CHAPTER 5

CONTRACT DOCUMENTS

The parts of the PAH shown in blue and bold should only be updated by Works Branch of Development Bureau.

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SYNOPSIS

This Chapter provides a handy reference to the various standard documents, forms and information that are regularly used in the preparation of contract documents for civil engineering works using the General Conditions of Contract (GCC) for Civil Engineering Works (1999 Edition). In some cases, standard forms and exact wording to be included in contract documents are reproduced in the Chapter. However, where a printed version of a standard document is available or where the information is contained in a well-known document, the Chapter makes reference to such documents or source rather than reproducing them. Standard documents referred to in this Chapter should be of the latest editions of the General Conditions of Contract for Civil Engineering Works, Standard Method of Measurement for Civil Engineering Works, General Specification for Civil Engineering Works, Subcontract Articles of Agreement and Conditions for Civil Engineering Works, Contractor Management Handbook and Construction Site Safety Manual. The information in this Chapter would also be useful in the preparation of documents for term contracts using the General Conditions of Contract for Term Contracts for Civil Engineering Works (2002 Edition).

To cater for the wider adoption of New Engineering Contract (NEC) form in public works projects, DEVB has promulgated the "Practice Notes" for New Engineering Contract for Public Works Projects in Hong Kong aiming to provide guidance, performance benchmarking and alignment of practices in the preparation and administration of public works projects using NEC form. The most updated version of the "Practice Notes" for Engineering and Construction Contract (NEC – ECC) and Term Service Contract (NEC – TSC) are available at the following DEVB's websites:

NEC – ECC
https://www.devb.gov.hk/en/publications_and_press_releases/publications/standard_contract_documents/practice_notes_nec_engineering_construction_contract/index.html

NEC – TSC
https://www.devb.gov.hk/en/publications_and_press_releases/publications/standard_contract_documents/practice_notes_nec_term_service_contract/index.html

Pursuant to SDEV's memo ref. () in DEVB 506/30/07 dated 31.12.2021, for works contracts adopting NEC ECC form where tenders are to be invited on or after 1.4.2022, project offices shall adopt NEC4 version unless there are justifications for not doing so, which shall be endorsed by an officer at D2 rank or above with the justifications documented. For ECC works contracts to be invited on or after 1.7.2022, the use of NEC4 version is mandatory.

Pursuant to SDEV's memo ref. () in DEVB 506/30/07 dated 8.7.2022, for term contracts adopting NEC TSC form where tenders are to be invited on or after 1.10.2022, project offices shall adopt NEC4 version unless there are justifications for not doing so, which shall be endorsed by an officer at D2 rank or above with the justifications documented. For term contracts adopting NEC TSC form to be invited on or after 1.1.2023, the use of NEC4 version is mandatory.

Pursuant to SDEV's memo ref. () in DEVB(W) 506/30/07 dated 19.7.2022, for capital works contracts of values above the threshold for engaging Group C contractors under the List of Approved Contractors for Public Works[1], procuring departments shall adopt NEC form unless there are strong justifications with prior endorsement obtained from DEVB for not doing so. The above revised

[1] For the avoidance of doubt, the revised requirement is also applicable to capital works contracts engaging specialist contractors under the List of Approved Suppliers of Materials and Specialist Contractors for Public Works, and the threshold for applying this revised requirement to such works contracts is the Group Tender Limit for engaging Group C contractors under the List of Approved Contractors for Public Works.

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requirements shall be applicable to works contracts of values above the Quotation Limit for which tenders are to be invited on or after 15.8.2022 except for those where the adoption of NEC form or otherwise has been endorsed prior to 19.7.2022.

Pursuant to SDEV's memo ref. () in DEVB 506/30/07 dated 16.11.2023, for works contracts adopting NEC ECC form where tenders are to be invited on or after 1.4.2024, project offices shall adopt the NEC ECC HK Edition unless there are justifications for not doing so, which shall be endorsed by an officer at D2 rank or above with the justifications documented. For works contracts adopting NEC ECC form where tenders are to be invited on or after 1.7.2024, the use of the NEC ECC HK Edition is mandatory.

Pursuant to SDEV's memo ref. () in DEVB 506/30/07 dated 28.6.2024, for works contracts (including both capital works and term contracts) of values above the threshold for engaging Group C contractors under the List of Approved Contractors for Public Works, procuring departments shall adopt NEC form unless there are strong justifications with prior endorsement obtained from DEVB for not doing so. For works contracts other than those covered above, procuring departments shall adopt NEC form as far as practicable. The decision and justifications for not doing so shall be endorsed by an officer at D2 rank or above in the procuring department.

The guidelines provided in this Chapter were originally written for preparation of contract documents under GCC contracts. As the types of contract involved and the composition of contract documents in GCC contracts and NEC contracts are different, project officers are advised to refer to Sections A4.1 and A4.2 of the Practice Notes for NEC-ECC and Section B4.1 and B4.2 of the Practice Notes for NEC – TSC when they prepare the tender and contract documents for NEC contracts.

Notwithstanding the above, many of the guidelines in this Chapter can still be applied to the preparation of contract documents for NEC contracts.

A contract for civil engineering construction is a very complex legal document containing several inter-related documents each of which plays an important role in defining the obligations and responsibilities of the parties concerned or in providing information on the works to be constructed. It is therefore essential that the contract documents for each contract are prepared with great care and by an experienced professional who has thorough knowledge of the works to be constructed. The documents forming a contract must be scrutinized for comprehensive coverage, accuracy and consistency with one another before tenders are invited.

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I. ABBREVIATION

I.01 The meaning of the abbreviations assigned in this Chapter of the Project Administration Handbook for Civil Engineering Works shall only apply to this Chapter.

I.02 The following list shows the meaning of the abbreviations for the common terms used in this Chapter of the Project Administration Handbook for Civil Engineering Works

Abbreviation	Term
AAR	Alkali-Aggregate Reaction
BQ	Bills of Quantities
CCC	Conditions of Contract Committee
CCGO	Central Cyber Government Office
CCIP	Contractor Controlled Insurance Programme
CEDD	Civil Engineering and Development Department
CPFS	Contract Price Fluctuation System
C&D	Construction and Demolition
DCED	Director of Civil Engineering and Development
DEVB	Development Bureau
DEVB TCW No.	DEVB Technical Circular (Works) No.
DLO	District Lands Office
DPO	Digital Policy Office
DRA	Dispute Resolution Adviser
EDP	Electronic Dissemination Package
EIA	Environmental Impact Assessment
E&M	Electrical and Mechanical
EMSD	Electrical and Mechanical Services Department
EP	Environmental Permit
EPD	Environmental Protection Department
ER	Employer's Requirements
ETWB	Environment, Transport and Works Bureau
ETWB TCW No.	ETWB Technical Circular (Works) No.
FoT	Form of Tender
FC No.	Financial Circular No.
GCC	General Conditions of Contract for Civil Engineering Works (1999 Edition)
CGE/S&T	Chief Geotechnical Engineer/Standards and Testing
GCT	General Conditions of Tender
GEO	Geotechnical Engineering Office
GS	General Specification for Civil Engineering Works (2020 Edition)
HATS	Harbour Area Treatment Scheme
HIA	Hazard Identification Activity
HyD	Highways Department

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Abbreviation	Term
LAD(Works)/DEVB	Legal Advisory Division (Works) of Development Bureau
LandsD	Lands Department
LD's	Liquidated Damages
LWBTC No.	Lands and Works Branch Technical Circular No.
MM	Method of Measurement
NEC	New Engineering Contract
NEC – ECC	New Engineering Contract – Engineering and Construction Contract
NEC – TSC	New Engineering Contract – Term Service Contract
NTT	Notes to Tenderers
OCIP	Owner Controlled Insurance Programme
PAH	Project Administration Handbook for Civil Engineering Works
PES	Pre-work Exercise and Safety
PFC	Public Fill Committee
PFF	Price Fluctuation Factor
PFSES	Pay for Safety and Environment Scheme
PFSS	Pay for Safety Scheme
PII	Professional Indemnity Insurance
PRC	People's Republic of China
PP	Particular Preamble
PS	Particular Specifications
PWP	Public Works Programme
PWL	Public Works Laboratories
QPME	Quality Powered Mechanical Equipment
SCC	Special Conditions of Contract
SCCT	Standing Committee on Concrete Technology
SCT	Special Conditions of Tender
SDEV	Secretary for Development
SETW	Secretary for Environment, Transport and Works
SFST	Secretary for Financial Services and the Treasury
S for W	Secretary for Works
SMM	Standard Method of Measurement for Civil Engineering Works (1992 Edition)
SMP	Subcontractor Management Plan
SoR	Schedule of Rates
SPID	Standard Phraseology of [Bill of Quantities] Item Descriptions
SPRs	Stores and Procurement Regulations
SRM	Systematic Risk Management
SSC	Site Safety Cycle
WBTC No.	Works Bureau Technical Circular No. or Works Branch Technical Circular No.

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Abbreviation	Term
WTO GPA	Agreement on Government Procurement of the World Trade Organization

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II. GLOSSARY OF TERMS

II.01 Words and expressions to which meanings are assigned in this Chapter of the Project Administration Handbook for Civil Engineering Works (PAH) shall only apply to this Chapter.

II.02 In this Chapter of the PAH the following words and expressions shall have the meaning hereby assigned to them except when the context otherwise requires:

"Government" means the Government of the Hong Kong Special Administrative Region.

"project office" means the office responsible for the planning, design and construction of the project.
(Where these functions are performed by different offices at different stages, the project office shall mean the office responsible at each particular stage.)

"Contract", "Contractor", "Drawings", "Employer", "Engineer", "Engineer's Representative" and "Works" are as defined in the General Conditions of Contract for Civil Engineering Works (1999 Edition) or the General Conditions of Contract for Term Contracts for Civil Engineering Works (2002 Edition).

"Schedule of Rates" and "Works Order" are as defined in the General Conditions of Contract for Term Contracts for Civil Engineering Works (2002 Edition).

II.03 Words importing the singular only also include the plural and vice versa where the context requires.

II.04 The common terminologies used in GCC, NEC – ECC and NEC – TSC are compared in the table below.

GCC	**NEC – ECC**	**NEC – TSC**
Extension of time, variations, claims, disruptions, loss and expenses	Compensation events	
Bills of Quantities / Schedule of Rates	Bill of Quantities / Activity Schedule	Price List
Architect / Engineer / Surveyor / Supervising Officer	Project Manager / Supervisor	Service Manager
Site	Site / Working Areas	Contract Areas / Sites
Contract Sum	The Prices	
Date of completion	Completion Date	End of the Service Period / Task Completion Date
Estimated value of works	Price for Work Done to Date	Price for Service(s) Provided to Date
Maintenance Periods	Defects date, defect correction period	Maintenance Periods

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Special Conditions of Contract	Additional Conditions of Contract
Liquidated damages	Delay damages

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1. GENERAL

1.1 SELECTION OF TYPE OF CONTRACT

Contracts for construction may be broadly classified into the following types:

(a) a remeasurement contract containing Bills of Quantities or a measurement contract containing a Schedule of Rates,

(b) a lump sum contract with drawings and specification,

(c) a lump sum contract with firm Bills of Quantities,

(d) a cost reimbursement contract,

(e) a design and build contract involving both design and construction by the Contractor. This type of contract is normally priced as a lump sum. (See DEVB TCW No. 4/2015)

Paragraph 10 stipulates that lump sum contracts with firm Bills of Quantities should be regarded as the preferred procurement approach for all civil engineering works. The criteria set out in Paragraph 10 should be followed in determining the type of contract to be adopted. A measurement contract with a Schedule of Rates should normally be used for term contracts involving maintenance works or works of a recurrent nature or works of a minor nature.

Other types of contract may be used subject to the prior approval of the Head of Office/Division who may seek higher authority as necessary.

1.2 COMPOSITION OF TENDER AND CONTRACT DOCUMENTS

For a typical civil engineering contract, the tender documents generally include the following:

(a) Notes to Tenderers (see Paragraph 11.2),

(b) General Conditions of Tender (GCT) (see Paragraph 2.1),

(c) Special Conditions of Tender (SCT) (see Paragraph 2.2),

(d) Form of Tender (see Paragraph 3.1, Appendix 5.1 & 5.2),

(e) Schedule of Proportions for calculating the PFF (see Paragraph 3.2),

(f) General Conditions of Contract (GCC) (see Paragraph 5.1),

(g) Special Conditions of Contract (SCC) (see Paragraph 5.2),

(h) General Specification (GS) (see Paragraph 6.1),

(i) Particular Specification (PS) (see Paragraph 6.2),

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(j) Standard Method of Measurement (SMM),

(k) Particular Preambles (if any),

(l) Bills of Quantities (BQ) (see Paragraph 7.1)

(m) Drawings (see Paragraph 8.1), and

(n) Any relevant pre-contract correspondence with the Contractor (e.g. tender addendum, circular letters to tenderers) (see Paragraphs 5.2, 6.14.4, 7.2.1, 7.3, 7.6 & 8.1.1 of PAH Chapter 6).

Usually, only documents (d) to (n) listed above, the letter of acceptance of the tender and the Articles of Agreement form the contract documents (see Paragraph 8.1.1 of PAH Chapter 6).

The type or edition of document used shall be the current version as promulgated by DEVB TCWs or other appropriate circular. Reference should also be made to the current corrigenda issued to the GS and the SMM (see Paragraph 5.2 of PAH Chapter 6).

1.3 CONSISTENCY AMONGST DOCUMENTS

Care should be taken to avoid any ambiguities or discrepancies in the documents which form a contract as contractual claims and disputes are often caused by inconsistencies in or between the documents. If any ambiguities or discrepancies exist, it should be noted that the provisions of the SCC prevail over those of the GCC, which in turn prevail over the PS and the Drawings, which in turn prevail over the GS. GCC Clause 5(1) and GS Clause 1.01 are relevant in this aspect.

In the drafting of SCC or PS clauses, reference should be made whenever appropriate to the GCC and the GS, using phrases such as:

(a) "Pursuant to General Conditions of Contract Clause .....", or

(b) "GS Clause ..... is deleted and replaced by ....." etc.

1.4 COMMENTS ON DOCUMENTS BY CONTRACT ADVISERS

The responsibility for ensuring that tender documents are properly prepared rests with the professional officers handling the project. They may however seek advice from Contract Advisers on tender documents when genuine doubts emerge. When seeking such advice, the officer concerned shall inform the Contract Adviser of the doubts he has and the aspects of the case on which he wants advice (see Paragraph 1.5.1 of this Chapter).

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1.5 LEGAL VETTING OF TENDER DOCUMENTS

1.5.1 Contracts Estimated to Exceed $500M

(Ref.: SDEV's memo ref. ( ) in DEVB(W) 510/30/01 dated 29 March 2019)

If a works contract has an estimated value exceeding $500M, departments must send all the non-standard components of the tender documents, including bills of quantities, particular specifications, special conditions of contracts, etc. through the appropriate Contract Adviser to the Legal Advisory Division (Works) of DEVB (LAD(Works)/DEVB) for legal vetting prior to calling for tenders. Before submission to LAD(Works)/DEVB, it is advisable to request the relevant Contract Adviser to comment on the documents. Comments made by the relevant Contract Adviser on the draft should be attached for LAD(Works)/DEVB's information.

The non-standard components of the tender documents to be submitted shall include the following:

(a) Special Conditions of Tender,

(b) Form of Tender and Appendix thereto (if these have been altered from the standard version shown at Appendix 5.1),

(c) Articles of Agreement (if these have been altered from the standard printed version),

(d) Special Conditions of Contract,

(e) Particular Specification, and

(f) Bills of Quantities, including General and Particular Preambles.

A memo shall accompany the non-standard components of the tender documents, drawing attention to the following:

(a) SCT 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 the PS, any item in the BQ, or any other matter relating to the tender documents or to the Contract which may have significant contractual or financial implications.

LAD(Works)/DEVB will consider these documents (retaining a copy for future reference) and may recommend amendments they consider advisable to the works division/regional office concerned, who should incorporate such amendments as necessary into the documents before calling for tenders. The vetting by LAD(Works)/DEVB will take at least three weeks and provision should be made in the programme for tender preparation.

If owing to urgency, or some other reasons, the documents cannot be submitted through Contract Adviser then the reason for the same should be explained in the covering memo to LAD(Works)/DEVB. However, action should then be taken to forward the comments made by Contract Adviser as soon as they are received.

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1.5.2 Design and Build Contract

The Administrative Procedures issued under DEVB TCW No. 4/2015 should be followed as closely as possible. In particular, the procedures laid down in the "Guidance Notes on the Preparation of the Employer's Requirements" (Appendix C of the Administrative Procedures) should be followed in order to avoid any unnecessary design changes after the contract is awarded. Prior approval of DEVB shall be obtained if the Procedures are not to be followed because of special consideration given to individual cases. The legal vetting requirement as described in Paragraph 1.5.1 applies equally to design and build contracts. The Administrative Procedures can be found on the DEVB website (under Publications and Press Releases\Publications\Standard Contract Documents\).

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2. CONDITIONS OF TENDER

2.1 GENERAL CONDITIONS OF TENDER

(Ref.: SDEV's memo ref. (026NM-01-3) in DEVB(W) 546/17/01 dated 25.6.2010 and SDEV's memo ref. ( ) in DEVB(W) 546/83/01 dated 11.11.2020)

Commonly used GCT clauses to be included in the Conditions of Tender are given in the Library of General Conditions of Tender available on DEVB website and shall be used for all works contracts other than design and build contracts.

The Library of General Conditions of Tender has been uploaded to the DEVB website under standard contract documents in the publications section and it will be updated from time to time when new technical circulars/memos are promulgated which may affect the library content. For the latest version, please refer to the DEVB website.

(http://www.devb.gov.hk/en/publications_and_press_releases/publications/standard_contract_documents/index.html)

2.2 SPECIAL CONDITIONS OF TENDER

(Ref.: SDEV's memo ref. (03487-01-1) in DEVB(W) 510/83/05 dated 31.12.2019 and SDEV's memo ref. () in DEVB(W) 510/83/05 dated 14.7.2020, 16.9.2020 and 26.3.2021)

Any alterations to a GCT shall be effected by a SCT. Commonly used SCT clauses to be included in the Conditions of Tender for works contracts other than design and build contracts are provided in the Library of Special Conditions of Tender available on DEVB website. In addition, any SCT clauses promulgated by means of memos/respective technical circulars after promulgation of the Library shall be deemed to have been included in the Library. The project office may use the SCTs promulgated selectively since not every item of the provisions is applicable to a particular contract.

The inclusion of the standard SCT clauses requires the approval of an officer at D1 rank or above. When non-standard SCT clauses are needed, approval will have to be given by an officer of at least D2 rank. When seeking such approval, the reasons for their inclusion and a draft of them (with legal advice from LAD(W)/DEVB where appropriate) should be submitted.

The Library of Special Conditions of Tender has been uploaded to the DEVB website under standard contract documents in the publications section and it will be updated from time to time when new technical circulars/memos are promulgated which may affect the library content. For the latest version, please refer to the DEVB website.

(*http://www.devb.gov.hk/en/publications_and_press_releases/publications/standard_contract_documents/index.html)*

A sample Joint Venture (JV) Proforma has been drawn up to facilitate tenders to provide the proposed value of works in submitting their tenders in the form of a joint venture. The sample JV Proforma and SCT on Contractors' Joint Venture as promulgated in SDEV's memo ref. () in DEVB(W) 510/83/05 dated 26.3.2021, Notes to Tenderer and GCT on Essential Submissions as promulgated in SDEV's memo ref. (03487-01-1) in DEVB(W) 510/83/05 dated 31.12.2019 shall be adopted for all public works contracts without prequalification. For contracts adopting prequalification, the SCT clause set out at Annex 1 of SDEV's memo ref. (02VVW-01-1) in DEVB(W) 510/83/05 dated 24.1.2017 remains in force.

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Updated version of standard GCT 31 in relation to the eligibility of probationary contractors to tender and for award of contracts is promulgated in SDEV's memo ref. () in DEVB(W) 510/83/05 dated 14.7.2020.

Updated version of standard GCT 29 on "One tender only for holding companies, subsidiaries or related parties" and sub-clause (3) of GCT 16 on "Tender Clarification" is promulgated in SDEV's memo ref. () in DEVB(W) 510/83/05 dated 9.11.2020.

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3. FORM OF TENDER AND SCHEDULE OF PROPORTIONS

3.1 STANDARD FORM OF TENDER
(Ref.: SDEV's memo ref. ( ) in DEVB(W) 546/83/01 dated 11.11.2020)

For capital works contracts, the standard Form of Tender as shown at Appendix 5.1 should be used. Guidelines for completing the Form of Tender are given at Appendix 5.2. Regarding Form of Tender for term contracts, reference should be made to PAH Chapter 8. For capital works contracts using NEC form, please refer to the above mentioned SDEV's memo for the updated Form of Tender.

Matters to be dealt with in the Appendix to the Form of Tender depend very much on the standard form of contract used and other special contract provisions (in the form of SCCs and Particular Specification) incorporated in the contract. Departments should check and ensure that all the matters required to be dealt with in the Appendix to the Form of Tender have been properly specified/stated therein.

3.2 SCHEDULE OF PROPORTIONS

A Contract Price Fluctuation System (CPFS) is used in all civil engineering capital works contracts and term contracts to cover changes in the cost of labour and materials between the time of tender submission and the time of payment is made for the Works completed. A description of the system and guidelines for the preparation and administration of contracts using the CPFS are provided in DEVB TCW No. 4/2021.

The CPFS requires the inclusion of a Schedule of Proportions in the contract documents, which will be used to calculate a PFF for adjusting payments to the Contractor for items valued at tendered rates. The guidelines on preparation and the sample Schedule of Proportions for different types of contracts are given at the annexes/ appendices of DEVB TCW No. 4/2021 which was revised via SDEV's memo ref. ( ) in DEVB WB WP4S-022-003-001-001 dated 1 August 2025. Amd No. 4/2025

All new contracts (including design and build contracts) with tenders to be invited on or after 1 October 2021 shall adopt the Index Numbers of the Costs of Labour and Materials used in Public Sector Construction Projects (April 2021=100) published by the Census and Statistics Department and the associated provisions stipulated in DEVB TCW No. 4/2021 for contract price fluctuation (CPF) adjustment. If it is considered impractical or unsuitable to adopt the CPFS in a contract due to reasons such as predominant use of proprietary products/systems and/or absence of suitable cost indices for price fluctuation computation, approval for such exemption should be obtained from an officer at D3 rank or above with the justifications properly documented.

3.3 LIQUIDATED DAMAGES
(Ref.: ETWB TCW No. 4/2003)

3.3.1 General Principle

Liquidated damages (LD's) is a sum agreed by the Employer and the Contractor in advance as the amount to be paid by or deducted from payments to the Contractor as damages if the Contractor breaches the contract by failing to complete the work in time. A provision for LD's is enforceable if the amount fixed is a genuine pre-estimate, judged at the time the contract is entered into, of the loss likely to arise from the anticipated breach. The Employer

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does not need to prove actual damages but LD's are not enforceable if imposed as a penalty. Guidelines for distinguishing between liquidated damages and a penalty are stated in the leading case of *Dunlop Pneumatic Tyre Company Limited v New Garage and Motor Company Limited* [1914-15] All ER 739. Reference may also be made to the judgement of the Privy Council in *Philips Hong Kong Limited v The Attorney General of Hong Kong* delivered on 9 February 1993. If the courts find the agreed sum to be "extravagant or unconscionable in amount in comparison with the greatest loss which could conceivably be proved to have followed from the breach" it will be held to be a penalty.

3.3.2 Calculation of Liquidated Damages

The LD's formula to be entered in the Appendix to the Form of Tender should be a genuine pre-estimate of the likely loss to the Employer resulting from delay in completion of the Works, or any Section of the Works, as the case may be. The General Conditions of Contract Clause 52 has been drafted on the basis that if any part of the Works is designated as a Section, the remainder of the Works must also be designated as a Section. If a contract contains Sections, LD's should be calculated for each Section instead of for the whole of the Works.

If it is possible to carry out a cost-benefit analysis, LD's shall be calculated using the daily rate of economic benefit likely to be generated by the project after completion and those additional costs due to the delay in completion of the Works, if any. Where such analysis is not possible, as is usually the case in public sector construction contracts, an amount being a genuine pre-estimate of the likely loss to the Employer may be stipulated as the LD's.

In estimating the likely loss to the Employer, there is a widely accepted formula method which includes the following components:

- **(a) loss of revenue or interest on the capital invested in the project;**
- **(b) supervisory costs during the delay period;**
- **(c) the additional sum payable to the Contractor in respect of fluctuations in the cost of labour and materials; and**
- **(d) any special damages specific to the particular project.**

Adopting this, the empirical formulae given in Appendix 5.34 may be used to calculate the components of LD's to be specified in the Contract unless an alternative, more accurate assessment can be made.

3.3.3 Special Damages

There may be situations where the Employer will suffer some special losses as a result of a project not being completed on time. For example, where a contract is on the critical path any delay may result in an ultimate delay to the completion of another contract (e.g. a separate demolition or piling contract can delay the completion of the whole project). The Employer will suffer a loss on the following contract(s) if delayed by the late completion of the contract in respect of which the calculation is being made. LD's for special damages cannot be imposed if there is a float period between contracts, because there cannot be any genuine pre-estimate of the special damages. However, in many cases contracts are programmed so that there is no float. This should be confirmed before a calculation is made.

There may be other categories of loss caused by delay in meeting key dates. For example, there may be a special loss of running a less cost efficient facility until the replacement

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facility is available; the opening of a school or offices may depend on the completion of a road access; or the loss of interest on capital invested in an adjoining sewage treatment plant which cannot be commissioned until the sewer tunnel is completed.

There may also be occasions where Government is liable to a third party for losses caused by delay in completion of the Works. For example, Government undertakes the site formation of a leased land and is liable to damages for delay. Another example is that Government may have to pay its consultants additional fees and expenses arising from delay in completion of the Works.

If any such special damages can be identified at the project planning stage, it is essential that the rationale behind the calculation (but not the calculation itself), is clearly stated in the tender documents as a Special Condition of Tender and the appropriate sum representing the special damages included as part of the genuine pre-estimate of loss in the event of late completion of the Works or, as the case may be, the relevant Section.

3.3.4 Minimum Amount of Liquidated Damages

The amount of LD's is subject to proportional reduction under General Conditions of Contract Clause 52(2), due to the completion or handing over of a part of the Works or part of a Section in advance of the whole. Under certain circumstances, this proportional reduction may not reflect the real effect of delay. For example, a partial completion of the Works would not help in reducing the special damages. Also, in practice, there is a limit on the minimum size of the site supervisory staff beyond that no further reduction is possible. Under such circumstances, a SCC specifying the minimum amount of LD's should be incorporated in the contract by adding a sub-clause (5) to General Conditions of Contract Clause 52 as follows:

"General Conditions of Contract Clause 52 is amended by adding the following as sub-clause (5):

> **(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."**

and the sum calculated in respect of the special damages and the minimum supervisory staff costs shall be inserted in the Appendix to the Form of Tender as the "Minimum amount of liquidated damages (per day)".

It should be noted that the concept of minimum site staff establishment may not be applicable to Sections, other than the last Section, as the supervision can be carried out by the supervisory staff for the remaining Sections. However, there are exceptions. For instance, if a Section of the Works is geographically or technically separated, entailing the need to deploy staff purely for that Section of the Works. Another example is where some of the staff could be released on completion of a major Section, leaving some minor works such as landscaping works as the last Section to be completed.

3.3.5 Lowering the Daily Rate of LD's

Contractually, there is no impediment to setting LD's at a level below the genuine pre-estimate of the Employer's loss as calculated in accordance with the above Paragraphs 3.3.2 and 3.3.3. If the daily rate of LD's is likely to be more than a contractor can reasonably bear, the

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procuring department may consider lowering the rate to a commercially acceptable level and seek the endorsement of the Development Bureau on the proposed amount of LD's on a case by case basis. Where such a rate is lower than the genuine pre-estimated loss, the approval of the Secretary for Financial Services and the Treasury must be sought before incorporating such a rate in the tender documentation.

3.3.6 LD's in the Tender Documentation

Where the amount of LD's is to a certain extent related to the contract value of the Works or the Section, the rate of LD's shall be stipulated as a function of the Contract Sum or the contract value of the Section and appropriate footnote should be added to the relevant LD's provisions in the Appendix to the Form of Tender. (e.g. $A*Y_1 + B$ where Y_1 is the Contract Sum or the total sum of a Bill in the Bills of Quantities and A & B are some numerical values determined in accordance with Appendix 5.34 and Paragraph 3.3.3. See also the example given in Annex B of Appendix 5.35). The department shall notify the tenderer of the rate of LD's so calculated before tender acceptance and a copy of such notice shall be incorporated in the contract documents forming part of the contract.

In addition, to deal with possible anomalies which may arise as a result of negative pricing by tenderers, appropriate footnote (depending on whether or not there is minimum LD's for the Works/Section) should be added to the relevant LD's provisions in the Appendix to the Form of Tender along the following lines:

(a) Where there is no minimum LD's

> **"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 *[specify those indeterminate items] [as appropriate,]** with its corresponding value in the priced Bills of Quantities."**
>
> **[Note*: *Consider inclusion of the words "as appropriate," if the Works are divided into Sections and the footnote is used in relation to two or more Sections with no minimum LD's.*]**

(b) Where there is minimum LD's

> **"The value of the formula within the square bracket shall be taken as *[specify the amount of the applicable daily rate of minimum LD's]* for the purpose of computation of the daily rate of liquidated damages if and when the sum is worked out to be less than *[specify the amount of the applicable daily rate of minimum LD's]* by substituting each of *[specify those indeterminate items]* with its corresponding value in the priced Bills of Quantities."**

An example of the LD's provisions in the Appendix to the Form of Tender is at Annex C of Appendix 5.35.

3.3.7 Independent Check

It is important that those responsible for calculating LD's should ensure that the calculations are logical and free from error. In all cases, the full implications of the contract must be considered in applying the formulae given in Appendix 5.34. In this respect, LD's

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calculations should always be subject to an independent check by a senior professional officer. Calculations from which LD's are derived must be set out clearly and kept on file for future reference.

A proforma which may be useful as a guide in the calculation of LD's is at Annex A of Appendix 5.35. A worked example is at Annex B of Appendix 5.35. The summary statement only but not the calculations shall be included in the Appendix to the Form of Tender.

3.3.8 Check Before Tender Invitation

The formula to be entered into the Appendix to the Form of Tender for determining the rate of LD's (hereinafter referred to "the Formula") should be reviewed immediately before tender invitation, with reference to the latest available information.

3.3.9 Keep in View During the Tender Period

Should there be changes to the scope of the Works or the special damages before the tender closing date, the Formula should be adjusted by means of a tender addendum.

3.3.10 Check before the Issue of the Letter of Acceptance

As a provision for LD's is enforceable only if the rate fixed is a genuine pre-estimate of the Employer's loss judged at the time of entering into the contract, there is a need to review the Formula immediately before a tender is accepted. If the Formula no longer represents a valid estimate of the likely loss to the Employer (e.g. the original assumption concerning the float period between contracts is found to be invalid or the special damages have changed due to changed circumstances), the following action should be taken:

(a) If the rate of LD's calculated in accordance with the Formula is higher than the latest estimate of the likely loss, the procuring department should negotiate with the tenderer(s) to amend the rate of LD's in accordance with the tender negotiation procedures stipulated in the SPRs.

(b) If the rate of LD's calculated in accordance with the Formula is lower than the latest estimate of the likely loss, the procuring department should follow the procedures in sub-paragraph (a) above to revise the rate of LD's. If as a result of negotiation the revised rate of LD's is at a level below the genuine pre-estimated loss i.e. the latest estimated loss in this case, the procuring department must seek DEVB's endorsement and the approval of Secretary for Financial Services and the Treasury.

3.3.11 Record

Full record of any review of LD's together with all related calculations should be kept on file.

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4. ARTICLES OF AGREEMENT

Standard Articles of Agreement attached to the respective editions of the GCCs shall be used, namely, GF 548 for capital works contracts for Civil Engineering Works as modified by Appendix A of WBTC No. 20/2000, GF 546 for term contracts for Civil Engineering Works, GF 549 for Design and Build Contracts, GF 541 for Building Works, and GF 550 for Electrical & Mechanical Works. Appropriate modification to the attestation clauses should be made in accordance with DEVB TCW No. 7/2014.

For Nominated Subcontracts, the Articles of Agreement in the "The Government of the Hong Kong Special Administrative Region, Subcontract Articles of Agreement and Conditions for Civil Engineering Works" (GF 543), with appropriate modification to suit different contract forms, shall be used for all Nominated Subcontracts to capital works contracts.

Where a contract is awarded to an unincorporated joint venture, the revised Articles of Agreement at Appendix E of ETWB TCW No. 50/2002 shall be used. Appropriate modification to the attestation clauses should be made in accordance with DEVB TCW No. 7/2014. Where the contractor is an incorporated joint venture, the ordinary form of Articles of Agreement shall be used.

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5. CONDITIONS OF CONTRACT

5.1 GENERAL CONDITIONS OF CONTRACT

The following standard documents are available:

(a) The Government of the Hong Kong Special Administrative Region, General Conditions of Contract for Civil Engineering Works (1999 Edition);

(b) The Government of the Hong Kong Special Administrative Region, General Conditions of Contract for Term Contracts for Civil Engineering Works (2002 Edition);

(c) The Government of the Hong Kong Special Administrative Region, General Conditions of Contract for Building Works (1999 Edition);

(d) The Government of the Hong Kong Special Administrative Region, General Conditions of Contract for Term Contracts for Building Works (2004 Edition);

(e) The Government of the Hong Kong Special Administrative Region, General Conditions of Contract for Electrical and Mechanical Engineering Works (1999 Edition);

(f) The Government of the Hong Kong Special Administrative Region, General Conditions of Contracts for Term Contracts for Electrical and Mechanical Engineering Works (2007 Edition); and

(g) The Government of the Hong Kong Special Administrative Region, General Conditions of Contract for Design and Build Contracts (1999 Edition).

The GCCs have been uploaded to the DEVB website (under standard contract documents in the publications section) and will be updated from time to time when new editions are promulgated. (*http://www.devb.gov.hk/en/publications_and_press_releases/publications/standard_contract_documents/index.html)*

5.2 SPECIAL CONDITIONS OF CONTRACT

5.2.1 General Consideration

Any amendments, additions, deletions and amplifications to the GCC should be effected by the inclusion of SCC clauses. However, SCC clauses should only be included when there is a genuine need to alter or supplement the GCC.

Matters concerning materials or workmanship standards or detailed arrangement for the execution of Works should not in general be stipulated in the form of SCC. Such matters, if not adequately covered by the GS, should be dealt with in the PS (see Paragraphs 6.1 and 6.2 below).

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5.2.2 Library of Standard Special Conditions of Contract

Commonly used standard SCC clauses for use with the General Conditions of Contract for Civil Engineering Works, Building Works and Electrical & Mechanical Engineering Works (1999 Edition) are included in the Library of Standard Special Conditions of Contract ("Library of standard SCC") promulgated and updated by DEVB in WBTC Nos. 18/2000, 18/2000A and 18/2000B and SDEV's memo ref. DEVB(W) 546/17/02 dated 9.2.2011. In addition, any SCC clauses promulgated by means of memos/respective technical circulars after promulgation of the Library of standard SCC shall be deemed to have been included in the Library. All additions and deletions from the Library of standard SCC will be vetted by the Conditions of Contract Committee (CCC) and approved by the SDEV. To maximize the usefulness of the Library, any non-standard SCC developed for a particular contract that will have repeated use or could be of use to others should be submitted to the CCC through the department's representative with a view to placing the clause in the Library of standard SCC.

The updated Library of standard SCC as promulgated in SDEV's memo ref. DEVB(W) 546/17/02 dated 9.2.2011 is available for use on the Works Group Intranet Portal. The current practice of updating the PAH to incorporate SCC from newly issued technical circulars/memos will be maintained. As updating of the Library of standard SCC may not be in pace with the PAH, newly issued SCC may have been updated to the PAH sooner than that of the Library of standard SCC. In this regard, project officers should also make reference to the PAH when using the Library of standard SCC. If any anomalies are found, they should notify their departmental contract advisors for further clarification with the DEVB subject officer [AS(WP4)8, telephone no. 3509 7308].

The SCC for deletion of a provision in GCC which expressly disentitles a Contractor to an extension of time if the cause of the delay is a shortage of labour is promulgated in Appendix A of DEVB TCW No. 5/2013, and should be incorporated in works contracts of all categories including capital works contracts, term contracts and Design and Build (D&B) contracts whose tenders are invited on or after 15 August 2013.

The SCC for introducing Pay for Safety Performance Merit System (PFSPMS) as an extension to the existing Pay for Safety and Environment Scheme (PFSES) and Pay for Safety Scheme (PFSS) is promulgated in SDEV's memo ref. (02LSV-01-1) in DEVB(W) 516/70/03 dated 22.11.2013, and should be included in all capital works contracts including electrical and mechanical contracts and D&B contracts which adopt PFSS/PFSES and with tenders to be invited on or after 1 February 2014. The Guidelines on the Inclusion of the Pay for Safety Performance Merit Scheme as Extension to the Pay for Safety Scheme (PFSS) have been revised in Chapter 12 of Construction Site Safety Manual (March 2018 version) and should be followed.

The SCC for dealing with tenderers' alternative designs, tenderer's designs required for part of the Works and alternative designs from Contractors after contract award is promulgated in DEVB TCW No. 3/2014, and should be included in all works contracts for which tenders are invited on or after 15 May 2014 except D&B contracts.

The SCC for aligning with the Domestic Arbitration Rules (2014) promulgated by the Hong Kong International Arbitration Centre which took effect on 1 November 2014 is promulgated in SDEV's memo ref. DEVB(W) 510/10/01 dated 4.12.2014, and should be included in all public works contracts for which tenders are invited on or after 1 January 2015. Dispute resolution clause in Annexes A – D to SDEV's memo ref. DEVB(W) 510/10/01 dated 4.12.2014 are superseded by Annex E to DEVB TC(W) No. 6/2021.

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The SCC for the use of non-road mobile machinery approved under the Air Pollution Control (Non-road Mobile Machinery) (Emission) Regulation is promulgated in DEVB TCW No. 1/2015, and should be incorporated in tender documents for capital works contracts of public works including D&B contracts, with an estimated contract value exceeding $200 million and with tenders to be invited on or after 1 June 2015.

The SCC for excluding enforceable contractual rights on a third party is promulgated in Annex of SEDV's memo DEVB(W) 510/10/01 dated 28.8.2015, and should be included in the tenders for all works contracts to be awarded on or after 1 January 2016.

The SCC for re-introducing the Independent Safety Audit Scheme is promulgated in SDEV's memo ref. (02SR7-01-1) in DEVB(W) 516/83/02 dated 30.10.2015, and should be incorporated into the documents of mega capital works contracts (estimated contract sums exceeding $1,000 million) or capital works contracts (excluding maintenance contracts) involving unconventional construction method (such as working in compressed air at pressure exceeding 3.45 bars) even if the estimated contract sum is less than $1,000 million, and for which tenders are to be invited on or after 1 January 2016.

The SCC for allowing the use of the prefabricated rebar products produced in the yards on the "List of Approved Steel Reinforcing Bar Prefabrication Yards for Public Works" is promulgated in DEVB TCW No. 10/2018, and should be included into the public works contracts including capital works contracts, term contracts, and D&B contracts of all categories of building and civil engineering works for which the tenders are to be invited on or after 1 March 2016.

The SCC for ceasing the reimbursement of the Mandatory Provident Fund is promulgated in SDEV's memo ref. (02VKU-01-3) in DEVB(W) 510/17/01 dated 16.12.2016, and is applicable to new contracts of which tenders will be invited on or after 1 January 2017.

The SCC for the provision of site uniform for personnel working on public works site is promulgated in Appendix I of the SDEV's memo ref. DEVB(Trg) 133/3 (10) dated 23.1.2017, and is applicable to all public works contracts, including design and build contracts and term contracts, with a contract period of not less than 12 months, of which the tender invitations will be issued on or after 1 February 2017.

Project officers should refer to SDEV's memo ref. DEVB(W) 505/91/01 dated 17.5.2017 which amends the DEVB TCW No. 8/2010 and specifies the latest requirements for an enhanced specification on site cleanliness and tidiness for adoption in public works contracts on a need basis.

The SCC for the employment of skilled works in public works contracts is promulgated in Appendix A of DEVB TCW No. 4/2017 and is applicable to all public works contracts, including design and build contracts and terms contracts, of which the tender invitations will be issued on or after 15 July 2017.

The SCC to be incorporated into tender documents for contracts requiring the contractor to have obtained ISO 9000 certification is promulgated in the Appendix F of SDEV's memo ref. DEVB(W)520/83/01 (2018 version) dated 4.4.2018 for immediate implementation.

The adoption of a unified title of Assistant Clerical Officer (Labour Relations) ("ACO(LR)") in all new public works contracts is promulgated in SDEV's memo ref. (02YWL-01-2) in DEVB(W) 510/17/01 dated 5.2.2018 which provides that Works Departments should modify the relevant SCC and Particular Specification for wage payment monitoring measures accordingly.

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The SCC for advance payment mechanism as an interim relief measure to assist the construction industry is promulgated in SDEV's memos ref. ( ) in DEVB(W) 510/33/02 dated 14.2.2020, 5.3.2021 and 10.3.2022, and should be included into the capital works contracts for which the tenders are to be invited on or after 1.3.2020 until further notice.

The SCC for advance payment mechanism under term contracts is promulgated in SDEV's memos ref. ( ) in DEVB(W) 510/33/02 dated 5.6.2020, 5.3.2021 and 10.3.2022, and should be included into term contracts for which the tenders are to be invited on or after 20.4.2020 until further notice.

The SCC for CPFS, which includes a mechanism to deal with changes in indices and statistical figures referenced in the prescribed method for CPF calculation, is promulgated in Appendix A of DEVB TCW No. 4/2021 and should be included in all new contracts (including design and build contracts) which tenders are to be invited on or after 1 October 2021.

The revised Guidelines on Scope and Contents of Subcontractor Management Plan promulgated under SDEV's memo ref. (03E8T) in DEVB(W)516/80/03 dated 3.8.2022 replacing the existing Appendix to Special Conditions of Contract / *additional conditions of contract* on Subcontractor Management Plan promulgated under DEVB TC(W) No. 6/2021 are at Appendices 5.6A, 5.6C and 5.6E respectively.

The above-mentioned revisions to the Library of standard SCC may not be exhaustive. Project officers should refer to the latest technical circulars/memos on DEVB's website and Works Group Intranet Portal during their preparation of tender documents.

5.2.3 Approval of Special Conditions of Contract

In accordance with the technical circulars promulgating the Library of Standard SCC, except for the clause deleting provision for extension of time due to inclement weather, standard SCC clauses may be used as required with the approval of the chief engineer (or a higher rank officer in cases of SCC for Sections subject to excision, care of the Works insurance and third party insurance) responsible for the administration of the particular contract. The use of the standard SCC clause deleting the provisions for extension of time due to inclement weather must however be approved by the Head of Department and endorsed by DEVB (attention PAS(W)3).

All non-standard SCC clauses may be drafted and used as required on the approval of the Head of Department/Office or those officers (not below the rank at D1) to whom this responsibility has been delegated. When seeking such approval, the reasons for the inclusion of the SCC clause and a draft of the clause should be submitted. Should the Head of Department/Office or the delegated officer have any doubt as to the wording of a proposed SCC not contained in the Library of standard SCC then the clause may be forwarded to LAD(Works)/DEVB for advice, through the relevant Contract Adviser.

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.

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6. SPECIFICATION

6.1 GENERAL SPECIFICATION
(Subsumed from WBTC No. 18/92; Ref.: DEVB TCW No. 7/2007)

The General Specification for Civil Engineering Works (GS) covers general requirements and may need varying degrees of amplification and modification to suit individual contracts, e.g. on the general description (major items only) of the Works, the list of Drawings, works by other contractors on the Site running concurrently with the Works under the contract. Amplifications and modifications to the GS should be made in the Particular Specification (PS). In supplementing the GS by a PS, compatibility of all changes must be ensured by the department preparing the tender documents. If changes are considered necessary, the revised items together with the reasons for the changes shall be submitted to the D1 (or higher) level officer administering the contract for approval. Furthermore, it is essential to ensure that the PS does not conflict with other parts of the tender documents.

The GS, 2020 Edition can be found on the CEDD website (https://www.cedd.gov.hk/eng/publications/standards-spec-handbooks-cost/stan-gs-2020/index.html). It has incorporated, among other changes, the use of "green" construction materials including recycled aggregates and reclaimed asphalt material to further promote environmentally friendly construction practices in public works projects. It has included two new sections on "Environmental Protection" and "Preservation and Protection of Trees".

As the latest edition of the GS is publicly available and can be purchased at the Publications Sales Unit of the Information Services Department, it is therefore not necessary to bind the GS into the tender or contract documents. However, this should be reflected in the Conditions of Tender by stating that the GS is not issued as part of the tender documents.

6.2 PARTICULAR SPECIFICATION

Each contract will require a different set of PS clauses to suit its own circumstances (See Paragraph 6.1). Standard clauses/guidelines may be available from DEVB TCWs for the following subjects:

(i) For capital works or maintenance works (including tree planting) within the Railway Protection Area or in close proximity to railway vent shafts, reference should be made to DEVB TCW No. 1/2019;

(ii) Not used;

(iii) Not used;

(iv) For contracts involving permanent pre-stressed ground anchors, reference should be made to ETWB TCW No. 16/2004;

(v) For reclamation contracts involving public filling, reference should be made to WBTC Nos. 10/92, 2/93, 2/93B, 16/96, 4/98 & 4/98A and subsequent revisions;

(vi) For contracts including computer facilities as an item to be provided by the Contractor, reference should be made to Paragraph 9.14 of this Chapter;

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(vii) Not used;

(viii) Not used;

(ix) Not used;

(x) For contracts involving importation of sand from the Chinese Mainland by barges, reference should be made to WBTC Nos. 10/95 & 10/95A;

(xi) For the Pay for Safety Scheme and Pay for Safety Performance Merit Scheme, reference should be made to WBTC No. 30/2000, the Construction Site Safety Manual, ETWB TCW No. 19/2005, the Interim Guidance Note on Administration of Environmental Management and Pay for Safety and Environment Scheme for Public Works Contracts promulgated under SETW's memo ref. (014G7-01-1) in ETWB(W) 517/91/01 dated 19.6.2006 (except paragraph 2 which was made obsolete by SDEV's memo ref. DEVB(W) 517/91/01 dated 29.3.2018), and SDEV's memo ref. DEVB(W) 517/91/01 dated 29.3.2018.;

(xii) For contracts including contract transport, reference should be made to LWBTC No. 11/84 and Paragraph 6.3.2(c);

(xiii) For independent checking of the Design, Erection, Use and Removal of Temporary Works, reference should be made to Paragraph 9.35;

(xiv) For contract measures to prevent non-payment of wages, reference should be made to Paragraph 9.11.

(xv) Not used;

(xvi) For employment of registered skilled workers and registered semi-skilled workers in public works contracts, reference should be made to DEVB TCW No. 4/2017;

(xvii) Not used;

(xviii) For contracts involving reinforced fill structures, references should be made to the model specification in Appendix A to Geoguide 6, "Guide to Reinforced Fill Structure and Slope Design", which is available on the CEDD website https://www.cedd.gov.hk/eng/publications/geo/geoguides/geo-g6/index.html (the project department shall submit the specification to GEO for checking in accordance with ETWB TCW Nos. 29/2002 & 29/2002A);

(xix) Not used;

(xx) Not used;

(xxi) Not used;

(xxii) Not used;

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(xxiii) For alternative hoarding design to enhance the aesthetic appearance of site and improve the image of construction sites and public's perception, reference should be made to the guidelines in DEVB's memo ref. (0289W-01-3) in DEVB(W) 516/95/02 dated 16.8.2010;

(xxiv) For contracts involving management of dredged/excavated sediment, reference should be made to paragraph 4.2 of Chapter 4 of the PAH;

(xxv) For contracts involving alternative designs by tenderers, reference should be made to DEVB TCW No. 3/2014;

(xxvi) For enhanced control of site cleanliness and tidiness, reference should be made to DEVB TCW No. 8/2010 (as amended by SDEV's memo ref. DEVB(W) 505/91/01 dated 17.5.2017);

(xxvii) For implementation of additional measures to improve site cleanliness and control mosquito breeding on construction sites, reference should be made to Appendix A to ETWB TCW Nos. 22/2003 and 22/2003A;

(xxviii) For contracts involving the use of recycled aggregates in concrete production or in road sub-base construction, reference should be made to Paragraph 9.37 for details while for contracts involving the use of concrete paving units made of recycled aggregates, reference should be made to ETWB TCW No. 24/2004;

(xxix) For implementation of Site Safety Cycle and provision of welfare facilities for workers at construction sites, reference should be made to Chapter 3 of Construction Site Safety Manual;

(xxx) For employment of technician apprentices and building & civil engineering graduates by contractors of public works contracts, reference should be made to Paragraph 9.39;

(xxxi) Not used;

(xxxii) For contracts implementing Systematic Risk Management (SRM), the standard particular specification in Annex I of ETWB TCW No. 6/2005 should be incorporated;

(xxxiii) For contracts where an Environmental Permit has been obtained by the project proponent for the Works, the standard PS clause in Paragraph 1.6.5 in Appendix A to ETWB TCW No. 13/2003 should be included;

(xxxiv) Not used;

(xxxv) For public works to be carried out within the protection boundary of the Harbour Area Treatment Scheme (HATS) Stage 1 and Stage 2A sewerage tunnels, reference should be made to Appendix 4.31 of Chapter 4 (subsumed with amendments from ETWB TCW No. 28/2003). For public works to be carried out in the vicinity of the drainage tunnels managed by Drainage Services Department (DSD) (e.g. Hong Kong West Drainage Tunnel), advice should be sought from DSD for the required protection requirements of the drainage tunnels;

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(xxxvi) For contracts involving tunnel works, reference should be made to ETWB TCW No. 15/2005;

(xxxvii) For contracts involving noise barriers, reference should be made to annex I to HyD's Practice Notes No. BSTR/PN/003 Rev. C;

(xxxviii) For contracts involving the use of Subcontractor Management Plan, reference should be made to Paragraph 9.33;

(xxxix) For contracts where construction and demolition materials including waste generated on site require disposal, reference should be made to DEVB TCW No. 6/2010;

(xl) For contracts involving provision of uniform for personnel working on public works sites, reference should be made to SDEV's memo ref. () in DEVB(Trg) 133/3 (10) dated 23.1.2017;

(xli) For contract involving procurement of arboricultural service for tree risk assessment, reference should be made to 'Service Specifications on Tree Risk Assessment and Mitigation Measures' in the Tree Management section of the Cyber Manual for Greening or the direct link (http://devb.host.ccgo.hksarg/en/contactus/index.html);

(xlii) For contract involving preservation of existing trees, reference should be made to 'Contract Provision for Preservation of Existing Trees (where there are Old and Valuable Trees)' and 'Contract Provision for Preservation of Existing Trees (where there are no Old and Valuable Trees)' in the Tree Management section of the Cyber Manual for Greening and the Particular Specification given in Appendix D of DEVB TCW No. 4/2020. The Tree Management Guidelines promulgated by DEVB (see Paragraph 12 "References") also contain considerations that should be taken into account in the contract provision;

(xliii) For adoption of sustainable designs and features in site accommodations for Resident Site Staff in public works contract, reference should be made to DEVB TCW No. 11/2020;

(xliv) For contracts involving the use of chainsaw in tree pruning works, reference should be made to the SDEV's memo ref. (36) in L/M to DEVB(GLTM) 302/5/1 dated 17.12.2014;

(xlv) For promoting green procurement, it is encouraged to adopt the mandatory/desirable requirements as specified in the green specifications in Annex II of Environment Bureau Circular Memorandum No. 1/2021 in contracts as far as possible;

(xlvi) Not used;

(xlvii) For contracts incorporating the Independent Safety Audit Scheme, reference should be made to Paragraph 9.48.

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(xlviii) For implementation of mandatory construction industry collaborative training schemes in public works contracts, reference should be made to DEVB TCW No. 6/2019.

(xlix) For civil engineering capital works contracts, to rationalise the minimum qualification and experience requirements for contractor's site management staff and maintain consistency amongst civil engineering contracts under works departments, a guideline setting out the minimum qualification and experience requirements for management staff of Group A, B and C contractors undertaking civil engineering capital works contracts is appended in Appendix 5.61 as promulgated under SDEV's memo ref. DEVB(W) 510/70/03 dated 8.4.2022. The guideline shall be applied to civil engineering capital works contracts, with tenders to be invited on or after 9.5.2022.

(il) For adoption of Building Information Modelling for Capital Works Projects, reference should be made to DEVB TCW No.2/2021.

(l) For the request for inspection and/or survey check (RISC) system, reference should be made to SDEV's memo ref. () in DEVB(W) 510/70/03 dated 13.11.2020.

(li) For capital works contracts with a pre-tender estimate exceeding $400 million, reference should be made to SDEV's memo ref. ( ) in DEVB(W) 510/70/03 dated 1.9.2021 for incorporating the standard PS clause on Inspection and Test Plans into the contract documents. For capital works contracts below this threshold, project offices may consider adopting the standard PS clause as appropriate.

(lii) For contracts involving the use of structural concrete, both pulverized fly ash (PFA) and ground granulated blastfurnace slag (GGBS) shall be allowed as supplementary cementitious material for partial replacement of Portland cement in concrete production. In accordance with the requirement as stated in WBTC No. 14/90 and the Standing Committee on Concrete Technology's (SCCT's) memo ref. ( ) in CEDD T 4/1/3/21 dated 5.8.2016, should there be special circumstances where the use of PFA/GGBS is considered undesirable, the project engineer/ architect shall seek the approval of the SCCT to include a restricting Particular Specification Clause in the works contracts. The particular specification clause in the works contracts should not specify using PFA only and must also allow the use of GGBS in concrete. The Engineer for the Contract shall consider the use of PFA/GGBS in structural concrete if it is proposed by the Contractor. If the Contractor's proposal is rejected, he/she should inform the Secretary of SCCT of the reasons for the rejection.

(liii) For contracts involving the use of manufactured sand, reference should be made to DEVB TCW No. 8/2018.

(liv) For capital works contracts, including capital subventions contracts under Head 708, with pre-tender estimate exceeding $30 million, reference should be made to DEVB TCW No. 2/2023 and 3/2016 for adoption of the Digital Works Supervision System (DWSS).

(lv) For contracts involving timely application of temporary electricity and water supply for public works contracts and wider use of electric vehicles in public works contracts, reference should be made to DEVB TCW No. 13/2020.

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(lvi) All government contracts with tender invitations to be issued on or after 1.12.2021, shall specify in their tenders the requirement to engage tree management personnel registered under the "Registration Scheme for Tree Management Personnel" in undertaking respective types of tree-related works. Reference should be made to SDEV's memo ref. DEVB(GLTM) 204/1/6 dated 31.8.2021.

(lvii) Pursuant to SDEV's memo ref. (03C1Q) DEVB(W)516/71/01 dated 28.12.2021, new particular specification clauses were promulgated to enhance control on works in confined space in connection with or in the vicinity of underground pipework, drainage or sewage manholes or chambers, or structures alike. The new particular specification clauses at Appendix 5.61A shall be incorporated in all public works contracts (including capital works contracts and maintenance contracts) of which tenders are to be invited on or after 28.1.2022.

(lviii) Pursuant to SDEV's memo ref. (03E45) in DEVB(W)516/71/01 dated 13.7.2022, a set of new particular specification clauses were promulgated to enhance the safety precautionary measures for floor openings and free edges at buildings and structures, and to tighten up the control on conveying debris through floor openings in public works contracts, with a view to mitigating the fall from height hazard through openings and struck by falling objects hazard. This new set of particular specification clause at Appendix 5.62 shall be incorporated in all public works contracts (including capital works contracts and maintenance contracts) of which tenders are to be invited on or after 29.7.2022.

(lix) Pursuant to SDEV`s memo ref. (03FBT) in DEVB(W) 505/91/01 dated 5.1.2023, to echo the directives from the Pest Control Steering Committee chaired by the Under Secretary for Environmental and Ecology appealing for the concerted effort to enhance the anti-rodent measures at various premises under the management of bureaux/departments, the particular specification at Appendix 5.63 shall be incorporated into public works contracts (including all capital works contracts and maintenance contracts) tendered on or after 6.1.2023.

(lx) Contractors are required to provide site specific induction training to all persons employed on the works or in connection with the contract on the first day of their commencement of work on site, and provide refresher training at intervals of 6 months depending on the amount of changes to the site condition. Pursuant to SDEV's memo ref. (03F9H) in DEVB(W)516/71/01 dated 29.12.2022, the particular specification at Appendix 5.64 shall be incorporated in all public works contracts (including capital works contracts and maintenance contracts) tendered on or after 29.12.2022.

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6.3 SPECIFICATION REGARDING CONTRACT PRELIMINARIES AND EQUIPMENT

6.3.1 General Principles

(a) Specification in Terms of Performance

In the drafting of any PS clause, it should be noted that according to Paragraph 9 of DEVB TCW No. 2/2014, technical specifications shall, where appropriate, be in terms of performance rather than design or descriptive characteristics and be based on international standards where such exist. The same principle applies regardless of whether or not the tendering procedures are governed by the Agreement on Government Procurement of the World Trade Organization (WTO GPA). 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 "products having equivalent functions or performance" shall always be permitted and indicated in the tender documentation. (See S for W's memo ref. WB(W) 272/31/02D dated 4.4.2002)

In the project offices there should exist a three-tier checking/approval mechanism whereby design drawings/tender documents are prepared by one group of officers, checked by officers of other ranks and finally approved by officers of higher ranks. If brand named products are to be specified, they should also be subject to the same scrutiny mechanism.

(b) Used Preliminaries

To accord with the green policy of the Government, used preliminaries can be accepted if they are in good working and serviceable condition and if they can comply with the requirements of the contract. In the preparation of tender documents, project offices are encouraged to specify, as far as reasonable and practicable and as much as possible, used preliminaries which are to be supplied by the Contractor for use of the Engineer during the contract period. In warranted cases, works departments could specify clearly preliminary items as "used, but in a condition acceptable to the Engineer" (or where appropriate, another more definitive specification such as "not more than 2 years old" for land transport, etc.) to save costs for the government.

Moreover, on the requirement of providing a temporary accommodation for the Engineer, the project offices, before considering erection of a new office, should first investigate the feasibility of using any existing site office. In the event that a new office is required to be erected, preference should be given to the used prefabricated units which are in good working and serviceable conditions, and such preference should be stated in the tender documents.

(c) Size of Site Accommodation

The size of site accommodation for in-house projects or consultant-managed projects should be determined with reference to the number and rank of resident site staff (RSS) required. The factors to be considered include the grade/rank of RSS proposed, size of furniture to be provided, and common ancillary areas (such as meeting rooms) required. When preparing the particular specification for the size of site accommodation, the project officer shall adopt the space standards promulgated by Government Property Agency as tabled in Appendix 5.56 to determine the ceiling of space entitlement of each grade/rank of RSS proposed. The relevant space standards are available on the CCGO Portal under Schedule of Accommodation of the Regulations & Guidelines section (http://gpa.host.ccgo.hksarg/schedule-of-accommodation.html). Deviations from these standards require the approval of an officer at D2 rank or above.

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6.3.2 Specification regarding Contract Preliminaries

(a) Central Acceptance and Distribution of Contract Preliminary Items

The following PS clause should be included in the tender documents for the provisioning of contract preliminaries:

> "*All contract preliminary items shall be provided to the office of the Engineer's Representative for central acceptance and distribution. The Engineer's Representative should inform the Contractor of the name of the officers responsible for accepting these items. The Contractor shall not provide the items directly to an individual member of the site supervisory staff.*"

(b) Avoid Over-provision of Preliminary Items

The following PS clause should be included in the tender documents for works contracts with estimated contract sum exceeding $15M:

> *"Any equipment or facilities to be provided for the use of the Engineer's staff are only required to meet the minimum requirements stipulated in the Contract. Where this is impracticable (e.g. when the model just satisfying the minimum requirements is outdated or out of stock), the Contractor may provide at his own cost equipment or facilities slightly exceeding the minimum requirements. Extravagant or out-of-the norm over-provision is unnecessary and should be avoided. In the event that a much higher quality than that stipulated shall be provided for legitimate reasons, the Contractor shall give prior notification to the Employer of such an over-provision.*"

(c) Identification on Contract Transport

The contract transport for the Engineer should be properly painted or affixed by adhesive plastic labels with the contract number, Contractor name, Department name, Department logo, Department complaint hotline (or other suitable identifications) and the phrase "For Official Use Only" "只供公務用途" in good size letters for easy identification.

(d) Intellectual Property Rights

In addition, it is necessary to include the following PS clause in accordance with S for W's memo ref. WB(W) 209/32/110 Pt. 12 dated 9.1.2001: "Please note that if the Contractor intends to use the intellectual property rights of another party in performing his obligations under the Contract, appropriate licences should be obtained from the relevant owners."

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7. BILLS OF QUANTITIES

7.1 GENERAL

(Subsumed from WBTC No. 18/92; Ref.: 21/93, 21/93A and 21/93B)

The main functions of the BQ are:

(a) to allow a comparison of tender prices of tenders obtained from tenderers, and

(b) to provide a means of valuing the work executed when the Contract has been entered into.

Provided that the construction works are measured according to the Standard Method of Measurement for Civil Engineering Works 1992 Edition (SMM) and conform to the General Specification for Civil Engineering Works 2020 Edition (GS), the BQ should be prepared in accordance with the SMM and the Standard Phraseology of [Bill of Quantities] Item Descriptions (SPID) as the standardized method for composing works-contract bill of quantity items. The latest edition of the SMM and its corrigenda can be found on the CEDD website. In the interest of uniformity the SMM shall be strictly followed for the measurement of items it covers. Only where this is not practical or where the SMM does not cover the item required should any amendment or addition to the SMM be made. Amendments or additions to the SMM should be made in the form of a Particular Preamble which shall follow the General Preambles in the contract documents and shall be submitted to an officer at D1 rank or above administering the contract for approval.

It is not necessary to reproduce a copy of SMM in contract and tender documents. The incorporation of the SMM into the contract is effected by reference in the Particular Specification. Since it is a requirement of Clause 59(1) of the General Conditions of Contract for Civil Engineering Works, 1999 edition, that the Method of Measurement to be used in the contract is that which is stated on the Preamble to the Bills of Quantities, it is essential that the General Preambles detailed in Part IV of the SMM are included in every contract document.

Due attention is drawn to the amendments made to SMM regarding the use of lump sum BQ contracts in Paragraph 7.4.2 and Paragraph 10. The quantities in the lump sum BQ contract must be measured accurately and regarded as firm, not subject to remeasurement. Where quantities cannot be measured accurately, the respective items in the BQ should be marked as "provisional".

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7.2 PREPARATION OF BILLS OF QUANTITIES

The rules for preparing BQ are contained in Part III of the SMM and they should be strictly followed. In accordance with the SMM, a BQ will comprise the following:

- General and Particular Preambles

- Bill No. 1 : Preliminaries
- Bill No. 2 :) for works items,
) see guidance below.
- Bill No. :)
- Bill No. : Site Safety *(a)
- Bill No. : Daywork
- Bill No. : Prime Cost and Provisional Sums
- Grand Summary.

*(a) This Bill is to be provided for all appropriate tenders as required under Pay For Safety Scheme in accordance with Chapter 3 and Chapter 12 of the Construction Site Safety Manual.

Separate bills may be considered, at the discretion of the project engineer, for work items charged to different financial votes. When a lump sum form of contract is used, the provisional quantities are included in the Bills wherever it is appropriate and sensible to do so. Individual items to be remeasured can be mixed in with the "firm" items, or a whole section can be shown separately and described as provisional. The items in each bill should be grouped into the appropriate section of Part V of the SMM in the order shown. A sample for the Grand Summary is given at Appendix 5.5.

Copies of the SMM have been issued to all the approved contractors on the DEVB Lists and it needs not be reproduced in contract and tender documents.

Specimen BQ items provided in DEVB TCWs for various subjects such as site cleanliness and tidiness, preservation and protection of preserved trees, Professional Indemnity Insurance for the Works, etc. should be adopted where applicable.

All works items should be included in the BQ and omitted items should be minimized as far as practicable. The BQ should undergo a checking process to ensure the completeness and accuracy of the BQ and elimination of major errors. This would facilitate competitive tendering, reduce resources for valuation of omitted items and minimize the disputes arising from the valuation of omitted items. (Audit Report No. 53 Ch. 3 - http://www.aud.gov.hk/pdf_e/e53ch03.pdf)

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7.3 PREAMBLES TO THE BQ

A set of standard clauses for the "General Preambles to the Bills of Quantities" is contained in Part IV of the SMM. Any amendments or alterations to the SMM to be adopted in the preparation of the BQ shall have the prior approval of an officer at D1 rank or above administering the Contract and shall be included as Particular Preambles to the Bills of Quantities.

The Preambles should also contain any other information which is considered to be necessary for the pricing of the BQ but is not included elsewhere in the contract documents.

Standard Particular Preambles for various subjects set out in DEVB TCWs, SDEV's memos and Construction Site Safety Manual should be adopted where applicable.

7.4 PROVISIONAL ITEM

7.4.1 Provisional Items

Provisional Item means an item describing work, the requirement for which is uncertain at the time the tender documents are issued and which can only be carried out on the instruction of the Engineer for the Contract. All works described by a Provisional Item should be clearly specified and the provisional nature clearly explained in the PS and BQ.

The use of Provisional Items in the BQ should be avoided as far as possible. They should not be included if it is impossible for the tenderer to provide a realistic tender price for the work, taking into account its provisional nature and the manner in which the works may be described. If the requirement for the work is very remote, issuing variations during the contract is generally more advisable than trying to cover the work by inclusion of Provisional Items.

7.4.2 Provisional Quantities under a Lump Sum Contract with Firm BQ

Any item or part of work which cannot be accurately measured is covered by a provisional quantity or sum and measured as executed on completion of the item or part of work i.e. the value of these item(s) or part(s) of work(s) in the Bills is/are deducted from the Contract Sum and the value of the works executed is added. For details, refer to Paragraph 10.

7.5 PROVISIONAL SUM/CONTINGENCY SUM/PRIME COST SUM

Provisional Sum means a sum provided for work(s) or expenditure which has not been quantified or detailed at the time the tender documents are issued. Contingency Sum means the sum provided for work(s) or expenditure which cannot be foreseen at the time the tender documents are issued. Prime Cost Sum means the sum provided for works to be executed or for materials or services to be supplied by a Nominated Subcontractor, after deducting any trade or other discount. However, according to GCC Clause 1(1), both Provisional Sum and Contingency Sum may include provision for works to be executed or for materials or services to be supplied by a Nominated Subcontractor.

Provisional Sums for specific purposes should be included in the relevant bills of the BQ.

Under the GCC for Term Contracts (2002 Edition), Contingency Sum may also be specified in a works order in term contracts for work or services or expenditure which cannot be foreseen at the time such works order is issued.

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7.6 DAYWORK
(Subsumed from ETWB TCW No. 31/2002)

The HKCA Schedules For Plant Used in Dayworks Carried Out Incidental to Contract Work ("the Schedules") published by the Hong Kong Construction Association (HKCA) have been developed to meet the absence of a developed plant hire market in Hong Kong. The Schedules are drawn up in broad categories thus enabling contractors, when tendering, to price the adjusting percentage on the various provisional sums included for dayworks plant in a manner suited to their particular plant holdings. In these circumstances the relativity of rates within an individual plant category assumes equal, if not greater, importance than the basic pricing level adopted in the Schedules.

Clause 27.03 in Part V of the SMM specifies that the rates contained in the Schedules current at the date for return of Tender shall be used for plant employed on dayworks. To provide certainty on the edition of the Schedules to be used under a contract, project officer shall check the homepage of HKCA for the current edition of the Schedules to be adopted and include the sample Particular Preamble given at Appendix 5.14 in the BQ.

7.7 SITE CLEANLINESS AND TIDINESS

For public works contracts including term contracts and design and build contracts, adopting the enhanced specification on site cleanliness and tidiness, payment provision shall be incorporated. The item on site cleanliness for works contracts that are BQ based are to be marked 'Quantity Provisional' to cater for Contractors over-running the time for completion of Contracts. Payment will continue to be made (if justified) throughout the construction period even if the Contractor is in culpable delay. The purpose of continuing the payment is to ensure that the Contractor shall continue the cleaning and tidying up of the Site irrespective of the work progress.

Sample BQ, method of measurement and guidelines for preparing the section on site cleanliness are given in DEVB TCW No. 8/2010 as amended by SDEV's memo ref. DEVB(W) 505/91/01 dated 17.5.2017.

7.8 SITE SAFETY AND ENVIRONMENTAL MANAGEMENT

7.8.1 Pay for Safety Scheme (PFSS) and Environmental Management on Construction Sites

All appropriate tenders as required under PFSS shall include a separate 'Site Safety' section in the BQ in accordance with Chapter 3 and Chapter 12 of the Construction Site Safety Manual.

With the promulgation of ETWB TCW No. 19/2005, all appropriate tenders with environmental management shall include items in "Preliminaries" section in the BQ. A number of sample BQ and guidelines for preparing the "Preliminaries" Section of BQ are given in ETWB TCW No. 19/2005 and the Interim Guidance Note on Administration of Environmental Management and Pay for Safety and Environment Scheme for Public Works Contracts promulgated under SETW's memo ref. (014G7-01-1) in ETWB(W) 517/91/01 dated 19.6.2006, which are amended under SDEV's memo ref. DEVB(W) 517/91/01 dated 29.3.2018. Please also see Paragraph 9.15.

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7.8.2 Site Safety Cycle (SSC)

Payment for Site Safety Cycle (SSC) shall be made under the PFSS by including appropriate sections in the Method of Measurement and appropriate items in the BQ. The main item to be included for payment is collectively referred to as 'Pre-work Activities' which comprise the following activities on one day:

(a) Pre-work Exercise and Safety (PES) meetings;

(b) Hazard Identification Activity (HIA) meetings; and

(c) Pre-work Safety Checks.

Guidelines for the SSC and the updated sample BQ are incorporated into Chapter 3 of the Construction Site Safety Manual.

7.8.3 Management of Contaminated Soil

Tender documents should indicate restrictions, if any, on disposal of contaminated soil from a project based on the agreed arrangements with EPD where appropriate (See Paragraph 3.1.2(g) of Chapter 3). Tenderers should be reminded that permission for disposal of contaminated soil at landfills needs to be obtained from EPD prior to the delivery of the contaminated soil to landfills.

In case the treatment or disposal arrangement of contaminated soil is subject to further assessment during contract stage, appropriate contract provisions should be provided to draw the tenderers attention and to allow for the possible variances in handling of contaminated soil.

7.8.4 Welfare Facilities for Workers

To take care of the needs and welfare of workers and to promote site cleanliness and hygiene, the Contractor is required to provide storage compartments, drinking water facilities, toilet facilities, hand-wash facilities and rubbish bins. Showering facilities may also be required depending on the number of workers on site. These provisions shall be included in the Preliminary Items 'Temporary Accommodation for the Contractor' or 'Contractor's Site Accommodation in the Preliminaries' as appropriate by incorporating the sample Particular Preamble in Chapter 3 of the Construction Site Safety Manual.

7.8.5 Pay for Safety Performance Merit Scheme (PFSPMS)

Reference should be made to Paragraph 9.15.1 of this Chapter. Sample BQ, measurement rules and guidelines for preparing the section on PFSPMS are given in Chapter 12 of the Construction Site Safety Manual.

7.9 TRIP TICKET SYSTEM

Sample Particular Preamble is provided in DEVB TCW No. 6/2010 for the requirement of Site Management Plan for Trip Ticket System.

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7.10 PRESERVATION AND PROTECTION OF PRESERVED TREES & OLD & VALUABLE TREES

Sample contract provisions, guidelines and reference information for preservation and protection of preserved trees and Old and Valuable trees can be found in the Tree Management section of the Cyber Manual for Greening.

7.11 MEASUREMENT PROCEDURES

The project engineer should open a measurement file before any taking-off commences and issue instructions to his staff regarding the method of measurement to be adopted and any other guidance he considers necessary for the preparation of the BQ.

Standard forms for taking-off, abstracting and billing are included in Chapter 9 (Measurement Procedure), and should be used. All taking-off and abstract sheets should be signed and dated by the officer preparing them and inserted into the measurement file.

The project engineer should arrange to have the taking-off sheets, abstract sheets and the bills checked to ensure correctness in all respects. Checked documents should be dated and signed by the officer who carries out the checks.

7.12 PAY FOR MONITORING PAYMENT OF WAGES

Reference should be made to Paragraph 9.11 of this Chapter for sample Particular Preambles and BQ for implementing “Pay for Monitoring Payment of Wages”.

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8. DRAWINGS

8.1 DRAWINGS INCLUDED WITH TENDER DOCUMENT

These should be listed in the PS and should include sufficient drawings to enable the tenderers to price the tender properly. Amongst these should be a general layout plan, general arrangement drawings, typical structural details and any other drawings required for providing tenderers with a good perspective of the extent and nature of the work.

8.2 DRAWINGS NOT INCLUDED WITH TENDER DOCUMENTS

It is not uncommon that drawings giving site investigation information, utilities drawings and reinforcement details drawings are not included with the tender documents. In that case, they should be listed in the PS and should be made available for inspection by tenderers during the tender period. These drawings, when forming part of the Contract, should be issued to the Contractor at the commencement of the Contract. Standard drawings, if applicable to the Contract, should be listed (specifying the applicable version) in the PS but may be excluded from the tender documents and the subsequent Contract documents if they are available in the department's website. Otherwise, they should be made available for inspection by tenderers during the tender period, and, if necessary, be issued to the Contractor at the commencement of the Contract.

8.3 DRAWINGS NOT FORMING PART OF THE CONTRACT

Drawings giving information only, including site investigation plans and existing utilities plans, do not form part of the Contract and should be stated as such so as to avoid possible future claims. A note should also be added on the drawings to disclaim responsibility for the accuracy or sufficiency of the information given. They should be made available for inspection by the tenderers during the tender period.

8.4 ELECTRONIC DRAWINGS

(Subsumed from WBTC No. 7/2000 and ETWB TCW No. 7/2000A; Ref.: SDEV's memo ref. () IN DEVBWB-WP4S-022-006-001-P001 dated 3.9.2024)

If tender/contract drawings are available in electronic form, a tenderer/contractor may ask the Engineer designate/Engineer for the supply of additional copies of such tender/contract drawings in electronic form for the purpose of preparing/administrating his tender/contract. The charges for supplying electronic drawings are announced by DEVB periodically. The charges with effect from 1 November 2024 as announced via SDEV's memo ref. () IN DEVB WB-WP4S-022-006-001-P001 dated 3.9.2024 are as follows: -

(a) Handling Charge - $56.4 per drawing

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(b) Material Charge

Material	Unit Charge (HK$)
(i) 700MB CD-ROM	$1.2
(ii) 4.7GB DVD+/-R	$1.2

The electronic drawings should only include the data files. They should not include any executable programmes.

Before electronic drawings are issued, the tenderers/contractors should be asked to confirm their acceptance of the following terms of use on electronic drawings.

(a) When electronic drawings are issued, the Engineer designate or the Engineer should advise the tenderer/contractor in writing that while every care has been taken to check the integrity of the electronic drawings, no guarantee can be given that the electronic drawings are free from computer viruses and that neither he nor the Employer will be responsible for any direct or consequential damage or losses resulting from any computer viruses that may be contained in the electronic drawings.

(b) The tenderer/contractor should also be advised that electronic drawings are issued only for the convenience of the tenderer/contractor and they do not form part of the tender/contract documents. There may be a loss of fidelity when the drawings are displayed on the tenderers/contractors system because the preservation of fidelity will depend on proper system settings. If there are discrepancies between the electronic drawings and the tender/contract drawings in hard copy format, the latter should prevail. The Employer and the Engineer or the Engineer designate will not accept any liability arising from any discrepancies between the electronic drawings and the tender/contract drawings.

Furthermore, if the electronic drawings contain digital map other than those mentioned in paragraphs 7.4.4(a) – (j) of Chapter 1 supplied by the Lands Department, the Engineer designate or the Engineer shall require the tenderer or, as the case may be, the contractor to provide a duly signed undertaking in the form set out in Appendix 5.7 before these electronic drawings are issued.

To assure authenticity, the Engineer designate or the Engineer shall digitally sign electronic drawings with the digital certificates issued by Certification Authorities approved by the DPO under the Electronic Transactions Ordinance (Cap. 553).

If the tenderer/contractor has provided an undertaking on the use of Government digital map data, the Engineer designate or the Engineer shall check that the tenderer/contractor has executed and returned the "Confirmation by contractor on cessation of the use of Government digital map data" set out in Appendix 5.10 on the tenderer submitting its tender or the contractor having completed the relevant work.

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9. SPECIAL TOPICS

9.1 MULTI-CONTRACT AND SINGLE CONTRACT ARRANGEMENTS

Where the required financial and manpower resources are available, the contracts of a multi-contract project are normally carried out in parallel to enable the completion of the project in the shortest possible time.

Some of the issues that need to be considered and provided for in a multi-contract project would include:

(a) Site access,

(b) Facilities (provided by the Contractor) for other contractors,

(c) Works areas,

(d) Staged possession and handing over of site, and

(e) Consequence of delay in any one of the contracts on other contracts.

Suitable provisions should be made in the constituent contracts to cover these and other relevant issues. Such provisions should be made in the SCC, PS and Drawings, where appropriate.

For projects (i) involving sequential handling-over of the project site among contractors of concurrent contracts and/or (ii) in which the work progress of one contractor is dependent on that of another contractor in the same project, the compatibility of the multi-contract arrangement with the preferred contract forms of the project should be carefully assessed. For instance, before adopting the arrangement of implementing a conventional contract for civil works and a design-and-build contract for E&M works at the same time, the pros and cons of such arrangement should be thoroughly compared with that of combining the civil and the E&M works into a single contract. When preparing tender documents for works contracts involving interface with other contracts, the consultants (for contracts administered by consultants) or the procuring departments (for contracts administered by in-house resources) are required to carefully check that the time programmes for interfacing works in all contracts concerned are consistent. The consultants shall seek the procuring departments' comments on the time programmes prior to incorporation of the relevant information in the tender documents.

For projects involving substantial underground works, and hence with a relatively high degree of uncertainty, consideration should be given to reducing risks by carrying out works at different locations under separate contracts to be undertaken by different contractors. However, before deciding on adopting this approach, its benefits would have to be balanced against possible demerits such as the reduction in economy of scale and the need for greater management effort to deal with contract interface problems.

For time-critical projects, whilst it may be desirable to adopt advance contracts to capture programming benefits, demerits of such arrangement such as introduction of additional contract interfaces should be carefully assessed (also see Paragraph 9.19 on time-critical projects).

It is important that all the merits and demerits of using multi-contract arrangement in a project should be thoroughly assessed before deciding on the most appropriate number and form of contracts in a project.

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For multi-contract projects, those parts of tender documents delineating the split of the works, particularly the drawings and bills of quantities, should be carefully checked to ensure consistency and that there is no omission or duplication of works at the interface.

9.2 COMPLETION IN SECTIONS

For contracts to be completed in Sections, the tender documents, i.e. the Form of Tender, SCC, PS and Drawings, where appropriate, should explicitly define the extent of the various Sections and their respective time for completion. Separate amounts of liquidated damages and minimum amounts of liquidated damages, if any, should be set for each Section of the Works in the Appendix to the Form of Tender.

Each Section should preferably be a self-contained package of work. Great care should be taken in defining the extent of each Section to avoid any possibility of ambiguity. There should be no overlapping between Sections and all the Sections should add up to be the Works.

9.3 CONTRACTOR'S DESIGNS AND ALTERNATIVE DESIGNS

Departments shall invite alternative designs and specify in the tender documents the part of the Works for which alternative designs are invited in situations where there is potential for better value for money or for enhancing buildability. The justifications for not inviting tenderers to submit alternative designs should be properly documented for future reference and auditing purposes.

Departments may require tenderers to submit tenderer's design for part of the Works not covered by the Engineer/Architect's design in the following circumstances:

(a) Where the part of the Works is in a specialist or developing field;

(b) Where the part of the Works involves materials and construction methods, the design of which requires the specialist experience of contractors or suppliers;

(c) Exceptionally, where the detailed design of the part of the Works is insufficiently advanced and the completion of the Works is urgent;

(d) For piling works where several solutions are available; and

(e) For works of a short limited lifespan or temporary in nature.

For all tenders, departments shall include provisions to allow the Contractor to submit and the Employer to accept Cost Savings Designs to provide opportunities for achieving better value for money. The resultant saving in cost, if any, shall be shared between the Employer and the Contractor.

The contractual provisions to be incorporated into the tender documents for tenders inviting alternative designs and tenders requiring tenderer's designs are given in DEVB TCW No. 3/2014. Particular attention is drawn to the following requirements:

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(a) The tender documents shall include a complete set of design criteria, any outline drawings, plans and requirements related to the part of the Works for which tenderer's design is required or alternative design is invited;

(b) The tender documents shall include clear indication to tenderers of any design material or method of construction which is not allowed; and

(c) An adequate tendering period shall be allowed, taking into account the time required to prepare a design in sufficient detail.

Where alternative designs are not to be invited, the following General Conditions of Tender shall be incorporated in the tender documents:

"Alternative tenders or designs for which no invitation has been made shall not be considered."

For tenders inviting alternative designs, tenderers have a choice to submit a conforming tender and/or a tender with an alternative design, i.e. an alternative tender. Those two tenders shall be assessed as two separate tenders. To this end, departments should include a Note to Tenderer to require tenderers to clearly mark on the respective sealed envelopes with the following words as appropriate:

"Technical Submission (Tender Conforming to the Engineer/Architect's Design)"

"Tender Price Documents (Tender Conforming to the Engineer/Architect's Design)"

or

"Technical Submission (Alternative Tender)"

"Tender Price Documents (Alternative Tender)"

To cater for the assessment of tenders inviting alternative designs or requiring tenderer's designs, the Standard Marking Scheme for tender evaluation in Appendix C1 to DEVB TCW No. 4/2014 (as amended by SDEV's memos ref. ( ) in DEVB(W) 546/84/01 dated 9.7.2021 and 10.11.2023), with due consideration to the points to note in Appendix E to DEVB TCW No. 3/2014, shall be used. There might be another situation where the Contractor, vis-à-vis tenderers, may be required to carry out and submit a relatively straight-forward design for part of the Works during the course of the Works. In these circumstances, the design need not be submitted at the tender stage for assessment or is only submitted for checking the compliance with essential requirements under the Stage I Screening. Tenders of this kind should be clearly distinguished from those tenders requiring tenderer's designs at the tender stage.

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9.4 CONSTRUCTION RELATED INSURANCE

9.4.1 Care of the Works Insurance and Third Party Liability Insurance
(Ref.: SDEV's memo ref. DEVB(W) 506/90/01 dated 11.5.2021)

(a) ETWB TCW No. 6/2005 sets out guidelines on the application of a systematic risk management (SRM) process in public works projects. All public works programme projects with cost estimates in excess of $1000M will be required to go through a SRM process promulgated under the subject circular. The authority for approving exemption remains to be an officer at D2 rank or above of the works department. The risk management process comprises a systematic approach to risk planning, identification, assessment and treatment. One of the treatment options available is to transfer certain risks to insurers through proper contract documentation.

(b) For public works programme projects with cost estimates below $1000M, ETWB TCW No. 6/2005 does not apply. However, for the purpose of assessing whether insurance is required for the respective contracts under that particular public works programme project, departments should adopt a similar approach to risk assessment and treatment set out under ETWB TCW No. 6/2005 to reach a decision on the matter. Project offices are encouraged to apply the SRM where the nature, complexity and/or risk level of the works warrant such applications. The justifications for applying the SRM in such cases should be properly documented.

(c) The result of the risk-based assessment on insurance procurement should be properly documented and endorsed by an officer at D2 rank or above.

(d) If the result of the SRM process dictates that insurance procurement is the proper treatment of the identified risks, two options exist on the procurement of construction insurance viz: -

(i) Owner Controlled Insurance Programme (OCIP)
(ii) Contractor Controlled Insurance Programme (CCIP)

(e) Coverage for the contract works (Care of the Works) or for liability emanating therefrom (Third Party Liability) should be procured in the joint-names of the Owner (i.e. Government/Works Department), the Contractors (including co- and subcontractors) and their servants or agents in any tier and/or consultants for their site activities only. The determination of the amount of insurance coverage should follow the quantitative assessment methods outlined in the SRM procedures. This can be procured by either OCIP or CCIP. If the requirement for insurance is specified, the contract should state clearly by way of inclusion of suitable special conditions, what insurance is required and who is responsible to arrange the insurance. In cases where the nature and extent of the risks identified in the SRM process which require insurance are routine and are considered insignificant, the procurement of insurance should be left with the Contractor on a self-arranged basis and the contract makes no mention of the requirement for insurance. The Employer, in this event, relies on the indemnity clauses under the contract for protection.

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(f) For contract specified insurance, strategies have been developed on how insurances are to be procured for the following categories of contracts: -

I Major projects which are significant and are multi-contract, multi-discipline in nature and involve interfacing and interdependencies or large and complex difficult contracts.
II Minor Works or small value contracts and Term Maintenance contracts.
III All other contracts.

A determination of which category the contract in question falls should be made.

(g) Procurement of insurances should be considered on the following basis for each category: -

Category I – Consideration should be given to procurement on an OCIP basis. The insurance clauses within the contract conditions for the contract works and third party liability coverage should state that the Employer will procure the insurance. These clauses are contract-specific and the project department should seek LAD(Works)/DEVB's assistance in drafting these provisions. The procurement may be taken to cover a number of concurrent or inter-related contracts.

The engagement of a specialist construction insurance adviser is recommended in the structuring of the programme. The insurance adviser shall have a sound understanding of construction risk, SRM and shall familiarise themselves with the specific risk profile of the project at hand.

Departments may consider the inclusion of the service of an insurance adviser as part of the main consultancy. The insurance adviser can advise on the coverage, policy wording and the method of procurement either by OCIP or CCIP. The service of the insurance adviser can be retained up to the tender stage of the construction contract or continued throughout the construction stage depending on the actual requirements. If CCIP is adopted and specified, the standard policy as described in Appendix B of ETWB TCW No. 7/2005, suitably modified and extended may be considered together with the special contract clause in Appendix A of ETWB TCW No. 7/2005.

Category II – The insurance clauses within the contract conditions should state that the contract works insurance should be procured by the contractor together with a primary HK$10M limit of indemnity for third party liability insurance i.e. a CCIP arrangement for the primary layer of liability. This limit should be for any one occurrence.

Above the HK$10M limit of indemnity for third party liability, project departments should arrange an excess liability policy for all minor works and term contracts within the department for HK$XM (exact sum determined via the SRM process) any one occurrence in excess of the contractor's primary HK$10M any one occurrence policy, providing a total limit of liability of HK$(10 + X)M any one occurrence. The arrangement will effectively be a multi-layer placement with a combination of a CCIP placement for the primary layer and an OCIP placement for the secondary layer. Again, the engagement of a specialist construction insurance adviser is recommended in the structuring of the OCIP placement for the secondary layer. Multi-layer insurance placement may also be suitable for Category I projects subject to the result of the SRM taking into consideration the recommendation of the insurance adviser

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and having regard to the prevailing market conditions.

Category III – The insurance clauses within the contract conditions should state what insurance(s) the contractor is required to procure, i.e. the contract works insurance, or the third party liability insurance, or both. This is a traditional approach and the placement is solely on the basis of a CCIP arrangement. Standard contract provisions for use in term contracts (primary layer) and capital works contracts and a standard policy are available for a CCIP placement and these are given in Appendix A and Appendix B of ETWB TCW No. 7/2005. Risk assessment may show that additional coverage or different policy wordings to those contained in the standard policy are required and in such case, the department may look for the advice of an insurance adviser, either employed independently or under the main consultancy as suggested above.

(h) Other key factors to consider in procuring construction related insurance should refer to ETWB TCW No. 7/2005.

9.4.2 Professional Indemnity Insurance (PII)

For works contracts involving contractors' designs or independent checking of contractors' designs including design and build contracts, a risk management approach shall be adopted in assessing whether PII is required to be procured, and if required, the amount of cover required so as to associate the PII requirements with the anticipated risk exposure. In respect of contractors' design and alternative design invited during the pre-contract stage, DEVB TCW No. 9/2007 promulgated the revised requirements of PII to be taken out by the relevant parties including consultants, contractors, their designers and independent checking engineers. In line with the changes brought about by DEVB TCW No. 9/2007, SDEV via his memo ref. (02245-01-13) in DEVB(W) 510/34/01 dated 6.10.2009 made the following amendment to the contractual provisions in respect of PII requirements for works contracts involving Contractor's Design or Independent Checking Engineer's Services:

DEVB TCW No. 9/2007

(a) SCC(A) at Appendix E is to be replaced by the revised SCC(A).

9.4.3 Execution of works within or adjacent to Railway

Works Departments shall request the Contractor to complete the "MTRCL's Indemnity Form" and "Letter of Undertaking" before entering into railway premises or working in the vicinity of at-grade or overhead railway structures/installations pursuant to DEVB TCW No. 1/2019.

9.4.4 Provision of BQ items for construction related insurance

Where insurance against damage to the Works or third party risks is required under the Contract, separate items should be provided in the BQ for the Contractor to price the cost of such insurance pursuant to Standard Method of Measurement for Civil Engineering Works (1992 Edition). Where PII is required to be procured, a separate item should be provided in the BQ for the Contractor to price the cost of such insurance pursuant to DEVB TCW No. 9/2007.

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9.5 CONTRACTOR'S SUPERINTENDENCE

The requirement for the Contractor to be represented at all times on the Site by a competent and authorized English speaking agent is stipulated in GCC Clause 17. The Engineer's authority to withdraw his approval of the Contractor's agent, thus causing this agent to be removed from the Site, is also stated in GCC Clause 17. See also the GS and the Guidance Notes on the GS.

In general, the qualifications of the Contractor's surveyor responsible for the setting out of the Works are specified in GS Clause 1.09(2). It should be noted that any person employed by the Contractor who is considered incompetent may be objected to by the Engineer, and thus removed from the Works, in accordance with GCC Clause 18.

In general, public works projects managed by different works departments vary in the nature and complexity of works. Works departments should determine the relevant requirements of land surveying staff employed by the Contractor based on the characteristics, complexity, site constraints, surveying demand etc. of the respective projects.

HyD has promulgated its Technical Circular No. 5/2003 which sets out the guidelines on qualification and experience requirements of the Contractor's surveyor in highway projects. If other works departments have public works projects involving the construction of new roads or substantial roadworks, they should make reference to the above-mentioned HyD's technical circular in preparing the contract requirements. Generally speaking, for projects involving substantial surveying work, the project officers should consult their respective survey division on the requirements of land surveying staff engaged by the Contractor in order to suit the latest development of the technology and the market.

9.6 CONTRACT TRANSPORT

(Ref.: Report No. 43 of the Director of Audit dated 23.10.2004, Part 3 of Chapter 7: Management of the government vehicle fleet)

Contract transport refers to land or marine transport provided for use by the Engineer (and his staff) and the Employer (and his employees) under the Contract. See LWBTC No. 11/84 and the GS for more details.

Contract transport should only be included under the Contract where it has been established that such transportation is essential to the supervisory staff for the adequate and proper supervision of the Works and for the discharge of other related duties. Critical examination for justifications to provide contract transport shall be made with due regard to meeting the operational need. The possibility of shared use of contract transport with other relevant on-going contracts shall also be taken into account in the critical examination. In particular, the adequacy of public transport for accessing the site direct shall be assessed in determination of the quantity of contract transport. In making such determination, the project office should not take into account the need to provide contract transport to serve the site staff to and from the site if the site is adequately served by public transport. The prior approval of an officer at D2 rank (D3 for HyD according to HyD's internal procedures) or above is required for the provision of contract transport.

The specification should be less restrictive so that there may be scope for savings. As stated in paragraph 7.1 of the LWBTC No. 11/84, it must be ensured that the specification does not call for a higher standard of transportation than is necessary. The transportation must be adequate having regard to the type of use to which it would be put and length of time for which it would be required. A new motor vehicle will not always be required; however, where a used motor vehicle will suffice, it is suggested that it should not be more than 2 years old when first brought to Site.

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9.7 MATERIALS TESTING ARRANGEMENT

9.7.1 General Considerations

Unless Chief Geotechnical Engineer/Standards and Testing of GEO (CGE/S&T) advises otherwise, all materials compliance tests required by the works contract or by the Engineer must be done through Public Works Laboratories (PWL) (comprising the Public Works Central Laboratory and the Public Works Regional Laboratories) in accordance with WBTC No. 14/2000. CGE/S&T may also advise on whether an additional Regional Laboratory should be established to meet the testing demand. On such occasion, the project office should liaise with CGE/S&T regarding the preparation of detailed layout plans, equipment lists and other contract requirements for incorporation into suitable works contracts.

CGE/S&T should be consulted at an early stage in project planning regarding the testing demand for testing services. In order to facilitate CGE/S&T to provide advice, the project office should supply full details of the anticipated testing required, including information on quantities and the programme. If CGE/S&T considers that certain tests cannot be undertaken by PWL, then such tests have to be performed by an independent laboratory (i.e. with no affiliation as a legal entity to the Contractor and its subcontractors) subject to approval by the Engineer. Test results obtained from a laboratory other than PWL should be checked by periodic verification using another independent laboratory to conduct identical tests on items selected from the same samples, or as advised by CGE/S&T.

Due to potential conflict of interest, only in very exceptional circumstances may compliance testing by the Contractor be specified and this should be provided through the provision of suitable PS clauses in the contract documents. CGE/S&T should be consulted in this regard. Where the cost of testing is not otherwise catered for in the Contract, then consideration should be given to including a separate item in the BQ.

For the laboratory testing of construction materials, reference should be made to WBTC Nos. 14/2000 and 15/2000 and CEDD website (https://www.cedd.gov.hk/eng/public-services-forms/geotechnical/laboratory-testing/index.html).

9.7.2 Laboratory Information Management System e-Portal ("LIMS e-Portal")

To boost productivity, enhance traceability and promote a paperless culture, PWL has introduced the Laboratory Information Management System e-Portal ("LIMS e-Portal") [system website: https://lims.cedd.gov.hk]. With LIMS e-Portal in place, project teams (including their Resident Site Staff (RSS)) of public works contracts can make test requests, arrange sample collection, trace the test progress and download electronic test reports online round-the-clock.

The adoption of LIMS e-Portal will not result in departure from the governing principles and policies set out in WBTC No. 14/2000 with respect to compliance tests for construction materials used in public works contracts. In particular, the test results will be delivered directly to the Engineer/Architect but not via the Contractor.

Starting from 1 April 2025 onwards, all test requests shall be made via LIMS e-Portal. The above arrangement shall apply to both ongoing and new public works contracts.

Under special circumstances, if a project team considers it necessary to make or continue making paper-based test requests on or after 1 April 2025 for a particular contract, endorsement from

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an officer at D1 rank or above should be obtained, with justification(s) provided to PWL for record. In this connection, the request for alternative arrangements to handle the tests shall be made to PWL.

For the procedures of Use of LIMS e-Portal , reference should be made to Annex of SDEV's memo ref. () in DEVBWB WP4S-022-006 of 25.10.2024. Amd No. 3/2025

9.7.3 Provision of Testing Equipment

Testing equipment for use on sites can be provided either:

(a) On loan from the PWL (or from the Employer), or

(b) By making appropriate provision in the contract documents.

The list of equipment required for a particular contract should be forwarded at contract design stage to CGE/S&T who will decide whether:

(a) All (or a part) of the testing equipment can be supplied on loan from the PWL, or

(b) All (or a part) of the testing equipment should be supplied by the Contractor and remain his property on completion of the works, or

(c) All (or a part) of the testing equipment should be supplied by the Contractor and become the property of Government on completion of the works.

Provision of testing equipment on loan from the PWL will be recommended if stocks are available. Provision of testing equipment by the Contractor which is to become the property of the Employer on completion of the Works will generally be recommended if the testing equipment is likely to be useful to the Employer and is in good condition at the end of the Contract. In each case CGE/S&T will seek approval from the Director of Government Logistics for any testing equipment acquired in this way, and will arrange for the testing equipment to be taken on charge at an appropriate time. The provision in the Contract for the maintenance and taking over of the testing equipment should be agreed with CGE/S&T.

Additional or replacement of testing equipment may be ordered through a variation order during the Contract. The same procedures for the provision of testing equipment as described above should be followed.

9.8 SUPPLY OF MATERIALS BY GOVERNMENT

The Contractor should normally obtain all materials necessary for use in the Works from his own sources except for:

(a) Materials specially pre-ordered by the Government under a separate contract,

(b) Materials provided from the Government stock,

(c) Materials produced by the Correctional Services Department, e.g. precast concrete products, retro-reflective traffic signs, metal road dividing railings, and traffic signposts. (See FC No. 3/2014)

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Before making provision in a Contract for certain materials to be supplied by Government, confirmation must be obtained from the relevant authority of the availability of the particular materials within the required time period. In the case of pre-ordered materials under another contract, the delivery date of the materials must be known in advance.

9.9 SUBCONTRACTS FOR SPECIALIST WORKS

(a) General

Very often the Engineer may wish to retain control over which subcontractor will carry out certain specialized work under the main contract. This may be achieved by writing into the main contract one of the following two alternatives:

(i) The specialized work shall be carried out by a Nominated Subcontractor (GCC Clauses 65 to 70), or

(ii) If the Contractor is not included in the List of Approved Suppliers of Materials and Specialist Contractors for Public Works or the List of Approved Contractor for Public Works, then the Contractor shall enter into written subcontracts with the approved listed contractors in the relevant Groups, Category and Class for the execution of the respective part of the Works.

(b) Nominated Subcontracts

The employment of Nominated Subcontractors on civil engineering works is not encouraged, because of the potential contractual problems. However, when highly specialized work constitutes a significant part of the project and the co-ordination of separate contracts would pose severe difficulties, it may be preferable to use the system of Nominated Subcontracts. When this is proposed the approval of the relevant Chief Engineer (or higher) responsible for the administration of the particular contract should be obtained.

In normal circumstances, when requiring the appointment of nominated subcontractors or when employing specialist contractors under direct contracts, to select the contractors from those included in the List of Approved Contractors for Public Works and the List of Approved Suppliers of Materials and Specialist Contractors for Public Works; any proposed appointment of nominated subcontractors or specialist contractor not on these Lists shall be referred to the Finance Section of DEVB for financial pre-qualification.

Documents for Nominated Subcontracts should be prepared following the guidelines set out in Paragraphs 2 to 8 of this Chapter using a separate set of Conditions of Tender, Articles of Agreement and Conditions of Subcontract.

(c) Subcontracts with Specialist Contractors on the Approved List

This method is commonly used in requiring the employment of specialist contractors for works such as piling, bridge bearings, permanent pre-stressed ground anchors, landscaping, planting, supply and installation of machinery for sewage treatment works and asbestos abatement works. WBTC No. 25/94 introduces the Standard

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Form of Domestic Subcontract for specialist works (1994 Edition). The form has been drafted to suit the GCC for Building Works only and may not suit the GCC for Civil Engineering Works. Advice should be sought from Contract Advisers if it is proposed to incorporate the form into an engineering contract.

(d) Subcontracts with Contractors on the Approved List in the Waterworks category

See WBTC No. 29/93 for details.

(e) Subcontracts with Contractors on the Specialist Contractors List of Supply of Bituminous Pavement Materials and Construction of Special Bituminous Surfacing

All contracts involving bituminous pavement materials shall require the contractor to enter into a subcontract with a contractor in the Specialist List for works defined below:

(i) supply of any bituminous pavement materials;
(ii) laying of the following special bituminous materials:-
(1) polymer modified bituminous surfacing materials which include polymer modified friction course materials, polymer modified stone mastic asphalt materials, polymer modified cushion course materials, etc.
(2) stone mastic asphalt;
(3) any other bituminous materials not covered by Section 9 of the General Specification for Civil Engineering Works 2020 Edition.

In this connection, the SCC clause on Subcontracting shall be included in the contract document.

(f) Subcontracts with Contractors for Coring of Deep Cement Mixing (DCM)

All core-drilling of DCM works shall be carried out by an independent Specialist Contractor registered under the DEVB's List of Approved Suppliers of Materials and Specialist Contractors for Public Works in the category of Ground Investigation Field Work, who is required to make a declaration that it is not a holding company, a subsidiary company, an associated company or a related party of the Contractor or any of his subcontractors responsible for the DCM works for which the core-drilling is carried out, and that it has no financial interests in the DCM works to be tested.

9.10 DISPOSAL OF EXCAVATED MATERIALS

If excavated materials are to be disposed of off Site, the specifying of particular disposal areas in the Contract should be made. Reference should be made to paragraph 4.1.3 and 4.2 of Chapter 4 of the PAH, WBTC Nos. 2/93, 2/93B, 16/96, 4/98, 4/98A, ETWB TCW No. 19/2005 and DEVB TCW No. 6/2010 and the Interim Guidance Note on Administration of Environmental Management and Pay for Safety and Environment Scheme for Public Works Contracts promulgated under SETW's memo ref. (014G7-01-1) in ETWB(W) 517/91/01 dated 19.6.2006. The project engineer should estimate the timing and the quantities of excavated materials (the secretary of the Marine Fill Committee and the Public Fill Committee should be kept fully informed of anticipated volumes of excess fill in accordance with WBTC No. 12/2000) and confirm with the managing office of the disposal areas as to their availability. The PS should require the Contractor to dispose of

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excavated materials at the specific locations and make provision for checking that he complies with this requirement. The relevant BQ items should be provided accordingly. This procedure should also be followed when it is considered desirable for the Contractor to dispose of excavated materials at a specific location irrespective of the quantities of excavated materials.

The Construction Waste Disposal Charging Scheme came into operation on 1 December 2005. A standard Note to Tenderers is given in SETW's memo ref. (00W45-01-9) in ETWB (W) 810/72/01 dated 21.11.2005.

9.11 CONTRACT MEASURES TO PREVENT NON-PAYMENT OF WAGES

(Ref.: SDEV's memo ref. (027RU-01-3) in DEVB(W) 510/17/01 dated 16.7.2010, SDEV's memo ref. (02FYE-01-11) in DEVB(W) 510/17/01 dated 27.7.2012, SDEV's memo ref. (02H25-01-1) in DEVB(W) 510/17/01 dated 8.11.2012, SDEV's memo ref. (02UZT-01-1) in DEVB(W) 510/17/01 dated 28.9.2016, SDEV's memo ref. (02VKU-01-3) in DEVB(W) 510/17/01 dated 16.12.2016 and SDEV's memo ref. (02YWL-01-2) in DEVB(W) 510/17/01 dated 5.2.2018)

Since 2008, DEVB has promulgated a set of contract measures to prevent non-payment of wages for implementation in all works contracts except maintenance contracts and E&M supply and installation contracts.

The contract measures for preventing non-payment of wages were further revised under SDEV's memos dated 16.7.2010, 27.7.2012, 8.11.2012, 28.9.2016, 16.12.2016 and 5.2.2018. The revisions include, but are not limited to, the adoption of the attendance records in the Construction Workers Registration System (CWRS) for the purpose of wage payment monitoring, cease of the requirement for reimbursement of contractor's and subcontractors' contribution to the Mandatory Provident Fund and granting flexibility to the Works Departments to adopt some alternative means of provision of Assistant Clerical Officer (Labour Relations). The latest revised contract provisions (e.g. SCC and PS) for preventing non-payment of wages were promulgated under SDEV's memo ref. (02VKU-01-3) in DEVB(W) 510/17/01 dated 16.12.2016. Based on SDEV's memo dated 5.2.2018, these latest revised contract provisions may need to be further fine-tuned, depending on the means of provision of Assistant Clerical Officer (Labour Relations) under a particular works contract.

The "Guidelines on Wage Payment Monitoring and Reimbursement of Contractor's and Subcontractors' Contributions to the Mandatory Provident Fund for their Site Personnel" (Rev. 1) were promulgated under SDEV's memo ref. (02H25-01-1) in DEVB(W) 510/17/01 dated 8.11.2012. The said Guidelines serve as reference for project officers, site supervisory staff and Labour Relations Officers/Assistant Clerical Officer (Labour Relations) in the execution of the relevant contract provisions. The soft copy of the Guidelines, and any further amendments, is available at DEVB's website.

As promulgated under SDEV's memo dated 16.7.2010, some maintenance contracts were selected for trial implementation of the contract measures to prevent non-payment of wages. DEVB had no plan for further trial and no plan to implement the contract measures in maintenance contracts after the trial.

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9.12 SITE CRUSHERS
(Subsumed from WBTC No. 11/2002)

9.12.1 Policy for Setting up Site Crushers

The hard inert C&D material, such as concrete and broken rock including rock excavated from works projects, can be recycled into aggregates for reuse in construction works. In order to reduce the pressure on the demand for public filling and landfill capacity, it is essential that the reusable portion of the inert C&D material be recycled and put into good use. For projects requiring excavation in rock or processing of hard inert C&D material, the project office should consider setting up site crushers where it is technically feasible and environmentally acceptable. This Paragraph sets out the necessary procedures and requirement for setting up site crushers in Government projects.

9.12.2 Procedures

At the planning stage of a project that includes the establishment of a site crusher, the project office should advise the Secretary of the Public Fill Committee (PFC) and seek approval in principle from the Director of Civil Engineering and Development (DCED). Approval from the Director of Environmental Protection (DEP) is also required for installation and operation of a site crusher in respect of the environmental requirements. In addition, the setting up of site crushers may be classified as a "designated" project under Schedule 2, G.5 of the Environmental Impact Assessment Ordinance. Where appropriate, DEP should be consulted on the environmental requirements for setting up a site crusher.

9.12.3 Crushed Rock and Recycled Products Produced by Site Crushers for Project Use

DCED should be informed in advance if a site crusher is to be included for use in a Government project to process hard inert C&D material including rock, which are generated from or imported to the site for use solely in the works. No royalty will be required by the Government in respect of the operation of a site crusher as described in this clause, provided its installation is permitted in the lease conditions.

9.12.4 Regulating Conditions

In every project where a site crusher is to be included, the following special conditions, to be provided by DCED, shall be included in the tender documents:

(a) The permitted uses, and royalty rate if sales are permitted;

(b) If rock and hard inert C&D material may be imported to the site;

(c) The permitted duration for the operation of the site crusher and its regular inspection by the Mines Division, CEDD;

(d) The submission for approval of the details of the crushing plant and its dust control systems; and

(e) The submission of monthly returns of production and declaration on sales, if permitted.

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If a site crusher is included in the Contract, the Pneumoconiosis Compensation Fund Board should be informed of the details. If approval has not been obtained to use a site crusher in a contract, a clause prohibiting the use of a site crusher should be included in the PS.

9.13 RESOLUTION OF DISPUTES BY MEDIATION / ADJUDICATION / ARBITRATION

(Ref.: SDEV's memos ref. (02BBG-01-4) in DEVB(W) 506/00/01, () in DEVB(W) 510/83/03, DEVB(W) 510/10/01 dated 24.3.2011, and 11.2.2021 respectively and DEVB TC(W) No. 6/2021)

GCC Clause 86 (For term contract, GCC Clause 89) sets out the framework of dispute resolution procedures. In summary, a dispute may go through 3 distinct stages: a decision of the Engineer, mediation and arbitration.

Where the Engineer makes a decision on the dispute, if either the Government or the Contractor is dissatisfied with such decision, either the Employer or the Contractor may, within 28 days after receiving the decision, request the matter be referred to mediation in accordance with the Government of HKSAR Construction Mediation Rules. Detailed guidelines are given in WBTC No. 4/99 and ETWB TCW No. 4/99A. Pursuant to WBTC No. 4/99, in all cases the merits of the dispute should be given careful consideration before deciding whether to agree to or to refuse mediation. Nonetheless, it is the Government's policy that mediation should be implemented wherever is possible to achieve cost effective resolution of disputes.

If the matter cannot be resolved by mediation, or if either the Employer or the Contractor does not wish the matter be referred to mediation, then either party may require the matter to be referred to arbitration. A SCC as given in the Library of Standard Special Conditions of Contract should be incorporated in the contract documents stating that place of arbitration shall be in Hong Kong.

To foster co-operation between Contractor and the Employer and their consultants and subcontractors, minimise the number of claims, avoid conflicts in the first instance and settle disagreements of disputes as they emerge, all capital works contracts shall adopt Dispute Resolution Advisor (DRA) System in conjunction with Voluntary Adjudication (VA), subject to the following selection criteria:

(a) Civil and E&M engineering works contracts

(i) The DRA System shall be adopted for such contracts with value exceeding $700M, except for contracts which are of routine nature and primarily straightforward. Approval for exemption shall be given by an officer at D2 rank or above of the procuring department;

(ii) Where the contract value does not exceed the $700M threshold, procuring departments may consider applying the DRA system having regard to the complexity of the works. The decision and justifications for applying the DRA system in such cases should be properly documented and endorsed by an officer at D2 rank or above of the procuring department.

(b) Building works contracts

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The adoption of the DRA System should be considered when the following criteria are satisfied:

(i) the nature of work is not simple and disputes are likely to arise during the course of contract; and

(ii) the contract value is over $700M, or over $100M for exceptional case where there is demonstrable benefit to adopt the DRA System.

The Guideline for the Use of the Dispute Resolution Advisor System with General Conditions of Contract for Civil Engineering Works (1999 Edition) and General Conditions of Contracts for Electrical and Mechanical Engineering Works (1999 Edition) and VA documents can be downloaded from Works Group Intranet Portal. Reference may be made to SDEV's memos ref. (02BBG-01-4) in DEVB(W) 506/00/01 of 24.3.2011 and ref. () in DEVB(W) 510/83/03 of 11.2.2021.

The provisions of four sets of SCC on settlement of disputes, where the Domestic Arbitration Rules (2014) promulgated by the Hong Kong International Arbitration Centre have been catered for, for capital works contract (with or without adoption of voluntary adjudication), term contract, and design & build contract are set out in Annex E of DEVB TC(W) No. 6/2021.

9.14 COMPUTER FACILITIES FOR WORKS CONTRACTS

(Ref.: Item Ref. 5.5 of Strategic Review of Project Administration Handbook for Civil Engineering Works, Progress Report on Second Stage Implementation of Review Proposal dated March 2005)

The Contract Computer Facilities (CCF) means the computer equipment (including hardware, software and network), related maintenance support services and training as stipulated in the relevant departmental guidelines on CCF which are provided by the Contractor under Works Contract to the staff of the Engineer/Supervising Officer for the purpose of managing the works contract on site.

The Project Officer should, at an appropriate stage, formulate a proposal for CCF in consideration of the following aspects and in compliance with relevant departmental technical specifications, guidelines and DPO's requirements:

(a) The intended areas of contract management where the CCF will be used;

(b) The site supervisory staff establishment;

(c) Training to be given to the site supervisory staff; and

(d) Requirements for necessary transfer of ownership of hardware, software and data and related intellectual property/copyright, etc.

The proposal of CCF with an estimated cost not exceeding $10 million or 0.5% of the estimated contract sum whichever is the lower is to be approved by an officer at D1 rank or above. If the aforementioned limit is to be exceeded, a submission with justification is to be made to an officer at D2 rank or above for approval.

9.15 SITE SAFETY AND ENVIRONMENTAL MANAGEMENT

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(Ref.: SDEV's memo ref. (02LSV-01-1) in DEVB(W) 516/70/03 dated 22.11.2013, SDEV's memo ref. (02N5N-01-1) in DEVB(W) 517/17/01 dated 8.6.2016, SDEV's memo ref. DEVB(W) 516/71/01 dated 29.3.2018 and SDEV's memo ref. DEVB(W) 517/91/01 dated 29.3.2018)

SDEV's memo ref. DEVB(W) 516/71/01 dated 29.3.2018 revised the Construction Site Safety Manual to reflect the enhancement to the Safety Management System for public works contracts with a view to sustaining the effort on site safety as well as to simplify and streamline the existing administrative work. The contractual provisions contained in Chapter 3 and Chapter 12 of the Construction Site Safety Manual shall apply to all works contracts and term contracts, undertaken by contractors on the List of Approved Contractors for Public Works or those on the List of Approved Suppliers of Materials and Specialist Contractors for Public Works, and design and build contracts. However, owing to their small size and/or nature, some contracts may warrant changes to the contractual provisions. Each works department is the best judge of its own situation and needs. Project engineers shall seek advice from their Departmental Safety and Environmental Adviser and the agreement of the appropriate (D2 rank or above) officer for such changes.

A Safety Plan shall be a mandatory requirement for the following contracts:

(a) Works contracts, undertaken by contractors on the List of Approved Contractors for Public Works or those on the List of Approved Suppliers of Materials and Specialist Contractors for Public Works, with contract period longer than 6 months and estimated contract sums of $20M and above;

(b) Term contracts, undertaken by contractors on the List of Approved Contractors for Public Works or those on the List of Approved Suppliers of Materials and Specialist Contractors for Public Works, with total estimated expenditure of $50M and above; and

(c) Design and build contracts with estimated contract sums of $20M and above.

For works contracts and design and build contracts with estimated contract sums of less than $20M and term contracts with total estimated expenditure of less than $50M, the criterion to decide whether safety plans are required or not is whether dangerous situations are anticipated by virtue of the site location or the operation involved in the construction work within the scope of the contract. Departmental Safety and Environmental Advisers should be consulted for advice on specific requirements.

In respect of environmental management, ETWB TCW No. 19/2005 sets out the policy and procedures requiring contractors to prepare an Environmental Management Plan and adopt unified standards on environmental nuisance abatement measures on sites, and expands the "pay for safety and environment scheme" to cover environmental nuisance.

However, interim guidance notes on the ETWB TCW No. 19/2005 regarding the administration of "Environmental Management on Construction Sites" were issued via SETW's memo ref. (014G7-01-1) in ETWB(W) 517/91/01 dated 19.6.2006, replacing Appendices A to F of ETWB TCW No. 19/2005.

Subsequently, SDEV's memo ref. DEVB(W) 517/91/01 dated 29.3.2018 was issued to promulgate the following enhancements to environmental management on construction sites:

(a) The Pay for Safety and Environment Scheme (PFSES) would be renamed as the Pay for Safety Scheme (PFSS).

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(b) All environmental related pre-priced payment items from the Bills for the PFSES would be removed and then combined in an appropriate item to the Bills for Preliminaries.

All public works contracts, including design and build contracts and term contracts, shall implement the above enhancements through incorporation of the amendments to ETWB TCW No. 19/2005 as stipulated in SDEV's memo ref. DEVB(W) 517/91/01 dated 29.3.2018.

The sample contract provisions regarding the requirements on mechanical dump truck covers for application to capital works contracts with PFSS and term contracts with PFSS were promulgated under SDEV's memo ref. DEVB(W) 810/83/09 dated 24.9.2010. The sample contract provisions include the following:

(a) A set of revised clauses in the Particular Specification at Appendix 5.48; and

(b) A new clause in the Notes to Tenderers at Appendix 5.49.

Capital works project with estimated construction cost equal to or exceeding $500M, excluding Design & Build projects, should follow the Design for Safety process as stipulated in the "Guidance Notes of Design for Safety" which can be downloaded from DEVB website:

https://www.devb.gov.hk/en/publications_and_press_releases/publications/index.html

In particular, "Pre-tender Health and Safety Plan" should be issued to the tenderer, tenderer should submit "Outline Health and Safety Plan" with his tender submission and "Health and Safety File" should be kept.

9.15.1 Pay for Safety Performance Merit Scheme (PFSPMS)

(Ref.:-SDEV's memo ref. DEVB(W) 517/91/01 dated 29.3.2018)

Under the current PFSES/PFSS, contractors are paid if they have completed the respective task-tied safety items, such as provision and updating of safety plan, attending safety meetings/walks, and provision of safety trainings, etc. The task-tied payment, however, is not linked to the safety performance of the contractors. To motivate contractors to strive for better safety performance, DEVB has promulgated a performance-tied payment scheme for public works contracts as an extension to the PFSS, i.e. the Pay for Safety Performance Merit System (PFSPMS), which has been incorporated in Chapter 12 of the Construction Site Safety Manual. The PFSPMS shall be applicable to all capital works contracts including electrical and mechanical contracts and Design and Build contracts which adopt PFSS.

Under the PFSPMS, payment will be made under a set of pre-priced performance-tied payment items which are measured according to the contractors' achievements in respect of the safety performance indicators specified in the contract. The total value of the performance-tied payment items under the PFSPMS shall be about 1.7% of the estimated Contract Sum or total estimated expenditure as stipulated in Annex B to the Guidelines, at Appendix VI in Chapter 12 of the Construction Site Safety Manual . The payment for PFSPMS is in addition to that for PFSS.

The eight safety performance indicators of the PFSPMS are as follows-

(a) No reportable accident in a month;

(b) No notice of safety or environmental prosecution received in a month;

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(c) Compliance of safety training (Silver Card) for workers of specified trades in a month;

(d) Half-yearly review of safety performance – based on inspection / improvement / suspension notices received from the Labour Department;

(e) 12-month rolling accident frequency rate for reportable accidents below 0.25 per 100,000 man-hours worked;

(f) Yearly review of safety performance - no fatal accident in a year;

(g) Achievement in safety campaign organized by Development Bureau, (i.e. Considerate Contractors Site Award Scheme); and

(h) Final review of safety performance – overall safety performance based on fatal accident and cumulative accident frequency rate for reportable accidents under the contract (Annex E to the Guidelines).

To implement the PFSPMS, DEVB have prepared a set of Guidelines and relevant contract provisions for inclusion in the tender/contract documents for capital works contracts. A copy of the Guidelines and contract provisions are enclosed Appendix VI in Chapter 12 of the Construction Site Safety Manual.

The PFSPMS for term contracts is under preparation and will be promulgated in due course.

The Construction Site Safety Manual Chapter 12 could be accessed via the following link: -

Construction Site Safety Manual Chapter 12
https://www.devb.gov.hk/filemanager/en/content_191/Chapter12_Ver.Mar.2018_highlighted.pdf

9.16 SECTIONAL COMMENCEMENT OF THE WORKS (Subsumed from WBTC No. 12/93)

9.16.1 General

The GCC defines "Section" as "a part of the Works for which a separate time for completion is identified in the Contract". GCC Clause 47 (Commencement of the Works) does not refer to a separate date for commencement of a Section.

There are occasions when it is necessary to stipulate in the Contract commencement of a part of the Works designated as a Section in the Contract at a later date than the date for commencement notified by the Engineer in accordance with GCC Clause 47. This shall be referred to as "sectional commencement".

9.16.2 Procedures

Where sectional commencement is required, the SCC for 'Sectional commencement' given in the Library of standard SCC under SDEV's memo ref. DEVB(W) 546/17/02 dated 9.2.2011 shall be included in the contract documents. Any requirement for phased possession of any Portion of the Site by the Contractor shall be prescribed in the contract documents taking into account the different dates for commencement of the Sections as stated or referred to in the Contract.

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It will not be necessary to invoke the said contractual arrangement in the following circumstances where delayed commencement of part(s) (whether designated as Section(s) or not) of the Works can be achieved by using the existing provisions in the GCC or the library of SCC. For example :-

(a) where only phased possession of Portion(s) of the Site by the Contractor is required the necessary contractual arrangement is stipulated in GCC Clause 48; or

(b) where a Section of the Works Subject to Excision is required in accordance with Paragraph 9.41 of this Chapter, the necessary contractual arrangement is already catered for by the SCC for 'Section Subject to Excision' as given in the Library of standard SCC under SDEV's memo ref. DEVB(W) 546/17/02 dated 9.2.2011.

It is important to check whether or not the other contract documents contain any cross reference(s) to GCC Clause 47 and if so, consider whether or not such cross-reference(s) need to be amended by reason of the SCC on sectional commencement.

9.17 ENVIRONMENTAL PERMIT

Departments shall observe the guidelines and procedures set out in ETWB TCW Nos. 13/2003 and 13/2003A for obtaining an environmental permit (EP) for Government projects and proposals. Depending on the nature of project and the recommendations in the EIA reports, project proponent may choose to apply for a single EP for a project or separate EPs for various stages of a project, such as construction, operation and decommissioning. To maintain overall programme control and continuity, it is recommended that the project proponent shall apply for the necessary EPs before the commencement of project construction and hold the EPs throughout the construction period. Such arrangement will ensure that the EP is in place immediately after the award of the contract and hence the Contractor can rely on the EP issued to the project proponent to commence works on the site without the need to apply for a further EP. Department should ensure that sufficient time is allowed for the completion of the EIA process before the issue of tender documents.

The standard clause in Paragraph 1.6.5, Appendix A of ETWB TCW No. 13/2003 shall be included in the Particular Specification for works contracts where EP has been obtained by the proponent for the works to safeguard against any unnecessary claims for extension of time and additional costs from the Contractor due to application for a further EP or any subsequent variation to the conditions of EP.

To ensure that the contractor has the full knowledge of the conditions of the EP, a copy of the EP issued to the proponent shall be included in the Particular Specification to form part of the tender documents and hence the contract. As part of the standard conditions of the EP, the Contractor shall display the EP at the site throughout the construction period. The proponent shall notify the Contractor any subsequent change or variation to the conditions of EP.

Where the requirements in ETWB TCW No. 13/2003 cannot be complied with, the department responsible should:

(a) take action to critically review the results and assess the implications of the EIA study

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(including the latest environment control conditions) as soon as it is available; and

(b) if the tender documents have already been handed out, take action to immediately inform all tenderers of the findings of the EIA study, so that they could take the EIA findings into account before submitting their bids (SETW's memo ref. () in ETWB(W) 1552/662/CL SF(1) dated 3.12.2003 refers).

9.18 DELETION OF EXTENSIONS OF TIME FOR INCLEMENT WEATHER (Subsumed from WBTC No. 26/98)

Circumstances may arise where it is desirable to fix the completion date (e.g. to tie in with the opening of a school term) and hence the Contractor's right to extensions of time for inclement weather is deleted. Heads of departments may approve the deletion of GCC Clause 50(1)(b)(i), (ii) and/or (iia), and submit details to the SDEV for endorsement. Tenders must not be invited until this endorsement has been received. The SCC on 'deletion of extensions of time for inclement weather' in the Library of standard SCC under SDEV's memo ref. DEVB(W) 546/17/02 dated 9.2.2011 shall be used as appropriate. Other than for exceptional circumstances, a reasonable allowance for inclement weather shall be included in the time for completion. What is reasonable will largely depend upon the nature of the Works. In deciding whether or not to delete sub-clause (b)(ii) and/or (iia), the risk of injury and/or damage to property must be considered.

Nevertheless, it should be noted that where the provision for extensions of time due to inclement weather is deleted, Contractor's entitlement to extensions of time in respect of inclement weather which occurs after the expiry of the time originally prescribed in the Contract for completion of the Works, but before the period of culpable delay, is not deleted.

9.19 TIME-CRITICAL PROJECTS

(See SETW's memo ref. () in ETWB(W) 1552/662/CL SF(1) dated 3.12.2003)

The time required for completion of time-critical projects should be critically assessed prior to the invitation of tenders so as to ensure that sufficient time is allowed for completion of the works. Furthermore, the implications and potential cost of including or deleting those contract provisions (such as provisions for granting extension of time for inclement weather) which could adversely affect the completion date of the works as stated in the contract documents so as to avoid the need for negotiating a supplementary agreement with the Contractor.

For time-critical projects with multiple works contracts, sufficient float time should be allowed between the works contracts so as to minimize the risk of the knock-on effect of delay in one contract on other contract(s).

If the projects require input from users on their design requirements, the departments should:

(a) Always require users to finalise their design requirements before an agreed cut-off date so as to avoid any design changes at a later stage; and

(b) Obtain the users' explicit agreement to essential design requirements prior to the letting of contracts so as to avoid delays and contractual claims arising from changes in users' requirements.

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9.20 CONTRACTS AFFECTED BY CONDITIONS OF LAND GRANT

(See SETW's memo ref. () in ETWB(W) 1552/662/CL SF(1) dated 3.12.2003)

Issues relating to any conditions of a land grant, which could have an effect on the works of the contracts, should be resolved with the Director of Lands before letting of the contracts. Departments should take prompt action to assess the implications of such conditions before a land grant is finalized.

9.21 CONTRACTUAL PROVISIONS TO REDUCE THE RISK OF CONTRACT FORFEITURE

(See SETW's memo ref. ETWB(CR)(W) 1-150/4 Pt.2 dated 27.4.2004)

For time critical contracts and/or large-scale contracts, and where the contract conditions impose a substantially higher degree of risk than normal on the Contractor, the project office should consider implementing measures (such as the use of parent company guarantee and performance bond) to minimize the risk of contract forfeiture and should strictly implement the contract conditions for the provision of parent company guarantee and performance bond (if any) to ensure the required contract instruments are submitted by the Contractor within the stipulated time limits. For the use of performance bonds security and retention money, see WBTC Nos. 10/97 & 10/97A (as amended by SDEV's memo ref. ( ) in DEVB(W) 510/70/03 dated 27.7.2021).

For large-scale works projects, the contract payment schedules should be critically devised to ensure that progress payments are made, as far as possible, in line with the actual progress of works.

9.22 RESTRICTED-HOUR LOCATIONS

(Ref.: SETW's memo ref. (008BT-01) in ETWB(W) 830/31/01 dated 12.7.2004, Audit Recommendations on Public Works Contracts)

Under a works contract, some works may be required to be carried out within restricted hours. Experience has shown that during the construction stage, the Transport Department/the Hong Kong Police Force required the works at more locations to be carried out within restricted hours. This has led to claims and variations. With a view to minimizing claims for EOT and prolongation cost arising from works carried out within restricted hours, the project office should:

(a) Strengthen consultation with the Transport Department/Hong Kong Police Force to ensure that all locations, which require works to be carried out within restricted hours, are identified before tendering; and

(b) Consider improving the contractual provisions of main-laying contracts such as by incorporating provisional items so as to allow for addition of more restricted-hour locations subsequently found necessary.

9.23 ADDITIONAL WORKS AREA AND EXTENSION OF WORKS AREA

(Ref.: Lands Department's memo ref. (3) in LD TI 10/04/03 dated 16.6.2004, Provision of Land for Works Area)

The project office should note that any request for additional works area after award of a

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contract will be subject to payment of rent by the Contractor and any request for extension of works area should be provided with justifications, or the DLO may charge a rental or may refuse the request.

9.24 TUNNEL WORKS

For contracts involving tunnel works, the project office should include suitable clauses in the PS and, in the case of design and build contracts, the Employer's Requirements (ER) to enable effective implementation of the ETWB TCW No. 15/2005. Where the GEO raises major geotechnical concerns on the public safety aspects of the geotechnical design or the related PS or the ER clauses, the project office must resolve such concerns before tenders are invited.

Reference should also be made to the "Guidance Notes on Safety and Health of Hand-Dug Tunnelling Work" published by the Labour Department when hand-dug tunnelling work is unavoidable. The occupational safety and health measures as set out in the Guidance Notes shall be incorporated in the relevant tender documents. The Guidance Notes is available on the website of Labour Department (*http://www.labour.gov.hk/eng/news/pdf/GN_on_S&H_of_Hand-dug_Tunnelling_Work_Eng.pdf*).

9.25 PERMITS FOR EXCAVATION WORKS UNDER LAND (MISCELLANEOUS PROVISIONS) ORDINANCE CAP.28

(Ref.: SDEV's memo ref. (0281L-01-5) in DEVB(W) 510/70/01 dated 1.11.2010)

Standard Notes to Tenderers, Particular Specification and amendment to the Form of Tender for incorporation into civil engineering works contracts are given in SETW's memo ref. ETWB (W) 249/38/02[TC13/2001] dated 29.3.2004. Standard Special Conditions of Contract for incorporation into civil engineering works contracts are given in SDEV's memo ref. (0281L-01-5) in DEVB(W) 510/70/01 dated 1.11.2010.

9.26 MEASURES TO PREVENT ILLEGAL EXTRACTION OR IMPORTATION OF BOULDERS/COBBLES/PEBBLES

For future public-works projects, if the design requires large quantities of natural boulders/cobbles/pebbles that are not readily available in the market, the project office should consider stipulating in the contract documents clauses requiring the Contractor to submit documentary proof that extraction or production of these materials by the material suppliers will not cause unacceptable environmental impacts (such as reports from independent environmental consultants) and also proof of the legality of the source of materials. For natural boulders/cobbles/pebbles that are to be obtained outside Hong Kong, the Contract should require the Contractor to submit export permits from the relevant authorities. These permits should have been verified by notary(ies) public of the originating place(s), where applicable, in order to demonstrate that such materials are supplied legally and without causing unacceptable environmental impacts to its source. The Engineer should be empowered to seek further information from the Contractor in case he has any doubt.

The Contractor shall not be allowed to deliver natural boulders/cobbles/pebbles to site before submission of the above-mentioned proof to the Engineer for his agreement. The Engineer for the Contract and the Contractor should also enhance their site supervision respectively to avoid

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the taking of risk by the Contractor or the Subcontractors to deliver these materials to site prior to approval.

9.27 ADOPTION OF NON-CONTRACTUAL PARTNERING IN PUBLIC WORKS CONTRACTS

(Ref: SETW's memo ref. (0117S-01-2) in ETWB (W) 506/30/02 dated 30.3.2006 and SDEV's memo ref. () in DEVB (W) 506/30/02 dated 23.9.2020)

The project offices and consultants should refer to the "Practice Note on Adoption of Non-contractual Partnering in Public Works Contracts" (included in Appendix 5.28) promulgated by DEVB in delivering public works contracts. The Practice Note sets out the guidelines for selection of contracts for adoption of non-contractual partnering and its implementation. Reference documents for the implementation of the non-contractual partnering that are provided include "Good Practices for Implementation of Non-contractual Partnering"; "Typical Partnering Charter"; "Standard notes for tenderers to communicate Government's intent to partner/ Standard letter to the Contractor to communicate Government's intent to partner and to invite him to participate in project partnering"; "Form of Tender" and "Client's Brief to Service Providers for Designing and Facilitation Partnering Workshops and Related Services".

9.27.1 Guidelines for selection of contracts for adoption of non-contractual partnering

In order to promote the wider use of partnering approach in public works contracts, non-contractual partnering should be adopted in the following types of contracts as far as possible:

(a) Building and civil engineering capital works contracts with tenders to be invited from Group C contractors;

(b) E&M contracts with tenders to be invited from Group B and/or C contractors;

(c) Other contracts such as maintenance term contracts if approval is given by an officer at D2 or above rank to adopt the non-contractual partnering arrangement having regard to the nature and complexity of the works.

For contracts under (a) and (b) above, approval from an officer at D2 or above rank shall be obtained for not adopting the non-contractual partnering arrangement.

For NEC contracts, they already entail partnering spirit and associated project management tools, and therefore there is no need to require the adoption of non-contractual partnering in NEC contracts.

9.28 CONTROL OF OFF-SITE FABRICATION OF CONSTRUCTION COMPONENTS

(Ref: SETW's memo ref. (018RD-01-1) in ETWB (W) 925/50/01 dated 13.10.2006 - Assignment No. 04/2006 - Control of Off-site Fabrication of Construction Components)

If the works under the Contract or any alternative design proposed by the Contractor involve fabrication of construction components outside Hong Kong, the project office should either arrange for the resident site staff of in-house projects or consultant-managed projects to supervise and inspect

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the works in the fabrication area or require the Contractor to employ an independent inspection agent (IIA)[#] to control the quality of the components fabricated in the fabrication area. In this situation, the project office should determine the most appropriate site supervision requirements, inspection arrangement and warranty from the manufacturer, and should stipulate them in the contract documents. If an IIA is employed by the Contractor to supervise and inspect the works in the fabrication area, the project office should specify in the contract documents the qualification requirements of the IIA and, where practicable, the IIA's staff assigned for the supervision and inspection.

If an IIA is required under the Contract, apart from the qualification requirements of the IIA and, where practicable, the IIA's staff assigned for the supervision and inspection, the project office shall also stipulate in the contract documents the following requirements:

(a) the qualifications of the IIA and the IIA's staff shall be submitted to the Engineer for approval;

[#] Note: project office is to decide the scope and extent of the IIA services

(b) the Contractor shall require the IIA and his staff to submit declaration of no conflict of interest with the supplier/manufacturer/Contractor to the Employer upon employment of the IIA. The Contractor shall also ensure that the IIA and his staff declare any conflict of interest with the supplier/manufacturer/Contractor to the Employer via the Engineer as soon as such a conflict comes to the knowledge of the IIA, his staff or the Contractor. In the event that such conflict or potential conflict between the supplier/manufacturer/Contractor arises, 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;

(c) the Contractor shall require the IIA to submit to the Engineer for approval a site supervision and inspection plan for the fabrication works as well as any subsequent changes, and to certify compliance with the site supervision and inspection plan;

(d) the Contractor shall caution the IIA and his staff not to accept lavish entertainment during supervision and inspection;

(e) the Contractor shall not allow the IIA and his staff to accept any advantage from suppliers, manufacturers and/or objects of supervision/inspection;

(f) the Contractor shall require the IIA to submit to the Contractor and the Engineer simultaneously site records and reports on any non-compliance with the Contract's requirements;

(g) the Contractor shall require the IIA to submit periodic statistical returns (e.g. returns on the number and periods of supervision and inspections conducted by the IIA and his staff and the works covered in these supervision and inspections) for management information; and

(h) the Contractor shall require the IIA to certify to the Employer that the fabrication works have been constructed in accordance with the Contract's requirements.

Notwithstanding the above requirements stipulated, the employment of the IIA shall not relieve the Contractor of any duties or liabilities under the Contract. Guidelines to assist project

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offices in controlling the quality of fabrication of construction components outside Hong Kong are given in Paragraph 21.21 of PAH Chapter 7.

9.29 SAFETY PRECAUTIONARY MEASURES RELATING TO EXTRACTION OF SAND FROM SEABED WITH POTENTIAL PRESENCE OF UNEXPLODED ORDNANCE

For any contracts involving extraction of sand from the seabed with potential presence of unexploded ordnance, the project office shall pay due regard to the "Guidance Note on Incidents Involving Explosive Ordnance During Marine Dredging" issued widely to all dredging contractors in the construction industry and updated by the Marine Fill Committee from time to time (whose terms of reference are stated in WBTC No. 12/2000). The Note is available for reference on the CEDD website (http://www.cedd.gov.hk/eng/services/fillmanagement/fm_mf.htm). The project office should consider the nature of the works and specify the necessary precautionary measures in the contract documents to minimize the risk associated with ordnance. For example, these measures to be specified may include the use of filtering devices during the suction or pumping of sand for the screening out of unexploded ordnance items exceeding 150mm.

9.30 DRAINAGE IMPACT ASSESSMENT PROCESS FOR PUBLIC SECTOR PROJECTS

The project proponent shall observe the guidelines and procedures set out in ETWB TCW No. 2/2006 for Government projects and proposals. Depending on the nature of project and the recommendations in the Drainage Impact Assessment reports, the project proponent shall incorporate into the tender documents all the specific requirements of the temporary mitigation measures, and the monitoring and audit requirements.

9.31 ENGAGEMENT OF SUBCONTRACTORS REGISTERED FROM THE "REGISTERED SPECIALIST TRADE CONTRACTORS SCHEME" (Subsumed from ETWB TCW No. 13/2004, SDEV's memo ref. (02KJ8-01-4) in DEVB(W) 510/94/02 dated 22.7.2013, SDEV's memo ref. ( ) in DEVB(W) 510/94/02 dated 28.3.2019, 11.8.2020, 4.12.2020, 11.1.2022, 17.6.2022,1.12.2022, 1.2.2023, 6.9.2023, 10.4.2024 and 11.12.2024 Amd No. 2/2025)

All capital works and maintenance works contracts shall require the contractor to only employ subcontractors (whether nominated, specialist or domestic and irrespective of tier) registered under the respective trades (and groups if available) available in the Registered Specialist Trade Contractors Scheme (RSTCS) (formerly known as the Subcontractor Registration Scheme (SRS)) managed by the Construction Industry Council (CIC).

The RSTCS which was launched on 1.4.2019 comprises the lists of both the Registered Specialist Trade Contractors (RSTC) and the Registered Subcontractors (RS). The RSTC are further classified into Group 1 and Group 2 subject to different admission criteria and tender limits. The requirement for engaging Group 1 and Group 2 Registered Specialist Trade Contractors in all public works contracts pursuant to the prescribed tender limits (see www.rstc.cic.hk) has taken effect since 1 October 2020.

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The NTT, SCC, ACC, as well as the appendices to SCC and ACC as given in Appendices 5.6, 5.6A, 5.6B, 5.6B1, Amd No. 2/2025 5.6C, 5.6C1, Amd No. 2/2025 5.6D and 5.6E shall be included in tenders to be invited on or after 1 May 2024,. The above requirements apply to Nominated Subcontractors, Specialist Subcontractors and subcontractors for specialist works referred to in SCC on "Subcontracting", as well as their further subcontractors of all tiers.

9.32 CONTRACT MEASURES TO LIMIT THE NUMBER OF TIERS OF SUBCONTRACTING

(Ref.: SDEV's memo ref. (01TC9-01-5) in DEVB(W) 510/17/01 dated 17.7.2008, & SDEV's memo ref. (01VP5-01-4) in DEVB(W) 510/17/01 dated 11.11.2008 & SDEV's memo ref. DEVB(W) 510/17/01 dated 6.9.2013 and 19.4.2021)

DEVB has promulgated that the contract measures at Appendix 5.19 for limiting the number of tiers of subcontracting is to be applied to all capital works contracts and maintenance contracts. The SCC clause at Appendix 5.19 sets as default the limitation to two tiers of subcontracting for all parts of works. For works requiring entry of human beings into confined space that form part of a drainage or sewerage system, only one tier of subcontracting is allowed in total. A diagram illustrating the intended limitation on subcontracting is at Appendix 5.20 for reference.

Subject to the agreement from Works Branch of DEVB, project officers may impose the restriction on other high-risk operations relevant to the nature of the contracts. Project officers shall provide justifications including past accident records involving such high-risk operations and obtaining prior endorsement of an officer at D2 rank or above in Works Departments.

The Engineer for the contract may, subject to no objection from the Employer (who should be an officer at D2 rank or above in Works Departments), permit the contractor to introduce an extra tier of subcontracting for a part of the Works in case there is a strong need for the extra tier of subcontracting. Works Departments shall keep a record of such approvals including justifications and update Works Branch of DEVB at 6-month intervals for all permissions granted under this provision. The need for the Engineer for the contract to obtain no objection from the Employer is a constraint on the power of the Engineer rendering the action of the Engineer being subject to the Employer's right of objection or direction.

In accordance with Clause 2(1)(b) of GCC, the particulars of any such constraint on the Engineer imposed under the terms of his appointment by the Employer has to be set out in the Appendix to Form of Tender. In this regard, project offices including consultants should include the constraint clause in the Appendix to Form of Tender when the SCC clause at Appendix 5.19 for limiting the number of tiers of subcontracting is incorporated.

9.33 ENHANCEMENT MEASURES FOR SUBCONTRACTOR MANAGEMENT PLAN (SMP)

(Subsumed from ETWB TCW No. 47/2002)

Subcontracting is a common practice in the construction industry. If properly managed by contractors, it will facilitate the execution of works in a cost-effective manner with efficient use of resources. However, in the absence of proper management, uncontrolled subcontracting could have adverse impact on the progress and quality of works.

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To augment the existing provisions prohibiting contractors from subcontracting the whole of the contracted works, special conditions are introduced in public works contracts to enhance the management of subcontractors by contractors.

A tenderer is required to submit with his tender a proposed outline SMP to show how he is going to manage his subcontractors. The guidelines on scope and contents of the SMP given at appendix to the SCC for Management of Subcontractors (Appendix 5.23) should be attached to the tender document to facilitate the tenderer to prepare his SMP.

The following requirements should be specified in the form of a SCC:

(a) The contractor will be required to ensure that his subcontractors will not further subcontract the whole of the works subcontracted to them.

(b) The contractor will be required to employ his own staff to manage and supervise his subcontractors.

To obtain a full picture of the contractor's subcontracting arrangement, the term 'subcontractor' described in this Paragraph means all types of subcontractor including without limitation Nominated Subcontractor and Specialist Subcontractor. Nevertheless, the requirements stipulated in WBTC No. 25/94 and other technical circulars for domestic subcontractors and nominated subcontractors should still be followed.

These following contractual provisions with updates from SDEV's memo ref. ( ) in DEVB(W) 510/94/02 dated 4.12.2020, DEVB TC(W) No. 6/2021 and Annex B to SDEV's memo ref. (03E8T) in DEVB(W)516/80/03 dated 3.8.2022 should be included in tenders for all capital and maintenance works contracts (For NEC ECC or TSC contracts, please refer to the above mentioned memo for the suite of contractual provisions):

(a) NTT for Payment for Subcontractor Management Plan (Appendix 5.22);

(b) SCC for Management of Subcontractors (Appendix 5.23) with Appendix to the SCC (Appendices 5.6A, 5.6C and 5.6E); and

(c) PS for Management of Subcontractors (Appendix 5.25).

Pursuant to the new arrangement promulgated under SDEV's memo ref. ( ) in DEVB(W) 510/94/02 dated 28.3.2019 (as mentioned in paragraph 9.31 above), the contractors should provide the details of subcontract(s), including but not limited to the trades (and groups if applicable) of the subcontractor(s) under the RSTCS and value of the subcontract(s) in the SMP. To build up subcontractors information and facilitate future analysis, project offices shall submit quarterly the particulars of subcontracts under item (ii) of Appendix to SCC on SMP in an excel template (see Table 1 in Appendix 5.23) to DEVB.

Project officers should refer to SDEV's memo ref. ( ) in DEVB(PS) 109/11/01 Pt. 9 dated 16.5.2017, the para. 3 of which provides the following revised requirements for streamlining of Subcontractor Management Plan submission in public works contracts:

(a) Deletion of the pre-priced items in Bills of Quantities/Schedule of Rates for "complete Subcontractor Management Plan" and "quarterly updating of Subcontractor Management Plan"; and

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(b) Minor revision of "Guidelines on Scope and Contents of SMP" – from "Criteria for selection of subcontractors" to "Criteria for selection of subcontractor(s) involving trade(s) not available in the Primary Register of the Subcontractor Registration Scheme".

9.34 CONTRACT MEASURES FOR IMPLEMENTATION OF EMERGENCY COMMAND SYSTEM

In August 2008, DEVB introduced the Emergency Command System (ECS) to deal with exceptional emergency incidents. To facilitate the implementation of the ECS, a set of contract measures was promulgated for incorporation into maintenance/term contracts. Please refer to Chapter 8 Paragraph 5.7 for the details of the ECS and the contract provisions.

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9.35 INDEPENDENT CHECKING OF THE DESIGN, ERECTION, USE AND REMOVAL OF TEMPORARY WORKS (Subsumed from WBTC No. 3/97)

A Special Condition of Tender (SCT 3 in the Library of Special Conditions of Tender), Special Condition of Contract (SCC 26 promulgated under SDEV's memo ref. DEVB(W) 546/17/02 dated 9.2.2011), and a Particular Specification (PS) item (see Appendix 5.11) have been prepared to enable officers responsible for preparing tender documents to require the Contractor to provide for independent checking of the design, erection, use and removal of selected Temporary Works.

SCC 26 promulgated under SDEV's memo ref. DEVB(W) 546/17/02 dated 9.2.2011 clarifies the Engineers' duty. The Engineer is required to examine the Contractor's design details concerning the design, erection, use and removal of the Temporary Works and shall satisfy himself that it contains no obvious deficiency and that the independent checking engineer has carried out his duties with reasonable skill and care in certifying that the Temporary Works have been properly and safely designed. The responsibility for the Temporary Works remains with the Contractor but no work shall be commenced until the Engineer has issued his consent in writing upon making such verification.

Under the revised SCC, the Contractor is additionally required to provide to the Engineer certified method statements in connection with the erection, use and removal of the designed Temporary Works.

The decision to incorporate any of the above documents i.e. SCT 3 in the Library of Special Conditions of Tender, SCC 26 promulgated under SDEV's memo ref. DEVB(W) 546/17/02 dated 9.2.2011 and the PS item (Appendix 5.11) in tender documents is a matter for the professional judgement of the Engineer and it is recognised that the type and complexity of Temporary Works to be used by the Contractor cannot always be accurately foreseen at the design stage. The following guidelines may be of assistance at tender documentation stage :

(a) The above documents shall only be used where the design of the Temporary Works is the responsibility of the Contractor, and not the Engineer.

(b) Where no part of the Temporary Works is assessed as requiring the particular submission of drawings or calculations or design checking, none of the above documents need to be included in the tender documents. During construction the Engineer will be able to call for details under Clauses 7 and 16 of the General Conditions of Contract (GCC), but will have to pay for any additional independent checking, being beyond the scope of merely providing details.

(c) If the project designer wishes to examine tenderers' proposals for undertaking more complex or extensive Temporary Works at tender assessment stage, then use of SCT 3 in the Library of Special Conditions of Tender may be considered together with SCC 26 promulgated under SDEV's memo ref. DEVB(W) 546/17/02 dated 9.2.2011. During construction, the Engineer will be able to call for more details under GCC 7 and 16.

(d) Use of the SCC 26 promulgated under SDEV's memo ref. DEVB(W) 546/17/02 dated 9.2.2011 and/or the PS item (Appendix 5.11) should be considered if it is thought likely the Temporary Works will be extremely complex or innovative, or

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the potential consequence of any failure is likely to be severe.

(e) Temporary cut or filled slopes and excavations and access platforms may require method statements. These can be called for under GCC 16.

(f) It is matter of judgement for the Engineer as when to require certificates for the erection, use or removal of Temporary Works.

Many failures of Temporary Works have been the result of insufficient consideration of ground conditions. The design of Temporary Works must take this into account.

SCT 3 in the Library of Special Conditions of Tender may be used independently of the PS item (Appendix 5.11) and SCC 26 promulgated under SDEV's memo ref. DEVB(W) 546/17/02 dated 9.2.2011.

In respect to Temporary Works generally, designers may find the following publications useful :

(a) Technical Report TRSC 4, issued by the Concrete Society and the Institution of Structural Engineers; provides useful guidance where Temporary Works are classified as falsework.

(b) Chapter 9 of the Geotechnical Manual for Slopes and GEO Technical Guidance Note No. 40 provide guidance and good practice for implementing temporary drainage and rainfall precautionary and mitigation measures during construction in the wet season.

(c) BS5975:1982 (Code of Practice for Falsework).

Should the Engineer be dissatisfied with the independent checking engineer, the Engineer, having given reasonable notice of dissatisfaction, may order the dismissal and replacement of the independent checking engineer by the Contractor.

Sub-clause (5) of GCC 7 affords basic protection to the Engineer from taking over responsibility for the Contractor's design of Temporary Works. Sub-clause (5) of SCC 26 promulgated under SDEV's memo ref. DEVB(W) 546/17/02 dated 9.2.2011 limits the involvement of the Engineer to seeing that the required certificates are in place and examining the design of the Temporary Works for obvious defects.

In addition, GCC 54(2)(d) gives the Engineer the right and the power to suspend any work discovered by the Engineer to be dangerous or potentially dangerous and the Engineer must do so. Sub-clauses (2) and (4) of GCC 7 further underline this power.

For Contractor designed Temporary Works that do not involve an independent checking engineer, the Engineer can similarly make use of the GCC clauses referred to in the above 2 paragraphs, without taking up any of the design responsibility. The duty to suspend also applies.

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9.36 QUALITY MANAGEMENT SYSTEM CERTIFICATION OF CONTRACTORS FOR PUBLIC WORKS ADMINISTERED BY THE WORKS GROUP OF DEPARTMENTS

(Ref.: SDEV's memos ref. (025B1) in DEVB(W) 520/83/01 dated 26.1.2010 and ref. DEVB(W) 520/83/01 dated 4.4.2018)

In accordance with WBTC No. 13/2001, consultants and contractors are required to obtain certification of their quality management systems in accordance with ISO 9001:2000 standard (subsequently updated as ISO 9001: 2015 standard in SDEV's memo ref. DEVB(W) 520/83/01 dated 4.4.2018).

The following new contract provisions which supersede the revised Appendices E, F, G and I as promulgated in DEVB's memo of 26.1.2010 are at Appendix 5.29 and summarised below for immediate implementation.

(a) SCT to be incorporated into tender documents for contracts requiring the contractor to have obtained the Certification *(replacing Revised Appendix E to DEVB's memo of 26.1.2010)*;

(b) SCC to be incorporated into tender documents for contracts requiring the contractor to have obtained ISO 9000 certification *(replacing Revised Appendix F to DEVB's memo of 26.1.2010)*;

(c) SCC to be incorporated into tender documents for contracts where the main contractor is required to enter into written subcontracts with the contractors on the categories and/or groups of the Lists shown in Appendix C to WBTC No. 13/2001 *(replacing Revised Appendix G to DEVB's memo of 26.1.2010)*; and

(d) SCT to be incorporated into tender documents for design and build contracts *(replacing Revised Appendix I to DEVB's memo of 26.1.2010)*.

9.37 USE OF RECYCLED AGGREGATES IN CONCRETE PRODUCTION AND IN ROAD SUB-BASE CONSTRUCTION

(Ref.: WBTC No. 12/2002)

This Paragraph promulgates the particular specifications to facilitate the use of recycled aggregates in concrete production and construction of road sub-base in PWP projects.

The hard inert C&D materials, such as broken rock and concrete, can be recycled into aggregates for reuse in construction works. In order to reduce the pressure on the demand for public filling and landfill capacity, it is essential that the reusable portion of C&D materials be recycled and put into good use. This Paragraph promulgates the particular specifications to facilitate the use of recycled aggregates in Grade 20 prescribed mix and Grade 25-35 designed mix concrete, and in road sub-base construction. The relevant particular specifications were developed by Standing Committee on Concrete Technology and Highways Department, based on internationally recognized standards and results of laboratory tests carried out locally. The particular specifications for prescribed mix concrete with 100% recycled coarse aggregate and for designed mix concrete with 20% recycled coarse aggregate are given in Appendix 5.30. The relevant specifications for recycled sub-base materials are given in GS Clauses 9.03, 9.13, 9.32 and 9.47.

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Recycled aggregates are also suitable for use in earthworks, drainage and marine works. The relevant specifications have been incorporated in the provisions in Sections 5, 6 and 21 of the GS. The use of recycled aggregates as sub-base materials for footpaths is being examined and if found feasible, a separate particular specification will be issued in due course.

The project department should consider using recycled aggregates in lieu of virgin materials wherever possible in the planning and design of a project, in accordance with the specifications stated in this paragraph. Where necessary, provisions should be included in the contract to cater for unforeseen problems, such as an unexpected shortage of supply of recycled aggregates.

9.38 METALLIC SITE HOARDINGS AND SIGNBOARDS (Ref.: WBTC No. 19/2001)

To reduce the amount of C&D waste generated from construction sites, all contracts shall specify the use of metal in all components of site hoardings and signboards. Furthermore, works departments shall specify a bolts and nuts jointing method in drawings and/or specifications for site hoardings and signboards where hoardings and signboards are to be erected, unless bolts and nuts jointing method are considered not feasible due to technical or safety reasons.

9.39 EMPLOYMENT OF TECHNICIAN APPRENTICES AND BUILDING & CIVIL ENGINEERING GRADUATES BY CONTRACTORS OF PUBLIC WORKS CONTRACTS (Ref.: ETWB TCW No. 12/2003)

To achieve the Government's objective to improve the quality and safety of public works projects, the contractors should employ, apart from qualified professionals, graduates and technicians for their works. The contractors of public works contracts are hence required to ensure that an adequate number of graduates and technicians are employed and provided with adequate training.

9.39.1 Technician Apprentices

For all capital works contracts exceeding $50M, the contractor is required to employ for each such contract the corresponding minimum number of technician apprentices under a valid contract of apprenticeship, as set out in the following table: -

(a)	**For a contract the contract sum of which exceeds $50 million but is not more than $100 million.**	**- one**
(b)	**For a contract the contract sum of which exceeds $100 million but is not more than $200 million.**	**- two**
(c)	**For a contract the contract sum of which exceeds $200 million.**	**- three**

To improve the quality and safety of construction works in the long run, the contractor must ensure that training is given to all technician apprentices employed in all aspects of their

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trades, and to ensure that they 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 a comparable alternative qualification.

9.39.2 Building and Civil Engineering Graduates

For all capital works contracts exceeding $50M, the contractor is required to employ for each such contract the corresponding minimum number of full time building or civil engineering graduate with an academic qualification gained within the preceding three years, and recognized by an appropriate local or overseas professional institution such as the Hong Kong Institute of Architects, the Hong Kong Institution of Engineers, the Institution of Civil Engineers, the Institution of Structural Engineers or the Chartered Institute of Building, as set out in the following table:-

(a)	**For a contract the contract sum of which exceeds $50 million but is not more than $100 million.**	**- one**
(b)	**For a contract the contract sum of which exceeds $100 million.**	**- two**

To improve the quality and safety of construction works in the long run, the contractor must provide practical training on site to the employed graduates 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. The contractor should also follow established training guidelines for the various disciplines as far as possible. General guidelines on site practice are given at Appendix 5.31 for works departments' information. The graduate(s) should be under the supervision of qualified professionals recognized by the relevant professional institutions mentioned in the first sub-paragraph of Paragraph 9.39.2. Unlike formal training, strict adherence to the guidelines and registration with the professional institutions mentioned are not required.

9.39.3 Implementation

Where the requirement on employment of technician apprentices and building & civil engineering graduates by contractors of public works contracts as given in Paragraph 9.39 applies, the Special Condition of Contract and Particular Specification given at Appendix 5.32 should be incorporated into the relevant tender document.

9.40 SPECIAL CONDITIONS OF CONTRACT FOR USE IN MEGA PROJECT CONTRACTS (Ref.: WBTC No. 26/2002)

A set of SCC, as given at Appendix 5.36, is devised for use in mega project contracts in conjunction with the GCC for Civil Engineering Works 1999 Edition.

Mega project contracts have some or all of the following characteristics:

(a) The contract sum is very large (normally exceeds $1 billion). During the construction period, there should be tight financial control because of the large sums of money involved.

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(b) There is a need to monitor the programme and control the progress closely because the contract itself or the project of which the subject contract forms an integral part has high social or economical implication

(c) The contract works are extensive and cover large areas, thus likely to have a lot of interfaces with other major projects. Hence very good co-ordination by all the concerned parties is required.

Project departments should have full regard to the "Guidelines for the Development of Major Infrastructure Projects" at Appendix 5.38.

This set of SCC has been prepared on the basis that all the SCC clauses will be used as a package (other than those optional clauses). As such, the full set of these SCC clauses (other than those optional clauses) must be used when a project department decides to use these SCC clauses in its works contract(s)

Project departments may adopt these SCC clauses including any modifications thereto on the approval of the Head of Department or his delegate. This delegation should not be down below the rank of D2 level. Any modifications to this set of SCC, including additions or omissions, should be vetted by LAD(Works)/DEVB.

Project departments are reminded that satisfying some or all of the criteria above does not automatically imply that the use of these SCC clauses is warranted. In deciding whether or not to use this set of SCC, project departments should consider the resource implication in the administration of the contract.

To facilitate the better management of the mega project contracts, the project department may wish to require the Engineer for the contract to obtain agreement of the Employer before making decisions on some of the following matters pursuant to Clause 2 of the GCC 1999 Edition in addition to those referred to in Paragraphs 7 and 8 of WBTC No. 20/2000, Paragraph 9.32 of this Chapter.

GCC Cl 16	**Approval of the works programme and any revised version thereof.**
GCC Cl 34	**Issuing instructions to afford facilities access and/or services to enable other parties to carry out their works.**
GCC Cl 48(5)(a)	**Deferral of a Portion handover date.**
GCC Cl 50	**Granting extensions of key dates.**
GCC Cl 53	**Issuing a Certificate of Completion in respect of the Works or of any part of the Works, any Section or any part of a Section or Certificate of Achievement for any Stage or any part of a Stage.**
GCC Cl 54	**Ordering suspension of the works or any part thereof save and except when considered to be essential on grounds of safety or other emergency in circumstances when it is impractical to refer the matter to the Employer beforehand.**
GCC Cl 55	**Recommencing work following suspension.**
GCC Cl 80	**Issuing the Maintenance Certificate.**

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GCC Cl 82(2)	**Authorizing remedial works to be carried out by persons other than the Contractor.**
GCC Cl 60(1)	**Omitting works on grounds of improved or more economic functioning of the works or aesthetic.**

For the purpose of Paragraph 9 of WBTC No. 20/2000, prior approval is deemed to have been given by the SDEV for the above additional constraints on the Engineer once a decision has been made by the project department to classify the contract as a mega project contract.

When the use of the SCC Clause A4A (under which provision for extension of time due to inclement weather is not included) is contemplated the proposal must be approved and endorsed in the manner as prescribed in Paragraph 9.18 of this Chapter prior to the invitation of tenders. If SCC Clause A10 at Appendix 5.36 is adopted in relation to a particular project, the SCT at Appendix 5.37 should be included in the tender documents in respect of that project.

The current requirement for legal vetting of draft tender documents by LAD(Works)/DEVB for all works contracts of estimated value in excess of $500M is also applicable to mega project contracts. Please refer to Paragraph 1.5.1 of this Chapter for details.

9.41 SECTIONS SUBJECT TO EXCISION

(Ref.: SDEV's memo ref. (027N7-01-2) in DEVB(W) 510/10/01 dated 29.6.2010, SDEV's memo ref. (02B2H-01-5) in DEVB(W) 510/10/01 dated 9.3.2011 and SDEV's memo ref. (02BL7-01-2) in DEVB(W) 510/10/01 dated 12.4.2011)

'Sections Subject to Excision' is required on occasions where it is necessary to let contracts prior to confirmation that all the works can proceed. For example, where there are land clearance problems, or where a decision has yet to be reached on the inclusion of a footbridge in a roadworks contract. In such circumstances it is obviously beneficial to have these works included as part of the competitive tender, but also equally important to make it clear to the tenderers that these works may not be required.

Where work is to be included in a tender, but the implementation of that work has not been decided upon by the Employer, then such work may be incorporated as a Section Subject to Excision. Consequently, the items for such works should comprise a separate bill within the BQ, which should be clearly designated 'Section Subject to Excision', and the standard Special Condition of Contract for 'Section Subject to Excision' as given in the Library of standard SCC under SDEV's memo ref. DEVB(W) 546/17/02 dated 9.2.2011 shall be included in the Contract.

It is obvious that the decision to proceed or not with the Section Subject to Excision shall rest with the Employer. The power of the Engineer to issue instruction to proceed with the works in a Section Subject to Excision is subject to a constraint in the sense that the Engineer is required to act in accordance with the direction of the Employer. In accordance with GCC Clause 2(1)(b), this constraint shall be set out in the Appendix to the Form of Tender.

Also the following information must be included in the Appendix to the Form of Tender:

(a) the period of time within which the Engineer may instruct the Contractor to proceed with the work contained within the Section Subject to Excision. This period commences from the date for commencement notified by the Engineer in

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accordance with Clause 47 of the General Conditions of Contract for Civil Engineering Works.

(b) the time for completion of the Section Subject to Excision,

(c) the liquidated damages for the Section Subject to Excision; and

(d) the aforesaid constraint on the Engineer's power.

As the Contractor must allow for the Section Subject to Excision in his programme, it must be taken into account when assessing the time for completion stated in the Contract.

However, if the work contained in the 'Sections Subject to Excision' is not ordered, any preliminaries and overhead costs attributable to those Sections which may be covered elsewhere in the Contract would still be payable to the Contractor. The effect of including 'Sections Subject to Excision' and the probability of its incorporation in the Works should therefore be carefully considered before it is included in the tender documents. Preliminary items in respect of the 'Sections Subject to Excision', where these can be identified, should be included in a separate bill of the BQ designated 'Section Subject to Excision'.

The inclusion of 'Sections Subject to Excision' in tender documents requires the approval of an officer at D2 rank or above.

If by the time a tender recommendation is made, the Government has decided not to proceed with the work contained within the Section(s) Subject to Excision, then the tender price for such section(s) shall be discarded and the net tender value shall be taken for the purposes of tender evaluation.

Departments should make the above policy known to the tenderers in the form of a note for tenderers for contracts which contain Section(s) Subject to Excision. SDEV promulgated via his memo ref. (02BL7-01-2) in DEVB(W) 510/10/01 dated 12.4.2011 an updated NTT(l) as shown in Appendix 5.41, which should be included in the Notes to Tenderers when SCC on Section Subject to Excision is incorporated in the tender documents.

In addition to civil engineering contracts, the provision for Section Subject to Excision has also been adopted in the "Administrative Procedures for use with the Government of the Hong Kong Special Administrative Region General Conditions of Contract for Design and Build Contracts, 1999 Edition". In this regard, the requirements mentioned in the above shall also apply to such Design & Build contracts. The project officers and where applicable the project consultants should include the constraint clause in the Appendix to Form of Tender for all works tenders in which a Section Subject to Excision is included.

SDEV promulgated via his memo ref. (02B2H-01-5) in DEVB(W) 510/10/01 dated 9.3.2011 two sets of SCC on the provision for Section Subject to Excision; one set for use with GCC for Civil Engineering Works 1999 Edition is given in Appendix 5.39, and the other set for use with GCC for Design and Build Contracts 1999 Edition is given in Appendix 5.40.

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9.42 ANTI-COLLUSION

(Ref.: SDEV's memo ref. (02B6J-01-6) in DEVB(W) 510/10/01 dated 24.3.2011)

To strengthen the collusion prevention in the letting of works contracts, DEVB has reviewed the GCTs for anti-collusion and decided to amend the relevant GCTs as well as introduce a new NTT.

Under the revised anti-collusion clauses, the tenderer shall submit with his tender a duly signed and witnessed letter to signify his understanding of the anti-collusion clauses. The above submission should not be included as an essential requirement under GCT 21.

SDEV promulgated via his memo ref. (02B6J-01-6) in DEVB(W) 510/10/01 dated 24.3.2011 a new NTT as shown in Appendix 5.42 and three revised GCTS on the provision for anti-collusion; GCT 1 on Definitions, GCT 25 on Submission of Further Information and GCT 26 on Anti-collusion as shown in Appendices 5.43, 5.44 and 5.45 respectively.

9.43 FINANCIAL RELIEF MEASURES TO ASSIST THE CONSTRUCTION INDUSTRY

(Ref.: SDEV's memo ref. (02APB-01-8) in DEVB(W) 510/83/08 dated 8.3.2011, SDEV's memo ref. () in DEVB(W) 510/83/08 dated 20.7.2012 and SDEV's memos ref. ( ) in DEVB(W) 510/33/02 dated 14.2.2020, 5.6.2020 and 5.3.2021)

In the immediate aftermath of the financial tsunami in late 2008, a package of interim financial relief measures were implemented via the promulgation of SDEV's memo ref. (01WLR-01-7) in DEVB(W) 510/83/08 dated 8.12.2008 with a view to relieving contractors, especially small and medium-sized contractors, of the cash flow difficulties they encountered at that time. Originally intended for one year, these interim measures were subsequently rolled forward to 2010 via SDEV's memo ref. (025QN-01-3) in DEVB(W) 510/83/08 dated 4.3.2010.

A review of these interim measures was completed. It was decided to adopt these interim measures (together with some additional ones) as standing policies in public works contracts with immediate effect. Details are stated in paragraphs 9.43.1, 9.43.2 and 9.43.3.

9.43.1 Interim Payment

(a) Interim payment should be instituted in all new public works contracts and existing public works contracts, which do not contain interim payment provision, including the quotation contracts of value less than $4 million. As the contracts without interim payment provision are in general small works contracts with different nature, works departments should prepare appropriate interim payment provisions specific to the contracts for incorporation; and

(b) In order to further enhance cash flow in major public works contracts, interim payments in respect of major off-site pre-fabrication works should be made as a standard practice, subject to the relevant precedent conditions including among others the maintenance of an effective bond to cover the pre-fabrication works. In this respect, the SCC in Appendix 5.46 shall be adopted for new public works contracts involving major off-site pre-fabrication works. The guidelines for adoption of the SCC in public works contract are attached at Appendix 5.55.

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9.43.2 Retention Money

For capital works contracts, the prevailing arrangement of releasing part of retention money after lapse of half of the maintenance period should be enhanced. It was decided to release retention money in stages in existing and new contracts viz. 50% of the retention money upon substantial completion of the works and the remaining 50% at expiry of the maintenance periods. Should there be minor outstanding works and defect rectification works remained, their estimated values at the material time should be taken into consideration in determining the amount of retention money to be released, making sure that these estimated values of works will be sufficiently covered by the remaining retention money after the first release of retention money upon substantial completion of the works and by retaining equivalent amount upon the second release at the expiry of the maintenance period until all minor outstanding works and defect rectification works are completed.

The enhanced arrangement is to be applied to existing capital works contracts, of which completion certificates of the Works are yet to be issued and supplementary agreements for releasing parts of retention money as promulgated in SDEV's memo ref (01WPS-01-4) in DEVB(W) 510/83/08 dated 11.12.2008 are yet to be signed. Please make reference to the samples in Annexes B1 and B2 attached to SDEV's memo ref. (02APB-01-8) in DEVB(W) 510/83/08 dated 8.3.2011 for preparing the supplementary agreements of the existing contracts. As regards new capital works contracts, please adopt the SCC in Appendix 5.47 for preparing tender documents.

9.43.3 Payment Level for Term Contracts

It was decided to raise the payment levels to not less than 90% of the estimated value of works upon completion of the works orders in existing and new term contracts.

For existing term contracts, please make reference to the samples of supplementary agreements in Annex A3 and A4 attached to SDEV's memo ref. (01WPS-01-4) in DEVB(W) 510/83/08 dated 11.12.2008 for raising the payment level. For new term contracts adopting General Conditions of Contract for Term Contracts for Building Works, please adopt the SCC in Annex D attached to SDEV's memo ref. (02APB-01-8) in DEVB(W) 510/83/08 dated 8.3.2011. For new term contracts adopting other General Conditions of Contract, please specify the payment level to not less than 90% of the estimated value of works in the Appendix to the Form of Tender.

9.43.4 Advance Payment under Capital Works Contracts

To assist the construction industry in the midst of the economic downturn in 2019/2020, an interim measure as promulgated in SDEV's memo ref () in DEVB(W) 510/33/02 dated 14.2.2020 is introduced on "advance payment" mechanism in capital works contracts adopting selective tendering, with a contract period of not less than 12 months. As stated in SDEV's memo ref () in DEVB(W) 510/33/02 dated 5.3.2021 and 10.3.2022, this interim "advance payment" measure shall apply to contracts for which tenders invited on or after 1.3.2020 until further notice.

The relevant provisions for contracts adopting GCC and NEC3 are set out at Appendix 5.47A and Appendix 5.47B respectively. For contracts adopting NEC4 form, the relevant provisions are incorporated in relevant NEC standard provisions.

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9.43.5 Advance Payment under Term Contracts

SDEV's memos ref () in DEVB(W) 510/33/02 dated 5.6.2020 introduced "advance payment" mechanism in term contracts adopting selective tendering. As stated in SDEV's memos ref () in DEVB(W) 510/33/02 dated 5.3.2021 and 10.3.2022, this interim "advance payment" measure shall apply to term contracts for which tenders are invited on or after 20.4.2020 until further notice.

The relevant provisions for term contracts adopting GCC and NEC are set out at Appendix 5.47C and Appendix 5.47D respectively. For contracts adopting NEC4 form, the relevant provisions are incorporated in relevant NEC standard provisions.

The memo dated 10.3.2022 also announced a new "advance payment" arrangement for new term contracts with tenders to be invited on or after 31.3.2022. Under the new arrangement, the amount of advance payment will be calculated based on the Estimated Average Annual Expenditure, instead of the estimated value of works under eligible Works Orders/Task Orders, while the Overall Cap of HK$10M for the advance payment will remain the same. The relevant tender and contract provisions for contracts adopting GCC and NEC are set out at Appendix 5.47E and Appendix 5.47F respectively. Procuring departments may fine-tune such tender and contract provisions to suit their particular circumstances, and seek advice/ clearance by LAD(W) in case of doubt.

In case officers responsible for administering term contracts consider it more appropriate to adopt the old arrangement as promulgated via SDEV's memo of 5.6.2020 or not appropriate to implement any of the "advance payment" arrangement under individual term contracts, approval from an officer at D2 rank or above shall be obtained, with written justifications kept for record purpose. For tenders already invited/ to be invited before 31.03.2022, procuring departments may consider adopting this new arrangement if found feasible.

9.43.6 Interim Relief Measure to Combat the 5th Wave of the COVID-19 Pandemic – Special Payment for Imported Items for Capital Works Contracts (Ref.: SDEV's memos ref. DEVB(W) 510/33/02 dated 8.7.2022 and 22.11.2023)

Although the 5th wave of the COVID-19 pandemic is gradually subsiding from its peak, the local business environment remains highly challenging. In particular, the construction industry is still experiencing uncertainties and delays in delivery of construction materials/products/plants/equipment/goods (hereinafter referred to as "materials and plant"). As a result, contractors are likely required to place orders of materials and plant well in advance with deliveries to be effected earlier than usual. At the same time, contractors may have to arrange local off-site storage for such materials and plant, especially for building contracts where the works sites are usually cramped.

To help public works contractors better cope with the above difficulties, policy approval is given for a special payment for materials and plant which are delivered to Hong Kong and properly stored off-site (hereinafter referred to as "Special Payment for Imported Items") under capital works contracts.

To enable proper implementation of the Special Payment for Imported Items under capital works contracts, project teams shall adopt the Special Payment for Imported Items mechanism by incorporating the following relevant provisions in the tender documents.

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Appendix 5.47L: Special Conditions of Contract for GCC
Appendix 5.47M: Amendments to NEC4 Clauses and *additional conditions of contract* for NEC4 ECC Option A and Option B contracts

This interim relief measure is effective until further notice.

9.43.7 Interim Relief Measure to Combat the 5th Wave of the COVID-19 Pandemic – Special Payment for Imported Items for Term Contracts
(Ref.: SDEV's memos ref. DEVB(W) 510/33/02 dated 28.7.2022 and 22.11.2023)

Similar to the arrangement in Paragraph 9.43.6 of this Chapter for the Special Payment for Imported Items under term contracts, project teams shall adopt the Special Payment for Imported Items mechanism by incorporating the following relevant provisions in the tender documents.

Appendix 5.47Q: Special Conditions of Contract for GCC Term Contracts
Appendix 5.47R: Amendments to NEC4 Clauses and *additional conditions of contract* for NEC4 TSC Option A

This interim relief measure is effective until further notice.

9.43.8 Relief Measures to Assist the Construction Industry – More Frequent Interim Payments and Milestone Payments
(Ref.: SDEV's memo ref. () in DEVBWB WP4S-021-004-002 dated 10.10.2024)

Since the construction sector has indicated that many contractors experienced difficulties in running their business in the past year or so due to financial hardship or cash flow problems, caused mainly by the shrinkage in volume of private construction works, SDEV's memos ref () in DEVBWB WP4S-021-004-002 dated 10.10.2024 introduced "partial interim payment" arrangement in existing interim payment mechanism of capital works contracts and more frequent milestones or more activities (for major items of works) in new capital works contracts adopting milestone payments or using activity schedules.

As stated in the aforementioned memo, "partial interim payment" arrangement shall apply to all new capital works contracts for which tenders are invited from 24 October 2024 to 31 August 2025 (both dates inclusive). The relevant contract provision for NEC ECC Hong Kong Edition are given in Appendix 5.47S. For ongoing capital works contracts, a supplementary agreement shall be executed between the contracting parties through exchange of correspondence by adopting the sample letters given in Appendix 5.74T, Appendix 5.74U and Appendix 5.74V.

In case project teams consider it not appropriate to implement the "partial interim payment" arrangement under their new or ongoing works contracts, approval from an officer at D2 rank or above should be obtained. The justifications for not adopting such arrangement may include contracts approaching substantial completion, outstanding value of works being small, high risk of re-entry, seriously poor performance of the contractor, etc.

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Furthermore, more frequent milestones or more activities was promulgated in memo ref. () in DEVBWB WP4S-021-004-002 dated 10.10.2024. The above measure shall also be incorporated into ongoing capital works contracts as far as practicable provided that it would not result in additional costs to be borne by the Government. For works contracts which have already had contract provisions to allow sub-division of milestones/ activities in the existing payment schedules, project offices should work proactively with contractors to introduce such sub-divisions. For works contracts which do not have such contract provisions, project offices should enter into a supplementary agreement with contractors through exchange of correspondence to introduce similar changes to the payment schedules with a view to achieving the objective of expediting payments to contractors by adopting the sample letters given in Appendix 5.74W, Appendix 5.74X and Appendix 5.74Y.

9.44 EMPLOYER'S POWER TO REDUCE THE AMOUNT OF THE CONTINGENCY SUM PRIOR TO AWARD OF CONTRACT (Ref.: SDEV's memo ref. DEVB(W) 546/70/01 dated 8.8.2011)

SDEV's memo ref. DEVB(W) 546/70/01 dated 8.8.2011 promulgates a new tender provision to provide the Employer with the power to unilaterally reduce the amount of the Contingency Sum stated in the tender documents prior to award of a works contract.

There were submissions to the Central Tender Board where the original tender sums of the recommended tenders had exceeded the Approved Project Estimates (APE). In each of these cases, the procuring department discovered an over-estimation of the amount of Contingency Sum allowed in the contract. Since there was no tender provision for the Employer to unilaterally reduce this amount, the procuring department resorted to conduct tender negotiation with the recommended tenderer after obtaining approval from the relevant authority to have the amount reduced. This then enabled the procuring department to reduce the contract sum below the APE and award the contract without the need to apply for additional funding.

Although no complication has occurred in the tender negotiations mentioned above, such a risk does exist since the tenderer may not accept the proposed reduction in the amount of the Contingency Sum which may open up an opportunity for the tenderer to retract his offer. In any event, tender negotiation will incur additional time and resources. To avoid the risk of tender complication and streamline the process under this circumstance, a new tender provision is introduced for (a) works contracts other than design and build (Non-D&B) contracts and (b) design and build (D&B) contracts, to provide the Employer with the aforesaid power.

(a) Non-D&B Contracts

The new tender provision is provided in the attached Special Conditions of Tender (SCT), special Form of Tender and Notes to Tenderers at Appendix 5.50. It should be noted that the inclusion of this provision is subject to an officer at D2 rank or above in the Project Office/Department being satisfied that the conditions given in the 'Remarks/Guidelines' provided alongside the SCT clause are met. The exercise of the power to reduce the amount of the Contingency Sum is also subject to meeting the requirements stated therein including the approval of the Vote Controller.

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The relevant parts of the Project Administration Handbook (i.e. Paragraph 7.2 of PAH Chapter 6 on "Checks prior to accepting tender", Appendix 5.5 on "Format of the Grand Summary to the Bills of Quantities" and Appendix 6.17 on "Sample Letter of Acceptance to Successful Tenderer") are revised accordingly. A sample letter for notifying the tenderer, whose tender is going to be recommended for contract award, of the reduction in the amount of the Contingency Sum, is also attached at Appendix 5.51.

(b) D&B Contracts

While the use of the new tender provision is discretionary for non-D&B contracts, it is mandatory for D&B contracts to include such a provision in view of the higher uncertainty in estimating the Contingency Sum in the absence of detailed design at the tendering stage. The new tender provision for D&B contracts is provided in the attached General Conditions of Tender (GCT) at Appendix 5.52. Departments shall make reference to the samples provided for non-D&B contracts above in preparing the Form of Tender, Notes to Tenderers, letter notifying the reduction in the amount of the Contingency Sum and the letter of acceptance to the successful tenderer for D&B contracts.

Departments must observe that the original tender sums of the tenderers (after being corrected for arithmetic errors, if any) shall be used in determining the price ranking or overall scores/marks in accordance with the prescribed tender evaluation criteria. The reduction in the amount of the Contingency Sum shall not affect the price ranking or overall scores/marks although the recommended contract sum will be reduced accordingly by the same amount.

Departments should be aware that the reduction in the amount of the Contingency Sum shall not affect any Provisional Sum, including that for reimbursement of Mandatory Provident Fund (MPF) as illustrated in the attached Appendix 5.5 of PAH. The reduction in the amount of the Contingency Sum shall also not affect the determination of liquidated damages (LD) since the Contingency Sum should have already been excluded from the contract sum in the LD computation according to ETWB TCW No. 4/2003. Departments shall check the LD formula(s) specified in the tender documents to ensure that the LD amount will not be affected by a reduction in the amount of the Contingency Sum.

Where the power to unilaterally reduce the amount of the Contingency Sum has been exercised, it should be clearly stated in the tender report. It should be confirmed in the tender report that the Vote Controller has approved the reduction in the amount of the Contingency Sum and the recommended tenderer has acknowledged the reduction of the Contingency Sum and the Tender Sum by the same amount.

Notwithstanding the availability of these new tender provisions, departments are reminded of their responsibility to prepare proper project estimates and pre-tender estimates as accurate as possible. Departments shall under no circumstances rely on these tender provisions to avoid seeking additional funding as a result of underestimation of the contract price. Prior to exercising the power, departments shall check that there will be sufficient remaining contingency sum to cover the contract and the project as a whole. Otherwise, departments shall resort to seeking additional funding prior to award of the contract.

The above new tender measure is applicable to all works contracts for which tenders are invited on or after 1 September 2011.

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9.45 PROVISION OF UNIFORM FOR PERSONNEL WORKING ON PUBLIC WORKS SITES
(Ref.: SDEV's memo ref. DEVB(Trg) 133/3 (10) dated 23.1.2017)

9.45.1 Purpose

SDEV's memo ref. DEVB(Trg) 133/3 (10) dated 23.1.2017 sets out the policy and implementation details related to the provision of uniform to personnel working on public works sites.

9.45.2 Policy

As one of the measures to enhance the image of the construction industry, SDEV's memo ref. DEVB(Trg) 133/3(7) dated 11.5.2011 was issued to introduce the policy regarding the provision of uniform to personnel working on public works sites.

After implementation, requests were received to enhance the policy with a view to simplifying administrative efforts, strengthening cost control, and promoting the use of anti-heat stress uniform which has been adopted by the Construction Industry Council as a standard design of uniform for workers.

To address the above issues, the following enhancements are made vide SDEV's memo ref. DEVB(Trg) 133/3 (10) dated 23.1.2017:

(a) To only require contractors ensuring non-casual workers (who are expected to work on the Site more than 7 days) involved in site works to wear site uniform when they are on site;

(b) To reduce the uniform items to "polo shirt and trousers" for capital works contracts, and "polo shirt or vest" for term maintenance contracts;

(c) To simplify the design requirement of polo shirt and trousers by adopting the design of anti-heat stress uniform or similar;

(d) To omit pre-priced item and other requirements related to payment measurement; and

(e) To simplify other administrative requirements.

All public works contracts, including Design and Build contracts and term contracts, with a construction period of not less than 12 months, the tender invitations of which are issued on or after 1 February 2017 shall implement the enhancements through the incorporation of relevant provisions into the tender documents. Similarly, the enhancements shall apply to Consultancy Agreements covering works contract(s) with estimated construction period of not less than 12 months and for which the invitations of technical and fee proposals for the Consultancy Agreements are issued on or after 1 February 2017. As for those public works contracts which have already obtained exemption on site uniform requirements, and the date of tender invitation of which is on or after 1 February 2017, the subject D2 or above officer of the relevant works department may decide following the exempted arrangement or the enhancements. The contract provisions to be incorporated into the public works contracts

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are available in SDEV's memo ref. DEVB(Trg) 133/3(10) dated 23.1.2017. The soft copies of the SDEV's memos and the Annexes are available at DEVB's Works Group Intranet Portal.

9.45.3 Implementation Guidelines

Guidelines have been prepared to facilitate project officers to implement the uniform initiative and are given in Paragraph 21.26 of PAH Chapter 7.

9.46 IMPLEMENTATION OF MANDATORY CONSTRUCTION INDUSTRY COLLABORATIVE TRAINING SCHEMES IN PUBLIC WORKS CONTRACTS

Please refer to the policy and relevant contract provisions as promulgated in DEVB TCW No. 6/2019 regarding the implementation of mandatory construction industry collaborative training schemes in public works contracts.

9.47 IMPLEMENTATION IN PUBLIC WORKS CONTRACTS OF THE MANDATORY EMPLOYMENT OF GRADUATES OF THE ENHANCED CONSTRUCTION MANPOWER TRAINING SCHEME (ECMTS) (Ref.: SDEV's memo ref. DEVB(Trg) 133/4 (9) dated 7.12.2012)

9.47.1 Purpose

SDEV's memo ref. DEVB(Trg) 133/4 (9) dated 7.12.2012 promulgates the implementation of the mandatory employment of Enhanced Construction Manpower Training Scheme (ECMTS) Graduates in public works contracts to help enhance the attractiveness of the scheme and to provide better opportunities for ECMTS Graduates to further strengthen their skills.

9.47.2 Background

The Construction Industry Council (CIC) provides placement services to ECMTS Graduates to help them secure employment in the construction industry.

As a long-term measures to provide better employment opportunities for ECMTS Graduates and to maintain the attractiveness of the ECMTS in attracting new blood to join the industry, the Works Policies Coordination Committee endorsed at its meeting held on 9 July 2012 the proposal to implement the mandatory of ECMTS Graduates in public works contracts.

9.47.3 Implementation

All B&C capital works contracts and term contracts (including Design and Build contracts) with an estimated contract sum or estimated total expenditure of over $200 million and with a construction period of 2 years or longer shall incorporate the SCC at Appendix 1 to SDEV's memo ref. DEVB(Trg) 133/4 (9) dated 7.12.2012 for the mandatory employment of ECMTS Graduates. The soft copy of the Appendix is available at DEVB's Works Group Intranet Portal.

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9.48 INDEPENDENT SAFETY AUDIT SCHEME FOR MEGA CAPITAL WORKS CONTRACTS OR CAPITAL WORKS CONTRACTS INVOLVING UNCONVENTIONAL CONSTRUCTION METHOD
(Ref.: SDEV's memo ref. (02SR7-01-1) in DEVB(W) 516/83/02 dated 30.10.2015)

The requirement of the Independent Safety Audit Scheme (ISAS) using the safety auditing system version 1.3 are to be incorporated into the tender documents of mega capital works contracts (estimated contract sums exceeding $1,000 million) or capital works contracts involving unconventional construction method (upon confirmation from the Departmental Safety & Environmental Advisors, such as working in compressed air at pressure exceeding 3.45 bars) even if the estimated contract sum is not exceeding $1,000 million, and for which tenders are to be invited on or after 1 January 2016 (maintenance contracts are excluded).

If incorporation of the ISAS is considered not warranted despite meeting the above criteria, the project office concerned shall seek the approval of an officer at D2 level or above for exemption.

The Special Conditions of Contract (replacing those in the library SCC in the Works Group Intranet Portal), Particular Specifications and Guidance Notes on the Administration of the ISAS respectively, as revised from those under WBTC No. 32/99, are provided under Appendices B, C and E of SDEV's memo ref. (02SR7-01-1) in DEVB(W) 516/83/02 dated 30.10.2015 for incorporation. The soft copies of the SDEV's memo and the Appendices are available at DEVB's Works Group Intranet Portal.

9.49 EMISSIONS CONTROL OF NON-ROAD MOBILE MACHINERY IN CAPITAL WORKS CONTRACTS OF PUBLIC WORKS
(Ref.: DEVB TCW No. 1/2015)

DEVB TCW No. 1/2015 promulgates the requirements for the use of non-road mobile machinery ("NRMM") approved under the Air Pollution Control (Non-road Mobile Machinery) (Emission) Regulation ("the Regulation") in new capital works contracts of public works including design and build contracts, in addition to the statutory requirements of the Regulation.

To improve the air quality of Hong Kong, the Secretary for the Environment has, after consultation with the Advisory Council on the Environment, made the Regulation under the Air Pollution Control Ordinance (Cap. 311) to mandate that NRMM (with the exception of exempted NRMM) to be sold or leased in Hong Kong or used in specified activities (including the use of NRMM in construction sites) must meet a set of emission standards and must be NRMM approved by the Authority under the Regulation ("approved NRMM"). Approved NRMM must be affixed with an approval label for identification.

The Authority under the Regulation may, on application, exempt certain NRMM and existing NRMM from the new emission-control requirements. Exempted NRMM must be affixed with an exemption label for identification.

Approved NRMM are more environmentally friendly as compared to exempted NRMM. As such, notwithstanding the permitted use of exempted NRMM under the Regulation, DEVB requires the use of more approved NRMM in the execution of public works.

In this connection, Appendix A of DEVB TCW No. 1/2015 sets out an implementation plan to phase out the use of exempted NRMM for four types of NRMM, namely generators, air

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compressors, excavators and crawler cranes in new capital works contracts of public works including design and build contracts, with an estimated contract value exceeding $200 million and tenders invited on or after 1 June 2015. The following provisions shall be incorporated in tender documents of such contracts:

(a) SCC – Use of non-road mobile machinery approved under the Air Pollution Control (Non-road Mobile Machinery) (Emission) Regulation in Appendix B of DEVB TCW No. 1/2015; and

(b) Note to Tenderer in paragraph 9(B) of DEVB TCW No. 1/2015.

9.50 ENHANCING CLEANSING MEASURES FOR CONCRETE DELIVERY VEHICLES AT CONSTRUCTION SITES
(Ref.: SDEV's memo ref. in DEVB(W) 825/83/04 dated 7.4.2020)

At present, vehicles, including concrete delivery vehicles leaving construction sites are subject to the following cleansing requirements as stipulated in the Air Pollution Control (Construction Dust) Regulation (CDR) (Chapter 311R):

(a) the vehicle shall be washed by using high pressure water jets in a facility installed at the exit of the construction site (from CDR Part III — General Control Requirements for Site Boundary & Entrance); and

(b) the vehicle shall be washed to remove any dusty materials from its body and wheels (from CDR Part IV – Control Requirements for Use of Vehicles)

To further minimise dust emission and reduce the impact on the areas outside the concrete batching plants (CBPs), concrete delivery vehicles of the CBPs in concerned areas need to be subject to enhanced vehicle cleansing when they leave these CBPs and at the construction sites before their return journey to these CBPs.

As promulgated in SDEV's memo ref. DEVB(W) 825/83/04 dated 7.4.2020, enhanced cleansing requirements for concrete delivery vehicles, which deliver ready-mix concrete supplied by CBPs, before they leave construction sites, shall be incorporated into relevant tender documents for new government works contracts as set out in Appendix 5.58.

9.51 EXTENSION OF "VACCINE BUBBLE" ARRANGEMENT TO PUBLIC WORKS CONTRACTS AND CONSULTANCIES
(Ref.: SDEV`s memo ref. DEVB(W) 511/70/01 dated 24.1.2022)

FSTB has promulgated via FSTB Circular Memorandum No. 2/2022 that the "vaccine bubble" arrangement for government employees shall be extended to cover employees of contractors and consultants of public works contracts/consultancies, who have to work in indoor government premises or enter the same for work-related purpose. Such arrangement shall also be applicable to employees of agents, sub-contractors or sub-consultants of the public works contractors and consultants.

The above "vaccine bubble" arrangement shall be applicable to public works contracts and consultancies which are awarded on or after 16.2.2022, regardless of the procurement means (e.g. quotations, tender, consultant selection procedures or direct engagement). Works departments should work out with the department(s) responsible for building management of the relevant government premises on the details of implementation of the "vaccine bubble" arrangement prior to the commencement of the contracts or agreements.

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In connection with the above, the following contract conditions shall be incorporated for the preparation of tender documents by project offices:

Works Contracts
(i) SCC for GCC contract (see Appendix 5.59A)
(ii) ACC for NEC3 contract (see Appendix 5.59B)
(iii) ACC for NEC4 contract (see Appendix 5.59C)

Consultancy
(iv) SCE for consultancy adopting GCE (see Appendix 5.59D)
(v) ACC for NEC3 PSC consultancy (see Appendix 5.59E)

For tenders/quotations under invitation, addendum should be issued to reflect the "vaccine bubble" requirement if feasible. For tenders/quotations of which the invitation period has ended but the contract has not yet been awarded, project offices should conduct negotiation with the contractor/consultant concerned to effect the "vaccine bubble" requirement. Pursuant to paragraph 6 of FSTBCM No. 2/2022, special blanket approval has been given to facilitate project offices to conduct the said negotiations expeditiously in accordance with Stores and Procurement Regulations 385. If there is an increase in tender/quotation price as a result of the negotiation, project offices should ensure that the extra expenditures incurred are reasonable, represent value for money and are justified on public interest grounds.

9.52 IMPLEMENTATION OF "VACCINE PASS" ARRANGEMENT AT PUBLIC WORKS SITES
(Ref.: SDEV's memo ref. DEVB(W) 511/70/01 dated 20.5.2022)

Pursuant to SDEV's memo ref. DEVB(W) 511/70/01 dated 20.05.2022, all public works sites shall adopt the "Vaccine Pass" arrangement, which applies to all persons working in or entering the sites, including employees of contractors and consultants as well as those of their agents, subcontractors or sub-consultants.

In connection with the above, the following standard contract provisions shall be incorporated for the "Vaccine Pass" arrangement into tender/invitation documents of new works contracts/consultancies:

For Works Contracts
(i) SCC for GCC contract (see Appendix 5.60A)
(ii) ACC for NEC3 contract (see Appendix 5.60B)
(iii) ACC for NEC4 contract (see Appendix 5.60C)

For Consultancies
(iv) SCE for consultancy adopting GCE (see Appendix 5.60D)
(v) ACC for NEC3 PSC consultancy (see Appendix 5.60E)

The above contract provisions shall apply to works contracts/consultancies with construction phase work, for which tenders/Technical & Fee (T&F) proposals are to be invited on or after 20.6.2022. For tenders or T&F proposals already invited or to be invited before the above date, the procuring department may incorporate the above contract provisions into the tender documents where practicable.

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9.53 CONTRACT PROVISION FOR PROHIBITION OF IMPOSING ADMINISTRATIVE CHARGES FOR REPORTING OF SITE ACCIDENTS AND ELIMINATION OF UNDER-REPORTING OF SITE ACCIDENTS (Ref.: SDEV's memo ref. (03E8T) in DEVB(W) 516/80/03 dated 3.8.2022)

SDEV's memo ref. (03E8T) in DEVB(W)516/80/03 dated 3.8.2022 promulgates a new set of contract provisions for incorporation in public works contracts and their subcontracts at all tiers for prohibition of imposing administrative charges for reporting of site accidents and processing employees' compensation claims as well as imposing requirements on reporting all site accidents by contractors. The contract provisions for incorporation into all public works contracts and their associated subcontracts are at Appendix 5.65.

The Contractor shall devise measures and incorporate the measures in the Subcontractor Management Plan for (a) monitoring the performance of the subcontractor in complying with the requirements in the Contract regarding reporting site accidents; and (b) ensuring all subcontractors, irrespective of tiers, to incorporate the subcontract conditions mutatis mutandis as required in the provisions at Appendix 5.65 into all subcontracts. The revised Guidelines on Scope and Contents of Subcontractor Management Plan to replace existing Appendix to Special Conditions of Contract/additional conditions of contract on Subcontractor Management Plan promulgated under DEVB TC(W) No. 6/2021 are at Appendices 5.6A, 5.6C and 5.6E respectively.

This new set of contract provisions as set out in Appendices 5.6A, 5.6C, 5.6E and 5.65 shall be incorporated into all public works contracts (including capital works contracts and term contracts) of which the tenders are to be invited on or after 26 August 2022.

9.54 TENDER / CONTRACT PROVISION FOR SAFEGUARDING NATIONAL SECURITY IN PUBLIC WORKS CONTRACTS AND CONSULTANCIES (Ref.: SDEV's memo ref. DEVB(W) 510/30/01 dated 31.08.2022)

As promulgated in SDEV's memo ref. DEVB(W) 510/30/01 dated 31 August 2022, the SPRs have been updated on 29 August 2022 to include provisions to safeguard national security interests by clearly specifying that Controlling Officers should take into account their duty to safeguard national security. As far as government procurement is concerned, such safeguards should also be applicable to every stage of the entire procurement process. Please refer to the requirements in the latest version of SPRs available on the CCGO Portal (http://fb.host.ccgo.hksarg/spr/spr.htm).

To cater for the updated SPRs and to assist relevant project officers in making the confirmation in tender report as required in the updated SPRs, the standard tender / contract provisions have been prepared for incorporation into tender documents of works contracts. The above-mentioned SDEV's memo and relevant tender / contract provisions can be downloaded from Works Group Intranet Portal.

The above standard provisions shall apply to works contracts for which invitation of tenders / prequalification submissions have been made but not yet closed, or are to be made on or after 31 August 2022. For the former case, procuring B/Ds should incorporate the above standard provisions into their works contracts through tender addendum.

9.55 PRE-BID ARRANGEMENT UNDER NEC ECC TARGET CONTRACT

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The Inter-departmental Working Group on NEC Projects and contract advisors completed a review of the pre-bid arrangement under NEC ECC target contracts. The set of tender / contract provisions have been updated accordingly. Relevant tender / contract provisions can be downloaded from DEVB's webpage and Works Group Intranet Portal.

Project officers shall note the guidelines given in Section A4.6 of the Practice Notes for NEC – ECC for Public Works Projects in Hong Kong (PN) available on DEVB's webpage for adoption of pre-bid arrangement.

Project officers can make necessary amendments to the provisions to suit the specific circumstances of the projects. The procedure specified in Section A4.1.1.1 of the PN shall be followed. Project Offices may consult DEVB and/or LAD(Works)/DEVB for advice, if there is any doubt.

Project officers shall consult contract advisors and/or LAD(Works)/DEVB before inviting a tenderer to submit further information or clarification in accordance with GCT 16 as given in SCT 18.

9.56 CONTRACT PROVISION FOR PROPOSAL ON INNOVATION AND TECHNOLOGY FOR PUBLIC WORKS CONTRACTS ADOPTING NEC FORM (Ref.: SDEV's memo ref. ( ) in DEVB(W) 506/30/07 dated 20.04.2023)

SDEV's memo ref. ( ) in DEVB(W) 506/30/07 dated 20.04.2023 promulgates a new set of *additional conditions of contract* (ACC) on Proposal on Innovation and Technology ("I&T Proposal") to promote the adoption of innovation and technology for enhancing site safety, site supervision efficiency or decarbonisation under public works contracts adopting NEC form.

For new public works contracts adopting NEC form, the following ACC shall be incorporated in the tender documents for the "I&T Proposal":

(i) ACC for NEC4 ECC (see Appendix 5.66A)[#]
(ii) ACC for NEC4 TSC (see Appendix 5.66B)

[#] This ACC is also incorporated into the NEC ECC HK Edition and become the secondary Option X30.

For ongoing public works contracts adopting NEC form, if project teams consider the implementation of the I&T Proposal mechanism has merits, a supplementary agreement will need to be executed between the contracting parties. Samples of the supplementary agreement for use in NEC3/4 ECC and NEC3/4 TSC are given in the following appendices.

(i) Supplementary agreement for NEC3 ECC (see Appendix 5.66C)
(ii) Supplementary agreement for NEC3 TSC (see Appendix 5.66D)
(iii) Supplementary agreement for NEC4 ECC (see Appendix 5.66E)
(iv) Supplementary agreement for NEC4 TSC (see Appendix 5.66F)

10. LUMP SUM CONTRACTS WITH FIRM BILLS OF QUANTITIES (Subsumed from WBTC Nos. 17/95 and 17/95A)

The Works Group Directors Meeting of September 1992 had decided that, wherever it is appropriate and feasible, civil engineering works contracts shall be tendered lump sum, rather than the usual remeasurement basis.

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A lump sum contract means a contract where the quantities are substantially measured firm and the final price to be paid is ascertained by adding to/deducting from the contractor's accepted tender price the value of variations and other specified items (e.g. provisional quantities and contingency items).

It is also customary for contracts for plant and equipment and for small construction works to be awarded as lump sum based on specifications and drawings (rather than quantities). This is outside the scope of this Handbook.

Traditionally all civil engineering works are contracted on an estimated quantities and remeasurement basis. Certain individual items are measured and priced lump sum, but overwhelmingly the tendered rates are treated as a preliminary schedule of rates.

Good financial management demands as much certainty as possible over the final cost of a contract. A "lump sum" approach will increase that certainty compared to total remeasurement.

With increasing pressure on the time of engineers both pre and post contract (e.g. the introduction of "Estimating using Risk Analysis" (ERA), more thorough programme planning and reporting, site safety management) it is necessary to find ways of saving time elsewhere in the project development process.

For remeasurement contracts under the civil engineering General Conditions of Contract the whole of the Works is measured more than once i.e. quantities are estimated at the pre-tender stage, followed by interim/final accurate measurement as work proceeds.

It is also noted that in many cases the design of the Works is well advanced at tender stage and that substantial parts of the Works are unlikely to change in quantity between tender and final account (unless there is an error in the measurement or a variation to the design is necessary).

In the circumstances described in above paragraph, time and effort can be saved if such contracts are awarded lump sum, thereby eliminating the need for total post contract remeasurement. It is recognised that more pre-tender effort is necessary to produce an advanced detailed design and accurate quantities for the tender, which requires tight management control to avoid delay in the start on site for contracts now in the detailed design stage.

Before any tender document is finalised, the project engineer shall aim to ensure that the design is sufficiently completed so that there is no necessity for substantial post contract design changes/additional information. Whenever a substantial part of the Works is unlikely to change, the contract shall be prepared and awarded on the basis of lump sum (plus/minus variation etc.).

For the purposes of the above paragraph, "substantial" is defined as when the value of the firm quantities exceeds 80% of the estimated value of the Works (not including Provisional, Contingency and Prime Cost Sums). Unless such circumstances exist, the tender shall not be called until the design work is so developed and finalised and the quantities that accurately represent that work are included in the Bills of Quantities. The quantities for those parts of the Works that cannot be fully designed shall be described as "provisional" and be remeasured in the usual way, as explained more fully in the attached Practice Note at Appendix 5.12.

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Contracts that fit the above paragraph situation but have to be "fast-tracked" for policy reasons, or the nature of the works/site precludes the design from reaching the required standard, can revert to remeasurement. Authority to "fast-track" is held by the Head of Department, whose written agreement shall be sought. Where given, the agreement to "fast track" or any other reason for not using lump sum, shall be attached to the tender report.

The then Secretary for Works had directed that the responsibility for providing the quantities shall remain with Government. The quantities shall be measured in accordance with the appropriate SMM as required by GCC Clause 59, some requirements of which may not be appropriate for lump sum and shall be amended in accordance with Appendix 5.13.

It is recognised that the change to quantities provided in accordance with the above paragraph has staffing implications and an appropriate lead-time for a substantial change-over to lump sum is necessary.

Whenever the lump sum approach is used, an additional Note to Tenderers (see Standard Note to Tenderers (g) in the Library of Notes to Tenderers) and a SCC (see standard SCC 21 promulgated under SDEV's memo ref. DEVB(W) 546/17/02 dated 9.2.2011) and the standard amendments to the SMM (at Appendix 5.13) shall be included in the Contract.

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11. MISCELLANEOUS

11.1 CONTRACT NUMBER

Contract numbers will be allocated by the headquarters of the office managing the Contract, notwithstanding that funds for the contract may be under the control of another office. For CEDD, each development office allocates its own contract numbers.

11.2 NOTES TO TENDERERS

Information that is relevant to the submission of tenders and contract award, but not considered to be part of the tender documents, should be provided in the form of Notes to Tenderers (NTT). There should be a remark on the NTT that they do not form part of the Contract. The NTT should be bound separately from the tender documents and issued to tenderers at the same time as tender documents.

Commonly used clauses to be included in the NTT for works contracts other than design and build contracts are given in the Library of Notes to Tenderers available on DEVB website. In addition, any NTT clauses promulgated by means of memos/respective technical circulars after promulgation of the Library shall be deemed to have been included in the Library. The project office may use the clauses promulgated selectively since not every item of the provisions is applicable to a particular contract. For the checklist for tenders deposited in the Government Secretariat Tender Box as referred to in NTT (d) of the Library (or Public Works Tender Box as the case may be), please refer to Appendix 5.8.

The Library of Notes to Tenderers has been uploaded to the DEVB website under standard contract documents in the publications section and it will be updated from time to time when new technical circulars are promulgated which may affect the library content (vide SDEV's memo ref. DEVB(W) 546/17/02 dated 20.3.2015).

For the latest version, please refer to the DEVB website:
http://www.devb.gov.hk/en/publications_and_press_releases/publications/standard_contract_documents/index.html

The clause for noting the tenderers that the Waste Disposal (Charges for Disposal of Construction Waste) Regulation has come into operation on 1 December 2005 is promulgated in Attachment 5 of SETW's memo ref. (00W45-01-9) in ETWB(W) 810/72/01 dated 21.11.2005, and should be included in NTT for tendering of contracts with value ≥ $1M. Where the value of a construction contract is less than $1M, the NTT promulgated in Annex B of SETW's memo ref. (00XFX-01-4) in ETWB(W) 810/72/01 dated 21.12.2005 should be included.

The clause for disclosing cashflow discount rates (CDR) for tender evaluation to tenderers is promulgated in SDEV's memo ref. () in DEVB(W) 545/17/01 dated 19.4.2010, and should be included in NTT for invitation of works tenders from 3 May 2010. The CDR applicable for tender evaluation shall be the rates prevailing as on the first date of tender invitation. Project Officers should refer to the latest memo from Secretary for Financial Services and the Treasury regarding cashflow discount rates for tender evaluation.

Amendments to the standard NTT clause on regulating actions on inappropriate conducts are promulgated in SDEV's memo ref. () in DEVB(W) 546/70/02 dated 10.2.2021.

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11.3 BINDING OF TENDER DOCUMENTS

The tender documents should be bound together into booklets with a front cover sheet showing the title and number of the contract and listing the documents contained therein. The documents will be in accordance with the list in Clause GCT 2 of the General Conditions of Tender All pages of the tender documents should be numbered.

Tender drawings may be bound together in a separate folder, in which case the folder should have a cover sheet listing the tender drawings (see also Chapter 6).

11.4 ELECTRONIC DISSEMINATION OF TENDER DOCUMENTS AND ELECTRONIC SUBMISSION OF TENDER RETURNS IN REMOVABLE MEDIA (Subsumed from ETWB TCW No. 11/2005 and SDEV's memo ref. ( ) in DEVB(W) 546/94/01 dated 19.12.2019)

11.4.1 Electronic Dissemination of Tender Documents

The electronic version of tender documents for works contracts should be disseminated in the form of "Electronic Dissemination Package" (EDP) in accordance with the manner and format contained in Appendix 6.34 of PAH Chapter 6.

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.

The hard copy disseminated according to the above and the EDP of the tender documents are each a complete set of the tender documents, bearing equal status.

11.4.2 Electronic Submission of Tender Returns in Removable Media

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 Annex 4 to Appendix 6.34 of PAH Chapter 6.**

A tenderer shall prepare his tender submission in accordance with Clause 4 of the General Conditions of Tender in the Library of General Conditions of Tender. He may submit his tender return in either hard copy format or electronic files format as follows:

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	Type of Document in Tender Return	Format of submission allowed
(a)	Form of Tender	In hard copy format only.
(b)	Bills of Quantities or Schedule of Rates	In hard copy format provided by the Works Department, or in electronic format only if electronic files of Bills of Quantities or Schedule of Rates in Excel format are provided in the EDP.
(c)	Other documents	In hard copy format or in electronic format

A tenderer who wishes to submit his tender partly in electronic format shall prepare the electronic part of the tender return in accordance with Annex 4 to Appendix 6.34 of PAH Chapter 6.

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.

A tenderer shall package necessary hard copy and electronic files together in accordance with Clause 4 of the General Conditions of Tender 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.

11.4.3 Electronic Tendering System for Works Contracts

In line with the Government's pledge to digitalise the public services, DEVB has developed Electronic Tendering System for works contracts (e-TS(WC)). DEVB has announced the full implementation of e-TS(WC) on 1 July 2024 for the procurement of works contract under the ambit of Central Tender Board and Public Works Tender Board. Starting from this date, all works tenders to be invited shall be handle via e-TS(WC), which includes, inter alia, issuing tender invitations as well as uploading and disseminating tender documents, supplementary information and addenda by procuring bureaux/ departments (B/Ds), downloading relevant documents and submitting electronic tenders by tenderers, handling tender correspondences or clarifications, submission of tender reports to Central Tender Board or Public Works Tender Board, and notification of award results.

As an interim measure to cope with any unforeseen situations concerning the integrity of files to be uploaded by tenderers, tenderers are permitted to have an option to submit their tenders in paper-based form in addition to their e-submissions via e-TS(WC). This interim arrangement will be applicable for works tenders to be invited from 1 July 2024 to 30 June 2025 (both dates inclusive). Afterwards, submission of tenders in paper-based form will not be allowed.

For works tenders involving special submission requirements, such as submission of physical models/pamphlets/project reference materials or tender proposals in special file formats (collectively referred to as "special tenders") or due to some special reasons, the use of e-TS(WC) for tender submission may not be found suitable. In this connection, procuring B/Ds are required to seek approval from DEVB for exemption with justification provided. It should however be noted that for works tenders so approved by DEVB for exempting from using e-TS(WC), the notices of tender invitation, uploading and disseminating tender documents, supplementary information and addenda by procuring B/Ds, downloading relevant

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documents by tenderers, handling tender correspondence or clarifications, submission of tender reports to the tender board and announcement of tender awards shall still be made via e-TS(WC).

Details of the tender provisions for deployment by procuring bureaux/ departments (B/Ds) when inviting tenders for public works contracts adopting e-TS(WC) are listed in DEVB website as shown in Paragraph 2.1 of PAH Chapter 5.

11.4.4 Preparation of Contract Documents

The following shall be included as part of the contract documents:

(a) The tender return including any electronic files therein; and

(b) All correspondence in relation to tender correction.

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

11.5 REPRESENTATIONS AT PRE-CONTRACT STAGE

Departments should always practise with great care when issuing information to any prospective contractor in the pre-contract stage. It should be borne in mind that such information, if issued, could amount to a pre-contract representation or even become a term of the contract thereby causing significant contractual implications if the information turns out to be incorrect [Note 1]. Whilst it is prudent to seek legal advice whenever doubts arise, project offices shall also follow the guidelines stated below: (see SDEV's memo ref. (01QXA-01-12) in DEVB(W) 546/70/02 dated 23.4.2008)

(a) Tendering stage

Departments shall set out detailed requirements of the contract in the tender documents. Departments may also spell out particular circumstances and/or constraints for the carrying out of the works in the tender documents with a view to clearly delineating the obligations of the contractor. Normally, all such information will eventually form part of the contract.

The principle remains that any information included in the tender documents shall be checked as fully as possible to ensure its correctness.

There may also be circumstances where information is purposely supplied to prospective tenderers for their reference only and shall not form part of the contract. Site investigation information normally falls into this category. To this end, a standard GCT[Note 2] serving as a disclaimer for the supply of site investigation information to tenderers has been developed and this shall be incorporated as part of the tender documents.

Similar to the position in relation to prequalification as given in Paragraph 4.3 of Chapter 6, the issue of other side information, which goes beyond the above, to prospective tenderers is rarely necessary or appropriate. Project offices should be conscious of the potentially major contractual implications that might result from incorrect information issued and allegedly having been relied upon by the contractor. There is also the risk that the originally correct information could become incorrect with the lapse of time or changes in circumstances after the information is issued.

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Where the circumstances genuinely require the issue of specific side information to prospective tenderers, consent from the relevant officer at D2 rank or above shall be obtained. Before incorporating such information as part of the tender documents, the department shall also consult LAD(W) with regard to drafting any SCT and/or SCC which may be necessary having regard to the nature of the information and/or particular circumstances of the procurement so as to safeguard the Government's interest.

(b) Subsequent doubt over the truthfulness of any information issued under (a) above

Where a piece of information has been issued under (a) above but its truthfulness is subsequently found to be questionable due to change in circumstances or other reason(s), LAD(W) should be consulted as to the appropriate action to be taken (e.g. withdrawal of the information with or without extension of the date set for submission of prequalification applications or the tender closing date or cancellation of the prequalification/tender exercise) notwithstanding that a disclaimer may have already been incorporated in the prequalification documents and/or the tender documents.

Note 1: Under the common law and the Misrepresentation Ordinance (Cap. 284), a misrepresentation is a representation which does not accord with the true facts. The representee who has entered into a contract in reliance on such representation may sue for rescission (i.e. cancellation and putting the parties back to where they were before the contract was made) and/or damages. Where a misrepresentation has become a term of the contract, there is a right to terminate the contract (if the term is in the nature of a condition) and sue for damages for breach of contract as well as a right to sue for rescission (see section 2 of the Misrepresentation Ordinance).

Note 2: The standard General Conditions of Tender contains an express reference to General Conditions of Contract Clause 13 with regard to inspection of the Site.

11.6 DECLARATION AND UNDERTAKING BY OFFICERS INVOLVED IN PREPARING TENDER DOCUMENTATION INCLUDING TENDER SPECIFICATIONS

As required under SPR 186, all officers involved in preparing tender documentation including tender specifications must declare whether they have any actual, potential or perceived conflict of interest at the start of deliberation or as soon as they become aware of a potential conflict. Reference should be made to the memos ref. (10) in FT 93/88 dated 19.12.2007 and ref. (27) in TsyB T 00/810-4/9/0 Pt. 2 dated 30.5.2012 from the Secretary for Financial Services and the Treasury (ref. *http://fb.host.ccgo.hksarg/spr/memos.htm*).

The specimen Declaration and Undertaking in Appendix I (A) of the latest version of SPRs shall be used for the declaration. All declarations should be kept in file for record.

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12. REFERENCES

LWBTC No. 11/84	Contract Transport
LWBTC No. 7/87	Minimum Amount of an Interim Payment
WBTC No. 10/92	Provision of Refuse Containment Booms in Reclamation Contracts Involving Public Dumping
WBTC No. 2/93	Public Dumps
WBTC No. 2/93B	Public Filling Facilities
WBTC No. 21/93	Standard Phraseology of [Bills of Quantity] Item Descriptions
WBTC No. 21/93A	Standard Phraseology of [Bills of Quantity] Item Descriptions (SPID)
WBTC No. 21/93B	Standard Phraseology of [Bills of Quantity] Item Descriptions (SPID)
WBTC No. 29/93	Procedure for Incorporation of Waterworks into other Capital Works Contracts
WBTC No. 25/94	Standard Form of Domestic Subcontract (for specialist works)
WBTC No. 10/95	Importation of Sand from the People's Republic of China by Barges
WBTC No. 10/95A	Additional Requirements Concerning Barge Routes and Third Party Insurance
WBTC No. 16/96	Wet Soil in Public Dumps
WBTC No. 10/97	Use of Performance Bonds Security and Retention Moneys and Standard Form of Bond
WBTC No. 10/97A	Use of Performance Bonds Security and Retention Moneys and Standard Form of Bond
WBTC No. 4/98	Use of Public Fill in Reclamation and Earth Filling Projects
WBTC No. 4/98A	Use of Public Fill in Reclamation and Earth Filling Projects
WBTC No. 4/99	Construction Mediation Rules (1999 Edition) and Administrative Guidelines
ETWB TCW No. 4/99A	Construction Mediation Rules (1999 Edition) and Administrative Guidelines
WBTC No. 32/99	Second Stage of the Independent Safety Audit Scheme (ISAS)
WBTC No. 12/2000	Fill Management
WBTC No. 14/2000	Usage of Public Works Laboratories in Public Works Projects
WBTC No. 15/2000	Funding Arrangement for Public Works Regional Laboratories Operating, Monitoring and Accounting Procedures
WBTC No. 18/2000	Works Bureau Library of Standard Special Conditions of Contract for use with G.C.C. for Building Works, Civil Engineering Works and Electrical & Mechanical Engineering Works 1999 Editions

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ETWB TCW No. 18/2000A	Works Bureau Library of Standard Special Conditions of Contract for use with G.C.C. for Building Works, Civil Engineering Works and Electrical & Mechanical Engineering Works 1999 Editions
ETWB TCW No. 18/2000B	Works Bureau Library of Standard Special Conditions of Contract for use with G.C.C. for Building Works, Civil Engineering Works and Electrical & Mechanical Engineering Works 1999 Editions
WBTC No. 20/2000	General Conditions of Contract for Civil Engineering Works, 1999 Edition
WBTC No. 30/2000	Construction Site Safety Manual Second Updating of Chapters 3 and 12
WBTC No. 13/2001	Quality Management System Certification of Consultants and Contractors for Public Works Administered by the Works Group of Departments
ETWB TCW No. 13/2001A	Quality Management System Certification of Consultants and Contractors for Public Works Administered by the Works Group of Departments
WBTC No. 19/2001	Metallic Site Hoardings and Signboards
WBTC No. 12/2002	Specifications Facilitating the Use of Recycled Aggregates
WBTC No. 26/2002	Special Conditions of Contract for Use in Mega Project Contracts
ETWB TCW No. 29/2002	Geotechnical Control for Slopes and Retaining Walls
ETWB TCW No. 29/2002A	Geotechnical Control for Slopes and Retaining Walls
ETWB TCW No. 50/2002	Contractors' Joint Ventures
ETWB TCW No. 4/2003	Assessment of Liquidated Damages
ETWB TCW No. 12/2003	Employment of Technician Apprentices and Building & Civil Engineering Graduates by Contractors of Public Works Contracts
ETWB TCW No. 13/2003	Guidelines and Procedures for Environmental Impact Assessment of Government Projects and Proposals
ETWB TCW No. 13/2003A	Guidelines and Procedures for Environmental Impact Assessment of Government Projects and Proposals - Planning for Provision of Noise Barriers
ETWB TCW No. 22/2003	Additional Measures to Improve Site Cleanliness and Control Mosquito Breeding on Construction Sites
ETWB TCW No. 22/2003A	Additional Measures to Improve Site Cleanliness and Control Mosquito Breeding on Construction Sites
ETWB TCW No. 28/2003	Protection of Harbour Area Treatment Scheme Stage I Sewage Tunnels
ETWB TCW No. 16/2004	The Use of Permanent Pre-stressed Ground Anchors in Government Projects

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ETWB TCW No. 24/2004	Specification Facilitating the Use of Concrete Paving Units Made of Recycled Aggregates
ETWB TCW No. 6/2005	Implementation of Systematic Risk Management in Public Works Projects
ETWB TCW No. 7/2005	Procurement of Construction Related Insurance
ETWB TCW No. 15/2005	Geotechnical Control for Tunnel Works
ETWB TCW No. 19/2005	Environmental Management on Construction Sites
ETWB TCW No. 2/2006	Drainage Impact Assessment Process for Public Sector Projects
DEVB TCW No. 9/2007	Professional Indemnity Insurance for Consultancy Services, Works Contracts Involving Contractor's Design or Independent Checking Engineer's Services
DEVB TCW No. 6/2010	Trip Ticket System for Disposal of Construction & Demolition Materials
DEVB TCW No. 8/2010	Enhanced Specification for Site Cleanliness and Tidiness
DEVB TCW No. 5/2013	Extension of Time due to Labour Shortage
DEVB TCW No. 2/2014	Tender Procedures for Procurement governed by the Agreement on Government Procurement of the World Trade Organization
DEVB TCW No. 3/2014	Contractors' Designs and Alternative Designs
DEVB TCW No. 4/2014	Tender Evaluation Methods for Works Contracts
DEVB TCW No. 7/2014	Guidance on Execution of Public Works Contracts as a Deed
DEVB TCW No. 1/2015	Emissions Control of Non-road Mobile Machinery in Capital Works Contracts of Public Works
DEVB TCW No. 4/2015	Administrative Procedures 2015 for Use with the Government of the Hong Kong Special Administrative Region General Conditions of Contract for Design and Build Contracts 1999 Edition
DEVB TCW No. 4/2017	Employment of Skilled Workers in Public Works Contracts
DEVB TCW No. 8/2018	Use of Manufactured Sand in Public Works Contracts
DEVB TCW No. 10/2018	Quality Assurance for Use of Off-site Prefabricated Steel Reinforcing Bar Products
DEVB TCW No. 1/2019	Railway Protection
DEVB TCW No. 6/2019	Implementation of Mandatory Construction Industry Collaborative Training Schemes in Public Works Contracts
DEVB TCW No. 3/2020	Digital Works Supervision System
DEVB TCW No. 4/2020	Tree Preservation
DEVB TCW No. 5/2020	Registration and Preservation of Old and Valuable Trees
DEVB TCW No. 11/2020	Sustainable Site Accommodation
DEVB TCW No. 13/2020	Timely Application of Temporary Electricity and Water Supply for Public Works Contracts and Wider Use of Electric Vehicles in Public Works Contracts

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DEVB TCW No. 2/2021	Adoption of Building Information Modelling for Capital Works Projects in Hong Kong
DEVB TCW No. 4/2021	Contract Price Fluctuation System for Civil Engineering and Building Contracts
DEVB TCW No. 6/2021	Security of Payment Provisions in Public Works Contracts
Environment Bureau Circular Memorandum No. 1/2021	Green Procurement in the Government
FC No. 3/2014	Correctional Services Industries
S for W's memo ref. () in WB(W) 209/32/110 Pt. 12 dated 9.1.2001	WTO GPA Article VI - Technical Specifications
S for W's memo ref. () in WB(W) 209/32/110 dated 23.3.2001	Library of Special Conditions of Contract, Clause 14 - Subcontracting
S for W's memo ref. () in WB(W) 216/29/2 dated 10.5.2001	Guidelines for the Development of Major Infrastructure Projects
S for W's memo ref. () in WB(W) 272/31/02D dated 4.4.2002	Specifications of Products in Tender Document
SETW's memo ref. () in ETWB(W) 1552/662/CL SF(1) dated 3.12.2003	Audit Review - Penny's Bay Reclamation Stage I Project - Project and Contract Management
SETW's memo ref. () in ETWB(W) 249/38/02 [TC 13/2001] dated 29.3.2004	Land (Miscellaneous Provisions) (Amendment) Ordinance 2003 - Notes to Tenderers, Form of Tender, Particular Specification, SCC for Civil Engineering Works
SETW's memo ref. () in ETWB(CR)(W) 1-150/4 Pt. 2 dated 27.4.2004	Audit Review on Harbour Area Treatment Scheme Stage I Project and Contract Management
LandsD's memo ref. (3) in LD TI 10/04/03 dated 16.6.2004	Provision of land for works areas
SETW's memo ref. (008BT-01) in ETWB(W) 830/31/01 dated 12.7.2004	Audit Recommendations on Public Works Contracts
Report No. 43 of the Director of Audit dated 23.10.2004, Part 3 of Chapter 7	https://www.aud.gov.hk/eng/pubpr_arpt/rpt_43.htm
SETW's memo ref. (00W45-01-9) in ETWB(W) 810/72/01 dated 21.11.2005	Waste Disposal (Charges for Disposal of Construction Waste) Regulation

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SETW's memo ref. (00XFX-01-4) in ETWB(W) 810/72/01 dated 21.12.2005	Waste Disposal (Charges for Disposal of Construction Waste) Regulation
SETW's memo ref. (0117S-01-2) in ETWB(W) 506/30/02 dated 30.3.2006	Practice Note on Adoption of Non-contractual Partnering in Public Works Contracts
SETW's memo ref. (014G7-01-1) in ETWB(W) 517/91/01 dated 19.6.2006	Interim Guidance Note on the Administration of 'Environmental Management on Construction Sites' (ETWB TCW No. 19/2005)
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SDEV's memo ref. (01TC9-01-5) in DEVB(W) 510/17/01 dated 17.7.2008	Limiting the number of tiers of subcontracting
SDEV's memo ref. (01VP5-01-4) in DEVB(W) 510/17/01 dated 11.11.2008	Limiting the Number of Tiers of Subcontracting
SDEV's memo ref. (01WLR-01-7) in DEVB(W) 510/83/08 dated 8.12.2008	Immediate Measures to Assist the Construction Industry
SDEV's memo ref. (01WPS-01-4) in DEVB(W) 510/83/08 dated 11.12.2008	Immediate Measures to Assist the Construction Industry
SDEV's memo ref. (02245-01-13) in DEVB(W) 510/34/01 dated 6.10.2009	Professional Indemnity Insurance for Works Contracts Involving Contractor's Designs, Alternative Designs and Independent Checking Engineer's Services

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SDEV's memo ref. (025B1) in DEVB(W) 520/83/01 dated 26.1.2010	WBTC No. 13/2001 and13/2001A QMS Certification of Consultants and Contractors for Public Works Administered by the Works Group of Departments, Contract Provisions - Appendices A, B, E, F, G and I and SCT6 - ISO 9000 of ETWB TCW 26/2004
SDEV's memo ref. (025QN-01-3) in DEVB(W) 510/83/08 dated 4.3.2010	Financial Relief Measures to assist the Construction Industry
SDEV's memo ref. () in DEVB(W) 545/17/01 dated 19.4.2010	Revised Clause (x) in Library of Notes to Tenderers (Disclosing of Cashflow Discount Rates for Tender Evaluation to Tenderers)
SDEV's memo ref. (026NM-01-3) in DEVB(W) 546/17/01 dated 25.6.2010	GCT 4 Submission of Tender (Formula Approach and Marking Scheme)
SDEV's memo ref. (027N7-01-2) in DEVB(W) 510/10/01 dated 29.6.2010	Duties and Powers of the Engineer - Section Subject to Excision
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SDEV's memo ref. () in DEVB(W) 810/83/09 dated 24.9.2010	Installation of Mechanical Dump Truck Covers in Capital/Term Contracts tendered on or after 1 November 2010
SDEV's memo ref. (0281L-01-5) in DEVB(W) 510/70/01 dated 1.11.2010	Land (Miscellaneous Provisions) Ordinance, Cap. 28 Special Conditions of Contracts (SCC)
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SDEV's memo ref. (02APB-01-8) in DEVB(W) 510/83/08 dated 8.3.2011	Financial Relief Measures to assist the Construction Industry
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SDEV's memo ref. (02H25-01-1) in DEVB(W) 510/17/01 dated 8.11.2012	Enhanced Guidelines on Wage Payment Monitoring and Reimbursement of Contractor's and Subcontractors' Contributions to the Mandatory Provident Fund for their Site Personnel and Revised Special Conditions of Contract on Reimbursement of Mandatory Provident Fund Contributions to Subcontractors - Supplementary Notes No. 1
SDEV's memo ref. () in DEVB(W) 510/10/01 dated 3.12.2012	New GCT and paragraph to be included in the "Instructions to Applicants" section of prequalification documents - Tenderer's Consent and Authorization on Conviction Records
SDEV's memo ref. () in DEVB(Trg) 133/4 (9) dated 7.12.2012	Implementation in Public Works Contracts of the Mandatory Employment of Graduates of the Enhanced Construction Manpower Training Scheme (ECMTS)
SDEV's memo ref. () in DEVB(W) 506/30/07 dated 3.9.2013	Extended Pilot on New Engineering Contract Form
SDEV's memo ref. () in DEVB(W) 510/17/01 dated 6.9.2013	Contract Measures to Limit the Tiers of Subcontracting in Maintenance Contracts
SDEV's memo ref. (02LSV-01-1) in DEVB(W) 516/70/03 dated 22.11.2013	Pay for Safety Performance Merit Scheme

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SDEV's memo ref. (02N5N-01-1) in DEVB(W) 517/17/01 dated 8.6.2016	Design for Safety (DfS)
SDEV's memo ref. () in DEVB(Trg) 133/3 (10) dated 23.1.2017	Provision of Site Uniform for Personnel Working on Public Works Sites
SDEV's memo ref. (02VVW-01-1) in DEVB(W) 510/83/05 dated 24.1.2017	SCT 4 – Contractor's Joint Venture
SDEV's memo ref. () in DEVB(W) 505/91/01 dated 17.5.2017	DEVB TCW No. 8/2010 Enhanced Specifications for Site Cleanliness and Tidiness
SDEV's memo ref. () in DEVB(W) 516/71/01 dated 29.3.2018	Construction Site Safety Manual
SDEV's memo ref. () in DEVB(W) 517/91/01 dated 29.3.2018	ETWB TCW No. 19/2005 Environmental Management on Construction Sites
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SDEV's memo ref. () in DEVB(W) 510/33/02 dated 14.2.2020 with Annex B (Version 2) updated on 25.2.2020	Interim Relief Measure to Assist the Construction Industry – Advance Payment under Capital Works Contracts
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SDEV's memo ref. () in DEVB(W) 510/83/05 dated 14.7.2020	Updated Version of Standard SCT 5 (Sub-clauses (5) & (5A) and GCT 31 in relation to the Eligibility of Probationary Contractors to Tender and for Award of Contracts
SDEV's memo ref. ( ) in DEVB(W) 510/94/02 dated 11.8.2020	Engagement of Subcontractors under Registered Specialist Trade Contractors Scheme (RSTCS) of the Construction Industry Council
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SDEV's memo ref. () in DEVB(W) 506/30/02 dated 23.9.2020	Updated Guidelines on Selection of Contracts for Adoption of Non-contractual Partnering in Public Works Contracts
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SDEV's memo ref. () in DEVB(W) 510/83/03 dated 11.2.2021	Update of Guidelines on Adoption of Dispute Resolution Advisor System in Capital Works Contracts
SDEV's memo ref. () in DEVB(W) 510/33/02 dated 5.3.2021	Extension of Interim Relief Measure to Assist the Construction Industry – Advance Payment under New Capital Works Contracts

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SDEV's memos ref. () in DEVB(W) 510/33/02 dated 5.3.2021	Extension of Interim Relief Measure to Assist the Construction Industry – Advance Payment under New Term Contracts
SDEV's memo ref. () in DEVB(W) 510/83/05 dated 26.3.2021	Updating of Standard SCT 5 – Contractors' Joint Venture (JV) and Sample JV Proforma
SDEV's memo ref. ( ) in DEVB(W) 510/17/01 dated 19.4.2021	Limiting the Number of Tiers of Subcontracting in Public Works Contracts
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SDEV's memo ref. ( ) in DEVB(W) 510/70/03 dated 27.7.2021	Use of Retention Money and Performance Bond/Cash Security
SDEV's memo ref. ( ) in DEVB(GLTM) 204/1/6 dated 31.8.2021	Employment of Registered Tree Management Personnel in Government Contracts
SDEV's memo ref. () in DEVB(W) 510/70/03 dated 1.9.2021	Particular Specification Clause on Inspection and Test Plans
SDEV's memo ref. (03C1Q) in DEVB(W) 516/71/01 dated 28.12.2021	Control on Works in Confined Space in Connection with/in the Vicinity of Underground Pipework, Drainage/Sewage Manholes/Chambers or Structures Alike
SDEV's memo ref. ( ) in DEVB(W) 506/30/07 dated 31.12.2021	Migration from NEC3 to NEC4 Engineering and Construction Contract (ECC)
SDEV's memo ref. ( ) in DEVB(W) 510/94/02 dated 11.1.2022	Addition of "Suspended Ceiling" and "Tower Crane (Erecting, Dismantling, Altering Height)" as Designated Trades under the Registered Specialist Trade Contractors Scheme of the Construction Industry Council
SDEV's memo ref. ( ) in DEVB(W) 511/70/01 date 24.1.2022	Extension of "Vaccine Bubble" Arrangement to Public Works Contracts and Consultancies
SDEV's memo ref. () in DEVB(W) 510/33/02 dated 10.3.2022	Extension of Interim Relief Measure to Assist the Construction Industry – Advance Payment under New Capital Works Contracts
SDEV's memo ref. () in DEVB(W) 510/33/02 dated 10.3.2022	Extension of Interim Relief Measure to Assist the Construction Industry – Advance Payment under New Term Contracts

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SDEV's memo ref. ( ) in DEVB(W) 510/70/03 dated 8.4.2022	Professional Staff in Contractor's Management Team – Minimum Qualification and Experience Requirements for Civil Engineering Works
SDEV's memo ref. () in DEVB(W) 511/70/01 dated 20.5.2022	Implementation of "Vaccine Pass" Arrangement at Public Works Sites
SDEV's memo ref. () in DEVB(W) 510/94/02 dated 17.6.2022	Addition of "Building Drainage Installation" as One of the Designated Trades under the Registered Specialist Trade Contractors Scheme of the Construction Industry Council
SDEV's memo ref. ( ) in DEVB(W) 510/33/02 dated 8.7.2022	Migration from NEC3 to NEC4 Term Service Contract (TSC)
SDEV's memo ref. ( ) in DEVB(W) 510/33/02 dated 8.7.2022	Interim Relief Measure to Combat the 5th Wave of the COVID-19 Pandemic – Special Payment for Imported Items for Capital Works Contracts
SDEV's memo ref. () in DEVB(W) 506/30/07 dated 19.7.2022 and 28.6.2024	Wider Adoption of New Engineering Contract (NEC) Form in Public Works Contracts
SDEV's memo ref. () in DEVB(W) 510/33/02 dated 28.7.2022	Interim Relief Measure to Combat the 5th Wave of the COVID-19 Pandemic – Special Payment for Imported Items for Term Contracts
SDEV's memo ref. (03E8T) in DEVB(W) 516/80/03 dated 3.8.2022	Construction Site Safety Manual – Prohibition of Imposing Administrative Charges for Reporting of Site Accidents and Elimination of Under-reporting of Site Accidents
SDEV's memo ref. () in DEVB(W) 510/30/01 dated 31.8.2022	Tender / Contract Provisions for Safeguarding National Security in Public Works Contracts and Consultancies
SDEV's memo ref. () in DEVB(W) 510/94/02 dated 1.12.2022	Addition of adding "Truss Out Scaffolding", "Gondola (Permanent)" and "Gondola (Temporary)" as Designated Trades under the Registered Specialist Trade Contractors Scheme of the Construction Industry Council
SDEV's memo ref. (03FBT) in DEVB(W) 505/91/01 dated 5.1.2023	Rodent Control on Construction Sites
SDEV's memo ref. () in DEVB(W) 510/94/02 dated 1.2.2023	Addition of "Levelling and Setting Out" as One of the Designated Trades under the Registered Specialist Trade Contractors Scheme of the Construction Industry Council
SDEV's memo ref. () in DEVB(W) 506/30/07 dated 20.4.2023	Proposal on Innovation and Technology for Public Works Contracts Adopting NEC form
SDEV's memo ref. () in DEVB(W) 510/94/02 dated 6.9.2023	Addition of "Building Maintenance" and "Interior Fitting-out" as Designated Trades under the Registered Specialist Trade Contractors Scheme of the Construction Industry Council

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SDEV's memo ref. () in DEVB(W) 511/70/02 dated 4.10.2023	Fees and Charges Review - Provision of Electronic Drawings
SDEV's memo ref. () in DEVB(W) 546/84/01 dated 10.11.2023	DEVB TC(W) No. 4/2014 & No. 4/2014A Tender Evaluation Methods for Works Contracts – Merit / Demerit Point for Safety
SDEV's memo ref. ( ) in DEVB(W) 506/30/07 dated 16.11.2023	Migration from NEC4 Engineering and Construction Contract to the Hong Kong Edition of NEC Engineering and Construction Contract
SDEV's memo ref. () in DEVB(W) 510/33/02 dated 22.11.2023	Extension of Interim Relief Measure to Combat the COVID-19 Pandemic – Special Payment for Imported Items
SDEV's memo ref.() in DEVB(W) 546/94/02 dated 29.12.2023	Implementation of Electronic Tendering System for Works Contracts
SDEV's memo ref. () in DEVB(W) 510/94/02 dated 10.4.2024	Addition of "Painting", "Metal Work", "Structural Steelwork", "Horticultural Works", "Arboriculture Works" and "Skyrise Greenery Works" as Designated Trades under the Registered Specialist Trade Contractors Scheme of the Construction Industry Council
SDEV's memo ref.() in DEVB(W) 546/94/02 dated 24.5.2024	Electronic Tendering System for Works Contracts
SDEV's memo ref. () in DEVB(W) 546/83/01 dated 20.9.2024	Threshold of the Constraints on the Power of the Contract Administrator to Order Variation and the Related Matters
SDEV's memo ref. () in DEVBWB WP4S-021-004-002 dated 10.10.2024	Relief Measures to Assist the Construction Industry – More Frequent Interim Payments and Milestone Payments
SDEV's memo ref. () in DEVB WB WP4S-022-006 dated 25.10.2024	Public Works Laboratories Electronic Laboratory Information Management System for Handling Compliance Testing Services for Public Works Contracts Amd No. 3/2025
SDEV's memo ref. () in DEVB WB WP4S-022-009-002-P001 dated 11.12.2024	Additional of "Truss-out Scaffolding" as Designated Trades under the Registered Specialist Trade Constrictors Scheme of the Construction Industry Council Amd No. 2/2025
SDEV's memo ref. () in DEVB WB WP4S-022-003-001-001 dated 1.8.2025	New Material Cost Index of Ready-mixed Concrete for Incorporation into Contract Price Fluctuation System Amd No. 4/2025

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SFST's memo ref. (27) in TsyB T 00/810-4/9/0 Pt. 2 dated 30.5.2012	Declaration of Conflict of Interest
SFST's memo ref. (31) in TsyB MA 00/550/1 (C) Pt. 2 dated 14.3.2018	Cashflow Discount Rates for Tender Evaluation
PWTB's memo ref. (7) in ASD13/95200/TEN/OPEN/ PCF dated 5.7.2018	Photocopying Fee - Works Remeasurement Contracts
SFST's memo ref. () in TsyB T ADM/1-135/1/0 Pt.10 dated 24.12.2018	Adjustment of Photocopying Fee for Works Contracts
Audit Report No. 53 Ch. 3 - Construction works under Castle Peak Road Improvement Project	http://www.aud.gov.hk/pdf_e/e53ch03.pdf
DEVB Construction Site Safety Manual	http://www.devb.gov.hk/en/publications_and_press_releases/publications/construction_site_safety_manual/index.html
DEVB Contractor Management Handbook	https://www.devb.gov.hk/filemanager/en/content_187/CMH_Rev21-r1.pdf
DEVB Standard Contract Documents	http://www.devb.gov.hk/en/publications_and_press_releases/publications/standard_contract_documents/index.html

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DEVB Tree Management Guidelines	http://devb.host.ccgo.hksarg/en/tree_mgnt/index.html or https://www.greening.gov.hk/en/tree-care/tree-care-practices/index.html Guidelines on Yard Waste Reduction and Treatment Guidelines for Tree Risk Assessment and Management Arrangement Guidelines on Arboriculture Occupational Safety and Health Management Guidelines for Stonewall Trees Guideline on Pavement Renovation Works and Tree Stability Guidelines on Tree Transplanting Management Guidelines for Mature Trees Guidelines on Tree Preservation during Development Manual on the Management of Brown Root Rot Disease Tree Management Practice Note No. 1: Tree Preservation during Construction Tree Management Practice Note No. 3: Tree Pruning Tree Management Practice Note No. 4: Management of Brown Root Rot Disease Infected Trees And, other relevant, up-to-date guidelines published on the Tree Management section of the Cyber Manual for Greening or the greening website from time to time
GPA Space Standards under Schedule of Accommodation	http://gpa.host.ccgo.hksarg/schedule-of-accommodation.html
HyD Practice Notes BSTR/PN/003 Rev. E– Noise Barriers with Transparent Panels	https://www.hyd.gov.hk/en/technical_references/technical_document/division_practice_notes/pdf/PN003E.pdf
Labour Department Guidance Notes on Safety and Health of Hand-dug Tunnelling Work	http://www.labour.gov.hk/eng/news/pdf/GN_on_S&H_of_Hand-dug_Tunnelling_Work_Eng.pdf

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APPENDICES

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APPENDIX 5.1 FORM OF TENDER

(Subsumed from ETWB TCW No. 56/2002 and 56/2002A, and ref. SDEV's memo ref. ( ) in DEVB(W) 546/83/01 dated 11.11.2020)

{Internal Remark: For Capital Works Contracts using GCC form (excluding Design and Build Contracts)}

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) here[2]:

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

[2] 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.

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FORM OF TENDER – P.2

1. Having inspected the Site, examined the Drawings, General Conditions of Contract and Special Conditions of Contract (hereinafter referred to as "the said Conditions"), Specification and Bills of Quantities for the execution of the Works as defined in the Contract, I/we offer to construct, complete and maintain the whole of the said Works in conformity with the said Conditions, Drawings, Specification and Bills of Quantities for the sum of Dollars _____ [HK$ _____] or such sum as may be ascertained in accordance with the said Conditions, Drawings, Specification and Bills of Quantities.

{Internal Remark: Paragraph 2 may be deleted if a security is not required}

2. [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 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 performance of the Contract under the terms of a Bond in accordance with the said Conditions.]

   # NOTE: Tenderer to delete either clause 2(a) or 2(b).

3. I/We agree to abide by this Tender for the period of [90 days][3] 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.

4. 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 3][4] hereof shall constitute a binding contract between us.

5. 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.

[3] Information to be inserted by the Project Office (normally 90 days).

[4] Modify as appropriate.

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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 _____

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FORM OF TENDER – P.4

NOTE: To be inserted in case the tenderer is an unincorporated joint venture[5]

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
_____	_____
_____	_____
_____	_____

[5] 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.

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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)[6] of Witness(es)	_____	_____
Signature(s) of Witness(es)	_____	_____
Occupation(s) of Witness(es)	_____	_____
Address(es) of Witness(es)	_____	_____
	_____	_____
Date	_____	_____

[6] In case more space is required for the information of the witness(es), insert an additional page following the above format.

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FORM OF TENDER – P.6

NOTE: To be inserted if the tenderer is a sole proprietorship or a partnership[7]

Name	_____	Name	_____
Signature	_____	Signature	_____
Residential address[8]		Residential address[7]	
_____		_____	
_____		_____	
_____		_____	
Name	_____	Name	_____
Signature	_____	Signature	_____
Residential address[7]		Residential address[7]	
_____		_____	
_____		_____	
_____		_____	

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)[9] of Witness(es)	_____	_____
Signature(s) of Witness(es)	_____	_____
Occupation(s) of Witness(es)	_____	_____
Address(es) of Witness(es)	_____	_____
	_____	_____
Date	_____	_____

[7] 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.

[8] In case a partner of the partnership is a body corporate, its registered address shall be provided instead.

[9] In case more space is required for the information of the witness(es), insert an additional page following the above format.

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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 Engineer before the signing of the Articles of Agreement:

Security Deposit (if any) Receipt No._____

Amount _____

Date _____

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APPENDIX TO FORM OF TENDER – P. 1

General Conditions of Contract for @Civil Engineering Works, 1999 Edition
{Internal Remark @: Modify as appropriate depending on the type of GCC form adopted}

Clause No.

1(1)	Maintenance Period	..... months
	*[Maintenance Period for the Works, except Establishment Works, Aftercare to Old and Valuable Trees and preservation and protection to existing trees (Section xx)	..... months]
	Maintenance Period for Establishment Works	..... months
	[1][Maintenance Period for preservation and protection to existing trees (Section xx)	..... months]
	[1][Maintenance Period for Aftercare to Old and Valuable Trees[2]	..... months]

2(1)(b) Actions of the Engineer[#] subject to the Employer's right of objection and direction

The Engineer[#] 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$1,400,000. This requirement shall not be applicable where the variation order or other action is considered by the Engineer[#] 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 Engineer[#] may, subject to any prior contrary instructions given by the Employer to the Engineer[#], 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$1,400,000.

[3][The Engineer[#] is required under the terms of his appointment[4] 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 subcontracting in accordance with sub-clause (5) of SCC[X[5]].]

*[The *Engineer[#] is required under the terms of his appointment[4] 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 SCC [X[6]].]

[7][The *Engineer[#] is required under the terms of his appointment[4] 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 sub-clause (3) of PS[X[8]]

{Internal Remark:
 # Modify as appropriate depending on the type of GCC form adopted - the Engineer / Surveyor / Supervising Officer.}

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*12 Amount of bond or cash security (if required) $ .....

APPENDIX TO FORM OF TENDER – P. 2

47 Time after acceptance of Tender within which the date for commencement of the Works shall occur ..... days

49 Time for completion of the *Works/Section ……. ..... days

52 [9]Liquidated damages

[For use where the Works are not divided into Section]
For the Works HK$[.....* (Y1 +….Yn)+.....][10] per day

[For use where the Works are divided into Sections]
Section A HK$[…. *Y1 +…. *Yn +…. *Y2 +….][10] per day

Section B HK$[…. *Y1 +…. *Yn +…. *Y3 +….][10] per day

In the above summary statement of liquidated damages:
Y_1 = Total sum of Bill No. 1 in the Bills of Quantities
Y_2 = Total sum of Bill No. 2 in the Bills of Quantities
Y_3 = Total sum of Bill No. 3 in the Bills of Quantities
Y_n = The value of the Adjustment Item
(Note: items which do not attract LD's, such as the safety related items, should be taken out)

79(1) Percentage of certified value retained ..... per cent

79(1) Limit of Retention Money $ .....

79(2) Minimum amount of interim certificate $ .....
*[There shall be no minimum amount of interim certificates for the Establishment Works]

Special Conditions of Contract

Clause No.

*SCC_ Period for Establishment Works ..... months
_

*SCC_ Time, commencing from and including the date for commencement of the Works notified by the Engineer in accordance with GCC Clause 47, within which the Section Subject to Excision may be ordered ..... days
_

*SCC_ Minimum amount of third party insurance $ .....
_

*SCC_ Minimum amount of liquidated damages for the *Works/Sections $ ..... per day
_

*SCC_ Sum[11] payable to the Employer in the event that Old and Valuable Tree No. __ dies or becomes moribund $ .....
_

*SCC_ Period for Aftercare to Old and Valuable Trees (*Tree/Trees No. __)[2] ..... months
_

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{Internal Remark: The following are internal notes for APPENDIX TO FORM OF TENDER}

* Delete or modify as appropriate

1. Use when a separate Section of the Works (Section xx) is given for preservation and protection to existing trees. The scope of Section xx is described in the Particular Specification.
2. 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.
3. This paragraph is applicable to all public works contracts. Please refer to SDEV's memos ref. (01TC9-01-5) in DEVB(W) 510/17/01 dated 17.7.2008, ref. (01VP5-01-4) in DEVB(W) 510/17/01 dated 11.11.2008 ref. (027RU-01-3) in DEVB(W) 510/17/01 dated 16.7.2010, and ref. DEVB(W) 510/94/02 dated 28.3.2019 and 11.8.2020.
4. Where the Engineer / Surveyor / Supervising Officer is a consultant, works departments should take steps to ensure that the constraint is stipulated in the relevant consultancy agreement.
5. To insert relevant clause number for the SCC clause on Limiting the Tiers of Subcontracting.
6. To insert relevant clause number of the SCC clause on Section Subject to Excision.
7. This paragraph is applicable to all public works contracts, including capital works contracts and term contracts. Please refer to the revised trip ticket system as promulgated in DEVB TCW No. 6/2010.
8. To insert relevant clause number for the PS clause on Trip Ticket System.
9. Refer to ETWB TCW No. 4/2003 for guidance to include appropriate provisions in the Appendix to the Form of Tender where there is no minimum LD's and where there is minimum LD's.
10. Choose from either (a) or (b) below an appropriate footnote depending on whether or not there is minimum LD's for the Works/Sections and, where the works involve excavation requiring the application of excavation permits, add footnote (c):
    (a) Where there is no minimum LD's
    "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 Y1, ...Yn with its corresponding value in the priced Bills of Quantities."
    (b) Where there is minimum LD's
    "The value of the formula within the square brackets shall be taken as HK$ [the minimum amount of LD's 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 HK$ [the minimum amount of LD's for the Works or, as the case may be, the relevant Section] per day by substituting each of Y1, ...Yn with its corresponding value in the priced Bills of Quantities."
    (c) Where application of excavation permit is required
    "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."
11. 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.

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APPENDIX 5.2 GUIDELINES FOR COMPLETING THE FORM OF TENDER

(1) Maintenance Period for the Works

The Maintenance Periods for the Works and for Establishment Works are normally 12 months and 1 month respectively but may vary depending on the type of work. If separate Sections of Works are provided for preservation and protection of existing trees, and where required, Aftercare to Old and Valuable Trees, the Maintenance Periods are to be determined by the project office and would usually be 1 month.

(2) Actions of the Engineer subject to the Employer's right of objection and direction

Clause 2 of the GCC 1999 Edition provides that the Employer may impose constraints on the powers of the Engineer. According to existing policy, the Engineer shall obtain the agreement of the Employer before ordering variation in excess of $1,400,000. The Engineer may however commit expenditure other than in respect of claims if such commitment is less than $1,400,000. Besides, the Engineer may, subject to the Employer's right of objection, (i) permit the contractor in all public works contracts (other than maintenance contracts) to introduce an extra tier of subcontracting for a part of the Works, (ii) issuing instruction on implementation of the Section Subject to Excision and (iii) approve alternative disposal grounds proposed by the Contractor. These provisions shall be set out in the Appendix to the Form of Tender.

(3) Amount of bond or cash security

This provision is not usually required for typical works contracts but shall be included where the circumstances as stated in para. 2 of WBTC No. 10/97 warrant. If bond or cash security is required, refer to Appendix A of WBTC No. 10/97 (as amended by SDEV's memo ref. ( ) in DEVB(W) 510/70/03 dated 27.7.2021) for such amount (rounded off to the nearest $1000) with respect to the estimated contract value. Appendix B of WBTC No. 10/97A gives the standard form of performance bond to be incorporated in the tender documents if required.

(4) Time after acceptance of Tender within which the date for commencement of the Works shall occur

Enter a specific number of days, generally between 7 and 42 days unless there are reasons for specifying a different period.

(5) Time for completion of the Works/Sections

Public works projects, especially those of complex and multi-disciplinary in nature and with long project period, are susceptible to delay in completion due to underestimation of the time required for construction and insufficient programme contingency to cater for the unexpected circumstances and site conditions during construction. These prolonged projects are exposed to a higher risk of cost overruns as additional expenses would be incurred to cover the preliminaries, overheads and upward price adjustments, etc.

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The time for completion of the Works/Sections should be based on a realistic estimate of the normal period required for construction of the Works or Section of the Works (including 'Section subject to Excision'), having regard to the date when completion of the project is required, particularly with respect to the programme of other related projects.

In assessing the contract period before proceeding to tender, no allowance need be made for the effects of inclement weather unless it is intended to delete the inclement weather sub-clause (reference should be made to Paragraph 9.18).

Establishment Works normally forms a 'Section of Works' of its own. However, if it is not desirable to do so, the clause may be suitably modified or described to make clear the respective time for completion of 'Works except Establishment Works' and 'Establishment Works'.

Project officers shall complete the Checklist for Setting Contract Period for Major Public Works Contracts as enclosed in Appendix 5.57 and seek D1 officer's endorsement prior to inviting tender.

(6) Liquidated damages

See ETWB TCW No. 4/2003 for detailed guidelines on liquidated damages. The liquidated damages for 'Section subject to Excision' shall also be included.

(7) Percentage of certified value retained

Refer to Appendix A of WBTC No. 10/97 (as amended by SDEV's memo ref. ( ) in DEVB(W) 510/70/03 dated 27.7.2021) for the rate of retention with respect to the estimated contract value. Whenever practicable, the percentage used for the calculation of Retention Money for Nominated Subcontracts is to be the same as that used for the main contract.

(8) Limit of Retention Money

Refer to Appendix A of WBTC No. 10/97 (as amended by SDEV's memo ref. ( ) in DEVB(W) 510/70/03 dated 27.7.2021) for the limit of Retention Money (rounded off to the nearest $1000) with respect to the estimated contract value.

(9) Minimum amount of interim certificate

According to LWBTC No. 7/87, the minimum amount of interim certificate for contracts with an estimated contract sum of $2,000,000 or more is to be:

Estimated Contract Sum	Minimum amount of interim certificate
$ 2 M up to and including $ 5M	$ 70,000
over $ 5M up to and including $ 10 M	$110,000
over $ 10 M up to and including $ 25 M	$160,000

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over $ 25 M up to and including $ 50 M	$250,000
over $ 50 M up to and including $100M	$350,000
over $ 100 M up to and including $250 M	$500,000
over $ 250 M	$750,000

For contracts with an estimated contract sum of less than $2,000,000, the minimum amount of interim certificate should be:

$$\frac{\text{Estimated Contract Sum}}{\text{Period for completion in months}} \times F$$

where F is a factor normally ranging between 0.6 and 0.8 and shall be decided by the officer preparing the tender documents to suit the type and timing of the proposed work. However, the minimum amount shall not exceed $500,000.

(10) Minimum amount of third party insurance [if required]

The minimum amount of third party insurance should normally be assessed following a risk based approach given in ETWB TCW No. 7/2005. For works project with a cost estimate in excess of $1000M, a systematic risk management (SRM) promulgated in ETWB TCW No. 6/2005 shall be adopted. For works project at a cost less than $1000M, works departments should adopt an approach of risk assessment similar to the SRM. Project offices are encouraged to apply the SRM where the nature, complexity and/or risk level of the works warrant such applications.

(11) Works involving preservation and protection of existing trees and Old and Valuable Trees

The guidelines regarding the preservation and protection of existing trees, and where required, the protection and maintenance of registered Old and Valuable Trees can be found in DEVB TCW No. 5/2020 and the Tree Management section of the Cyber Manual for Greening (http://devb.host.ccgo.hksarg/en/contactus/index.html).

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APPENDIX 5.3 (NOT USED)

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APPENDIX 5.4 (NOT USED)

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APPENDIX 5.5 FORMAT OF THE GRAND SUMMARY TO THE BILLS OF QUANTITIES

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION
..... DEPARTMENT
CONTRACT NO. ……..….
(Title of Contract)
BILLS OF QUANTITIES
GRAND SUMMARY

Page No.	Bill No.	Description	HK$
	1 2 .. .. X Y	Preliminaries .. .. Site Safety + Daywork Prime Cost and Provisional Sums (excluding the sum allowed for MPF reimbursement)	
		Sub-Total of bill No. 1 to Y inclusive	
		Contingency Sum(1)	
		Total of the above	
		Add 3.5%# of the Total above as a Provisional Sum for reimbursement of MPF(2)	
		Grand Total	
		Adjustment Item *Addition/*Deduction	

Tender Sum _____

Signature of person authorized
to sign on behalf of tenderer: ……..

Name of tenderer: ……
Date: ……

\+ *the Bill on Site Safety is to be provided for all appropriate tenders required under Pay for Safety Scheme in accordance with Chapter 3 and Chapter 12 of the Construction Site Safety Manual.*

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 # Exact percentage to be decided by the project office

** delete where inappropriate*

(1) Where the Special Conditions of Tender on reduction of Contingency Sum has been included, the Employer has power to reduce the amount of the Contingency Sum as stated in the Bills of Quantities by giving notification in writing to the tenderer whose tender is going to be recommended for contract award.

(2) Where the Special Conditions of Tender (SCT) on reduction of Contingency Sum has been included and in accordance with sub-clause (2)(c) of the SCT, this provisional sum for reimbursement of Mandatory Provident Fund contribution shall not be affected by a reduction in the amount of the Contingency Sum by the Employer under sub-clause (2)(a) of the SCT.

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APPENDIX 5.6 NOTES TO TENDERERS AND SPECIAL CONDITIONS OF CONTRACT FOR ENGAGEMENT OF SUBCONTRACTORS REGISTERED FROM THE "REGISTERED SPECIALIST TRADE CONTRACTORS SCHEME" (FOR GENERAL CONDITIONS OF CONTRACT (GCC))

(Subsumed from ETWB TCW No. 13/2004, SDEV's memo ref. (02KJ8-01-4) in DEVB(W) 510/94/02 dated 22.7.2013 and SDEV's memo ref. ( ) in DEVB(W) 510/94/02 dated 4.12.2020, 11.1.2022,17.6.2022, 1.12.2022, 1.2.2023 ,6.9.2023 and 10.4.2024)

The following Notes to Tenderers and Special Conditions of Contract shall be included in tenders for all capital and maintenance works contracts:

Notes to Tenderers:

NTT C1 Engagement of Subcontractors who are Registered under the Respective Trades and Groups available in the Registered Specialist Trade Contractors Scheme (RSTCS)

Tenderers' attention is drawn to the Clause [x]# of the Special Conditions of Contract requiring the engagement of subcontractors who are registered under the respective trades and groups available in the Registered Specialist Trade Contractors Scheme (RSTCS).

Special Conditions of Contract

SCC[x]# - Engagement of subcontractors who are registered under the respective trades and groups available in the Registered Specialist Trade Contractors Scheme (RSTCS)

General Conditions of Contract Clause 4 is amended by adding the following:

[(10)][1] (a) For the purpose of this sub-clause [(10)][1] , the following words and expressions shall have the meaning hereby assigned to them:

" RSTCS[2]" means the Registered Specialist Trade Contractors Scheme managed by the Construction Industry Council and as referred to in the Rules and Procedures applicable to the aforesaid Registered Specialist Trade Contractors Scheme.

"Group 1", "Group 1 (Advanced)" and "Group 2" mean the classification of contractors into Group 1, "Group 1 (Advanced)" and Group 2 under each trade of the Register of Specialist Trade Contractors.

["Building Maintenance" and "Interior Fitting-out" mean the trade of "building maintenance" and "interior fitting-out" respectively under the RSTCS as promulgated by the Construction Industry Council from time to time.][8]

["Painting", "Metal Work", "Structural Steelwork", "Horticultural Works", "Arboriculture Works" and "Skyrise Greenery Works" mean the trade of

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"painting", "metal work", "structural steelwork", "horticultural works", "arboriculture works" and "skyrise greenery works" respectively under the RSTCS as promulgated by the Construction Industry Council from time to time.][9]

(b) Where the Contractor is to [subcontract/sub-let][3] part of the Works execution of which involves trades available in the RSTCS, the Contractor shall only engage, for the purposes of execution of such part of the Works, a subcontractor who has satisfied all of the following criteria:

(i) the subcontractor is the subcontractor stated in the Contractor's latest updated submission of the Subcontractor Management Plan;

(ii) the subcontractor has completed registration under the relevant trade(s) available in the RSTCS before the commencement of the works under the relevant subcontract; and

(iii) if the subcontractor is registered under a trade [9], except [8 Building Maintenance and Interior Fitting-out,][8] Painting, Metal Work, Structural Steelwork, Horticultural Works, Arboriculture Works and Skyrise Greenery Works][9] in the Register of Specialist Trade Contractors, and if the value of relevant subcontract exceeds the tender limit of Group 1, the subcontractor has been admitted into Group 1 (Advanced) or Group 2, and if the value of relevant subcontract exceeds the tender limit of Group 1 (Advanced), the Subcontractor has been admitted into Group 2, before the commencement of the works under the relevant subcontract.

The Contractor shall not engage a subcontractor who is suspended or in the process of an appeal against his suspension from registration in the RSTCS unless the suspension is lifted before the commencement of the works under the relevant subcontracts. The foregoing shall also apply to the Contractor's engagement of [Nominated Subcontractors][4], [Specialist Subcontractors][5] and [7 subcontractors for specialist works referred to in Special Conditions of Contract Clause [ ][6]][7].

(c) The Contractor shall ensure that where any part of the part of the Works subcontracted to :-

(i) a subcontractor engaged under sub-clause 10[1](b) of this Clause;

[(ii) a Nominated Subcontractor;][4]

[(iii) a Specialist Subcontractor; or][5]

[(iv) a subcontractor for specialist works referred to in Special Conditions of Contract Clause [ ][6]][7],

execution of which involves trades available in the RSTCS is further subcontracted (irrespective of any tier), only subcontractors (irrespective of any

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tier) who have satisfied all of the following criteria are engaged for the purposes of execution of such part of the part of the Works:

(i) the subcontractor is the subcontractor stated in the Contractor's latest updated submission of the Subcontractor Management Plan;

(ii) the subcontractor has completed registration under the relevant trade(s) available in the RSTCS before the commencement of the works under the relevant further subcontract; and

(iii) if the subcontractor is registered under a trade [[9], except [[8] Building Maintenance and Interior Fitting-out,][8] Painting, Metal Work, Structural Steelwork, Horticultural Works, Arboriculture Works and Skyrise Greenery Works,][9] in the Register of Specialist Trade Contractors, and if the value of relevant subcontract exceeds the tender limit of Group 1, the subcontractor has been admitted into Group 1 (Advanced) or Group 2, and if the value of relevant subcontract exceeds the tender limit of Group 1 (Advanced), the subcontractor has been admitted into Group 2, before the commencement of the works under the relevant further subcontract.

The Contractor shall also ensure that a subcontractor (irrespective of any tier) who is suspended or in the process of an appeal against his suspension from registration in the RSTCS shall not be engaged for the aforesaid further subcontracting (irrespective of any tier) unless the suspension is lifted before the commencement of the works under the relevant further subcontracts.

Internal Notes:

 # Insert appropriate reference.

1. The numbering of this added sub-clause may vary depending on the type of GCCs used and whether there are other SCC in the contract which also amend GCC Clause 4.

2. Upon the launch of the RSTCS by the CIC on 1 April 2019, seven trades, viz.– (1) Concreting; (2) Concreting Formwork; (3) Curtain Wall; (4) Demolition; (5) Erection of Concrete Precast Component; (6) Reinforcement Bar Fixing; and (7) Scaffolding are included under the Register of Specialist Trade Contractors. One more trade, i.e. (8) Plastering, has been included since 1 January 2021. Two more trades, i.e. (9) Suspended Ceiling and (10) Tower Crane (Erecting, Dismantling, Altering Height), have been included since 1 April 2022. One more trade, i.e. (11) Building Drainage Installation, has been included since 1 September 2022. One more trade, i.e. (15) Levelling and Setting Out, has been included since 1 March 2023. Two more trades, i.e. (13) Building Maintenance and (14) Interior Fitting-out have been included since 1 October 2023. With effect from 1 May 2024, six new trades, i.e. (15) Painting, (16) Metal Work, (17) Structural Steelwork, (18) Horticultural Works, (19) Arboriculture Works and (20) Skyrise Greenery Works will be added to the Register of Specialist Trade Contractors.

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3. Use "subcontract" or "sub-let" as appropriate depending on the type of GCC's used in individual contract.

4. Use as appropriate depending on the type of GCC's used in individual contract.

5. Use when the standard SCC in WBTC No. 25/94 (entitled "Standard Form of Domestic Subcontract for specialist works") is used in individual contract.

6. Insert the number of the SCC in the individual contract which has used the standard SCC for subcontracting in Secretary for Works' memo WB(W) 209/32/110 (entitled "Library of Special Conditions of Contract Clause 14 - Subcontracting") dated 23.3.2001.

7. Use when standard SCC on subcontracting in Secretary for Works' memo WB(W)209/32/110 (entitled "Library of Special Conditions of Contract Clause 14 - Subcontracting") dated 23.3.2001 is used in individual contract.

8. The words in square brackets should be deleted for contracts for which tenders will be invited on or after 1 July, 2024, i.e. the tender limits of Group 1, Group 1 (Advanced) and Group 2 should be observed for all trades including, Building Maintenance and Interior Fitting-out, except Painting, Metal Work, Structural Steelwork, Horticultural Works, Arboriculture Works and Skyrise Greenery Works. (SDEV's memo ref. DEVB(W) 510/94/02 dated 1.12.2022 refers)

9. The words in square brackets should be deleted for contracts for which tenders will be invited on or after 1 February, 2025, i.e. the tender limits of Group 1, Group 1 (Advanced) and Group 2 should be observed for all trades including Painting, Metal Work and Structural Steelwork while the tender limits of Group 1 and Group 2 should be observed for all trades including Horticultural Works, Arboriculture Works and Skyrise Greenery Works.,, (SDEV's memo ref. DEVB(W) 510/94/02 dated 10.4.2024, refers)

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APPENDIX 5.6A NOTES TO TENDERERS AND APPENDIX TO SPECIAL CONDITIONS OF CONTRACT FOR SUBCONTRACTOR MANAGEMENT PLAN (FOR GENERAL CONDITIONS OF CONTRACT (GCC))

The following Notes to Tenderers and Appendix to Special Conditions of Contract shall be included in tenders for all capital and maintenance works contracts:

Notes to Tenderers

NTT C2 Payment for Sub-contractor Management Plan

Tenderers' attention is drawn to Clause [GCT 20]# of General Conditions of Tender, Clause [X]# of Special Conditions of Contract and Clause [X]# of the Particular Specification requiring the submission and quarterly updating of the Subcontractor 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 SMP.

Tenderers should note that there are no separate items in the [*Bills of Quantities/Schedule of Rates] for measurement of "complete Subcontractor Management Plan" and "quarterly updating of Subcontractor Management Plan" and that, in line with the [*General Preambles/Method of Measurement] to the [*Bills of Quantities/Schedule of Rates], the rates in the [*Bills of Quantities/Schedules of Rates] shall cover, inter alia, the provision of implementation of and compliance with the SMP.

NTT C3 Details of Sub-contractor Management Plan

Tenderers' attention is drawn to the Appendix [X]# to Clause [X]# of Special Conditions of Contract on the scope and contents of Subcontractor Management Plan, including but not limited to the details of subcontract(s), the trade and group (if any) of the sub-contractor under the Registered Specialist Trade Contractors Scheme and value of the subcontract(s).

Internal Notes:

 # Insert appropriate reference

*** Delete or amend as appropriate**

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Appendix [X]# to SCC [X]#

Guidelines on Scope and Contents of Subcontractor Management Plan

The Subcontractor Management Plan shall include (but not limited to) the following:

i) Scope of works to be subcontracted including the form and extent of subcontracting arrangement such as labour only, labour and plant, labour and material, plant only, lump sum or any other combination of types. Proof of ownership of construction plant and material shall be addressed. The scope of works to be subcontracted shall comply with the relevant contractual provisions (i.e. the SCC for Limiting the Tiers of Subcontracting).

ii) Particulars of subcontracts (irrespective of tiers) as required under the Template under Table 1.

iii) The Contractor's approach to demand/ensure his subcontractor(s) to a) abstain from sub-contracting the whole of the works sub-contracted to him/them, and b) report upwards his/their subcontracting arrangement and any subsequent changes with written declarations of no "hidden" subcontracts for any part of the Works sub-contracted to any of them.

iv) The Contractor's proposed measures for supervision of the works and monitoring of the performance of subcontractors, particularly the aspects of the works programming, quality and safety of the works and environmental protection.

v) The Contractor's proposed measures for monitoring the performance of the sub-contractors in complying with the requirements in the contract in reporting site accidents.

vi) The Contractor's approach to ensure all sub-contractors, irrespective of tiers, to incorporate the Mandatory Subcontract Conditions for Prohibition of Imposing Administrative Charges for Reporting of Site Accidents and Elimination of Under-reporting of Site Accidents.

(vii) Criteria for selection of subcontractor(s) involving trade(s) not available in the Registered Specialist Trade Contractors Scheme (RSTCS).

(viii) The Contractor's approach to ensure all his subcontractor(s) (irrespective of tiers) to adopt written contracts in his/their subcontracting and that all the sub-contract(s) comply with the requirements as stipulated in the Contract (i.e. SCC for Subcontract conditions) and incorporate the Mandatory Subcontract Conditions for Security of Payment.

(ix) Details of the Contractor's Management Team, as required in the Contract (i.e. the SCC for Contractor's Management Team), employed on direct supervision and management of subcontractor(s). An organization chart showing the responsibilities of the Contractor's direct staff in supervision and management of his subcontractor(s) shall be submitted.

(x) Declaration through the standard declaration form that members of staff on the Contractor's Management Team are prohibited to be given a subcontract to any part of the Works or to have a vested interest in any of the subcontractors irrespective of tiers.

(xi) The Contractor's proposed measures to ensure the compliance with the implementation of the system of payment of wages to the Site Workers as stipulated in the Contract (i.e. SCC for Payment of Wages of Site Workers). The Contractor's proposed measures for ensuring timely payments to subcontractor(s) and payments by subcontractor(s) to subcontractor(s) of lower tiers.

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[NB. The above items are not exhaustive. The Contractor can add any other items, which he considers pertinent to the proper management of his subcontractor(s).]

Internal Note:

[#] Insert appropriate reference

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Appendix [X]# to SCC [X]#

[For contracts without contract measures to prevent non-payment of wages and/or limiting number of tiers of subcontracting]

Guidelines on Scope and Contents of Subcontractor Management Plan

The Subcontractor Management Plan shall include (but not limited to) the following:

i) Scope of works to be subcontracted including the form and extent of subcontracting arrangement such as labour only, labour and plant, labour and material, plant only, lump sum or any other combination of types. Proof of ownership of construction plant and material shall be addressed.

ii) Particulars of subcontracts (irrespective of tiers) as required under the Template under Table 1.

iii) Criteria for selection of subcontractor(s) involving trade(s) not available in the Registered Specialist Trade Contractors Scheme (RSTCS).

iv) Details of the Contractor's own staff employed for direct supervision and management of his subcontractor(s). An organization chart showing the responsibilities of the contractor's direct staff in supervision and management of his subcontractor(s) shall be submitted.

v) The Contractor's approach to demand/ensure his subcontractor(s) to a) abstain from subcontracting the whole of the works subcontracted to him/them, and b) submit written declarations of no "hidden" subcontracting of works.

vi) The Contractor's approach to encourage his subcontractor(s) to adopt written contract(s) in his/their subcontracting and that all the sub-contract(s) comply with the requirements as stipulated in the Contract to incorporate the Mandatory Subcontract Conditions for Security of Payment.

vii) The Contractor's proposed measures to demand his subcontractor(s) to report upward his/their subcontracting arrangement(s) and any subsequent changes.

viii) The Contractor's proposed measures for monitoring and assessing the works programme, quality, safety and environmental performance of his subcontractors.

ix) The Contractor's proposed measures for monitoring the performance of the sub-contractors in complying with the requirements in the Contract in reporting site accidents.

x) The Contractor's approach to ensure all sub-contractors, irrespective of tiers, to incorporate the Mandatory Subcontract Conditions for Prohibition of Imposing Administrative Charges for Reporting of Site Accidents and Elimination of Under-reporting of Site Accidents.

xi) The Contractor's proposed measures for ensuring timely payment to downstream sub-contractor(s) after his payment to his direct subcontractor(s)

xii) The Contractor's approach for monitoring disputes.

xiii) The Contractor's approach for handling complaints from workers on site regarding wages arrears disputes and co-ordinating with Labour Department for prompt action. Contractors are required to keep the Architect/Engineer/Supervising Officer's site representatives updated of the situation.

xiv) The Contractor's proposed measures for maintaining updated daily attendance records of all workers on site.

xv) The Contractor's proposed measures for site security and workers' daily access control if applicable.

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[NB. The above items are not exhaustive. The Contractor can add any other issues, which he considers pertinent to the proper management of his subcontractor(s).]

Internal Note:
 # Insert appropriate reference

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Appendix [X]# to SCC [X]#

Standard Declaration Form by the Contractor
on Compliance with Provisions in
Sub-contractor Management Plan

To: The [Engineer / Maintenance Engineer / Supervising Officer / Maintenance Surveyor]*

Contract No. : _____

Contract Title : _____

In accordance with the Guidelines on Scope and Contents of Subcontractor Management Plan referred in SCC [X]#, I / we declare and confirm that we have complied with and undertake to continue to comply with the following provisions, and declare and confirm that I / we have ensured and undertake to continue to ensure that our members of staff on the Contractor's Management Team as referred in SCC [Y]# are aware of the following provisions:

(a) Members of staff on the Contractor's Management Team are prohibited from being given a subcontract to any part of the Works or having a vested interest in any of the subcontractors irrespective of tiers;

(b) Members of staff on the Contractor's Management Team are required to submit written declarations to the [Engineer / Maintenance Engineer / Supervising Officer / Maintenance Surveyor]* upon his / her written request from time to time or at any time that they do not have a subcontract to any part of the Works or any vested interest in any of the sub-contractors irrespective of tiers.

(Name of the Contractor) _____

(Name of the Signatory) _____

(Position of the Signatory) _____

(Date) _____

Internal Notes:
 # Insert appropriate reference
*** Delete where inappropriate**

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Appendix [X]# to SCC [X]#

Table 1 - Particulars of Sub-contracts (1)

No.	Contract No.	Contract Title	Contract Sum ($)	Contact Point	Company Name of Sub-contractor	Commencement Date	Program	No. of Tier	Form of Sub-contractor	Type(2) (RSTC or RS)	Trade(3)	Specialty(3) (NA for RSTC)	Registration No.	Expiry Date	Value(4)	Grouping(5) (1, 2 or NA)
e.g.	CV/XXXX/XX	Construction of XXX	100,000,000	Mr. XXX, E/XX	ABC Company Ltd.	1-10-2020	9 months	1	labour, plant & material	RSTC	Concreting Formwor	NA	XXXXXX	31-3-2022	E	1
	CV/XXXX/XX	Construction of XXX	100,000,000	Mr. XXX, E/XX	123 Company Ltd.	1-10-2020	12 months	2	labour & plant	RS	Fire Services Installati	ervices pipe work	XXXXXX	31-3-2022	D	NA
1																
2																

Notes:

(1) Apart from the above information, the Contractor shall provide additional information and supporting document upon requested.

(2) RSTC refers to the Registered Specialist Trade Contractors under the Registered Specialist Trade Contractors Scheme (RSTCS) of the Construction Industry Council (CIC).

RS refers to the Registered Subcontractors under the RSTCS.

(3) One row for one particular trade or specialty. Sub-contract with multiple trades or specialties shall be reported individually in several rows. For details of the classification of trade and specialty, please refer to the website of the RSTC c.cic.hk managed by the CIC.
RSTCS covers 20_ designated trade groups, viz. (1) Concreting, (2) Concreting Formwork, (3) Curtain Wall, (4) Demolition, (5) Erection of Concrete Precast Component, (6) Reinforcement Bar Fixing, (7) Scaffolding, (8) Plastering, ed Ceiling, (10) Tower Crane (Erecting, Dismantling, Altering Height), (11) Building Drainage Installation, (12) Levelling and Setting Out, (13) Building Maintenance, (14) Interior Fitting-out, (15) Painting, (16) Metal Work, (17) Structural Steelwork, (18) Ho Works, (19) Arboriculture Works and (20) Skyrise Greenery Works.

(4) One value for one particular trade group and specialty. The ranges of Value A to G are shown below:

A: Value < $1M

B: $1M ≤ Value < $3M
C: $3M ≤ Value < $6M
D: $6M ≤ Value < $15M
E: $15M ≤ Value < $30M
F: $30M ≤ Value < $50M
G: Value ≥ $50M

(5) Group 1, Group 1A and Group 2 refer to the tender limits set by CIC for the 20_ designated trades mentioned in (3) above, which are only applicable to RSTC. For details of the tender limits, please refer to the website of the RSTC tc.cic.hk managed by the CIC

Internal Note:
Insert appropriate reference

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APPENDIX 5.6B NOTES TO TENDERERS AND ADDITIONAL CONDITIONS OF CONTRACT FOR ENGAGEMENT OF SUBCONTRACTORS REGISTERED FROM THE "REGISTERED SPECIALIST TRADE CONTRACTORS SCHEME" (FOR NEW ENGINEERING CONTRACT (NEC) – ENGINEERING AND CONSTRUCTION CONTRACT (ECC))

The following Notes to Tenderers and Additional Conditions of Contract shall be included in tenders for all capital works contracts:

Notes to Tenderers

NTT C1 Engagement of Subcontractors who are Registered under the Respective Trades and Groups available in the Registered Specialist Trade Contractors Scheme (RSTCS)

Tenderers' attention is drawn to the Clause [C6]# of the *additional conditions of contract* requiring the engagement of subcontractors who are registered under the respective trades and groups available in the Registered Specialist Trade Contractors Scheme (RSTCS).

Additional Conditions of Contract

[C6]# Engagement of Subcontractors who are registered under the respective trades and groups available in the Registered Specialist Trade Contractors Scheme (RSTCS)

(1) For the purpose of this Clause, the following words and expressions shall have the meaning hereby assigned to them:

"RSTCS[1]" means the Registered Specialist Trade Contractors Scheme managed by the Construction Industry Council and as referred to in the Rules and Procedures applicable to the aforesaid Registered Specialist Trade Contractors Scheme.

"Group 1", "Group 1 (Advanced)" and "Group 2" mean the classification of contractors into Group 1, Group 1 (Advanced) and Group 2 under each trade of the Register of Specialist Trade Contractors.

["Gondola (Permanent)" and "Gondola (Temporary)" mean the trade of"gondola (permanent)" and "gondola (temporary)" respectively under the RSTCS as promulgated by the Construction Industry Council from time to time.][3]

["Levelling and Setting Out" means the trade of "levelling and setting out" under the RSTCS as promulgated by the Construction Industry Council from time to time.][4]

["Building Maintenance" and "Interior Fitting-out" mean the trade of "building maintenance" and "interior fitting-out" respectively under the RSTCS as promulgated by the Construction Industry Council from time to time.][3]

["Painting", "Metal Work", "Structural Steelwork", "Horticultural Works", "Arboriculture Works" and "Skyrise Greenery Works" mean the trade of

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"painting", "metal work", "structural steelwork", "horticultural works", "arboriculture works" and "skyrise greenery works" respectively under the RSTCS as promulgated by the Construction Industry Council from time to time.][4]

(2) Where the *Contractor* is to subcontract part of the *works*, performance of which involves trades available in the RSTCS, the *Contractor* shall only engage, for the purposes of execution of such part of the *works*, a Subcontractor who has satisfied all of the following criteria:

(i) the Subcontractor is the subcontractor stated in the *Contractor*'s latest updated submission of the Subcontractor Management Plan;

(ii) the Subcontractor has completed registration under the relevant trades available in the RSTCS before the commencement of the work under the relevant subcontracts; and

(iii) if the Subcontractor is registered under a trade [[4], except [[3] Building Maintenance and Interior Fitting-out,][3] Painting, Metal Work, Structural Steelwork, Horticultural Works, Arboriculture Works and Skyrise Greenery Works,][4] in the Register of Specialist Trade Contractors and if the value of relevant subcontract exceeds the tender limit of Group 1, the Subcontractor has been admitted into Group 1 (Advanced) or Group 2, and if the value of relevant subcontract exceeds the tender limit of Group 1 (Advanced), the Subcontractor has been admitted into Group 2, before the commencement of the work under the relevant subcontract.

The *Contractor* shall not engage a Subcontractor who is suspended or in the process of an appeal against his suspension from registration in the RSTCS unless the suspension is lifted before the commencement of the work under the relevant subcontracts. The foregoing shall also apply to the *Contractor*'s engagement of Specialist Subcontractors in Clause [C3][2] of these *additional conditions of contract*.

(3) The *Contractor* shall ensure that where any part of the part of the *works* subcontracted to a Subcontractor engaged under sub-clause (2) performance of which involves trades available in the RSTCS is further subcontracted (irrespective of any tier), only subcontractors (irrespective of any tier) who have satisfied all of the following criteria are engaged for the purposes of execution of such part of the part of the *works*:

(i) the Subcontractor is the subcontractor stated in the *Contractor*'s latest updated submission of the Subcontractor Management Plan;

(ii) the Subcontractor has completed registration under the relevant trades available in the RSTCS before the commencement of the work under the relevant further subcontracts; and

(iii) if the Subcontractor is registered under a trade [[4], except [[3] Building Maintenance and Interior Fitting-out,][5] Painting, Metal Work, Structural Steelwork, Horticultural Works, Arboriculture Works and Skyrise Greenery Works,][4] in the Register of Specialist Trade Contractors, and if the value of relevant subcontract exceeds the tender limit of Group 1, the Subcontractor has been admitted into Group 1 (Advanced) or Group 2, and if the value of

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relevant subcontract exceeds the tender limit of Group 1 (Advanced), the Subcontractor has been admitted into Group 2, before the commencement of the work under the relevant subcontract.

The *Contractor* shall also ensure that a Subcontractor (irrespective of any tier) who is suspended or in the process of an appeal against his suspension from registration in the RSTCS shall not be engaged for the aforesaid further subcontracting (irrespective of any tier) unless the suspension is lifted before the commencement of the work under the relevant further subcontracts.

Internal Notes:

 # Insert appropriate reference.

1. **Upon the launch of the RSTCS by the CIC on 1 April 2019, seven trades, viz. (1) Concreting; (2) Concreting Formwork; (3) Curtain Wall; (4) Demolition; (5) Erection of Concrete Precast Component; (6) Reinforcement Bar Fixing; and (7) Scaffolding are included under the Register of Specialist Trade Contractors. One more trade, i.e. (8) Plastering, has been included since 1 January 2021. Two more trades, i.e. (9) Suspended Ceiling and (10) Tower Crane (Erecting, Dismantling, Altering Height), have been included since 1 April 2022. One more trade, i.e. (11) Building Drainage Installation, has been included since 1 September 2022. One more trade, i.e. (12) Levelling and Setting Out, has been included since 1 March 2023.,, Two more trades, i.e. (13) Building Maintenance and (14) Interior Fitting-out have been included since 1 October 2023. With effect from 1 May 2024, six new trades, i.e. (15) Painting, (16) Metal Work, (17) Structural Steelwork, (18) Horticultural Works, (19) Arboriculture Works and (20) Skyrise Greenery Works will be added to the Register of Specialist Trade Contractors.**

2. **Insert appropriate reference which refers to Clause C3 of Library of Standard Additional Conditions of Contract for NEC ECC regarding "Specialist Subcontractors".**

3. **The words in square brackets should be deleted for contracts for which tenders will be invited on or after 1 October 2023, i.e. the tender limits of Group 1, Group 1 (Advance) and Group 2 should be observed for all trades including, Building Maintenance, and Interior Fitting-out except Painting, Metal Work, Structural Steelwork, Horticultural Works, Arboriculture Works and Skyrise Greenery Works. (SDEV's memo ref. DEVB(W)510/94/02 dated 6.9.2023, refers)**

4. **The words in square brackets should be deleted for contracts for which tenders will be invited on or after 1 February 2024, i.e. the tender limits of Group 1, Group 1 (Advanced) and Group 2 should be observed for all trades including, Painting, Metal Work and Structural Steelwork while the tender limits of Group 1 and Group 2 should be observed for all trades including Horticultural Works, Arboriculture Works and Skyrise Greenery Works. (SDEV's memo ref. DEVB(W) 510/94/02 dated 10.4.2024, refers)**

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APPENDIX 5.6B1 NOTES TO TENDERERS AND ADDITIONAL CONDITIONS OF CONTRACT FOR ENGAGEMENT OF SUBCONTRACTORS REGISTERED FROM THE "REGISTERED SPECIALIST TRADE CONTRACTORS SCHEME" (FOR NEW ENGINEERING CONTRACT (NEC) – ENGINEERING AND CONSTRUCTION CONTRACT (ECC) HONG KONG EDITION)

The following Notes to Tenderers and Additional Conditions of Contract shall be included in tenders for all capital works contracts:

Notes to Tenderers

NTT C1 Engagement of Subcontractors who are Registered under the Respective Trades and Groups available in the Registered Specialist Trade Contractors Scheme (RSTCS)

Tenderers' attention is drawn to the Clause [V:4]# of the *additional conditions of contract* requiring the engagement of subcontractors who are registered under the respective trades and groups available in the Registered Specialist Trade Contractors Scheme (RSTCS).

Additional Conditions of Contract

V:4 Subcontractor Registration Scheme

(1) For the purpose of this Clause,

(a) "RSTCS" means the Registered Specialist Trade Contractors Scheme managed by the Construction Industry Council and as referred to in the Rules and Procedures applicable to the aforesaid Scheme.

(b) "Register of Specialist Trade Contractors" means the register of specialist trade contractors compiled by the Construction Industry Council for the purpose of the RSTCS.

(c) "Group 1", "Group 1 (Advanced)" and "Group 2" mean the classification of contractors into Group 1, Group 1 (Advanced) and Group 2 under each trade of the Register of Specialist Trade Contractors.

(d) [Note 1 "Painting", "Metal Work", "Structural Steelwork", "Horticultural Works", "Arboriculture Works" and "Skyrise Greenery Works" mean the trade of "painting", "metal work", "structural steelwork", "horticultural works", "arboriculture works" and "skyrise greenery works" respectively under the Register of Specialist Trade Contractors.] Note 1

(2) If the *Contractor* is to subcontract part of the *works*, except the part of the *works* to be done by a Specialist Contractor stated in ACC Clause V:5, involving trades available in the RSTCS, the *Contractor* appoints a Subcontractor

(a) that is identified as a subcontractor in the latest SMP,

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(b) that is registered under the relevant trade in the RSTCS before the subcontract work starts, and

(c) if the Subcontractor is registered under a trade [Note 1, except Painting, Metal Work, Structural Steelwork, Horticultural Works and Skyrise Greenery Works,]Note 1 in the Register of Specialist Trade Contractors, that has been admitted into Group 1 (Advanced) or Group 2 before the subcontract work starts if the value of the subcontract exceeds the tender limit of Group 1 and that has been admitted into Group 2 before the subcontract work starts if the value of the subcontract exceeds the tender limit of Group 1 (Advanced).

The *Contractor* does not appoint a Subcontractor that is suspended or in the process of appealing against its suspension from registration unless the suspension will be lifted before the subcontract work starts.

(3) The *Contractor* ensures that a Tier Subcontractor that has been subcontracted with part of the *works*, except the part of the *works* to be done by a Specialist Contractor stated in ACC Clause V:5, involving trades available in the RSTCS

(a) is identified as a Tier Subcontractor in the latest SMP,

(b) is registered under the relevant trade in the RSTCS before the subsubcontract work starts, and

(c) if the Tier Subcontractor is registered under a trade [Note 1, except Painting, Metal Work, Structural Steelwork, Horticultural Works and Skyrise Greenery Works,]Note 1 in the Register of Specialist Trade Contractors, is admitted into Group 1 (Advanced) or Group 2 before the subsubcontract work starts if the value of the subsubcontract exceeds the tender limit of Group 1 and is admitted into Group 2 before the subsubcontract work starts if the value of the subsubcontract exceeds the tender limit of Group 1 (Advanced).

The Tier Subcontractor is not appointed if it is suspended or in the process of appealing against its suspension from registration unless the suspension will be lifted before the subsubcontract work starts.

Notes:

1. The words in square brackets should be deleted for contracts for which tenders will be invited on or after 1 February 2025, i.e. the tender limits of Group 1, Group 1 (Advanced) and Group 2 should be observed for all trades including Painting, Metal Work and Structural Steelwork while the tender limits of Group 1 and Group 2 should be observed for all trades including Horticultural Works, Arboriculture Works and Skyrise Greenery Works. (SDEV's memo ref. DEVB(W) 510/94/02 dated 10 April 2024 refers)

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APPENDIX 5.6C NOTES TO TENDERERS AND APPENDIX TO ADDITIONAL CONDITIONS OF CONTRACT FOR SUBCONTRACTOR MANAGEMENT PLAN (FOR NEW ENGINEERING CONTRACT (NEC) - ENGINEERING AND CONSTRUCTION CONTRACT (ECC))

The following Notes to Tenderers and Appendix to Additional Conditions of Contract shall be included in tenders for all capital works contracts:

Notes to Tenderers

NTT C2 Payment for Subcontractor Management Plan

Tenderers' attention is drawn to Clause [GCT 20]# of General Conditions of Tender, Clause [C5]# of *additional conditions of contract* and Clause [X]# of the Particular Specification requiring the submission and quarterly updating of the Subcontractor 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 SMP.

Tenderers should note that there are no separate items in the [bill of quantities* / **activity schedule*] for "submission of Subcontractor Management Plan" and "quarterly updating of Subcontractor Management Plan". The prices in the [**bill of quantities* / **activity schedule*] shall cover, inter alia, the provision of implementation of and compliance with the SMP.**

NTT C3 Details of Subcontractor Management Plan

Tenderers' attention is drawn to the Appendix [X]# to Clause [C5]# of *additional conditions of contract* on the scope and contents of Subcontractor Management Plan, including but not limited to the details of subcontract(s), the trade and group (if any) of the subcontractor under the Registered Specialist Trade Contractors Scheme and value of the subcontract(s).

Internal Notes:

 # Insert appropriate reference

*** Delete or amend as appropriate**

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Appendix [X]# to ACC [C5]#

Guidelines on Scope and Contents of Subcontractor Management Plan

The Subcontractor Management Plan shall include (but not limited to) the following:

i) **Scope of works to be subcontracted including the form and extent of subcontracting arrangement such as labour only, labour and plant, labour and material, plant only, lump sum or any other combination of types. Proof of ownership of construction plant and material shall be addressed. The scope of works to be subcontracted shall comply with the relevant contractual provisions (i.e. the ACC for Limiting the Tiers of Subcontracting).**

ii) **Particulars of subcontracts (irrespective of tiers) as required under the Template under Table 1.**

iii) **The *Contractor*'s approach to demand/ensure his subcontractor(s) to a) abstain from subcontracting the whole of the works subcontracted to him/them, and b) report upwards his/their subcontracting arrangement and any subsequent changes with written declarations of no "hidden" subcontracts for any part of the *works* subcontracted to any of them.**

iv) **The *Contractor*'s proposed measures for supervision of the works and monitoring of the performance of subcontractors, particularly the aspects of the works programming, quality and safety of the works and environmental protection.**

v) **The *Contractor's* proposed measures for monitoring the performance of the subcontractors in complying with the requirements in the contract in reporting site accidents.**

vi) **The *Contractor's* approach to ensure all subcontractors, irrespective of tiers, to incorporate the Mandatory Subcontract Conditions for Prohibition of Imposing Administrative Charges for Reporting of Site Accidents and Elimination of Under-reporting of Site Accidents.**

vii) **Criteria for selection of subcontractor(s) involving trade(s) not available in the Registered Specialist Trade Contractors Scheme (RSTCS).**

viii) **The *Contractor*'s approach to ensure all his subcontractor(s) (irrespective of tiers) to adopt written contracts in his/their subcontracting and that all the subcontract(s) comply with the requirements as stipulated in the Contract (i.e. ACC for Subcontract conditions) and incorporate the Mandatory Subcontract Conditions for Security of Payment.**

ix) **Details of the *Contractor*'s Management Team, as required in the Contract (i.e. the ACC for *Contractor*'s Management Team), employed on direct supervision and management of subcontractor(s). An organization chart showing the responsibilities of the *Contractor*'s direct staff in supervision and management of his subcontractor(s) shall be submitted.**

x) **Declaration through the standard declaration form that members of staff on the *Contractor*'s Management Team are prohibited to be given a subcontract to any part of the *works* or to have a vested interest in any of the subcontractors irrespective of tiers.**

xi) **The *Contractor*'s proposed measures to ensure the compliance with the implementation of the system of payment of wages to the Site Workers as stipulated in the Contract (i.e. ACC for Payment of Wages of Site Workers). The *Contractor*'s proposed measures for ensuring timely payments to subcontractor(s) and payments by subcontractor(s) to subcontractor(s) of lower tiers.**

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[NB. The above items are not exhaustive. The Contractor can add any other items, which he considers pertinent to the proper management of his subcontractor(s).]

Internal Note:
[#] Insert appropriate reference

Go to Table of Content >>> Go to Table of Content >>> Go to Table of Content

Appendix [X]# to ACC [C5]#

[For contracts without contract measures to prevent non-payment of wages and/or limiting number of tiers of subcontracting]

Guidelines on Scope and Contents of Subcontractor Management Plan

The Subcontractor Management Plan shall include (but not limited to) the following:

i) Scope of works to be subcontracted including the form and extent of subcontracting arrangement such as labour only, labour and plant, labour and material, plant only, lump sum or any other combination of types. Proof of ownership of construction plant and material shall be addressed.

ii) Particulars of subcontracts (irrespective of tiers) as required under the Template under Table 1.

iii) Criteria for selection of subcontractor(s) involving trade(s) not available in the Registered Specialist Trade Contractors Scheme (RSTCS).

iv) Details of the *Contractor*'s own staff employed for direct supervision and management of his subcontractor(s). An organization chart showing the responsibilities of the contractor's direct staff in supervision and management of his subcontractor(s) shall be submitted.

v) The *Contractor*'s approach to demand/ensure his subcontractor(s) to a) abstain from subcontracting the whole of the works subcontracted to him/them, and b) submit written declarations of no "hidden" subcontracting of works.

vi) The *Contractor's* approach to encourage his subcontractor(s) to adopt written contract(s) in his/their subcontracting and that all the subcontract(s) comply with the requirements as stipulated in this contract to incorporate the Mandatory Subcontract Conditions for Security of Payment.

vii) The *Contractor*'s proposed measures to demand his subcontractor(s) to report upward his/their subcontracting arrangement(s) and any subsequent changes.

viii) The *Contractor*'s proposed measures for monitoring and assessing the works programme, quality, safety and environmental performance of his subcontractors.

ix) The *Contractor's* proposed measures for monitoring the performance of the subcontractors in complying with the requirements in the contract in report in site accidents.

x) The *Contractor's* approach to ensure all subcontractors, irrespective of tiers, to incorporate the Mandatory Subcontract Conditions for Prohibition of Imposing Administrative Charges for Reporting of Site Accidents and Elimination of Under-reporting of Site Accidents.

xi) The *Contractor*'s proposed measures for ensuring timely payment to downstream subcontractor(s) after his payment to his direct subcontractor(s).

xii) The *Contractor*'s approach for monitoring disputes.

xiii) The *Contractor*'s approach for handling complaints from workers on site regarding wages arrears disputes and co-ordinating with Labour Department for prompt action. *Contractors* are required to keep the Architect/Engineer/Supervising Officer's site representatives updated of the situation.

xiv) The *Contractor*'s proposed measures for maintaining updated daily attendance records of all workers on site.

xv) The *Contractor*'s proposed measures for site security and workers' daily access control if applicable.

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[NB. The above items are not exhaustive. The Contractor can add any other issues, which he considers pertinent to the proper management of his subcontractor(s).]

Internal Note:
[#] Insert appropriate reference

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Appendix [X]# to ACC [C5]#

Standard Declaration Form by the *Contractor* on Compliance with Provisions in Subcontractor Management Plan

To: The *Project Manager*

Contract No. : _____

Contract Title : _____

In accordance with the Guidelines on Scope and Contents of Subcontractor Management Plan referred in ACC [C5]#, I / we declare and confirm that we have complied with and undertake to continue to comply with the following provisions, and declare and confirm that I / we have ensured and undertake to continue to ensure that our members of staff on the *Contractor*'s Management Team as referred in ACC [D1]# are aware of the following provisions:

(a) Members of staff on the *Contractor*'s Management Team are prohibited from being given a subcontract to any part of the *works* or having a vested interest in any of the subcontractors irrespective of tiers;

(b) Members of staff on the *Contractor*'s Management Team are required to submit written declarations to the *Project Manager* upon his / her written request from time to time or at any time that they do not have a subcontract to any part of the *works* or any vested interest in any of the subcontractors irrespective of tiers.

(Name of the *Contractor*) _____

(Name of the Signatory) _____

(Position of the Signatory) _____

(Date) _____

Internal Note:

 # Insert appropriate reference

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Appendix [X]# to ACC [C5]#

Table 1 - Particulars of Subcontracts(1)

No.	Contract No.	Contract Title	Contract Sum ($)	Contact Point	Company Name of Subcontractor	Commencement Date	Program	No. of Tier	Form of Subcontractor	Type(2) (RSTC or RS)	Trad	Specialty(3) (NA for RSTC)	Registration No.	Expiry Date	Value(4)	Grouping(5) (1, 2 or NA)
e.g.	CV/XXXX/XX	Construction of XXX	100,000,000	Mr. XXX, E/XX	ABC Company Ltd.	1-10-2020	9 months	1	labour, plant & material	RSTC	Concreting	NA	XXXXXX	31-3-2022	E	1
	CV/XXXX/XX	Construction of XXX	100,000,000	Mr. XXX, E/XX	123 Company Ltd.	1-10-2020	12 months	2	labour & plant	RS	Fire Services	Fire services pipe work	XXXXXX	31-3-2022	D	NA
1																
2																

Notes:

(1) Apart from the above information, the *Contractor* shall provide additional information and supporting document upon requested.

(2) RSTC refers to the Registered Specialist Trade Contractors under the Registered Specialist Trade Contractors Scheme (RSTCS) of the Construction Industry Council (CIC).

RS refers to the Registered Subcontractors under the RSTCS.

(3) One row for one particular trade or specialty. Subcontract with multiple trades or specialties shall be reported individually in several rows. For details of the classification of trade and specialty, please refer to the website of the RSTCS cic.hk managed by the CIC. RSTCS covers 20_ designated trade groups, viz. (1) Concreting, (2) Concreting Formwork, (3) Curtain Wall, (4) Demolition, (5) Erection of Concrete Precast Component, (6) Reinforcement Bar Fixing, (7) Scaffolding, (8) Plastering, (9) Suspended Ceiling, (10) Tower Crane (Erecting, Dismantling, Altering Height), (11) Building Drainage Installation, (12) Levelling and Setting Out, (13) Building Maintenance,(14) Interior Fitting-out, (15) Painting, (16) Metal tructural Steelwork, (18) Horticultural Works, (19) Arboriculture Works and (20) Skyrise Greenery Works.

(4) One value for one particular trade group and specialty. The ranges of Value A to G are shown below:

A: Value < $1M

B: $1M ≤ Value < $3M
C: $3M ≤ Value < $6M
D: $6M ≤ Value < $15M
E: $15M ≤ Value < $30M
F: $30M ≤ Value < $50M
G: Value ≥ $50M

(5) Group 1, Group 1A and Group 2 refer to the tender limits set by CIC for the 20_ designated trades mentioned in (3) above, which are only applicable to RSTC. For details of the tender limits, please refer to the website of the RSTCS cic.hk managed by the CIC

Internal Note:

Insert appropriate reference

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APPENDIX 5.6C1 NOTES TO TENDERERS AND APPENDIX TO ADDITIONAL CONDITIONS OF CONTRACT FOR SUBCONTRACTOR MANAGEMENT PLAN (FOR NEW ENGINEERING CONTRACT (NEC) - ENGINEERING AND CONSTRUCTION CONTRACT (ECC) HONG KONG EDITION)

The following Notes to Tenderers and Appendix to Additional Conditions of Contract shall be included in tenders for all capital works contracts:

Notes to Tenderers

NTT C2 Payment for Subcontractor Management Plan

Tenderers' attention is drawn to Clause [GCT 20]# of General Conditions of Tender, Clause [V:2]# of *additional conditions of contract* and Clause [X]# of the Particular Specification requiring the submission and quarterly updating of the Subcontractor 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 SMP.

Tenderers should note that there are no separate items in the [bill of quantities* / **activity schedule*] for "submission of Subcontractor Management Plan" and "quarterly updating of Subcontractor Management Plan". The prices in the [**bill of quantities* / **activity schedule*] shall cover, inter alia, the provision of implementation of and compliance with the SMP.**

NTT C3 Details of Subcontractor Management Plan

Tenderers' attention is drawn to the Appendix [X]# to Clause [V:2]#

Internal Notes:

 # Insert appropriate reference

*** Delete or amend as appropriate**

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Appendix [X]# to ACC [V:2]#

[For contracts with contract measures to prevent non-payment of wages]

Guidelines on Scope and Contents of Subcontractor Management Plan

The Subcontractor Management Plan shall include (but not limited to) the following:

(i) **Scope of works to be subcontracted including the form and extent of subcontracting arrangement such as labour only, labour and plant, labour and material, plant only, lump sum or any other combination of types. Proof of ownership of construction plant and material shall be addressed. The scope of works to be subcontracted shall comply with the relevant contractual provisions (i.e. ACC Clause V:3 on Limiting Tiers of Subcontracting).**

(ii) **Particulars of subcontracts (irrespective of tiers) as required under the Template under Table 1.**

(iii) **The *Contractor*'s approach to demand/ensure its Subcontractor(s) to a) abstain from subcontracting the whole of the works subcontracted to it/them, and b) report upwards its/their subcontracting arrangement and any subsequent changes with written declarations of no "hidden" subcontracts for any part of the *works* subcontracted to any of them.**

(iv) **The *Contractor*'s proposed measures for supervision of the works and monitoring of the performance of Subcontractors, particularly the aspects of the works programming, quality and safety of the works and environmental protection.**

(v) **The C*ontractor*'s proposed measures for monitoring the performance of the Subcontractors in complying with the requirements in the contract in reporting site accidents.**

(vi) **The *Contractor*'s approach to ensure all Tier Subcontractors to incorporate the Mandatory Subcontract Conditions for Prohibition of Imposing Administrative Charges for Reporting of Site Accidents and Elimination of Under-reporting of Site Accidents as stipulated in the Appendix to ACC Clause V:7(1)(i).**

(vii) **Criteria for selection of Subcontractor(s) involving trade(s) not available in the Registered Specialist Trade Contractors Scheme (RSTCS).**

(viii) **The *Contractor*'s approach to ensure all its Tier Subcontractor(s) to adopt written contracts in its/their subcontracting and that all the subcontract(s) comply with the requirements as stipulated in the contract (i.e. ACC Clause V:7 on Subcontract Conditions) and incorporate the Mandatory Subcontract Conditions for Security of Payment as stipulated in the Appendix to ACC Clause VIII:1.**

(ix) **Details of the *Contractor*'s Management Team, as required in the contract (i.e. ACC Clause IV:1 on *Contractor*'s Management Team), employed on direct supervision and management of Subcontractor(s). An organization chart showing the responsibilities of the *Contractor*'s direct staff in supervision and management of its Subcontractor(s) shall be submitted.**

(x) **Declaration through the standard declaration form that members of staff on the *Contractor*'s Management Team are prohibited to be given a subcontract to any part of the *works* or to have a vested interest in any of the Tier Subcontractor(s).**

(xi) **The *Contractor*'s proposed measures to ensure the compliance with the implementation of the system of payment of wages to the Site Workers as stipulated in the contract (i.e. ACC Clause IV:4 on Non-Payment of Wages and Section 6.7 of**

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the Scope). The *Contractor*'s proposed measures for ensuring timely payments to Subcontractor(s) and payments by Subcontractor(s) to subcontractor(s) of lower tiers.

[NB. The above items are not exhaustive. The Contractor can add any other items, which it considers pertinent to the proper management of its Subcontractor(s).]

Internal Note:
 # Insert appropriate reference

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Appendix [X]# to ACC [V:2]#

[For contracts without contract measures to prevent non-payment of wages and/or limiting number of tiers of subcontracting]

Guidelines on Scope and Contents of Subcontractor Management Plan

The Subcontractor Management Plan shall include (but not limited to) the following:

i) Scope of works to be subcontracted including the form and extent of subcontracting arrangement such as labour only, labour and plant, labour and material, plant only, lump sum or any other combination of types. Proof of ownership of construction plant and material shall be addressed. The scope of works to be subcontracted shall comply with the relevant contractual provisions (i.e. ACC Clause V:3 on Limiting Tiers of Subcontracting).

ii) Particulars of subcontracts (irrespective of tiers) as required under the Template under Table 1.

iii) Criteria for selection of Subcontractor(s) involving trade(s) not available in the Registered Specialist Trade Contractors Scheme (RSTCS).

iv) Details of the *Contractor*'s own staff employed for direct supervision and management of its Subcontractor(s). An organization chart showing the responsibilities of the contractor's direct staff in supervision and management of its Subcontractor(s) shall be submitted.

v) The *Contractor*'s approach to demand/ensure its Subcontractor(s) to a) abstain from subcontracting the whole of the works subcontracted to it/them, and b) submit written declarations of no "hidden" subcontracting of works.

vi) The *Contractor*'s approach to encourage its Subcontractor(s) to adopt written contract(s) in its/their subcontracting and that all the subcontract(s) comply with the requirements as stipulated in the contract (i.e. ACC Clause V:7 on Subcontract Conditions other than ACC Clause V:7(1)(b) on Payment of Site Workers' Wages) and incorporate the Mandatory Subcontract Conditions for Security of Payment as stipulated in the Appendix to ACC Clause VIII:1.

vii) The *Contractor*'s proposed measures to demand its Subcontractor(s) to report upward its/their subcontracting arrangement(s) and any subsequent changes.

viii) The *Contractor*'s proposed measures for monitoring and assessing the works programme, quality, safety and environmental performance of its Subcontractors.

ix) The C*ontractor*'s proposed measures for monitoring the performance of the Subcontractors in complying with the requirements in the contract in reporting site accidents.

x) The *Contractor*'s approach to ensure all Tier Subcontractors to incorporate the Mandatory Subcontract Conditions for Prohibition of Imposing Administrative Charges for Reporting of Site Accidents and Elimination of Under-reporting of Site Accidents as stipulated in the Appendix to ACC Clause V:7(1)(i).

xi) The *Contractor*'s proposed measures for ensuring timely payment to downstream subcontractor(s) after its payment to Subcontractor(s).

xii) The *Contractor*'s approach for monitoring disputes.

xiii) The *Contractor*'s approach for handling complaints from workers on site regarding wages arrears disputes and co-ordinating with Labour Department for prompt action. The *Contractor* is required to keep the *Project Manager*'s site

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representatives updated of the situation.

xiv) The *Contractor*'s proposed measures for maintaining updated daily attendance records of all workers on site.

xv) The *Contractor*'s proposed measures for site security and workers' daily access control if applicable.

[NB. The above items are not exhaustive. The Contractor can add any other issues, which he considers pertinent to the proper management of his subcontractor(s).]

Internal Note:

[#] Insert appropriate reference

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Appendix [X]# to ACC [V:2]#

Standard Declaration Form by the *Contractor*
on Compliance with Provisions in
Subcontractor Management Plan

To: The *Project Manager*

Contract No. : _____

Contract Title : _____

In accordance with the Guidelines on Scope and Contents of Subcontractor Management Plan referred in ACC [V:2]#, I / we declare and confirm that we have complied with and undertake to continue to comply with the following provisions, and declare and confirm that I / we have ensured and undertake to continue to ensure that our members of staff on the *Contractor*'s Management Team as referred in ACC [IV:1]# are aware of the following provisions:

(a) Members of staff on the *Contractor*'s Management Team are prohibited from being given a subcontract to any part of the *works* or having a vested interest in any of the Tier Subcontractors;

(b) Members of staff on the *Contractor*'s Management Team are required to submit written declarations to the *Project Manager* upon its written request from time to time or at any time that they do not have a subcontract to any part of the *works* or any vested interest in any of the Tier Subcontractors.

(Name of the *Contractor*) _____

(Name of the Signatory) _____

(Position of the Signatory) _____

(Date) _____

Internal Note:
 # Insert appropriate reference

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Appendix [X]# to ACC [C5]#

Table 1 - Particulars of Subcontracts(1)

No.	Contract No.	Contract Title	Contract Sum ($)	Contact Point	Company Name of Subcontractor	Commencement Date	Program	No. of Tier	Form of Subcontractor	Type(2) (RSTC or RS)	Trad	Specialty(3) (NA for RSTC)	Registration No.	Expiry Date	Value(4)	Grouping(5) (1, 2 or NA)
e.g.	CV/XXXX/XX	Construction of XXX	100,000,000	Mr. XXX, E/XX	ABC Company Ltd.	1-10-2020	9 months	1	labour, plant & material	RSTC	Concreting F	NA	XXXXXX	31-3-2022	E	1
	CV/XXXX/XX	Construction of XXX	100,000,000	Mr. XXX, E/XX	123 Company Ltd.	1-10-2020	12 months	2	labour & plant	RS	Fire Services	Fire services pipe work	XXXXXX	31-3-2022	D	NA
1																
2																

Notes:

(1) Apart from the above information, the *Contractor* shall provide additional information and supporting document upon requested.

(2) RSTC refers to the Registered Specialist Trade Contractors under the Registered Specialist Trade Contractors Scheme (RSTCS) of the Construction Industry Council (CIC).

RS refers to the Registered Subcontractors under the RSTCS.

(3) One row for one particular trade or specialty. Subcontract with multiple trades or specialties shall be reported individually in several rows. For details of the classification of trade and specialty, please refer to the website of the RS .rstc.cic.hk managed by the CIC. RSTCS covers 21 designated trade groups, viz. (1) Concreting, (2) Concreting Formwork, (3) Curtain Wall, (4) Demolition, (5) Erection of Concrete Precast Component, (6) Reinforcement Bar Fixing, (7) Scaffolding, (8) [illegible] (9) Suspended Ceiling, (10) Tower Crane (Erecting, Dismantling, Altering Height), (11) Building Drainage Installation, (12) Levelling and Setting Out, (13) Building Maintenance,(14) Interior Fitting-out, (15) Painting, (16) M 17) Structural Steelwork, (18) Horticultural Works, (19) Arboriculture Works , (20) Skyrise Greenery Works and (21) Truss-out Scaffolding.

(4) One value for one particular trade group and specialty. The ranges of Value A to G are shown below:

A: Value < $1M
B: $1M ≤ Value < $3M
C: $3M ≤ Value < $6M
D: $6M ≤ Value < $15M
E: $15M ≤ Value < $30M
F: $30M ≤ Value < $50M
G: Value ≥ $50M

(5) Group 1, Group 1A and Group 2 refer to the tender limits set by CIC for the 21 designated trades mentioned in (3) above, which are only applicable to RSTC. For details of the tender limits, please refer to the website of the R w.rstc.cic.hk managed by the CIC

Internal Note:

Insert appropriate reference

Amd No. 2/2025

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APPENDIX 5.6D NOTES TO TENDERERS AND ADDITIONAL CONDITIONS OF CONTRACT FOR ENGAGEMENT OF SUBCONTRACTORS REGISTERED FROM THE "REGISTERED SPECIALIST TRADE CONTRACTORS SCHEME" (FOR NEW ENGINEERING CONTRACT (NEC) – TERM SERVICE CONTRACT (TSC))

The following Notes to Tenderers and Additional Conditions of Contract shall be included in tenders for all term service contracts:

Notes to Tenderers

NTT C1 Engagement of Subcontractors who are Registered under the Respective Trades and Groups available in the Registered Specialist Trade Contractors Scheme (RSTCS)

Tenderers' attention is drawn to the Clause [C6]# of the *additional conditions of contract* requiring the engagement of subcontractors who are registered under the respective trades and groups available in the Registered Specialist Trade Contractors Scheme (RSTCS).

Additional Conditions of Contract

[C6]# Engagement of Subcontractors who are registered under the respective trades and groups available in the Registered Specialist Trade Contractors Scheme (RSTCS)

(1) For the purpose of this Clause, the following words and expressions shall have the meaning hereby assigned to them:

"RSTCS[1]" means the Registered Specialist Trade Contractors Scheme managed by the Construction Industry Council and as referred to in the Rules and Procedures applicable to the aforesaid Registered Specialist Trade Contractors Scheme.

"Group 1", "Group 1 (Advanced)" and "Group 2" mean the classification of contractors into Group 1, Group 1 (Advanced) and Group 2 under each trade of the Register of Specialist Trade Contractors.

Amd No. 2/2025

["Painting", "Metal Work", "Structural Steelwork", "Horticultural Works", "Arboriculture Works" and "Skyrise Greenery Works" mean the trade of "painting", "metal work", "structural steelwork", "horticultural works", "arboriculture works" and "skyrise greenery works" respectively under the RSTCS as promulgated by the Construction Industry Council from time to time.][2]

(2) Where the *Contractor* is to subcontract part of the *service*, except those service specified in Clause C3 of these additional conditions of contract, Amd No. 2/2025 **performance of which involves trades available in the RSTCS, the *Contractor* shall only engage, for the purposes of execution of such part of the *service*, a Subcontractor who has satisfied all of the following criteria:**

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(i) the Subcontractor is the subcontractor stated in the *Contractor*'s latest updated submission of the Subcontractor Management Plan;

(ii) the Subcontractor has completed registration under the relevant trades available in the RSTCS before the commencement of the work under the relevant subcontracts; and

(iii) if the Subcontractor is registered under a trade [[2], except Amd No. 2/2025 **Painting, Metal Work, Structural Steelwork, Horticultural Works, Arboriculture Works and Skyrise Greenery Works,][2] in the Register of Specialist Trade Contractors, and if the value of relevant subcontract exceeds the tender limit of Group 1, the Subcontractor has been admitted into Group 1 (Advanced) or Group 2, and if the value of relevant subcontract exceeds the tender limit of Group 1 (Advanced), the Subcontractor has been admitted into Group 2, before the commencement of the work under the relevant subcontract.**

The *Contractor* shall not engage a Subcontractor who is suspended or in the process of an appeal against his suspension from registration in the RSTCS unless the suspension is lifted before the commencement of the work under the relevant subcontracts. Amd No. 2/2025

(3) The *Contractor* shall ensure that where any part of the *service* which has been Amd No. 2/2025 **subcontracted to a Subcontractor and it** Amd No. 2/2025 **involves trades available in the RSTCS is further subcontracted (irrespective of any tier), only subcontractors (irrespective of any tier) who have satisfied all of the following criteria are engaged for the purposes of execution of such part of the part of the *service*:**

(i) the subcontractor (irrespective of any tier) Amd No. 2/2025 **is the subcontractor stated in the *Contractor*'s latest updated submission of the Subcontractor Management Plan;**

(ii) the subcontractor (irrespective of any tier) Amd No. 2/2025 **has completed registration under the relevant trades available in the RSTCS before the commencement of the work under the relevant further subcontracts; and**

(iii) if the subcontractor (irrespective of any tier) Amd No. 2/2025 **is registered under a trade [[4], except [[2],** Amd No. 2/2025 **Painting, Metal Work, Structural Steelwork, Horticultural Works, Arboriculture Works and Skyrise Greenery Works,][4] in the Register of Specialist Trade Contractors, and if the value of relevant subcontract exceeds the tender limit of Group 1, the subcontractor (irrespective of any tier)** Amd No. 2/2025 **has been admitted into Group 1 (Advanced) or Group 2, and if the value of relevant subcontract exceeds the tender limit of Group 1 (Advanced), the Subcontractor has been admitted into Group 2, before the commencement of the works under the relevant subcontract**

The *Contractor* shall also ensure that a subcontractor Amd No. 2/2025 **(irrespective of any tier) who is suspended or in the process of an appeal against his suspension from registration in the RSTCS shall not be engaged for the aforesaid further**

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subcontracting (irrespective of any tier) unless the suspension is lifted before the commencement of the work under the relevant further subcontracts.

Internal Notes:

 # Insert appropriate reference.

1. **Upon the launch of the RSTCS by the CIC on 1 April 2019, seven trades, viz. (1) Concreting; (2) Concreting Formwork; (3) Curtain Wall; (4) Demolition; (5) Erection of Concrete Precast Component; (6) Reinforcement Bar Fixing; and (7) Scaffolding are included under the Register of Specialist Trade Contractors. One more trade, i.e. (8) Plastering, has been included since 1 January 2021. Two more trades, i.e. (9) Suspended Ceiling and (10) Tower Crane (Erecting, Dismantling, Altering Height), have been included since 1 April 2022. One more trade, i.e. (11) Building Drainage Installation, has been included since 1 September 2022. One more trade, i.e. (12) Levelling and Setting Out, has been included since 1 March 2023. Six more trades, i.e. (15) Painting, (16) Metal Work, (17) Structural Steelwork, (18) Horticultural Works, (19) Arboriculture Works and (20) Skyrise Greenery Works have been included since 1 May 2024. With effect from 1 January 2025, one new trade, i.e. (21) Truss-out Scaffolding will be added to the Register of Specialist Trade Contractors.** Amd No. 2/2025

Amd No. 2/2025

2. **The words in square brackets should be deleted for contracts for which tenders will be invited on or after 1 February 2025** Amd No. 2/2025**, i.e. the tender limits of Group 1, Group 1 (Advanced) and Group 2 should be observed for all trades including Painting, Metal Work and Structural Steelwork while the tender limits of Group 1 and Group 2 should be observed for all trades including Horticultural Works, Arboriculture Works and Skyrise Greenery Works. (SDEV's memo ref. DEVB(W) 510/94/02 dated 10.4.2024, refers)**

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APPENDIX 5.6E NOTES TO TENDERERS AND APPENDIX TO ADDITIONAL CONDITIONS OF CONTRACT FOR SUBCONTRACTOR MANAGEMENT PLAN (FOR NEW ENGINEERING CONTRACT (NEC) - TERM SERVICE CONTRACT (TSC))

The following Notes to Tenderers and Appendix to Additional Conditions of Contract shall be included in tenders for all term service contracts:

Notes to Tenderers

NTT C2 Payment for Subcontractor Management Plan

Tenderers' attention is drawn to Clause [GCT 20]# of General Conditions of Tender, Clause [C5]# of *additional conditions of contract* and Clause [X]# of the Particular Specification requiring the submission and quarterly updating of the Subcontractor 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 SMP.

Tenderers should note that there are no separate items in the Schedule of Rates for "submission of Subcontractor Management Plan" and "quarterly updating of Subcontractor Management Plan". The rates in the Schedules of Rates shall cover, inter alia, the provision of implementation of and compliance with the SMP.

NTT C3 Details of Subcontractor Management Plan

Tenderers' attention is drawn to the Appendix [X]# to Clause [C5]# of *additional conditions of contract* on the scope and contents of Subcontractor Management Plan including but not limited to the details of subcontract(s), the trade and group (if any) of the subcontractor under the Registered Specialist Trade Contractors Scheme and value of the subcontract(s).

Internal Notes:

 # Insert appropriate reference

*** Delete or amend as appropriate**

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Appendix [X]# to ACC [C5]#

Guidelines on Scope and Contents of Subcontractor Management Plan

The Subcontractor Management Plan shall include (but not limited to) the following:

i) Scope of works to be subcontracted including the form and extent of subcontracting arrangement such as labour only, labour and plant, labour and material, plant only, lump sum or any other combination of types. Proof of ownership of construction plant and material shall be addressed. The scope of works to be subcontracted shall comply with the relevant contractual provisions (i.e. the ACC for Limiting the Tiers of Subcontracting).

ii) Particulars of subcontracts (irrespective of tiers) as required under the Template under Table 1.

iii) The *Contractor*'s approach to demand/ensure his subcontractor(s) to a) abstain from subcontracting the whole of the works subcontracted to him/them, and b) report upwards his/their subcontracting arrangement and any subsequent changes with written declarations of no "hidden" subcontracts for any part of the *service* subcontracted to any of them.

iv) The *Contractor*'s proposed measures for supervision of the works and monitoring of the performance of subcontractors, particularly the aspects of the works programming, quality and safety of the works and environmental protection.

v) The *Contractor's* proposed measures for monitoring the performance of the subcontractors in complying with the requirements in the contract in reporting site accidents.

vi) The *Contractor*'s approach to ensure all subcontractors, irrespective of tiers, to incorporate the Mandatory Subcontract Conditions for Prohibition of Imposing Administrative Charges for Reporting of Site Accidents and Elimination of Under-reporting of Site Accidents.

vii) Criteria for selection of subcontractor(s) involving trade(s) not available in the Registered Specialist Trade Contractors Scheme (RSTCS).

viii) The *Contractor*'s approach to ensure all his subcontractor(s) (irrespective of tiers) to adopt written contracts in his/their subcontracting and that all the subcontract(s) comply with the requirements as stipulated in the Contract (i.e. ACC for Subcontract conditions) and incorporate the Mandatory Subcontract Conditions for Security of Payment.

ix) Details of the *Contractor*'s Management Team, as required in the Contract (i.e. the ACC for *Contractor*'s Management Team), employed on direct supervision and management of subcontractor(s). An organization chart showing the responsibilities of the *Contractor*'s direct staff in supervision and management of his subcontractor(s) shall be submitted.

x) Declaration through the standard declaration form that members of staff on the *Contractor*'s Management Team are prohibited to be given a subcontract to any part of the *service* or to have a vested interest in any of the subcontractors irrespective of tiers.

xi) The *Contractor*'s proposed measures to ensure the compliance with the implementation of the system of payment of wages to the Site Workers as stipulated in the Contract (i.e. ACC for Payment of Wages of Site Workers). The *Contractor*'s proposed measures for ensuring timely payments to subcontractor(s) and payments by subcontractor(s) to subcontractor(s) of lower tiers.

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[NB. The above items are not exhaustive. The Contractor can add any other items, which he considers pertinent to the proper management of his subcontractor(s).]

Internal Note:
 # Insert appropriate reference

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Appendix [X]# to ACC [C5]#

[For contracts without contract measures to prevent non-payment of wages and/or limiting number of tiers of subcontracting]

Guidelines on Scope and Contents of Subcontractor Management Plan

The Subcontractor Management Plan shall include (but not limited to) the following:

i) Scope of works to be subcontracted including the form and extent of subcontracting arrangement such as labour only, labour and plant, labour and material, plant only, lump sum or any other combination of types. Proof of ownership of construction plant and material shall be addressed.

ii) Particulars of subcontracts (irrespective of tiers) as required under the Template under Table 1.

iii) Criteria for selection of subcontractor(s) involving trade(s) not available in the Registered Specialist Trade Contractors Scheme (RSTCS).

iv) Details of the *Contractor*'s own staff employed for direct supervision and management of his subcontractor(s). An organization chart showing the responsibilities of the contractor's direct staff in supervision and management of his subcontractor(s) shall be submitted.

v) The *Contractor*'s approach to demand/ensure his subcontractor(s) to a) abstain from subcontracting the whole of the works subcontracted to him/them, and b) submit written declarations of no "hidden" subcontracting of works.

vi) The *Contractor*'s approach to encourage his subcontractor(s) to adopt written contract(s) in his/their subcontracting and that all the subcontract(s) comply with the requirements as stipulated in this contract to incorporate the Mandatory Subcontract Conditions for Security of Payment.

vii) The *Contractor*'s proposed measures to demand his subcontractor(s) to report upward his/their subcontracting arrangement(s) and any subsequent changes.

viii) The *Contractor*'s proposed measures for monitoring and assessing the works programme, quality, safety and environmental performance of his subcontractors.

ix) The *Contractor's* proposed measures for monitoring the performance of the subcontractors in complying with the requirements in the contract in reporting site accidents.

x) The *Contractor's* approach to ensure all subcontractors, irrespective of tiers, to incorporate the Mandatory Subcontract Conditions for Prohibition of Imposing Administrative Charges for Reporting of Site Accidents and Elimination of Under-reporting of Site Accidents.

xi) The *Contractor*'s proposed measures for ensuring timely payment to downstream subcontractor(s) after his payment to his direct subcontractor(s).

xii) The *Contractor*'s approach for monitoring disputes.

xiii) The *Contractor*'s approach for handling complaints from workers on site regarding wages arrears disputes and co-ordinating with Labour Department for prompt action. *Contractors* are required to keep the Architect/Engineer/Supervising Officer's site representatives updated of the situation.

xiv) The *Contractor*'s proposed measures for maintaining updated daily attendance records of all workers on site.

xv) The *Contractor*'s proposed measures for site security and workers' daily access control if applicable.

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[NB. The above items are not exhaustive. The Contractor can add any other issues, which he considers pertinent to the proper management of his subcontractor(s).]

Internal Note:
 # Insert appropriate reference

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Appendix [X]# to ACC [C5]#

Standard Declaration Form by the *Contractor*
on Compliance with Provisions in
Subcontractor Management Plan

To: The *Service Manager*

Contract No. : _____

Contract Title : _____

In accordance with the Guidelines on Scope and Contents of Subcontractor Management Plan referred in ACC [C5]#, I / we declare and confirm that we have complied with and undertake to continue to comply with the following provisions, and declare and confirm that I / we have ensured and undertake to continue to ensure that our members of staff on the *Contractor*'s Management Team as referred in ACC [D1]# are aware of the following provisions:

(a) Members of staff on the *Contractor*'s Management Team are prohibited from being given a subcontract to any part of the *service* or having a vested interest in any of the subcontractors irrespective of tiers;

(b) Members of staff on the *Contractor*'s Management Team are required to submit written declarations to the *Service Manager* upon his / her written request from time to time or at any time that they do not have a subcontract to any part of the *service* or any vested interest in any of the subcontractors irrespective of tiers.

(Name of the *Contractor*) _____

(Name of the Signatory) _____

(Position of the Signatory) _____

(Date) _____

Internal Note:
 # Insert appropriate reference

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Appendix [X]# to ACC [C5]#

Table 1 - Particulars of Subcontracts[1]

No.	Contract No.	Contract Title	Contract Sum ($)	Contact Point	Company Name of Subcontractor	Commencement Date	Program	No. of Tier	Form of Subcontractor	Type[2] (RSTC or RS)	Trade[3]	Specialty[3] (NA for RSTC)	Registration No.	Expiry Date	Value[4]	Grouping[5] (1, 2 or NA)
e.g.	CV/XXXX/XX	Construction of XXX	100,000,000	Mr. XXX, E/XX	ABC Company Ltd.	1-10-2020	9 months	1	labour, plant & material	RSTC	Concreting Formw	NA	XXXXXX	31-3-2022	E	1
	CV/XXXX/XX	Construction of XXX	100,000,000	Mr. XXX, E/XX	123 Company Ltd.	1-10-2020	12 months	2	labour & plant	RS	Fire Services Instal	Fire services pipe work	XXXXXX	31-3-2022	D	NA
1																
2																

Notes:

(1) Apart from the above information, the *Contractor* shall provide additional information and supporting document upon requested.

(2) RSTC refers to the Registered Specialist Trade Contractors under the Registered Specialist Trade Contractors Scheme (RSTCS) of the Construction Industry Council (CIC). RS refers to the Registered Subcontractors under the RSTCS.

(3) One row for one particular trade or specialty. Subcontract with multiple trades or specialties shall be reported individually in several rows. For details of the classification of trade and specialty, please refer to the website of the RSTCS ...cic.hk managed by the CIC. RSTCS covers 21 Amd No. 2/2025. designated trade groups, viz. (1) Concreting, (2) Concreting Formwork, (3) Curtain Wall, (4) Demolition, (5) Erection of Concrete Precast Component, (6) Reinforcement Bar Fixing, (7) Scaffolding, (8) Plasteri... (9) Suspended Ceiling, (10) Tower Crane (Erecting, Dismantling, Altering Height), (11) Building Drainage Installation, (12) Levelling and Setting Out,(13) Building Maintenance,(14) Interior Fitting-out (15) Painting, (16) Metal W... ...ructural Steelwork, (18) Horticultural Works, (19) Arboriculture Works, (20) Skyrise Greenery Work and (21)Truss-out Scaffolding Amd No. 2/2025.

(4) One value for one particular trade group and specialty. The ranges of Value A to G are shown below:

A: Value < $1M

B: $1M ≤ Value < $3M
C: $3M ≤ Value < $6M
D: $6M ≤ Value < $15M
E: $15M ≤ Value < $30M
F: $30M ≤ Value < $50M
G: Value ≥ $50M

(5) Group 1, Group 1A and Group 2 refer to the tender limits set by CIC for the 21 Amd No. 2/2025. designated trades mentioned in (3) above, which are only applicable to RSTC. For details of the tender limits, please refer to the website of t... ...t www.rstc.cic.hk managed by the CIC

Internal Note:

Insert appropriate reference

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APPENDIX 5.7 UNDERTAKINGS BY CONTRACTOR ON THE USE OF GOVERNMENT DIGITAL MAP DATA (Subsumed from WBTC No. 7/2000)

(Please complete in Block Letters)

To : _____
(Name of the Engineer/Engineer designate*)

In consideration of the Government of the Hong Kong Special Administrative Region ("Government") supplying additional copies of tender/contract* drawings in electronic form to us, we, _____ agree to abide by the
(Name of contractor in full)

following conditions in the use of Government digital map data ("the data") supplied by the Land Information Centre which may be contained in the drawings provided by the Engineer/Engineer designate* (for preparation of a tender)* for Contract No. _____ with _____concerning
(Name of Government Department in full)

_____.
(Title of the Contract)

(i) The data shall only be used in our computer systems or visual terminals assigned (for tendering)* for the above Contract.

(ii) The data shall not be used for any purposes other than (tendering for)* the above Contract.

(iii) The data shall not be distributed in part or in whole and in whatever forms and media to a third party.

(iv) The data stored in our computer systems and storage media shall all be destroyed immediately after the completion of the tender/work for the above Contract and we undertake to advise in writing within seven days of so destroying the data by completing the standard form "Confirmation by contractor on cessation of the use of Government digital map data" and submit it to the Engineer/Engineer designate*.

2. We understand that our employees must observe and abide by the above conditions. If any of our employees are proved to have breached any of the above conditions, we undertake to compensate the Government for any loss or damage that the Government has suffered as a result of the said breach.

Signed for and on behalf of the contractor

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

Company Chop
***delete where inappropriate**

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APPENDIX 5.8 CHECK-LIST FOR TENDERS DEPOSITED IN THE *GOVERNMENT SECRETARIAT TENDER BOX / *PUBLIC WORKS TENDER BOX

1. Before the tender is sealed and delivered to the *Government Secretariat Tender Box / *Public Works Tender Box, please check the following:

(a) The tender has been properly signed and the signature witnessed.

(b) 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.

(c) For remeasurement contracts, copies of the Bills of Quantities and the Schedule of Proportions are attached to the tender. The *Central Tender Board / *Public Works Tender Board will make copies of the Bills of Quantities and Schedule of Proportions on behalf of tenderers who have failed to submit copies of such documents and a charge of *$12[1] /*$14.8[2] or such amount as advised by the *Secretary for Financial Services and the Treasury / *Chairman of the Public Works Tender Board periodically will be levied for each page so copied.

(d) 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.

2. Tenderers should also note the following:

(a) 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 drawings are to be returned to the issuing office after submission of the tender.

(b) 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.

(c) 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 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.

(d) For tender submission in electronic 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 at a charge of $51[3] per electronic file and a material charge of $1.0[3] per CD-ROM and $1.3[3] per 4.7GB DVD+/-R, or such amount as advised by the *Secretary for Financial Services and the Treasury / *Chairman of the Public Works Tender Board periodically will be levied for each duplicate so made.

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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 day, 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 tenders that are delivered after the closing time. However, if a rainstorm black warning or typhoon signal No. 8 or above is hoisted between 9 a.m. and 12 noon on the tender closing day, the tender closing time will be extended to 12 noon on the first working day of the following week. An announcement of the extension of the tender closing time will be made through the radio (by the Financial Services and the Treasury Bureau) immediately after 9 a.m. or immediately after the signal/warning has been hoisted. 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.

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.

Notes:

* Delete as appropriate.

1. For tenders opened by CTB, see SFST's memo ref. () in TsyB T ADM/1-135/1/0 Pt.10 dated 24.12.2018.

2. For tenders opened by PWTB, see PWTB's memo ref. (7) in ASD13/95200/TEN/OPEN/PCF dated 5.7.2018.

3. See SDEV's memo ref. () IN DEVB(W) 511/70/02 dated 26.9.2022.

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APPENDIX 5.9 (NOT USED)

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APPENDIX 5.10 CONFIRMATION BY CONTRACTOR ON CESSATION OF THE USE OF GOVERNMENT DIGITAL MAP DATA (Subsumed from WBTC No. 7/2000)

(Please complete in Block Letters)

To : _____
(Name of the Engineer/Engineer designate*)

This is to advise that we, _____, have ceased
(Name of contractor in full)

using the Government digital map data ("the data") from the electronic drawings provided by the Engineer/Engineer designate* with effect from _____
(Date)

(for preparation of a tender)* for the Contract No. _____ with_____concerning_____
(Name of Government Department in full) (Title of Project/Study)

_____

We confirm that we are no longer in possession of the data or any part thereof in any media or in any form and that the data has been permanently erased and/or duly destroyed from our computer systems.

Signed for and on behalf of the contractor

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

Company Chop
*** delete where inappropriate**

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APPENDIX 5.11 PARTICULAR SPECIFICATION FOR INDEPENDENT CHECKING OF THE DESIGN, ERECTION, USE AND REMOVAL OF TEMPORARY WORKS (Subsumed from WBTC No. 3/97)

Particular Specification

(1) Pursuant to SCC Clause _____ , the design of the following Temporary Works shall be certified by the independent checking engineer -

(a) .....

(b) .....

(c) .....

(2) In addition, method statements certified by the independent checking engineer shall be provided for the erection, use and removal of the following Temporary Works -

(a) .....

(b) .....

(c) .....

(3) Any Temporary Works erected in close proximity to traffic shall be protected against impact from vehicles by suitably designed protective measures. The Contractor shall design such protective measures with regard to the conditions prevailing on the Site and the effect of any such impact. Such protective measures are to be designed as part of the Temporary Works and included in any requirement for independent checking.

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APPENDIX 5.12 PRACTICE NOTE FOR THE USE OF LUMP SUM BILLS OF QUANTITIES CONTRACTS FOR CIVIL ENGINEERING WORKS (Subsumed from WBTC No. 17/95)

1. **For pure lump sum contracts the Contractor undertakes to carry out a defined amount of work in return for an agreed price. Once the work is done, the price is paid.**

2. **In our contracts the price is usually paid in stages, which may be subject to a price fluctuation clause. When it is not, it is described as a "fixed price" contract. The price is also adjusted for the effect of any variation ordered to the design of the Works and for adjustments for the Contingency Sum, any Provisional Sum, Prime Cost Sum etc. as stated in the Contract and for any error discovered in the quantities (if included).**

3. **It is clear that when we use the term "lump sum" we do not mean it strictly in the way it is used in para. 1. When we let a contract based on Bills of Quantities we further complicate the issue, because it is almost certain that when we go to tender not every detail of the design will be finalised and these unfinalised details cannot be measured accurately (referred to as "firm" quantities/items). The term "lump sum" is therefore a convenient way to differentiate this approach from total remeasurement (and other contracts).**

4. **Lump sum contracts with Bills of Quantities are priced on the basis of the drawings and specification, reduced by means of a standard method of measurement to a list of items which describe and measure the work included on the drawings and in the specification. Any item or section of work which cannot be accurately measured is covered by a provisional quantity or sum and measured as executed on completion of the item or section of work i.e. the value of the provisional item(s) or section(s) of work in the Bills is/are deducted from the Contract Sum and the value of the work executed is added.**

5. **The "details" referred in para 3 can be substantial. For example, in the building industry the whole of the substructure and much of the external works may be described as provisional and are remeasured as done. This does not prevent the contract from being described and treated as lump sum of a substantial part of the Works can be measured accurately for inclusion in the Bills.**

6. **The provisional quantities are included in the Bills wherever it is appropriate and sensible to do so. Individual items to be remeasured can be mixed in with the "firm" items, or a whole section can be shown separately and described as provisional. It is very important to clearly differentiate items of work that are not measured firm, by marking each item (or group of items) "provisional" and explaining the process of adjustment elsewhere in the Contract. (e.g. in the Preliminaries/Preambles).**

7. **General Conditions of Contract (GCC) Clause 5 - Documents mutually explanatory, takes on more importance in lump sum contracts. The agreement is that the work to be done is accurately reflected in the Bills. Any failure to do so**

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places an obligation on the Engineer to put it right. (See the reference in sub-clause (4) proviso (a) to GCC Clause 59, which is replaced by the standard SCC 21 promulgated under SDEV's memo ref. DEVB(W) 546/17/02 dated 9.2.2011 and para 10(a) following.) Any other discrepancy between the various contract documents must be sorted out as though it were a variation. It is for the Contractor to prove that a discrepancy or an error in measurement exists.

8. Lump sum contracts often result in a heavier use of GCC Clause 60 - Variations. The provisional quantities are dealt with in the same way as estimated quantities in remeasurement contracts. The proviso to GCC Clause 61(1) i.e. the valuing of the "knock-on" effect of varied work on the unvaried, also takes on more importance in lump sum contracts. It is therefore very important to make sure that the design of the parts of the works measured as firm will not be subject to variations or lack detail that can produce an extension of time and disruption/prolongation claims.

9. The measure and value of each variation ordered is collected together into a "bill of variations" the net total of which is added to or omitted from the Contract Sum (together with the effect of any remeasured items or sections, the Contingency Sum adjustment etc.). The measure and value must be completed by the Engineer (but not necessarily agreed with the Contractor) within the contractually stated period. [See the standard SCC 21 promulgated under SDEV's memo ref. DEVB(W) 546/17/02 dated 9.2.2011 covering GCC Clause 59(7)].

10. Most of the changes to the General Conditions of Contract introduced by the Special Conditions of Contract, bring the Civil Engineering version into line with the Building version, generally using the same wording. There are exceptions viz -

(a) Clause 50(1)(b)(v) - Whilst the wording is changed, the purpose remains the same i.e. an extension of time is only considered if the increase in quantity is produced by other than an error in or omission of firm quantities (e.g. provisional quantities are under-estimated) because the work shown on the Drawings and/or in the Specification does not change, and therefore there is no reason why the time for completion should change. With provisional quantities the work can increase and therefore such increases should be considered for an extension of time. If the work shown on the Drawings and/or in Specification changes, this is a variation. (See Annex 1 examples).

(b) Clause 59(3) - the words "work required by the (Engineer) to be carried out" do not appear in the SCC. This reflects differing procedures between the civil engineering and building approaches. (For the latter, Clause 5 would be operated by the Contractor.) This difference does not change the outcome, items of work shown on the Drawings or described in the Specification which are required to be measured under the rules of the SMM must be so measured.

(c) Clause 59(4)(a) - includes an additional final sentence, again in order to assist the Engineer.

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(d) Clause 59(6)(b) and (c) and (7) - describe the procedures applicable to civil engineering, but require the Engineer to complete (but not necessarily agree with the contractor) the final measure and valuation in respect of work required to be measured under Clause 59(3), within a 30-day period commencing on the date of issue of the maintenance certificate.

11. GCC Clause 79(1) - Interim payments, are treated differently for lump sum contracts. No accurate measure of the work done at the applicable date is carried out. For interim payments the Engineer estimates the amount of work done (if possible in agreement with the Contractor) and values it. The Engineer also estimates the financial effect of all work done that has been varied under GCC Clause 60, though the Engineer should measure variations as soon as practicable in order to make a full and proper adjustment at the appropriate time i.e. when the varied work is executed/omitted. An estimate is not an inspired guess, it is a professional assessment.

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Annex 1 to Appendix 5.12

Examples of assessments under GCC Clause 50(1)(b)(v)

Scenario One :	**The drawings show an assumed rockhead level based on which the provisional quantity of rock excavation is determined in the Bills of Quantity.**	
Situation 1	**Quantity based on assumed information in the drawing**	**1000 units**
	Provisional quantity listed in the Bills of Quantity	**200 units**
	Actual quantity remeasured on site	**1000 units**
Intension	**Total change in quantity is 800 (1000 - 200) units. No Extension of Time shall be provided due to this change.**	
Situation 2	**Quantity based on assumed information in the drawing**	**1000 units**
	Provisional quantity listed in the Bills of Quantity	**1000 units**
	Actual quantity remeasured on site	**2000 units**
Intension	**Total change in quantity is 1000 (2000 - 1000) units. Extension of Time for this change shall be provided.**	
Situation 3	**Quantity based on assumed information in the drawing**	**1000 units**
	Provisional quantity listed in the Bills of Quantity	**200 units**
	Actual quantity remeasured on site	**2000 units**
Intension	**Total change in quantity is 1800 (2000 -200) units. No extension of Time for the change from 200 to 1000. Extension of Time shall be provided for the change from 1000 to 2000.**	
Scenario Two	**Specifications requires the formation for pavement and structures shall be compacted at completion. An item in the Bills of Quantity shall be provided according to the Standard Method of Measurement.**	
Situation 1	**Quantity implied from the Contract**	**1000 units**
	Quantity omitted in the Bills of Quantity	
	Actual quantity remeasured on site	**1000 units**
Intension	**No Extension of Time shall be provided.**	
Situation 2	**Quantity implied from the Contract**	**1000 units**
	Quantity described as firm quantity in the B of Q	**200 units**
	Errors discovered in the firm quantity	**800 units**

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Intension	**No Extension of Time shall be provided.**	
Situation 3	**Quantity implied from the Specifications**	**1000 units**
	Quantity described as provisional quantity in the B of Q	**200 units**
	Actual quantity remeasured on site	**1000 units**
Intension	**No Extension of Time shall be provided.**	
Scenario Three	**Specification requires width of road reinstatement shall be the trench width plus minimum 300 mm or the full lane width as directed by the Engineer.**	
Situation 1	**Quantity implied from the Specification 1000 units**	**unclear but minimum**
	Provisional quantity listed in the B of Q	**200 units**
	Actual quantity remeasured on site	**1000 units**
Intension	**No Extension of Time.**	
Situation 2	**Quantity implied from the Specification 1000 units**	**unclear but minimum**
	Provisional quantity listed in the B of Q	**1000 units**
	Actual quantity remeasured on site	**2000 units**
Intension	**Extension of Time shall be provided for the change in quantity of 1000 units (2000 - 1000)**	
Situation 3	**Quantity implied from the Specification 1000 units**	**Unclear but minimum**
	Provisional quantity listed in the B of Q	**200 units**
	Actual quantity remeasured on site	**2000 units**
Intension	**No Extension of Time for the change in quantity from 200 units to 1000 units. Extension of Time shall be provided for the change from 1000 units to 2000 units.**	

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APPENDIX 5.13 AMENDMENTS TO THE STANDARD METHOD OF MEASUREMENT FOR CIVIL ENGINEERING WORKS (1992 EDITION) (Subsumed from WBTC No. 17/95A)

Para. 1(a) of Part I of the SMM shall be replaced by :

> **"Bills of Quantities" means a list of items giving brief identifying descriptions and the quantities measured in accordance with this document in respect of the work to be performed.**

Para. 1(c) of Part I of the SMM shall be deleted.

Para. 1 of Part II of the SMM shall be replaced by the following :

> **"The Bills of Quantities are intended in the first instance to give information upon which tenders can be obtained. The quantities in the Bills of Quantities are firm except where described as provisional. When a contract has been entered into, measurement and valuation of the work required to be measured under the Contract performed shall be carried out by reference to the priced Bills of Quantities in the manner stated in the Contract."**

Para. 3 of Part III (Rules of Preparing Bills of Quantities) of the SMM shall be replaced by :

Quantities 3 (a) **Unless required otherwise by the nature of the work or directed otherwise by a measurement rule in the Method of Measurement, the quantities shall accurately represent the work to be executed and shall be regarded as firm. Where quantities cannot be accurately measured, the respective item in the Bills of Quantities shall be marked as "provisional".**

(b) **The quantities shall be computed net from the Drawings or Specification, unless otherwise stated in the Contract, and no allowance shall be made for bulking, shrinkage or waste. Quantities may be rounded up or down where appropriate. Fractional quantities are not generally necessary but, where required, should not be given to more than one place of decimals.**

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APPENDIX 5.14 PARTICULAR PREAMBLE TO SPECIFY THE CURRENT EDITION OF HKCA SCHEDULES FOR PLANT USED IN DAYWORKS CARRIED OUT INCIDENTAL TO CONTRACT WORK

SECTION 27

DAYWORK

DAYWORK

Measurement

27.03A Replace "HKCA Schedules for Plant Used in Dayworks Carried Out Incidental to Contract Work" current at the date for return of Tender" with "HKCA Schedules for Plant Used in Dayworks Carried Out Incidental to Contract Work (xxxx Edition[#]) " in line 1 of paragraph 1.

Insert the appropriate edition, e.g. 2013 Edition, of the Schedules current at the date for return of tender with reference to the information of Hong Kong Construction Association.

* * * * *

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APPENDIX 5.15 (NOT USED)

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APPENDIX 5.16 (NOT USED)

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APPENDIX 5.17 (NOT USED)

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APPENDIX 5.18 (NOT USED)

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APPENDIX 5.19 CONTRACT MEASURES FOR LIMITING TIERS OF SUBCONTRACTING

The following Notes to Tenderers and Special Conditions of Contract shall be included in tenders for all capital and maintenance works contracts:

Notes to Tenderers

NTT [xx]# – Limiting tiers of subcontracting

The Tenderers' attention is drawn to the provisions under Special Conditions of Contract Clause [X]# which impose certain restrictions on subcontracting.

Special Conditions of Contract

SCC [X]# – Limiting tiers of subcontracting

(1) For the purposes of this Clause, the first tier of subcontracting means the contracts between the Contractor and his subcontractors. The second tier means the subcontracts between any of the subcontractors of the first tier and his subcontractors. The foregoing shall apply with necessary modifications to subsequent tiers of subcontracting.

(2) Notwithstanding General Conditions of Contract Clause 4 on subcontracting and subject to sub-clause (3) to of this Clause, the subcontracting of any part of the Works by the Contractor shall be limited as follows:

(a) subcontracting of any part of the Works requiring entry of human beings into confined space that forms part of a sewerage or drainage system [or any part of the Works involving [state clearly the project-specific high-risk operations(s)][1]]* shall be limited to the first tier of subcontracting; and

(b) subcontracting of any part of the Works not falling under sub-clause (2)(a) above shall be limited to two tiers (i.e. the first tier and second tier) of subcontracting.

(3) (a) The Contractor may submit a proposal to the [Engineer/Maintenance Engineer/Supervising Officer/Maintenance Surveyor]* for an extra tier of subcontracting for any part of the Works which has been subcontracted in compliance with the limit in sub-clauses (2)(a) or (2)(b), whichever is applicable, of this Clause and with other provisions of the Contract.

(b) The [Engineer/Maintenance Engineer/Supervising Officer/Maintenance Surveyor]* shall not be obliged to consider the Contractor's proposal for an extra tier of subcontracting unless the proposal is submitted in writing to the [Engineer/ Maintenance Engineer/Supervising Officer/Maintenance Surveyor]* at least 14 days before the subcontractor of the relevant tier of subcontracting enters into any subcontract for the extra tier of subcontracting and the proposal is accompanied by an explanation with supporting evidence on the need for the extra tier of subcontracting.

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(c) A proposal which has been made in strict compliance with sub-clause (3)(b) above is taken to have been approved by the [Engineer/Maintenance Engineer/Supervising Officer/Maintenance Surveyor]* if it is not expressly rejected by the [Engineer/Maintenance Engineer/Supervising Officer/Maintenance Surveyor]* in writing within 14 days from the date of receipt by the [Engineer/Maintenance Engineer/Supervising Officer/Maintenance Surveyor]* of the Contractor's proposal.

(d) The rejection of the Contractor's proposal for any reason by the [Engineer/ Maintenance Engineer/Supervising Officer/Maintenance Surveyor]* shall not entitle the Contractor to any extension of time or additional payment nor does it relieve the Contractor from any liability or obligation under the Contract.

(4) The Contractor shall comply with and shall ensure that all subcontractors (irrespective of any tier) shall comply with the provisions of this Clause. If the Contractor or any of the subcontractors (irrespective of any tier) fails to comply with the provisions of this Clause, the [Engineer/Maintenance Engineer/Supervising Officer/Maintenance Surveyor]* shall, without prejudice to any other rights and remedies, have full power to order the removal of any subcontractor which has been engaged in contravention of any of the provisions of this Clause from the Site and/or the Works.

(5) 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).

Internal Notes:

 # Insert appropriate reference.

*** Delete as appropriate.**

1. Subject to the approval of Works Branch of the Development Bureau, project officers can insert project-specific high-risk operations, e.g. demolition, scaffolding work or working in confined spaces, etc. Project officers shall provide justifications including past accident records involving such high-risk operations and obtaining prior endorsement of an officer at D2 rank or above in Works Departments.

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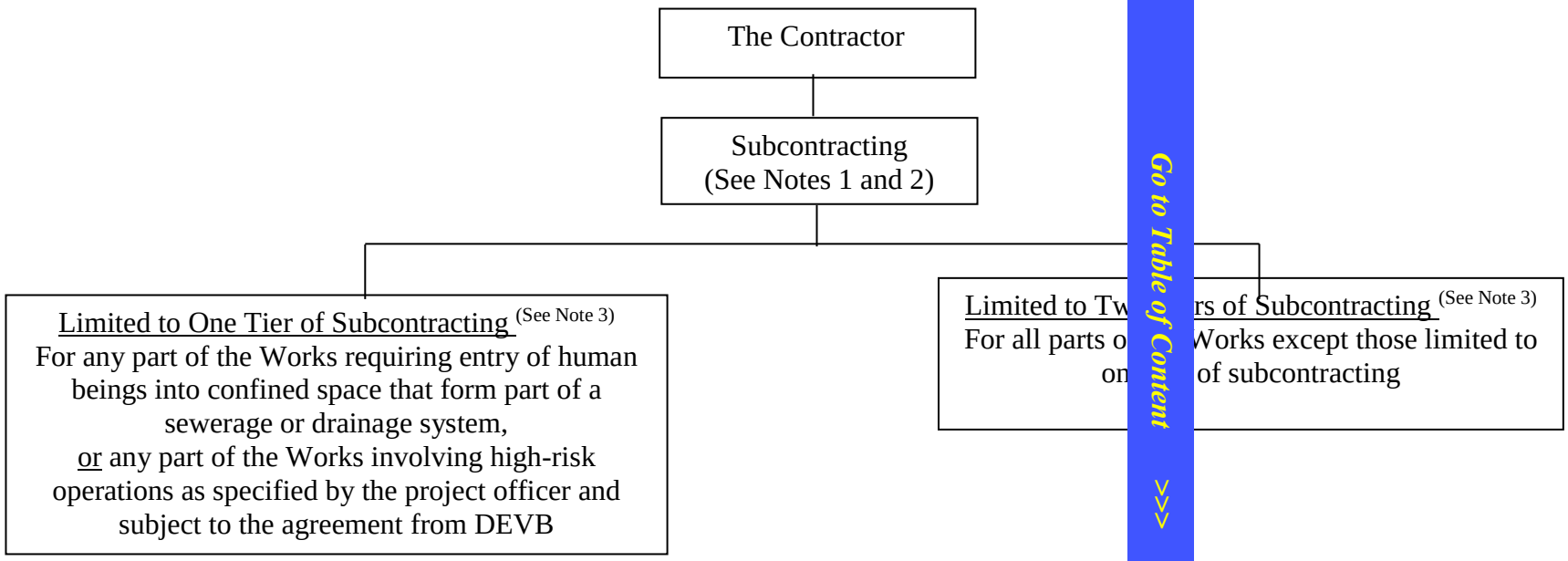
APPENDIX 5.20 ILLUSTRATION DIAGRAM ON LIMITING THE NUMBER OF TIERS OF S ONTRACTING FOR DIFFERENT NATURE OF WORKS

(For internal reference only and shall not be attached in contract documents)



Notes:

1. **Where the Contractor is to sublet/subcontract part of the Works to subcontractors involving trades av e under the Registers of the "Registered Specialist Trade Contractors Scheme" (RSTCS), the subcontractors shall be registered under the rel trades (and groups if applicable) in the Registers.**
2. **Details of the RSTCS are given in SDEV's memos ref. DEVB(W)510/94/02 dated 28 March 2019 and 4 D ber 2020, or the latest updated version.**
3. **The *Project Manager*, *Service Manager*, Engineer, Maintenance Engineer, Supervising Officer or Main e Surveyor may, subject to no objection from the Employer (who should be an officer at D2 rank or above in Works Departments), permit Contractor to introduce an extra tier of subcontracting for a part of the Works in case there is a strong need for the extra tier of subcontractin Works Departments shall keep a record of such approvals including justifications and update Works Branch of DEVB at 6-month intervals for all p ssions granted under this provision.**

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APPENDIX 5.21 (NOT USED)

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APPENDIX 5.22 NOTES TO TENDERERS FOR PAYMENT FOR SUBCONTRACTOR MANAGEMENT PLAN

Notes to Tenderers

NTT# : Payment for Subcontractor Management Plan

Tenderers' attention is drawn to GCT 20, Special Conditions of Contract Clauses [x]# and Particular Specification Section [x]# requiring the submission and quarterly updating of the Subcontractor 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 SMP.

Tenderers should note that there are no separate items in the [*Bills of Quantities/Schedule of Rates] for measurement of "complete Subcontractor Management Plan" and "quarterly updating of Subcontractor Management Plan" and that, in line with the "[*General Preambles/Method of Measurement] to the [*Bills of Quantities/Schedule of Rates], the rates in the [*Bills of Quantities/Schedules of Rates] shall cover, inter alia, the provision of implementation of and compliance with the SMP.

NTT# : Details of Subcontractor Management Plan

Tenderers' attention is drawn to the Appendix [x]# to Special Conditions of Contract [x]# requiring the submission of the details of subcontract(s), including but not limited to the trade and group (if any) of the subcontractor under the Registered Specialist Trade Contractors Scheme and value of the subcontract(s) in the Subcontractor Management Plan.

Internal Notes:
 # Insert appropriate reference

***Delete or amend as appropriate**

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APPENDIX 5.23 SPECIAL CONDITIONS OF CONTRACT FOR MANAGEMENT OF SUBCONTRACTORS

Special Conditions of Contract

SCC[x] #: Management of Subcontractors

General Conditions of Contract Clause 4 is amended by adding the following:

(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 Subcontractor Management Plan (SMP) to the Engineer/Supervising Officer* (E/SO*) for information and comments, if any.

(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 E/SO* for information and comments, if any. Should there be any major changes in the Contractor's subcontracting arrangement during the period before the next quarterly reporting, the Contractor should notify immediately such changes to the E/SO* 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 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 Subcontractor Management Plan at Appendix [x] # to these Special Conditions of Contract.

(d) The E/SO* may upon receipt of the SMP comment on the SMP and notify the Contractor of such comments in writing. If the E/SO* 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 E/SO* 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 E/SO*.

(e) Subject to the provisions of other Special Conditions of Contract stating to the contrary, the Contractor shall ensure that his subcontractors shall not subcontract the whole of the works subcontracted to them.

(f) The Contractor shall employ his own staff to manage and supervise his subcontractors.

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(g) For the purpose of this clause and the Guidelines on Scope and Contents of the Subcontractor Management Plan at Appendix [x] # to these Special Conditions of Contract, the term 'subcontractor' means all types of subcontractor including without limitation Nominated Subcontractor and Specialist Subcontractor.

(h) The Contractor shall, upon written request by the E/SO* (which may be issued by the E/SO* from time to time or at any time), produce to the E/SO* documentary proof to demonstrate to the satisfaction of the E/SO* 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 subcontracts, reports from subcontractors on their further subcontracting arrangement and daily attendance records of site workers. For the purpose of determining the extent of documentary proof, the E/SO* 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 E/SO* may make as many separate written requests as he thinks fit. The provisions of this sub-clause shall be without prejudice to sub-clause (5/7*) of this Clause.

Internal Notes:

 # Insert appropriate reference

*** Delete as appropriate [The numbering of the sub-clause may vary depending on individual contract. The sub-clause intended to be referred to is the sub-clause of GCC Clause 4 which states the duty of the Contractor if so required to furnish full particulars of any subcontractor employed on the Works.]**

^ The numbering of this added sub-clause may vary depending on the type of GCCs used and whether there is other SCC in the contract which also amend GCC Clause 4.

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Appendix [x]# to SCC[x]#

Guidelines on Scope and Contents of Subcontractor Management Plan

The Subcontractor Management Plan shall include (but not limited to) the following:

i) Scope of works to be subcontracted including the form and extent of subcontracting arrangement such as labour only, labour and plant, labour and material, plant only, lump sum or any other combination of types. Proof of ownership of construction plant and material shall be addressed. The scope of works to be subcontracted shall comply with the relevant contractual provisions (i.e. the SCC for Limiting the Tiers of Subcontracting).

ii) Particulars of subcontracts (irrespective of tiers) as required under the Template under Table 1.

iii) The Contractor's approach to demand/ensure his subcontractor(s) to a) abstain from subcontracting the whole of the works subcontracted to him/them, and b) report upwards his/their subcontracting arrangement and any subsequent changes with written declarations of no "hidden" subcontracts for any part of the Works subcontracted to any of them.

iv) The Contractor's proposed measures for supervision of the works and monitoring of the performance of subcontractors, particularly the aspects of the works programming, quality and safety of the works and environmental protection.

v) Criteria for selection of subcontractor(s) involving trade(s) not available in the Registered Specialist Trade Contractors Scheme (RSTCS).

vi) The Contractor's approach to ensure all his subcontractor(s) (irrespective of tiers) to adopt written contracts in his/their subcontracting and that all the subcontract(s) comply with the requirements as stipulated in the Contract (i.e. SCC for Subcontract conditions).

vii) Details of the Contractor's Management Team, as required in the Contract (i.e. the SCC for Contractor's Management Team), employed on direct supervision and management of subcontractor(s). An organization chart showing the responsibilities of the Contractor's direct staff in supervision and management of his subcontractor(s) shall be submitted.

viii) Declaration through the standard declaration from that members of staff on the Contractor's Management Team are prohibited to be given a subcontract to any part of the Works or to have a vested interest in any of the subcontractors irrespective of tiers.

ix) The Contractor's proposed measures to ensure the compliance with the implementation of the system of payment of wages to the Site Workers as stipulated in the Contract (i.e. SCC for Payment of Wages of Site Workers). The Contractor's proposed measures for ensuring timely payments to subcontractor(s) and payments by subcontractor(s) to subcontractor(s) of lower tiers.

NB. The above items are not exhaustive. The Contractor can add any other items, which he considers pertinent to the proper management of his subcontractor(s).

Internal Notes:

Insert appropriate reference

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Appendix [x]# to SCC[x]#

[For contracts without contract measures to prevent non-payment of wages and/or limiting number of tiers of subcontracting]

Guidelines on Scope and Contents of Subcontractor Management Plan

The Subcontractor Management Plan shall include (but not limited to) the following:

i) Scope of works to be subcontracted including the form and extent of subcontracting arrangement such as labour only, labour and plant, labour and material, plant only, lump sum or any other combination of types. Proof of ownership of construction plant and material shall be addressed.
ii) Particulars of subcontracts (irrespective of tiers) as required under the Template under Table 1.
iii) Criteria for selection of subcontractor(s) involving trade(s) not available in the Registered Specialist Trade Contractors Scheme (RSTCS).
iv) Details of the Contractor's own staff employed for direct supervision and management of his subcontractor(s). An organization chart showing the responsibilities of the contractor's direct staff in supervision and management of his subcontractor(s) shall be submitted.
v) The Contractor's approach to demand/ensure his subcontractor(s) to a) abstain from subcontracting the whole of the works subcontracted to him/them, and b) submit written declarations of no "hidden" subcontracting of works.
vi) The Contractor's approach to encourage his subcontractor(s) to adopt written contract(s) in his/their subcontracting.
vii) The Contractor's proposed measures to demand his subcontractor(s) to report upward his/their subcontracting arrangement(s) and any subsequent changes.
viii) The Contractor's proposed measures for monitoring and assessing the works programme, quality, safety and environmental performance of his subcontractors.
ix) The Contractor's proposed measures for ensuring timely payment to downstream subcontractor(s) after his payment to his direct subcontractor(s).
x) The Contractor's approach for monitoring disputes.
xi) The Contractor's approach for handling complaints from workers on site regarding wages arrears disputes and co-ordinating with Labour Department for prompt action. Contractors are required to keep the Architect/Engineer/Supervising Officer's site representatives updated of the situation.
xii) The Contractor's proposed measures for maintaining updated daily attendance records of all workers on site.
xiii) The Contractor's proposed measures for site security and workers' daily access control if applicable.

NB. The above items are not exhaustive. The Contractor can add any other issues, which he considers pertinent to the proper management of his subcontractor(s).

Internal Notes:
 # Insert appropriate reference

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Appendix [x]# to SCC[x]#

Standard Declaration Form by the Contractor on Compliance with Provisions in Subcontractor Management Plan

To: The [Engineer / Maintenance Engineer / Supervising Officer / Maintenance Surveyor]*

Contract No. : _____

Contract title : _____

In accordance with the Guidelines on Scope and Contents of Subcontractor Management Plan referred in SCC [x]# , I / we declare and confirm that we have complied with and undertake to continue to comply with the following provisions, and declare and confirm that I / we have ensured and undertake to continue to ensure that our members of staff on the Contractor's Management Team as referred in SCC [y]# are aware of the following provisions:

(c) Members of staff on the Contractor's Management Team are prohibited from being given a subcontract to any part of the Works or having a vested interest in any of the subcontractors irrespective of tiers;

(d) Members of staff on the Contractor's Management Team are required to submit written declarations to the [Engineer / Maintenance Engineer / Supervising Officer / Maintenance Surveyor]* upon his / her written request from time to time or at any time that they do not have a subcontract to any part of the Works or any vested interest in any of the subcontractors irrespective of tiers.

(Name of the Contractor) _____

(Name of the Signatory) _____

(Position of the Signatory) _____

(Date) _____

Internal Notes:

***Delete where inappropriate**

 # Insert appropriate reference

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Appendix [x]# to SCC[x]#

Table 1 - Particulars of Sub-contracts[1]

No.	Contract No.	Contract Title	Contract Sum ($)	Contact Point	Company Name of Sub-contractor	Commencement Date	Program	No. of Tier	Form of Sub-contractor	Type[2] (RSTC or RS)	Trade[3]	Specialty[3] (NA for RSTC)	Registration No.	Expiry Date	Value[4]	Grouping[5] (1, 2 or NA)
e.g.	CV/XXXX/XX	Construction of XXX	100,000,000	Mr. XXX EAX	ABC Company Ltd.	1-10-2020	9 months	1	labour, plant & material	RSTC	Concreting Formwork	NA	XXXXXX	31-3-2022	E	1
	CV/XXXX/XX	Construction of XXX	100,000,000	Mr. XXX EAX	123 Company Ltd.	1-10-2020	12 months	2	labour & plant	RS	Fire Services Installation	Fire services pipe work	XXXXXX	31-3-2022	D	NA
1																
2																

Notes:

(1) Apart from the above information, the Contractor shall provide additional information and supporting document upon requested.

(2) RSTC refers to the Registered Specialist Trade Contractors under the Registered Specialist Trade Contractors Scheme (RSTCS) of the Construction Industry Council (CIC).
RS refers to the Registered Subcontractors under the RSTCS.

(3) One row for one particular trade or specialty. Sub-contract with multiple trades or specialities shall be reported individually in several rows. For details of the classification of trade and specialty, please refer to the website of the RSTCS at www.rstc.cic.hk managed by the CIC.
RSTCS covers 8 designated trade groups, viz. (1) Concreting, (2) Concreting Formwork, (3) Curtain Wall, (4) Demolition, (5) Erection of Concrete Precast Component, (6) Reinforcement Bar Fixing, (7) Scaffolding, and (8) Plastering.

(4) One value for one particular trade group and specialty. The ranges of Value A to G are shown below:
A: Value < $1M
B: $1M ≤ Value < $3M
C: $3M ≤ Value < $6M
D: $6M ≤ Value < $15M
E: $15M ≤ Value < $30M
F: $30M ≤ Value < $60M
G: Value ≥ $60M

(5) Group 1 and Group 2 refer to the tender limits set by CIC for the 8 designed trades mentioned in (3) above, which are only applicable to RSTC. For details of the tender limits, please refer to the website of the RSTCS at www.rstc.cic.hk managed by the CIC.

Internal Note:
 # Insert appropriate reference

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Appendix [y]# to SCC[x]#

Guidelines on documentary proof to demonstrate the compliance of the provisions in the SMP

i) E/SO should base on their professional judgment in selecting samples of subcontract document/report for documentary proof.

ii) Documentary proof should be limited to relevant information for the demonstration of the compliance of the provisions in the submitted SMP i.e. information as stipulated in the Guidelines on Scope and Contents of the Subcontractor Management Plan at Appendix [x]# to these Special Conditions of Contract.

iii) Documentary proof should exclude sensitive commercial information such as price, payment conditions, bills of quantity etc.

Internal Note:

 # Insert appropriate reference

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APPENDIX 5.24 (NOT USED)

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APPENDIX 5.25 PARTICULAR SPECIFICATION FOR MANAGEMENT OF SUBCONTRACTORS

SECTION X

Management of Subcontractors

GENERAL

General **X.1** **(1)** **The Contractor shall ensure the submission and quarterly updating of the Subcontractor Management Plan (SMP) in the form and contents as prescribed in the Contract.**

(2) **The Contractor shall monitor and ensure the implementation of and the compliance with the SMP.**

SUBCONTRACTOR MANAGEMENT PLAN (SMP)

SMP **X.2** **(1)** **The Contractor shall, in accordance with SCC [x], prepare and submit to the Engineer/Supervising Officer* (E/SO*) 2 copies of the Subcontractor Management Plan signed by the Site Agent. The SMP shall contain detailed information as required by the Guideline on Scope and Contents of the Subcontractor Management Plan at Appendix [x] to the SCC [x].**

Quarterly updated SMP **X.3** **(1)** **The Contractor shall, in accordance with SCC [x], submit to the Engineer/Supervising Officer* (E/SO*) 2 copies of the quarterly updated Subcontractor Management Plan signed by the Site Agent. The quarterly updated SMP shall contain the updated detailed information as required by the Guideline on Scope and Contents of the Subcontractor Management Plan at Appendix [x] to the SCC [x].**

(2) **If there is no change to the previous SMP, the Contractor shall, in accordance with SCC [x], declare such status in writing instead of submitting the same SMP again. The declaration shall be signed by the Site Agent and for the purpose of this Particular Specification, the declaration shall be considered as a quarterly updating of the SMP.**

***** **Delete as appropriate**

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APPENDIX 5.26 (NOT USED)

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APPENDIX 5.27 (NOT USED)

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APPENDIX 5.28 PRACTICE NOTE ON ADOPTION OF NON-CONTRACTUAL PARTNERING IN PUBLIC WORKS CONTRACTS (Ref: SETW's memo ref. (0117S-01-2) in ETWB (W) 506/30/02 dated 30.3.2006 and SDEV's memo ref. () in DEVB(W) 506/30/02 dated 23.9.2020)

Introduction

Partnering is a project delivery technique based on cooperative working practices, which can be taken as a journey of improvement with non-contractual partnering being the first step on this journey. This Practice Note promulgates the guidelines and good practices for implementation of non-contractual partnering in public works contracts.

Background

2. In Hong Kong, the Hospital Authority and MTR Corporation Limited (MTRCL) were probably the first clients to embrace the concept of partnering. Partnering was first used in hospital projects in the mid 1990's with some notable success. Partnering was also adopted by the MTRCL in its Tseng Kwan O Extension project, which opened ahead of schedule with construction cost substantially below budget. MTRCL has attributed such success to the use of project partnering.

3. The ETWB has been actively promoting the adoption of partnering in public works contracts in recent years, and introduced partnering on a non-contractual basis in public works contracts in 1997. Since then, non-contractual partnering has been used in more than 30 public works contracts. The wider use of partnering in construction industry was also recommended in the Construct for Excellence report published by the Construction Industry Review Committee (2001).

4. The ETWB also arranged a forum in November 2004, which was attended by representatives from all works departments and the Independent Commission Against Corruption (ICAC). The purpose of the forum was to share experience and information about what was going well and what needed to be improved. The good practices identified during the forum are summarized in Annex A as a reference guide.

Guidelines for selection of contracts for adoption of non-contractual partnering

5. In order to promote the wider use of partnering approach in public works contracts, non-contractual partnering should be adopted in the following types of contracts as far as possible:

(a) Building and civil engineering capital works contracts with tenders to be invited from Group C contractors;

(b) E&M contracts with tenders to be invited from Group B and/or C contractors;

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(c) Other contracts such as maintenance term contracts if approval is given by an officer at D2 or above rank to adopt the non-contractual partnering arrangement having regard to the nature and complexity of the works.

For contracts under (a) and (b) above, approval from an officer at D2 or above rank shall be obtained for not adopting the non-contractual partnering arrangement.

Implementation

Project Charter

6. Non-contractual partnering involves establishing a Partnering Charter after the contract is awarded. The Partnering Charter is a statement of general principles agreed among the stakeholders (e.g. Employer, Consultant and Contractor) and is non-binding, while the underlying contract establishes the legal relationship between the parties. A typical Partnering Charter is given in Annex B.

7. The Partnering Charter is drawn up at the beginning of the contract during the start-up partnering workshop. Subsequent partnering meetings are held at various stages to review performance of each project according to the established objectives. The partnering meetings are also used as the means to achieve better project value through mutual recognition and development of improvement opportunities, enhance effectiveness by preventing unnecessary cost and time escalations, and identify opportunities for simplifying procedures and potential savings in time or costs, etc. An independent professional facilitator is usually engaged jointly by the project office and contractor to help plan the partnering workshops and provide facilitation services.

Start-up workshop

8. To fully utilize the start-up workshop for each contract, the project office should invite staff who may not be involved in the project but are interested in non-contractual partnering to attend the workshop as observers. This will provide additional training opportunities for staff, especially frontline staff. Also, in order to "attract" other key stakeholders (e.g. EPD, TD, Police, subcontractors, etc.) to join the workshop to establish an informal communication channel at an early stage, representatives from these parties should be invited to attend the relevant part of the workshop instead of sitting through it, which usually lasts for a full day.

Sample Documents

9. Where a contract is selected for adoption of non-contractual partnering, the project department should include a note in the Notes for Tenderers in the tender documents indicating the Government's intention to adopt non-contractual partnering. After contract award, the project department should ask the contractor in writing whether he is willing to adopt non-contractual post-award partnering and share equally the costs associated with the partnering workshops including the services of an independent professional facilitator. The standard note for inclusion in the Notes for Tenderers and sample letter to the contractor are given in Annex C.

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10. A sample Form of Tender and Brief for appointing the facilitator are given in Annexes D and E respectively. The experience and qualification requirements for the facilitators are set out in paragraph 22 of the sample Brief. The quality of the facilitator has an important bearing on the outcome of non-contractual partnering. Therefore, the facilitator should be appointed on the basis of his technical and fee proposals, and where appropriate, a two-envelope approach should be adopted in his selection.

Appointment of Facilitator

11. Currently, with the agreement of the contractor, each contract will appoint a facilitator by letting a small consultancy assignment. For a department with many contracts adopting non-contractual partnering, some administrative time and resources may be saved if the department elects to let a term consultancy to provide facilitating services for say up to 3 contracts over a given period of time. However, before adopting this non-mandatory approach, the department should first consider its limitations, such as the administrative and funding arrangements for the term consultancy, the potential complications due to project slippage or cancellation, and the implications in case the contractor refuses to work with the term consultancy consultant, etc. If this approach is adopted, references to the "Contractor" in the brief in Annex E for appointment of facilitator should be removed. Also, the standard notes for tenderers and sample letter to the contractor in Annex C should be amended accordingly. Furthermore, the Engineer for a contract covered by the scope of the term consultancy should record his justifications in file if he elects NOT to use the term consultancy.

Monitoring

12. In addition to provision of partnering workshops/meetings, project departments should set up individual project management teams to drive, manage and monitor the actual process. In addition, DEVB has set up a steering group comprising representatives from works departments as well as the ICAC, to promote the wider use of partnering in public works contracts, to oversee the implementation as well as to determine policy and strategic directions.

Promote Awareness

13. To promote the awareness of non-contractual partnering, departments may consider identifying a pool of experienced staff, so that any "new comers" could contact them for help/advice if necessary. The contractor should be encouraged to do likewise.

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Annex A

GOOD PRACTICES FOR IMPLEMENTATION OF NON-CONTRACTUAL PARTNERING

ETWB arranged a forum in November 2004 for Works Department staff members who were working on non-contractual partnering projects. The purpose of the workshop was to share experience and information about what was going well and what needed to be improved. The following is a summary of good practices identified. In addition, some basic principles in contract administration from the standpoint of corruption prevention are reiterated in Enclosure I.

1 Common goals

Partnering enables project team members to share views about their own organisation's objectives and to establish a set of mutual objectives that all can aim for. At first this might seem difficult to achieve as team members often assume that they have incompatible objectives (i.e. RSS team want quality but the contractor wants profit) but this is rarely the case and any differences can normally be talked through to achieve a 'partnering charter' with objectives acceptable to all parties.

Establishing common goals begins at the start-up workshop and continues throughout the project. It is important to establish common goals for key issues affecting the projects such as major delaying events. Common goals should also be revisited and adjusted as necessary at review workshops.

Example ***:CEDD's T3 project in Shatin is being built in a densely populated area, both the project team and contractor are constantly facing challenges from external influences. As each new issue arises the project team from CEDD, the contractor and the RSS team discuss and agree a common approach.***

2 Involvement of senior management

One of the major benefits of partnering is the opportunity for senior management of the key parties (e.g. D1 or above officer) to get together to discuss and resolve key issues jointly, through the Champion or Steering Group meetings. Such meetings also provide an informal forum for senior management to share perceptions of how things are going and to listen to the views of junior staff. This helps senior staff to be better informed and provide support to the project staff in overcoming key issues.

Example ***:Open discussions at the Regular Champion Group meetings for the Central Reclamation Phase III project has helped senior management from CEDD, the contractor and RSS team to develop a relationship of cooperation, which was particularly important in dealing with the situation surrounding the judicial review process.***

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3 Culture of sharing and trust

No one party can succeed in delivering a project alone; often the teams are only as strong as the weakest link, which for example can be a key subcontractor. Establishing cooperation and trust amongst the parties provides the basis for a successful outcome. But this is often difficult to achieve if we have a culture of mistrust and selfish behaviour within the industry.

How can we build trust within a hard contractual relationship? The starting point is to think of how you can help the other team members achieve the mutual objectives rather than to think about how they should help you achieve your own objectives. There are plenty of ways to do this within the bounds of the contract and Government procedures, but it does need a change of attitude. By taking the first step to help others you will set an example and begin to establish a culture of sharing and trust, which will have significant benefits for the project and those involved.

Once you have taken the lead in role modelling this behaviour, be prepared to be assertive with those who remain selfish. Partnering has to be win/win.

Example ***:Getting an early mutual agreement for alternative designs proposed by the contractor gives a strong signal of the willingness to help the other side succeed. For Route 9 (formerly Route 5) in Tsuen Wan, the project team from CEDD was able to agree with the contractor the principles of the major Supplementary Agreement on his proposed alternative designs within 3 months of the start of the project.***

4 Prompt problem solving and decision making

Compared to other industries, decision-making and problem solving in construction is relatively slow. The root cause is that team members often focus on achieving decisions for the benefit of their own organisation or on allocating blame for problems on others. Joint problem solving is therefore a key to getting the best solutions, since no one party normally has all the information or the best ideas. A suggested approach to problem solving is illustrated in Enclosure II. Efficiency is also dependent upon employing good people and then giving them the freedom and authority to make decisions in the best interest of the project. Monitoring of the project performance can be done by taking a more holistic view and measuring trends against overall objectives.

Example ***:The Route 8 (Shatin Heights Tunnels and Approaches) project team reviewed progress of the project at Steering Group meetings using Key Performance Indicators, which provided an objective measure of performance against the mutual objectives. The review meetings also enabled the project team to focus on key issues affecting objectives and trends.***

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5 Streamlining procedures

There are many procedures to be followed in delivering a project. Some procedures have obvious purpose and benefit for a given project whilst others may not. Streamlining procedures is about removing activities that do not add value to the end result of the project, which we are all trying to achieve. Through cooperation, establishing trust and common objectives the parties can remove unnecessary procedures and duplication of effort. But this needs to start at the top and be undertaken as a joint improvement actions.

Example ***:Environmental constraints for construction of Tung Chung Road Improvement make it difficult for the contractor to carry out the construction works using conventional approaches. To assist the contractor to overcome the difficulty, the project team from HyD has worked hard to smooth out the processes required to enable the contractor to gain access, obtain storage areas and modify designs to suit the emerging situation.***

6 Sharing pain and sharing gain

Projects rarely go exactly as planned throughout project delivery. Therefore, success in partnering depends a great deal upon how the team face up to the opportunities and threats along the journey together. To encourage the contractor to come forward with cost-saving alternative methods or ideas that do not detract from the overall objectives or contractual obligations, such savings are shared equally between the Government and contractor [see DEVB TCW No. 3/2014]. Although getting the savings is not easy, they are still there for the teams that are prepared to look for them and work together to achieve them.

Sharing pain is more difficult under the conventional contractual arrangements. Nevertheless, supporting each other in difficult circumstances in whatever way is possible is a good investment in the relationship and will be returned when circumstances reverse.

Example ***:Replacement of the deodorisation equipment at To Kwa Wan and Kwun Tong Primary Sewage Treatment plants whilst keeping the plant running was a challenge that could only be met through teamwork. The teams from EMSD and the contractor treated each other as equals while facing the problem together. Both teams openly discussed issues on a regular basis and supported each other as new problems arose.***

[Notes: ETWB has identified a public works project for the trial adoption of contractual partnering based on the New Engineering Contract, which permits the cost of risk to be shared between the Employer and the contractor.]

7 Involvement of more stakeholders

For many projects, the non-contractual partnering relationship typically involves the employer, main contractor and principle consultant. This can bring about significant benefit. However, greater benefits may be realised by

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including other major stakeholders such as key subcontractors, user groups and other Government departments that can have a significant impact on the project outcome. If these stakeholders understand better the needs and objectives of the main project team by joining the partnership, they are more likely to help to find solutions to problems that satisfy the needs of all parties.

Example ***:Tai O Harbour and Development project team invited EPD, the environmental consultant and the independent environmental checking consultant along to the start-up workshop. This has greatly enhanced the relationship between the parties in dealing with subsequent environmental issues.***

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Enclosure I

General Principles for Contract Administration for Corruption Prevention

The following general principles in contract administration should be adopted for prevention of potential corruption:

a. Fairness and openness.

b. The terms and conditions of the contract should remain in full force unless varied by way of a supplementary agreement. The arrangement for controlling the issue of supplementary agreements is given in Appendix V(B) of the SPRs.

c. Quality control of the works on site, and checks-and-balances should not be relaxed

d. Granting of extension of time applications and claim assessment etc. should follow existing approval procedures and properly documented

e. The non-contractual partnering arrangement should not be used as an excuse for accepting advantage or inappropriate entertainments offered by contractors. Further guidelines are given in the Civil Service Regulation Chapter III.

In addition, project departments should consider inviting the ICAC to participate in the start-up workshop for contracts where non-contractual partnering is adopted.

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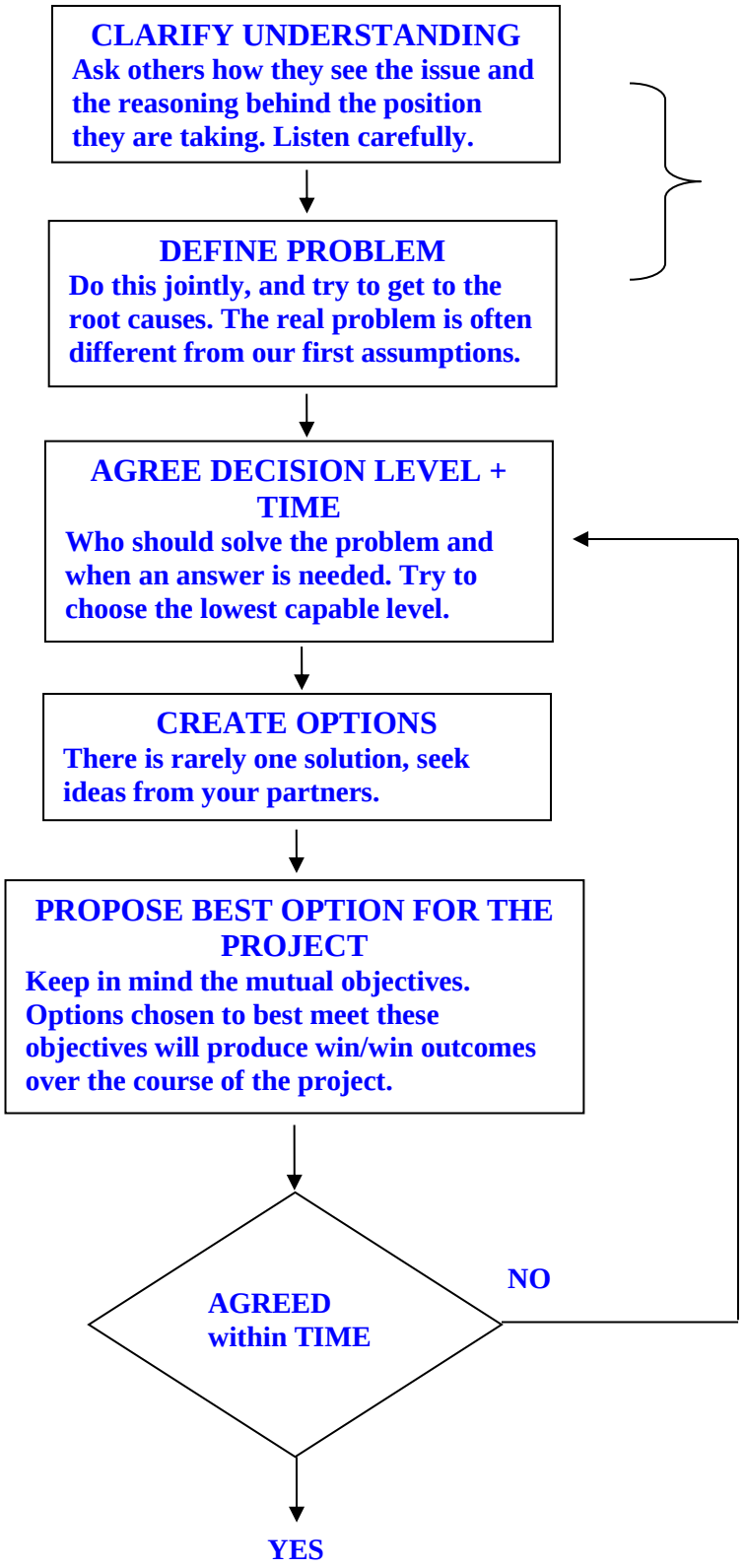
Enclosure II

Communication and Problem Solving in Partnering

90% of disagreements are caused by misunderstandings. To avoid this and improve problem solving, the following general approach may be considered:



Notes **:**

Any understanding or agreement reached between the senior management of the key parties should be brought promptly to the attention of the relevant frontline staff.

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Annex B

TYPICAL PARTNERING CHARTER

Contract No. + Contract Title
Main Participants - Employer/Main Contractor/Consultants

VISION STATEMENT

A simple statement of what the team aspires to.

MUTUAL OBJECTIVES

- **This is a detailed set of objectives that can be used as a basis for performance measurement.**
- **Generally they cover hard objectives such as time, cost, quality, safety and environmental outcomes.**
- **Usually there are about 6 key objectives.**

VALUES & BEHAVIOURS (Optional)

- **These set out how the team would expect to work together and can be used as a basis for monitoring development of the relationship and how the team adopting partnering behaviours.**
- **Generally they cover soft issues such as cooperation, trust, openness, support, joint problem solving, etc.**
- **Usually there are about 6-8 key values and behaviours noted.**

Though not essential it is often good to include a team photo or logos of the companies involved.

Signatures: All key members of the team (normally those present at the start-up partnering workshop) sign the charter.

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Annex C

(1) Standard notes for tenderers to communicate Government's intent to partner

NOTES FOR TENDERERS
(These notes will NOT form part of the Contract)

Partnering

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 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.

(2) Standard letter to the Contractor to communicate Government's intent to partner and to invite him to participate in project partnering

Adoption of Project Partnering

Please be informed of the Employer's intention to adopt non-binding post-award project partnering with participation of all stakeholders of the project. If the non-binding 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 Contractor. As this initiative is to be implemented on a purely voluntary basis, please advise in writing your agreement or otherwise to the undersigned by Date .

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Annex D

FORM OF TENDER

NOTES:
If a tender is being made by a partnership or an unincorporated body, the name(s) and residential address(es) of all partners should be given in the spaces provided below.
In all cases, the tenderer must insert below the number and date of the business registration certificate:

Number _____ Date_____

To:	**Employer's Representative**	**Contractor's Representative**
	Name:	**Name:**
	Post:	**Post:**
	Department:	**Company:**
	Address:	**Address:**

1. **Having inspected the Client's Brief to Service Providers for Designing and Facilitating Partnering Workshops and Related Services (hereinafter referred to as "the Brief"), I/we offer to deliver and complete the assignment required under the Brief commencing from a date to be notified by the Client, in conformity with the Brief and for such rates that I/we have quoted in this Form of Tender.**

2. **I/We agree to abide by this Tender for a period of 3 months from the date fixed for receiving the same and it shall remain binding upon me/us and may be accepted at any time before the expiry of that period.**

3. **I/We understand that the acceptance of this Tender by the Client shall constitute a binding contract between us. The technical information attached to the Tender, with details of the qualifications and relevant experience of the Lead Facilitator and the Co-facilitator, shall be used for the purpose of assessing the Service Provider's competence in satisfactorily completing the assignment.**

4. **I/We understand that the Client is not bound to accept the lowest or any tender it may receive.**

5. **I/We understand that the Client reserves the right to negotiate with any tenderer about the terms of the offer.**

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6. I/We quote the following rates for completing the assignment as described in the Brief:

Item No	Description of Service	Estimated Quantity	Rate (HK$)
	Start-up Workshop		
	Design and facilitate a one-day start-up workshop	***1***	
	Follow-up Workshops		
2.	**Design and facilitate a half-day follow-up workshop (0.5 day)**	***1***	
	Venue for Workshops		
3.	**Provide venue for a one-day workshop for *[20]* participants**	***1***	
4.	**Extra over Item 3 for each additional participant**	***10***	
	Partnering and Introductory Meetings		
5.	**Attend and facilitate a partnering meeting (average 0.5 day per meeting)**	***5***	
6.	**Design and facilitate an introductory meeting (0.5 day) for an average of *[30]* participants**	***2***	

[Note: The estimated quantities for individual items and the number of participants for Items 3 and 6 are to be assessed by the Employer and the Contractor and adjusted accordingly prior to inviting tender.]

7. I/We understand that the rates quoted above shall be valid throughout the contract period from xxx to yyy *[to be specified by the project office]*, and my/our remuneration will be determined by the services to be instructed by the Client and actually carried out.

8. I/We will provide _____ as the Lead Facilitator and _____ as the Co-facilitator for the workshops and meetings.

Signed by the Tenderer with Company Chop _____

Name of Tenderer _____

Date _____

Registered Address of Company _____

Place of Business Registration _____

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Annex E

Client's Brief to Service Providers for Designing and Facilitating Partnering Workshops and Related Services

THE CLIENT AND THEIR REPRESENTATIVES

1. The Client requesting the Tender and technical information for designing and facilitating partnering workshops and the provision of related services are the Employer and the Contractor for the following Government works contract:

Contract No:
Contract Title:
Employer:
Contractor:
Commencement Date:
Contract Period:

2. The Employer's Representative for this assignment is _____ or such other person as may be appointed from time to time by the Employer and notified to the Contractor and the Service Provider in writing.

3. The Contractor's Representative for this assignment is _____ or such other person as may be appointed from time to time by the Contractor and notified to the Employer and the Service Provider in writing.

4. The Service Provider is the person, firm or company whose tender for this assignment has been accepted by the Client.

BACKGROUND AND OBJECTIVES OF THE ASSIGNMENT

5. The Client is determined to foster a partnering spirit for the project team which includes the staff of the Employer, Contractor, consultants, subcontractors and suppliers involved in the Government works contract through partnering workshops and meetings. The partnering workshops and meetings are intended to achieve enhanced mutual understanding, effective communication and co-operation, and to enhance project value through the involvement and commitment of all parties concerned.

6. The workshops and meetings are to be designed to facilitate participants to understand better project objectives; focus on creative co-operation; avoid adversarial confrontation; build working relationships based on mutual respect, trust and integrity; establish a more dynamic project organizational structure and clear line of communication; and develop a formal problem solving and dispute avoidance mechanism. The workshops and meetings will also be used as the means to achieve better project value through mutual recognition and development of improvement opportunities; enhance effectiveness by preventing unnecessary cost and time escalations, delays, or unresolved issues or problems; reduce the project time and improve quality; clarify common objectives; clarify project requirements; and identify opportunities for simplifying procedures and potential savings in time or costs.

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SERVICES TO BE PROVIDED BY THE SERVICE PROVIDER

Start-up Workshop

7. The Service Provider will initially be required to design and facilitate the start-up workshop, to be held in _____. The Service Provider shall use facilitation skills and all other necessary techniques to achieve the objectives of the assignment, and to ensure full commitment of all participants. Upon completion of the start-up workshop, the Service Provider shall provide a full report on all points agreed during the workshop with a follow-up action plan and post-workshop evaluation system. The Service Provider shall also prepare 3 copies of the project charter (with photo frames provided) to be signed up by the participants.

8. The Service Provider shall facilitate participants to develop an evaluation mechanism for regular monitoring and evaluating the mutual project objectives, improvement initiatives and partnering relationships. Such mechanism shall record the project team's assessed performance for the Government works contract to encourage continuous improvement.

9. The Service Provider must perform the work with the degree of skill and care required by good and sound professional procedures and currently available standards. He shall take all necessary steps to rectify any part of his work that does not meet professional standards and/or the Client's requirements.

10. The start-up workshop shall be designed and conducted by the Lead Facilitator and the Co-facilitator using the most up-to-date partnering methodologies worldwide. The Lead Facilitator is the person named in the Form of Tender to be the Lead Facilitator for this assignment. The Co-facilitator is the person named in the Form of Tender to be the Co-facilitator for this assignment. The facilitators shall conduct the workshop in a structured manner using a participatory and collaborative approach. The outcome of the workshop shall be action-oriented. At least one of the facilitators shall be Cantonese-speaking, otherwise the Service Provider may need to provide translation service at his own expenses.

11. The rate quoted for designing and facilitating the start-up workshop shall cover the services of the two facilitators for the workshop and the pre-workshop discussions and meetings, secretarial service at the workshop, preparation of the full report and the project charter, and the supply of worksheets, workbooks, relevant references and literature and other workshop material necessary for the effective delivery of the workshop.

12. The Service Provider shall be required to provide the venue for the workshop. The rate quoted for providing the venue for a one-day workshop shall cover the rent and other charges for the venue, lunch and coffee breaks and the provision of necessary audio and visual equipment and stationery such as paper, pencils, transparencies, markers, flip charts, TV, LCD projector, overhead projector, etc. The duration for the start-up workshop shall be from 9:00 a.m. to 6:00 p.m. (inclusive of 1 hour lunch break).

13. The facilitators for the workshop shall meet with key project team members in order to identify major concerns and risks involved with key stakeholders before the

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workshop. During such meetings, the facilitators shall clarify all pre-workshop concerns and issues and prepare all parties for the workshop. The Client shall forward relevant details of the workshop, e.g. names of participants, scope and progress of the Government works contract, etc. to the Service Provider before the workshop.

14. Participants will mainly be key members of the project team including staff of the Employer, Contractor, consultants, subcontractors and suppliers. The Service Provider shall prepare and agree the scope, format, structure, agenda, contents and handout with the Client prior to the workshop. The Service Provider shall provide each of the participants with a copy of the agenda and handout at the commencement of the workshop. The Service Provider shall also prepare and supply sufficient worksheets, workbooks, relevant references and literatures and workshop equipment and stationery, etc. as necessary for effective delivery of the workshop. The facilitators shall arrange for their own computer and printer for the workshop.

15. Within seven days from the workshop completion date, the Service Provider shall furnish to the Client four (4) copies of the post-completion report (in both hard copy and electronic format) for the workshop containing the information as mentioned in clause 7 of this Brief. In addition, the post-completion report shall evaluate the effectiveness of the workshop and make recommendations for future action. It shall also contain the salient points of the discussions, findings and conclusions made during the workshop.

Follow-up Workshops, Partnering Meetings and Introductory Meetings

16. In addition to designing and facilitating the start-up workshop, the Service Provider may be required to design and facilitate follow-up workshops and partnering meetings for the project team, and introductory meetings for other staff members of the Client. However, the services for follow-up workshops, partnering meetings and introductory meetings may only be required when instructed by the Client, and the Service Provider shall have no claims against the Client should these workshops and meetings are not required for any reasons.

17. The rate quoted for designing and facilitating the follow-up workshops shall cover the services of the two facilitators (i.e. the Lead Facilitator and the Co-facilitator) for the workshops and the pre-workshop discussions and meetings, secretarial service at the workshops, preparation of the workshop reports, and the supply of worksheets, workbooks, relevant references and literature and other workshop material necessary for the effective delivery of the workshops.

18. The rate quoted for attending and facilitating partnering meetings shall cover the service of either the Lead Facilitator or the Co-facilitator for the meeting with an evaluation of the effectiveness of the meeting and a recommendation for future action, as well as the secretarial service for the partnering meetings.

19. The rate quoted for designing and facilitating introductory meetings shall cover the service of a speaker (who shall be the Lead Facilitator for the workshops) for the meeting and necessary pre-meetings with key members of the Client, and the supply of worksheets, workbooks, relevant references and literature and other material necessary for the effective delivery of the meetings, as well as the secretarial service for the meetings and preparation of any reports as requested by the Client.

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20. The venue for the follow-up workshops, partnering meetings and introductory meetings will be approved by the Client.

SPECIALIST AND SUPPORTING SERVICES

21. The Service Provider shall provide all specialist and non-specialist services deemed necessary for the satisfactory completion of the assignment.

22. Facilitators for the workshops shall be highly trained in facilitation techniques. The Lead Facilitator shall have at least 3 years of practical relevant experience in conducting partnering workshops. Both facilitators should preferably have undergone training in group psychology and group dynamics, and have experience in facilitating partnering workshops for organizations in Hong Kong.

REMUNERATION AND PAYMENT TERMS

23. The Service Provider shall be remunerated for the services provided in accordance with the rates quoted in the Form of Tender. Payment to the Service Provider shall be made after satisfactory completion of each service including submission of the report to the reasonable satisfaction of the Client. The rates quoted in the Form of Tender shall be all inclusive rates. They shall also cover all profits, insurance, travelling, accommodation, food, subsistence allowance, price fluctuation and other expenses (e.g. royalties for use of copyright or patented material etc.) necessary and required for the assignment.

24. The Employer and the Contractor shall each be liable for half of the remuneration properly due to the Service Provider for the services provided by the Service Provider.

25. For each payment for services provided, the Service Provider shall separately invoice the Employer and the Contractor for half of the remuneration quoted in the Form of Tender. The invoices to the Employer or the Contractor shall be certified by the Employer's Representative or as the case may be the Contractor's Representative within 7 calendar days if the services are considered satisfactorily completed, and be settled by the Employer or as the case may be the Contractor within another 21 calendar days.

COPYRIGHT

26. Subject to Clause 27, the copyright and all other intellectual property rights in the reports, minutes, documents or other materials prepared produced or created at the workshops and meetings or otherwise prepared produced or created by the Service Provider for the assignment shall vest in the Employer and the Contractor jointly immediately upon their coming into existence. Upon completion of the services, the Service Provider shall deliver to the Employer and the Contractor all copies of such reports, minutes, documents or other materials.

27. The Service Provider shall draw to the attention of the Client those workshop materials that are under licence or in respect of which there is a pre-existing copyright or

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patent or any other restriction whatsoever affecting the use of the same and procure, at its sole costs and expense, the grant of irrevocable, royalty-free, worldwide sub-licensable licences for the benefits of the Client its authorized users assigns and successors by the relevant third parties in respect of such materials rights for all purposes contemplated by the assignment.

28. The Service Provider shall at its own costs and expense do and execute any further things and documents (or procure that the same be done or executed) as may be required by the Employer and/or the Contractor to give full effect to Clauses 26 and 27 and shall provide all such documents and materials to the Employer and/or the Contractor within 14 days of the date of the written request of the Employer and/or the Contractor or such longer period as may be agreed by the Employer and/or the Contractor in writing.

29. The Service Provider warrants that:

a) it has full right capacity power and authority to enter into this contract including without limitation the grant of the rights referred to in Clause 26 upon the terms and conditions of this contract;

b) the exercise of any rights granted under this contract by the Employer and the Contractor and their authorized users assigns and successors will not infringe any intellectual property rights of any persons; and

c) in respect of any third party materials used which will be incorporated as part of the workshop materials, the Service Provider has or shall have a valid and continuing licence under which it is entitled to use and sub-license the relevant materials for the Employer and the Contractor and their authorized users assigns and successors to use such materials for all (or any one or more) of the purposes contemplated by this contract.

The Service Provider shall indemnify and keep the Employer and the Contractor fully and effectively indemnified against all actions, costs, claims, demands, damages, expenses and liabilities of whatsoever nature for the infringement of any copyright or other intellectual property rights of any third party arising out of or in connection with the use and/or possession of any of the materials supplied by the Service Provider. The provisions of this clause shall survive the termination of this contract (howsoever occasioned) and shall continue in full force and effect notwithstanding such termination.

CONFIDENTIALITY

30. The Service Provider shall treat all information (including without limitation any personal data as defined in the Personal Data (Privacy) Ordinance, Cap.486) provided by the Client to the Service Provider for this assignment as confidential and shall not disclose or divulge it to any person (except to its own employees on a need to know basis) without the Client's prior written consent Provided That this clause shall not extend to any information which was rightfully in the possession of the Service Provider prior to the commencement of this assignment or which is already in the public knowledge otherwise than as a result of a breach of this clause.

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31. The Service Provider shall take all appropriate measures to ensure security of such information and shall in all respects comply with the provisions of the Personal Data (Privacy) Ordinance, Cap. 486.

32. The Service Provider shall indemnify and keep the Client fully and effectively indemnified against all actions, costs, claims, demands, damages, expenses and liabilities of whatsoever nature arising from or incurred by reason of any actions and/or claims made in respect of

- **a) any breach of confidence by the Service Provider or any of its employees or agents; and**
- **b) any breach of the provisions of the Personal Data (Privacy) Ordinance, Cap. 486 which would not have arisen but for the negligence or omission of the Service Provider.**

33. The provisions of Clauses 30, 31 and 32 shall survive the termination of this contract (howsoever occasioned) and shall continue in full force and effect notwithstanding such termination.

CANCELLATION OF WORKSHOPS OR MEETINGS

34. The Client shall have the right to cancel a workshop or a meeting by giving 7 days written notice. In the event that a typhoon warning signal number 8 or above or black rainstorm warning signal is hoisted on the date of a workshop or a meeting, the workshop or meeting will automatically be cancelled. If a workshop or a meeting is cancelled under the above conditions or any other unforeseeable conditions not due to the Service Provider's own fault, the Service Provider will be reimbursed for the actual expenses incurred, such as non-refundable deposit paid for the venue, and the Service Provider shall have no other claims against the Client.

DECLARATION OF INTEREST

35. The Service Provider shall declare any involvement or interest which he considers to be in real or apparent conflict with the duties to be performed for the assignment.

OTHER TERMS

36. The tenderer for the assignment shall submit with his tender a technical information for the purpose of assessing the tenderer's competence in satisfactorily completing the assignment.

37. Upon acceptance of a tender by the Client, the Client shall confirm this to the successful tenderer in writing. The Acceptance Letter, this Brief and the Form of Tender shall be construed as a binding contract valid for the whole contract period of the Government works contract. The Client shall confirm the preferred date of a workshop or a meeting to the Service Provider in writing. Any failure of the Service Provider to provide the service after the above written confirmation may render him liable for the damages incurred by the Client in this connection.

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38. The Client shall have the right to withhold payment in whole or in part should the Service Provider fail to meet the requisite professional standards and the Client's requirements.

39. Once the Service Provider's tender has been accepted by the Client, the Lead Facilitator and the Co-facilitator shall not be changed without the prior written approval from the Client.

ENQUIRIES FOR CLARIFICATION AND DETAILS

40. Please contact the Employer's Representative or the Contractor's Representative at the following addresses and contact numbers:

Employer's Representative	Contractor's Representative
Name:	**Name:**
Address:	**Address:**
Tel No:	**Tel No:**
Fax No:	**Fax No:**
E-mail:	**E-mail:**

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APPENDIX 5.29 CONTRACT PROVISIONS – REVISED APPENDICES E, F & G OF WBTC NO. 13/2001 AND REVISED APPENDIX I OF ETWB TCW NO. 13/2001A
(Ref.: SDEV's memo ref. ( ) in DEVB(W) 520/83/01 dated 4.4.2018)
Revised Appendix E (2018 version)

Special Condition of Tender to be incorporated into tender documents for contracts requiring the contractor to have obtained the Certification

SCT - ISO 9000 Certification for the Contractor

(1) The tenderer shall, upon written request by the [1]Architect/Engineer designate issued in accordance with General Conditions of Tender Clause 25, submit to the [1]Architect/Engineer/designate:

EITHER

(a) a copy of his ISO 9001:2015 certificate acceptable to the Employer showing the scope of certification and a statement either:

i) confirming that there is no area/aspect in the Contract which his quality system specifically excludes; or

ii) disclosing the areas/aspects in the Contract which his quality system specifically excludes

OR

(b) where the tenderer due to circumstances beyond his control has not obtained ISO 9001:2015 certification:

i) a copy of the confirmation from a certification body acceptable to the Employer, stating that a full review of the Quality Manual of the tenderer's Hong Kong office has been carried out in Hong Kong and such Quality Manual has been found to be in conformity with the requirements of the ISO 9001:2015 standard; and

ii) an undertaking that within three months of the acceptance of tender, he would book with the certification body the date of audit for the ISO 9001:2015 certification; with detailed documented quality system procedures ready at the time of booking

(2) Where the tenderer is a joint venture, he shall, upon written request by the [1]Architect/Engineer designate issued in accordance with General Conditions of Tender Clause 25, submit to the 1Architect/Engineer designate:

a statement declaring that he shall implement the quality system of one of his participants or shareholders and specifying which one;

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(b) a copy of the written notification to the certification body of the specified participant or shareholder that the joint venture shall implement the quality system of the specified participant or shareholder and the written agreement of all participants or, as the case may be, shareholders of the joint venture that the activities of the joint venture shall be subject to the surveillance of the certification body; and

(c) (i) a copy of his specified participant or shareholder's ISO 9001:2015 certificate acceptable to the Employer showing the scope of certification and a statement either:

(A) confirming that there is no area/aspect in the Contract which the specified participant or shareholder's quality system specifically excludes; or

(B) disclosing the areas/aspects in the Contract which the specified participant or shareholder's quality system specifically excludes.

OR

(ii) where the specified participant or shareholder due to circumstances beyond his control has not obtained the ISO 9001: 2015 certification:

(A) a copy of the confirmation from a certification body acceptable to the Employer, stating that a full review of the Quality Manual of the specified participant or shareholder's Hong Kong office has been carried out in Hong Kong and such Quality Manual has been found to be in conformity with the requirements of ISO 9001:2015 standard; and

(B) an undertaking that within three months of the acceptance of tender, the specified participant or shareholder would book with the certification body the date of audit for the ISO 9001:2015 certification; with detailed documented quality system procedures ready at the time of booking.

(3) The submission under sub-clause (2)(a) of this SCT, if applicable, shall form part of the Contract.

[1] **Delete as appropriate.**

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Revised Appendix F (2018 version)

Special Condition of Contract to be incorporated into tender documents for contracts requiring the contractor to have obtained ISO 9000 certification

SCC - ISO 9000 Certification for the Contractor

(1) Within three months of the acceptance of the Tender, the Contractor shall book with a certification body acceptable to the Employer the date of audit for the ISO 9001:2015 certification; with detailed documented quality system procedures ready at the time of booking. If the Contractor is a joint venture, the date of audit for the ISO 9001:2015 certification shall mean that of the specified participant or shareholder in the statement submitted in accordance with SCT [ ]§.

(2) Notwithstanding any other provisions in the Contract, compliance with subclause (1) 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.

(3) Sub-clauses (1) and (2) of this Clause are not applicable if the Contractor or, where the Contractor is a joint venture, its specified participant or shareholder has already obtained the ISO 9001:2015 certification on or before the date of acceptance of the Tender.

§ **Insert the clause number of the SCT dealing with ISO 9000 Certification for the Contractor.**

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Revised Appendix G (2018 version)

Special Condition of Contract to be incorporated into tender documents for contracts where the main contractor is required to enter into written subcontracts with the contractors on the categories and/or groups of the Lists shown in Appendix C

SCC – ISO 9000 Certification for Subcontractor
General Conditions of Contract Clause 4 is amended by adding the following:

(7) The approved listed contractor to be engaged in accordance with sub-clause (6) of this Clause for [specify the relevant categories and/or groups of works]:
shall either:

(a) have obtained an ISO 9001:2015 certificate acceptable to the Employer with the scope of certification acceptable to the Architect/Engineer; or

(b) (i) have obtained a confirmation from a certification body acceptable to the Employer, stating that a full review of the Quality Manual of its Hong Kong office has been carried out in Hong Kong and such Quality Manual has been found to be in conformity with ISO 9000 the requirements of the ISO 9001:2015; and

(ii) submit an undertaking to the Engineer that within three months of the execution of the subcontract, it would book with the certification body the date of audit ISO 9001:2015 certification; with detailed documented quality system procedures ready at the time of booking..

(8) (a) If the works specified in sub-clause (7) of this Clause are to be carried out by the Contractor itself, in which case the Contractor must be listed in the relevant category and/or group, it shall within three months of the acceptance of Tender, book with a certification body acceptable to the Employer the date of audit for the ISO 9001:2015 certification, with detailed documented quality system procedures ready at the time of booking. If the respective works are to be carried out through a subcontract by an approved listed contractor, then the Contractor shall procure that the approved listed contractor.

(b) Notwithstanding any other provisions in the Contract, compliance with sub-clause (8)(a) 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, for the works specified in sub-clause (7) of this Clause under the Contract.

(c) Sub-clauses (8)(a) and (8)(b) of this Clause are not applicable if the Contractor has already obtained ISO 9001:2015 certification on or before the acceptance of the Tender or, as the case may be, the approved listed contractor has already obtained the ISO 9001:2015 certification on or before the date of execution of the subcontract.

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Revised Appendix I ***(2018 version)***

Special Conditions of Tender to be incorporated into tender documents of design and build contracts

SCT - Contractors under suspension

(a) 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.

[list the category or categories of public works]

Provided that the tender will still be considered if the suspension is due solely to the failure of the tenderer to obtain ISO 9001:2015 certification.

(b) 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 who 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.

[list the category or categories of public works]

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 9001:2015 certification.

*** Delete whichever is inappropriate**

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APPENDIX 5.30 PARTICULAR SPECIFICATIONS TO FACILITATE THE USE OF RECYCLED AGGREGATES IN CONCRETE PRODUCTION (Ref.: WBTC No. 12/2002)

Particular Specification for Prescribed Mix Concrete with 100% Recycled Coarse Aggregate

Scope	**This Particular Specification is only applicable to concrete of 20 MPa grade strength.**
Application	**Concrete with 100% recycled coarse aggregate shall only be used in benches, stools, planter walls, concrete mass walls and other minor concrete structures where specifically permitted in the contract.**
General Requirements	**Concrete shall comply with Section 16 of GS and the additional requirements given below. In case of discrepancies, the requirements in this Particular Specification shall take precedence.**
Recycled Coarse Aggregates	**Recycled Coarse Aggregate shall be produced by crushing old concrete and shall meet the requirements in Table 1.**
Fine Aggregates	**Fine aggregate shall be within the limits of grading M in BS 882.** **Fine aggregate derived from recycled concrete shall not be used.**
Grading	**The grading of the coarse aggregates shall comply with the limits of Table 3 of BS 882:1992 for single-sized 20 mm and 10 mm aggregates.**
Mix Proportions	**Concrete shall be mixed in the following proportions:** **Ordinary Portland Cement : 100 Kg** **Fine Aggregate : 180 Kg** **20 mm Coarse Aggregate : 180 Kg** **10 mm Coarse Aggregate : 90 Kg**
Workability	**Recycled coarse aggregates have to be thoroughly wetted before being used.** **The concrete shall have a slump of 75 mm when it is ready to be compacted to its final position.**
Test Cubes	**4 concrete cubes shall be made on each concreting day, 2 for crushing tests at 7 days and another 2 at 28 days.**
Minimum Strength	**The minimum concrete cube strength shall be 14 MPa and 20 MPa at 7 and 28 days respectively.**
Trials	**Laboratory trials shall be conducted to confirm that the strength requirement can be met before the prescribed mix is used in the works.**

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The 28 day strength of each of the 3 cubes in the trial shall not be less than 26 MPa.

Table 1

Mandatory Requirements	Limits	Testing Method
Minimum dry particle density (kg/m^3)	2000	BS 812: Part 2
Max. water absorption	10 %	BS 812: Part 2
Max. content of wood and other material less dense than water	0.5 %	Manual sorting in accordance with BRE Digest 433
Max. content of other foreign materials (e.g. metals, plastics, clay lumps, asphalt and tar, glass etc.)	1 %	
Max. fines	4 % - Note 1	BS 812: Section 103.1
Max. content of sand (<4mm) (% m/m)	5 %	BS 812: Section 103.1
Max. content of sulphate (%m/m)	1%	BS 812: Part 118
Flakiness index	40 % - Note 2	BS 812: Section 105.1
10% fines test	100 kN - Note 3	BS 812: Part 111
Grading	Table 3 of BS 882:1992	
Maximum Chloride content	Table 7 of BS 882 – 0.05% by mass of chloride ion of combined aggregate – Note 4	

Note 1 Filler (<0.063mm) should be less than 2% in the RILEM Specification. BS 882 says that fines passing 75µm sieve shall not exceed 4 %. The latter requirement is easier to satisfy.

Note 2 Clause 16.08 (3) of the General Specification for Civil Engineering Works (GS) states that flakiness shall not exceed 35% whereas BS 882 states that it shall not exceed 40% for crushed rock or crushed gravel.

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Note 3 **Clause 16.08(3) of GS states that the 10% fines value shall be at least 100kN. BS 882 states that the 10% fines value to be 50kN for concrete not subjected to wearing. BRE Digest 433 states that 70kN is achievable in recycled aggregate derived from brickwork, and 100kN for those derived from crushed concrete. In recent tests carried out on recycled aggregates derived from old concrete, 100kN can be satisfied.**

Note 4 **BRE Digest 433 recommends to determine acid soluble chloride rather than water soluble chloride.**

Particular Specification for Designed Mix Concrete with 20% Recycled Coarse Aggregate

Scope	**This Particular Specification is only applicable to designed mix concrete of 25-35 MPa grade strength.**
Application	**Concrete with 20 % recycled coarse aggregates is for general application except in water retaining structures or otherwise precluded in the contract.**
Cementitious Material	**Only ordinary Portland Cement to BS 12 shall be used.**
Coarse Aggregates	**Coarse aggregates shall consist of 80% natural rock aggregates as defined in Cl. 16.08(3) of GS and 20% recycled coarse aggregates.** **Recycled Coarse Aggregates shall be produced by crushing old concrete and shall meet the requirements in Table 1.** **Tests on recycled aggregates from a particular source shall be carried out at weekly intervals to check compliance with Table 1.**
Fine Aggregates	**Fine aggregates shall be as defined in Cl.16.08(2) of GS.** **Fine aggregates recycled from old concrete shall not be used.**
Grading	**The grading of the coarse aggregates shall comply with the limits of Table 3 of BS 882:1992 for single-sized 20 mm and 10 mm aggregates.**
Workability	**Recycled coarse aggregates have to be thoroughly wetted before being used.** **The concrete shall have a minimum slump of 75 mm when it is ready to be compacted to its final position.**
Laboratory mix trials and plant trials	**Before any concrete is produced for use in the works, laboratory trials and plant trials must be performed in accordance with Cl. 16.25 and Cl.16.24 of GS respectively.**
Compliance	**Compliance criteria shall be as in Cl. 16.27 and Cl. 16.26 of GS**

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Criteria	**respectively if 150 mm cubes are used.**
	If 100 mm cubes are used, the modified compliance criteria will apply.
Concrete batching	**Recycled aggregates have to be stored in separate stockpiles or silos to prevent inadvertent mixing with natural aggregates.**
	A separate compartment must be provided for recycled aggregates in the batching plant.

Table 1

Mandatory Requirements	Limits	Testing Method
Minimum dry particle density (kg/m^3)	2000	BS 812: Part 2
Max. water absorption	10 %	BS 812: Part 2
Max. content of wood and other material less dense than water	0.5 %	Manual sorting in accordance with BRE Digest 433
Max. content of other foreign materials (e.g. metals, plastics, clay lumps, asphalt and tar, glass etc.)	1 %	
Max. fines	4 % - Note 1	BS 812: Section 103.1
Max. content of sand (<4mm) (% m/m)	5 %	BS 812: Section 103.1
Max content of sulphate (%m/m)	1%	BS 812: Part 118
Flakiness index	40 % - Note 2	BS 812: Section 105.1
10% fines test	100 kN - Note 3	BS 812: Part 111
Grading	Table 3 of BS 882:1992	
Maximum Chloride content	Table 7 of BS 882 – 0.05% by mass of chloride ion of combined aggregate – Note 4	

Note 1 **Filler (<0.063mm) should be less than 2% in the RILEM Specification. BS 882 says that fines passing 75µm sieve shall not exceed 4 %. The latter**

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requirement is easier to satisfy.

Note 2 **Clause 16.08 (3) of the General Specification for Civil Engineering Works (GS) states that flakiness shall not exceed 35% whereas BS 882 states that it shall not exceed 40% for crushed rock or crushed gravel.**

Note 3 **Clause 16.08(3) of GS states that the 10% fines value shall be at least 100 kN. BS 882 states that the 10% fines value to be 50kN for concrete not subjected to wearing. BRE Digest 433 states that 70kN is achievable in recycled aggregate derived from brickwork, and 100 kN for those derived from crushed concrete. In recent tests carried out on recycled aggregates derived from old concrete, 100 kN can be satisfied.**

Note 4 **BRE Digest 433 recommends to determine acid soluble chloride rather than water soluble chloride.**

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APPENDIX 5.31 GENERAL GUIDELINES ON SITE PRACTICE FOR BUILDING AND CIVIL ENGINEERING GRADUATES (Ref.: ETWB TCW No. 12/2003)

Experience with regard to site practice should, where possible, be provided in the following areas;

- **Planning and programming of construction**
- **Resource planning, allocation and control**
- **Methods of construction and their proper sequence, including design of temporary works**
- **Setting out works and knowledge of surveying instrument**
- **Mechanical plant including knowledge of use, capacity, output & cost**
- **Materials including their cost, storage and handling problems, quality and other characteristics**
- **Testing materials**
- **Measurement of work**
- **Valuation of variations including variation orders**
- **Interim statements and certificates**
- **Site safety**
- **Working conditions and welfare**
- **Liaison with other organizations and the public**
- **Site administration including control and management of subordinates**
- **Site records and reports**

Note :
The guidance on site practice is reproduced from the section on training for a Civil Engineer (Technologist) in the current Report on "Training Programmes for Principal Jobs in the Building and Civil Engineering Industry, Volume One : Technologists Jobs". The Report was prepared by the Building and Civil Engineering Industry Training Board of the Vocational Training Council.

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APPENDIX 5.32 CONTRACT MEASURES FOR TECHNICIAN APPRENTICES AND BUILDING & CIVIL ENGINEERING GRADUATES (Ref.: ETWB TCW No. 12/2003)

Special Conditions of Contract for Technician Apprentices and Building and Civil Engineering Graduates

"SCC [ ](1) The Contractor shall employ at least the minimum number of technician apprentices and building or civil engineering graduates as specified in the Contract.

(2) Where the Contractor employs the technician 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.

(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."

Particular Specification

1 The Contractor shall employ for each capital works contract exceeding $50M the corresponding minimum number of technician apprentices under a valid contract of apprenticeship, as set out in the following table. The contractor shall provide to the procuring department the names of technician apprentices employed, together with evidence of each technician apprentice's contract of apprenticeship, within three months after the date of commencement of the contract. Any subsequent changes on the employed technician apprentices must also be reported to the procuring department within 1-month time.

(a)	**For a contract the contract sum of which exceeds $50 million but is not more than $100 million.**	**- one**
(b)	**For a contract the contract sum of which exceeds $100 million but is not more than $200 million.**	**- two**
(c)	**For a contract the contract sum of which exceeds $200 million.**	**- three**

2 The Contractor shall employ for each capital works contract exceeding $50M the corresponding minimum number of building or civil engineering graduate with an academic qualification gained within the preceding three years, and recognised by an appropriate local or overseas professional institution, such as the Hong Kong Institute of Architects, the Hong Kong Institution of Engineers,

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the Institution of Civil Engineers, the Institution of Structural Engineers or the Chartered Institute of Building, as set out in the following table. The contractor shall provide to the procuring department the names of the building or civil engineering graduates employed, together with evidence of each graduate's terms or contract of employment and the qualified professional supervising such graduates, within three months after the date of commencement of the contract. Any subsequent changes on the employed graduates must be reported to the procuring department within 1-month time.

(a)	**For a contract the contract sum of which exceeds $50 million but is not more than $100 million.**	**- one**
(b)	**For a contract the contract sum of which exceeds $100 million.**	**- two**

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APPENDIX 5.33 GCT 4 - SUBMISSION OF TENDER (FORMULA APPROACH AND MARKING SCHEME)

(Ref.: ETWB TCW No. 11/2005 and SDEV's memo ref. ( ) in DEVB(W) 546/94/01 dated 19.12.2019 and ref. ( ) in DEVB(W) 546/83/01 dated 11.11.2020)

Clause		Remarks/Guidelines
GCT 4	**Submission of Tender (Formula Approach)**	
(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:**	**For tenders not using a marking scheme for tender evaluation. Ref. DEVB memos ref. (026NM-01-3) in DEVB(W) 546/17/01 dated 25.6.2010 and DEVB(W) 546/83/01 dated 11.11.2020.**
(a)	**One set of the documents referred to in Clause 2(b)* above with:**	*** Delete/Modify as appropriate.**
(i)	**The Form of Tender in hard copy format duly signed.**	**Note:**
***(ii)**	**The *Bills of Quantities/ *Schedule of Quantities/*Schedule of Rates in either hard copy format or electronic format [See Note 1] fully priced as to each item, extended, cast and totalled as appropriate. [See also Note 2]**	**1. Delete the option of electronic submission when the Bills of Quantities or Schedule of Quantities or Schedule of Rates in the EDP have not been provided in Excel format.**
***(iii)**	**Summary of Tender in either hard copy format or electronic format.**	**2. In some contracts, e.g. term contracts, tenderers are not required to return the Schedule of Rates etc. in which case sub-clause (1)(a)(ii) should be deleted.**
***(iv)**	**Column 3 in the Schedule of Proportions and the Appendix thereto, if applicable, to be used in calculating the Price Fluctuation Factor completed, in hard copy format.**	**3. Failure to provide certain information in the Form of Tender does not necessarily render a tender invalid. It depends on the nature of information that is found missing.**
***(v)**	***Plant and Labour Schedule/ *Equipment Schedule/ *Schedules of Particulars completed, in either hard copy format or in electronic format.**	
(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.**	*** Delete/Modify as appropriate.**
(c)	**The submissions that are required by the General Conditions of Tender (GCT)**	**** Works Departments should stipulate the prevailing rates which may from time to time be prescribed by DEVB, FSTB**

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Clause		Remarks/Guidelines
	and Special Conditions of Tender (SCT).	**and/or PWTB. Ref: SDEV's memo ref. (030FA-01-1) in DEVB(W) 511/70/02 dated 3.7.2019, FSTB's memo ref. () in TsyB T ADM/1-135/1/0 Pt.10 dated 24.12.2018 and PWTB's memo ref. (7) in ASD13/95200/TEN/OPEN/PCF dated 5.7.2018. [Note: Please check the latest relevant memo. The photocopying charge for tenders opened by the CTB and PWTB are $12.0 per page and $14.8 per page respectively.]**
(2)	**If a tenderer submitted the documents required under sub-clause (1)(a) 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 $54** per electronic file and the material charge at $1.1** per CD-ROM and $1.3** per 4.7GB DVD+/-R.**	
(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 $12 /$14.8 ** per copied page, which cost also covers material.**	
(4)	**If a tenderer elects to submit the priced *Bills of Quantities/ *Schedule of Quantities/ *Schedule of Rates in hard copy format and where a hard copy has been supplied by the Employer, he should price the *Bills of Quantities/ *Schedule of Quantities/ *Schedule of Rates 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.**	

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Clause	Remarks/Guidelines
(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. **(6) All submissions in electronic format shall comply with the requirements set out in Appendix [*insert appropriate reference*] [See Note 3].**	

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Clause	Remark/Guidelines
GCT 4 Submission of Tender (Marking Scheme)	
(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: **In an envelope clearly marked with the tender reference and the words 'Tender Price Documents'** **(a) One set of documents referred to in Clause 2(b)* above with:** **(i) The Form of Tender in hard copy format duly signed.** ***(ii) The *Bills of Quantities/*Schedule of Quantities/*Schedule of Rates in either hard copy format or electronic format [See Note 1] fully priced as to each item, extended, cast and totalled as appropriate. [See Note 2]** ***(iii) Summary of Tender in either hard copy format or electronic format.** ***(iv) Column 3 in the Schedule of Proportions and the Appendix thereto, if applicable, to be used in calculating the Price Fluctuation Factor completed, in hard copy format.** **(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.** **(c) The following submissions that are required by the General Conditions of Tender (GCT) and Special Conditions of Tender (SCT) [See Note 3]:** **(i) …… (GCT Clause [ ])** **(ii) ……(SCT Clause [ ])**	**Alternative Clause 4 for tenders using a marking scheme for tender evaluation** **Ref. DEVB memos ref. (026NM-01-3) in DEVB(W) 546/17/01 dated 25.6.2010 and DEVB(W) 546/83/01 dated 11.11.2020.** *** Delete/Modify as appropriate.** **Note:** **1. Delete the option of electronic submission when the Bills of Quantities or Schedule of Quantities or Schedule of Rates in the EDP have not been provided in Excel format.** **2. In some contracts, e.g. term contracts, tenderers are not required to return the Schedule of Rates etc. in which case sub-clause (1)(a)(ii) should be deleted.** **3. All submissions required from tenderers should be stated, quoting where the details of the requirements are given, e.g. Clause 1 of the Special Conditions of Tender.** **4. 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).**

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Clause		Remark/Guidelines
	In another envelope clearly marked with the tender reference and the words 'Technical Submission'	
(d)	**Submissions on technical resources and technical proposals which are the subject of evaluation in accordance with the marking scheme at [Appendix to Notes to Tenderers] *[and more particularly described in Special Conditions of Tender Clause], in either hard copy format or electronic format.**	
(e)	**The following submissions that are required by the General Conditions of Tender (GCT) and Special Conditions of Tender (SCT) [See Note 3]: (i) …… (GCT Clause [ ]) (ii) ……..……..(SCT Clause [ ])**	
(2)	**If a tenderer submitted the documents required under sub-clause (1)(a) 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 $54** per electronic file and the material charge at $1.1** per CD-ROM and $1.3** per 4.7GB DVD+/-R.**	** **Works Departments should stipulate the prevailing rates which may from time to time be prescribed by DEVB, FSTB and/or PWTB. Ref: SDEV's memo ref. (032YD-01) in DEVB(W) 511/70/02 dated 3.7.2019, FSTB 's memo ref. () in TsyB T ADM/1-135/1/0 Pt.10 dated 24.12.2018 and PWTB's memo ref. (7) in ASD13/95200/TEN/OPEN/PCF dated 5.7.2018. [Note: Please check the latest relevant memo. The photocopying charge for tenders opened by the CTB and PWTB are $12.0 per page and $14.8 per page respectively.]**
(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**	

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Clause		Remark/Guidelines
	of photocopying is currently set at $12/$14.8 ** per copied page, which cost also covers material.	
(4)	**If a tenderer elects to submit the priced *Bills of Quantities/*Schedule of Quantities/ *Schedule of Rates in hard copy format and where a hard copy has been supplied by the Employer, he should price the *Bills of Quantities/ *Schedules of Quantities/ *Schedule of Rates 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.**	
(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.**	
(6)	**All submission in electronic format shall comply with the requirements set out in Appendix [*insert appropriate reference*] [See Note 4].**	

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APPENDIX 5.34 EMPIRICAL FORMULAE FOR CALCULATION OF LIQUIDATED DAMAGES (Ref.: ETWB TCW No. 4/2003)

The following empirical formulae may be used to calculate the components of LD's to be specified in the Contract unless an alternative, more accurate assessment can be made.

(a) Recovery on Capital Invested (Notes 1 & 4)

$$\text{Daily LD's} = \frac{(C+E) * (1-V)*P}{365}$$

(b) Site Supervisory Costs (Notes 2 & 4)

$$\text{Daily LD's} = \frac{S}{T}$$

(c) Fluctuation (Note 3)

$$\text{Daily LD's} = \frac{V * C * T * F}{2 * D * 365}$$

Where C = the contract value of the Works (including preliminary items and the Provisional Sum for price fluctuations (if any) but excluding the payment for site safety, Contingency Sum and daywork) or, as the case may be, the contract value of the Section (including a share of preliminary items and the Provisional Sum for price fluctuations).

D = the assumed delay in days for the completion of the Works, or the delay in completion of a Section.

E = the estimated lump sum cost for providing professional and site supervisory staff.

F = the assumed annual change in the Price Fluctuation Factor applicable to the Contract.

P = the assumed lending rate (% per annum) during the course of the Contract.

S = the estimated lump sum site supervisory costs.

T = the time in days for completion of the Works, or time for completion of a Section.

V = the assumed value of outstanding works in percentage of C at time for completion.

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The following guidelines are provided for reference:

(i) D may be determined by reference to department's record of similar or equivalent contracts completed in the past 5 years;

(ii) E and S vary with the size and complexity of the project as well as the prevailing level of charge for professional service. They should exclude contingent sums such as allowance for supervisory costs during extended contract periods;

(iii) the average annual change in the Price Fluctuation Factor pertaining to the contract based on the past 5-year record may be taken as F;

(iv) the quoted best lending rate (% per annum) of the Hong Kong Monetary Authority recorded in the latest issue of the Hong Kong Monthly Digest of Statistics published by the Census and Statistics Department, Hong Kong may be taken as P; and

(v) V should be determined based on the value of D, the construction sequence and the rates for the works.

Note

1. If it is possible to carry out a cost-benefit analysis, such as the estimated daily revenue expected from the facility on completion, this sum should replace that derived by formula at (a).

2. The formula at (b) applies where site supervisory costs are likely to continue at a constant rate during the period of delay. See also Paragraph 3.3.4.

3. Daily LD's at (c) only apply to contracts to which price fluctuations apply.

4. For term contracts, it is not possible to estimate a lump sum value for E & S applicable to all works orders. The following formulae may be used in lieu of that in (a) and (b):

(i) Recovery on Capital Invested (alternative version for term contracts)

$$\text{Daily LD's} = \frac{(1 + E_1) * (1-V) * C * P}{365}$$

(ii) Site Supervisory Costs (alternative version for term contracts)

$$\text{Daily LD's} = \frac{C * S_1}{T}$$

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Where E_1 = the estimated cost for providing professional and site supervisory staff in percentage of C.

S_1 = the estimated site supervisory costs in percentage of C.

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APPENDIX 5.35 GUIDELINES ON CALCULATION OF LIQUIDATED DAMAGES (Ref.: ETWB TCW No. 4/2003)

ANNEX A - SUGGESTED FORMAT FOR CALCULATION OF LIQUIDATED DAMAGES

Title of Contract

_____

Contract No.

_____ **Date** _____

Estimated final contract sum (including contingencies)

$_____ **SECTION** _____

_____

	Value of Section (C) (include preliminaries but exclude contingencies)	**= $**	
	Time for Completion of Section (T)	**=**	**days**
	Interest Rate (P)	**=**	**%**
	Assumed delay in completion of the Section (D)	**=**	**days**
	Value of outstanding work at time for completion (V)	**=**	**%**
	Cost of Professional service and site supervision (E)/(E_1)	**=**	
	Site supervisory costs (S)/(S_1)	**=**	
	Annual change in the Price Fluctuation Factor (F)	**=**	**%**
(a)	**Recovery on capital invested [(C+E) * (1-V) * P ÷ 365] OR [(1+E_1)*(1-V)*C*P÷ 365]**	**= $**	
	OR		
	Daily rate of economic benefit	**= $**	
(b)	**Site Supervisory Costs**		
(i)	**[S ÷ T] OR C * S_1 ÷T**	**= $**	
(ii)	**Minimum site Supervisory Costs**	**= $**	
(c)	**Fluctuations V * C * T * F ÷ (2 * D * 365)(if any)**	**= $**	

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(d) Special damages (if any) **= $**

Total LD's (a + b(i) + c + d) **= $** **per day**

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ANNEX B – WORKED EXAMPLE

Contract for a service reservoir with an access road which requires early completion. There will be no special damages if the project is not completed on time. In the Bills of Quantities, Bill 1(Y_1) covers the preliminaries, Bill 2(Y_2) the access road and Bill 3 & 4(Y_3) the remainder of the Works. The preliminaries for the access road is 0.2 * Y_1. The contingency sums for the access road and remainder of the works are \$0.1M and \$0.2M respectively.

Section A (Access Road)

Value of Section A (C)	=	$0.2 * Y_1 + Y_2 – 0.1M$
Time for completion of Section A (T)	=	350 days
Lending Rate (P)	=	10 %
Delay in completion of the Section (D)	=	88 days
Outstanding work at time for completion (V)	=	20 %
Cost of professional service and site supervision (E)	=	3M
Site supervisory costs (S)	=	2M
Annual change in the Price Fluctuation Factor (F)	=	6.1 %
(a) Recovery on capital invested	=	$0.8 * (0.2 * Y_1 + Y_2 – 0.1M + 3M) *10\% \div 365$
	=	$2.192 * 10^{-4} * (0.2 * Y_1 + Y_2 + 2.9M)$
(b) (i) Site supervisory costs	=	2M ÷ 350 = 5714
(ii) Minimum site supervisory costs	=	zero
(c) Fluctuations	=	$0.2*(0.2*Y_1+Y_2-0.1M) *350*0.061 \div (2*88* 365)$
	=	$6.647 * 10^{-5} * (0.2 * Y_1 + Y_2 – 0.1M)$
(d) Special damages	=	zero
Total LD's (a+b(i)+c+d)	=	$0.571 * 10^{-4} * Y_1 + 2.857 * 10^{-4} * Y_2 +$ 6356

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Section B (remainder of the Works)

Value of Section B (C)	=	**(0.8 * Y_1 + Y_3 – 0.2M)**
Time for completion of Section B (T)	=	**400 days**
Lending Rate (P)	=	**10 %**
Delay in completion of the Section (D)	=	**100 days**
Outstanding work at time for completion (V)	=	**20 %**
Cost of professional service and site supervision (E)	=	**12M**
Site supervisory costs (S)	=	**8M**
Annual change in the Price Fluctuation Factor (F)	=	**6.1 %**
(a) Recovery on capital invested	=	**0.8 * (0.8 * Y_1 + Y_3 – 0.2M + 12M) * 10% ÷ 365**
	=	**$2.192 * 10^{-4}$ * (0.8 * Y_1 + Y_3 + 11.8M)**
(b) (i) Site supervisory costs	=	**8M ÷ 400 = 20,000**
(ii) Minimum site supervisory costs	=	**(to be calculated based on the minimum establishment, say $15,000 for this example)**
(c) Fluctuations	=	**0.2*(0.8*Y_1+Y_3-0.2M) *400*0.061÷(2*100* 365)**
	=	**$6.685 * 10^{-5}$ * (0.8 * Y_1 + Y_3 – 0.2M)**
(d) Special damages	=	**zero**
Total LD's (a+b(i)+c+d)	=	**$2.288 * 10^{-4}$ * Y_1 + $2.861 * 10^{-4}$ * Y_3 + 22,573**

Summary statement of liquidated damages:

Liquidated damages for section A	**=$ ($0.571*10^{-4}*Y_1+2.857*10^{-4}*Y_2+6356$) per day**
Liquidated damages for Section B	**=$ ($2.288*10^{-4}*Y_1+2.861*10^{-4}*Y_3+22,573$) per day**
Minimum liquidated damages for Section A	**= N/A**
Minimum liquidated damages for Section B	**= $15,000 per day**

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ANNEX C - APPENDIX TO FORM OF TENDER

52 Liquidated Damages

Summary statement of liquidated damages:

Section A	**HK$ [$0.571*10^{-4}*Y_1+2.857*10^{-4}*Y_2+6356$][#] per day**
Section B	**HK$ [$2.288*10^{-4}*Y_1+2.861*10^{-4}*Y_3+22,573$][##] per day**
Section B minimum liquidated damages	**HK$15,000 per day**

In the above summary statement of liquidated damages:

Y_1	**=**	**Total sum of Bill No. 1 in the Bills of Quantities**
Y_2	**=**	**Total sum of Bill No. 2 in the Bills of Quantities**
Y_3	**=**	**Total sum of Bill No. 3 and Bill No. 4 in the Bills of Quantities**

[#] 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 and Y_2 with its corresponding value in the priced Bills of Quantities.

[##] The value of the formula within the square brackets shall be taken as HK$15,000 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 HK$15,000 per day by substituting each of Y_1 and Y_3 with its corresponding value in the priced Bills of Quantities.

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APPENDIX 5.36 SPECIAL CONDITIONS OF CONTRACT FOR USE IN MEGA PROJECT CONTRACTS (Ref.: WBTC No. 26/2002)

INDEX

S.C.C. Ref.	Content	Related GCC	Related ETWB TCW	Date of Issue of SCC
A1	Programmes and Progress Reports	1(1), 16 & 78		
A2	Facilities for and coordination with others	34 & 63		
A3	Possession of Site	1(1), 48, 13, 20 & 21(1) & 22		
A4	Extension of time	50		
A4A	Extension of time (alternative version)	50		
A5	Liquidated damages for delay	52	4/2003	
A6	Variations	60		
A7	Stages and Key Dates	1(1), 49(1), 51(1), 53 & 63		
A8	Maintenance of records	6		
A9	Construction methods	7		
A10	General damages (optional)	52		

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S.C.C. A1 Programmes and progress reports

(1) **General Conditions of Contract Clause 1(1) is amended by adding the following :**

Programmes and progress reports

Must be used with SCC A2 – A9

" "Monthly Progress Report" means the report to be prepared by the Contractor in the form and detail prescribed by the Specification and submitted monthly to the Engineer in accordance with Clause 16(10).

"Works Programme" means the programme showing the sequence, method and timing in which the Contractor proposes to carry out the construction, testing, commissioning of the Works and related activities and any investigations and design as may be required to be carried out by the Contractor under the Contract including (in so far as such work is described in the Contract) due allowance for the carrying out of Specialist Works and work by utility undertakings, in the form and content prescribed by the Specification, or any amended or varied version thereof, as submitted by the Contractor and approved by the Engineer in accordance with Clause 16."

(2) **General Conditions of Contract Clause 16 is deleted and replaced by the following :**

"16 (1) **Within 7 days of acceptance of the Tender, the Contractor shall submit to the Engineer his proposed programme for approval as the initial Works Programme in the form and content prescribed by the Specification. Within 60 days of approval of the initial Works Programme in accordance with Clause 16(2) or such other period as may be prescribed in the Specification, the Contractor shall submit to the Engineer for his approval an expanded and more detailed version of the initial Works Programme in the form and content prescribed by the Specification.**

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S.C.C. A1 Programmes and progress reports

(2) The Engineer shall, within 30 days of receipt of any programme submitted pursuant to this Clause 16, notify the Contractor in writing :

(a) that the programme is approved; or

(b) that the programme is rejected, in which case reasons for such rejection shall be given, including indication of those parts of the programme with which the Engineer is not satisfied; or

(c) that further information is required to clarify or substantiate the programme or to satisfy the Engineer as to its reasonableness.

Provided that if none of the above actions is taken within the said period of 30 days the Engineer shall be deemed to have approved the programme submitted.

(3) The Contractor shall within 21 days of receiving notification under Clause 16(2)(c), or within such further period as the Engineer may allow in writing, provide the further information requested failing which the programme shall, subject to the provisions of Clause 16(4), be deemed to have been rejected. The Engineer shall within 21 days of receipt of such further information approve or reject the programme in accordance with Clause 16(2).

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S.C.C. A1 Programmes and progress reports

(4) **If the Engineer is of the opinion that the Contractor has provided sufficient information to satisfy him as to the reasonableness of a substantial part of any programme submitted pursuant to this Clause 16, the Engineer may but shall not be bound to notify the Contractor in writing that the programme is approved notwithstanding the failure of the Contractor to provide all or any of the further information requested under Clause 16(2)(c) in respect of the remaining part of the programme.**

(5) **In the event of a programme being rejected under Clause 16(2)(b) or deemed to have been rejected under Clause 16(3), the Contractor shall within 21 days thereafter submit a revised programme taking into account of the reasons given for the rejection or incorporating the further information requested by the Engineer, as the case may be.**

(6) **(a)** **The Contractor may at any time following approval of a programme as the Works Programme submit to the Engineer an amended or varied version thereof.**

(b) **The Contractor shall review the Works Programme in the event that :**

(i) **the Engineer grants an extension of time in accordance with Clause 50 ;**

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S.C.C. A1 Programmes and progress reports

(ii) **the Engineer instructs steps be taken to expedite the completion of the Works or any Section thereof or the achievement of any Stage under Clause 51;**

(iii) **the Engineer instructs a variation under Clause 60 ;**

(iv) **the Contractor considers for any reason that there is or will be a significant deviation between the actual or anticipated progress of the Works and the Works Programme, including without limitation the Contractor foreseeing a substantial increase or decrease in the quantity of an item of work included in the Contract;**

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S.C.C. A1 Programmes and progress reports

(v) the Engineer requests the Contractor in writing to reflect or incorporate any other matter in the Works Programme;

and shall within 21 days of such event either submit an amended or varied programme to the Engineer in accordance with Clause 16(2) or inform the Engineer in writing of the reasons why the Contractor considers that such a submission is inappropriate.

(7) Should it appear to the Engineer at any time that there is or will be a significant deviation between the actual or anticipated progress of the Works and the Works Programme, the Engineer 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 and all Sections and the achievement of all Stages by the Key Dates. The Contractor shall submit such revised programme within 14 days of the Engineer's instruction or within such other time as the Engineer shall allow in writing.

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S.C.C. A1 Programmes and progress reports

(8) **(a)** **Unless and until an amended version of the Works Programme is approved by the Engineer in accordance with this Clause 16, the programme previously approved by the Engineer shall remain as the Works Programme for all purposes of the Contract.**

(b) **Approval by the Engineer of a Works Programme in accordance with this Clause 16 shall not relieve the Contractor of any its duties or responsibilities under the Contract nor bind or create any obligation or liability on the part of the Employer nor, in the event that a Works Programme indicates that a Key Date has not or will not be met entitle the Contractor to an extension of time in relation to such Key Date.**

(9) **Within 14 days of acceptance of the Tender, and thereafter at the end of each calendar month, the Contractor shall submit to the Engineer its three month rolling programme in the form and detail prescribed by the Specification setting out the work to be carried out during the following three months.**

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S.C.C. A1 Programmes and progress reports

(10) (a) The Contractor shall submit to the Engineer by the end of each monthly period (the first of such monthly periods to commence on the date for commencement of the Works) its 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 Engineer, the Contractor shall submit to the Engineer at weekly intervals a written report as to the progress of off-Site manufacture of goods and materials."

(3) General Conditions of Contract Clause 78 is amended by adding the following :

"(3) As a condition precedent to consideration by the Engineer of any sums due to the Contractor, each of such statement shall be accompanied by the Monthly Progress Report for the month to which the statement relates."

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S.C.C. A2 Facilities for and coordination with others

(1)	**General Conditions of Contract Clause 34 is deleted and replaced by the following :**		**Facilities for and coordination with others**	**Must be used with SCC A1 and A3 – A9**
	"34	**(1) In accordance with the Contract and/or the reasonable instructions of the Engineer, the Contractor shall not impede and shall afford all reasonable facilities, access and/or services to any person who may be carrying out, on or adjacent to the Site, any work not included in the Contract but required by the Employer, any utility undertaking or other duly constituted authority, [(including in particular but without limitation the following interfacing works which are more particularly described in the Specification :** **(a) ……to be carried out by ……** **(b) ……to be carried out by ……** **(c) ……to be carried out by ……]**[1]		
		(2) The Contractor shall take all reasonable steps to ensure that the Works are coordinated and integrated with the design and construction of such other work as referred to in Clause 34(1), and shall in particular (but without limitation) consult, liaise and cooperate with those responsible for carrying out such other work including where necessary in the preparation of joint programmes, method statements, coordination drawings and specifications.		

[1] The words in square brackets at the end of Clause 34(1) should be incorporated only if Government is in a position to describe in sufficient details the "interfacing works" which are anticipated to have substantial interface with the Works.

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S.C.C. A2 Facilities for and coordination with others

(3) (a) The Contractor shall be deemed to have made adequate allowance in his Tender and in the Works Programme in respect of his obligations under Clauses 34(1) and 34(2).

(b) Without prejudice to the generality of Clauses 50, 63 and 64, if the Contractor considers that he has been requested or instructed to act in a manner which goes beyond his obligations under Clause 34(1) and if the Contractor considers that compliance with such request or instruction may entitle him to any extension of time and/or any additional payment of Cost, it shall be a condition precedent to any such entitlement that:

(i) the Contractor shall have notified the Engineer in writing prior to taking any such action that he considers such an entitlement may arise from the provision of such facilities, access and/or services, giving full particulars of the estimated duration of the delays and of the Cost which would be incurred; and

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S.C.C. A2 Facilities for and coordination with others

(ii) following receipt of such notice, the Engineer shall have instructed the Contractor in writing to take such action."

(2) General Conditions of Contract Clause 63 is amended by replacing paragraph (d) with the following :

"(d) delay caused by any person or any 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 save to the extent that such delay was caused or contributed to by some default on the part of the Contractor (including without limitation any failure by the Contractor to comply with his obligations under Clause 34(1) or Clause 34(2)) or by the Contractor complying with his obligations under Clause 34(1) or Clause 34(2), or"

"[(3) The Contractor shall be entitled to the sums set out in the section of the Bills of Quantities concerning coordination with those responsible for carrying out the interfacing works referred to in General Conditions of Contract Clause 34(1), provided that the Contractor shall have fulfilled his obligations for each item to the satisfaction of the Engineer.]"[1]

[1] Sub-clause (3) should be included only if Government is in a position to describe in sufficient details the "interfacing works" which are anticipated to have substantial interface with the Works and an item (pre-priced by the Engineer) is included in the BQ to cover the cost of promoting and facilitating co-ordination with the contractors carrying out such "interfacing works"

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S.C.C. A3 Possession of site

(1)	**General Conditions of Contract Clause 1(1) is amended by adding the following :** **""Portion Handover Date" means a date identified as such in the Appendix to the Form of Tender for possession of a Portion to be made available to or relinquished by the Contractor, as the same may be deferred by the Engineer in accordance with Clause 48(5)(a)."**	**Possession of Site**	**Must be used with SCC A1 – A2 and A4 – A9**

(2) General Conditions of Contract Clause 48 is deleted and replaced by the following :

"48 (1) The Contract may prescribe :

(a) the Portions of the Site to which the Contractor is intended to be given possession from time to time;

(b) the periods during which possession of such Portions of the Site is intended to be made available to the Contractor and the respective Portion Handover Dates;

(c) the order in which the Works shall be executed;

(d) the availability and nature of the access which is to be provided by the Employer;

(e) the availability and nature of the access which the Contractor is to provide to others;

(f) the use which the Contractor may make of such Portions of the Site.

(2) The Employer shall give to the Contractor on the date for commencement of the Works notified by the Engineer in accordance with Clause 47 possession of so much of the Site and access thereto as may be required to enable the Contractor to commence and proceed with the

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S.C.C. A3 Possession of site

construction of the Works in accordance with the Works Programme and shall from time to time, as the Works proceed, give to the Contractor possession of such further parts of the Site and such further access as may be required to enable the Contractor to proceed with the construction of the Works with due despatch in accordance with the Works Programme.
Provided always that:

(a) the Employer shall not in any event be obliged to give to the Contractor possession of a Portion of the Site or any part thereof or access thereto earlier or for a longer period than is prescribed pursuant to Clause 48(1); and

(b) the Employer may, on or at any time after the date for commencement of the Works notified by the Engineer in accordance with Clause 47, give the Contractor possession of any or all of the Portions of the Site, or of any part thereof, before the date prescribed pursuant to Clause 48(1) for such possession to be given to the Contractor.

Provided further that the Contractor shall not be entitled to any extension of time or additional payment by reason of the Contractor being given early possession of the Site or any Portion or part thereof in accordance with Clause 48(2)(b).

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S.C.C. A3 Possession of site

(3) Unless the Contract expressly provides to the contrary the Contractor shall not be entitled to exclusive possession of or uninterrupted access to the Site or any Portion or part of the Site and shall co-ordinate its activities with others on or in the vicinity of Site as described in Clause 34 and elsewhere in the Contract.

(4) Subject to Clause 64, if the Engineer is of the opinion that the Contractor has been involved in additional expenditure by reason of the progress of the Works or any part thereof having been materially affected by the failure of the Employer to give possession of or access to the Site or any Portion or part thereof in accordance with this Clause 48 then the Engineer shall as soon as reasonably practicable ascertain the Cost incurred, and shall certify in accordance with Clause 79.

(5) In the event that a Portion Handover Date is prescribed pursuant to Clause 48(1) for the release by the Contractor of a Portion of the Site:

(a) the Contractor shall relinquish possession of the relevant Portion of the Site on the Portion Handover Date unless the Engineer shall have deferred the Portion Handover Date by prior notice in writing. Such a notice shall not in any event constitute a variation within the meaning of Clause 60; and

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S.C.C. A3 Possession of site

(b) the Contractor shall, subject to any express provision of the Contract or written instruction of the Engineer to the contrary, clear away and remove from the relevant Portion of the Site before the Portion Handover Date all Constructional Plant, temporary buildings, surplus materials and all rubbish of any kind whatsoever. If the Contractor should fail to do so, the Employer may exercise the powers set out in Clauses 73(2)(a) and (b).

(6) (a) If the Engineer is of the opinion that the Contractor has been involved in additional expenditure by reason of the Engineer's decision under Clause 48(5)(a) to defer any Portion Handover Date, the Engineer shall ascertain the Cost incurred and certify payment to the Contractor.

(b) Any payment made in accordance with Clause 48(6)(a) shall be deemed to be in full compensation to the Contractor of any expenditure incurred by reason of the Engineer's decision under Clause 48(5)(a) to defer the Portion Handover Date. The Contractor shall be entitled to no further payment whatsoever or extension of any Key Date by reason of the Engineer's decision under Clause 48(5)(a) to defer the Portion Handover Date.

(7) The Contractor shall bear all expenses and charges for special or temporary wayleaves required by him in connection with access to the Site.

(8) Notwithstanding sub-clause (4) of this Clause, with respect to prescribed Portions of the Site of which the Contractor is to be given possession

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S.C.C. A3 Possession of site

from time to time, if the Contractor suffers delay from failure on the part of the Employer to give possession of any Portion in accordance with the terms of the Contract and the Engineer grants an extension of time for completion [of the Works or, as the case may be, the relevant Section in accordance with General Conditions of Contract Clause 50]+ in respect thereof, the Engineer shall certify payment to the Contractor a sum calculated at the rate per day inserted by the Contractor in the Bills of Quantities (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 of the Site is delayed the Engineer shall reduce the specified rate for the affected Portion as he considers fair and reasonable having regard to all the circumstances.

(9) Any extension of time for completion [of the Works or, as the case may be, the relevant Section]+ granted in accordance with General Conditions of Contract Clause 50 and any payment made in accordance with sub-clause (8) of this Clause shall be deemed to be in full compensation to the Contractor for whatever claims that it may have as a result of failure on the part of the Employer to give possession of any Portion or any part of any Portion."

[Note : *(1) Sub-clauses (8) and (9) should only be used for contracts where delay in possession of the Site is envisaged.*

(2) If sub-clauses (8) and (9) are used, there is no need to use SCC 8 of the WB Library of Standard SCCs (Delayed Possession of Portion of) Not part of the SCC

+ Where sectional completion is envisaged.

+ Where sectional completion is envisaged.

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S.C.C. A3 Possession of site

the Site)*].*

+Under GCC Clause 50, EOT could be granted for completion of the Works/Section as well as achievement of a Stage on the ground of non-possession of the Site or any Portion or part thereof. Sub-clauses (8) and (9) only make reference to EOT for completion of the Works or the relevant Section because, it is submitted, EOT for achievement of a Stage is irrelevant for the purposes of sub-clauses (8) and (9).

(3) General Conditions of Contract Clause 13 is amended by replacing sub-clause (1) with the following :

"13 (1) The Contractor shall be deemed to have examined and inspected the Site and its surroundings and to have satisfied himself, before submitting his Tender, as regards existing roads or other means of communication with and access to the Site, the possibility of interference by persons other than the Employer who will also have access to or use of the Site or any Portion or part thereof after the Employer has given the Contractor possession of the Site or, as the case may be, the relevant Portion or part, the nature of the ground and sub-soil, the form and nature of the Site, the risk of injury or damage to property, the nature of materials (whether natural or otherwise) to be excavated, the nature of the work, and materials necessary for the execution of the Works, the accommodation he may require and generally to have obtained his own information on all matters affecting his Tender and the execution of the Works."

(4) General Conditions of Contract Clause 20 is deleted and replaced by the following :

"20 (1) The Contractor shall throughout the continuance of the Contract and the progress of the Works take full

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S.C.C. A3 Possession of site

responsibility for the adequate stability and safety of all operations on the Site other than those of Specialist Contractors and utility undertakings and have full regard for the safety of all persons on the Site. The Contractor shall keep the Site and the Works in an orderly state appropriate to the avoidance of danger to all persons.

(2) The Contractor shall in connection with the Works or for the purpose of the Contract provide and maintain all lights, guards, fences and warning signs and provide watchmen when and where necessary or required by the Engineer or by any competent statutory or other authority for the protection of the Works or the Site or for the safety and convenience of the public or others.

(3) The Contractor shall ensure that all parts of the Site where work is being carried out are so lighted as to ensure the safety of all persons on or in the vicinity of the Site and of such work.

(4) The Contractor, after obtaining any necessary approval from any relevant authority, shall submit to the Engineer proposals showing the layout of pedestrian routes, lighting, signing and guarding for any road opening or traffic diversion which may be required in connection with the execution of the Works or otherwise required for the purposes of the Contract. No such road opening or traffic diversion shall be brought into operation or use unless the proposals submitted have been previously approved by the Engineer and properly provided and implemented on the Site."

(5) General Conditions of Contract Clause 21(1) is amended by appending the following :

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S.C.C. A3 Possession of site

"And provided further that if the Engineer has decided under Clause 48(5)(a) to defer any Portion Handover Date to a date later than 28 days after the date of completion of the Works certified by the Engineer in accordance with Clause 53, the Contractor shall continue to be responsible for the care of the part of the Works on the relevant Portion and for the care of all things which are required to be retained on the relevant Portion by reason of the Engineer's decision under Clause 48(5)(a) to defer the Portion Handover Date until and including the deferred date of relinquishment."

(6) General Conditions of Contract Clause 22 is amended by replacing sub-clause (1) with the following :

"22 (1) The Contractor shall, except if and so far as the Contract otherwise provides, indemnify and keep indemnified the Employer against all losses and claims for injury or damage to any person or property whatsoever, other than surface or other damage to land or crops on the Site, which may arise out of or in consequence of the execution of the Works or the carrying out of the Contract and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto."

[Note: If the Contractor in respect of a particular project is required to take out care of the Works insurance, SCC11 in the Works Bureau Library of Standard Special Conditions of Contract, as amended along the following lines, should be adopted.]

)) Not part of) the SCC)

"SCC[ ] (1) 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 Works in the joint names of the Contractor and the Employer,

Care of the works insurance

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S.C.C. A3 Possession of site

an insurance policy with an insurer and in terms approved by the Employer (which approval shall not unreasonably be withheld). The Contractor shall also assess the value of Specialist Works. 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. The insurance policy shall cover the period from the date for commencement of the Works until 28 days after the date of completion of the Works certified by the Engineer in accordance with General Conditions of Contract Clause 53 or, where the Engineer has decided under General Conditions of Contract Clause 48 (5)(a) to defer any Portion Handover Date to a date later than 28 days after the date of the completion of the Works certified by the Engineer in accordance with General Conditions of Contract Clause 53, until and including the deferred date of relinquishment. The Contractor shall lodge with the Employer through the Engineer or the Engineer'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.

(2) The extent of the cover to be provided shall be :

(a) The Works and Specialist Works to the full reinstatement value; and

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S.C.C. A3 Possession of site

(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."

S.C.C. A4 Extension of time

(1) General Conditions of Contract Clause 50 is deleted and replaced by the following :	**Extension of time**	**Must be used with SCC A1 - A3 and A5 – A9**

"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 or to the achievement of any Stage has arisen, the Contractor shall give notice in writing to the Engineer 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 Engineer is likely to cause a delay to the progress of the Works or any Section thereof or to the achievement of any Stage the Contractor shall forthwith give notice in writing to the Engineer 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 Engineer has issued the relevant order or instruction.

(b) If in the opinion of the Engineer the cause of the delay is:

(i) inclement weather and/or its consequences adversely affecting the progress of the Works, or

(ii) the hoisting of tropical cyclone warning signal No. 8 or above, or

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S.C.C. A4 Extension of time

(iia) a Black Rainstorm Warning, or

(iii) an instruction issued by the Engineer under Clause 5, or

(iv) a variation ordered under Clause 60, or

(v) a substantial increase in the quantity of any item of work included in the Contract not resulting from a variation ordered under Clause 60, or

(vi) the Contractor not being given possession of or access to the Site or any Portion or part thereof in accordance with the Contract or is subsequently deprived of it by the Employer, or

(vii) a disturbance to the progress of the Works for which the Employer or the Engineer or a Specialist Contractor is responsible including but not restricted to any matter referred to in Clause 63, or

(viii) the Engineer suspending the Works in accordance with Clause 54 in so far as the suspension is not occasioned by the circumstances described in Clause 54(2)(a) to (d), or

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S.C.C. A4 Extension of time

(ix) any utility undertaking or other duly constituted authority failing to commence or to carry out in due time any work directly affecting the execution of the Works, provided that the Contractor has taken all practical steps to cause the utility undertaking or duly constituted authority to commence or to proceed with such work, or

(x) the imposition by the Engineer of requirements or limitations in relation to the Contractor's methods of construction, in the circumstances described in Special Conditions of Contract Clause A9, or

(xi) the provision of facilities, access and/or services to the Employer or third parties in excess of the obligations of the Contractor under Clause 34(1) pursuant to an instruction of the Engineer in accordance with Clause 34(3)(b), or

(xii) delay on the part of any Nominated Subcontractor for any reason specified in sub-clauses (b)(i) to (xi) of this Clause and which the Contractor has taken all reasonable steps to avoid or reduce, or

(xiii) any special circumstance of any kind whatsoever,

then the Engineer shall in accordance with Clause 50(3) consider whether the Contractor is fairly entitled to an extension of the Key Dates.

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S.C.C. A4 Extension of time

(c) Notwithstanding the powers of the Engineer 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 if the cause of the delay is:

(i) a suspension occasioned by the circumstances described in Clause 54(2)(a) to (d), or

(ii) a shortage of Constructional Plant or labour, or

(iii) interference by reason of the provision of facilities, access and/or services to the Employer or third parties in accordance with the Contractor's obligations under Clause 34(1), or

(iv) 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 or any Section thereof or the achievement of any Stage occurring on or after the date identified in the Appendix to the Form of Tender or on or after the date to which extension of time has been granted under this Clause for completion of the Works or the relevant Section or, as the case may be, for achievement of the relevant Stage.

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S.C.C. A4 Extension of time

(2) The Contractor shall use and continue to use all reasonable endeavours to avoid or reduce the effects of a cause of delay to the progress of the Works or any Section or to the achievement of any Stage and as soon as practicable but in any event within 28 days of notification under Clause 50(1) submit by further written notice to the Engineer :

(a) full and detailed particulars of the cause and actual or likely extent of the delay to the progress of the Works or any Section or to the achievement of any Stage; or

(b) where a cause of delay has a continuing effect or where the Contractor is unable to determine whether the effect of a cause of delay will actually cause delay to the progress of the Works or any Section or to the achievement of any Stage, such that it is not practicable for the Contractor to submit full and detailed particulars in accordance with Clause 50(2)(a), a statement to that effect with reasons together with interim written particulars (including details of the likely consequences of the cause of delay on progress of the Works and an estimate of the likelihood or likely extent of the delay); the Contractor shall thereafter submit to the Engineer at intervals of not more than 28 days further interim written particulars until the actual or likely delay caused (if any) is ascertainable, whereupon the Contractor shall as soon as practicable but in any event within 28 days submit to the Engineer full and detailed particulars of the cause and actual or likely extent of the delay; and

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S.C.C. A4 Extension of time

(c) details of the measures which the Contractor has adopted and/or proposes to adopt to avoid or reduce the effects of such cause of delay to the progress of the Works or any Section or to the achievement of any Stage.

(3) If in accordance with Clause 50(1)(b) the Engineer considers that the Contractor is using and will continue to use all reasonable endeavours to make good any delay, and that the Contractor is fairly entitled to an extension of the Key Dates, the Engineer shall within 28 days or such further time as may be reasonable in the circumstances of:

(a) receipt of final full and detailed particulars of the cause and actual or likely effect of any delaying factor, or

(b) where a cause of delay has a continuing effect or where the Engineer anticipates a significant delay before the actual or likely effect of a cause of delay becomes ascertainable and the Engineer considers an interim extension of time should be granted, receipt of such particulars as in the Engineer's opinion are sufficient for him to determine such an interim extension of time,

determine, grant and notify in writing to the Contractor such extension. The Engineer in determining any extension shall take into account all the circumstances known to him at that time, including in particular but without limitation the effect of any omission of work or part of any Stage, or substantial decrease in the quantity of any item of work.

Provided that:

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S.C.C. A4 Extension of time

(i) the Engineer may at any time following notification of a cause of delay under Clause 50(1)(a) determine and notify the Contractor in writing as to whether or not the said cause of delay constitutes a potential ground upon which an extension of time may be granted in accordance with Clause 50(1)(b) and the foregoing provisions of Clause 50(3);

(ii) the Engineer may in the absence of any claim assess and determine the delay that he considers has been suffered by the Contractor as a result of any of the events described in Clause 50(1)(b) in which case he shall determine, grant and notify in writing to the Contractor any such extension he considers appropriate;

(iii) notwithstanding Clause 50(2) and the foregoing provisions of this Clause 50(3), the Engineer may in the event of failure by the Contractor to comply with the provisions of Clause 50(2) consider such extension to the extent that the Engineer is able on the information available.

(4) If the Engineer decides that the Contractor is not entitled to an extension, the Engineer shall as soon as reasonably practicable notify the Contractor in writing accordingly.

(5) (a) Without prejudice to the Engineer's powers pursuant to Clause 50(3)(b), the Contractor shall not be entitled to an extension of time by reason of any delay unless such delay actually affects substantial completion of the Works or any Section or achievement of any Stage by the relevant Key Date.

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S.C.C. A4 Extension of time

(b) Any extension to a Key Date shall not of itself entitle the Contractor to an extension to any other Key Date.

(6) The Engineer shall within 28 days of the issue of either the certificate of completion of the Works or, in the event of division of the Works into Sections, of the certificate of completion of the last Section review and finally determine and certify the overall extension of time (if any) to which he considers the Contractor is entitled in respect of the Works or any Section or any Stage. Such final review shall not result in a decrease in any extension of time already granted by the Engineer under Clause 50(3).

(7) For the avoidance of doubt if the Engineer grants an extension of time in respect of a cause of delay occurring after the Employer is entitled to recover liquidated damages in respect of the Works or any Section or any Stage, the period of extension of time granted shall be added to the relevant Key Date identified in the Appendix to the Form of Tender or, if the same has been extended in accordance with this Clause 50, the relevant previously extended Key Date.

(8) Except as provided elsewhere in the Contract, any extension of time granted by the Engineer to the Contractor shall be deemed to be in full compensation and satisfaction for any loss or injury sustained or sustainable by the Contractor in respect of any matter or thing in connection with which such extension shall have been granted and every extension shall exonerate the Contractor from any claim or demand on the part of the Employer for the delay during the period of such extension but not for any delay continued beyond such period.

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S.C.C. A4 Extension of time

(9) For the purpose of this Clause, "Black Rainstorm Warning" means a warning issued by the Director of Hong Kong Observatory of a heavy rainstorm in, or in the vicinity of, Hong Kong by the use of the heavy rainstorm signal commonly referred to as "Black"."

S.C.C. A4A Extension of time (alternative version)

(1) General Conditions of Contract Clause 50 is deleted and replaced by the following :

Extension of time

Approval from Head of Department required for use of this SCC clause and details are to be submitted to SDEV for endorsement

Must be used with SCC A1 – A3 and A5 – A9

"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 or to the achievement of any Stage has arisen, the Contractor shall give notice in writing to the Engineer 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 Engineer is likely to cause a delay to the progress of the Works or any Section thereof or to the achievement of any Stage the Contractor shall forthwith give notice in writing to the Engineer 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 Engineer has issued the relevant order or instruction.

(b) If in the opinion of the Engineer the cause of the delay is:

(i) the hoisting of tropical cyclone warning signal No. 8 or above, or

(ii) a Black Rainstorm Warning, or

(iii) an instruction issued by the Engineer under Clause 5, or

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S.C.C. A4A Extension of time (alternative version)

(iv) a variation ordered under Clause 60, or

(v) a substantial increase in the quantity of any item of work included in the Contract not resulting from a variation ordered under Clause 60, or

(vi) the Contractor not being given possession of or access to the Site or any Portion or part thereof in accordance with the Contract or is subsequently deprived of it by the Employer, or

(vii) a disturbance to the progress of the Works for which the Employer or the Engineer or a Specialist Contractor is responsible including but not restricted to any matter referred to in Clause 63, or

(viii) the Engineer suspending the Works in accordance with Clause 54 in so far as the suspension is not occasioned by the circumstances described in Clause 54(2)(a) to (d), or

(ix) any utility undertaking or other duly constituted authority failing to commence or to carry out in due time any work directly affecting the execution of the Works, provided that the Contractor has taken all practical steps to cause the utility undertaking or duly constituted authority to commence or to proceed with such work, or

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S.C.C. A4A Extension of time (alternative version)

(x) the imposition by the Engineer of requirements or limitations in relation to the Contractor's methods of construction, in the circumstances described in Special Conditions of Contract Clause A9 , or

(xi) the provision of facilities, access and/or services to the Employer or third parties in excess of the obligations of the Contractor under Clause 34(1) pursuant to an instruction of the Engineer in accordance with Clause 34(3)(b), or

(xii) 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 or any Section thereof or the achievement of any Stage occurring after the date identified in the Appendix to the Form of Tender for completion of the Works or the relevant Section or, as the case may be, for achievement of the relevant Stage but before the Employer is entitled to recover liquidated damages in respect of the Works or the relevant Section or, as the case may be, the relevant Stage, or

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S.C.C. A4A Extension of time (alternative version)

(xiii) delay on the part of any Nominated Subcontractor for any reason specified in sub-clauses (b)(i) to (xii) of this Clause and which the Contractor has taken all reasonable steps to avoid or reduce, or

(xiv) any special circumstance of any kind whatsoever,

then the Engineer shall in accordance with Clause 50(3) consider whether the Contractor is fairly entitled to an extension of the Key Dates.

(c) Notwithstanding the powers of the Engineer 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 if the cause of the delay is:

(i) a suspension occasioned by the circumstances described in Clause 54(2)(a) to (d), or

(ii) a shortage of Constructional Plant or labour, or

(iii) interference by reason of the provision of facilities, access and/or services to the Employer or third parties in accordance with the Contractor's obligations under Clause 34(1), or

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S.C.C. A4A Extension of time (alternative version)

(iv) 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 or any Section thereof or the achievement of any Stage occurring on or before the date identified in the Appendix to the Form of Tender for completion of the Works or the relevant Section or, as the case may be, for achievement of the relevant Stage.

(2) The Contractor shall use and continue to use all reasonable endeavours to avoid or reduce the effects of a cause of delay to the progress of the Works or any Section or to the achievement of any Stage and as soon as practicable but in any event within 28 days of notification under Clause 50(1) submit by further written notice to the Engineer :

(a) full and detailed particulars of the cause and actual or likely extent of the delay to the progress of the Works or any Section or to the achievement of any Stage; or

(b) where a cause of delay has a continuing effect or where the Contractor is unable to determine whether the effect of a cause of delay will actually cause delay to the progress of the Works or any Section or to the achievement of any Stage, such that it is not practicable for the Contractor to submit full and detailed particulars in accordance with Clause 50(2)(a), a statement to that effect with reasons together with interim written particulars (including details of the likely consequences of

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S.C.C. A4A Extension of time (alternative version)

the cause of delay on progress of the Works and an estimate of the likelihood or likely extent of the delay); the Contractor shall thereafter submit to the Engineer at intervals of not more than 28 days further interim written particulars until the actual or likely delay caused (if any) is ascertainable, whereupon the Contractor shall as soon as practicable but in any event within 28 days submit to the Engineer full and detailed particulars of the cause and actual or likely extent of the delay; and

(c) details of the measures which the Contractor has adopted and/or proposes to adopt to avoid or reduce the effects of such cause of delay to the progress of the Works or any Section or to the achievement of any Stage.

(3) If in accordance with Clause 50(1)(b) the Engineer considers that the Contractor is using and will continue to use all reasonable endeavours to make good any delay, and that the Contractor is fairly entitled to an extension of the Key Dates, the Engineer shall within 28 days or such further time as may be reasonable in the circumstances of:

(a) receipt of final full and detailed particulars of the cause and actual or likely effect of any delaying factor, or

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S.C.C. A4A Extension of time (alternative version)

(b) where a cause of delay has a continuing effect or where the Engineer anticipates a significant delay before the actual or likely effect of a cause of delay becomes ascertainable and the Engineer considers an interim extension of time should be granted, receipt of such particulars as in the Engineer's opinion are sufficient for him to determine such an interim extension of time,

determine, grant and notify in writing to the Contractor such extension. The Engineer in determining any extension shall take into account all the circumstances known to him at that time, including in particular but without limitation the effect of any omission of work or part of any Stage, or substantial decrease in the quantity of any item of work.

Provided that :

(i) the Engineer may at any time following notification of a cause of delay under Clause 50(1)(a) determine and notify the Contractor in writing as to whether or not the said cause of delay constitutes a potential ground upon which an extension of time may be granted in accordance with Clause 50(1)(b) and the foregoing provisions of Clause 50(3);

(ii) the Engineer may in the absence of any claim assess and determine the delay that he considers has been suffered by the Contractor as a result of any of the events described in Clause 50(1)(b) in which case he shall determine, grant and notify in writing to the Contractor any such extension he considers appropriate;

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S.C.C. A4A Extension of time (alternative version)

(iii) notwithstanding Clause 50(2) and the foregoing provisions of this Clause 50(3), the Engineer may in the event of failure by the Contractor to comply with the provisions of Clause 50(2) consider such extension to the extent that the Engineer is able on the information available.

(4) If the Engineer decides that the Contractor is not entitled to an extension, the Engineer shall as soon as reasonably practicable notify the Contractor in writing accordingly.

(5) (a) Without prejudice to the Engineer's powers pursuant to Clause 50(3)(b), the Contractor shall not be entitled to an extension of time by reason of any delay unless such delay actually affects substantial completion of the Works or any Section or achievement of any Stage by the relevant Key Date.

(b) Any extension to a Key Date shall not of itself entitle the Contractor to an extension to any other Key Date.

(6) The Engineer shall within 28 days of the issue of either the certificate of completion of the Works or, in the event of division of the Works into Sections, of the certificate of completion of the last Section review and finally determine and certify the overall extension of time (if any) to which he considers the Contractor is entitled in respect of the Works or any Section or any Stage. Such final review shall not result in a decrease in any extension of time already granted by the Engineer under Clause 50(3).

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S.C.C. A4A Extension of time (alternative version)

(7) For the avoidance of doubt if the Engineer grants an extension of time in respect of a cause of delay occurring after the Employer is entitled to recover liquidated damages in respect of the Works or any Section or any Stage, the period of extension of time granted shall be added to the relevant Key Date identified in the Appendix to the Form of Tender or, if the same has been extended in accordance with this Clause 50, the relevant previously extended Key Date.

(8) Except as provided elsewhere in the Contract, any extension of time granted by the Engineer to the Contractor shall be deemed to be in full compensation and satisfaction for any loss or injury sustained or sustainable by the Contractor in respect of any matter or thing in connection with which such extension shall have been granted and every extension shall exonerate the Contractor from any claim or demand on the part of the Employer for the delay during the period of such extension but not for any delay continued beyond such period.

(9) For the purpose of this Clause, "Black Rainstorm Warning" means a warning issued by the Director of Hong Kong Observatory of a heavy rainstorm in, or in the vicinity of, Hong Kong by the use of the heavy rainstorm signal commonly referred to as "Black"."

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S.C.C. A5 Liquidated damages for delay

(1)	**General Conditions of Contract Clause 52 is deleted and replaced by the following :**		**Liquidated damages for delay**	**Must be used with SCC A1 - A4 and A6 –A9**
	"52 (1)	**If the Contractor fails to achieve any Stage or complete the Works or, where the Works are divided into Sections, any Section by the relevant Key Date, then the Employer shall be entitled to recover from the Contractor liquidated damages, and may but shall not be bound to deduct such damages either in whole or in part, in accordance with the provisions of Clause 83. The payment of such damages shall not relieve the Contractor from his obligation to complete the Works or from any other of his obligation under the Contract.**		
	(2) (a)	**The liquidated damages shall be calculated using the rate per day prescribed in the Appendix to the Form of Tender, either for the Works or for the relevant Section or Stage, whichever is applicable.**		
		Provided that, if the Engineer :		

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S.C.C. A5 Liquidated damages for delay

(i) certifies completion under Clause 53(5) of any part of the Works before completion of the Works or, where the Works are divided into Sections, any part of any Section before the completion of the whole thereof, or

(ii) certifies achievement under Clause 53(9) of any part of any Stage before achievement of the Stage,

then the daily rate of liquidated damages for the Works, the relevant Section or the relevant Stage , as the case may be, shall from the date of such certification be reduced in the proportion which the value of the part so certified bears to the value of the Works, the relevant Section or the relevant Stage, as applicable, both values as of the date of such certification shall be determined by the Engineer.

(b) The obligations to achieve any Stage and to complete the Works or, where the Works are divided into

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S.C.C. A5 Liquidated damages for delay

Sections, any Section by the relevant Key Dates are separate obligations of the Contractor. The Contractor acknowledges that the liquidated damages have been estimated by the Employer on the basis of damages likely to be suffered as a result of failure to meet any relevant Key Date irrespective of and independent from any damages which are likely to be suffered as a result of failure to meet any other Key Date. Liquidated damages attributed to separate Key Dates may, therefore, run concurrently.

(3) The period for which liquidated damages shall be calculated shall be the number of days from the relevant Key Date until and including the date when the Works are completed or, where the Works are divided into Sections, the relevant Section is completed or, as the case may be, the relevant Stage is achieved.

Provided that, if the Engineer subsequently grants an extension of time which affects the period described above, then the Employer shall reimburse the Contractor the liquidated damages for the number of days so affected at the rate described in sub-clause (2) of this Clause together with interest at the rate provided for in Clause 79(4) within 28 days of the granting of such extension of time.

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S.C.C. A5 Liquidated damages for delay

(4) All monies payable by the Contractor to the Employer pursuant to this Clause shall be paid as liquidated damages for delay and not as a penalty."

"[(5) Notwithstanding the proviso to Clause 52(2)(a) the resulting daily rate of liquidated damages for the Works, any Section or any Stage after reduction in accordance with that proviso shall not be less than the minimum rate per day of liquidated damages for the Works, the relevant Section or the relevant Stage, as the case may be, as stated in the Appendix to the Form of Tender.]*"

[Note : *Sub-clause (5) should be deleted if no minimum liquidated damages is specified in the Appendix to the Form of Tender.]

) Not part of) the SCC))

S.C.C. A6 Variations

(1) General Conditions of Contract Clause 60 is deleted and replaced by the following :

"60 (1) The Engineer shall order any variation to any part of the Works or any Stage that is in his opinion necessary for the completion of the Works or for the achievement of any Stage and may order any variation that is in his opinion desirable to achieve satisfactory or timely completion, or improved or more economic functioning of the Works or to achieve satisfactory or timely achievement of any Stage, or on aesthetic grounds. Such variations may include:

Variations

Must be used with SCC A1 – A5 and A7 – A9

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S.C.C. A6 Variations

(a) additions, omissions, substitutions, alterations, changes in quality, form, character, kind, position, dimension, level or line;

(b) changes to any sequence, method or timing of construction specified in the Contract; and

(c) changes to any Portion or part of the Site or access thereto,

and may be ordered during the Maintenance Period.

(2) No such variation shall be made by the Contractor without an order in writing, in the form specified in Appendix ____ hereto, by the Engineer. No variation shall in any way vitiate or invalidate the Contract, but the value of all such variations determined in accordance with Clause 61 shall be taken into account by the Engineer in ascertaining the Final Contract Sum.

) Fill in the
) Appendix
) No.

(3) The Employer may procure that work omitted as a variation to the Works pursuant to an order under Clause 60(1) be carried out by another contractor provided always that:

(a) upon such omitted work being let to another contractor, the Engineer shall , subject to the provisions of Clause 60(4), determine a fair amount in respect of the profit reasonably anticipated by the Contractor in respect of such omitted work as at the time of the relevant variation order and shall make such revision to the Final Contract Sum; and

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S.C.C. A6 Variations

(b) if the effect of the omission of such work would be to reduce an extension of time to which the Contractor would otherwise have been entitled had no such variation been ordered, the Engineer shall take the effect of such omission into account and, subject to the provisions of Clause 50, grant such extension of time (if any) so as to put the Contractor in no better and no worse position than if the said variation had not been ordered.

(4) Sub-clause (3)(a) of this Clause shall have no application if the omitted work is let to another contractor after the issue of the certificate of completion of the Works or earlier termination of the Contract or determination of the Contractor's employment, entry and expulsion in accordance with Clause 81. 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 purpose of this sub-clause, mean the last of such certificates.

(5) An instruction of the Engineer requiring the Contractor to comply with his obligations under Clause 30 or arising from a breach or apprehended breach by the Contractor of his obligations under Clause 30, shall not under any circumstances constitute a variation for the purposes of this Clause 60.

(6) The Engineer may order a variation to any part of the outstanding work referred to in Clause 53 during the Maintenance Period if such a variation shall in the opinion of the Engineer be desirable for or to achieve the satisfactory completion and functioning of the Works."

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S.C.C. A7 Stages and Key Dates

(1) **General Conditions of Contract Clause 1(1) is amended by adding the following :**

" "Key Date" means a date identified as such in the Appendix to the Form of Tender as the same may be extended in accordance with Clause 50.

"Stage" means a degree of achievement in the execution of the Works identified as such and more particularly described in the Specification for which a Key Date for the achievement thereof is stipulated in the Appendix to the Form of Tender."

(2) **General Conditions of Contract Clause 1(1) is amended by replacing the definition of "Section" with the following:**

" "Section" means a part of the Works identified as such and more particularly described in the Specification for which a Key Date for the completion thereof is stipulated in the Appendix to the Form of Tender."

(3) **General Conditions of Contract Clause 49(1) is deleted and replaced by the following :**

"49 (1) The Works and any Section thereof shall be completed and any Stage shall be achieved by the respective Key Dates thereof."

(4) **General Conditions of Contract Clause 51(1) is deleted and replaced by the following :**

Stages and Key Dates

Must be used with SCC A1 - A6 and A8 – A9

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S.C.C. A7 Stages and Key Dates

"51 (1) If the rate of progress of the Works or any Section thereof or any Stage is at any time in the opinion of the Engineer too slow to ensure completion of the Works or any Section thereof or the achievement of any Stage by the relevant Key Date, the Engineer may so inform the Contractor in writing and the Contractor shall immediately take such steps as are necessary to expedite the completion of the Works or any Section thereof or the achievement of any Stage by the relevant Key Date. The Contractor shall inform the Engineer of such proposed steps and review the Works Programme in accordance with Clause 16(6)(b)(ii)."

(5) General Conditions of Contract Clause 53 is amended by adding the following :

"53 (8) When a Stage has been achieved and has satisfactorily passed any test that may be prescribed by the Contract, the Contractor may serve notice in writing to that effect on the Engineer, accompanied by an undertaking to carry out any outstanding work as soon as practicable but in any event within 42 days of issue of the certificate of achievement, requesting the Engineer to issue a certificate of achievement in respect of that Stage. The Engineer shall within 21 days of the date of receipt of such notice either :

(a) issue a certificate of achievement stating the date on which, in the Engineer's opinion, the Stage was achieved in accordance with the Contract, or

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S.C.C. A7 Stages and Key Dates

(b) issue instructions in writing to the Contractor specifying all the work which, in the Engineer's opinion, is required to be done by the Contractor before such certificate of achievement can be issued, in which case the Contractor shall be entitled to receive such certificate of achievement within 14 days of carrying out to the satisfaction of the Engineer the works specified by the said instructions.

(9) (a) The Engineer shall give a certificate of achievement in respect of any part of any Stage which has been achieved to the satisfaction of the Engineer and is required by the Employer for occupation or use or by any utility undertaking or other duly constituted authority for carrying out on or adjacent to the Site any work not included in the Contract but required by the Employer before achievement of the Stage.

(b) The Engineer, following a written request by the Contractor, may give a certificate of achievement in respect of any part of any Stage which has been achieved to the satisfaction of the Engineer before achievement of the Stage and is capable of occupation and/or use by the Employer for any purpose or capable of occupation and/or use by any utility undertaking or other duly constituted authority for carrying out on or adjacent to the Site any work not included in the Contract but required by the Employer.

(10) Achievement of a Stage shall not of itself constitute completion or substantial completion of a part of the Works for the purposes of Clause 53(5)."

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S.C.C. A7 Stages and Key Dates

(6) General Conditions of Contract Clause 63(a) is deleted and replaced by the following :

"63 (a) the Contractor not having received in due time necessary instructions, orders, directions, decisions, Drawings, specifications, details or levels from the Engineer for which the Contractor specifically applied in writing on a date which having regard to the Key Date for completion of the Works or any Section or achievement of any Stage was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for the Contractor to receive the same, or"

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S.C.C. A8 Maintenance of records

(1)	**The Contractor shall establish at the Site or elsewhere as may be permitted in writing by the Engineer an office which shall be staffed during all normal business hours and at which shall be kept copies of all documents relating to or arising under the Contract and a complete, up-to-date and orderly documentary record of all transactions entered into by the Contractor for the purposes of the Contract, including copies of all subcontracts, purchase orders, correspondence, whether by letter, telex, facsimile or electronic transmission, manufacturer's specifications and details, minutes of meetings, all documents relating to the procurement of Constructional Plant, goods and materials, payroll and salary cost records, and all other matters whatsoever.**	**Maintenance of records**	**Must be used with SCC A1 – A7 & A9**
(2)	**To the extent that the design and other records of the Contractor are to be created and/or maintained on a computer or other information system or data storage device, the Contractor shall agree with the Engineer a procedure for backup and off-Site storage of copies of such design and other records and shall adhere, and shall cause its subcontractors [and the engineer carrying out independent checking of the Temporary Works in accordance with Special Conditions of Contract Clause _____]* to adhere, to such agreed procedure.**		
(3)	**If the Contractor uses proprietary software for the purpose of storing or utilizing records maintained in accordance with sub-clause (1) of this Clause and sub-clause (3) of Clause 64 of the General Conditions of Contract, the Contractor shall procure at his own expense the grant of a licence or sub-licence to use such software in favour of the Employer, the Engineer and their respective agents and employees and shall pay such licence fee or other payment as the grantor of such licence may require provided that the use of such software under the licence may be restricted to use relating to the design, construction, reconstruction, completion, maintenance, reinstatement, extension, repair and operation of the Works or any part thereof or any other works**		

* **The words in square brackets should be deleted if SCC clause 26 "Independent Checking of the Design, Erection, Use and Removal of Temporary Works" of the Works Bureau Library of Standard Special Conditions of Contract is not adopted.**

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S.C.C. A8 Maintenance of records

required to be carried out by the Employer in Hong Kong (irrespective of whether or not such works are related to the Works) and settlement of disputes or differences in accordance with Clause 86 of the General Conditions of Contract.

(4) General Conditions of Contract Clause 6 is amended by replacing sub-clause (5) with the following :

"(5) Without prejudice to the generality of Clause A8(1) of the Special Conditions of Contract, one copy of the Drawings furnished to the Contractor as aforesaid shall be kept by the Contractor on the Site and the same shall at all reasonable times be available for inspection and use by the Engineer and the Engineer's Representative and by any other person authorized by the Engineer in writing."

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S.C.C. A9 Construction methods

(1) The Contractor shall submit in accordance with General Conditions of Contract Clause 7 such documents and information pertaining to the methods of construction (including Temporary Works [other than those parts of the Temporary Works which are subject to independent checking in accordance with Special Conditions of Contract Clause _____[1]] and the use of Constructional Plant) which the Contractor proposes to adopt or use and such calculations of stresses, strains and deflections that will or may arise in the permanent work or any parts thereof during construction from the use of such methods as will enable the Engineer to decide whether, if such methods are adhered to, the Works can be executed in accordance with the Drawings and the Specification and without detriment when completed to the permanent work.

Construction methods

Must be used with SCC A1 – A8

(2) The Engineer shall inform the Contractor in writing within a reasonable period after receipt of the information submitted in accordance with sub-clause (1) of this Clause :

(a) that the Contractor's proposed methods of construction have the consent of the Engineer (which consent shall not be unreasonably withheld); or

(b) in what respects in the opinion of the Engineer the Contractor's proposed methods of construction :

(i) fail to meet the requirements of the Drawings and/or the Specification; or

(ii) would be detrimental to the permanent work; or

(iii) do not comply with the other requirements of the Contract; or

(c) as to the further documents or information which are required to enable the Engineer properly to assess the proposed methods of construction.

In the event that the Engineer does not give his consent, the Contractor shall take such steps or make

[1] Insert SCC Clause number for checking of Temporary Works here.

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S.C.C. A9 Construction methods

such changes in the said methods or supply such further documents or information as may be necessary to meet the Engineer's requirements and to obtain his consent. The Contractor shall not change the methods of construction which have received the Engineer's consent without the further consent in writing of the Engineer which shall not be unreasonably withheld.

(3) The Engineer shall at the written request of the Contractor provide to the Contractor such design criteria relating to the permanent work or any Temporary Works designed by the Engineer which are relevant, in the opinion of the Engineer, to the Contractor's obligations under sub-clauses (1) and (2) of this Clause.

(4) If the Engineer's consent to the proposed methods of construction shall be unreasonably withheld or delayed or if the requirements of the Engineer pursuant to sub-clauses (2)(b)(i) and (ii) of this Clause or any limitations imposed by any of the design criteria supplied by the Engineer pursuant to sub-clause (3) of this Clause could not reasonably have been foreseen by an experienced contractor at the time of tender and if in consequence of any of the aforesaid the Contractor unavoidably incurs delay or Cost the Engineer shall :

(a) subject to Clause 50 of the General Conditions of Contract take such delay into account in determining any extension of time to which the Contractor is entitled, and

(b) subject to Clause 64 of the General Conditions of Contract and as soon as reasonably practicable determine such sum in respect of the Cost incurred and notify the Contractor in writing of such determination.

(5) Notwithstanding the foregoing provisions of this Clause or that certain of the Contractor's proposed methods of construction may be the subject of the consent of the Engineer given in accordance with sub-clause (2) of this Clause, the Contractor shall not be relieved of any liability or obligation under the Contract nor shall the same bind or create any obligation or liability on the part of the Employer.

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S.C.C. A10 General damages

(1)	**General Conditions of Contract Clause 52 shall not apply to [Section _____] of the Works.**	**General damages**	**[+]Optional. When is used, must be used with SCC A1 – A9 and include in the tender document a Special Condition of Tender along the lines at Appendix 5.36**
(2)	**If the Contractor fails to complete [Section _____] of the Works by the relevant Key Date, he shall indemnify the Employer against all loss or liability incurred by the Employer (including without limitation any and all liability under the Employer's contracts with third parties) arising from the delay between the Key Date for [Section _____] and the date of completion of [Section _____] certified in accordance with General Conditions of Contract Clause 53. All amounts payable by the Contractor pursuant to this Special Condition of Contract Clause A10 are hereafter to as "general damages".**		
(3)	**The Employer may but shall not be bound to deduct such general damages, either in whole or in part, in accordance with the provisions of General Conditions of Contract Clause 83. The payment of such damages shall not relieve the Contractor from his obligations to complete the Works or from any other of his obligations under the Contract.**		
(4)[*]	**The total amount of general damages in respect of [Section _____] of the Works to which this Special Condition of Contract Clause A10 applies shall be limited in aggregate to the relevant sum stated in the Appendix to the Form of Tender.**		
(5)	**If the Engineer subsequently grants an extension or further extension of time for completion of [Section _____] of the Works such that the Employer shall no longer be entitled to general damages in respect of the period of such extension, then any sum in respect of such extension which may already have been recovered under this Special Condition of Contract Clause A10 shall be reimbursed forthwith to the Contractor together with interest at the rate provided for in General Conditions of Contract Clause 79(4) within 28 days of the granting of such extension of time.**		

[+] **To adopt where liquidated damages will not apply in respect to the Works, any Section or Stage and general damages are to be recoverable.**

[*] **Sub-clause (4) should be deleted (and sub-clause (5) re-numbered accordingly) if it is decided, in relation to a particular project, that there is no need to limit the total amount of general damages payable.**

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APPENDIX 5.37 SPECIAL CONDITIONS OF TENDER FOR USE IN MEGA PROJECT CONTRACTS (Ref.: WBTC No. 26/2002)

SCT (General damages)

The tenderer's attention is drawn to the Contractor's obligation under Special Conditions of Contract Clause A10 to indemnify the Employer against all loss or liability incurred by the Employer (including without limitation any and all liability under the Employer's contracts with third parties) arising from the delay in completion of [Section _____] of the Works. Based on the information currently available to the Employer such loss or liability would include without limitation the Employer's obligation to compensate [specify the third party(ies) and refer to the relevant contract(s)/agreement(s) with the third party(ies) as described in Appendix [ ] to these Special Conditions of Tender. The tenderer shall be deemed to have allowed in his tender for all the risks, liabilities and obligations set out or implied in the Contract and all matters and things necessary for the proper execution of the Works including without limitation the full extent of the obligation to comply with the provisions of Special Conditions of Contract Clause A10.

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APPENDIX 5.38 GUIDELINES FOR THE DEVELOPMENT OF MAJOR INFRASTRUCTURE PROJECTS (Ref.: S for W's memo ref. () in WB(W) 216/29/2 dated 10.5.2001)

A Background

The original set of the Guidelines was prepared based on experience learnt from the implementation of the Airport Core Programme. Since its promulgation in October 1999, the Guidelines had been applied in a few major infrastructure projects. A review of the application of the Guidelines was later completed. Based on the feedbacks from the bureaux and departments, the Guidelines were considered generally in order but it would be appropriate to highlight in the Guidelines the need to address environmental issues at the earliest possible stage. As a result, a set of updated internal administrative guidelines for managing the delivery of major infrastructure projects was promulgated with paragraph 8 of the Guidelines expanded accordingly.

B Application

The Guidelines should be given full regard and careful consideration before embarking on major infrastructure projects. The Guidelines cover all stages in the delivery of a major infrastructure project starting from the initial selection of a suitable delivery agent through to the final operation stage. In addition, they contain special features such as project auditing, risk assessment and contingency planning. Thus all bureaux and works departments dealing with such projects should comply with the Guidelines as a matter of policy. However it should be realized that major infrastructure projects may differ widely in nature and that different institutional arrangements for their delivery are possible. These Guidelines are therefore meant to be only broad principles of general applicability. During the implementation process the concerned policy bureau could further develop or refine them to suit the circumstances of individual project. Due consideration should be given to the complexity of the project, number of parties involved, number of interfaces and so forth. The Development Bureau will continue to monitor, review and update the Guidelines.

C The Guidelines

The Guidelines are set out in the following pages.

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GUIDELINES FOR THE DEVELOPMENT OF MAJOR INFRASTRUCTURE PROJECTS

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GUIDELINES FOR THE DEVELOPMENT OF MAJOR INFRASTRUCTURE PROJECTS

I. Selecting the Most Appropriate Institutional Entity of Delivery

At a very early stage, careful thought should be given to how a project is to be delivered. A comparison should be made of the basic choices, such as designating a Government department as the delivery agent, commissioning a statutory organization as the executive agency or involving a private enterprise through a franchise or some other form of agreement. As a general rule, we should give a project to a Government department, a statutory organization or a private enterprise for delivery only when their ability to do so has been fully proven. The degree of control available to Government (in case of a non-government delivery agent), the track record of the organization and the experience of the key personnel involved are important considerations which would need to be taken into account.

II. Clear Demarcation of Responsibility and Authority

2. After the selection of the institutional entity of delivery, a basic 'charter' should be drawn up in consultation with the concerned parties, setting out the control and monitoring framework, with detailed description of their respective roles and responsibilities. Three points are particularly important:-

(a) Authority and responsibility must be aligned – Parties involved must not be left in any doubt as to their own responsibilities, whatever the overall monitoring mechanism is. In the case of a project undertaken by a non-Government organization, the demarcation of responsibilities must be clearly spelt out and formally agreed between Government and the organization and widely promulgated. Government must avoid getting more involved than its position requires, which might create the wrong impression that the success or otherwise of the project is a Government responsibility.

(b) 'Re-energization' is required – Parties involved in the delivery of a project should be reminded of their respective roles and responsibilities from time to time so that there will be no misunderstanding of what they should be. There can be updating exercises, conferences or seminars at crucial points for re-familiarization as necessary.

(c) In the 'charter', there should be clear and precise procedures and standards for measuring, tracking and reporting progress of the project by the delivery agent and all concerned parties. A commonly accepted glossary of terms and reporting formats for this purpose should be included.

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III. Good Governance as a General Requirement

3. This is of particular importance when the implementation of a huge and complex project is undertaken by a statutory organization, which is autonomous by law. The proper governance of the statutory organization is of pivotal importance. For example, its chairman and members are knowledgeable about the main functional areas of the project (e.g. engineering, finance, management, information technology, legal, etc.) or can have ready access to external expert advice. The Board of the statutory organization and its senior management should work together as a fully integrated entity with their responsibilities and relationship clearly delineated. The Board should be given authority commensurate with its responsibilities, including power to hire and fire staff. In order not to undermine the authority of the Board, Government should deal with the Board as far as practicable rather than solely with its staff.

IV. A Unified Project Management Approach

4. For a large scale project involving a multitude of key activities which must be centrally coordinated, consideration should be given to setting up a central point of monitoring and control with sufficient authority over project scope, schedule and budgets.

(a) Where Government has the ultimate responsibility and authority, certain powers should be vested in a Project Management Office within Government. In addition to authority, the Office would need to be provided with the necessary resources so that it is able to control critical milestones, use budget and project contingencies, order risk assessments and authorize acceleration of works. On top of this Office and directing its operation should be a high-level Steering Committee overseeing progress and budget of the project.

(b) Where the works have to be carried out by a statutory organization, a Steering Committee and a Project Management Office should be set up by mutual agreement. The respective responsibilities of the Steering Committee, the Project Management Office and the organization must be clearly delineated and promulgated, preferably in a Project Agreement. The Project Agreement should also cover other terms and conditions and serve as a binding document between the organization and the Government. It will need to be approved by both the management Board of the organization and the Government's policy secretary in charge of the project. As a general point, both the Steering Committee and the Project Management Office should have readily available professional input at a senior level, from either the head or senior members of the concerned Government department.

5. The project management framework in paragraph 4(b) above should also apply to situations where a number of projects which require close co-ordination are to be delivered in a mixed manner, i.e. some by Government and some by one or several autonomous statutory organizations. For

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entrustment works, the statutory organization will operate as the works agent for Government, and the same project management structure as set out in paragraph 4(a) should be considered although there is a case for a closer level of monitoring by the Project Management Office because of the more immediate accountability of Government for the timely completion of the works.

V. Check and Balance

6. At the macro level, a Project Management Office independent of the delivery agent working direct to a Steering Committee should operate as check and balance by way of exercising overall project management and control – see paragraphs 4 and 5 above. Depending on the nature and complexity of individual projects, the Office could be headed by a professional, if considered necessary.

7. At the micro level, out-sourced project management – Consideration should be given to contracting out project management or construction management services for new types of projects and for projects undertaken by an organization without a significant history in constructing and operating similar projects using its own resources. Leaving everything to the project team within the organization will run the risk of the project team being too much in control, to the detriment of the overall objectives of the project. The situation is particularly unsatisfactory when internal monitoring is absent or weak, or when the project team dominates the operation team.

8. Ongoing reviews during the design and construction stages – Technical viability considerations, including environmental issues, must be addressed in the design of the project at the earliest possible stage, before designs are fully committed. Design and construction should not be carried out in parallel as far as possible. Where this is necessary, a special mechanism would need to be set up to deal with design changes and their impact on project delivery so as to mitigate problems. In addition, an ongoing programme of value engineering by the project team and a one-off peer review of the project by an independent expert should be considered.

9. Early involvement of the operation team or the users – Assuming there is an ultimate operation team or user(s) of the facilities (not necessarily the owner) who can be identified early, the operation team or the users should be involved at the earliest possible stage. Operability should be an important consideration at the design stage and customer orientation should be recognized throughout the life cycle of the project. This is particularly true of integrated operational systems. Early and comprehensive work on systems performance and technical specifications, operational characteristics and systems integration planning should require and respect input from the operation team. The procuring body must spell out its specifications in clear and comprehensive terms which do not allow for any alternative interpretation. The bidder of a systems contract must be able to demonstrate that he fully understands the proposed systems before a contract is awarded to him. This would

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prevent substantial changes to the specifications at a later stage. Where changes are inevitable, they should be thoroughly discussed between the project team and the operation team and properly authorized at the appropriate level. A full documentary record of any such changes should be kept.

10. **Formal handing over of systems to the operation team – At a predetermined point in the master programme, the systems must be handed over formally to the operation team, who would then assess the operational status in accordance with their priorities during the commissioning stage and determine whether the systems are in fact ready for operational use on the target opening day.**

11. **Confirming readiness all around – There should be a predetermined checklist, prepared by an independent expert where appropriate, to be signed off by each and everyone of the operators of the key systems, attesting to the compliance and readiness of the systems for the opening day and the satisfactory completion of the required training, testing and trial activities. Any discrepancy must be attended to by the project team and/or the operation team as appropriate at the earliest possible opportunity. Unless the checklist is completely signed off, the project must not be considered ready for operational use. If an opening date for the project has been fixed well in advance, the opening date will need to be critically reviewed if items in the checklist are still outstanding. Where appropriate, this procedure of self-verification can be enhanced by an independent expert audit (see paragraph 19 below) or be tied in with statutory licensing procedures.**

VI. Transparency and Co-ordination

12. **Use an 'open book' approach to project management – Throughout the project management cycle, there shall be no withholding of information by the delivery agent. This is achieved through an 'open book' concept which includes full access for all concerned parties to reports and information notes, open attendance at review meetings etc. The Project Management Office will take the lead and set the example. It is recognized that there may be restrictions where proprietary or commercially sensitive information is involved. However, if the principle is recognized there should be a free flow of information between the project team and the Project Management Office, and between the delivery agent and their business partners, franchisees and Government departments to facilitate effective monitoring of progress of all key items.**

13. **Co-ordination meetings and progress review meetings – The successful airport relocation exercise and operations of Government departments at the airport highlight the importance of an early start on co-ordination and a close working relationship between the parties concerned. If outside agents or business partners are involved in the provision of services, their activities should be properly co-ordinated by the delivery agent. However the delivery agent should avoid creating too many committees with overlapping functions and responsibilities, but should rather devise an**

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open, comprehensive and flexible coordination mechanism. Moreover, progress reports should be studied carefully and digested, and any problems identified from such reports should be brought up for discussion in the appropriate forum. All discussions and decisions made together with subsequent actions should be properly documented.

VII. Programme Management

14. Use of well-defined critical milestones as 'project decision points' – There should be established targets and critical milestones incorporated into baseline implementation plans and contracts. Milestones should be integrated with scope control documents and programmes, and must be rigorously controlled. If a critical milestone is missed or forecast to be missed by a certain threshold value, the Project Management Office should be in a position to order an impact study or a risk assessment to determine possible 'workarounds', such as resequencing or acceleration, based on the invariable assumption that unless 'workarounds' are available and authorized, the opening date will be delayed by at least a corresponding duration as the milestone is missed. The burden of proof to overcome this assumption will rest with the project team.

15. A master programme for overview and tracking of progress – A project should proceed on the basis of a master programme that links activities together and allows progress and impact of delays to be measured. Without it, formal programme risk assessment cannot be conducted. The delivery agent must provide the Project Management Office with a comprehensive master programme setting out the resource requirements, updated and statused on a regular basis for control and monitoring purposes. Where applicable, the master programme should incorporate key dates for awarding contracts in time to meet the project completion date and key transitional activities such as progression from construction to operation.

16. Critical item reporting – The flow of information from the delivery agent to the Project Management Office and from the Project Management Office to the Steering Committee must be complete and honest. There should exist a mechanism whereby critical items are identified and reported on with follow-up actions taken as a matter of course. It will be a prime function of the Project Management Office to ensure that such a system is in place and is strongly enforced.

VIII. Managing the Transition from Construction to Operation

17. Transitional activities such as testing, commissioning, training and trials should be co-ordinated by the executive agent for the project on a comprehensive basis (i.e. all key operators included) as part of the master programme. There should be ample time allowed for each phase of the activities. Any compression of the timetable should be critically reviewed by the Project Management Office and the operation team. The entire process should be carried out under the overall charge of an officer with

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suitable experience in project management or with close professional support.

IX. An International Perspective

18. Use of international experts should be considered if local resources are not available. A degree of 'networking' with overseas authorities, overseas visits and, where appropriate, some international 'benchmarking' should be considered.

X. Use of an Auditor

19. In addition to the regular monitoring system, the Project Management Office and the delivery agent should also consider separate auditing of the project by an independent auditor, either on an ad hoc or regular basis as an additional safeguard on top of the regular monitoring mechanism. It will be necessary for the auditor to be guaranteed access to full information on the project so that he can be authorized, for example, to certify certain key activities such as trials or tests. Care should be taken to avoid confusion of roles or duplication of efforts.

XI. Risk Assessment and Contingency Plan

20. At the final stage of the project and in good time, the operation team should consider an overall risk assessment. Comprehensive contingency plans, prepared in consultation with all concerned parties and fully tried out, should exist to deal with unexpected situations with particular attention to the possible 'snowballing' effects of relatively minor problems. It should be the responsibility of the Project Management Office to oversee the work of all concerned parties in these issues.

XII. Community Support

21. Efforts should be made to seek and maintain the support of the community for the project. This process can become a source of useful feedback on the future operation of the project. Publicity activities however must not be allowed to interfere with project work, particularly when time is at a premium. Where public expectations run high, care should be taken to forewarn that for huge and complex projects some minor difficulties at the commissioning stage might be unavoidable.

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APPENDIX 5.39 SCC ON SECTION SUBJECT TO EXCISION (FOR USE WITH GENERAL CONDITIONS OF CONTRACT FOR CIVIL ENGINEERING WORKS 1999 EDITION)

(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 Engineer.**

(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.**

(3) **The Engineer 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 Works notified by the Engineer in accordance with General Conditions of Contract Clause 47), 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 Engineer'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 and this time for completion commences from and includes the date for commencement of the Works notified by the Engineer in accordance with General Conditions of Contract Clause 47; 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 Engineer 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**

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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 Engineer 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 Engineer.

+ State the relevant contract provisions.

NOTE : For contracts which also use SCC 6 in the Library of SCCs (i.e. the SCC on Sectional Commencement), "Clause 47" referred to in this SCC on Section Subject to Excision should be replaced by "Clause 47(1)".

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APPENDIX 5.40 SCC ON SECTION SUBJECT TO EXCISION (FOR USE WITH GENERAL CONDITIONS OF CONTRACT FOR DESIGN AND BUILD CONTRACTS 1999 EDITION)

(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*.**

(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.**

(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 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**

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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*.

+ State the relevant contract provisions.

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APPENDIX 5.41 NTT ON SECTION SUBJECT TO EXCISION

Notes to Tenderers

[NTT(l) to be included in the Notes to Tenderers when SCC [ ] on Section Subject to Excision is incorporated.]

(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.**

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APPENDIX 5.42 NTT ON ANTI-COLLUSION

Tenderers' attention is drawn to the anti-collusion provisions in GCT 26.

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APPENDIX 5.43 GCT 1 ON DEFINITIONS

Clause			Remarks/Guidelines
GCT 1 Definitions			
(1)	For the purpose of these General Conditions of Tender and Special Conditions of Tender, 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:		DEVB memo ref. (02B6J-01-6) in DEVB(W)510/10/01 dated 24.3.2011.
	(a)	"Engineer/Architect/Maintenance Surveyor designate" means ____#	# Delete/Modify as appropriate. Full description of the "Engineer/ Surveyor/ 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.
	(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.	
	(c)	"person" includes individual, corporation, partnership, firm and unincorporated body.	
(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.		

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APPENDIX 5.44 GCT 25 ON SUBMISSION OF FURTHER INFORMATION

Clause	Remarks/Guidelines
GCT 25 Submission of further information	
The tenderer shall upon written request by the *Architect/Engineer/Surveyor/Maintenance Surveyor designate (which may be issued at any time after the tender closing date) submit to the *Architect/Engineer/Surveyor/Maintenance Surveyor designate within 7 days of the date of issue of the written request or within reasonable time upon the written request the following documents: **#[(a) .....;** **(b) .....; and** **(c) .....]** **Failure to comply with this Clause by the tenderer shall render his tender invalid.**	*** Delete as appropriate.** **Note: Non submission will be regarded as withdrawal of tender.** **# 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 General Conditions of Tender Clause 5. Such documents should not contain information which will affect the evaluation process or the marking scheme.**

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APPENDIX 5.45 GCT 26 ON ANTI-COLLUSION

Clause	Remarks/Guidelines
GCT 26 Anti-collusion	
(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. **(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 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.**	DEVB memo ref. (02B6J-01-6) in DEVB(W)510/10/01 dated 24.3.2011.
(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. **(2) Sub-clause (1)(a) of this Clause shall have no application to the tenderer's communications in strict confidence with:** **(a) his own insurers or brokers to obtain an insurance quotation for computation of tender price;** **(b) his consultants or subcontractors to solicit their assistance in preparation of tender submission; and** **(c) his bankers in relation to financial resources for the Contract.**	
(3) The tenderer shall submit with his tender a duly signed and witnessed letter in the form set out in Appendix [*insert appropriate reference*]+ 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. **(4) The tenderer shall indemnify and keep indemnified the Employer against all**	+ **See below. It shall not be included as an essential submission under GCT 21.**

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Clause	Remarks/Guidelines
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 incurred.	
Appendix [ ] **To: The Government of the Hong Kong Special Administrative Region ("Government")** **Date: _____** **Dear Sir/Madam,** **Contract No.: [ ]** **Title: [ ]** ***[I/We], [(name of the tenderer) of (address of the tenderer)][1], refer to *[my/our] tender for the above Contract.** ***[I/We] confirm that, before *[I/we] sign this letter, *[I/we] have read and fully understand this letter and the anti-collusion clause in General Conditions of Tender Clause 26.** ***[I/We], represent and warrant that in relation to the tender for the above Contract:** **(i) *[I/We], other than the Excepted Communications referred to in the last paragraph of this letter, have not communicated and will not communicate to any person other than the Government the amount of the tender price or any part thereof until *[I/we] have been notified by the Government of the outcome of the tender exercise;** **(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;** **(iii) *[I/We] have not made and will not**	*** Delete as appropriate.** **1 Where the tenderer comprises two or more persons or companies acting in partnership, joint venture or otherwise, this part in square brackets should be expanded to include the respective names and addresses of such persons or as the case may be companies.** **2 Where the tenderer comprises two or more persons or companies acting in partnership, joint venture or otherwise, all such persons or as the case may be companies must sign. The signatory for each of such persons or companies shall be a person authorized to sign Government contracts on behalf of that person or as the case may be company.**

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Clause	Remarks/Guidelines
make any arrangement with any person as to whether *[I/we] or that other person will or will not submit a tender; and	
(iv) *[I/We] have not otherwise colluded and will not otherwise collude with any person in any manner whatsoever in the tendering process. ***[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.** **In this letter, the expression "Excepted Communications" means *[my/our] communications in strict confidence with:** **(i) *[my/our] own insurers or brokers to obtain an insurance quotation for computation of tender price;** **(ii) *[my/our] consultants or subcontractors to solicit their assistance in preparation of tender submission; and** **(iii) *[my/our] bankers in relation to financial resources for the Contract.** **Signed for and on behalf of [name of the tenderer] by [name and position of the signatory][2]:** **_____** **Name of Witness: _____** **Signature of Witness: _____** **Occupation: _____**	

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APPENDIX 5.46 SCC ON BOND FOR OFF-SITE MANUFACTURES OF MAJOR PREFABRICATION ITEM(S)

S.C.C. xx

Bond for Off-Site Manufacture of Major Prefabrication Item(s)

(1) For purposes of the Contract, "[Major Prefabrication Items]" shall mean the following item(s) of works:

(a) [*description*] identified in [*set out the relevant Drawing number(s) and the relevant clause/section number(s) of the Contract documents, e.g. Specification*]; and

(b) ……
[*set out details of any further item(s) of works*],

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 [ ] 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 Engineer. 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.

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(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 sub-paragraph 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 xx, 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 xx, to the Major Prefabrication Item(s)

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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 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 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 xx, 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 subcontract.

(3) The 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 Engineer. Such 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.

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The operation of this Clause shall not be deemed to imply any approval by the Engineer of such materials or Major Prefabrication Item(s) or prevent the rejection by the Engineer of any material or Major Prefabrication Item at any time.

Clause 78 of General Conditions of Contract shall be amended by:

(A) Adding after sub-clause (1)(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 xx and the estimated contract value of such Major Prefabrication Item(s)"; and"

(B) Renumbering original sub-clause (1)(c) as sub-clause (1)(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 xx; and"

(B) Renumbering original sub-clause "(1)(d)" and "(1)(e)" as (1)(e)" and "(1)(f)" respectively.

(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 as referred to in (c) above for use in

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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 Engineer 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 xx."

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 Engineer'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 of the Bills of Quantities.

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Furthermore, the Contractor shall furnish to the Engineer 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 insets, 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

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[(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 : *In implementation of the risk-based assessment for insurance procurement according to ETWB TCW Nos. 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.*

[#] Delete if OCIP arrangement has been adopted for the Contract.

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Appendix [ ]

FORM OF CONTRACTOR'S BOND IN RESPECT OF OFF-SITE PAYMENT FOR A MAJOR PREFABRICATION ITEM

BY THIS BOND dated the day of [ ] 201X
[ ] whose registered office is at
[ ]
("the Surety") is irrevocably and unconditionally bound to the Government of the Hong Kong Special Administrative Region (together with its successors and assigns, "the Employer") for payment of a sum ("the Bonded Sum") not exceeding [ ] ([ ])[1] for payment of which sum the Surety binds itself its successors and assigns in accordance with the provisions of this Bond.

WHEREAS

(A) By a contract dated [ ]("the Contract") made between the Employer and [ ] ("the Contractor"), the Contractor has agreed to execute and complete certain works ("the Works") upon the terms and conditions contained in the Contract.

(B) Pursuant to the terms of the Contract, the Contractor agrees that if he elects to apply for interim payment for any Major Prefabrication Items ("the Off-Site Payment") pursuant to Special Conditions of Contract Clause xx, the Contractor shall, as a condition precedent to its right to apply for any such interim payment, provide this on-demand bond ("Bond").

(C) The Contractor has elected to apply for interim payment for the Major Prefabrication Item comprising [ ] pursuant to Special Conditions of Contract Clause xx ("Relevant Major Prefabrication Item")

NOW THE TERMS AND CONDITIONS of this Bond are:-

1. The Surety hereby irrevocably and unconditionally undertakes to pay to the Employer an amount not exceeding [ ] ([ ])[1] upon receipt from the Employer of a written demand therefor accompanied by a certificate signed on behalf of the Employer stating:

   (a) that the Employer is entitled to terminate or has terminated the Contract or the employment of the Contractor under the Contract; and

   (b) the amount due and payable under this Bond in accordance with Clause 3 below.

2. The Surety shall pay to the Employer the amount thus demanded without requiring further evidence or proof of:-

   (a) the default of the Contractor or

   (b) the Employer's entitlement to terminate the Contract or the employment of the Contractor under the Contract or

[1] The value stated in the Appendix to Form of Tender which the Employer considers will be sufficient to cover him for maximum Off-Site Payment payable to the Contractor for the Relevant Major Prefabrication Item.

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(c) any termination of the Contract or the employment of the Contractor under the Contract or

(d) of the amount due and payable under this Bond.

3. The amount payable under this Bond shall be the aggregate of the sum stated in the latest interim payment certificate representing the Off-Site Payment paid to the Contractor under the Contract prior to the date of the written demand referred to in Clause 1 above less the aggregate of any and all sums in respect of the Relevant Major Prefabrication Item delivered to the Site as certified by the Engineer (as defined in the Contract) in accordance with the terms of the Contract provided always that the liability of the Surety under this Bond shall not exceeded [ ] ([ ])[1].

4. The liability of the Surety under this Bond shall remain in full force and effect and shall not be affected or discharged in any way by and the Surety hereby waives notice of:-

(a) any suspension of the Works, variation to or amendment of the Contract (including without limitation extension of time for performance), or any concession or waiver by the Employer in respect of the Contractor's obligations under the Contract;

(b) the termination of the Contract or of the employment of the Contractor under the Contract solely as a result of default by the Contractor under the Contract;

(c) any forbearance or waiver of any right of action or remedy the Employer may have against the Contractor or negligence by the Employer in enforcing any such right of action or remedy;

(d) any other bond, security or guarantee held or obtained by the Employer for any of the obligations of the Contractor under the Contract or any release or waiver thereof;

(e) any act or omission of the Contractor pursuant to any other arrangement with the Surety.

5. The liability of the Surety under this Bond shall cease on whichever of the following events first occurs:-

(a) payment by the Surety of the Bonded Sum in full to the Employer; or

(b) receipt of written notification from the Employer that all the components comprising the Relevant Major Prefabrication Item have been delivered to the Site; or

6. The Employer shall be entitled to assign the benefit of this Bond at any time without the consent of the Surety or the Contractor being required.

7. All documents arising out of or in connection with this bond shall be served:-

(a) Upon the Employer, at [ ], marked for the attention of [ ];

(b) Upon the Surety, at [ ] Hong Kong.

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8. The Employer and the Surety 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.

9. This Bond shall be governed by and construed according to the laws for the time being in force in Hong Kong and the Surety agrees to submit to the non-exclusive jurisdiction of the courts of Hong Kong.

10. In this Bond, "Hong Kong" means the Hong Kong Special Administrative Region. Where applicable, words and expressions used in this Bond shall have the meanings assigned to them in the Contract.

IN WITNESS whereof this Bond has been executed as a deed on the date first above written.

(a) SIGNED, SEALED and DELIVERED)
by [name of sole proprietor])
trading as [name of the Surety])
in the presence of:)
) *[Signature of the*
) *sole proprietor]** L.S.
.....)
[Name])
[Occupation])
[Address])

Or

(b) SIGNED, SEALED and DELIVERED by)
[name of partner] and)
[name of partner]^) *[Signature of the*
being the partners of [name of the Surety]) *individual*
in the presence of:) *partner]** L.S.
)
) *[Signature of the*
.....) *individual*
[Name]) *partner]** L.S.
[Occupation])
[Address])

Or

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(c) Executed and delivered)
as a deed and the COMMON SEAL)
of [name of the Surety])
was affixed in the presence of) *[Signature of the*
[ ] its [director(s) or) *director(s) etc]**
director and secretary or person(s))
authorized to sign the bond by its)
board of directors]**)
in the presence of a witness:)
)
.....)
[Name])
[Occupation])
[Address])

Common Seal

Or

(d) Executed and delivered as a deed)
by [name of the Surety])
acting through)
[ ] (its sole director))
or) *[Signature of the*
[ ] and [ ] (its directors)) *director(s) etc]**
or)
)
[ ] (its director) and)
[ ] (its company secretary)**)
in the presence of a witness:)
)
)
.....)
[Name])
[Occupation])
[Address])

Or

(e) SIGNED, SEALED and DELIVERED by)
[name of the Surety] by [ ])
his/her/its** attorney under power of attorney)
dated [ ])
) *[Signature of the*
in the presence of:) *attorney]**
)
.....)
[Name])
[Occupation])
[Address])

L.S.

Note :

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(a) For use where the surety is a sole proprietor.
(b) For use where the surety is a partnership.
(c) For use where the surety is a company incorporated in Hong Kong and executes the deed with a Common Seal.
(d) For use where the surety is a company incorporated in Hong Kong and executes the deed without a Common Seal.
(e) For use where the surety executes the deed under a power of attorney.

* The italic parts are not part of the execution clause. They are for guidance or information only.

** Select the correct expression for use. If none is applicable, insert an appropriate expression.

^ The deed shall be executed by all the partners. Add more names if required.

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APPENDIX 5.47 SCC ON RELEASE OF RETENTION MONEY (FOR USE IN CONJUNCTION WITH GCCS FOR BUILDING WORKS, CIVIL ENGINEERING WORKS, DESIGN AND BUILD CONTRACTS AND ELECTRICAL AND MECHANICAL ENGINEERING WORKS, 1999 EDITIONS)

SCC on Release of Retention Money

(For Capital Works contracts)

General Conditions of Contract Clause 79(3) is deleted and replaced by the following :

"(3)(a) The Engineer[/Surveyor][1][/Supervising Officer][2] 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,][3] repair, rectification and making good of any defects[/Defects][4] [imperfection, shrinkage, settlement and other fault][5] 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 Subcontractor][6] 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 [/Defects Liability Period][7] for the Works or, where there is more than one such Period, the latest Period, the Engineer [/Surveyor][8] [/Supervising Officer][9] 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 Engineer [/Surveyor][10][/Supervising Officer][11], 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][12] 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 Engineer [/Surveyor][13] [/Supervising Officer][14]

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[1] Only applicable to Building Works contracts
[2] Only applicable to Design and Build contracts
[3] Not applicable to E&M contracts
[4] Only applicable to E&M contracts
[5] Not applicable to E&M contracts
[6] Only applicable to contracts with provision for Nominated Subcontractor
[7] Only applicable to E&M contracts
[8] Only applicable to Building Works contracts
[9] Only applicable to Design and Build contracts
[10] Only applicable to Building Works contracts
[11] Only applicable to Design and Build contracts
[12] Only applicable to contracts with provision for Nominated Subcontractor
[13] Only applicable to Building Works contracts
[14] Only applicable to Design and Build contracts

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shall, within 14 days of the date of issue by the Engineer [/Architect][1] [/Supervising Officer][2] of the maintenance certificate [/defects liability certificate][3] 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][4] and, subject to Clause 83, the Employer shall pay such sum to the Contractor within 21 days of the date of such certificate."

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[1] Only applicable to Building Works contracts
[2] Only applicable to Design and Build contracts
[3] Only applicable to E&M contracts
[4] Only applicable to contracts with provision for Nominated Subcontractor

SCC on Release of Retention Money

(For Capital Works contracts – landscape works)

General Conditions of Contract Clause 79(3) is deleted and replaced by the following :

"(3)(a) The Engineer[/Surveyor][1][/Supervising Officer][2] shall within 14 days of the date of issue of the certificate of completion in respect of the Works except Landscape 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, in respect of the Works except Landscape Works, the cost of the outstanding work referred to in Clause 53 and all work of [maintenance,][3] repair, rectification and making good any defects[/Defects][4] , [imperfection, shrinkage, settlement and other fault][5] referred to in Clause 56 which have been notified in writing to the Contractor [and , which certificate shall state any Retention Money due to any Nominated Subcontractor][6] 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 except Landscape 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 upon the expiry of the Maintenance Period[/Defects Liability Period][7] for the Works except Landscape Works, or where there is more than one such Period, the latest Period, the Engineer[/Architect][8] [/Supervising Officer][9] shall notify the Contractor in writing the date of expiry of such Maintenance Period [/Defects Liability Period][10], and within 14 days of the date of notification by the Engineer [/Architect][11] [/Supervising Officer][12] , the Engineer [/Surveyor][13] [/Supervising Officer][14] shall issue a certificate for the payment of a further portion of the Retention Money and such further portion shall be equal to the Relevant Percentage of the Retention Money less an amount which, in the opinion of the Engineer [/Surveyor][15][/Supervising Officer][16], represents the cost of the outstanding work referred to in Clause 53 and all work of [maintenance,][17] repair, rectification and making good any defects[/Defects][18] , [imperfection, shrinkage, settlement and other fault][19] referred to in Clause 56 then remaining to be carried out) [, which certificate shall state any Retention Money

[1] Only applicable to Building Works contracts
[2] Only applicable to Design and Build contracts
[3] Not applicable to E&M contracts
[4] Only applicable to E&M contracts
[5] Not applicable to E&M contracts
[6] Only applicable to contracts with provision for Nominated Subcontractor
[7] Only applicable to E&M contracts
[8] Only applicable to Building Works contracts
[9] Only applicable to Design and Build contracts
[10] Only applicable to E&M contracts
[11] Only applicable to Building Works contracts
[12] Only applicable to Design and Build contracts
[13] Only applicable to Building Works contracts
[14] Only applicable to Design and Build contracts
[15] Only applicable to Building Works contracts
[16] Only applicable to Design and Build contracts
[17] Not applicable to E&M contracts
[18] Only applicable to E&M contracts
[19] Not applicable to E&M contracts

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due to any Nominated Subcontractor][1] and, subject to Clause 83, the Employer shall pay such further portion of Retention Money to the Contractor within 21 days of the date of such certificate. For the purposes of this sub-clause, "Relevant Percentage" means [98][2] % minus the percentage of the Retention Money certified under paragraph (a) of this sub-clause.

(c) The Engineer[/Surveyor][3] [/Supervising Officer][4] shall, within 14 days of the date of issue by the Engineer[/Architect][5] [/Supervising Officer][6] of the maintenance certificate[/defects liability certificate][7] in accordance with Clause 80, issue a certificate for the payment of the remaining portion of Retention Money [, which certificate shall state any Retention Money due to any Nominated Subcontractor][8] and, subject to Clause 83, the Employer shall pay such remaining portion of Retention Money to the Contractor within 21 days of the date of such certificate."

[1] Only applicable to contracts with provision for Nominated Subcontractor
[2] To insert a percentage appropriate to the Contract taking into account the proportion of Retention Money for Landscape Works
[3] Only applicable to Building Works contracts
[4] Only applicable to Design and Build contracts
[5] Only applicable to Building Works contracts
[6] Only applicable to Design and Build contracts
[7] Only applicable to E&M contracts
[8] Only applicable to contracts with provision for Nominated Subcontractor

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APPENDIX 5.47A NTT AND SCC ON ADVANCE PAYMENT (FOR USE IN CONJUNCTION WITH GCCS FOR BUILDING WORKS, CIVIL ENGINEERING WORKS, DESIGN AND BUILD CONTRACTS AND ELECTRICAL AND MECHANICAL ENGINEERING WORKS)

The following Notes to Tenderers and Special Conditions of Contract shall be included in the tender documents of all capital works contracts adopting General Conditions of Contract for Building Works (1999 Edition), General Conditions of Contract for Civil Engineering Works (1999 Edition) or General Conditions of Contract for E & M Engineering Works (1999 Edition) with contract period[1] of not less than 12 months and for which tenders are to be invited on or after 1 March 2020[2] from contractors on the List of Approved Contractors for Public Works and the List of Approved Suppliers of Materials and Specialist Contractors for Public Works:

Notes to Tenderers

Tenderers' attention is drawn to Special Conditions of Contract Clause [x] setting out the details of an advance payment to the Contractor and the repayment arrangement thereof.

Special Conditions of Contract[@]

"SCC[x] –

(1) The Contractor may request an advance payment from the Employer in accordance with the provisions of this Clause. The advance payment shall be the lesser of (i) an amount equal to two percent (2%) of the Contract Sum less Provisional Sums and the Contingency Sum or (ii) HK$30,000,000. The Contractor shall submit a statement after execution of the Articles of Agreement to the [Engineer/Surveyor]* requesting payment of the advance payment ("Advance Payment Statement"). Within 21 days of the date of delivery of the Advance Payment Statement to the [Engineer/Surveyor]*, the [Engineer/Surveyor]* shall if he is satisfied that the Contract has been duly executed by the Contractor, certify payment and within a further 21 days the Employer shall pay the advance payment to the Contractor. If a certified payment is late or if a payment is late because the [Engineer/Surveyor]* does not certify payment which he should certify, no interest is payable on such late payment.

(2) Subject to sub-clause (3) below, the advance payment shall be deducted by the Employer from interim and/or final payments due to the Contractor starting from the seventh monthly payment by equal instalments for a period of [six][3] months.

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[1] Contract period refers to the period stated in the Tender Notice.
[2] This relief measure will be implemented until further notice.
[3] Departments shall determine the number of repayment instalments, which shall not be less than 6, to suit the nature, size and characteristics of individual contract.

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(3) The advance payment or such part thereof which has not been repaid to the Employer shall become due for repayment immediately upon termination or abandonment of the Contract, or determination of the Contractor's employment in accordance with General Conditions of Contract Clause 81.

(4) Sub-clause (2) of Special Conditions of Contract Clause [28]# on ISO 9000 Certification for the Contractor is deleted and replaced by the following:

"Notwithstanding any other provisions in the Contract, compliance with sub-clause (1) 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 provided that this condition precedent does not apply to the advance payment under Special Conditions of Contract Clause [ ]#."

(5) Special Conditions of Contract Clause [52]# on submission of signed declaration to confirm compliance with the provisions on ethical commitment and confidentiality is amended by replacing the first sentence with the following:

"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 and as part of the Contractor's Advance Payment Statement under Special Conditions of Contract Clause [ ]#."

2. Where situation permits, the above Notes to Tenderers and Special Conditions of Contract shall also be included, by way of tender addendum, in the tender documents of all capital works contracts adopting General Conditions of Contract for Building Works (1999 Edition), General Conditions of Contract for Civil Engineering Works (1999 Edition) or General Conditions of Contract for E & M Engineering Works (1999 Edition) with contract period of not less than 12 months and for which tenders have been invited from contractors on the List of Approved Contractors for Public Works and the List of Approved Suppliers of Materials and Specialist Contractors for Public Works.

@ If the standard SCC 33 on Security or sureties is adopted, the use of this SCC on advance payment will need to be reviewed in consultation with DEVB.

*** Delete as appropriate**

 # Insert as appropriate.

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APPENDIX 5.47B CONTRACT PROVISIONS ON ADVANCE PAYMENT (FOR CAPITAL WORKS CONTRACTS ADOPTING NEC3)

Notes to Tenderers

Tenderers' attention is drawn to the provisions of Secondary Option X14 as amended by the schedule to the Articles of Agreement setting out the details of advance payment to the Contractor and the repayment arrangement thereof.

Amendments to Secondary Option X14@

NEC ECC Clause No.	Action	Details
Option X14	Replace	The title and sub-title of "Advanced payment" to "Advance payment"
X14.1	Replace	Replace the whole X14.1 by the following: "The *Contractor* may request the *Employer* to make an advance payment to the *Contractor* of the amount stated in the Contract Data."
X14.2	Replace	Replace the whole X14.2 by the following new clause X14.2(a) to (d): "(a) The *Contractor* submits to the *Project Manager* a statement requesting payment of the advance payment after execution of the Articles of Agreement ("Advance Payment Statement"). (b) The *Project Manager* certifies payment within one week of the date of receipt of the Advance Payment Statement if the *Project Manager* is satisfied that the *Contractor* has duly executed the Articles of Agreement. (c) The *Employer* pays the advance payment to the *Contractor* within three weeks from the date the *Project Manager* certifies the Advance Payment Statement for payment. If a certified payment is late, or if a payment is late because the *Project Manager* does not certify payment which he should certify, no compensation event arises and no interest is payable on such late payment. (d) The Advance Payment Statement shall be submitted together with a declaration signed by the *Contractor* in a form prescribed and accepted by the *Employer* to confirm

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		compliance with the provisions on ethical commitment and confidentiality in Clauses [A3 and D15] #. If the *Contractor* fails to submit the duly signed declaration with the Advance Payment Statement, the *Employer* shall be entitled to withhold payment until such declaration is submitted and the *Contractor* shall not be entitled to interest in that period."
X14.3	**Replace**	**"advanced payment" by "advance payment".**

additional conditions of contract

ACC Clause D8(2) should be deleted and replaced by the following:

"Notwithstanding any other provisions in this contract, compliance with sub-clause (1) 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 this contract provided that this condition precedent does not apply to the advance payment under Secondary Option Clause X14."

@ If a performance bond is required, the use of this Secondary Option Clause on advance payment will need to be reviewed in consultation with DEVB.
 # insert as appropriate.

Contract Data Part one

The amount of the advance payment is the lesser of (1) an amount equal to two percent (2%) of the tendered total of the Prices set out in Contract Data Part 2 at the date of acceptance of the tender or (ii) HK$30,000,000.

The *Contractor* repays the instalments in assessments starting at the 7th month after the Contract Date. The instalments are [1/6][1] of the advance payment.

[1] **Departments shall determine the number of instalments, which shall not be less than 6, to suit the nature, size and characteristics of individual contract.**

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APPENDIX 5.47C CONTRACT PROVISIONS ON ADVANCE PAYMENT FOR TERM CONTRACTS ADOPTING GCC

The following Notes to Tenderers and Special Conditions of Contract shall be included in the tender documents for all term contracts adopting General Conditions of Contract for Term Contracts for Civil Engineering Works (2002 Edition), General Conditions of Contract for Term Contract for Building Works (2004 Edition) and General Conditions of Contract for E&M Works (2007 Edition).

Notes to Tenderers

Tenderers' attention is drawn to Special Conditions of Contract Clause [x] setting out the details of advance payment to the Contractor and the repayment arrangement thereof.

Special Conditions of Contract@

"SCC[x] –

(1) The Contractor may request an advance payment from the Employer for a Works Order if:

(i) issued on or after the date of the Articles of Agreement for the Contract up to and including the date being 12 months from the date of the abovementioned Articles of Agreement; and

(ii) with the [estimated value/total estimated cost]* of the Works not less than HK$300,000 and the time for completion not less than 6 months as stated in the Works Order at the time of its issuance ("Original Works Order"). For the avoidance of doubt, the [estimated value/total estimated cost]* of the Works as stated in the Original Works Order does not include Contingency Sum (if any).

(2) The total accumulated advance payment to be paid to the Contractor under the Contract shall not exceed HK$10,000,000 ("Overall Cap"). The advance payment shall be equal to five percent (5%) of the [estimated value/total estimated cost]* of the Works as stated in the Original Works Order unless the remaining balance of the Overall Cap is less than the amount calculated as aforesaid. In such case, the advance payment for that Works Order shall be equal to the remaining balance of the Overall Cap.

(3) The Contractor shall submit a statement, within 14 calendar days from the issuing date of a Works Order, to the [Engineer/ Maintenance Surveyor/ Surveyor]* requesting payment of the advance payment ("Advance Payment Statement"). The Contractor will no longer be entitled to any advance payment for that Works Order if the Contractor fails to comply with the

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14 days submission requirement set out above.

(4) Within 21 days of the date of delivery of the Advance Payment Statement to the [Engineer/Maintenance Surveyor/Surveyor]*, the [Engineer/ Maintenance Surveyor/Surveyor]* shall certify payment if he is satisfied that the conditions set out in sub-clauses (1) to (3) have been complied with, and within a further 21 days the Employer shall pay the advance payment to the Contractor. If a certified payment is late or if a payment is late because the [Engineer/ Maintenance Surveyor/ Surveyor]* does not certify payment which he should certify, no interest is payable on such late payment.

(5) Subject to sub-clauses (6), (7) and (8) below, the advance payment paid under each Works Order shall be deducted by the Employer from payments certified as due to the Contractor. The deduction shall be made from payments with a certificate date falling on or after :-

(a) the expiry of the period of six months from the issuing date of the Original Works Order, if the time for completion stated in the Original Works Order is not less than nine months; or

(b) the expiry of the period of [four/five]* months from the issuing date of the Original Works Order, if the time for completion stated in the Original Works Order is less than nine months.

The amount to be deducted from each payment^ shall be determined by the [Engineer/Maintenance Surveyor/Surveyor]*.

(6) The Contractor shall repay the advance payment or such part thereof which has not been repaid to the Employer immediately if the Works Order is varied by the [Engineer/ Maintenance Surveyor/ Surveyor]* in accordance with Clause [62/63]* of the General Conditions of Contract to the effect that the [estimated value/total estimated cost]* of the part of the Works under that Works Order which is considered by the [Engineer/ Maintenance Surveyor/ Surveyor]* to be outstanding as at the date of the variation is less than the amount of advance payment already paid for that Works Order.

(7) The advance payment or such part thereof which has not been repaid to the Employer shall become due for repayment immediately upon termination or abandonment of the Contract, or determination of the Contractor's employment in accordance with General Conditions of Contract Clause [84/87]*.

(8) If at any time the [Engineer/ Maintenance Surveyor/ Surveyor]* is of the opinion that the repayment mechanism stated in sub-

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clause (5) above will not be sufficient to recover the entire amount of the advance payment, or upon the advance payment or such part thereof becoming due under sub-clauses (6) or (7) above, the Employer is entitled to set off the entire amount of the advance payment or any part thereof against monies due to the Contractor under that Works Order or any other Works Order under the Contract or any other contract between the Employer and the Contractor.

(9) Sub-clause (2) of Special Conditions of Contract Clause [ ]# on ISO 9000 Certification for the Contractor is deleted and replaced by the following:

"Notwithstanding any other provisions in the Contract, compliance with sub-clause (1) 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 provided that this condition precedent does not apply to the advance payment under Special Conditions of Contract Clause [ ]#."

(10) Special Conditions of Contract Clause [ ]# on submission of signed declaration to confirm compliance with the provisions on ethical commitment and confidentiality is amended by replacing the first sentence by the following:

"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 and SCC]# of these Special Conditions of Contract as part of the Contractor's interim statement at a frequency of once every [ ]# months and as part of the Contractor's Advance Payment Statement under Special Conditions of Contract Clause [ ]#."

(11) + (A) General Conditions of Contract Clause 81 is amended by replacing the first sentence by the following:

"Payment upon each of the Engineer's certificates shall be made by the Employer, after deducting any sum deductible by the Employer under the Contract, within twenty-one days of the Engineer's certificate."

(B) General Conditions of Contract Clause 82 is amended by inserting the following after "by the Employer" in the first line:

", after deducting any sum deductible by the Employer under the Contract,"

(12) ++ The definition of "Minor Works Order" in General Conditions of Contract Clause 1 is amended by replacing "an estimated value" by "a total estimated cost".

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(13) [++] General Conditions of Contract Clause 67A(2) is amended by replacing "the estimated value of the Works" by "the total estimated cost of the Works".

[@] If the standard SCC [ ] on Security or sureties is adopted, the use of this SCC on advance payment will need to be reviewed in consultation with DEVB.

[^] For the repayment arrangement, the Engineer/Maintenance Surveyor/Surveyor is given the discretion to determine the amount of deduction from payments in the remaining period of a Works Order. Normally, the deduction shall be made in three instalments from payments for that Works Order but the Engineer/Maintenance Surveyor/Surveyor has the discretion to make alternative arrangement to suit the circumstances of the Works Order and the project. The project team should ensure that the advance payment will be deducted in full from interim payment(s).

[+] Adopt Clause 11A for General Conditions of Contract for Term Contracts for Civil Engineering Works (2002 Edition) and General Conditions of Contract for E&M Works (2007 Edition). Adopt Clause 11B for General Conditions of Contract for Term Contract for Building Works (2004 Edition).

[++] Adopt for General Conditions of Contract for Term Contract for Building Works (2004 Edition) and where GCC 80B is adopted.

[#] Insert as appropriate.

[*] Delete as appropriate

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APPENDIX 5.47D CONTRACT PROVISIONS ON ADVANCE PAYMENT FOR TERM CONTRACTS ADOPTING NEC3

Notes to Tenderers

Tenderers' attention is drawn to the provisions of Secondary Option Clause X19 as amended by the schedule to the Articles of Agreement setting out the details of advance payment to the *Contractor* and the repayment arrangement thereof.

Amendments to Secondary Option Clause X19[@]

NEC TSC Clause No.	Action	Details
X19.13	Add	"(1) The *Contractor* may request an advance payment from the *Employer* for a Task Order if (i) the Task Order is issued on or after the date of the Articles of Agreement for the Contract up to and including the date being 12 months from the date of the abovementioned Articles of Agreement; and (ii) the total of the Prices for the Task is not less than HK$300,000 and the Task Completion Date is not less than 6 months as stated in the Task Order at the time of its issuance ("Original Task Order"). (2) The total accumulated advance payment to be paid to the *Contractor* under the Contract shall not exceed HK$10,000,000 ("Overall Cap"). The advance payment shall be equal to five percent (5%) of the total of the Prices for the Task as stated in the Original Task Order unless the remaining balance of the Overall Cap is less than the amount calculated as aforesaid. In such case, the advance payment for that Task Order shall be equal to the remaining balance of the Overall Cap. (3) The *Contractor* submits to the *Service Manager* a statement requesting payment of the advance payment ("Advance Payment Statement") within 14 calendar days from the issuing date of a Task Order, failing which the *Contractor* is no longer entitled to any advance payment for that Task Order. (4) If the *Service Manager* is satisfied that sub-clauses [X19.13(1) to (3)][#] have been complied with, the

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		Service Manager **certifies payment within one week of the date of receipt of the Advance Payment Statement.** **(5) The *Employer* pays the advance payment to the *Contractor* within three weeks from the date the *Service Manager* certifies the Advance Payment Statement for payment. If a certified payment is late, or if a payment is late because the *Service Manager* does not certify payment which he should certify, no compensation event arises and no interest is payable on such late payment.** **(6) The Advance Payment Statement shall be submitted together with a declaration signed by the *Contractor* in a form prescribed and accepted by the *Employer* to confirm compliance with the provisions on ethical commitment and confidentiality in Clauses [A3 and D15]#. If the *Contractor* fails to submit the duly signed declaration with the Advance Payment Statement, the *Employer* shall be entitled to withhold payment until such declaration is submitted and the *Contractor* shall not be entitled to interest in that period.** **(7) Subject to X19.13(8) and X19.13(9) below, the advance payment paid under each Task Order shall be deducted by the *Employer* from payments certified as due to the Contractor for that Task Order. The deduction shall be made from payments with a certification date falling on or after:-** **(a) the expiry of the period of six months from the issuing date of the Original Task Order, if the Task Completion date stated in the Original Task Order is not less than nine months; or** **(b) The expiry of the period of [four/five]* months from the issuing date of the Original Task Order, if the Task Completion Date stated in the Original Task Order is less than nine months as stated therein at the time of its issuance.** **The amount to be deducted from each payment shall be determined by the *Service Manager*.^** **(8) The *Contractor* shall repay the advance payment or such part thereof which has not been repaid to the *Employer* immediately if the Task Order is changed by the *Service Manager* in accordance with Clause X19.4 to the effect that the total of the Prices for the part of the Task under the Task Order which is estimated by**

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		the *Service Manager* to be outstanding as at the date of the change is less than the amount of advance payment already paid for that Task Order. **(9) If at any time the *Service Manager* is of the opinion that the repayment mechanism stated in X19.13(7) above will not be sufficient to recover the entire amount of the advance payment, or upon the advance payment or such part thereof becoming due under X19.13(8) above, the *Employer* is entitled to set off the entire amount of the advance payment or any part thereof against monies due to the *Contractor* under that Task Order or any other Task Order under the Contract or any other contract between the *Employer* and the *Contractor*.**

Amendment to Core Clause 93.1

93.1	**Add**	**A new fifth bullet point** **"a deduction of any un-repaid balance of an advance payment."**

Amendment to *additional conditions of contract*

ACC Clause D8(2) should be deleted and replaced by the following:

"Notwithstanding any other provisions in this contract, compliance with sub-clause (1) 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 this contract provided that this condition precedent does not apply to the advance payment under Secondary Option Clause [X19.13]#."

@ If a performance bond is required, the use of this Secondary Option Clause on advance payment will need to be reviewed in consultation with DEVB.

^ For the repayment arrangement, the *Service Manager* is given the discretion to determine the amount of deduction from payments in the remaining period of a Task Order. Normally, the deduction shall be made in three instalments from payments for that Task Order but the *Service Manager* has the discretion to make alternative arrangement to suit the circumstances of the Task Order and the project. The project team should ensure that the advance payment will be deducted in full from interim payment(s).

 # insert as appropriate.

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APPENDIX 5.47E CONTRACT PROVISIONS FOR NEW ARRANGEMENT ON ADVANCE PAYMENT FOR TERM CONTRACTS ADOPTING GCC (for new term contracts with tenders to be invited on or after 31.3.2022)

The following Notes to Tenderers and Special Conditions of Contract shall be included in the tender documents for all term contracts adopting General Conditions of Contract for Term Contracts for Civil Engineering Works (2002 Edition), General Conditions of Contract for Term Contract for Building Works (2004 Edition) and General Conditions of Contract for E&M Works (2007 Edition).

Notes to Tenderers

Tenderers' attention is drawn to Special Conditions of Contract Clause [x]# setting out the details of advance payment to the Contractor and the repayment arrangement thereof.

Special Conditions of Contract[1]

SCC[x] # –

(1) Within 14 calendar days after the commencement of the Contract Period ("Application Period"), the Contractor may make no more than one request for an advance payment from the Employer in accordance with the provisions of this clause. The advance payment shall be in an amount that is the lesser of (i) an amount equal to five percent (5%) of the Estimated Average Annual Expenditure, and (ii) HK$10,000,000. The Estimated Average Annual Expenditure shall be determined in accordance with Appendix [ ] # to the Special Conditions of Contract.

(2) A request for an advance payment under sub-clause (1) shall be in the form of a written statement [set out in [ ]#/setting out the amount of payment requested]* duly signed by the Contractor ("Advance Payment Statement") and submitted to the [Engineer/ Maintenance Surveyor]* within the Application Period. The Contractor is not entitled to any advance payment if the Advance Payment Statement is submitted after the expiry of the Application Period.

(3) Within 21 days after the delivery of the Advance Payment Statement to the [Engineer/ Maintenance Surveyor]*, if the [Engineer/ Maintenance Surveyor]* is satisfied that the Advance Payment Statement is submitted in accordance with sub-clause (2) [and the conditions in Special Conditions of Contract Clause [ ]# are satisfied][2], he shall issue to the Employer a certificate certifying the amount of advance payment calculated in accordance with sub-clause (1), which is to be paid to the Contractor in response to

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[1] If the standard SCC [ ] on Security or sureties is adopted, the use of this SCC on advance payment will need to be reviewed in consultation with DEVB.

[62] Please insert other conditions precedent to payment if applicable.

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the Advance Payment Statement. The Employer shall pay the amount so certified ("Advance Payment") to the Contractor within 21 days after his receipt of the certificate issued by the [Engineer/ Maintenance Surveyor]*. The Employer shall not be liable to pay the Contractor any interest if for any reason whatsoever, any Advance Payment is made after the 21-day period aforesaid.

(4) Notwithstanding any other provisions of the Contract but subject to sub-clauses (6) and (7) below, the amount of Advance Payment shall be fully accounted for and offset against payments certified by the [Engineer/ Maintenance Surveyor]* as due to the Contractor under the Contract during the Deduction Period specified in paragraph (i) below (collectively, "Certified Payments" and each a "Certified Payment"). Unless otherwise decided by the [Engineer/ Maintenance Surveyor]*[1]

[(i) the Deduction Period shall be a period of [12]# months commencing from the date falling 6 months after the commencement date of the Contract Period;

(ii) a deduction shall be made from each of the first [12]# Certified Payments certified in the Deduction Period; and

(iii) the amount to be deducted from each Certified Payment shall be calculated by dividing the amount of Advance Payment by [12]#][2]

(5) No deduction shall be regarded to have been made to a Certified Payment for the purpose of this Clause unless and until the Employer has paid the Contractor the balance of the Certified Payment, or if no such sum is payable by the Employer, the Employer has acknowledged the amount calculated in accordance with sub-clause (4)(iii) has been otherwise duly accounted for.

(6) The Contractor shall pay the Employer the balance of any Advance Payment not yet deducted from the Certified Payments immediately upon occurrence of any of the following events:

(i) termination of the Contract;

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[1] The Engineer/ Maintenance Surveyor may take the forecast applications for payment to be submitted by the Contractor into consideration when exercising his discretion in agreeing other repayment arrangement with the Contractor.

[2] For the repayment arrangement, the project team is given the discretion to determine (i) the Deduction Period, (ii) the Certified Payments from which the deductions are made and (iii) the amount to be deducted from each Certified Payment. The project team may make alternative arrangement to suit their particular term contracts taking into consideration of the circumstances like payment mechanism, funding source, etc. Subject to the project team's determination on the repayment arrangement, normally, the deduction shall be made in 12 instalments equal to 1/12 of the advance payment within the 12-month period. Unless otherwise approved by DEVB, the 12-month period for repayment should not be adjusted shorter than 6 months or longer than 18 months. The project team should ensure that the advance payment will be deducted in full from interim payment(s).

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(ii) the Contractor's abandonment of the Contract; and

(iii) determination of the Contractor's employment in accordance with General Conditions of Contract Clause [84/87]*.

(7) The [Engineer/ Maintenance Surveyor]* may adjust the amount to be deducted from each Certified Payment and/or the number of Certified Payments to which deductions may be made under sub-clause (4) to ensure that the Advance Payment is fully accounted for and offset against the Certified Payments by the end of the Deduction Period. If at any time the [Engineer/ Maintenance Surveyor]* is of the opinion that notwithstanding the adjustments, it is unlikely that the Advance Payment can be fully accounted for and offset against the Certified Payments by the end of the Deduction Period, the [Engineer/ Maintenance Surveyor]* shall immediately notify the Employer and the Contractor in writing. In such event, the Employer is entitled to offset the whole or part of such Advance Payment not yet deducted from Certified Payments against monies due to the Contractor under the Contract or any other contract between the Employer and the Contractor.

(8) Sub-clause (2) of Special Conditions of Contract Clause [ ]# on ISO 9000 Certification for the Contractor is deleted and replaced by the following:

"Notwithstanding any other provisions in the Contract, compliance with sub-clause (1) 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 provided that this condition precedent does not apply to the Advance Payment under Special Conditions of Contract Clause [x] #."

(9) Special Conditions of Contract Clause [ ] # on submission of signed declaration to confirm compliance with the provisions on ethical commitment and confidentiality is deleted and replaced by the following:

"The Contractor shall submit a signed declaration in a form prescribed or approved by the Employer to confirm the Contractor's compliance with the provisions on ethical commitment and confidentiality in Special Conditions of Contract Clauses [ ]# and [ ]#. The first signed declaration shall be submitted with the Advance Payment Statement. Thereafter, the signed declaration shall be submitted once every [ ]# months after the commencement of the Contract Period and together with the Contractor's interim statement then due. If the Contractor fails to submit the duly signed declaration with the Advance Payment Statement, the Employer is entitled to withhold payment of the

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Advance Payment until such declaration is submitted."

Amendment to Appendix [ ] to Special Conditions of Contract – Security of Payment (SOP) Provisions[1]

The following provision shall be inserted after SOP Clause 2(2)(b) in Appendix [ ]# to Special Conditions of Contract Clause [ ]# on Security of Payment Provisions:

"(c) the date, which is the commencement of the Contract Period, for the advance payment under Special Conditions of Contract Clauses [X]#."

*** Delete/ Modify as appropriate**
 # Insert as appropriate.

[1] **In the SOP provisions set out in Annex C of DEVB TC(W) 6/2021, for (i) term contracts using GCC for Term Contracts for Civil Engineering Works, 2002 Ed. or GCC for Term Contracts for E&M Engineering Works, 2007 Ed., and (ii) term contracts using GCC for Term Contracts for Building Works, 2004 Ed. (using Clauses 79B and 80B), SOP Clause 2(2)(c) has to be deleted if the advance payment under term contracts promulgated in DEVB's memos of 5.6.2020 and 5.3.2021 is not adopted. A new SOP Clause 2(2)(c) should be included in contracts adopting advance payment mechanism promulgated in this memo.**

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Appendix to Special Conditions of Contract

Notwithstanding any other provision of the Contract, for the purpose of Special Conditions of Contract Clause [x]#, the Estimated Average Annual Expenditure shall be determined as follows:-

Version A

[*Note: The definition of "Estimated Average Annual Expenditure" in Version A is drafted based on the sample format of Grand Summary of the Schedule of Percentages (attached at Annex A) where the "Total Value for Tender Assessment" is expressed in monetary value. Amendments should be made to suit the requirements of different term contracts and to match with the pricing document adopted in the contract.*]

"Estimated Average Annual Expenditure" is an amount equal to the Total Value for Tender Assessment (excluding contingency sums and provisional sums) divided by the number of years in the Contract Period, where:

(i) Total Value for Tender Assessment (excluding contingency sums and provisional sums) is [the amount set out in the Grand Summary of the Schedule of Percentages opposite "Subtotal of above (A)"] after correction in accordance with relevant correction rules specified in the tender documents if any; and**

(ii) for the purpose of Special Conditions of Contract [x]#, the number of years in the Contract Period is [ ][1].

Version B

[*Note: The definition of "Estimated Average Annual Expenditure" in Version B is drafted based on the sample format of the Schedule of Percentages (attached at Annex B) where the "Total Values for Tender Assessment" is the summation of the Value of Tender Assessment in column (7) of the Schedule of Percentages. Amendments should be made to suit the requirements of different term contracts and to match with the pricing document adopted in the contract.*]

"Estimated Average Annual Expenditure" is an amount equal to the Estimated Total Expenditure (excluding contingency sums and provisional sums) multiplied by (1 + the Total Value for Tender Assessment (in percentage)) divided by the number of years in the Contract Period, where

(i) Estimated Total Expenditure (excluding contingency sums and

[1] The amount to be inserted shall be determined based on the number of months in the Contract Period (an incomplete month shall not be taken into account) divided by 12 and the result shall be rounded to nearest 0.5 year.

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provisional sums) is [ ][#1]; and

(ii) Total Value for Tender Assessment (in percentage) is [the summation of the values in column [7][#] of the Schedule of Percentages] after correction in accordance with relevant correction rules specified in the tender documents if any; and**

(iii) for the purpose of Special Conditions of Contract [x][#], the number of years in the Contract Period is [ ][2].

[#] Insert as appropriate.
**** Revise as appropriate**

[1] The amount to be inserted shall be determined based on the Estimated Total Expenditure as specified under standard General Conditions of Tender on "Estimated Total Expenditure" with deduction of contingency sums and provisional sums, if there is any.

[2] The amount to be inserted shall be determined based on the number of months in Contract Period (an incomplete month shall not be taken into account) divided by 12 and the result shall be rounded to nearest 0.5 year.

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Annex A – Sample Format of Grand Summary of the Schedule of Percentages in Term Contracts (GCC form)

Page	Description	Value for Tender Assessment ($ M)
…	…	
	Sub-total of above (A) [To be calculated based on the weighting factors and the contract percentages, the estimated total expenditure but excluding the estimated contingency sums and provisional sums]	
	Contingency sum* (B)	*Insert by project office before tender invitation*
	Provisional sum for price adjustment for inflation* (C)	*Insert by project office before tender invitation*
	Sub-total of all contingency sums and provisional sums above* (D) = (B) + (C)	
	Total Value for Tender Assessment (TVTA) for tender assessment purpose* (E) = (A) + (D)	To be completed by the Engineer designate after receipt of tender

*Remarks:

(1) The contingency sums, provisional sums and Total Value for Tender Assessment (TVTA) shall not form part of this contract. Please refer to Special Conditions of Contract Clause [ ].

Annex B – Sample Format of Schedule of Percentages (GCC form)

Schedule of Percentages

Section No. of Schedule of Rates	Item No. of Schedule of Rates	Section Percentage (whole number) (%)	Adjustment Percentage (whole number) (%)	Contract Percentage (%)	Weighting Factor	Value for Tender Assessment (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
SECTION 01			*PLUS / MINUS %			
SECTION 02						
SECTION 03						
SECTION 04						
SECTION 05						
SECTION 07						
SECTION 08						

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SECTION 09						
SECTION 10						
SECTION 11						
SECTION 12						
SECTION 14						
SECTION 16						
SECTION 19						
SECTION 22						
SECTION 24						
SECTION 26						
SECTION 27						
SECTION 28						
				Total	1.000	

*Delete or modify as appropriate

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APPENDIX 5.47F CONTRACT PROVISIONS FOR NEW ARRANGEMENT ON ADVANCE PAYMENT FOR TERM CONTRACTS ADOPTING NEC3/4 (for new term contracts with tenders to be invited on or after 31.3.2022)

Notes to Tenderers

Tenderers' attention is drawn to Clause [D32]# of the *additional conditions of contract* setting out the details of advance payment to the *Contractor* and the repayment arrangement thereof.

Inclusion of a new *additional conditions of contract*[1]

Clause No.	Details
[D32]#	(1) Within 14 calendar days after the *starting date* ("Application Period"), the *Contractor* may make no more than one request for an advance payment from the *Employer** in accordance with the provisions of this clause. The advance payment shall be in an amount that is the lesser of (i) an amount equal to five percent (5%) of the Estimated Average Annual Expenditure, and (ii) HK$10,000,000. The Estimated Average Annual Expenditure shall be determined in accordance with Appendix [ ]# to the *additional conditions of contract*. (2) A request for an advance payment under sub-clause (1) shall be in the form of a written statement [set out in [ ]#/setting out the amount of payment requested]* duly signed by the *Contractor* ("Advance Payment Statement") and submitted to the *Service Manager* within the Application Period. The *Contractor* is not entitled to any advance payment if the Advance Payment Statement is submitted after the expiry of the Application Period. (3) If the *Service Manager* is satisfied that the Advance Payment Statement is submitted in accordance with sub-clause (2) [and the conditions in Clause [ ]# of the *additional conditions of contract* are satisfied][2], the *Service Manager* certifies in the Advance Payment Statement the amount of advance payment calculated in accordance with sub-clause (1) within [one week][3] of the date of his receipt of the Advance Payment Statement. (4) Subject to sub-clause (5), the *Employer** pays the amount so certified ("Advance Payment") to the *Contractor* within [three weeks][4] from the date the *Service Manager* certifies the Advance Payment Statement. The *Employer** is not liable to pay the *Contractor* any interest if for any reason whatsoever, an Advance Payment is made after the three-week

[1] If a performance bond is required, the use of this *additional condition of contract* on advance payment will need to be reviewed in consultation with DEVB.
[2] Please insert other conditions precedent to payment if applicable.
[3] The payment processing time can be shortened subject to the lead-time required by individual project team.
[4] The payment processing time can be shortened subject to the lead-time required by individual project team.

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Clause No.	Details
[D32]#	**period aforesaid. For the avoidance of doubt, late payment of the Advance Payment to *the Contractor* does not constitute a compensation event.** **(5) *The Contractor* must submit with the Advance Payment Statement a declaration signed by the *Contractor* in a form prescribed and accepted by the *Employer** to confirm compliance with the provisions on confidentiality and ethical commitment in Clauses [A3 and D15]#. If the *Contractor* fails to submit the duly signed declaration with the Advance Payment Statement, the *Employer** is entitled to withhold payment of the Advance Payment until such declaration is submitted.** **(6) Notwithstanding any other provisions of this contract but subject to sub-clauses (8) and (9) below, the amount of Advance Payment shall be fully accounted for and offset against payments certified by the *Service Manger* as due to the *Contractor* under this contract during the Deduction Period specified in paragraph (i) below (collectively, "Certified Payments" and each a "Certified Payment"). Unless otherwise decided by the *Service Manager*[1]:** **[(i) the Deduction Period is a period of [12]# months commencing from the date falling 6 months after the *starting date*;** **(ii) a deduction is made from each of the first [12]# Certified Payments certified in the Deduction Period; and** **(iii) the amount to be deducted from each Certified Payment is calculated by dividing the amount of Advance Payment by [12]#][2].** **(7) No deduction shall be regarded to have been made to a Certified Payment for the purpose of this Clause unless and until the *Employer** has paid the *Contractor* the balance of the Certified Payment, or if no such sum is payable by the *Employer**, the *Employer** has acknowledged the amount calculated in accordance with sub-clause (6)(iii) has been otherwise duly accounted for.** **(8) The *Contractor* shall pay the *Employer** the balance of any Advance Payment not yet deducted from the Certified Payments immediately upon the expiry or earlier termination of this contract.**

[1] The *Service Manager* may take the forecast applications for payment to be submitted by the *Contractor* into consideration when exercising his discretion in agreeing other repayment arrangement with the *Contractor*.

[2] For the repayment arrangement, the project team is given the discretion to determine (i) the Deduction Period, (ii) the Certified Payments from which the deductions are made and (iii) the amount to be deducted from each Certified Payment. The project team may make alternative arrangement to suit their particular term contracts taking into consideration of the circumstances like payment mechanism, funding source, etc. Subject to the project team's determination on the repayment arrangement, normally, the deduction shall be made in 12 instalments equal to 1/12 of the advance payment within the 12-month period. Unless otherwise approved by DEVB, the 12-month period for repayment should not be adjusted shorter than 6 months or longer than 18 months. The project team should ensure that the advance payment will be deducted in full from interim payment(s).

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Clause No.	Details
[D32]#	**(9) The *Service Manager* may adjust the amount to be deducted from each Certified Payment and/or the number of Certified Payments to which deductions may be made under sub-clause (6) to ensure that the Advance Payment is fully accounted for and offset against the Certified Payments by the end of the Deduction Period. If at any time the *Service Manager* is of the opinion that notwithstanding the adjustments, it is unlikely that the Advance Payment can be fully accounted for and offset against the Certified Payments by the end of the Deduction Period, the *Service Manager* immediately notifies the *Employer** and the *Contractor*. In such event, the *Employer** is entitled to offset the whole or part of such Advance Payment not yet deducted from Certified Payments against monies due to the *Contractor* under this contract or any other contract between the *Employer** and the *Contractor*.**

Amendment to Core Clause 93.1

93.1	**Add**	**At the end** **"but after deduction of the balance of any Advance Payment not yet deducted from the Certified Payments."**

Amendment to *additional conditions of contract*

ACC Clause D8(2) should be deleted and replaced by the following:

"Notwithstanding any other provisions in this contract, compliance with sub-clause (1) 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 this contract provided that this condition precedent does not apply to the advance payment under Clause [D32]# of these *additional conditions of contract*."

Amendment to Appendix [ ]# to *additional conditions of contract – Security of Payment (SOP) Provision*[1]

The following provision is inserted after SOP Clause 2(2)(a) in Appendix [ ]# to Clause [ ]# of the *additional conditions of contract* on Security of Payment Provisions:

"the date, which is the *starting date*, for the advance payment under Clause [D32]# of the *additional conditions of contract*."

*** Use "*Employer*" for NEC3 TSC and "*Client*" for NEC4 TSC**
 # Insert as appropriate.

[1] **In the SOP provisions set out in Annex C of DEVB TC(W) 6/2021, for NEC 3 TSC, SOP Clause 2(2)(b) has to be deleted if the advance payment under term contracts promulgated in DEVB's memos of 5.6.2020 and 5.3.2021 is not adopted. A new SOP Clause 2(2)(b) should be included in NEC 3 TSCs adopting advance payment mechanism promulgated in this memo.**

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Appendix to the *additional conditions of contract*

Notwithstanding any other provision of this contract, for the purpose of Clause [D32]# of the *additional conditions of contract*, the Estimated Average Annual Expenditure shall be determined as follows:-

Version A

[*Note: The definition of "Estimated Average Annual Expenditure" in Version A is drafted based on the sample format of Grand Summary of the Schedule of Percentages (attached at Annex A) where the "Total Value for Tender Assessment" is expressed in monetary value. Amendments should be made to suit the requirements of different term contracts and to match with the pricing document adopted in the contract.*]

"Estimated Average Annual Expenditure" is an amount equal to the Total Value for Tender Assessment (excluding contingency sums and provisional sums) divided by the number of years in the *service period*, where

(i) Total Value for Tender Assessment (excluding contingency sums and provisional sums) is [the amount set out in the Grand Summary of the Schedule of Percentages opposite "Subtotal of above (A)"] after correction in accordance with relevant correction rules specified in the tender documents if any; and**

(ii) for the purpose of Clause [x]# of the *additional conditions of contract*, the number of years in the service period is [ ][1]

Version B

[*Note: The definition of "Estimated Average Annual Expenditure" in Version B is drafted based on the sample format of the Schedule of Percentages (attached at Annex B) where the "Total Values for Tender Assessment" is the summation of the Value of Tender Assessment in column (7) of the Schedule of Percentages. Amendments should be made to suit the requirements of different term contracts and to match with the pricing document adopted in the contract.*]

"Estimated Average Annual Expenditure" is an amount equal to the Estimated Total Expenditure (excluding contingency sums and provisional sums) multiplied by (1 + the Total Value for Tender Assessment (excluding contingency sums and provisional sums) (in percentage) divided by the Total Weighting Factor (excluding contingency sums and provisional sums)) divided by the number of years in the *service period*, where

(i) Estimated Total Expenditure (excluding contingency sums and provisional sums) is [ ]#;

(ii) Total Value for Tender Assessment (excluding contingency sums and provisional sums) (in percentage) is [the amount set out in column [7] # of the Schedule of Percentages opposite "Total Value for Tender Assessment

[1] The amount to be inserted shall be determined based on the number of months in the *service period* (an incomplete month shall not be taken into account) divided by 12 and the result shall be rounded to nearest 0.5 year.

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(excluding contingency sums and provisional sums)"] after correction in accordance with relevant correction rules specified in the tender documents if any;**

(iii) Total Weighting Factor (excluding contingency sums and provisional sums) is [ ][1]; and

(iv) for the purpose of Clause [x]# of the *additional conditions of contract*, the number of years in the *service period* is [ ][2]

 # Insert as appropriate

**** Revise as appropriate**

[1] The amount set out in column [6] of the Schedule of Percentages opposite "Total Value for Tender Assessment (excluding contingency sums and provisional sums)" shall be inserted.

[2] The amount to be inserted shall be determined based on the number of months in the *service period* (an incomplete month shall not be taken into account) divided by 12 and the result shall be rounded to nearest 0.5 year.

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Annex A – Sample Format of Grand Summary of the Schedule of Percentages in NEC TSC Contracts

Page	Description	Value for Tender Assessment
…	…	
	Sub-total of above (A) [To be calculated based on the weighting factors and the *contract percentages*, the estimated total expenditure but excluding the estimated contingency sums and provisional sums]	
	Contingency sum for Defined Cost for compensation events* (B)	*Insert by project office before tender invitation*
	Contingency sum for Fee for compensation events* (C) = (B) x *fee percentage* inserted by the tenderer in the Contract Data Part two	
	Provisional sum for price adjustment for inflation under Secondary Option X1* (D)	*Insert by project office before tender invitation*
	Sub-total of all contingency sums and provisional sums above* (E) = (B) + (C) + (D)	
	Forecast total of the Prices / Total Value for Tender Assessment (TVTA)** for tender assessment purpose*** (F) = (A) + (E)	To be completed by the *Service Manager* designate after receipt of tender

*Remarks:

(1) The contingency sums, provisional sums and forecast total of the Prices** / Total Value for Tender Assessment (TVTA)** shall not form part of this contract. Please refer to Clause [A7] of the *additional conditions of contract*.

**Delete as appropriate

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Annex B – Sample Format of Schedule of Percentages (NEC form)

Schedule of Percentages

Section No. of Schedule of Rates in Price List	Item No. of Schedule of Rates in Price List	Section Percentage (whole number) (%)	Adjustment Percentage (whole number) (%)	*contract percentage* (whole number) (%)	Weighting factor	Value for Tender Assessment (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
SECTION 01			*PLUS / MINUS %			
SECTION 02						
SECTION 03						
SECTION 04						
SECTION 05						
SECTION 07						
SECTION 08						
SECTION 09						
SECTION 10						
SECTION 11						
SECTION 12						
SECTION 14						
SECTION 16						
SECTION 19						
SECTION 22						
SECTION 24						
SECTION 26						
SECTION 27						
SECTION 28						
Total Value for Tender Assessment excluding contingency sums and provisional sums **						(A)
Contingency sum for Defined Cost for compensation events**					(B)	
Contingency sum for Fee for compensation events** (C) = (B) × *fee percentage*						(C)
Provisional sum for price adjustment for inflation**						(D)
Total Value for Tender Assessment (TVTA) ** (E) = (A) + (C) + (D)					1.0000	(E)

* Delete whichever is inapplicable

** The contingency sums, provisional sums and Total Value for Tender Assessment (TVTA) shall not form part of this contract. Please refer to Clause [A7] of the *additional conditions of contract*.

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APPENDIX 5.47G (NOT USED)

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APPENDIX 5.47H (NOT USED)

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APPENDIX 5.47I (NOT USED)

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APPENDIX 5.47J (NOT USED)

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APPENDIX 5.47K (NOT USED)

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APPENDIX 5.47L SAMPLE SCC FOR NEW CONTRACT USING GCC FOR SPECIAL PAYMENT FOR IMPORTED ITEMS FOR CAPITAL WORKS CONTRACTS

SCC [A]

(1) The following shall be inserted after the definition of "Hong Kong" in General Conditions of Contract Clause 1(1):

"Imported Item" means any materials imported from any place outside Hong Kong.

(2) The following shall be inserted after the definition of "Maintenance Period" in General Conditions of Contract Clause 1(1):

"materials" include plants, materials, goods and equipment that form or are intended to form part of the Works but do not include Constructional Plant.

(3) The following shall be inserted after the definition of "Provisional Sum" in General Conditions of Contract Clause 1(1):

"Relevant Imported Item" means an Imported Item which is:

(i) purchased or imported into Hong Kong ahead of time due to supply shortages or logistics disruptions;
(ii) properly and securely stored at a premises in Hong Kong ("Premises") but is not yet due to be delivered by the Contractor to the Site; and
(iii) clearly demarcated from any other materials at the Premises.

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SCC [B]

[Note: Amendments/insertions are underlined for easy reference.]

(1) General Conditions of Contract Clause 78 is deleted and replaced by the following:

"78. (1) The Contractor shall submit to the Engineer at the end of each monthly period (the first of such monthly periods to commence on the date for commencement of the Works) a statement showing:

(a) the estimated contract value of the work done in accordance with the Contract up to the end of such monthly period with sums payable in respect of Nominated Subcontractors listed separately;
(b) a list of materials delivered to the Site for use in the permanent work and their estimated contract value;
(b1) a list of Relevant Imported Items and their estimated contract value;
(c) all further estimated sums which the Contractor considers to be due to him under the Contract,

("Interim Statement").

In this Clause, "estimated contract value" means the value estimated by the Contractor for the work done, materials delivered to the Site or Relevant Imported Items (as the case may be) based on the rates set out in the Contract.

(2) The Interim Statement shall be prepared on a form supplied by and at the expense of the Contractor, and the style and number of copies of the Interim Statement to be submitted shall be determined by the Engineer. The Contractor shall complete the required number of copies of the Interim Statement and deliver them to the Engineer for checking and, if necessary, correction in accordance with Clause 79. One corrected copy shall be returned to the Contractor.

(3) If the Contractor applies for interim payment for a Relevant Imported Item in an Interim Statement, the Contractor shall submit together with the Interim Statement all relevant supporting documents, including but not limited to evidence of purchase or importation of the Relevant Imported Item, evidence of supply shortage or logistic disruptions, the original date agreed by the Engineer for delivery of the Relevant Imported Item to the Site (if applicable), the address of the Premises, and photographs showing the condition of the Relevant Imported Items and the manner in which it is stored."

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SCC [C]

[Note: Amendments/insertions are underlined for easy reference.]

(1) Sub-clause (1) of General Conditions of Contract Clause 79 shall be replaced with the following new sub-clause (1) of General Conditions of Contract Clause 79:

"79. (1) Within 21 days (unless otherwise stated in the Contract) of the date of delivery to the Engineer of the Interim Statement submitted in accordance with Clause 78, the Engineer shall value and certify the sum which he considers to be due, based on the rates in the Contract where appropriate, in respect of the following:

(a) the estimated value of the permanent work executed, and

(b) the estimated value of any Temporary Works or preliminary item for which a separate sum is provided in the Bills of Quantities, and

(c) the estimated value of materials for inclusion in the permanent work, which are not prematurely delivered to and are properly stored on the Site, and

(c1) the estimated value of Relevant Imported Items, and

(d) the estimated sums payable in respect of Nominated Sub-contractors, and

(e) any other estimated sum to which, in the opinion of the Engineer, the Contractor is entitled in accordance with the Contract.

Provided that the total certified sum shall be adjusted by the Engineer to take into account:

(i) the retention of the percentage stated in the Contract until the sum retained reaches the limit of Retention Money stated in the Contract; and

(ii) any adjustment to be made for fluctuations in the cost of labour and materials in accordance with Clause 89.

Provided further that, for the purpose of interim payments:

(A) the value of the materials 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 Relevant Imported Items referred to in (c1) above shall be determined on the basis of the rate set out in the

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Contract for such work; and

(B) in relation to a Relevant Imported Item referred to in (c1) above, the Engineer shall not value and certify any interim payment unless he is satisfied that the Relevant Imported Item is purchased or imported into Hong Kong ahead of time due to supply shortages or logistics disruptions; properly and securely stored at the Premises but is not yet due to be delivered by the Contractor to the Site; and clearly demarcated from any other materials at the Premises."

(2) The following new sub-clause (1A) of General Conditions of Contract Clause 79 shall be inserted after General Conditions of Contract Clause 79 (1):

"(1A) Within 21 days after the Employer's receipt of the Engineer's certification issued under sub-clause (1) of this Clause, the Employer shall pay to the Contractor the sum certified by the Engineer as due after deducting all previous payments made by the Employer (including previous payments on account, if any), value of materials supplied by the Employer (if any) and any other sum deductible by the Employer under the Contract."

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SCC [D] – Relevant Imported Items

(1) If the Engineer certifies interim payment for any Relevant Imported Item in an interim payment certificate and the total certified sum in the interim payment certificate has been paid by the Employer, the Contractor shall deliver the Relevant Imported Item to the Site within 6 months from the date of payment.

(2) Subject to sub-clause (3), if the Contractor fails to comply with sub-clause (1), without prejudice to any other right or remedy that the Employer may have against the Contractor, the Employer is entitled to deduct the interim payment made by the Employer for that Relevant Imported Item from payments due to the Contractor in 6 equal monthly instalments, or to otherwise recover the amount of interim payment made from the Contractor.

(3) On the expiry or earlier termination of the Contract or the determination of the Contractor's employment for any reason, all interim payments made by the Employer for Relevant Imported Items that are not yet delivered by the Contractor to the Site on the date of expiry or termination of the Contract or determination of the Contractor's employment shall be immediately recoverable by the Employer from the Contractor as a debt.

(4) The Engineer may cease to accept any new application for interim payment for any Relevant Imported Item on giving the Contractor not less than 30 days' written notice in advance. The date on which the cessation takes effect is hereinafter referred to as the "Cessation Date".

(5) With effect from the Cessation Date, the Contractor shall not make, and the Engineer shall not accept, any new application for interim payment for Relevant Imported Item. Notwithstanding the cessation, if an application for interim payment for a Relevant Imported Item is submitted before the Cessation Date, the Engineer shall continue to value and certify interim payment for the Relevant Imported Item in accordance with General Conditions of Contract Clause 79.

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APPENDIX 5.47M AMENDMENTS TO NEC4 ECC OPTION A AND OPTION B CONTRACTS FOR SPECIAL PAYMENT FOR IMPORTED ITEMS FOR CAPITAL WORKS CONTRACTS

Amendment to NEC Clauses

For use with NEC4 ECC Option A

NEC Clause	Amendments	
11.2	Add	the following as a new sub-clause after sub-clause #[(32)] of NEC Clause 11.2 "(33) Imported Items are Plant and Materials imported from any place outside Hong Kong."
50.2A	Add	a new clause 50.2A after clause 50.2 as follows: "The *Contractor* may in an application for payment referred to in clause 50.2 apply for payment of Plant and Materials which • are not individually itemised in the Activity Schedule, • have not been included in any completed work, and • are not prematurely delivered to and not improperly stored on the Site ("Relevant Plant and Materials"). The *Contractor* shall clearly identify in the application for payment the amount claimed and the item in the Activity Schedule to which the Relevant Plant and Materials will be included ("Relevant Item"), and submit to the *Project Manager* all relevant supporting documents. If on the assessment date to which the application for payment relate, the *Project Manager* is satisfied that the Relevant Plant and Materials • are not individually itemised in the Activity Schedule, • have not been included in any completed work, and • are not prematurely delivered to and not improperly stored on the Site,

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NEC Clause	Amendments	
		the *Project Manager* may assess the amount due to the *Contractor* for such Relevant Plant and Materials by reference to rates and lump sums of the Relevant Item. ("Advance Payment for Plant and Materials")."
50.2B	Add	a new clause 50.2B after clause 50.2A as follows: "The *Contractor* may in an application for payment referred to in clause 50.2 apply for payment of an Imported Item which is • purchased or imported into Hong Kong ahead of time due to supply shortages or logistics disruptions; • properly and securely stored at a premises in Hong Kong ("Premises") but is not yet due to be delivered by the *Contractor* to the Site; and • clearly demarcated from any other materials at the Premises. ("Relevant Imported Item") The *Contractor* shall clearly identify in the application for payment of the Relevant Imported Item the amount claimed and the item in the Activity Schedule to which the Relevant Imported Item relate ("Related Item") and submit to the *Project Manager* all relevant supporting documents, including but not limited to evidence of purchase or importation of the Relevant Imported Item, evidence of supply shortage or logistic disruptions, the original date agreed by the *Project Manager* for delivery of the Relevant Imported Item to the Site (if applicable), the address of the Premises, and photographs showing the condition of the Relevant Imported Item and the manner in which it is stored. If on the assessment date to which the application for payment relate, the *Project Manager* is satisfied that the Relevant Imported Item is • purchased or imported into Hong Kong ahead of time due to supply shortages or logistics disruptions; • properly and securely stored at the Premises but is not yet due to be delivered by the *Contractor* to the Site; and • clearly demarcated from any other materials at the Premises, the *Project Manager* shall assess the amount due to the *Contractor* for such Relevant Imported Item by reference to the rates and lump sums of the Related Item. ("Special Payment")."
50.3	Replace	the whole clause 50.3 by the following new clause 50.3:

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NEC Clause	Amendments	
		"If the *Contractor* submits an application for payment before the assessment date, the amount due at the assessment date is the amount calculated in the manner below based on the *Project Manager*'s assessment for each of the following items: • the Price for Work Done to Date, • plus Advance Payment for Plant and Materials, • plus Special Payment, • plus other amounts to be paid to the *Contractor*, • in respect of any item included in the assessment of the Price for Work Done to Date, less Advance Payment for Plant and Materials and Special Payment already made in respect of that item, if any, • less amounts to be paid by or retained from or deducted from the *Contractor*. The actual amount due shall be certified by the *Project Manager* and paid in accordance with clause 51."

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Amendment to NEC Clauses

For use with NEC4 ECC Option B

NEC Clause	**Amendments**	
11.2	Add	the following as a new sub-clause after sub-clause #[(33)] of NEC Clause 11.2 "(34) Imported Items are Plant and Materials imported from any place outside Hong Kong."
50.2A	Add	a new clause 50.2A after clause 50.2 as follows: "The *Contractor* may in an application for payment referred to in clause 50.2 apply for payment of Plant and Materials which • are not individually itemised in the Bills of Quantities, • have not been included in any completed work, and • are not prematurely delivered to and not improperly stored on the Site ("Relevant Plant and Materials"). The *Contractor* shall clearly identify in the application for payment the amount claimed and the item in the Bills of Quantities to which the Relevant Plant and Materials will be included ("Relevant Item"), and submit to the *Project Manager* all relevant supporting documents. If on the assessment date to which the application for payment relate, the *Project Manager* is satisfied that the Relevant Plant and Materials • are not individually itemised in the Bills of Quantities, • have not been included in any completed work, and • are not prematurely delivered to and not improperly stored on the Site, the *Project Manager* may assess the amount due to the *Contractor* for such Relevant Plant and Materials by reference to rates and lump sums of the Relevant Item. ("Advance Payment for Plant and Materials")."

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NEC Clause	Amendments	
50.2B	Add	a new clause 50.2B after clause 50.2A as follows: "The *Contractor* may in an application for payment referred to in clause 50.2 apply for payment of an Imported Item which is • purchased or imported into Hong Kong ahead of time due to supply shortages or logistics disruptions; • properly and securely stored at a premises in Hong Kong ("Premises") but is not yet due to be delivered by the *Contractor* to the Site; and • clearly demarcated from any other materials at the Premises. ("Relevant Imported Item") The *Contractor* shall clearly identify in the application for payment of the Relevant Imported Item the amount claimed and the item in the Bills of Quantities to which the Relevant Imported Item relate ("Related Item") and submit to the *Project Manager* all relevant supporting documents, including but not limited to evidence of purchase or importation of the Relevant Imported Item, evidence of supply shortage or logistic disruptions, the original date agreed by the *Project Manager* for delivery of the Relevant Imported Item to the Site (if applicable), the address of the Premises, and photographs showing the condition of the Relevant Imported Item and the manner in which it is stored. If on the assessment date to which the application for payment relate, the *Project Manager* is satisfied that the Relevant Imported Item is • purchased or imported into Hong Kong ahead of time due to supply shortages or logistics disruptions; • properly and securely stored at the Premises but is not yet due to be delivered by the *Contractor* to the Site; and • clearly demarcated from any other materials at the Premises, the *Project Manager* shall assess the amount due to the *Contractor* for such Relevant Imported Item by reference to the rates and lump sums of the Related Item. ("Special Payment")."
50.3	Replace	the whole clause 50.3 by the following new clause 50.3:

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NEC Clause	Amendments	
		"If the *Contractor* submits an application for payment before the assessment date, the amount due at the assessment date is the amount calculated in the manner below based on the *Project Manager*'s assessment for each of the following items: • the Price for Work Done to Date, • plus Advance Payment for Plant and Materials, • plus Special Payment, • plus other amounts to be paid to the *Contractor*, • in respect of any item included in the assessment of the Price for Work Done to Date, less Advance Payment for Plant and Materials and Special Payment already made in respect of that item, if any, • less amounts to be paid by or retained from or deducted from the *Contractor*. The actual amount due shall be certified by the *Project Manager* and paid in accordance with clause 51."

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additional conditions of contract

For use with NEC4 ECC Option A and Option B

Clause D[XX] of the *additional conditions of contract*

D[XX] (1) If the *Project Manager* certifies Special Payment for any Relevant Imported Item in a *Project Manager*'s certificate and the amount certified as due to the *Contractor* in the *Project Manager*'s certificate has been paid by the *Client*, the *Contractor* shall deliver the Relevant Imported Item to the Site within 6 months from the date of payment. Relevant Imported Items

(2) Subject to sub-clause (3), if the *Contractor* fails to comply with sub-clause (1), then, without prejudice to any other right or remedy that the *Client* may have against the *Contractor*, the *Client* is entitled to deduct the Special Payment made by the *Client* for that Relevant Imported Item from payments due to the *Contractor* in 6 equal monthly instalments, or to otherwise recover the amount of the Special Payment made from the *Contractor*.

(3) On the expiry or earlier termination of the contract for any reason, all Special Payments made by the *Client* for Relevant Imported Items that are not yet delivered by the *Contractor* to the Site on the date of expiry or termination of the contract shall be immediately recoverable by the *Client* from the *Contractor* as a debt.

(4) The *Project Manager* may cease to accept any new application for Special Payment for Relevant Imported Items on giving the Contractor not less than 30 days' written notice in advance. The date on which the cessation takes effect is hereinafter referred to as the "Cessation Date".

(5) With effect from the Cessation Date, the *Contractor* shall not make, and the *Project Manager* shall not accept, any new application for Special Payment. Notwithstanding the cessation, the *Project Manager* shall continue to process an application for Special Payment that is submitted before the Cessation Date and for which an assessment has not yet been made by the *Project Manager* under NEC Clause 50.

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APPENDIX 5.47N (NOT USED)

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APPENDIX 5.47O (NOT USED)

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APPENDIX 5.47P (NOT USED)

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APPENDIX 5.47Q SPECIAL CONDITIONS OF CONTRACT FOR GCC TERM CONTRACTS

[SCC for new contract using GCC for Term Contracts for Civil Engineering Works]

SCC [A]

(1) The following shall be inserted after the definition of "Hong Kong" in General Conditions of Contract Clause 1(1):

"Imported Item" means any materials imported from any place outside Hong Kong.

(2) The following shall be inserted after the definition of "Maintenance Period" in General Conditions of Contract Clause 1(1):

"materials" include plants, materials, goods and equipment that form or are intended to form part of the Works but do not include Constructional Plant.

(3) The following shall be inserted after the definition of "Provisional Sum" in General Conditions of Contract Clause 1(1):

""Relevant Imported Item" means an Imported Item which is:

(i) purchased or imported into Hong Kong ahead of time due to supply shortages or logistics disruptions;

(ii) properly and securely stored at a premises in Hong Kong ("Premises") but is not yet due to be delivered by the Contractor to the Site; and

(iii) clearly demarcated from any other materials at the Premises."

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SCC [B]

[Note: Amendments/insertions are underlined for easy reference.]

(1) General Conditions of Contract Clause 79 is deleted and replaced by the following:

"79.(1) During the progress of any Works the Contractor may submit a statement requesting an interim payment for such Works in respect of the following:

(a) the estimated value of the work carried out valued in accordance with the Contract; and

(b) the estimated value of materials for inclusion in the permanent work, based on the rates in the Contract for such work, and not being prematurely delivered to and being properly stored on the Site of such Works;

(b1) the estimated value of Relevant Imported Items for inclusion in the permanent work, based on the rates in the Contract for such work; and

(c) any other estimated sum to which the Contractor considers to be due to him under the Contract.

("Interim Statement")

(1A)If the Contractor applies for interim payment for a Relevant Imported Item in an Interim Statement, the Contractor shall submit together with the Interim Statement all relevant supporting documents, including but not limited to evidence of purchase or importation of the Relevant Imported Item, evidence of supply shortage or logistic disruptions, the original date agreed by the Engineer for delivery of the Relevant Imported Item to the Site (if applicable), the address of the Premises, and photographs showing the condition of the Relevant Imported Item and the manner in which it is stored.

(2) On receipt of the Interim Statement and any supporting documents, the Engineer shall within a reasonable time check and, if necessary, correct the Interim Statement and shall certify the sum which he considers to be due for payment provided that:

(a) each interim payment for work and materials as specified in paragraphs (a), (b) and (b1) of sub-clause (1) of this Clause shall not exceed the percentage stated in the Appendix to the Form of Tender of the estimated value of the same; and

(b) the statement shall be dated not less than 30 days from the date of issue of the Works Order or from the date of any previous successful request for an interim payment on such Works; and

(c) the amount payable under any Works Order shall not be less than the minimum amount for interim payments given in the Appendix to the Form of Tender; and

(d) in relation to a Relevant Imported Item referred to in paragraph (b1) of sub-clause (1) above, the Engineer shall not certify any interim

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payment unless he is satisfied that the Relevant Imported Item is purchased or imported into Hong Kong ahead of time due to supply shortages or logistics disruptions; properly and securely stored at the Premises but is not yet due to be delivered by the Contractor to the Site; and clearly demarcated from any other materials at the Premises.

Provided further that, the total certified sum shall be adjusted by the Engineer to take into account:

(i) any previous payment made by the Employer to the Contractor; and

(ii) any other sum deductible by the Employer under the Contract.

(3) Nothing in this Clause shall prevent the Engineer from issuing a certificate at any time for any sum if in the opinion of the Engineer it is desirable to do so."

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SCC [C]

[Note: Amendments/insertions are underlined for easy reference.]

(1) General Conditions of Contract Clause 80 is deleted and replaced by the following:

"80. The Interim Statement referred to in Clause 79 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 Engineer shall determine. The Contractor shall complete the required number of copies of the Interim Statement and deliver them to the Engineer for checking and, if necessary, correction in accordance with Clause 79. One corrected copy shall be returned to the Contractor."

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SCC [D] – Relevant Imported Items

(1) If the Engineer certifies interim payment for any Relevant Imported Item in an interim payment certificate and the total certified sum in the interim payment certificate has been paid by the Employer, the Contractor shall deliver the Relevant Imported Item to the Site within 6 months from the date of payment.

(2) Subject to sub-clause (3), if the Contractor fails to comply with sub-clause (1), without prejudice to any other right or remedy that the Employer may have against the Contractor, the Employer is entitled to deduct the interim payment made by the Employer for that Relevant Imported Item from payments due to the Contractor in 6 equal monthly instalments, or to otherwise recover the amount of interim payment made from the Contractor.

(3) On the expiry or earlier termination of the Contract or the determination of the Contractor's employment for any reason, all interim payments made by the Employer for Relevant Imported Items that are not yet delivered by the Contractor to the Site on the date of expiry or termination of the Contract or determination of the Contractor's employment shall be immediately recoverable by the Employer from the Contractor as a debt.

(4) The Engineer may cease to accept any new application for interim payment for any Relevant Imported Item on giving the Contractor not less than 30 days' written notice in advance. The date on which the cessation takes effect is hereinafter referred to as the "Cessation Date".

(5) With effect from the Cessation Date, the Contractor shall not make, and the Engineer shall not accept, any new application for interim payment for Relevant Imported Item. Notwithstanding the cessation, if an application for interim payment for a Relevant Imported Item is submitted before the Cessation Date, the Engineer shall continue to value and certify interim payment for the Relevant Imported Item in accordance with General Conditions of Contract Clause 79.

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APPENDIX 5.47R AMENDMENTS TO NEC CLAUSES AND ADDITIONAL CONDITIONS OF CONTRACT FOR NEW TERM CONTRACT USING NEC4 TSC OPTION A

Amendment to NEC Clauses

For use with NEC4 TSC Option A

NEC Clause	Amendments	
11.2	Add	the following as a new sub-clause after sub-clause #[(31)] of NEC Clause 11.2 "(32) Imported Items are Plant and Materials imported from any place outside Hong Kong."
50.2A	Add	a new clause 50.2A after clause 50.2 as follows: "The *Contractor* may in an application for payment referred to in clause 50.2 apply for payment of Plant and Materials which • are not individually itemised in the Price List, • have not been included in any completed work, and • are not prematurely delivered to and not improperly stored on the Site ("Relevant Plant and Materials"). The *Contractor* shall clearly identify in the application for payment the amount claimed and the item in the Price List to which the Relevant Plant and Materials will be included ("Relevant Item"), and submit to the *Service Manager* all relevant supporting documents. If on the assessment date to which the application for payment relate, the *Service Manager* is satisfied that the Relevant Plant and Materials • are not individually itemised in the Price List, • have not been included in any completed work, and • are not prematurely delivered to and not improperly stored on the Site,

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NEC Clause	Amendments	
		the *Service Manager* may assess the amount due to the *Contractor* for such Relevant Plant and Materials by reference to rates and lump sums of the Relevant Item. ("Advance Payment for Plant and Materials")."
50.2B	Add	a new clause 50.2B after clause 50.2A as follows: "The *Contractor* may in an application for payment referred to in clause 50.2 apply for payment of an Imported Item which is • purchased or imported into Hong Kong ahead of time due to supply shortages or logistics disruptions; • properly and securely stored at a premises in Hong Kong ("Premises") but is not yet due to be delivered by the *Contractor* to the Site; and • clearly demarcated from any other materials at the Premises. ("Relevant Imported Item") The *Contractor* shall clearly identify in the application for payment of the Relevant Imported Item the amount claimed and the item in the Price List to which the Relevant Imported Item relate ("Related Item") and submit to the *Service Manager* all relevant supporting documents, including but not limited to evidence of purchase or importation of the Relevant Imported Item, evidence of supply shortage or logistic disruptions, the original date agreed by the *Service Manager* for delivery of the Relevant Imported Item to the Site (if applicable), the address of the Premises, and photographs showing the condition of the Relevant Imported Item and the manner in which it is stored. If on the assessment date to which the application for payment relate, the *Service Manager* is satisfied that the Relevant Imported Item is • purchased or imported into Hong Kong ahead of time due to supply shortages or logistics disruptions; • properly and securely stored at the Premises but is not yet due to be delivered by the *Contractor* to the Site; and • clearly demarcated from any other materials at the Premises, the *Service Manager* shall assess the amount due to the *Contractor* for such Relevant Imported Item by reference to the rates and lump sums of the Related Item. ("Special Payment")."
50.3	Replace	the whole clause 50.3 by the following new clause 50.3:

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NEC Clause	Amendments	
		"If the *Contractor* submits an application for payment before the assessment date, the amount due at the assessment date is the amount calculated in the manner below based on the *Service Manager*'s assessment for each of the following items: • the Price for Services Provided to Date, • plus Advance Payment for Plant and Materials, • plus Special Payment, • plus other amounts to be paid to the *Contractor*, • in respect of any item included in the assessment of the Price for Services Provided to Date, less Advance Payment for Plant and Materials and Special Payment already made in respect of that item, if any, • less amounts to be paid by or retained from or deducted from the *Contractor*. The actual amount due shall be certified by the *Service Manager* and paid in accordance with clause 51."

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additional conditions of contract

For use with NEC4 TSC Option A

Clause D[XX] of the *additional conditions of contract*

D[XX]	(1)	If the *Service Manager* certifies Special Payment for any Relevant Imported Item in a *Service Manager*'s certificate and the amount certified as due to the *Contractor* in the *Service Manager*'s certificate has been paid by the *Client*, the *Contractor* shall deliver the Relevant Imported Item to the Site within 6 months from the date of payment.	Relevant Imported Items
	(2)	Subject to sub-clause (3), if the *Contractor* fails to comply with sub-clause (1), then, without prejudice to any other right or remedy that the *Client* may have against the *Contractor*, the *Client* is entitled to deduct the Special Payment made by the *Client* for that Relevant Imported Item from payments due to the *Contractor* in 6 equal monthly instalments, or to otherwise recover the amount of the Special Payment made from the *Contractor*.	
	(3)	On the expiry or earlier termination of the contract for any reason, all Special Payments made by the *Client* for Relevant Imported Items that are not yet delivered by the *Contractor* to the Site on the date of expiry or termination of the contract shall be immediately recoverable by the *Client* from the *Contractor* as a debt.	
	(4)	The *Service Manager* may cease to accept any new application for Special Payment for Relevant Imported Items on giving the Contractor not less than 30 days' written notice in advance. The date on which the cessation takes effect is hereinafter referred to as the "Cessation Date".	
	(5)	With effect from the Cessation Date, the *Contractor* shall not make, and the *Service Manager* shall not accept, any new application for Special Payment. Notwithstanding the cessation, the *Service Manager* shall continue to process an application for Special Payment that is submitted before the Cessation Date and for which an assessment has not yet been made by the *Service Manager* under NEC Clause 50.	

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APPENDIX 5.47S Amendment to NEC ECC Hong Kong Edition Core Clauses

Amendments to NEC ECC Hong Kong Edition Core Clauses are highlighted in blue.

Clause No.	Applicable main Option(s)	Details
50.3A	A, B, C & D	**Add** a new clause 50.3A after clause 50.3 as follows: "If the *Contractor* submits an application for payment two weeks before the assessment date, the *Project Manager* may determine on or before the assessment date the provisional amount due. The provisional amount due is: • the amount the *Contractor* considers will be due at the assessment date stated in the application for payment, or • if the *Project Manager* considers the amount stated in the application for payment unreasonable, a reasonable estimate of the amount due at the assessment date as assessed by the *Project Manager* based on the information in the application for payment."
51.1	A, B, C & D	**Replace** the whole clause 51.1 by the following new clause 51.1: "If the *Contractor* submits an application for payment in the form of a payment claim compliant with SOP Clause 5 two weeks before the assessment date, the *Project Manager*: • may certify a partial payment on or before the assessment date, and • certifies a payment in the form of a payment response compliant with SOP Clause 6(2) within two weeks of each assessment date. Otherwise, the *Project Manager* certifies a payment within two weeks of each assessment date. The *Project Manager's* certificate for payment (except partial payment) includes details of how the amount due has been assessed. The first partial payment is 50% of the provisional amount due at the first assessment date. Other partial payments are 50% of the amount which is equal to the provisional amount due at each assessment date less the amount due at the previous assessment date. If the amount of the partial payment is zero or negative, no partial payment will be made. The first payment is the amount due at the first assessment date less the first partial payment. Other payments are the change in the amount due since the previous assessment less the partial payment made in the same *assessment interval*. A payment is made by the *Contractor* to the *Client* if the change reduces the amount due.

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Clause No.	Applicable main Option(s)	Details
		Other payments are made by the *Client* to the *Contractor*. Payments are in the *currency of the contract* unless otherwise stated in the contract and are subject to the *Client's* rights of set off in law or equity."
51.2	A, B, C & D	**Replace** the whole clause 51.2 by the following new clause 51.2: "Each certified partial payment is made within one week of the assessment date and each certified payment is made within three weeks of the assessment date or, if a different period is stated in the Contract Data, within the period stated. If a certified payment is late, or if a payment is late because the *Project Manager* has not issued a certificate which should be issued, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made. Interest is not paid if a certified partial payment is not made within one week of the assessment date, or if a partial payment is late because the *Project Manager* has not issued a certificate which should be issued."
51.6	A, B, C & D	**Add** a new clause 51.6 after clause 51.5 as follows: "The *Project Manager* has the full power to suspend or cease certification of partial payment in any *assessment interval* at its sole discretion without the need to give prior notification to the *Contractor*. In such cases, the provisions related to provisional amount due and partial payment in clauses 50.3A, 51.1 and 51.2 are not applicable in the relevant *assessment interval*. A reason for suspending or ceasing certification of partial payment is that in the opinion of the *Project Manager* the *Contractor* fails to make any payment under a subcontract to a Subcontractor appropriately after receipt of partial payment from the *Client*."
51.7	A, B, C & D	**Add** a new clause 51.7 after clause 51.6 as follows: "The *Contractor* makes payment under subcontracts to the relevant Subcontractors appropriately after receipt of partial payment from the *Client*. When necessary, the *Project Manager* requests the *Contractor* to provide records to demonstrate its compliance with this requirement."

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APPENDIX 5.47T Supplementary Agreement for NEC ECC Hong Kong Edition Contracts (Partial Interim Payment)

[DRAFT for NEC Hong Kong Edition Contracts]

From: The Government of the Hong Kong Special Administrative Region ("***Client***")

To: [insert] ("***Contractor***")

Date:

Dear Sirs,

[Contract Title and Contract No.]

Supplementary Agreement No. [ ]
Partial Interim Payment

The *Client* and the *Contractor* have entered into the above contract ("**the contract**") on [date]. Words and expressions defined in the contract shall, save as otherwise defined herein, have the same meaning in this supplementary agreement.

2. With a view to enhancing the cash flow of the *Contractor* under the contract, the *Client* is desirous of making more frequent payments to the *Contractor* by introducing "partial interim payment" in the existing interim payment mechanism under the contract.

3. The *Contractor* acknowledges that the "partial interim payment" arrangement under this supplementary agreement is only an interim relief measure. The *Project Manager* has the full power to suspend or cease such arrangement in any *assessment interval* at its sole discretion without the need to give prior notification to the *Contractor*. In such cases, the payment arrangement shall be reverted to the existing monthly interim payment arrangement.

4. As Subcontractors are also facing similar cash flow problem, the *Contractor* is required to make payment under subcontracts to the relevant Subcontractors appropriately to ease their financial burden after receipt of partial interim payment from the *Client*. When necessary, the *Contractor* will be requested to provide records to demonstrate its compliance with such requirement. In case the *Contractor* fails to make payment to the relevant Subcontractors after receipt of partial interim payment, the *Project Manager* shall exercise its power mentioned in paragraph 3 above to suspend or cease the partial interim payment arrangement. Besides, the performance of the *Contractor* in this regard will be duly reflected in the Contractor's Performance Report(s).

5. With effect from the date of this letter, the *Client* and the *Contractor* ("**the Parties**") agree to incorporate the following amendments to Section I of the *additional conditions of contract* of the contract:

(a) I:1 Amendments to Core Clauses:

Clause No.	**Details**

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50.3A	**Add** a new clause 50.3A after clause 50.3 as follows: "If the *Contractor* submits an application for payment two weeks before the assessment date, the *Project Manager* may determine on or before the assessment date the provisional amount due. The provisional amount due is: • the amount the *Contractor* considers will be due at the assessment date stated in the application for payment, or • if the *Project Manager* considers the amount stated in the application for payment unreasonable, a reasonable estimate of the amount due at the assessment date as assessed by the *Project Manager* based on the information in the application for payment."
51.2	**Replace** the whole clause 51.2 by the following new clause 51.2: "Each certified partial payment is made within one week of the assessment date and each certified payment is made within three weeks of the assessment date or, if a different period is stated in the Contract Data, within the period stated. If a certified payment is late, or if a payment is late because the *Project Manager* has not issued a certificate which should be issued, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made. Interest is not paid if a certified partial payment is not made within one week of the assessment date, or if a partial payment is late because the *Project Manager* has not issued a certificate which should be issued."
51.6	**Add** a new clause 51.6 after clause 51.5 as follows: "The *Project Manager* has the full power to suspend or cease certification of partial payment in any *assessment interval* at its sole discretion without the need to give prior notification to the *Contractor*. In such cases, the provisions related to provisional amount due and partial payment in clauses 50.3A, 51.1 and 51.2 are not applicable in the relevant *assessment interval*. A reason for suspending or ceasing certification of partial payment is that in the opinion of the *Project Manager* the *Contractor* fails to make any payment under a subcontract to the relevant Subcontractor appropriately after receipt of partial payment from the *Client*."

(b) The amendment to NEC Clause 51.1 is deleted and replaced by the following:

Clause No.	**Details**
51.1	**Replace** the whole clause 51.1 by the following new clause 51.1:

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	"If the *Contractor* submits an application for payment in the form of a payment claim compliant with SOP Clause 5 two weeks before the assessment date, the *Project Manager*: • may certify a partial payment on or before the assessment date, and • certifies a payment in the form of a payment response compliant with SOP Clause 6(2) within two weeks of each assessment date. Otherwise, the *Project Manager* certifies a payment within two weeks of each assessment date. The *Project Manager's* certificate for payment (except partial payment) includes details of how the amount due has been assessed. The first partial payment is 50% of the provisional amount due at the first assessment date. Other partial payments are 50% of the amount which is equal to the provisional amount due at each
	assessment date less the amount due at the previous assessment date. If the amount of the partial payment is zero or negative, no partial payment will be made. The first payment is the amount due at the first assessment date less the first partial payment. Other payments are the change in the amount due since the previous assessment less the partial payment made in the same *assessment interval*. A payment is made by the *Contractor* to the *Client* if the change reduces the amount due. Other payments are made by the *Client* to the *Contractor*. Payments are in the *currency of the contract* unless otherwise stated in the contract and are subject to the *Client's* rights of set off in law or equity."

6. Except as amended by this letter, all the terms and conditions of the contract [as amended by Supplementary Agreement Nos….dated…][1] shall continue to be binding on the Parties and shall remain in full force and effect.

7. Save as expressly provided herein, nothing in this letter shall give rise to any right or entitlement of the *Contractor* to claim any payment, compensation, relief or changes to the Completion Date, Key Dates or the Prices on the basis of or arising out of or in connection with this letter. The *Client*'s rights under the contract shall not be prejudiced in any way by this letter.

IN WITNESS WHEREOF this letter has been executed as a deed[2] by the Parties the day and year first above written

[Please adopt appropriate execution clauses.]

[1] To be incorporated where there is/are previous supplementary agreement(s).
[2] Both Parties will have to execute the letter as a deed and the guidance on execution of public works contracts as a deed in DEVB TC(W) No. 7/2014 is applicable.

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APPENDIX 5.47U Supplementary Agreement for NEC4 ECC Contracts (Partial Interim Payment)

[DRAFT for NEC4 ECC Contracts]

From: The Government of the Hong Kong Special Administrative Region ("***Client***")

To: [insert] ("***Contractor***")

Date:

Dear Sirs,

[Contract Title and Contract No.]

Supplementary Agreement No. [ ]
Partial Interim Payment

The *Client* and the *Contractor* have entered into the above contract ("**the contract**") on [date]. Words and expressions defined in the contract shall, save as otherwise defined herein, have the same meaning in this supplementary agreement.

2. With a view to enhancing the cash flow of the *Contractor* under the contract, the *Client* is desirous of making more frequent payments to the *Contractor* by introducing "partial interim payment" in the existing interim payment mechanism under the contract.

3. The *Contractor* acknowledges that the "partial interim payment" arrangement under this supplementary agreement is only an interim relief measure. The *Project Manager* has the full power to suspend or cease such arrangement in any *assessment interval* at its sole discretion without the need to give prior notification to the *Contractor*. In such cases, the payment arrangement shall be reverted to the existing monthly interim payment arrangement.

4. As Subcontractors are also facing similar cash flow problem, the *Contractor* is required to make payment under subcontracts to the relevant Subcontractors appropriately to ease their financial burden after receipt of partial interim payment from the *Client*. When necessary, the *Contractor* will be requested to provide records to demonstrate its compliance with such requirement. In case the *Contractor* fails to make payment to the relevant Subcontractors after receipt of partial interim payment, the *Project Manager* shall exercise its power mentioned in paragraph 3 above to suspend or cease the partial interim payment arrangement. Besides, the performance of the *Contractor* in this regard will be duly reflected in the Contractor's Performance Report(s).

5. With effect from the date of this letter, the *Client* and the *Contractor* ("**the Parties**") agree to incorporate the following amendments to NEC4 ECC Clause of the contract:

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(a) Amendments to Core Clauses:

NEC4 ECC Clause No.	Action	Details
50.3A	Add	a new clause 50.3A after clause 50.3 as follows: "If the *Contractor* submits an application for payment two weeks before the assessment date, the *Project Manager* may determine on or before the assessment date the provisional amount due. The provisional amount due is: • the amount the *Contractor* considers will be due at the assessment date stated in the application for payment, or • if the *Project Manager* considers the amount stated in the application for payment unreasonable, a reasonable estimate of the amount due at the assessment date as assessed by the *Project Manager* based on the information in the application for payment."
51.6	Add	a new clause 51.6 after clause 51.5 as follows: "The *Project Manager* has the full power to suspend or cease certification of partial payment in any *assessment interval* at its sole discretion without the need to give prior notification to the *Contractor*. In such cases, the provisions related to provisional amount due and partial payment in clauses 50.3A, 51.1 and 51.2 are not applicable in the relevant *assessment interval*. A reason for suspending or ceasing certification of partial payment is that in the opinion of the *Project Manager* the *Contractor* fails to make any payment under a subcontract to the relevant Subcontractor appropriately after receipt of partial payment from the *Client*."

(b) The amendment to NEC Clause 51.1 is deleted and replaced by the following:

NEC4 ECC Clause No.	Action	Details
51.1	Replace	the whole clause 51.1 by the following new clause 51.1: "If the *Contractor* submits an application for payment in the form of a payment claim compliant with SOP Clause

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		5 two weeks before the assessment date, the *Project Manager*: • may certify a partial payment on or before the assessment date, and • certifies a payment in the form of a payment response compliant with SOP Clause 6(2) within two weeks of each assessment date. Otherwise, the *Project Manager* certifies a payment within two weeks of each assessment date. The *Project Manager's* certificate for payment (except partial payment) includes details of how the amount due has been assessed. The first partial payment is 50% of the provisional amount due at the first assessment date. Other partial payments are 50% of the amount which is equal to the provisional amount due at each assessment date less the amount due at the previous assessment date. If the amount of the partial payment is zero or negative, no partial payment will be made. The first payment is the amount due at the first assessment date less the first partial payment. Other payments are the change in the amount due since the previous assessment less the partial payment made in the same *assessment interval*. A payment is made by the *Contractor* to the *Client* if the change reduces the amount due. Other payments are made by the *Client* to the *Contractor*. Payments are in the *currency of the contract* unless otherwise stated in the contract."

(c) The amendment to NEC Clause 51.2 is deleted and replaced by the following:

NEC4 ECC Clause No.	**Action**	**Details**
51.2	Replace	the whole clause 51.2 by the following new clause 51.2: "Subject to the Client 's rights of set-off in law or equity, each certified partial payment is made within one week of the assessment date and each certified payment is made within three weeks of the assessment date or, if a different period is stated in the Contract Data, within the period stated. If a certified payment is late, or if a payment is late because the *Project Manager* has not

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		issued a certificate which should be issued, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made. Interest is not paid if a certified partial payment is not made within one week of the assessment date, or if a partial payment is late because the *Project Manager* has not issued a certificate which should be issued."

6. Except as amended by this letter, all the terms and conditions of the contract [as amended by Supplementary Agreement Nos…. dated…][1] shall continue to be binding on the Parties and shall remain in full force and effect.

7. Save as expressly provided herein, nothing in this letter shall give rise to any right or entitlement of the *Contractor* to claim any payment, compensation, relief or changes to the Completion Date, Key Dates or the Prices on the basis of or arising out of or in connection with this letter. The *Client*'s rights under the contract shall not be prejudiced in any way by this letter.

IN WITNESS WHEREOF this letter has been executed as a deed[2] by the Parties the day and year first above written

[Please adopt appropriate execution clauses.]

[1] To be incorporated where there is/are previous supplementary agreement(s).

[2] Both Parties will have to execute the letter as a deed and the guidance on execution of public works contracts as a deed in DEVB TC(W) No. 7/2014 is applicable.

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APPENDIX 5.47V Supplementary Agreement for GCC Contracts (Partial Interim Payment)

[DRAFT for GCC Contracts]

From: The Government of the Hong Kong Special Administrative Region ("**Employer**")

To: [insert] ("**Contractor**")

Date:

Dear Sirs,

[Contract Title and Contract No.]

Supplementary Agreement No. [ ]
Partial Interim Payment

The Employer and the Contractor have entered into the above Contract ("**Contract**") on [date]. Words and expressions defined in the Contract shall, save as otherwise defined herein, have the same meaning in this supplementary agreement.

2. With a view to enhancing the cash flow of the Contractor under the Contract, the Employer is desirous of making more frequent payments to the Contractor by introducing "partial interim payment" in the existing interim payment mechanism under the Contract.

3. The Contractor acknowledges that the "partial interim payment" arrangement under this supplementary agreement is only an interim relief measure. The [Engineer/Surveyor][1] shall have full power to suspend or cease such arrangement in any monthly period at his sole discretion without the need to give prior notice to the Contractor. In such cases, the payment arrangement shall be reverted to the existing monthly interim payment arrangement.

4. As Subcontractors are also facing similar cash flow problem, the Contractor is required to make payment under subcontracts to the relevant Subcontractors appropriately to ease their financial burden after receipt of partial interim payment from the Employer. When necessary, the Contractor will be requested to provide records to demonstrate his compliance with such requirement. In case the Contractor fails to make payment to the relevant Subcontractors after receipt of partial interim payment, the [Engineer/Surveyor][1] shall exercise his power mentioned in paragraph 3 above to suspend or cease the partial interim payment arrangement. Besides, the performance of the Contractor in this regard will be duly reflected in the Contractor's Performance Report(s).

5. With effect from the date of this letter, the Employer and the Contractor ("**the Parties**") agree to incorporate the following amendments to the Contract:

[1] Delete as appropriate.

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The following clause is added to the Special Conditions of Contract as Clause SCC [insert]:

"**SCC [ ] Partial Interim Payment**

(1) General Conditions of Contract Clause 78 is amended by

(i) adding the following after sub-clause (1) as sub-clause (1A):

"(1A) Within 14 days of the date of delivery to the [Engineer/Surveyor][1] of the Contractor's statement in accordance with Clause 78(1), the [Engineer/Surveyor][1] may value the provisional sum payable which is:

(a) the sum which the Contractor considers to be due to him at the end of each monthly period stated in the statement, or
(b) if the [Engineer/Surveyor][1] considers the sum payable stated in the statement unreasonable, a reasonable estimate of the sum payable to the Contractor at the end of that monthly period as determined by the [Engineer/Surveyor][1] based on the information in the statement (hereinafter referred to as "Provisional Sum Payable")."

(2) General Conditions of Contract Clause 79 is amended by

(i) adding the following before sub-clause (1) as sub-clause (1A):

"(1A) Within 14 days of the date of delivery to the Engineer of the Contractor's statement in accordance with Clause 78(1), the [Engineer/Surveyor][1] may value and certify a partial interim payment, and within a further 7 days the Employer shall pay such certified partial interim payment to the Contractor. The first certified partial interim payment is 50% of the Provisional Sum Payable at the end of the first monthly period. Subsequent partial interim payments are 50% of the amount which is equal to the Provisional Sum Payable at the end of each of the monthly period less the sum payable to the Contractor at the end of the previous monthly period. If the amount of the certified partial interim payment is zero or negative, the Employer shall not make any partial interim payment."

(ii) replacing the first paragraph of sub-clause (1) with the following:

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"Within 21 days (unless otherwise stated in the Contract) of the date of delivery to the Engineer of the Contractor's statement in accordance with Clause 78, the Engineer shall value and certify and within a further 21 days the Employer shall pay to the Contractor after deducting previous payments on account (if any), certified partial interim payment made in the same monthly period (if any) and any other sum deductible by the Employer under the Contract the sum which in the opinion of the Engineer is due, based on the rates in the Contract where appropriate, in respect of the following:"

(iii) replacing sub-clause (4)(a) with the following:

"In the event of failure by the Employer to pay the Contractor in compliance with the provisions of this Clause (except a certified partial interim payment in sub-clause (1A) above), the Employer shall pay to the Contractor interest at one percent below the judgment 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 but not including the date on which the same should have been made."

(iv) adding the following after sub-clause (7) as sub-clause (8):

"(8) The [Engineer/Surveyor][1] shall have full power to suspend or cease valuation and certification of partial interim payment in any monthly period at his sole discretion without the need to give prior notice to the Contractor. In such cases, the provisions related to Provisional Sum Payable and partial interim payment in Clauses 78(1A), 79(1A), 79(1) and 79(4) shall not apply in the relevant monthly period. A reason for suspending or ceasing certification of partial interim payment is that in the opinion of the [Engineer/Surveyor][1] the Contractor fails to make any payment under a subcontract to the relevant Subcontractor appropriately after receipt of partial interim payment from the Employer."

6. Except as amended by this letter, all the terms and conditions of the Contract [as amended by Supplementary Agreement Nos…. dated …][2] shall continue to be binding on the Parties and shall remain in full force and effect.

7. Save as expressly provided herein, nothing in this letter shall give rise to any right or entitlement of the Contractor to claim any payment, compensation, relief, Cost or

[2] To be incorporated where there is/are previous supplementary agreement(s).

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extension of time on the basis of or arising out of or in connection with this letter. The Employer's rights under the Contract shall not be prejudiced in any way by this letter.

IN WITNESS WHEREOF this letter has been executed as a deed[3] by the Parties the day and year first above written

[Please adopt appropriate execution clauses.]

[3] Both Parties will have to execute the letter as a deed and the guidance on execution of public works contracts as a deed in DEVB TC(W) No. 7/2014 is applicable.

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APPENDIX 5.47W Supplementary Agreement for NEC ECC Hong Kong Edition Contracts (More Frequent Milestone Payment)

[DRAFT for NEC Hong Kong Edition Contracts]

From: The Government of the Hong Kong Special Administrative Region ("***Client***")

To: [insert] ("***Contractor***")

Date:

Dear Sirs,

[Contract Title and Contract No.]

Supplementary Agreement No. [ ]
More Frequent Milestone Payment

The *Client* and the *Contractor* have entered into the above contract ("**the contract**") on [date]. Words and expressions defined in the contract shall, save as otherwise defined herein, have the same meaning in this supplementary agreement.

2. With a view to enhancing the cash flow of the *Contractor* under the contract, the *Client* is desirous of revising the [Schedule of Milestones / *activity schedule*][1] by inserting additional [milestones / activities][1] therein such that payments to the *Contractor* for the relevant works / activities can better follow the cost incurred in completing the relevant works / activities.

3. As Subcontractors are also facing similar cash flow problem, the *Contractor* is required to make timely payments under the subcontracts to its relevant Subcontractors as appropriate upon receipt of [milestone payment / payment][1] from the *Client* to ease the cash flow of the Subcontractors. When necessary, the *Contractor* will be requested to provide records to demonstrate its compliance with such requirement. In case the *Contractor* fails to make timely payments to its relevant Subcontractors, the *Project Manager* will exercise its power under this supplementary agreement to cease certifying payment to the *Contractor* using the revised [Schedule of Milestones / Activity Schedule][1]. In such cases, the *Project Manager* certifies payment for the relevant remaining works / activities under the contract using the original [Schedule of Milestones / *activity schedule*][1]. Besides, the performance of the *Contractor* in this regard will be duly reflected in the Contractor's Performance Report(s).

4. With effect from the date of this letter, the *Client* and the *Contractor* ("**the Parties**") agree to incorporate the following amendments to the contract:

(a) The [Schedule of Milestones / *activity schedule*][1] of the contract is replaced by the [Schedule of Milestones / Activity Schedule][1] (Revision No. 1) as attached in [Appendix 1][2] hereto. The *Project Manager* certifies payment to

[1] To be deleted or amended by project offices as appropriate to suit the needs of their contracts.
[2] [Schedule of Milestones / Activity Schedule][1] (Revision No. 1), incorporating the additional [milestones / activities][1], shall be prepared by individual project office to suit its need.

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the *Contractor* for the works / activities under the contract in accordance with the [Schedule of Milestones / Activity Schedule][1] (Revision No. 1).

(b) If in the opinion of the *Project Manager* the *Contractor* fails to make timely payment under a subcontract to the relevant Subcontractor upon receipt of [milestone payment / payment][1] from the *Client*, the *Project Manager* has the full power to cease certifying payment to the *Contractor* for the relevant works / activities under the contract in accordance with the [Schedule of Milestones / Activity Schedule][1] (Revision No. 1). In such cases, the *Project Manager* certifies payment for the relevant remaining works / activities under the contract in accordance with the [Schedule of Milestones / *activity schedule*][1] as at the Contract Date.

5. Except as amended by this letter, all the terms and conditions of the contract [as amended by Supplementary Agreement Nos…. dated …][3] shall continue to be binding on the Parties and shall remain in full force and effect.

6. Save as expressly provided herein, nothing in this letter shall give rise to any right or entitlement of the *Contractor* to claim any payment, compensation, relief or changes to the Completion Date, Key Dates or the Prices on the basis of or arising out of or in connection with this letter. The *Client*'s rights under the contract shall not be prejudiced in any way by this letter.

IN WITNESS WHEREOF this letter has been executed as a deed[4] by the Parties the day and year first above written.

[Please adopt appropriate execution clauses.]

[3] To be incorporated where there is/are previous supplementary agreement(s).
[4] Both Parties will have to execute the letter as a deed and the guidance on execution of public works contracts as a deed in DEVB TC(W) No. 7/2014 is applicable.

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APPENDIX 5.47X Supplementary Agreement for NEC4 ECC Contracts (More Frequent Milestone Payment)

[DRAFT for NEC4 ECC Contracts]

From: The Government of the Hong Kong Special Administrative Region ("***Client***")

To: [insert] ("***Contractor***")

Date:

Dear Sirs,

[Contract Title and Contract No.]

Supplementary Agreement No. [ ]
More Frequent Milestone Payment

The *Client* and the *Contractor* have entered into the above contract ("**the contract**") on [date]. Words and expressions defined in the contract shall, save as otherwise defined herein, have the same meaning in this supplementary agreement.

2. With a view to enhancing the cash flow of the *Contractor* under the contract, the *Client* is desirous of revising the [Schedule of Milestones / *activity schedule*][1] by inserting additional [milestones / activities][1] therein such that payments to the *Contractor* for the relevant works / activities can better follow the cost incurred in completing the relevant works / activities.

3. As Subcontractors are also facing similar cash flow problem, the *Contractor* is required to make timely payments under the subcontracts to its relevant Subcontractors as appropriate upon receipt of [milestone payment / payment][1] from the *Client* to ease the cash flow of the Subcontractors. When necessary, the *Contractor* will be requested to provide records to demonstrate its compliance with such requirement. In case the *Contractor* fails to make timely payments to its relevant Subcontractors, the *Project Manager* will exercise its power under this supplementary agreement to cease certifying payment to the *Contractor* using the revised [Schedule of Milestones / Activity Schedule][1]. In such cases, the *Project Manager* certifies payment for the relevant remaining works / activities under the contract using the original [Schedule of Milestones / *activity schedule*][1]. Besides, the performance of the *Contractor* in this regard will be duly reflected in the Contractor's Performance Report(s).

4. With effect from the date of this letter, the *Client* and the *Contractor* ("**the Parties**") agree to incorporate the following amendments to the contract:

(a) The [Schedule of Milestones / *activity schedule*][1] of the contract is replaced by the [Schedule of Milestones / Activity Schedule][1] (Revision No. 1) as

[1] To be deleted or amended by project offices as appropriate to suit the needs of their contracts.

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attached in [Appendix 1][2] hereto. The *Project Manager* certifies payment to the *Contractor* for the works / activities under the contract in accordance with the [Schedule of Milestones / Activity Schedule][1] (Revision No. 1).

(b) If in the opinion of the *Project Manager* the *Contractor* fails to make timely payment under a subcontract to the relevant Subcontractor upon receipt of [milestone payment / payment][1] from the *Client*, the *Project Manager* has the full power to cease certifying payment to the *Contractor* for the relevant works / activities under the contract in accordance with the [Schedule of Milestones / Activity Schedule][1] (Revision No. 1). In such cases, the *Project Manager* certifies payment for the relevant remaining works / activities under the contract in accordance with the [Schedule of Milestones / *activity schedule*][1] as at the Contract Date.

5. Except as amended by this letter, all the terms and conditions of the contract [as amended by Supplementary Agreement Nos…. dated …][3] shall continue to be binding on the Parties and shall remain in full force and effect.

6. Save as expressly provided herein, nothing in this letter shall give rise to any right or entitlement of the *Contractor* to claim any payment, compensation, relief or changes to the Completion Date, Key Dates or the Prices on the basis of or arising out of or in connection with this letter. The *Client*'s rights under the contract shall not be prejudiced in any way by this letter.

IN WITNESS WHEREOF this letter has been executed as a deed[4] by the Parties the day and year first above written.

[Please adopt appropriate execution clauses.]

[2] [Schedule of Milestones / Activity Schedule][1] (Revision No. 1), incorporating the additional [milestones / activities][1], shall be prepared by individual project office to suit its need.
[3] To be incorporated where there is/are previous supplementary agreement(s).
[4] Both Parties will have to execute the letter as a deed and the guidance on execution of public works contracts as a deed in DEVB TC(W) No. 7/2014 is applicable.

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APPENDIX 5.47Y Supplementary Agreement for GCC Contracts (More Frequent Milestone Payment)

[DRAFT for GCC Contracts]

From: The Government of the Hong Kong Special Administrative Region ("**Employer**")

To: [insert] ("**Contractor**")

Date:

Dear Sirs,

[Contract Title and Contract No.]

Supplementary Agreement No. [ ]
More Frequent Milestone Payment

The Employer and the Contractor have entered into the above Contract ("**Contract**") on [date]. Words and expressions defined in the Contract shall, save as otherwise defined herein, have the same meaning in this supplementary agreement.

2. With a view to enhancing the cash flow of the Contractor under the Contract, the Employer is desirous of revising the [Schedule of Milestones][1] by inserting additional [milestones][1] therein such that payments to the Contractor for the relevant works can better follow the cost incurred in completing the relevant works.

3. As Subcontractors are also facing similar cash flow problem, the Contractor is required to make timely payments under the subcontracts to his relevant Subcontractors as appropriate upon receipt of [milestone payment / payment][1] from the Employer to ease the cash flow of the Subcontractors. When necessary, the Contractor will be requested to provide records to demonstrate his compliance with such requirement. In case the Contractor fails to make timely payments to his relevant Subcontractors, the [Engineer/Surveyor][2] will exercise his power under this supplementary agreement to cease certifying payment to the Contractor using the revised [Schedule of Milestones][1]. In such cases, the [Engineer/Surveyor][2] certifies payment for the relevant remaining works under the contract using the original [Schedule of Milestones][1]. Besides, the performance of the Contractor in this regard will be duly reflected in the Contractor's Performance Report(s).

4. With effect from the date of this letter, the Employer and the Contractor ("**the Parties**") agree to incorporate the following amendments to the Contract:

(a) The [Schedule of Milestones][1] of the Contract is replaced by the [Schedule of Milestones][1] (Revision No. 1) as attached in [Appendix 1][3] hereto. The [Engineer/Surveyor][2] certifies payment to the Contractor for the works under

[1] To be amended by project offices as appropriate to suit the needs of their contracts.
[2] To be deleted as appropriate.
[3] [Schedule of Milestones][1] (Revision No. 1), incorporating the additional [milestones][1], shall be prepared by individual project office to suit its need.

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the Contract in accordance with the [Schedule of Milestones][1] (Revision No. 1).

(b) If in the opinion of the [Engineer/Surveyor][2] the Contractor fails to make timely payment under a subcontract to the relevant Subcontractor upon receipt of [milestone payment / payment][1] from the Employer, the [Engineer/Surveyor][2] has the full power to cease certifying payment to the Contractor for the relevant works under the Contract in accordance with the [Schedule of Milestones][1] (Revision No. 1). In such cases, the [Engineer/Surveyor][2] certifies payment for the relevant remaining works under the Contract in accordance with the [Schedule of Milestones][1] as at the commencement date of the Contract.

5. Except as amended by this letter, all the terms and conditions of the Contract [as amended by Supplementary Agreement Nos….][4] shall continue to be binding on the parties and shall remain in full force and effect.

6. Save as expressly provided herein, nothing in this letter shall give rise to any right or entitlement of the Contractor to claim any payment, compensation, relief, Cost or extension of time on the basis of or arising out of or in connection with this letter. The Employer's rights under the Contract shall not be prejudiced in any way by this letter.

IN WITNESS WHEREOF this letter has been executed as a deed[5] by the parties the day and year first above written

[Please adopt appropriate execution clauses.]

[4] To be incorporated where there is/are previous supplementary agreement(s).
[5] Both parties will have to execute the letter as a deed and the guidance on execution of public works contracts as a deed in DEVB TC(W) 7/2014 is applicable.

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APPENDIX 5.48 SAMPLE PARTICULAR SPECIFICATION FOR MECHANICAL DUMP TRUCK COVERS

1. (a) All dump trucks (i.e. goods vehicles of gross vehicle weight equal to or more than 16 tonnes, fitted with a dump bed) leaving the Site carrying dusty materials shall be fitted with a mechanical cover in good service condition which covers the dump bed. Such dump truck covers shall comply with the following.

(i) The cover shall be constructed of durable materials and suitable components in good condition. The covering materials shall be effective in preventing dust emissions. The cover shall be power-operated with manual backup. Except in the manual backup mode, the cover shall only be operable inside the driving cabin, if applicable.

(ii) The cover system shall incorporate controls to ensure safety in operation. The cover shall be inoperable unless the vehicle has come to a standstill, and after the hand brake is on. A warning system, consisting of flashing amber lights and audible alarm, shall be activated automatically when the cover is being operated inside the driving cabin. The warning system shall be visible and audible from both inside (by an indicator light or the like if necessary) and outside the driving cabin. A locking system shall be in place to prevent accidental opening of the cover, if applicable.

(iii) The cover shall be able to withstand strong winds under normal circumstances. After the cover to the dump bed is closed, any gap left on the system of enclosure shall be less than 25 mm wide measured in a direction across the gap as far as practicable. Any remaining gap shall be sealed up tightly with suitable materials of sufficient length to bridge across the gap as far as practicable. In addition, the cover shall not accumulate any significant amount of dust or debris which may obstruct its operation. The gross vehicle weight and maximum dimensions of the truck after fitted with the cover and associated accessories shall comply with the relevant legislation.

(b) The Contractor shall be responsible for selecting the design of mechanical cover satisfying the above requirements.

(c) The *Architect/Engineer/Supervising Officer or his Representative shall have the power to:

(i) refuse entry into the Site any dump truck that fails to meet this specification; and

(ii) require any loaded dump truck to unload its contents before leaving the Site if its dump bed and cover is found not to comply with the above requirements after loading.

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Provided always that approval for leaving the Site of a loaded dump truck by the *Architect/Engineer/Supervising Officer or his site supervisory staff shall not relieve the Contractor of his obligation to comply with the relevant legislation, and the Employer shall not be liable for any loss or damage sustained by the Contractor or the truck drivers or truck owners arising from or in connection with any offence committee by the Contractor or the truck drivers or truck owners in relation to transportation of the C&D materials from the Site.

2. Vehicles other than 'dump trucks' carrying dusty materials away from the Site may use means other than mechanical covers to cover their dusty materials, provided that the vehicle shall have properly fitted side boards and tailboards, with the dusty material loaded to a height not exceeding the height of side boards and tailboards, and covered by a tarpaulin or suitably impervious covering materials (as approved by the *Architect/Engineer/Supervising Officer or his Representative) in good condition. The covering shall be properly secured and extended at least 300 mm over the side boards and tailboards before leaving the Site.

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APPENDIX 5.49 NTT ON MECHANICAL DUMP TRUCK COVERS

Clause		Remarks/Guidelines
NTT(x)* (a)	Tenderers' attention is drawn to Particular Specification Clause [ ] on mechanical dump truck covers	This is to be used 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 November 2010. *Uses of these clauses are subject to the Project Officer.
(b)	Tenderers should note that there are no separate items in the [*Bills of Quantities/Schedule of Rates] for measurement of use of mechanical dump truck covers and that, in line with the [*General Preambles/Method of Measurement] to the [*Bills of Quantities/Schedule of Rates], the rates in the [*Bills of Quantities/Schedule of Rates] shall cover, inter alia, provision of mechanical covers for dump trucks.	

* Delete or amend as appropriate

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APPENDIX 5.50 TENDER PROVISION (NON-D&B CONTRACTS) ON EMPLOYER'S POWER TO REDUCE THE AMOUNT OF THE CONTINGENCY SUM PRIOR TO AWARD OF CONTRACT

Special Conditions of Tender on Employer's Power to Reduce the Amount of the Contingency Sum prior to Award of Contract

Clause	Remarks/Guidelines
SCT XX Reduction of Contingency Sum (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 [Bills of Quantities][1] by himself giving or requiring the *Engineer / Architect / Maintenance Surveyor designate to give a notification in writing as regards the reduction to a tenderer at any time after determination of the price ranking or overall marks/scores of the tenders in accordance with the evaluation criteria set forth in the tender documents but before award of the Contract. (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 sub-clause (1) of this Clause: **(a)** the amount of the Contingency Sum as stated in the [Bills of Quantities][1] shall be taken to be reduced accordingly; **(b)** the amount of the tender sum as stated in the Form of Tender and [Bills of Quantities][1] shall be taken to be reduced accordingly to reflect the reduction in the amount of the Contingency Sum under paragraph (a) above;[and][2] (c) the reduction in the amount of the Contingency Sum under paragraph (a) above shall not affect any Provisional Sums specified in the [Bills of Quantities][1] [or the amount of the Adjustment Item; and	1. This SCT shall only be included in a works contract involving Contingency Sum if an officer at D2 rank or above in the Project Office/Works Department is satisfied that the following adoption criterion is met: - The contract is identified in the risk assessment at the pre-tender stage to have highly uncertain risk factors that could lead to an over-estimation of the allowance made in the Contingency Sum for covering such risks. This finding must be properly documented in file. 2. Subject to compliance with the requirements given in paragraph 3 below, this SCT 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: (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 (ii) reduce the amount of additional funding required even if after such reduction the tender sum of the recommended tender still exceeds the funding available and additional funding is still required to be sought.

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Clause	Remarks/Guidelines
(d) for the purposes of paragraph (c) above, "Adjustment Item" shall have the meaning given in [Preambles to the Bills of Quantities/Special Conditions of Tender Clause [ ]** and Special Conditions of Contract Clause [ ]**][1], and the amount of which may (where applicable) be revised in accordance with General Conditions of Tender Clause [ ]***][3].	3. In order to exercise this SCT, the Project Office shall have: (a) reviewed the risk assessment made at the pre-tender stage in arriving at the original Contingency Sum; (b) proper justifications that the amount of reduction is genuinely an excessive allowance in the original Contingency Sum; and (c) obtained approval of the Vote Controller.
(3) For the avoidance of doubt, the original tender sum as stated in the Form of Tender and [Bills of Quantities][1] will, subject to correction (where applicable) in accordance with General Conditions of Tender Clause [ ]***, be used for determination of the price ranking or overall marks/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.	4. In conjunction with the use of this SCT, the Form of Tender and the Letter of Acceptance to Successful Tenderer shall be modified as provided in the memo promulgating this SCT ref. DEVB(W) 546/70/01 of *8.8.2011*. Sample letter notifying the tenderer (whose tender is going to be recommended for contract award) of the reduction of the Contingency Sum is also provided in the said memo. 5. This SCT is for use in works contracts other than design and build (D&B) contracts. A GCT is separately provided for D&B contracts in the memo mentioned in paragraph 4 above. Explanatory notes to words in square brackets *1 The Project Office shall determine the appropriate wording to suit the contract/tender documentation arrangements of the contract being tendered.* *[2] To be inserted if the last part of paragraph (c) and the whole of paragraph (d), are deleted (see note 3 below).* *3 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.* * Delete as appropriate. ** Insert the clause numbers of the Special Conditions of Tender and Special

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Clause	Remarks/Guidelines
	Conditions of Contract respectively on Adjustment Item (applicable to a contract which has adopted an SCT and an SCC dealing with Adjustment Item). *** Insert the clause number of the General Conditions of Tender dealing with correction rules for tender errors (i.e. GCT 11 in DEVB's Library of GCTs, SCTs and NTTs).

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Form of Tender on Employer's Power to Reduce the Amount of the Contingency Sum prior to Award of Contract

FORM OF TENDER
(For capital works contracts other than design-and-build contracts WHICH HAVE ADOPTED SCT XX ON REDUCTION OF COTINGENCY SUM)

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

..... DEPARTMENT

CONTRACT NO. .....

(Title of Contract)

FORM OF TENDER

NOTES :

(1) The Appendix forms part of the Contract.

(2) If the tenderer is a sole proprietorship or a partnership, the name(s) and residential address(es) of the sole proprietor or all the partners shall be given in the spaces provided below.

(3) In all cases, the tenderer must give the number and the expiry date of the business registration certificate here:

Number :

Expiry Date :

[1]To: The Chairman,
Central Tender Board,
Ground Floor, East Wing,
Central Government Offices,
2 Tim Mei Avenue, Tamar, Hong Kong.

Having inspected the Site, examined the Drawings, General Conditions of Contract and Special Conditions of Contract (hereinafter referred to as "the said Conditions"), Specification and [2]Bills of Quantities for the execution of the Works as defined in the Contract, I/we offer to construct, complete and maintain the whole of the said Works in conformity with the said Conditions, Drawings, Specification [3]and Bills of Quantities for the sum of Dollars ..... ($.....) or such sum as may be ascertained in accordance with the said Conditions, Drawings, Specification and Bills of Quantities.

2. I/we agree that, upon receipt by me/us of a notification in writing referred to in sub-clause (1) of Special Conditions of Tender Clause [ ][4] (a copy of which is at the Appendix

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hereto) concerning reduction in the amount of the Contingency Sum, my/our Tender shall be taken to be amended as follows:

(a) the amount of the Contingency Sum as stated in the Bills of Quantities 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 Bills of Quantities 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 Bills of Quantities [or the amount of the Adjustment Item. For the purposes of this clause 2, "Adjustment Item" shall have the same meaning as given in [5]Preambles to the Bills of Quantities/Special Conditions of Tender Clause [ ][6] (a copy of which is at the Appendix hereto) and Special Conditions of Contract Clause [ ][6], and the amount of which may (where applicable) be revised in accordance with General Conditions of Tender Clause [ ][7] (a copy of which is at the Appendix hereto)][8].

[9]3. 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 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 performance of the Contract under the terms of a Bond in accordance with the said Conditions.

4. I/We agree to abide by this Tender for the period of [10]90 days from the date 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.

5. 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 4 hereof shall constitute a binding Contract between us.

6. 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 mark.

NOTES:

1. Where the tenders are to be submitted to a tender board other than the Central Tender Board, type in the name and the address of the tender board in lieu of that of the Central Tender Board.

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2. All references to Bills of Quantities may need to be suitably adjusted where some other forms are used.

3. Replace "and Bills of Quantities" with ", Bills of Quantities and the technical resources and technical proposals submitted in accordance with Clause 3(1)(d) of the General Conditions of Tender" when the tender adopts a marking scheme for use in tender evaluation.

4. Insert the clause number of the Special Conditions of Tender (SCT) dealing with reduction of Contingency Sum. 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. Adopt the appropriate wording to suit the contract/tender documentation arrangements of the contract being tendered.

6. Insert the respective clause numbers of the SCT and Special Conditions 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.

7. Insert the clause number of the General Conditions of Tender (GCT) dealing with correction rules for tender errors (i.e. GCT 11 in DEVB's Library of GCTs, SCTs and NTTs). 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.

8. The part in square brackets should be deleted if "Adjustment Item" is not allowed in relation to the contract being tendered.

9. This item may be deleted if a security is not required.

10. Normally 90 days

#: Tenderer to delete either clause 3(a) or 3(b)

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Notes to Tenderer on Employer's Power to Reduce the Amount of the Contingency Sum prior to Award of Contract

Notes to Tenderer
Clause (XX) Employer's Power to Reduce Contingency Sum

Clause	Remarks/Guidelines
Tenderers' attention is drawn to Special Conditions of Tender Clause [ ] on "Reduction of Contingency Sum".	This is to be used where the Special Conditions of Tender on "Reduction of Contingency Sum" is included.

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APPENDIX 5.51 SAMPLE LETTER FOR NOTIFICATION OF REDUCTION OF CONTINGENCY SUM

Dear Sirs,

(Contract Title)
Reduction of Contingency Sum

Pursuant to sub-clause (1) of Special Conditions of Tender (SCT) XX, I hereby notify you that the Contingency Sum in the amount of $_____ as stated in the [Bills of Quantities][1] is reduced to $_____.

Please note that in accordance with sub-clause (2) of SCT XX, you are deemed to have agreed that:

(1) the amount of the Contingency Sum as stated in the [Bills of Quantities][1] shall be taken to be reduced accordingly; and

(2) the amount of the tender sum as stated in the Form of Tender and [Bills of Quantities][1] shall be taken to be reduced to $_____ to reflect the reduction in the amount of the Contingency Sum under (1) above.

Please also note that the Government is yet to decide on the award of the Contract and nothing in this letter should be construed as either an acceptance or rejection of your tender. The Government is not bound to accept any tender irrespective of whether the tender is the lowest tender or, where the assessment of the tenders is based on a marking scheme or formula approach, the tender has the highest overall mark.

I enclose an acknowledgement letter which you are required to sign and return within two days of receipt of this letter.

Yours faithfully,

.....
(Designation of the Engineer designate for the Contract)

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ACKNOWLEDGEMENT
(To be signed and returned within two days of receipt of the above letter)

Date …….

To: (Designation of the Engineer designate for the Contract
or Consultant's Project Officer as appropriate)

Dear Sir,

(Contract Title)
Reduction of Contingency Sum

We hereby acknowledge receipt of the notification letter dated ____(date)____ on reduction of the Contingency Sum as stated in the [Bills of Quantities][1] for the above Contract.

Yours faithfully,

…….
(Authorized Signature with Company chop)

Name of Company ……..

1 The Project Office shall determine the appropriate wording to suit the contract/tender documentation arrangements of the contract being tendered.

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APPENDIX 5.52 TENDER PROVISION (D&B CONTRACTS) ON EMPLOYER'S POWER TO REDUCE THE AMOUNT OF THE CONTINGENCY SUM PRIOR TO AWARD OF CONTRACT

General Conditions of Tender Clause for Design and Build Contracts

Clause	Remarks/Guidelines
GCT XX Reduction of Contingency Sum (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. (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 sub-clause (1) of this Clause: (a) the amount of the Contingency Sum as stated in the Employer's Requirements shall be taken to be reduced accordingly; (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] (c) the reduction in the amount of the Contingency Sum under paragraph (a) above shall not affect any Provisional Sums specified in the Employer's Requirements [or the amount of the Adjustment Item; and (d) for the purposes of paragraph (c) above, "Adjustment Item" shall	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: (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 (ii) reduce the amount of additional funding required even if after such reduction the tender sum of the recommended tender still exceeds the funding available and additional funding is still required to be sought. 2. In order to exercise this GCT, the Project Office shall have: (a) reviewed the risk assessment made at the pre-tender stage in arriving at the original Contingency Sum; (b) proper justifications that the amount of reduction is genuinely an excessive allowance in the original Contingency Sum; and (c) obtained approval of the Vote Controller. 3. In conjunction with the use of this GCT, the Form of Tender and the Letter of

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Clause	Remarks/Guidelines
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].	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.
(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.	Explanatory notes to words in square brackets *1 To be inserted if the last part of paragraph (c) and the whole of paragraph (d), are deleted (see note 2 below).* *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.* * Insert the clause numbers of the Special Conditions of Tender and Special Conditions of Contract respectively on Adjustment Item (applicable to a contract which has adopted an SCT and an SCC dealing with Adjustment Item). ** Insert the clause number of the General Conditions of Tender dealing with correction rules for tender errors.

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APPENDIX 5.53 (NOT USED)

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APPENDIX 5.54 (NOT USED)

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APPENDIX 5.55 GUIDELINES ON ADOPTION OF SCC ON INTERIM PAYMENT FOR OFF-SITE PREFABRICATION ITEM

1. In order to enhance the cash flow of contractors, we promote wider adoption of the SCC in public works contracts. Project officers should pay attention to the requirements as stipulated in SCC. In gist, making interim payment(s) for major off-Site prefabrication item / equipment ("the item") are subject to the following preconditions, including

(i) maintenance of an effective bond by Contractor,

(ii) Contractor's undertaking of arrangement and all the costs and expenditure incurred by the Engineer's Representative in connection with his visit to off-Site manufacture / fabrication / assembly yards for verification on Contractor's entitlement on interim payment(s),

(iii) clear proof that the item has met Contract requirements,

(iv) clear identification of the item on whose order it is held and its destination,

(v) shipping documents (if by sea),

(vi) clear proof of Contractor's ownership of the item, and

(vii) if applicable, insurance against loss or damage for the full value of the item under a policy protecting the interests of Employer and Contractor during the period from transfer of property in the item to the Contractor until it is delivered to the Works.

2. Works Departments are required to incorporate the SCC into contracts satisfying the following criteria:-

(i) Project officer anticipates that an item [1] under the Contract is likely to be prefabricated off-Site (e.g. bridge deck, steel truss and E&M equipment[2]); and

(ii) The estimated total value of a single type of off-Site prefabrication item is not less than $1.4 million or 0.3% of pre-tender estimate (PTE) of the Contract, whichever is the greater.

3. The above requirements in paragraph 2 may be waived for a particular contract, where justified, with the approval of an officer at D2 or above rank.

4. Notwithstanding the requirement in paragraph 2(ii), when it is desirable, the project officer may still incorporate the SCC for smaller value of the off-Site prefabrication item having regard to the PTE.

Development Bureau
July 2012

[1] Item should be completed in off-Site manufacture / fabrication / assembly yards and no considerable assembly work is required on Site. Item may not be considered if its identification cannot be easily proved (e.g. typical precast concrete kerbs, precast pipes, electrical cables, bus-ducts and other more generic items and manufactured products).

[2] E&M equipment referred to may mean
(i) Heat Pump; (ii) Chiller; (iii) Air-handling units; (iv) Pumpset (including fire pump) ;
(v) Motor Control Centre (vi) Generator; (vii)Transformer; (viii) Switchboard; (ix) Centrifuge;
(x) Filter Press; (xi) Air Blower; (xii) Traffic Control and Surveillance System; and (xiii) Boiler.

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APPENDIX 5.56 SPACE ENTITLEMENT OF EACH GRADE/RANK OF RSS
(Ref: Staff Space Standard promulgated by Government Property Agency)

Grade/Rank of RSS of Consultant-Managed Projects		Equivalent Directorate/Grade/Rank of Civil Service		Space Entitlement (m^2)
Professional Staff	Principal Resident Engineer	Directorate D2		19.0
	Chief Resident Engineer	Directorate D1		19.0
	Senior Resident Engineer	Engineer	Senior Engineer	10.8
	Resident Engineer		Engineer	8.7
	Assistant Resident Engineer		Assistant Engineer	6.1
	Resident Architect	Architect	Architect	8.7
Technical Inspectorate	Resident Senior Inspector of Works	Inspector of Works	Senior Inspector of Works	6.9
	Resident Inspector of Works		Inspector of Works	4.1
	Resident Assistant Inspector of Works		Assistant Inspector of Works	4.1
	Resident Clerk of Works	Clerk of Works	Clerk of Works	4.1
	Resident Assistant Clerk of Works		Assistant Clerk of Works	2.8
Supervisory Staff	Resident Works Supervisor I	Works Supervisor	Works Supervisor I	2.0
	Resident Works Supervisor II		Works Supervisor II	2.0
Engineering Survey Staff	Senior Resident Land Surveyor	Land Surveyor	Senior Land Surveyor	10.8
	Resident Land Surveyor		Land Surveyor	8.7
	Resident Principal Survey Officer (Engineering)	Survey Officer	Principal Survey Officer	7.5
	Resident Senior Survey Officer (Engineering)		Senior Survey Officer	7.5
	Resident Survey Officer (Engineering)		Survey Officer	6.0
	Resident Survey Officer Trainee (Engineering)		Survey Officer Trainee	6.0
Quantity Survey Staff	Resident Senior Quantity Surveyor	Quantity Surveyor	Senior Quantity Surveyor	10.8
	Resident Quantity Surveyor		Quantity Surveyor	8.7
	Assistant Resident Quantity Surveyor		Assistant Quantity Surveyor	6.1
	Resident Senior Survey Officer (Quantity)	Survey Officer	Senior Survey Officer	7.5
	Resident Survey Officer (Quantity)		Survey Officer	6.0

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Grade/Rank of RSS of Consultant-Managed Projects		Equivalent Directorate/Grade/Rank of Civil Service		Space Entitlement (m^2)
	Resident Survey Officer Trainee (Quantity)		Survey Officer Trainee	6.0
Landscape Architectural Staff	Senior Resident Landscape Architect	Landscape Architect	Senior Landscape Architect	10.8
	Resident Landscape Architect		Landscape Architect	8.7
	Assistant Resident Landscape Officer		Assistant Landscape Officer	6.1
	Resident Senior Field Officer	Field Officer	Senior Field Officer	5.8
	Field Officer I		Field Officer I	4.4
	Field Officer II		Field Officer II	4.4
Technical Staff	Resident Principal Technical Officer (Civil)	Technical Officer	Principal Technical Officer	7.5
	Resident Senior Technical Officer (Civil)		Senior Technical Officer	7.5
	Resident Technical Officer (Civil)		Technical Officer	6.0
	Resident Technical Officer Trainee (Civil)		Technical Officer Trainee	6.0
	Resident Technical Officer (Laboratory)		Technical Officer	6.0
Clerical Staff	Resident Clerical Officer	Clerical Officer	Clerical Officer	4.4
	Resident Assistant Clerical Officer		Assistant Clerical Officer	4.4
	Resident Labour Relations Officer		Assistant Clerical Officer	4.4
	Resident Clerical Assistant	Clerical Assistant	Clerical Assistant	4.1

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APPENDIX 5.57 SAMPLE CHECKLIST FOR SETTING CONTRACT PERIOD FOR MAJOR PUBLIC WORKS CONTRACTS

Department: _____ Date: _____
Contract No.: _____
Contract Title:: _____

A. Comparison with Reference Contracts

	Pretender Estimate	Proposed Contract Period: (months)	Contract Form
This contract			

Reference Contracts	Awarded Contract Sum:	Final Contract Sum	Original Contract Period: (months)	Actual / Latest Contract Period: (months)	Comparison Table in Annex
1.					
2.					
3.					

Remarks: Please refer to the Gantt Chart showing the breakdown of major works activities for details.

B. Contract Period - Time allowance for major works activities

√ / X	**Activities**	**Time allowance**
☐	Permits application	months
☐	Authorities' vetting and approval of submissions	months
☐	Critical construction activities	months
☐	Working period due to traffic / environment / other constraints	months
☐	Interfacing works by utility undertakings / others	months
☐	Testing and commissioning / defect rectification	months
☐	Other specific time-critical tasks: Please state: _____	months

C. Project Period in LegCo Submission

√ / X	**Project information**	**Time allowance**
☐	Project period stated in LegCo submission: From _____ to _____	months
☐	Programme contingency for Extension of Time (at least 2 months per year)	months
☐	Delay by other parties, e.g. site possession, interfacing works, etc	months
☐	Delay by the contractors, e.g. material and plant delivery, resources, etc	months
☐	Variation for change in design / additional works / unforeseen site conditions	months
☐	Inclement weather	months
☐	Other time allowance for employer's risks. Please state: _____	months
☐	For project with multiple contracts, check if project period stated in LegCo submission (e.g. PWSC paper) will be extended due to this contract? If yes, please state extended project completion date: _____	

D. Endorsement

Prepared by: (Professional)	Checked by: (Senior Professional)	Endorsed by: (D1 rank officer)
Date:	Date:	Date:

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Guideline for Completing Checklist For Setting Contract Period for Major Public Works Contracts

1. This checklist is intended to give a summary of time allowance for critical activities and programme contingencies for a major public works contract of a Cat A project under public works programme. It is not only intended to provide a structured and aligned approach to assist project officers in devising the overall contract / project period but also enable the project leaders to take a quick check on the reasonableness of the time for construction.

2. The checklist is designed for major capital works contracts. Maintenance term contracts, service contracts, works contract under Cat D project and other entrusted and subvented works contracts are not applicable.

3. Project officers could add / delete items in Parts B and C of the checklist to suit particular circumstances of the contract.

4. The planned works programme in the form of a Gantt Chart shall be enclosed with the checklist.

5. For **Part A**, a systematic comparison with relevant and comparable past contracts is useful in assessing the reasonableness of the planned contract period. The comparison tables, which compare the contract forms, scope and quantity of works, complexity, site constraints and other peculiarities, etc. of the proposed contract with the reference contracts, shall be included in the annexes.

6. For **Part B**, given some major works activities may be carried out simultaneously, the overall contract period is not necessarily the sum of time allowance for the major works activities in contract period as stated in the checklist

7. For **Part C**, the programme contingency for Extension of Time means the float between project period stated in Legislative Council (LegCo) submission and the contract period. As agreed in Works Policies Coordination Committee, a programme contingency of at least 2 months per year shall be allowed in the project period for public works projects. If the proposed works contract is one of the multiple works contracts under a public works project, the project officers shall check whether the project period stated in the LegCo submission will be expired due to this contract. If affirmative, the extended project completion date shall be stated.

8. For **Part D**, project officers shall complete the checklist and seek D1 officer's endorsement prior to inviting tender.

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APPENDIX 5.58 Specifications for Enhanced Cleansing Measures for Concrete Delivery Vehicles at Construction Sites

The following enhanced measures shall be adopted for construction sites of government projects and public housing projects (except for the construction sites with small and/or congested areas rendering the provision of the enhanced measures not practicable, e.g. road maintenance works, roadside slope works, local waterworks and local drainage improvement works, etc.) which source concrete deliveries from Concrete Batching Plants:

(a) In addition to the use of high pressure water jets under the Air Pollution (Construction Dust) Regulation – Part III – General Control Requirements for Site Boundary & Entrance, CCTV shall be provided for surveillance monitoring of the washed vehicles. If necessary, manual hosing by designated labourer[1] shall be supplemented to ensure thorough removal of dusty materials from the body and wheels of the concrete delivery vehicles before departing from the construction site.

(b) A vehicle stopping device (e.g. a barrier gate) shall be provided within the site boundary and operated by designated labourer to ensure sufficient time for cleansing of concrete delivery vehicles and dripping or drying of excess wash water. The concrete delivery vehicles shall not be allowed to leave the construction site until the entire washing and dripping or drying processes have been completed.

(c) A slurry water handling system, usually in the form of U-channel or cut-off drain, shall be operated to intercept the wash water from the concrete delivery vehicle cleansing process to prevent it from flowing outside the construction site.

[1] The designated labourer is a worker responsible for vehicle cleansing in the frontline. He/she should be trained to comprehend the parts of the vehicle body that are often found with dust and concrete residues and a typical cleansing cycle that he/she should adopt as far as practicable in each cleansing exercise.

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APPENDIX 5.59A SCC Clause for Public Works Contracts in GCC Form

SCC [X] Admission of Contractor Personnel to Government Premises

(1) For purposes of the Contract, "Government" shall mean the Government of the Hong Kong Special Administrative Region.

(2) Notwithstanding any other provision of the Contract, upon request of the Employer made at any time and from time to time, the Contractor shall submit to the Employer a list containing information specified in sub-clause (3) of this Clause relating to the following persons who are to enter into any indoor premises owned or occupied by the Government ("Government Premises") for the purpose of the Contract:

(a) an employee of the Contractor;

(b) an agent of the Contractor;

(c) a sub-contractor of the Contractor; and

(d) an employee of the agent or sub-contractor of the Contractor.

(the persons referred to in paragraphs (a) to (d) above are collectively referred to as "Relevant Personnel").

(3) The list shall contain the following information of a Relevant Personnel:

(a) names;

(b) post;

(c) staff identity card number;

(d) telephone number;

(e) relationship with the Contractor; and

(f) any other information which the Employer may reasonably require.

(4) The Contractor shall ensure that while any of the Relevant Personnel is on the Government Premises, they shall observe the Government's rules, regulations, guidelines and code of practice which are from time to time applicable to the Contractor's execution of all or any part of the Works at the Government Premises.

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(5) The Contractor shall ensure that:

(a) all Relevant Personnel who are natural persons (other than an Excepted Personnel defined in sub-clause (7) of this Clause) have received at least the first dose of COVID-19 vaccine (or the latest required number of doses as specified by the Government from time to time for the Government's employees entering buildings and offices of the Government for work-related purposes); and

(b) each Relevant Personnel who is a natural person (other than an Excepted Personnel) presents his or her vaccination record in such form as required by the Employer for inspection and verification by any person authorised by the Employer to do so whenever such Relevant Personnel enters any Government Premises and upon request by the Employer's authorised person.

(6) The Contractor shall maintain a register of vaccination status of the Relevant Personnel and update the register at such intervals as prescribed by the Employer. The Contractor shall submit the register to the Employer for inspection upon the latter's request from time to time.

(7) If a Relevant Personnel is medically unfit to receive COVID-19 vaccine, the Contractor shall obtain from him or her a valid medical certificate certifying the medical reasons for not receiving the vaccine. The Contractor shall within [xx][1] days from the commencement of the Contract, submit to the Employer a list of names of all Relevant Personnel who are so certified to be unfit for vaccination due to medical conditions ("Excepted Personnel"). The Contractor shall submit to the Employer an updated list of Excepted Personnel at such intervals as specified by the Employer.

(8) The Contractor shall ensure that each Excepted Personnel applies to the Employer for a special pass ("SP") and submit to the Employer the medical certificate referred to in sub-clause (7) and all other documents required by it to process the application.

(9) The Employer will (i) refuse to admit an Excepted Personnel or other Relevant Personnel to a Government Premises, or (ii) evict such person from a Government Premises if:

(a) in the case of an Exempted Personnel, he or she is unable to produce a valid SP to the person authorised by the Employer to inspect the document; or

(b) in the case of other Relevant Personnel, he or she is unable to produce a valid vaccination record in such form as required by the Employer to a person authorised by the Employer to inspect the record.

[1] Project officers to insert the number of days as appropriate.

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(10) The Contractor shall obtain from all Relevant Personnel (including Excepted Personnel) consent to disclose and/or submit to the Employer information related to him or her as referred to in this Clause.

(11) The Contractor acknowledges and agrees that:

(a) the Government may at any time vary unilaterally the entry requirements (including any vaccination requirements) to any Government Premises;

(b) it will comply with the guidelines and/or directions issued by the Employer from time to time on entry requirements to the Government Premises.

(12) Without prejudice to any other provision of the Contract, if the Contractor fails to observe any provision of this Clause or if any Excepted Personnel or other Relevant Personnel is refused entry to or evicted from any Government Premises, such failure, refusal or eviction will be taken into account in compiling any report on the Contractor's performance referred to in the Contractor Management Handbook promulgated by the Development Bureau of the Government.

(13) Without prejudice to any other provision of the Contract, 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.

(14) For the purpose of this clause, a medical certificate will only be regarded as valid if:

(a) it is issued by a medical officer of the Government or Hospital Authority, or a private medical practitioner who is a registered medical practitioner within the meaning of the Medical Registration Ordinance (Cap. 161); and

(b) it contains the full name of a Relevant Personnel, the assessments/recommendations of the medical officer/practitioner, the issue date and such other information required by the Employer from time to time.

(15) Nothing in this Clause shall derogate from any requirements under the Prevention and Control of Disease Ordinance (Cap. 599) (including its subsidiary legislation) and any other legislation applicable to the Contractor's performance of its obligations under the Contract.

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APPENDIX 5.59B ACC Clause for Public Works Contracts in NEC3 Form

ACC [X] Admission of Contractor Personnel to Government Premises

(1) For purposes of this contract, this contract, "Government" shall mean the Government of the Hong Kong Special Administrative Region.

(2) Notwithstanding any other provision of this contract, upon request of the *Employer* made at any time and from time to time, the *Contractor* shall submit to the *Employer* a list containing information specified in sub-clause (3) of this Clause relating to the following persons who are to enter into any indoor premises owned or occupied by the Government ("Government Premises") for the purpose of this contract:

(a) an employee of the *Contractor*;

(b) an agent of the *Contractor;*

(c) a sub-contractor of the *Contractor*; and

(d) an employee of the agent or sub-contractor of the *Contractor.*

(the persons referred to in paragraphs (a) to (d) above are collectively referred to as "Relevant Personnel").

(3) The list shall contain the following information of a Relevant Personnel:

(a) names;

(b) post;

(c) staff identity card number;

(d) telephone number;

(e) relationship with the *Contractor*; and

(f) any other information which the *Employer* may reasonably require.

(4) The *Contractor* shall ensure that while any of the Relevant Personnel is on the Government Premises, they shall observe the Government's rules, regulations, guidelines and code of practice which are from time to time applicable to the *Contractor*'s execution of all or any part of the [*works/service*][1] at the Government Premises.

[1] Use "*works*" for ECC and "*service*" for TSC.

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(5) The *Contractor* shall ensure that:

(a) all Relevant Personnel who are natural persons (other than an Excepted Personnel defined in sub-clause (7) of this Clause) have received at least the first dose of COVID-19 vaccine (or the latest required number of doses as specified by the Government from time to time for the Government's employees entering buildings and offices of the Government for work-related purposes); and

(b) each Relevant Personnel who is a natural person (other than an Excepted Personnel) presents his or her vaccination record in such form as required by the *Employer* for inspection and verification by any person authorised by the *Employer* to do so whenever such Relevant Personnel enters any Government Premises and upon request by the *Employer*'s authorised person.

(6) The *Contractor* shall maintain a register of vaccination status of the Relevant Personnel and update the register at such intervals as prescribed by the *Employer*. The *Contractor* shall submit the register to the *Employer* for inspection upon the latter's request from time to time.

(7) If a Relevant Personnel is medically unfit to receive COVID-19 vaccine, the *Contractor* shall obtain from him or her a valid medical certificate certifying the medical reasons for not receiving the vaccine. The *Contractor* shall within [xx][2] days of the Contract Date, submit to the *Employer* a list of names of all Relevant Personnel who are so certified to be unfit for vaccination due to medical conditions ("Excepted Personnel"). The *Contractor* shall submit to the *Employer* an updated list of Excepted Personnel at such intervals as specified by the *Employer*.

(8) The *Contractor* shall ensure that each Excepted Personnel applies to the *Employer* for a special pass ("SP") and submit to the *Employer* the medical certificate referred to in sub-clause (7) and all other documents required by it to process the application.

(9) The *Employer* will (i) refuse to admit an Excepted Personnel or other Relevant Personnel to a Government Premises, or (ii) evict such person from a Government Premises if:

(a) in the case of an Exempted Personnel, he or she is unable to produce a valid SP to the person authorised by the *Employer* to inspect the document; or

(b) in the case of other Relevant Personnel, he or she is unable to produce a valid vaccination record in such form as required by the *Employer* to a person authorised by the *Employer* to inspect the record.

[2] Project officers to insert the number of days as appropriate.

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(10) The *Contractor* shall obtain from all Relevant Personnel (including Excepted Personnel) consent to disclose and/or submit to the *Employer* information related to him or her as referred to in this Clause.

(11) The *Contractor* acknowledges and agrees that:

(a) The Government may at any time vary unilaterally the entry requirements (including any vaccination requirements) to any Government Premises;

(b) it will comply with the guidelines and/or directions issued by the *Employer* from time to time on entry requirements to the Government Premises.

(12) Without prejudice to any other provision of this contract, if the *Contractor* fails to observe any provision of this Clause or if any Excepted Personnel or other Relevant Personnel is refused entry to or evicted from any Government Premises, such failure, refusal or eviction will be taken into account in compiling any report on the *Contractor*'s performance referred to in the Contractor Management Handbook promulgated by the Development Bureau of the Government.

(13) Without prejudice to any other provision of this contract, 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 these *additional conditions of contract*.

(14) For the purpose of this clause, a medical certificate will only be regarded as valid if:

(a) it is issued by a medical officer of the Government or Hospital Authority, or a private medical practitioner who is a registered medical practitioner within the meaning of the Medical Registration Ordinance (Cap. 161); and

(b) it contains the full name of a Relevant Personnel, the assessments/recommendations of the medical officer/practitioner, the issue date and such other information required by the *Employer* from time to time.

(15) Nothing in this Clause shall derogate from any requirements under the Prevention and Control of Disease Ordinance (Cap. 599) (including its subsidiary legislation) and any other legislation applicable to the *Contractor*'s performance of its obligations under this contract.

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APPENDIX 5.59C ACC Clause for Public Works Contracts in NEC4 Form

ACC [X] Admission of Contractor Personnel to Government Premises

(1) For purposes of the contract, "Government" shall mean the Government of the Hong Kong Special Administrative Region.

(2) Notwithstanding any other provision of the contract, upon request of the *Client* made at any time and from time to time, the *Contractor* shall submit to the *Client* a list containing information specified in sub-clause (3) of this Clause relating to the following persons who are to enter into any indoor premises owned or occupied by the Government ("Government Premises") for the purpose of the contract:

(a) an employee of the *Contractor*;

(b) an agent of the *Contractor;*

(c) a sub-contractor of the *Contractor*; and

(d) an employee of the agent or sub-contractor of the *Contractor.*

(the persons referred to in paragraphs (a) to (d) above are collectively referred to as "Relevant Personnel").

(3) The list shall contain the following information of a Relevant Personnel:

(a) names;

(b) post;

(c) staff identity card number;

(d) telephone number;

(e) relationship with the *Contractor*; and

(f) any other information which the *Client* may reasonably require.

(4) The *Contractor* shall ensure that while any of the Relevant Personnel is on the Government Premises, they shall observe the Government's rules, regulations, guidelines and code of practice which are from time to time applicable to the *Contractor*'s execution of all or any part of the [*works/service*][1] at the Government Premises.

[1] Use "*works*" for ECC and "*service*" for TSC.

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(5) The *Contractor* shall ensure that:

(a) all Relevant Personnel who are natural persons (other than an Excepted Personnel defined in sub-clause (7) of this Clause) have received at least the first dose of COVID-19 vaccine (or the latest required number of doses as specified by the Government from time to time for the Government's employees entering buildings and offices of the Government for work-related purposes); and

(b) each Relevant Personnel who is a natural person (other than an Excepted Personnel) presents his or her vaccination record in such form as required by the *Client* for inspection and verification by any person authorised by the *Client* to do so whenever such Relevant Personnel enters any Government Premises and upon request by the *Client*'s authorised person.

(6) The *Contractor* shall maintain a register of vaccination status of the Relevant Personnel and update the register at such intervals as prescribed by the *Client*. The *Contractor* shall submit the register to the *Client* for inspection upon the latter's request from time to time.

(7) If a Relevant Personnel is medically unfit to receive COVID-19 vaccine, the *Contractor* shall obtain from him or her a valid medical certificate certifying the medical reasons for not receiving the vaccine. The *Contractor* shall within [xx][2] days of the Contract Date, submit to the *Client* a list of names of all Relevant Personnel who are so certified to be unfit for vaccination due to medical conditions ("Excepted Personnel"). The *Contractor* shall submit to the *Client* an updated list of Excepted Personnel at such intervals as specified by the *Client*.

(8) The *Contractor* shall ensure that each Excepted Personnel applies to the *Client* for a special pass ("SP") and submit to the *Client* the medical certificate referred to in sub-clause (7) and all other documents required by it to process the application.

(9) The *Client* will (i) refuse to admit an Excepted Personnel or other Relevant Personnel to a Government Premises, or (ii) evict such person from a Government Premises if:

(a) in the case of an Exempted Personnel, he or she is unable to produce a valid SP to the person authorised by the *Client* to inspect the document; or

(a) in the case of other Relevant Personnel, he or she is unable to produce a valid vaccination record in such form as required by the *Client* to a person authorised by the *Client* to inspect the record.

[2] Project officers to insert the number of days as appropriate.

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(10) The *Contractor* shall obtain from all Relevant Personnel (including Excepted Personnel) consent to disclose and/or submit to the *Client* information related to him or her as referred to in this Clause.

(11) The *Contractor* acknowledges and agrees that:

(a) the Government may at any time vary unilaterally the entry requirements (including any vaccination requirements) to any Government Premises;

(b) it will comply with the guidelines and/or directions issued by the *Client* from time to time on entry requirements to the Government Premises.

(12) Without prejudice to any other provision of the contract, if the *Contractor* fails to observe any provision of this Clause or if any Excepted Personnel or other Relevant Personnel is refused entry to or evicted from any Government Premises, such failure, refusal or eviction will be taken into account in compiling any report on the *Contractor*'s performance referred to in the Contractor Management Handbook promulgated by the Development Bureau of the Government.

(13) Without prejudice to any other provision of the contract, the *Contractor* shall indemnify and keep indemnified the *Client* against all losses, claims, costs, demands and expenses that may arise out of or in consequence of any breach of these *additional conditions of contract*.

(14) For the purpose of this clause, a medical certificate will only be regarded as valid if:

(a) it is issued by a medical officer of the Government or Hospital Authority, or a private medical practitioner who is a registered medical practitioner within the meaning of the Medical Registration Ordinance (Cap. 161); and

(b) it contains the full name of a Relevant Personnel, the assessments/recommendations of the medical officer/practitioner, the issue date and such other information required by the *Client* from time to time.

(15) Nothing in this Clause shall derogate from any requirements under the Prevention and Control of Disease Ordinance (Cap. 599) (including its subsidiary legislation) and any other legislation applicable to the *Contractor*'s performance of its obligations under the contract.

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APPENDIX 5.59D SCE Clause for Consultancies in GCE Form

SCE [X] Admission of Consultants Personnel to Government Premises

(1) Notwithstanding any other provision of the Agreement, upon request of the Employer made at any time and from time to time, the Consultants shall submit to the Employer a list containing information specified in sub-clause (2) of this Clause relating to the following persons who are to enter into any indoor premises owned or occupied by the Government ("Government Premises") for the purpose of the Agreement:

(a) an employee of the Consultants;

(b) an agent of the Consultants;

(c) a sub-consultant of the Consultants; and

(d) an employee of the agent or sub-consultant of the Consultants.

(the persons referred to in paragraphs (a) to (d) above are collectively referred to as "Relevant Personnel").

(2) The list shall contain the following information of a Relevant Personnel:

(a) names;

(b) post;

(c) staff identity card number;

(d) telephone number;

(e) relationship with the Consultants; and

(f) any other information which the Employer may reasonably require.

(3) The Consultants shall ensure that while any of the Relevant Personnel is on the Government Premises, they shall observe the Government's rules, regulations, guidelines and code of practice which are from time to time applicable to the Consultants' execution of all or any part of the services at the Government Premises.

(4) The Consultants shall ensure that:

(a) all Relevant Personnel who are natural persons (other than an Excepted Personnel defined in sub-clause (6) of this Clause) have received at least the first dose of COVID-19 vaccine (or the latest required number of doses as specified by the Government from time to time for the Government's employees entering buildings and offices of the Government for work-related purposes); and

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(b) each Relevant Personnel who is a natural person (other than an Excepted Personnel) presents his or her vaccination record in such form as required by the Employer for inspection and verification by any person authorised by the Employer to do so whenever such Relevant Personnel enters any Government Premises and upon request by the Employer's authorised person.

(5) The Consultants shall maintain a register of vaccination status of the Relevant Personnel and update the register at such intervals as prescribed by the Employer. The Consultants shall submit the register to the Employer for inspection upon the latter's request from time to time.

(6) If a Relevant Personnel is medically unfit to receive COVID-19 vaccine, the Consultants shall obtain from him or her a valid medical certificate certifying the medical reasons for not receiving the vaccine. The Consultants shall within [xx][1] days from the commencement of the Agreement, submit to the Employer a list of names of all Relevant Personnel who are so certified to be unfit for vaccination due to medical conditions ("Excepted Personnel"). The Consultants shall submit to the Employer an updated list of Excepted Personnel at such intervals as specified by the Employer.

(7) The Consultants shall ensure that each Excepted Personnel applies to the Employer for a special pass ("SP") and submit to the Employer the medical certificate referred to in sub-clause (6) and all other documents required by it to process the application.

(8) The Employer will (i) refuse to admit an Excepted Personnel or other Relevant Personnel to a Government Premises, or (ii) evict such person from a Government Premises if:

(a) in the case of an Exempted Personnel, he or she is unable to produce a valid SP to the person authorised by the Employer to inspect the document; or

(b) in the case of other Relevant Personnel, he or she is unable to produce a valid vaccination record in such form as required by the Employer to a person authorised by the Employer to inspect the record.

(9) The Consultants shall obtain from all Relevant Personnel (including Excepted Personnel) consent to disclose and/or submit to the Employer information related to him or her as referred to in this Clause.

(10) The Consultants acknowledge and agree that:

(a) the Government may at any time vary unilaterally the entry requirements (including any vaccination requirements) to any Government Premises;

[1] Project officers to insert the number of days as appropriate.

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(b) it will comply with the guidelines and/or directions issued by the Employer from time to time on entry requirements to the Government Premises.

(11) Without prejudice to any other provision of the Agreement, if the Consultants fail to observe any provision of this Clause or if any Excepted Personnel or other Relevant Personnel is refused entry to or evicted from any Government Premises, such failure, refusal or eviction will be taken into account in compiling any report on the Consultants' performance referred to in the Development Bureau Technical Circular (Works) No. 3/2016.

(12) Without prejudice to any other provision of the Agreement, the Consultants 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 Employment.

(13) For the purpose of this clause, a medical certificate will only be regarded as valid if:

(a) it is issued by a medical officer of the Government or Hospital Authority, or a private medical practitioner who is a registered medical practitioner within the meaning of the Medical Registration Ordinance (Cap. 161); and

(b) it contains the full name of a Relevant Personnel, the assessments/recommendations of the medical officer/practitioner, the issue date and such other information required by the Employer from time to time.

(14) Nothing in this Clause shall derogate from any requirements under the Prevention and Control of Disease Ordinance (Cap. 599) (including its subsidiary legislation) and any other legislation applicable to the Consultants' performance of its obligations under the Agreement.

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APPENDIX 5.59E ACC Clause for Consultancies in NEC3 PSC Form

ACC B[X] Admission of *Consultant* Personnel to Government Premises

(A) Notwithstanding any other provision of this contract, upon request of the Employer made at any time and from time to time, the *Consultant* shall submit to the Employer a list containing information specified in sub-clause (B) of this Clause relating to the following persons who are to enter into any indoor premises owned or occupied by the Government ("Government Premises") for the purpose of this contract:

(a) an employee of the *Consultant*;

(b) an agent of the *Consultant*;

(c) a Subconsultant of the *Consultant*; and

(d) an employee of the agent or Subconsultant of the *Consultant.*

(the persons referred to in paragraphs (a) to (d) above are collectively referred to as "Relevant Personnel").

(B) The list shall contain the following information of a Relevant Personnel:

(a) names;

(b) post;

(c) staff identity card number;

(d) telephone number;

(e) relationship with the *Consultant*; and

(f) any other information which the Employer may reasonably require.

(C) The *Consultant* shall ensure that while any of the Relevant Personnel is on the Government Premises, they shall observe the Government's rules, regulations, guidelines and code of practice which are from time to time applicable to the *Consultant's* execution of all or any part of the services at the Government Premises.

(D) The *Consultant* shall ensure that:

(a) all Relevant Personnel who are natural persons (other than an Excepted Personnel defined in sub-clause (F) of this Clause) have received at least the first dose of COVID-19 vaccine (or the latest required number of doses as specified by the Government from time to time for the Government's employees entering buildings and offices of the Government for work-related purposes); and

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(b) each Relevant Personnel who is a natural person (other than an Excepted Personnel) presents his or her vaccination record in such form as required by the Employer for inspection and verification by any person authorised by the Employer to do so whenever such Relevant Personnel enters any Government Premises and upon request by the Employer's authorised person.

(E) The *Consultant* shall maintain a register of vaccination status of the Relevant Personnel and update the register at such intervals as prescribed by the Employer. The *Consultant* shall submit the register to the Employer for inspection upon the latter's request from time to time.

(F) If a Relevant Personnel is medically unfit to receive COVID-19 vaccine, the *Consultant* shall obtain from him or her a valid medical certificate certifying the medical reasons for not receiving the vaccine. The *Consultant* shall within [xx][1] days of the Contract Date, submit to the Employer a list of names of all Relevant Personnel who are so certified to be unfit for vaccination due to medical conditions ("Excepted Personnel"). The *Consultant* shall submit to the Employer an updated list of Excepted Personnel at such intervals as specified by the Employer.

(G) The *Consultant* shall ensure that each Excepted Personnel applies to the Employer for a special pass ("SP") and submit to the Employer the medical certificate referred to in sub-clause (F) and all other documents required by it to process the application.

(H) The Employer will (i) refuse to admit an Excepted Personnel or other Relevant Personnel to a Government Premises, or (ii) evict such person from a Government Premises if:

(a) in the case of an Exempted Personnel, he or she is unable to produce a valid SP to the person authorised by the Employer to inspect the document; or

(b) in the case of other Relevant Personnel, he or she is unable to produce a valid vaccination record in such form as required by the Employer to a person authorised by the Employer to inspect the record.

(I) The *Consultant* shall obtain from all Relevant Personnel (including Excepted Personnel) consent to disclose and/or submit to the Employer information related to him or her as referred to in this Clause.

(J) The *Consultant* acknowledges and agrees that:

(a) the Government may at any time vary unilaterally the entry requirements (including any vaccination requirements) to any Government Premises;

(b) it will comply with the guidelines and/or directions issued by the Employer from time to time on entry requirements to the Government Premises.

[1] Project officers to insert the number of days as appropriate.

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(K) Without prejudice to any other provision of this contract, if the *Consultant* fails to observe any provision of this Clause or if any Excepted Personnel or other Relevant Personnel is refused entry to or evicted from any Government Premises, such failure, refusal or eviction will be taken into account in compiling any report on the *Consultant's* performance referred to in the Development Bureau Technical Circular (Works) No. 3/2016.

(L) Without prejudice to any other provision of this contract, the *Consultant* 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 these *additional conditions of contract.*

(M) For the purpose of this clause, a medical certificate will only be regarded as valid if:

(a) it is issued by a medical officer of the Government or Hospital Authority, or a private medical practitioner who is a registered medical practitioner within the meaning of the Medical Registration Ordinance (Cap. 161); and

(b) it contains the full name of a Relevant Personnel, the assessments/recommendations of the medical officer/practitioner, the issue date and such other information required by the Employer from time to time.

(N) Nothing in this Clause shall derogate from any requirements under the Prevention and Control of Disease Ordinance (Cap. 599) (including its subsidiary legislation) and any other legislation applicable to the *Consultant's* performance of its obligations under this contract.

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APPENDIX 5.60A SCC Clause for Public Works Contracts in GCC Form

SCC [X] Vaccine Pass Requirements on the Site

(A) For purposes of the Contract, "Government" shall mean the Government of the Hong Kong Special Administrative Region.

(B) Notwithstanding any other provision of the Contract, upon request of the Employer made at any time and from time to time, the Contractor shall submit to the Employer a list containing information specified in sub-clause (3) of this Clause relating to the following persons who are to enter into the Site for the purpose of the Contract:

(a) an employee of the Contractor;

(b) an agent of the Contractor;

(c) a sub-contractor of the Contractor; and

(d) an employee of the agent or sub-contractor of the Contractor.

(the persons referred to in paragraphs (a) to (d) above are collectively referred to as "Relevant Contractor Personnel").

(C) The list shall contain the following information of a Relevant Contractor Personnel:

(a) name;

(b) post;

(c) staff identity card number;

(d) telephone number;

(e) relationship with the Contractor; and

(f) any other information which the Employer may reasonably require.

(D) The Contractor shall ensure that:

(a) each person working in or entering the Site who is a natural person (including the Relevant Contractor Personnel but excluding a person who is medically unsuitable for vaccination as certified in a valid Exemption Certificate within the meaning of this clause ("Exempted Person")) has been vaccinated according to the prevailing vaccination requirements (including but not limited to the dosage of vaccine and implementation date) set for all persons aged 12 or above entering or remaining on the specified premises under the Vaccine Pass arrangement as promulgated by the Government from time to time via the COVID-19 thematic website on Vaccine Pass (https://www.coronavirus.gov.hk/eng/vaccine-pass.html); and

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(b) whenever a person (other than an Exempted Person) works in or enters the Site, the person presents his or her vaccination record in such form as required by the Employer for inspection and verification by any person authorised by the Contractor to do so.

(E) The Contractor shall maintain a register of vaccination status of the Relevant Contractor Personnel and update the register at such intervals as prescribed by the Employer. The Contractor shall submit the register to the Employer for inspection upon the latter's request from time to time.

(F) If a Relevant Contractor Personnel is medically unsuitable to receive COVID-19 vaccine, the Contractor shall obtain from him or her a valid Exemption Certificate. The Contractor shall maintain and update a list of names of all Relevant Contractor Personnel to whom Exemption Certificates have been issued ("Excepted Contractor Personnel"). The Contractor shall submit an updated list of the Excepted Contractor Personnel to the Employer for inspection from time to time upon the latter's request.

(G) The Contractor shall (i) refuse to admit a person to the Site, or (ii) evict such person from the Site if:

(a) in the case of a person who claims to be medically unsuitable for vaccination, he or she is unable to present a valid Exemption Certificate to the person authorised by the Contractor to inspect the document; or

(b) in the case of any other person, he or she is unable to present a valid vaccination record meeting the vaccination requirements stated in sub-clause (4) of this Clause in such form as required by the Employer to a person authorised by the Contractor to inspect the record.

(H) The Contractor shall obtain from all Relevant Contractor Personnel (including an Excepted Contractor Personnel) consent to disclose and/or submit to the Employer information related to him or her as referred to in this Clause.

(I) The Contractor acknowledges and agrees that:

(a) the Employer may at any time vary unilaterally the entry requirements (including any vaccination requirements) to the Site;

(b) it will comply with the guidelines and/or directions issued by the Employer from time to time on entry requirements to the Site.

(J) Without prejudice to any other provision of the Contract, if the Contractor fails to observe any provision of this Clause, such failure will be taken into account in compiling any report on the Contractor's performance referred to in the Contractor Management Handbook promulgated by the Development Bureau of the Government.

(K) Without prejudice to any other provision of the Contract, 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.

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(L) For the purpose of this Clause, a "valid Exemption Certificate" means a medical certificate:

(a) issued by a medical officer of the Government or Hospital Authority, or a private medical practitioner who is a registered medical practitioner within the meaning of the Medical Registration Ordinance (Cap. 161), certifying that a person is medically unsuitable for receiving the COVID-19 vaccine; and

(b) containing the full name of the person referred to in paragraph (a), the assessments/recommendations of the medical officer/practitioner in respect of the person, the issue date and such other information required by the Employer from time to time.

(M) Nothing in this Clause shall derogate from any requirements under the Prevention and Control of Disease Ordinance (Cap. 599) (including its subsidiary legislation) and any other legislation applicable to the Contractor's performance of its obligations under the Contract.

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APPENDIX 5.60B ACC Clause for Public Works Contracts in NEC3 Form

ACC [X] Vaccine Pass Requirements on the Site

(1) For purposes of this contract, "Government" shall mean the Government of the Hong Kong Special Administrative Region.

(2) Notwithstanding any other provision of this contract, upon request of the *Employer* made at any time and from time to time, the *Contractor* shall submit to the *Employer* a list containing information specified in sub-clause (3) of this Clause relating to the following persons who are to enter into the Site for the purpose of this contract:

(a) an employee of the *Contractor*;

(b) an agent of the *Contractor*;

(c) a subcontractor of the *Contractor*; and

(d) an employee of the agent or subcontractor of the *Contractor*.

(the persons referred to in paragraphs (a) to (d) above are collectively referred to as "Relevant Contractor Personnel").

(3) The list shall contain the following information of a Relevant Contractor Personnel:

(a) name;

(b) post;

(c) staff identity card number;

(d) telephone number;

(e) relationship with the *Contractor*; and

(f) any other information which the *Employer* may reasonably require.

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(4) The *Contractor* shall ensure that:

(a) each person working in or entering the Site who is a natural person (including the Relevant Contractor Personnel but excluding a person who is medically unsuitable for vaccination as certified in a valid Exemption Certificate within the meaning of this clause ("Exempted Person")) has been vaccinated according to the prevailing vaccination requirements (including but not limited to the dosage of vaccine and implementation date) set for all persons aged 12 or above entering or remaining on the specified premises under the Vaccine Pass arrangement as promulgated by the Government from time to time via the COVID-19 thematic website on Vaccine Pass (https://www.coronavirus.gov.hk/eng/vaccine-pass.html); and

(b) whenever a person (other than an Exempted Person) works in or enters the Site, the person presents his or her vaccination record in such form as required by the *Employer* for inspection and verification by any person authorised by the *Contractor* to do so.

(5) The *Contractor* shall maintain a register of vaccination status of the Relevant Contractor Personnel and update the register at such intervals as prescribed by the *Employer*. The *Contractor* shall submit the register to the *Employer* for inspection upon the latter's request from time to time.

(6) If a Relevant Contractor Personnel is medically unsuitable to receive COVID-19 vaccine, the *Contractor* shall obtain from him or her a valid Exemption Certificate. The *Contractor* shall maintain and update a list of names of all Relevant Contractor Personnel to whom Exemption Certificates have been issued ("Excepted Contractor Personnel"). The *Contractor* shall submit an updated list of the Excepted Contractor Personnel to the *Employer* for inspection from time to time upon the latter's request.

(7) The *Contractor* shall (i) refuse to admit a person to the Site, or (ii) evict such person from the Site if:

(a) in the case of a person who claims to be medically unsuitable for vaccination, he or she is unable to present a valid Exemption Certificate to the person authorised by the *Contractor* to inspect the document; or

(b) in the case of any other person, he or she is unable to present a valid vaccination record meeting the vaccination requirements stated in sub-clause (4) of this Clause in such form as required by the *Employer* to a person authorised by the *Contractor* to inspect the record.

(8) The *Contractor* shall obtain from all Relevant Contractor Personnel (including an Excepted Contractor Personnel) consent to disclose and/or submit to the *Employer* information related to him or her as referred to in this Clause.

(9) The *Contractor* acknowledges and agrees that:

(a) the Employer may at any time vary unilaterally the entry requirements (including any vaccination requirements) to the Site;

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(b) it will comply with the guidelines and/or directions issued by the *Employer* from time to time on entry requirements to the Site.

(10) Without prejudice to any other provision of this contract, if the *Contractor* fails to observe any provision of this Clause, such failure will be taken into account in compiling any report on the *Contractor*'s performance referred to in the Contractor Management Handbook promulgated by the Development Bureau of the Government.

(11) Without prejudice to any other provision of this contract, 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 these *additional conditions of contract*.

(12) For the purpose of this Clause, a "valid Exemption Certificate" means a medical certificate:

(a) issued by a medical officer of the Government or Hospital Authority, or a private medical practitioner who is a registered medical practitioner within the meaning of the Medical Registration Ordinance (Cap. 161), certifying that a person is medically unsuitable for receiving the COVID-19 vaccine; and

(b) containing the full name of the person referred to in paragraph (a), the assessments/recommendations of the medical officer/practitioner in respect of the person, the issue date and such other information required by the *Employer* from time to time.

(13) Nothing in this Clause shall derogate from any requirements under the Prevention and Control of Disease Ordinance (Cap. 599) (including its subsidiary legislation) and any other legislation applicable to the *Contractor*'s performance of its obligations under this contract.

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APPENDIX 5.60C ACC Clause for Public Works Contracts in NEC4 Form

ACC [X] Vaccine Pass Requirements on the Site

(1) For purposes of the contract, "Government" shall mean the Government of the Hong Kong Special Administrative Region.

(2) Notwithstanding any other provision of the contract, upon request of the *Client* made at any time and from time to time, the *Contractor* shall submit to the *Client* a list containing information specified in sub-clause (3) of this Clause relating to the following persons who are to enter into the Site for the purpose of the contract:

(a) an employee of the *Contractor*;

(b) an agent of the *Contractor*;

(c) a subcontractor of the *Contractor*; and

(d) an employee of the agent or subcontractor of the *Contractor*.

(the persons referred to in paragraphs (a) to (d) above are collectively referred to as "Relevant Contractor Personnel").

(3) The list shall contain the following information of a Relevant Contractor Personnel:

(a) name;

(b) post;

(c) staff identity card number;

(d) telephone number;

(e) relationship with the *Contractor*; and

(f) any other information which the *Client* may reasonably require.

(4) The *Contractor* shall ensure that:

(a) each person working in or entering the Site who is a natural person (including the Relevant Contractor Personnel but excluding a person who is medically unsuitable for vaccination as certified in a valid Exemption Certificate within the meaning of this clause ("Exempted Person")) has been vaccinated according to the prevailing vaccination requirements (including but not limited to the dosage of vaccine and implementation date) set for all persons aged 12 or above entering or remaining on the specified premises under the Vaccine Pass arrangement as promulgated by the Government from time to time via the COVID-19 thematic website on Vaccine Pass (https://www.coronavirus.gov.hk/eng/vaccine-pass.html); and

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(b) whenever a person (other than an Exempted Person) works in or enters the Site, the person presents his or her vaccination record in such form as required by the *Client* for inspection and verification by any person authorised by the *Contractor* to do so.

(5) The *Contractor* shall maintain a register of vaccination status of the Relevant Contractor Personnel and update the register at such intervals as prescribed by the *Client*. The *Contractor* shall submit the register to the *Client* for inspection upon the latter's request from time to time.

(6) If a Relevant Contractor Personnel is medically unsuitable to receive COVID-19 vaccine, the *Contractor* shall obtain from him or her a valid Exemption Certificate. The *Contractor* shall maintain and update a list of names of all Relevant Contractor Personnel to whom Exemption Certificates have been issued ("Excepted Contractor Personnel"). The *Contractor* shall submit an updated list of the Excepted Contractor Personnel to the *Client* for inspection from time to time upon the latter's request.

(7) The *Contractor* shall (i) refuse to admit a person to the Site, or (ii) evict such person from the Site if:

(a) in the case of a person who claims to be medically unsuitable for vaccination, he or she is unable to present a valid Exemption Certificate to the person authorised by the *Contractor* to inspect the document; or

(b) in the case of any other person, he or she is unable to present a valid vaccination record meeting the vaccination requirements stated in sub-clause (4) of this Clause in such form as required by the *Client* to a person authorised by the *Contractor* to inspect the record.

(8) The *Contractor* shall obtain from all Relevant Contractor Personnel (including an Excepted Contractor Personnel) consent to disclose and/or submit to the *Client* information related to him or her as referred to in this Clause.

(9) The *Contractor* acknowledges and agrees that:

(a) the Employer may at any time vary unilaterally the entry requirements (including any vaccination requirements) to the Site;

(b) it will comply with the guidelines and/or directions issued by the *Client* from time to time on entry requirements to the Site.

(10) Without prejudice to any other provision of the contract, if the *Contractor* fails to observe any provision of this Clause, such failure will be taken into account in compiling any report on the *Contractor*'s performance referred to in the Contractor Management Handbook promulgated by the Development Bureau of the Government.

(11) Without prejudice to any other provision of the contract, the *Contractor* shall indemnify and keep indemnified the *Client* against all losses, claims, costs, demands and expenses that may arise out of or in consequence of any breach of these *additional conditions of contract*.

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(12) For the purpose of this Clause, a "valid Exemption Certificate" means a medical certificate:

(a) issued by a medical officer of the Government or Hospital Authority, or a private medical practitioner who is a registered medical practitioner within the meaning of the Medical Registration Ordinance (Cap. 161), certifying that a person is medically unsuitable for receiving the COVID-19 vaccine; and

(b) containing the full name of the person referred to in paragraph (a), the assessments/recommendations of the medical officer/practitioner in respect of the person, the issue date and such other information required by the *Client* from time to time.

(13) Nothing in this Clause shall derogate from any requirements under the Prevention and Control of Disease Ordinance (Cap. 599) (including its subsidiary legislation) and any other legislation applicable to the *Contractor*'s performance of its obligations under the contract.

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APPENDIX 5.60D SCE Clause for Consultancies in GCE Form

SCE [X] Vaccine Pass Requirements on the Sites for Contract Works

(1) Notwithstanding any other provision of the Agreement, upon request of the Employer made at any time and from time to time, the Consultants shall submit to the Employer a list containing information specified in sub-clause (2) of this Clause relating to the following persons who are to enter into any Engineer's offices or accommodations on the sites for contract works covered by the Agreement ("the Relevant Site Accommodations"):

(a) an employee of the Consultants;

(b) an agent of the Consultants;

(c) a sub-consultant of the Consultants; and

(d) an employee of the agent or sub-consultant of the Consultants.

(the persons referred to in paragraphs (a) to (d) above are collectively referred to as "Relevant Consultants Personnel").

(2) The list shall contain the following information of a Relevant Consultants Personnel:

(a) name;

(b) post;

(c) staff identity card number;

(d) telephone number;

(e) relationship with the Consultants; and

(f) any other information which the Employer may reasonably require.

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(3) The Consultants shall ensure that:

(a) each person working in or entering the Relevant Site Accommodations who is a natural person (including the Relevant Consultants Personnel but excluding a person who is medically unsuitable for vaccination as certified in a valid Exemption Certificate within the meaning of this clause ("Exempted Person")) has been vaccinated according to the prevailing vaccination requirements (including but not limited to the dosage of vaccine and implementation date) set for all persons aged 12 or above entering or remaining on the specified premises under the Vaccine Pass arrangement as promulgated by the Government from time to time via the COVID-19 thematic website on Vaccine Pass (https://www.coronavirus.gov.hk/eng/vaccine-pass.html); and

(b) whenever a person (other than an Exempted Person) works in or enters the Relevant Site Accommodations, the person presents his or her vaccination record in such form as required by the Employer for inspection and verification by any person authorised by the Consultants to do so.

(4) The Consultants shall maintain a register of vaccination status of the Relevant Consultants Personnel and update the register at such intervals as prescribed by the Employer. The Consultants shall submit the register to the Employer for inspection upon the latter's request from time to time.

(5) If a Relevant Consultants Personnel is medically unsuitable to receive COVID-19 vaccine, the Consultants shall obtain from him or her a valid Exemption Certificate. The Consultants shall maintain and update a list of names of all Relevant Consultants Personnel to whom Exemption Certificates have been issued ("Excepted Consultants Personnel"). The Consultants shall submit an updated list of the Excepted Consultants Personnel to the Employer for inspection from time to time upon the latter's request.

(6) The Consultants shall (i) refuse to admit a person to the Relevant Site Accommodations, or (ii) evict such person from the Relevant Site Accommodations if:

(a) in the case of a person who claims to be medically unsuitable for vaccination, he or she is unable to present a valid Exemption Certificate to the person authorised by the Consultants to inspect the document; or

(b) in the case of any other person, he or she is unable to present a valid vaccination record meeting the vaccination requirements stated in sub-clause (3) of this Clause in such form as required by the Employer to a person authorised by the Consultants to inspect the record.

(7) The Consultants shall obtain from all Relevant Consultants Personnel (including an Excepted Consultants Personnel) consent to disclose and/or submit to the Employer information related to him or her as referred to in this Clause.

(8) The Consultants acknowledge and agree that:

(a) the Employer may at any time vary unilaterally the entry requirements (including any vaccination requirements) to the Relevant Site Accommodations; and

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(a) it will comply with the guidelines and/or directions issued by the Employer from time to time on entry requirements to the Relevant Site Accommodations.

(9) Without prejudice to any other provision of the Agreement, if the Consultants fail to observe any provision of this Clause, such failure will be taken into account in compiling any report on the Consultants' performance referred to in the Development Bureau Technical Circular (Works) Nos. 3/2016 and 5/2018.

(10) Without prejudice to any other provision of the Agreement, the Consultants 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 Employment.

(11) For the purpose of this Clause, a "valid Exemption Certificate" means a medical certificate:

(a) issued by a medical officer of the Government or Hospital Authority, or a private medical practitioner who is a registered medical practitioner within the meaning of the Medical Registration Ordinance (Cap. 161), certifying that a person is medically unsuitable for receiving the COVID-19 vaccine; and

(a) containing the full name of the person referred to in paragraph (a), the assessments/recommendations of the medical officer/practitioner in respect of the person, the issue date and such other information required by the Employer from time to time.

(12) Nothing in this Clause shall derogate from any requirements under the Prevention and Control of Disease Ordinance (Cap. 599) (including its subsidiary legislation) and any other legislation applicable to the Consultants' performance of its obligations under the Agreement.

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APPENDIX 5.60E ACC Clause for Consultancies in NEC3 PSC Form

ACC B[X] Vaccine Pass Requirements on the Sites for Contract Works

(A) Notwithstanding any other provision of this contract, upon request of the *Employer* made at any time and from time to time, the *Consultant* shall submit to the *Employer* a list containing information specified in sub-clause (B) of this Clause relating to the following persons who are to enter into any Engineer's / Project Manager's offices or accommodations on the sites for contract works covered by this contract ("the Relevant Site Accommodations"):

(a) an employee of the Consultant;

(b) an agent of the Consultant;

(c) a Subconsultant of the Consultant; and

(d) an employee of the agent or Subconsultant of the Consultant.

(the persons referred to in paragraphs (a) to (d) above are collectively referred to as "Relevant Consultant Personnel").

(B) The list shall contain the following information of a Relevant Consultant Personnel:

(a) name;

(b) post;

(c) staff identity card number;

(d) telephone number;

(e) relationship with the *Consultant*; and

(f) any other information which the *Employer* may reasonably require.

(C) The *Consultant* shall ensure that:

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(a) each person working in or entering the Relevant Site Accommodations who is a natural person (including the Relevant Consultant Personnel but excluding a person who is medically unsuitable for vaccination as certified in a valid Exemption Certificate within the meaning of this clause ("Exempted Person")) has been vaccinated according to the prevailing vaccination requirements (including but not limited to the dosage of vaccine and implementation date) set for all persons aged 12 or above entering or remaining on the specified premises under the Vaccine Pass arrangement as promulgated by the Government from time to time via the COVID-19 thematic website on Vaccine Pass (https://www.coronavirus.gov.hk/eng/vaccine-pass.html); and

(b) whenever a person (other than an Exempted Person) works in or enters the Relevant Site Accommodations, the person presents his or her vaccination record in such form as required by the *Employer* for inspection and verification by any person authorised by the *Consultant* to do so.

(D) The *Consultant* shall maintain a register of vaccination status of the Relevant Consultant Personnel and update the register at such intervals as prescribed by the *Employer*. The *Consultant* shall submit the register to the *Employer* for inspection upon the latter's request from time to time.

(E) If a Relevant Consultant Personnel is medically unsuitable to receive COVID-19 vaccine, the *Consultant* shall obtain from him or her a valid Exemption Certificate. The *Consultant* shall maintain and update a list of names of all Relevant Consultants Personnel to whom Exemption Certificates have been issued ("Excepted Consultant Personnel"). The *Consultant* shall submit an updated list of the Excepted Consultant Personnel to the *Employer* for inspection from time to time upon the latter's request.

(F) The *Consultant* shall (i) refuse to admit a person to the Relevant Site Accommodations, or (ii) evict such person from the Relevant Site Accommodations if:

(a) in the case of a person who claims to be medically unsuitable for vaccination, he or she is unable to present a valid Exemption Certificate to the person authorised by the *Consultant* to inspect the document; or

(b) in the case of any other person, he or she is unable to present a valid vaccination record meeting the vaccination requirements stated in sub-clause (C) of this Clause in such form as required by the *Employer* to a person authorised by the *Consultant* to inspect the record.

(G) The *Consultant* shall obtain from all Relevant Consultant Personnel (including an Excepted Consultant Personnel) consent to disclose and/or submit to the *Employer* information related to him or her as referred to in this Clause.

(H) The *Consultant* acknowledge and agree that:

(a) the Employer may at any time vary unilaterally the entry requirements (including any vaccination requirements) to the Relevant Site Accommodations; and

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(b) it will comply with the guidelines and/or directions issued by the *Employer* from time to time on entry requirements to the Relevant Site Accommodations.

(I) Without prejudice to any other provision of this contract, if the *Consultant* fails to observe any provision of this Clause, such failure will be taken into account in compiling any report on the *Consultant*'s performance referred to in the Development Bureau Technical Circular (Works) Nos. 3/2016 and 5/2018.

(J) Without prejudice to any other provision of this contract, the *Consultant* 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 these *additional conditions of contract*.

(K) For the purpose of this Clause, a "valid Exemption Certificate" means a medical certificate:

(a) issued by a medical officer of the Government or Hospital Authority, or a private medical practitioner who is a registered medical practitioner within the meaning of the Medical Registration Ordinance (Cap. 161), certifying that a person is medically unsuitable for receiving the COVID-19 vaccine; and

(b) containing the full name of the person referred to in paragraph (a), the assessments/recommendations of the medical officer/practitioner in respect of the person, the issue date and such other information required by the *Employer* from time to time.

(L) Nothing in this Clause shall derogate from any requirements under the Prevention and Control of Disease Ordinance (Cap. 599) (including its subsidiary legislation) and any other legislation applicable to the *Consultant*'s performance of its obligations under this contract.

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APPENDIX 5.61 Guideline on Minimum Qualification and Experience Requirements for Common Positions of Professional Staff in Contractor's Management Team (For Civil Engineering Capital Works Contracts)

Guideline on Minimum Qualification and Experience Requirements for Common Positions of Professional Staff in Contractor's Management Team (For Civil Engineering Capital Works Contracts)

Position	Minimum Professional / Academic Qualification Requirement	Minimum Post-qualification Experience Requirement	
		Groups A and B Contracts	Group C Contracts
Project Manager or Construction Manager or equivalent	Corporate Member of an appropriate professional institution or equivalent	10 years relevant post-qualification experience	12 years relevant post-qualification experience
Site Agent or equivalent	(i) Corporate Member of an appropriate professional institution or equivalent; or	5 years relevant post-qualification experience	7 years relevant post-qualification experience
	(ii) University degree or equivalent in an appropriate discipline	10 years relevant post-qualification experience	12 years relevant post-qualification experience
Site Engineer or Land Surveyor or Quantity Surveyor or equivalent	(i) Corporate Member of an appropriate professional institution or equivalent; or	No relevant post-qualification experience is required	2 years relevant post-qualification experience
	(ii) University degree or equivalent in an appropriate discipline; or	5 years relevant post-qualification experience	7 years relevant post-qualification experience
	(iii) Diploma/Higher certificate or equivalent in an appropriate discipline	7 years relevant post-qualification experience	9 years relevant post-qualification experience

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Notes:

1) Procuring departments may fine-tune the above minimum requirements taking into account the nature and complexity of the contracts as well as relevant administrative/regulatory requirements, and/or add other requirements for individual positions where found necessary (e.g. NEC training requirements, requisite work-related requirements, etc.).

2) For maintenance contracts or contracts undertaken by specialist contractors, procuring departments may make reference to this guideline, where suitable, and set their own requirements to suit the nature of contracts.

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APPENDIX 5.61A New Particular Specification Clauses on Control on Works in Confined Space in Connection with/in the Vicinity of Underground Pipework, Drainage/Sewage Manholes/Chambers or Structures Alike

Particular Specification on
Control on Works in Confined Space in Connection with/in the Vicinity of Underground Pipework, Drainage/Sewage Manholes/Chambers or Structures Alike

****

The following PS Clauses apply to the works in confined space in connection with or in the vicinity of underground pipework, drainage or sewage manholes or chambers, or structures alike.

A. Safety Training

(1) (a) All workers having the qualification of a "competent person (CP)" as per s.2 and s.4(2) of Chapter 59AE – Factories and Industrial Undertakings (Confined Spaces) Regulation (Chapter 59AE), who are employed on the Works or in connection with the Contract whether in the employ of the Contractor or subcontractors at all tiers shall complete the 1-day **"Confined Space Safety Training Course for Competent Persons Engaged in DSD's Works"** run by the Construction Industry Council (CIC) and obtain a certificate. For the purpose of this Contract, the course is referred to hereinafter as the **"Confined Space Training for Competent Persons"** and the certificate as the "**Certificate for Competent Persons**". A CP who possesses the valid qualification of competent person pursuant to s.2 and s.4(2) of the Factories and Industrial Undertakings (Confined Spaces) Regulation and simultaneously holds a valid "Certificate for Competent Persons" is referred to hereinafter as "Designated Competent Person (DCP)".

(b) All workers having the qualification of a "certified worker (CW)" as per s.2 and s.4(1) of Chapter 59AE – Factories and Industrial Undertakings (Confined Spaces) Regulation, who are employed on the Works or in connection with the Contract whether in the employ of the Contractor or subcontractors at all tiers shall complete the 1-day **"Confined Space Safety Training Course for Certified Workers Engaged in DSD's Works"** run by CIC and obtain a certificate. For the purpose of this Contract, the course is referred to hereinafter as the **"Confined Space Training for Certified Workers"** and the certificate as the "**Certificate for Certified Workers**".

(c) For workers having both the qualifications of a CP and CW as stated in sub-clause (a) and (b) above, they shall be taken as workers having the qualification of a CP only for the purpose of this PS Clause and the relevant provisions in this PS Clause shall apply.

(d) The provisions in this PS Clause do not apply to Safety Officers (SOs) appointed by the Contractor, who are registered under the Factories and Industrial Undertakings (Safety Officers and Safety Supervisors)

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Regulations. However, if they are also qualified as "competent persons" as per Factories and Industrial Undertakings (Confined Spaces) Regulation and are to perform the duties of a CP in carrying out confined space works, they shall be taken as workers having the qualification of a CP for the purpose of this PS Clause and the relevant provisions in this PS Clause shall apply.

B. Further Requirements

(1) (a) Safety precautions for working in drains, sewers and other enclosed spaces shall comply with (a) the statutory requirements laid down in Chapter 59AE – Factories and Industrial Undertakings (Confined Spaces) Regulation, (b) Code of Practice on Safety and Health at Work in Confined Space published by Labour Department, (c) the requirements contained in the publications "Safety Precautions in Sewers, Drains and Other Enclosed Spaces" (at in **PS Appendix [X]**) and (d) "Drainage Services Department Practice Note No. 1/2021 – Safety Supervision of Work in Confined Space" published by the Drainage Services Department (DSD) and its latest version. If an ambiguity or discrepancy in or divergence between the aforementioned documents and the Contract is found, the most stringent requirement contained in the aforementioned documents and the Contract shall prevail.

(b) Man-entry to sewers or drains with a diameter not greater than 900mm or equivalent for undertaking any type of works shall be prohibited. For CCTV survey, man-entry to sewers or drains with a diameter not larger than 1 300mm or equivalent shall also be prohibited. Where man-entry cannot be avoided under anomalous circumstances, the Contractor shall obtain prior approval from the Engineer. The Contractor's attention is drawn to that approval from the Engineer would not normally be given for man-entry to carry out opening of lateral connections inside a lined pipeline due to lack of robotic cutting machine/equipment or the like.

(c) The Contractor shall establish a written notification system to enable the Engineer's Representative (ER) of confined space works to be carried out. The system shall include means to ensure that the ER is to be informed of, vide the Contractor, any such works to be carried out by him, his subcontractors at all tiers or other persons on the Works or in connection with the Contract.

(d) The Contractor shall notify the ER two clear working days in advance of any proposed work in confined space in writing. The Contractor shall also notify the ER the proposed time of commencement for the confined space works. In case of emergency situations where the 2-day advance notification requirement cannot be met, the Contractor shall obtain verbal consent from the Engineer or the ER prior to the commencement of any confined space works. The verbal consent shall be recorded in writing by the Engineer or the ER before noon on the next working day following the granting of verbal consent.

(e) The Contractor shall implement a permit-to-work system for working in confined space. The permit-to-work certificate (refer to hereinafter as

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"Permit") shall only be signed and issued by the Contractor's representative on confined space works (viz. Project Manager or Site Agent) who is appointed by the Contractor and accepted by the Engineer, and shall not be issued by the subcontractors nor the DCP. The Permit shall be signed by the Contractor's representative on confined space works at the entrance of the confined space works and advance issue of the Permit shall not be accepted. The Permit shall legibly indicate the date and time of issue, allowable period of stay in the confined space and incorporate the latest record of gas monitoring at that space. Original copy of the valid Permit pertaining to each shift of confined space operation shall be displayed at the entrance of that confined space. The implementation of the permit-to-work system does not derogate the Contractor from his obligation under the legislation and other contractual requirements.

(f) Any work involving entry into confined space shall not be carried out without the presence of the Contractor's Safety Officer or other staff who is a DCP, and having sufficient knowledge and experience in supervising the work in confined space appointed by the Contractor and accepted by the ER. He shall attend the Site and shall not leave the Site until all persons entering the confined space have left the confined space and return to the open atmosphere.

(g) The Contractor shall submit a copy of the risk assessment with a safety checklist and detailed programme of the work at least two weeks before the commencement of confined space works for checking. When there is change in the works or the risks involved, the Contractor shall submit a fresh risk assessment and programme to the ER at least two weeks in advance for checking.

(h) The Contractor shall not allow work to proceed in a confined space unless all pre-entry requirements as mentioned in this clause and **PS Appendix [X]** are fully checked and satisfied. Notwithstanding this, the Contractor shall ensure that any person entering a confined space shall bring along a gas detector each therein to continuously monitor the atmosphere throughout the stay in the confined space.

(i) The Contractor shall ensure that each person entering a confined space shall wear an audio-visual personal alarm of dead-man type maintaining its operating in active mode throughout his/her stay in that space, and is able to give out signals that can alert the standby person stationed at the entrance of that space.

(j) The Contractor shall not allow work to proceed in a confined space located in industrial areas unless the persons working therein are wearing suitable breathing apparatus of approved type.

(k) The Contractor shall ensure that each person entering a confined space shall wear safety harness with a lifeline connected to a man-lifting tripod or other lifting equipment approved by the Engineer for rescue purpose.

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(l) The Contractor shall set up CCTV cameras at manholes or end of pipeline for real-time monitoring of the conditions of the workers staying in the confined space where the direct line of sight between the standby person stationed at the entrance of a confined space and the person entering a confined space is impossible.

(m) The Contractor shall take video throughout the whole work duration, including entry to and exit from the confined space. The Contractor shall submit electronic copy of the videos to the ER within two working days for record purpose.

(n) The Contractor shall ensure that –

i) any person entering a confined space shall wear a spark-proof / explosion-proof two-way telecommunication equipment to enable continuous and non-interrupted real-time communication with the standby person stationed at the entrance of a confined space; and

ii) any person entering a confined space shall be continuously monitored by the standby person or via the CCTV visual display panel real-time viewable by the standby person when the direct line of sight between the standby person stationed at the entrance of a confined space and the person entering a confined space is impossible.

(o) The Contractor shall conduct regular rescue drills on confined space works to enhance and maintain the responsiveness of the confined space operating team and the rescue team during emergency. The rescue drills shall be conducted at an interval of not more than six months or a more frequent interval when considered necessary by the Engineer.

(p) The Contractor's representative on confined space works (viz. Project Manager or Site Agent) and the Safety Officer shall conduct at least 3 site check in each shift of confined space works.

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PS Appendix [X]

SAFETY PRECAUTIONS WHEN WORKING IN SEWERS, DRAINS AND OTHER CONFINED SPACE

1. Responsibility

1.1 The **person-in-charge** (e.g. foreman or gang leader) of the confined space works appointed by the Contractor and accepted by the Engineer's Representative (ER) shall ensure that –

(a) detailed working procedures and safety precautions are drawn up for the work being carried out;

(b) all workers are provided with adequate training and information on the personal hygiene and health precautions, the use of personal protective equipment etc.;

(c) all workers are instructed in the working procedures and safety precautions to be followed;

(d) equipment is provided in sufficient quantities and readily available in serviceable condition at the scene for immediate use so that the working procedures and safety precautions can be followed;

(e) the working procedures and safety precautions are correctly carried out;

(f) the requirements of the Factories and Industrial Undertakings (Confined Spaces) Regulation and other requirements stated in the Contract are strictly complied with;

(g) a DCP is appointed to carry out risk assessment of the working environment and the works to be carried out in the confined space and make recommendations on measures to be taken in relation to safety and health of workers when work is to be undertaken, and he shall not be the certified worker in the same confined space operation;

(h) no workers enter or work in the confined space other than certified workers (For the purpose of this Contract, a certified worker refer to a person who possesses the valid qualification of certified worker pursuant to s.2 and s.4(1) of the Factories and Industrial Undertakings (Confined Spaces) Regulation and simultaneously holds a valid "Certificate for Certified Worker" (person refer to hereinafter as "DCW"));

(i) he shall not act as the Contractor's representative on confined space works or DCP in the same shift of confined space works concurrently;

(j) he shall attend the Site at the commencement of the confined space works and shall not leave the Site until all personnel entering the

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confined space have left that space and return to the open atmosphere; and

(k) he shall not enter the confined space to carry out any work thereat throughout the period of discharging the duties as "person-in-charge" in the confined space works. He shall arrange the responsible DCP to closely monitor the health and safety of all personnel staying in the confined space.

(The following sub-clause shall be included in the tender document if it is considered that the "person-in-charge" will have genuine need to enter into confined space)

Should entry of "person-in-charge" into confined space be required due to works management purpose, prior agreement shall be sought from Employer vide the Engineer and suitable arrangement should be made by the Contractor to the satisfaction of Employer in such manner that the responsibilities of "person-in-charge" stated in the above sub-clauses (a) to (j) will not be sacrificed due to his/her absence outside the confined space. During the entry of "person-in-charge" into confined space, the DCP shall be kept stationing outside the confined space. The time of entry/leave in each confined space by the "person-in-charge" shall be timely registered in a logsheet for subsequent auditing. For the avoidance of doubt, the entry of "person-in-charge" into the confined space is limited to ad-hoc (not full time) supervision, inspection, checking, verification of the progress/condition of work in confined space and handing-over of the works thereat. Simultaneous entry/staying of the responsible DCP and the "person-in-charge" within the confined space shall not be allowed unless the Safety Officer is present at the entrance of confined space to oversee and monitor the health and safety of all personnel staying in that confined space. The "person-in-charge" entering the confined space shall hold a valid DCW certificate, comply with all necessary confined space safety requirements as stated in the contract and risk assessment for that shift of confined space works concerned, and shall not perform the works of certified workers during his/her period of stay in that confined space.

1.2 The **DCP** shall –

(a) attend the Site and shall not leave this Site until all persons entering the confined space have left that space and return to the open atmosphere;

(b) have sufficient knowledge and experience in supervising the work in confined space appointed by the Contractor and accepted by the ER;

(c) carry out risk assessment of the working environment and the works to be carried out in the confined space and make recommendations on measures to be taken in relation to safety and health of workers when work is to be undertaken in compliance with the Factories and Industrial Undertakings (Confined Spaces) Regulation;

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(d) not enter the confined space throughout the period of discharging the duties as "DCP" in that operation. Should his/her entry into confined space be required, he/she should designate a competent standby person, who holds a valid DCW certificate, to station outside the confined space throughout the duration of his/her absence outside the confined space to perform the duties of the standby person according to the duties stated in paragraph 1.4 of this PS Appendix. DCP shall seek prior agreement of both the Contractor's representative and the ER before his/her entry. For the avoidance of doubt, DCP's entry is limited to ad-hoc (not full time) inspection, checking, verification or assessment of the condition in confined space and he/she shall hold a valid DCW certificate, comply with all necessary confined space safety requirements as stated in the contract, and all necessary safety precautions in relation to the hazards identified in the risk assessment pertaining to DCP's entry into confined space have been taken. He/She shall not perform the works of DCWs during his/her period of stay in that confined space. For the avoidance of doubt, a separate risk assessment (not compiled by the DCP intending to enter confined space) and Permit-to-work shall be prepared prior to DCP's entry; and

(e) not act as the person-in-charge or Contractor's representative on confined space works in the same shift of confined space works concurrently.

1.3 The **Contractor's representative on confined space works** (viz. Site Agent or Project Manager) shall –

(a) be directly and wholly employed by the Contractor;

(b) be authorized by the Contractor to endorse the risk assessment and issue / void the Permit for the work to be proceeded in the confined space;

(c) be responsible for determining the continuation / suspension / resuming of confined space operation at the onset of / during / after adverse weather conditions and / or the lowering of adverse weather warning signals;

(d) attend the Site and shall ensure all persons entering the confined space have left that space and return to the open atmosphere;

(e) not enter the confined space throughout the period of discharging the duties as "Contractor's representative on confined space works" in the same shift of confined space works; and

(f) not act as the person-in-charge or DCP in the same shift of confined space works concurrently.

1.4 **Standby person** is responsible for ensuring the safety of all personnel staying in the confined space. He shall –

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(a) keep in touch with the personnel staying in the confined space via suitable two-way communication device at reasonable intervals, normally not more than every 2 minutes (Direct calling/shouting is NOT encouraged and the Contractor is required to explore and formulate alternative more effective two-way communication device before the commencement of confined space operation);

(b) ensure the lifelines are holding firmly on a man-lifting tripod, or other lifting equipment approved by the Engineer, pay out and reel in the lifelines as required, so that at all times the lifeline can be used in an emergency;

(c) in the event of a warning being received that working environment is likely to become dangerous, or if they suspect danger themselves, instruct all personnel staying in the confined space to return to the open atmosphere immediately;

(d) hold a valid DCW certificate and be responsible for the lookout for signs of danger including –

(i) sudden increases in flow,

(ii) heavy rain falling in the area or upstream, and

(iii) signs of hot or peculiar smelling discharges;

(e) ensure all confined space including manholes etc. required for ventilation are kept open;

(f) prohibit smoking and ensure that no naked lights, fires and internal combustion engine (diesel generator set) are located near to the confined space openings;

(g) check that all personnel have returned to the open atmosphere on completion of the operation and that all manhole covers are property reinstated;

(h) not act as the person-in-charge or the Contractor's representative; and

(i) not enter the confined space thereat throughout the period of discharging the duties as "standby-person" in the same shift of confined space operation.

1.5 **All persons entering or staying in manholes, sewers, drains and other confined space** should –

(a) hold a valid DCW certificate;

(b) wear adequate protective clothing and safety harness with lifeline;

(c) keep in touch with the standby persons and obey any instructions given by them;

(d) carry a gas detector with them and perform continuous gas monitoring throughout the period of stay;

(e) wear a dead-man type personal alarm, maintaining in active operating mode throughout his/her stay in that space;

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(f) place safety chains etc. in manholes where facilities are provided for them, in particular, downstream of the area being worked;

(g) avoid stirring up silt and check frequently for gas when this is unavoidable;

(h) be on the lookout for signs of danger including:

(i) sudden increases in flow,

(ii) signs of hot or peculiar smelling discharges,

(iii) signs of gas shown by the gas detector equipment, and

(iv) tiredness, faintness, headaches;

(i) return to the open atmosphere immediately when the working environment become dangerous or weather condition become worsen;

(j) observe procedures implemented by the person-in-charge of the confined space operation;

(k) observe instructions and advice and have already attended relevant safety training courses for confined space operation; and

(l) make full and proper use of, and forthwith report to the person-in-charge of the confined space operation any fault or defect in, any safety equipment or emergency facilities provided.

2. **Safety Equipment**

(a) Every gang working in manholes, sewers, storm water drains and other confined space must check that they have the following safety equipment readily available in a serviceable condition at the scene in addition to normal working tools –

- sufficient number of gas detection apparatus (At least 1 no. of gas detection apparatus shall be carried into the confined space to continuously monitor the atmosphere therein.)
- 1 No. of dead-man type audio-visual personal alarm for each person, maintaining in active operating mode throughout his/her stay in that space, for each person entering the confined space to alert those staying outside.

  (WARNING: The dead-man type personal alarm emits "rescue signal" rather than "warning signal for danger detected". Its major use is for locating the victim in a rescue. The dead-man type alarm shall never be relied upon, whether knowingly or unknowingly, as an alarm of danger detected because serious harm could have already been done to the person wearing it before it is activated.)
- 1 No. of safety harness for each person.
- 1 No. of lifeline for each person, each 15m long.

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- 1 No. of man-lifting tripod, or other lifting equipment approved by the Engineer.
- 1 No. of first aid kit.
- 1 No. of crowbar.
- Sufficient sets of spark-proof / explosion-proof lamp or torch.
- soap, antiseptic and an adequate supply of clean water.
- 3 Nos. of safety chains, each 3 m long.
- Other than those to be used by personnel entering the confined space, minimum 1 set of standby approved type of breathing apparatus (BA) shall be ready available at the scene for immediate use at each job location / work front in case of emergency. The nos. of BA required in each shift of operation should be sufficient to cater for the extent, time to be spent and the nos. of personnel to enter into the confined space.
- Effective wireless and hands-free two-way communication device for establishing clear and uninterrupted communications between the workers in the confined space and the supervisors/standby-persons at ground level or entrance of confined space of a type approved by the Engineer. When equipped by the workers in the confined space, such communication device shall not involve modification to the approved type of BA or if modification is required, the modified BA shall have been approved by Labour Department according to the prevailing legislation. The communication device shall be spark-proof / explosion-proof.
- 1 set of resuscitation equipment.
- 1 No. of mechanical blower
- 1 No. of stretcher.
- 1 set of fire fighting equipment.

(b) Each workman shall be provided with protective headgear, helmet, goggles, hearing protection, a pair of industrial gloves, rubber boots and other protective clothing as required by the working environment and the nature of the works to be carried out.

(c) The weather condition should be checked and under continuous monitoring by those personnel staying outside the confined space.

(d) CCTV camera shall be set up at manholes or end of pipeline for real-time monitoring of the condition of workers staying in the confined space where direct line of sight between the standby person at the entrance of that space and the person entering that space is impossible.

(e) The Contractor shall note that some of the survey works may involve man-entry into deep manholes with intermediate platforms where the access and line of sight may be hindered. In such case, the Contractor shall devise and implement specific safety measures in order to enable the survey works to be carried out in compliance with the safety requirements for confined space operations as stated in the contract. For example, the Contractor is required to setup one additional tripod at the intermediate platform for rescue. Where the

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intermediate platform does not provide sufficient space for setting up of tripod, the Contractor may design and construct temporary works / platform to ensure the safe execution of the survey works. For the avoidance of doubt, if the Contractor fails to provide such specific safety measures resulting in abandonment of survey but the Engineer considers it reasonably practical to do so, the Engineer's acceptance will not be given for the application for abandonment of survey.

3. **General Precautions**

(a) Prohibit smoking, naked lights, fires or internal combustion engine (diesel generator set) located near to any entrance to manholes, drains, sewers or nullahs and only spark-proof / explosion-proof lamp or torch are to be used anywhere below ground level or inside confined space.

(b) Unhealed cuts or scratches, however, must be covered by impermeable plaster.

(c) Any abrasion, scratch or cut, no matter how slight, must be cleaned immediately and dressed with antiseptic gauze and impermeable plaster.

(d) Before eating and after changing clothing, all workers should wash their hands and forearms with soap and water containing disinfectant.

(e) Use caution and common sense at all times.

4. **Precautions Before Commencing Work**

(a) Check that all safety equipment is readily available and in serviceable condition.

(b) Check the position and likelihood of exceptional discharges or any influx of dangerous substances, either vapour/gases or liquid, from factories and other places affecting the area in which the gang is working.

(c) Check that the sewers, drains, manholes, confined space, etc., in which the gang is working, is structurally stable.

(d) Locate the nearest fire station and hospital for summoning assistance in case of an emergency. If man-entry confined space work is carried out at remote / rural areas, the nearest well known scenic spot or public road should be ascertained so that the rescue team can reach the correct spot to conduct the rescue expeditiously.

(e) Ventilate the area to be worked by opening the manhole covers and if necessary by providing forced ventilation. At least one manhole upstream and one manhole downstream of the length of sewer or drain being worked / inspected should be opened in addition to those on the length being worked / inspected.

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(f) All open manholes shall be marked with Danger Notice Boards and guarded at all sides so that vehicles and persons are kept well clear.

(g) Proper temporary traffic arrangement (TTA) and lighting, signing and guarding shall be provided.

(h) Alternative confined space exit point(s) is practicably available and imminently serviceable for evacuation / escape purpose. The location(s) and route(s) to reach these exit point(s) shall be made known to all personnel concerned before the commencement of each shift of man-entry confined space operation. These exit point(s) shall be opened and illuminated throughout each operation.

5. **Before Entering Manholes, Sewers, Drains or Confined Space**

(a) Risk assessment is carried out and prepared by the DCP at the scene of entry which is specific to the prevailing weather, actual working environment and the type, scope and duration of confined space works to be carried out.

(b) Permit-to-work is signed and issued by the Contractor's representative on confined space works (not by DCP or sub-contractor) at the scene of entry.

(c) Advance preparation, signing or issue of risk assessment and/or permit-to-work are strictly prohibited.

(d) Standby persons are stationed at the scene of entry and shall attend full time at those points where personnel are entering or leaving a manhole, sewer, drains and other confined space.

(e) After the sewer, drain, manhole and other confined space has been ventilated for a sufficient period, a gas detection apparatus shall be lowered into that space to test whether or not it is safe for personnel to enter/stay.

(f) If working inside conduits is required, a gas detection apparatus shall be placed inside the concerned part of the conduits to test and monitor continuously whether or not it is safe for personnel to enter/stay.

(g) Even though the gas tests indicate safe conditions, if there is a peculiar smell or if there are any suspicious circumstances no one shall enter the sewer, drain, manhole or confined space.

(h) Clean down the manhole shaft and step irons or access ladder.

(i) Check any other works activities being implemented in the vicinity that may affect the safety of the workmen staying inside the sewer, drain, manhole or confined space.

(j) Set up a man-lifting tripod, or other lifting equipment approved by the Engineer, for holding lifelines. The tripod need not sit directly over the manhole or entrance / exit point during the works but must be placed in the vicinity such that it will be ready available for rescue purpose in case of emergency.

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6. **In Case of Emergency**

(a) In the event of physical injury, first aid should be given and the injured person must be brought out of the manhole, sewer, drain or confined space as quickly as possible, care being taken not to aggravate the injury. Depending upon the seriousness of the injury, the person-in-charge must decide whether medical or other assistance is required.

(b) In the event of a person collapse in the sewer, drain, manhole or confined space, any personnel with him/her must warn the standby person(s) stationed outside the confined space and unless they are able to drag the casualty clear at once, leave the sewer, drain, manhole or confined space as quickly as possible.

(c) NO FURTHER RESCUE ATTEMPT SHOULD BE MADE WITHOUT BREATHING APPARATUS and help must be summoned AS QUICKLY AS POSSIBLE by dialing 999 and asking for life rescue.

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APPENDIX 5.62 New Set of Particular Specification Clauses for Safety Precautionary Measures for Floor Openings and Free Edges at Buildings and Structures and Control on Conveying Debris through Floor Openings

Particular Specification –
Safety Precautionary Measures
for Floor Openings and Free Edges at Buildings and Structures
and Control on Conveying Debris through Floor Openings

****

Safety Precautionary Measures for Floor Openings and Free Edges at Buildings and Structures

(1) (a) The Contractor shall fully cover all floor openings or erect railings around them. The Contractor shall post warning notices at the floor openings to alert site personnel of the floor openings.

(b) Covers to all floor openings shall be constructed with solid material of sufficient strength and securely fixed in position to prevent fall of persons, materials and article. All covers to all floor openings shall be clearly and boldly marked to show their purpose.

(c) The Contractor shall erect rigid and secure railings around the floor openings and at the free edges of a building or structure. They shall include but not be limited to the following –

(i) top railing at a height of 900 mm to 1 150 mm;
(ii) intermediate railing at a height of 450 mm to 600 mm;
(iii) toe board of 200 mm high above the floor surface where no permanent upstand exists; and
(iv) brightly coloured safety meshes mounted on the top railings and down to the toe boards.

(d) On top of the provisions in sub-clause (c) of this Clause, for floor openings with considerable risks or safety concerns of falling persons or objects, the Contractor shall provide safety nets of suitable size and sufficient strength covering the floor openings. The safety nets shall be clear of any debris.

(e) Where the erection of railings or provision of covers to prevent fall from a floor opening or a free edge is considered impracticable, the Contractor shall provide suitable fall arrest system to workers with reference to the Guidance Notes on Classification and Use of Safety Belts and their Anchorage Systems published by the Labour Department.

(f) The Contractor shall develop and implement an effective and safe system of work to ensure that the above safety measures are properly implemented and maintained.

(g) For the avoidance of doubt, this Clause is applied to all buildings or structures, irrespective of whether they are permanent or temporary in nature.

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Control on Conveying Debris through Floor Openings

(2) (a) Debris generated in the works shall be regularly removed to prevent excessive stockpiling that could –

(i) affect the integrity of the building or structure;
(ii) affect the access to and egress from the workplaces;
(iii) result in a risk of fire; or
(iv) cause health and safety hazards.

(b) The Contractor shall only convey debris through floor openings with suitable chutes, full enclosures or shafts.

(c) The Contractor shall define designated areas for conveying debris through floor openings with chute, full enclosure or shaft for acceptance by the Architect/Engineer. The designated areas shall have an enclosed structure to contain the falling debris where the hazard of workers or the public being struck by falling objects/rebounding debris is eliminated. The designated areas shall be clearly identified, and fenced off or barricaded to prevent unauthorized entry. Overhead conveyance of debris through designated areas shall be suspended during removal of debris therein. All site personnel involved shall be unequivocally informed of the suspension of overhead conveyance of debris through the designated areas. Warning notice shall be posted at all entry points of the designated areas to warn site personnel of the potential hazards.

(d) The Contractor shall ensure that all chutes, full enclosures or shafts installed at the floor openings –

(i) shall be of adequate strength and securely fixed and supported to allow safe and free falling of debris therein;
(ii) shall be fully enclosed at every entry point to prevent a person from falling therein;
(iii) shall be adequately secured having regard to the weight of the chute, full enclosure or shaft and the weight of possible accumulated load therein;
(iv) shall prevent escape of materials and dust; and
(v) shall be able to minimise the noise while debris is passing through.

(e) The Contractor shall ensure that every entry point for the designated area mentioned in sub-clause (c) of this Clause, and all chutes, full enclosures or shafts mentioned in sub-clause (d) of this Clause shall be adequately protected by barriers during the removal of debris by mobile plant, and suitably guarded by barriers with adequate strength at all times. Barriers shall be high enough to prevent mobile plant from riding over them, and strong enough to halt a fully loaded mobile plant.

(f) Where the compliance of any provision in sub-clauses (b), (c), (d) and (e) of this Clause by the Contractor is considered impracticable, the Contractor shall submit an alternative proposal for conveying debris through floor openings, with due consideration and mitigation of hazards including, but not limited to falling from height and struck by falling objects, for acceptance by the Architect/Engineer before the commencement of conveying debris through floor openings.

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(g) For the avoidance of doubt, this Clause is applied to all buildings or structures, irrespective of whether they are permanent or temporary in nature.

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APPENDIX 5.63 Particular Specification - Rodent Control on Construction Sites

(a) The *Contractor / *Contractor* shall comply with the Code of Practice for Rodent Management and other relevant guidelines promulgated by the Food and Environmental Hygiene Department for anti-rodent work.

(b) The *Contractor / *Contractor* shall engage a competent pest control agent to carry out rodent disinfestation operations upon taking over the Site and throughout the Contract, which shall include, but not limited to –

(i) identify any rodent infested areas and any potential rodent infested areas on the Site;

(ii) set out and install sufficient rodent control measures, such as rodent baiting points, rodent traps, rodent glues and filling of rodent holes, as appropriate, to disinfest any rodent found and to prevent rodent infestation on the Site;

(iii) inspect the rodent control measures regularly, replenish and adjust them as necessary;

(iv) place appropriate warning signs in the vicinity of the rodent baits, traps and glues; and

(v) collect and dispose of live and dead rodent and all wastes arising from the disinfestation operation to appropriate waste collection points.

(c) The *Contractor / *Contractor* shall clean up the Site to eliminate the three survival conditions of rodent on the Site, viz. removal of food sources, elimination of hiding places of rodents, and blockage of rodent dispersal routes, and continue to maintain the Site in a clean and hygienic condition.

(d) The *Contractor / *Contractor* shall provide statistics on anti-rodent work to the *Architect / Engineer / Supervising Officer / Maintenance Surveyor / *Project Manager* / *Service Manager* on a monthly basis. The statistics shall include the following items and other items as requested by the *Architect / Engineer / Supervising Officer / Maintenance Surveyor / *Project Manager* / *Service Manager* –

(i) Number of inspection conducted in connection with rodent infestation / control;
(ii) Number of bait points set;
(iii) Number of trap placed;
(iv) Number of live rodent trapped;
(v) Number of dead rodent collected;
(vi) Number of rodent hole filled;
(vii) Number of joint site visit conducted with the Food and Environmental Hygiene Department;
(viii) Number of joint visit conducted with *Architect / Engineer / Supervising Officer / Maintenance Surveyor / *Project Manager* / *Service Manager*; and
(ix) Number of complaint received.

(e) The *Contractor / *Contractor* shall review the statistics enumerated in sub-clause (d) above as well as the sufficiency and effectiveness of rodent control measures adopted

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with the *Architect / Engineer / Supervising Officer / Maintenance Surveyor / *Project Manager* / *Service Manager* during the Site Environmental Management Committee meetings or other appropriate meetings between the *Contractor / *Contractor* and the *Architect / Engineer / Supervising Officer / Maintenance Surveyor / *Project Manager* / *Service Manager* on a monthly basis.

Note:
The optional entries with asterisk (*) are for selection by contract drafters to suit contracts using NEC or Government of the Hong Kong Special Administrative Region (HKSARG) General Conditions of Contracts (GCC). Contract drafters are reminded to remove the inapplicable ones in blue.

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APPENDIX 5.64 Particular Specification on Safety Training

Construction Site Safety Manual
Chapter 3
Appendix III – PARTICULAR SPECIFICATION ON SITE SAFETY

8 Safety Training

(6) (a) All persons employed on the Works or in connection with the Contract whether in the employ of the Contractor or sub-contractors of all tiers shall receive "site specific induction training".

(b) Site specific induction training and its refresher shall take the form of an one-hour talk conducted by the Safety Officer in accordance with sub-clause 6(e) below.

(c) The talk shall be conducted as follows:

(i)	Safety Policy	10 mins
(ii)	General particulars of the Site	10 mins
(iii)	Special characteristics of the Works and inherent hazards on the Site, highlights of particular safety measures and use of personal protective equipment	15 mins
(iv)	Emergency procedures and first-aid facilities	10 mins
(v)	Reporting of accidents and injury compensation procedures	5 mins
(vi)	Questions and answers	10 mins
	total	60 mins

(d) The Safety Officer shall prepare the talk based on Part II of the "Site Safety & Health Induction Training Manual" published by the Hong Kong Construction Association Ltd.

(e) An outline of the talk and every update of it shall be provided to the *Architect/Engineer's Representative for approval. All persons enumerated in sub-clause (6)(a) above shall be provided with site specific induction training on the first day of their commencement of work on the Site. Thereafter, they shall be given refresher talks at

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intervals of 6 months depending on the amount of changes to the site condition.

(f) The Contractor shall ensure that "site specific induction training" talks are carried out by Safety Officers who are competent trainers and have received training on safety training techniques organised by the Hong Kong Construction Association Ltd. (HKCA), Construction Industry Council (CIC), Occupational Safety and Health Council (OSHC) or other approved training organisations.

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APPENDIX 5.65 Contract Provisions for Prohibition of Imposing Administrative Charges for Reporting of Site Accidents and Elimination of Under-reporting of Site Accidents

****

[**Note:** The optional entries with asterisk (*) are for selection by contract drafter to suit contracts using NEC3/4 Engineering and Construction Contract (ECC) or NEC3/4 Term Services Contract (TSC) or Government of the Hong Kong Special Administrative Region (HKSARG) General Conditions of Contract (GCC) 1999 Edition or HKSARG GCC for Term Contracts. Contract drafters are reminded to remove the inapplicable ones in blue.

Please update the reference as appropriate.]

The following shall be incorporated into the contract / Contract between the *Employer* / *Client* / Employer and the *Contractor* / Contractor as *additional conditions of contract* / Special Conditions of Contract –

Section D – General Obligation

			Marginal Notes	Guidelines
[D33]#	(1)	The **Contractor* / Contractor shall not impose charges of any form on any *subcontractor / sub-contractor, or deduct any amount from the payment to which any *subcontractor / sub-contractor is entitled, for reporting accidents and processing any claims for compensation under the Employees' Compensation Ordinance (Cap. 282) on behalf of the *subcontractor / sub-contractor. For the avoidance of doubt, *subcontractor / sub-contractor in this clause [D33]# means all types of *subcontractors / sub-contractors, irrespective of tiers.	**Prohibition of Imposing Administrative Charges for Reporting of Site Accidents and Elimination of Under-reporting of Site Accidents**	
	(2)	The **Contractor* / Contractor shall ensure that the provisions at Appendix [A]# of these **additional conditions of contract* / Special Conditions of Contract are included *mutatis mutandis* in all *subcontracts / sub-contracts entered into with *its / his *subcontractors / sub-contractors. The **Contractor* / Contractor shall, if necessary, within a reasonable time enter into a supplemental agreement with *its / his *subcontractors / sub-contractors to comply with the requirements in this sub-clause.		

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Marginal Notes Guidelines

(3) For *subcontracts / sub-contracts at any lower tiers of *subcontracting / sub-contracting, the **Contractor* / Contractor shall take all reasonable steps to ensure that the provisions at Appendix [A]# of these **additional conditions of contract* / Special Conditions of Contract are included *mutatis mutandis* in all such *subcontracts / sub-contracts. The **Contractor* / Contractor shall take all reasonable steps to ensure that *subcontractors / sub-contractors at any lower tiers of *subcontracting / sub-contracting shall, if necessary, within a reasonable time enter into a supplemental agreement to include the provisions at Appendix [A]# of these **additional conditions of contract* / Special Conditions of Contract *mutatis mutandis* in all such *subcontracts / sub-contracts.

(4) Upon request by the **Project Manager / Service Manager* / Architect / Engineer / Maintenance Surveyor / Surveyor / Supervising Officer, the **Contractor* / Contractor shall provide the original documents of the *subcontracts / sub-contracts to the **Project Manager / Service Manager* / Architect / Engineer / Maintenance Surveyor / Surveyor / Supervising Officer, for inspection.

(5) Where injury by accident arising out of and in the course of the employment is caused to any person employed to *Provide the Works / Provide the Service or in connection with the contract, the *Contractor* shall notify the Commissioner for Labour in such form and manner as required by the law and report the matter to the **Project Manager / Service Manager* in the form prescribed in this contract without delay. This sub-clause shall apply irrespective of whether the person is in the employ of the *Contractor* or a subcontractor, and whether the person claims for compensation.

[**Note:** This sub-clause is only applicable for contracts using NEC3/4 ECC or NEC3/4 TSC.]

(6) The **Contractor* / Contractor shall make necessary arrangements to ensure that all *subcontractors / sub-contractors report all accidents on the Site involving their employees via their upper tier *subcontractors / sub-contractors (if applicable) to the **Contractor* / Contractor without delay. Such arrangement shall be incorporated in the Safety Plan and Subcontractor Management Plan required under the *contract / Contract.

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	Marginal Notes	Guidelines
(7) The **Employer / Client* shall not be liable for or in respect of any damages or compensation payable at law in respect of or in consequence of any accident or injury to any worker or other person in the employ of the *Contractor* or any subcontractors save and except an accident or injury resulting from any act or default of the **Employer / Client*, his agents or employees and the *Contractor* shall indemnify and keep indemnified the **Employer / Client* against all such damages and compensation, save and except as aforesaid and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.		[**Note:** This sub-clause is only applicable for contracts using NEC3/4 ECC or NEC3/4 TSC.]
(8) The compliance of this clause [D33]# of these **additional conditions of contract* / Special Conditions of Contract by the **Contractor* / Contractor is entirely without prejudice to and do not relieve the **Contractor* / Contractor from any of **its / his* obligations or responsibilities under the **contract / Contract,* the Factories and Industrial Undertakings Ordinance (Cap. 59), the Occupational Safety and Health Ordinance (Cap. 509) and the Employees' Compensation Ordinance (Cap. 282), and all their subsidiary legislation.		

Appendix [A]# of **additional conditions of contract* / Special Conditions of Contract

The following clause shall be incorporated mutatis mutandis into the *subcontracts / sub-contracts at any tiers under the Contractor as *additional conditions of contract / Special Conditions of Contract –

Clause [X] – Mandatory Subcontract Conditions for Prohibition of Imposing Administrative Charges for Reporting of Site Accidents and Elimination of Under-reporting of Site Accidents

(1) In this clause, the following words and expressions shall have the meanings hereby assigned to them except when the context otherwise requires:-

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

"**Project Manager / Service Manager* / Architect / Engineer / Maintenance Surveyor / Surveyor / Supervising Officer" means the **Project Manager / Service Manager* / Architect / Engineer / Maintenance Surveyor / Surveyor / Supervising Officer for the Contract;

"Contract" means the main contract [insert the Contract No.]# made between the **Client / Employer* / Employer and the **Contractor* / Contractor;

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"**Contractor* / Contractor" means the contractor who has entered into the Contract with the **Client / Employer* / Employer and entered into the Sub-contract with the Sub-contractor [Note: Replace the words "the Sub-contract with the Sub-contractor" with "a sub-contract with a sub-contractor at the first tier of the same chain of subcontracting in connection with this Sub-contract" for the second or lower tier subcontracts];

"Sub-contract" means this agreement;

"Sub-contractor" means the party who entered into this Sub-contract with the **Contractor* / Contractor [Note: Replace the words "the **Contractor* / Contractor" with "the Higher-tier-sub-contractor" for the second or lower tier subcontracts];

"sub-contractors" means all types of sub-contractors of the Sub-contractor, irrespective of tiers;

"Higher-tier-sub-contractor" means the party who entered into a subcontract at higher tier than this Sub-contract with another party and entered into this Sub-contract with the Sub-contractor; *[Note: Adopt this definition for the second or lower tiers subcontracts only]*.

(2) The Sub-contractor shall not impose charges in any form on any sub-contractor, or deduct any amount from the payment to which any sub-contractor is entitled, for reporting any accidents and processing any claims for compensation under the Employees' Compensation Ordinance (Cap. 282) on behalf of the sub-contractor.

(3) Where injury by accident arising out of and in the course of the employment is caused to any person employed by the Sub-contractor or sub-contractors on the Works or in connection with the Contract, the Sub-contractor shall, without delay, notify the Commissioner for Labour in such form and manner as required by the law and report the matter to the **Contractor* / Contractor and **Project Manager* / *Service Manager* / Architect / Engineer / Maintenance Surveyor / Surveyor / Supervising Officer. This sub-clause shall apply irrespective of whether the person claims for compensation.

(4) Upon request by the **Contractor* / Contractor [Note: Add "or the Higher-tier-subcontractor" for the second or lower tiers subcontracts], the Sub-contractor shall provide the original documents of the sub-contracts to the **Contractor* / Contractor [Note: Replace "the **Contractor* / Contractor" with "the Higher-tier-subcontractor" for the second or lower tiers subcontracts] who is authorized to provide the same to the **Project Manager* / *Service Manager* / Architect / Engineer / Maintenance Surveyor / Surveyor / Supervising Officer [Note: Add "and the **Contractor* / Contractor" for the second or lower tiers subcontracts] for inspection.

(5) The compliance of this clause [X]# of the **additional conditions of contract* / Special Conditions of Contract by the Sub-contractor is entirely without prejudice to and do not relieve the Sub-contractor from any of **its /his* obligations or responsibilities under this contract, the Factories and Industrial Undertakings Ordinance (Cap. 59), the Occupational Safety and Health Ordinance (Cap. 509) and the Employees' Compensation Ordinance (Cap. 282), and all their subsidiary legislation.

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APPENDIX 5.66A Amendments to *additional conditions of contract* for use with NEC4 ECC regarding Proposal on Innovation and Technology

****

Clause AA[XX] of the *additional conditions of contract*

AA[XX] (1) For the purpose of this Clause, the following words and expressions shall have the meaning hereby assigned to them:-

Proposal on Innovation and Technology

"I&T Proposal" means a proposal to adopt an innovation or technology which:-

(a) is additional to or more advanced than the requirements in the Scope; and

(b) could enhance site safety, site supervision efficiency or decarbonisation.

"Innovation and Technology Register" is a register of I&T Proposals which are notified by the *Project Manager* or the *Contractor*.

(2) The *Contractor* and the *Project Manager* give written notice to the other when either makes an I&T Proposal. The *Project Manager* enters I&T Proposals in the Innovation and Technology Register. Notification of an I&T Proposal for which a compensation event has previously been notified is not required.

(3) (a) The *Project Manager* prepares a first Innovation and Technology Register and issues it to the *Contractor* within four weeks of the first notification of an I&T Proposal. The *Project Manager* instructs the *Contractor* to attend a first innovation and technology meeting within two weeks of the issuance of the first Innovation and Technology Register.

(b) Later innovation and technology meetings are held if either the *Project Manager* or *Contractor* instructs the other to attend an innovation and technology meeting.

(c) The *Project Manager* or *Contractor* may invite any person to attend an innovation and technology meeting.

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(4) At an innovation and technology meeting, those who attend co-operate in:-

(a) considering each I&T Proposal in the Innovation and Technology Register, including but not limited to exploring the potential benefits as well as cost and time implications of adopting each I&T Proposal;

(b) deciding on the I&T Proposals to be adopted; and

(c) deciding which I&T Proposals can be removed from the Innovation and Technology Register.

(5) The *Project Manager* revises the Innovation and Technology Register to record the decisions made at each innovation and technology meeting and issues the revised Innovation and Technology Register to the *Contractor* within one week of the innovation and technology meeting. If a decision needs a change to the Scope, the *Project Manager* instructs the change at the same time as the revised Innovation and Technology Register is issued.

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APPENDIX 5.66B Amendments to *additional conditions of contract* for use with NEC4 TSC regarding Proposal on Innovation and Technology

****

Clause AA[XX] of the *additional conditions of contract*

AA[XX] (1) For the purpose of this Clause, the following words and expressions shall have the meaning hereby assigned to them:-

Proposal on Innovation and Technology

"I&T Proposal" means a proposal to adopt an innovation or technology which:-

(a) is additional to or more advanced than the requirements in the Scope; and

(b) could enhance site safety, site supervision efficiency or decarbonisation.

"Innovation and Technology Register" is a register of I&T Proposals which are notified by the *Service Manager* or the *Contractor*.

(2) The *Contractor* and the *Service Manager* give written notice to the other when either makes an I&T Proposal. The *Service Manager* enters I&T Proposals in the Innovation and Technology Register. Notification of an I&T Proposal for which a compensation event has previously been notified is not required.

(3) (a) The *Service Manager* prepares a first Innovation and Technology Register and issues it to the *Contractor* within four weeks of the first notification of an I&T Proposal. The *Service Manager* instructs the *Contractor* to attend a first innovation and technology meeting within two weeks of the issuance of the first Innovation and Technology Register.

(b) Later innovation and technology meetings are held if either the *Service Manager* or *Contractor* instructs the other to attend an innovation and technology meeting.

(c) The *Service Manager* or *Contractor* may invite any person to attend an innovation and technology meeting.

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(4) At an innovation and technology meeting, those who attend co-operate in:-

(a) considering each I&T Proposal in the Innovation and Technology Register, including but not limited to exploring the potential benefits as well as cost and time implications of adopting each I&T Proposal;

(b) deciding on the I&T Proposals to be adopted; and

(c) deciding which I&T Proposals can be removed from the Innovation and Technology Register.

(5) The *Service Manager* revises the Innovation and Technology Register to record the decisions made at each innovation and technology meeting and issues the revised Innovation and Technology Register to the *Contractor* within one week of the innovation and technology meeting. If a decision needs a change to the Scope, the *Service Manager* instructs the change at the same time as the revised Innovation and Technology Register is issued.

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APPENDIX 5.66C Supplementary Agreement for NEC3 ECC

[DRAFT for NEC3 – ECC]

[PLEASE FILL IN ALL MISSING INFORMATION]

[*Insert Contract Title and Contract Number*]

Supplementary Agreement No. [xx]

THIS SUPPLEMENTARY AGREEMENT No. [xx] is made on [xx]

BETWEEN

(1) The Government of the Hong Kong Special Administrative Region (hereinafter referred to as "***Employer***"); and

(2) [***insert name of contractor***] of [***insert principal place of business of the contractor***] (hereinafter referred to as "***Contractor***"),

(the *Employer* and the *Contractor* are hereinafter collectively referred to as the "**Parties**").

WHEREAS

(A) The Parties have entered into a contract dated [xx] (bearing reference number Contract No. [xx]) for [***insert brief description of the subject matter of this contract***]. #[This Contract was subsequently amended by Supplementary #[Agreement] No. [xx] made by the Parties on [xx]].

(B) The Parties are desirous of amending this Contract in accordance with this Agreement.

#Delete/revise as appropriate.

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[DRAFT for NEC3 – ECC]

NOW IT IS HEREBY AGREED BETWEEN THE PARTIES as follows: -

1. In this Agreement (including the Recitals):

   (i) "Contract" means Contract No. [xx] referred to in Recital (A) #[and as it is amended by the Supplementary Agreement(s) mentioned in the Recital];

   (ii) words and expressions defined in this Contract shall, save as otherwise defined herein or unless the context otherwise requires, have the same meaning in this Agreement;

   (iii) all rules of interpretation and construction used in this Contract shall be and are hereby deemed to be incorporated in and form part of this Agreement as if set out herein in full.

2. In consideration of the mutual benefits conferred by this Agreement, the Parties agree that with effect from the date of this Agreement –

   (i) a new clause AA[XX] as set out in **Annex** is added to the *additional conditions of contract.*

   [*Note: The following sub-clause (ii) should be added if NEC Clauses 12.5 to 12.10 have not already been added in a previous supplementary agreement.*]

   (ii) the following shall be inserted after NEC Clause 12.4:

   "12.5 All references to "this contract" or "the contract" are to this contract as supplemented or amended from time to time.

   12.6 All references to the "*conditions of contract*" are to the *conditions of contract* described in Part One of the Contract Data and as supplemented or amended from time to time.

   12.7 All references to the "*additional conditions of contract*" are to the *additional conditions of contract* described in Part One of the Contract Data and as supplemented or amended from time to time.

   12.8 All references to a condition, clause, sub-clause or provision of the *conditions of contract* or *additional conditions of contract* are to the condition, clause, sub-clause or provision of the *conditions of contract* or *additional conditions of contract*, and as supplemented or amended from time to time.

   12.9 Headings are inserted for ease of reference only and shall not

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affect construction of this contract.

12.10 References in this contract to a document shall: -

(a) include all schedules, appendices, annexures and other materials attached to such document; and

(b) mean the same as supplemented or amended from time to time."

3. The Parties further agree that:

(i) the *Contractor* shall not be entitled to any additional payment, compensation, relief or variation of the Completion Date or the Prices by reason of any provision in this Agreement;

(ii) nothing in this Agreement shall affect any antecedent rights or obligations of either Party under the Contract;

(iii) save as varied herein, the terms and conditions of this Contract shall remain and continue in full force and effect in all respects; and

(iv) with effect from the date of this Agreement, this Agreement shall be construed as one with the Contract.

4. This Agreement shall be governed by and construed in accordance with the laws of Hong Kong.

[#]Delete/revise as appropriate.

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[DRAFT for NEC3 – ECC]

IN WITNESS WHEREOF this Agreement is executed as a deed by the Parties on the date first above written.

[***Please insert suitable attestation clauses in accordance with DEVB TC(W) No. 7/2014*** **]**

[#]Delete/revise as appropriate.

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Annex

Clause AA[XX] of the *additional conditions of contract*

AA[XX] **Proposal on Innovation and Technology**

(1) For the purpose of this Clause, the following words and expressions shall have the meaning hereby assigned to them:-

"I&T Proposal" means a proposal to adopt an innovation or technology which:-

(a) is additional to or more advanced than the requirements in the Works Information; and

(b) could enhance site safety, site supervision efficiency or decarbonisation.

"Innovation and Technology Register" is a register of I&T Proposals which are notified by the *Project Manager* or the *Contractor*.

(2) The *Contractor* and the *Project Manager* give written notice to the other when either makes an I&T Proposal. The *Project Manager* enters I&T Proposals in the Innovation and Technology Register. Notification of an I&T Proposal for which a compensation event has previously been notified is not required.

(3) (a) The *Project Manager* prepares a first Innovation and Technology Register and issues it to the *Contractor* within four weeks of the first notification of an I&T Proposal. The *Project Manager* instructs the *Contractor* to attend a first innovation and technology meeting within two weeks of the issuance of the first Innovation and Technology Register.

(b) Later innovation and technology meetings are held if either the *Project Manager* or *Contractor* instructs the other to attend an innovation and technology meeting.

(c) The *Project Manager* or *Contractor* may invite any person to attend an innovation and technology meeting.

(4) At an innovation and technology meeting, those who attend co-operate in:-

(a) considering each I&T Proposal in the Innovation and Technology Register, including but not limited to

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exploring the potential benefits as well as cost and time implications of adopting each I&T Proposal;

(b) deciding on the I&T Proposals to be adopted; and

(c) deciding which I&T Proposals can be removed from the Innovation and Technology Register.

(5) The *Project Manager* revises the Innovation and Technology Register to record the decisions made at each innovation and technology meeting and issues the revised Innovation and Technology Register to the *Contractor* within one week of the innovation and technology meeting. If a decision needs a change to the Works Information, the *Project Manager* instructs the change at the same time as the revised Innovation and Technology Register is issued.

[#]Delete/revise as appropriate.

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APPENDIX 5.66D Supplementary Agreement for NEC3 TSC

[DRAFT for NEC3 – TSC]

[PLEASE FILL IN ALL MISSING INFORMATION]

[*Insert Contract Title and Contract Number*]

Supplementary Agreement No. [xx]

THIS SUPPLEMENTARY AGREEMENT No. [xx] is made on [xx]

BETWEEN

(1) The Government of the Hong Kong Special Administrative Region (hereinafter referred to as "***Employer***"); and

(2) [*insert name of contractor*] of [*insert principal place of business of the contractor*] (hereinafter referred to as "***Contractor***"),

(the *Employer* and the *Contractor* are hereinafter collectively referred to as the "**Parties**").

WHEREAS

(A) The Parties have entered into a contract dated [xx] (bearing reference number Contract No. [xx]) for [***insert brief description of the subject matter of this contract***]. #[This Contract was subsequently amended by Supplementary #[Agreement] No. [**xx**] made by the Parties on [**xx**]].

(B) The Parties are desirous of amending this Contract in accordance with this Agreement.

#Delete/revise as appropriate.

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[DRAFT for NEC3 – TSC]

NOW IT IS HEREBY AGREED BETWEEN THE PARTIES as follows: -

1. In this Agreement (including the Recitals):

   (i) "Contract" means Contract No. [xx] referred to in Recital (A) #[and as it is amended by the Supplementary Agreement(s) mentioned in the Recital];

   (ii) words and expressions defined in this Contract shall, save as otherwise defined herein or unless the context otherwise requires, have the same meaning in this Agreement;

   (iii) all rules of interpretation and construction used in this Contract shall be and are hereby deemed to be incorporated in and form part of this Agreement as if set out herein in full.

2. In consideration of the mutual benefits conferred by this Agreement, the Parties agree that with effect from the date of this Agreement –

   (i) a new clause AA[XX] as set out in **Annex** is added to the *additional conditions of contract.*

   [*Note: The following sub-clause (ii) should be added if NEC Clauses 12.5 to 12.10 have not already been added in a previous supplementary agreement.*]

   (ii) the following shall be inserted after NEC Clause 12.4:

   "12.5 All references to "this contract" or "the contract" are to this contract as supplemented or amended from time to time.

   12.6 All references to the "*conditions of contract*" are to the *conditions of contract* described in Part One of the Contract Data and as supplemented or amended from time to time.

   12.7 All references to the "*additional conditions of contract*" are to the *additional conditions of contract* described in Part One of the Contract Data and as supplemented or amended from time to time.

   12.8 All references to a condition, clause, sub-clause or provision of the *conditions of contract* or *additional conditions of contract* are to the condition, clause, sub-clause or provision of the *conditions of contract* or *additional conditions of contract*, and as supplemented or amended from time to time.

   12.9 Headings are inserted for ease of reference only and shall not

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affect construction of this contract.

12.10 References in this contract to a document shall: -

(a) include all schedules, appendices, annexures and other materials attached to such document; and

(b) mean the same as supplemented or amended from time to time."

3. The Parties further agree that:

(i) the *Contractor* shall not be entitled to any additional payment, compensation, relief or variation of the Task Completion Date or the Prices by reason of any provision in this Agreement;

(ii) nothing in this Agreement shall affect any antecedent rights or obligations of either Party under the Contract;

(iii) save as varied herein, the terms and conditions of this Contract shall remain and continue in full force and effect in all respects; and

(iv) with effect from the date of this Agreement, this Agreement shall be construed as one with the Contract.

4. This Agreement shall be governed by and construed in accordance with the laws of Hong Kong.

[#]Delete/revise as appropriate.

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[DRAFT for NEC3 – TSC]

IN WITNESS WHEREOF this Agreement is executed as a deed by the Parties on the date first above written.

[***Please insert suitable attestation clauses in accordance with DEVB TC(W) No. 7/2014*** **]**

[#]Delete/revise as appropriate.

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Annex

Clause AA[XX] of the *additional conditions of contract*

AA[XX] **Proposal on Innovation and Technology**

(1) For the purpose of this Clause, the following words and expressions shall have the meaning hereby assigned to them:-

"I&T Proposal" means a proposal to adopt an innovation or technology which:-

(a) is additional to or more advanced than the requirements in the Service Information; and

(b) could enhance site safety, site supervision efficiency or decarbonisation.

"Innovation and Technology Register" is a register of I&T Proposals which are notified by the *Service Manager* or the *Contractor*.

(2) The *Contractor* and the *Service Manager* give written notice to the other when either makes an I&T Proposal. The *Service Manager* enters I&T Proposals in the Innovation and Technology Register. Notification of an I&T Proposal for which a compensation event has previously been notified is not required.

(3) (a) The *Service Manager* prepares a first Innovation and Technology Register and issues it to the *Contractor* within four weeks of the first notification of an I&T Proposal. The *Service Manager* instructs the *Contractor* to attend a first innovation and technology meeting within two weeks of the issuance of the first Innovation and Technology Register.

(b) Later innovation and technology meetings are held if either the *Service Manager* or *Contractor* instructs the other to attend an innovation and technology meeting.

(c) The *Service Manager* or *Contractor* may invite any person to attend an innovation and technology meeting.

(4) At an innovation and technology meeting, those who attend co-operate in:-

(a) considering each I&T Proposal in the Innovation and Technology Register, including but not limited to

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exploring the potential benefits as well as cost and time implications of adopting each I&T Proposal;

(b) deciding on the I&T Proposals to be adopted; and

(c) deciding which I&T Proposals can be removed from the Innovation and Technology Register.

(5) The *Service Manager* revises the Innovation and Technology Register to record the decisions made at each innovation and technology meeting and issues the revised Innovation and Technology Register to the *Contractor* within one week of the innovation and technology meeting. If a decision needs a change to the Service Information, the *Service Manager* instructs the change at the same time as the revised Innovation and Technology Register is issued.

[#]Delete/revise as appropriate.

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APPENDIX 5.66E Supplementary Agreement for NEC4 ECC

[DRAFT for NEC4 – ECC]

[PLEASE FILL IN ALL MISSING INFORMATION]

[*Insert Contract Title and Contract Number*]

Supplementary Agreement No. [xx]

THIS SUPPLEMENTARY AGREEMENT No. [xx] is made on [xx]

BETWEEN

(1) The Government of the Hong Kong Special Administrative Region (hereinafter referred to as "***Client***"); and

(2) [*insert name of contractor*] of [*insert principal place of business of the contractor*] (hereinafter referred to as "***Contractor***"),

(the *Client* and the *Contractor* are hereinafter collectively referred to as the "**Parties**").

WHEREAS

(A) The Parties have entered into a contract dated [xx] (bearing reference number Contract No. [xx]) for [***insert brief description of the subject matter of this contract***]. #[This Contract was subsequently amended by Supplementary #[Agreement] No. [**xx**] made by the Parties on [**xx**]].

(B) The Parties are desirous of amending this Contract in accordance with this Agreement.

#Delete/revise as appropriate.

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[DRAFT for NEC4 – ECC]

NOW IT IS HEREBY AGREED BETWEEN THE PARTIES as follows: -

1. In this Agreement (including the Recitals):

   (i) "Contract" means Contract No. [xx] referred to in Recital (A) #[and as it is amended by the Supplementary Agreement(s) mentioned in the Recital];

   (ii) words and expressions defined in this Contract shall, save as otherwise defined herein or unless the context otherwise requires, have the same meaning in this Agreement;

   (iii) all rules of interpretation and construction used in this Contract shall be and are hereby deemed to be incorporated in and form part of this Agreement as if set out herein in full.

2. In consideration of the mutual benefits conferred by this Agreement, the Parties agree that with effect from the date of this Agreement –

   (i) a new clause AA[XX] as set out in **Annex** is added to the *additional conditions of contract.*

   [*Note: The following sub-clause (ii) should be added if NEC Clauses 12.5 to 12.10 have not already been added in a previous supplementary agreement.*]

   (ii) the following shall be inserted after NEC Clause 12.4:

   "12.5 All references to "this contract" or "the contract" are to this contract as supplemented or amended from time to time.

   12.6 All references to the "*conditions of contract*" are to the *conditions of contract* described in Part One of the Contract Data and as supplemented or amended from time to time.

   12.7 All references to the "*additional conditions of contract*" are to the *additional conditions of contract* described in Part One of the Contract Data and as supplemented or amended from time to time.

   12.8 All references to a condition, clause, sub-clause or provision of the *conditions of contract* or *additional conditions of contract* are to the condition, clause, sub-clause or provision of the *conditions of contract* or *additional conditions of contract*, and as supplemented or amended from time to time.

   12.9 Headings are inserted for ease of reference only and shall not

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affect construction of this contract.

12.10 References in this contract to a document shall: -

(a) include all schedules, appendices, annexures and other materials attached to such document; and

(b) mean the same as supplemented or amended from time to time."

3. The Parties further agree that:

(i) the *Contractor* shall not be entitled to any additional payment, compensation, relief or variation of the Completion Date or the Prices by reason of any provision in this Agreement;

(ii) nothing in this Agreement shall affect any antecedent rights or obligations of either Party under the Contract;

(iii) save as varied herein, the terms and conditions of this Contract shall remain and continue in full force and effect in all respects; and

(iv) with effect from the date of this Agreement, this Agreement shall be construed as one with the Contract.

4. This Agreement shall be governed by and construed in accordance with the laws of Hong Kong.

[#]Delete/revise as appropriate.

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[DRAFT for NEC4 – ECC]

IN WITNESS WHEREOF this Agreement is executed as a deed by the Parties on the date first above written.

[***Please insert suitable attestation clauses in accordance with DEVB TC(W) No. 7/2014*** **]**

[#]Delete/revise as appropriate.

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Annex

Clause AA[XX] of the *additional conditions of contract*

AA[XX] (1) For the purpose of this Clause, the following words and expressions shall have the meaning hereby assigned to them:-

Proposal on Innovation and Technology

"I&T Proposal" means a proposal to adopt an innovation or technology which:-

(a) is additional to or more advanced than the requirements in the Scope; and

(b) could enhance site safety, site supervision efficiency or decarbonisation.

"Innovation and Technology Register" is a register of I&T Proposals which are notified by the *Project Manager* or the *Contractor*.

(2) The *Contractor* and the *Project Manager* give written notice to the other when either makes an I&T Proposal. The *Project Manager* enters I&T Proposals in the Innovation and Technology Register. Notification of an I&T Proposal for which a compensation event has previously been notified is not required.

(3) (a) The *Project Manager* prepares a first Innovation and Technology Register and issues it to the *Contractor* within four weeks of the first notification of an I&T Proposal. The *Project Manager* instructs the *Contractor* to attend a first innovation and technology meeting within two weeks of the issuance of the first Innovation and Technology Register.

(b) Later innovation and technology meetings are held if either the *Project Manager* or *Contractor* instructs the other to attend an innovation and technology meeting.

(c) The *Project Manager* or *Contractor* may invite any person to attend an innovation and technology meeting.

(4) At an innovation and technology meeting, those who attend co-operate in:-

(a) considering each I&T Proposal in the Innovation and Technology Register, including but not limited to

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exploring the potential benefits as well as cost and time implications of adopting each I&T Proposal;

(b) deciding on the I&T Proposals to be adopted; and

(c) deciding which I&T Proposals can be removed from the Innovation and Technology Register.

(5) The *Project Manager* revises the Innovation and Technology Register to record the decisions made at each innovation and technology meeting and issues the revised Innovation and Technology Register to the *Contractor* within one week of the innovation and technology meeting. If a decision needs a change to the Scope, the *Project Manager* instructs the change at the same time as the revised Innovation and Technology Register is issued.

[#]Delete/revise as appropriate.

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APPENDIX 5.66F Supplementary Agreement for NEC4 TSC

[DRAFT for NEC4 – TSC]

[PLEASE FILL IN ALL MISSING INFORMATION]

[*Insert Contract Title and Contract Number*]

Supplementary Agreement No. [xx]

THIS SUPPLEMENTARY AGREEMENT No. [xx] is made on [xx]

BETWEEN

(1) The Government of the Hong Kong Special Administrative Region (hereinafter referred to as "***Client***"); and

(2) [*insert name of contractor*] of [*insert principal place of business of the contractor*] (hereinafter referred to as "***Contractor***"),

(the *Client* and the *Contractor* are hereinafter collectively referred to as the "**Parties**").

WHEREAS

(A) The Parties have entered into a contract dated [xx] (bearing reference number Contract No. [xx]) for [***insert brief description of the subject matter of this contract***]. #[This Contract was subsequently amended by Supplementary #[Agreement] No. [**xx**] made by the Parties on [**xx**]].

(B) The Parties are desirous of amending this Contract in accordance with this Agreement.

#Delete/revise as appropriate.

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NOW IT IS HEREBY AGREED BETWEEN THE PARTIES as follows: -

1. In this Agreement (including the Recitals):

   (i) "Contract" means Contract No. [xx] referred to in Recital (A) #[and as it is amended by the Supplementary Agreement(s) mentioned in the Recital];

   (ii) words and expressions defined in this Contract shall, save as otherwise defined herein or unless the context otherwise requires, have the same meaning in this Agreement;

   (iii) all rules of interpretation and construction used in this Contract shall be and are hereby deemed to be incorporated in and form part of this Agreement as if set out herein in full.

2. In consideration of the mutual benefits conferred by this Agreement, the Parties agree that with effect from the date of this Agreement –

   (i) a new clause AA[XX] as set out in **Annex** is added to the *additional conditions of contract.*

   [*Note: The following sub-clause (ii) should be added if NEC Clauses 12.5 to 12.10 have not already been added in a previous supplementary agreement.*]

   (ii) the following shall be inserted after NEC Clause 12.4:

   "12.5 All references to "this contract" or "the contract" are to this contract as supplemented or amended from time to time.

   12.6 All references to the "*conditions of contract*" are to the *conditions of contract* described in Part One of the Contract Data and as supplemented or amended from time to time.

   12.7 All references to the "*additional conditions of contract*" are to the *additional conditions of contract* described in Part One of the Contract Data and as supplemented or amended from time to time.

   12.8 All references to a condition, clause, sub-clause or provision of the *conditions of contract* or *additional conditions of contract* are to the condition, clause, sub-clause or provision of the *conditions of contract* or *additional conditions of contract*, and as supplemented or amended from time to time.

   12.9 Headings are inserted for ease of reference only and shall not affect construction of this contract.

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12.10 References in this contract to a document shall: -

(a) include all schedules, appendices, annexures and other materials attached to such document; and

(b) mean the same as supplemented or amended from time to time."

3. The Parties further agree that:

(i) the *Contractor* shall not be entitled to any additional payment, compensation, relief or variation of the Task Completion Date or the Prices by reason of any provision in this Agreement;

(ii) nothing in this Agreement shall affect any antecedent rights or obligations of either Party under the Contract;

(iii) save as varied herein, the terms and conditions of this Contract shall remain and continue in full force and effect in all respects; and

(iv) with effect from the date of this Agreement, this Agreement shall be construed as one with the Contract.

4. This Agreement shall be governed by and construed in accordance with the laws of Hong Kong.

[#]Delete/revise as appropriate.

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[DRAFT for NEC4 – TSC]

IN WITNESS WHEREOF this Agreement is executed as a deed by the Parties on the date first above written.

[***Please insert suitable attestation clauses in accordance with DEVB TC(W) No. 7/2014*** **]**

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[#]Delete/revise as appropriate.

Annex

Clause AA[XX] of the *additional conditions of contract*

AA[XX] (1) For the purpose of this Clause, the following words and expressions shall have the meaning hereby assigned to them:- **Proposal on Innovation and Technology**

"I&T Proposal" means a proposal to adopt an innovation or technology which:-

(a) is additional to or more advanced than the requirements in the Scope; and

(b) could enhance site safety, site supervision efficiency or decarbonisation.

"Innovation and Technology Register" is a register of I&T Proposals which are notified by the *Service Manager* or the *Contractor*.

(2) The *Contractor* and the *Service Manager* give written notice to the other when either makes an I&T Proposal. The *Service Manager* enters I&T Proposals in the Innovation and Technology Register. Notification of an I&T Proposal for which a compensation event has previously been notified is not required.

(3) (a) The *Service Manager* prepares a first Innovation and Technology Register and issues it to the *Contractor* within four weeks of the first notification of an I&T Proposal. The *Service Manager* instructs the *Contractor* to attend a first innovation and technology meeting within two weeks of the issuance of the first Innovation and Technology Register.

(b) Later innovation and technology meetings are held if either the *Service Manager* or *Contractor* instructs the other to attend an innovation and technology meeting.

(c) The *Service Manager* or *Contractor* may invite any person to attend an innovation and technology meeting.

(4) At an innovation and technology meeting, those who attend co-operate in:-

(a) considering each I&T Proposal in the Innovation and Technology Register, including but not limited to

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exploring the potential benefits as well as cost and time implications of adopting each I&T Proposal;

(b) deciding on the I&T Proposals to be adopted; and

(c) deciding which I&T Proposals can be removed from the Innovation and Technology Register.

(5) The *Service Manager* revises the Innovation and Technology Register to record the decisions made at each innovation and technology meeting and issues the revised Innovation and Technology Register to the *Contractor* within one week of the innovation and technology meeting. If a decision needs a change to the Scope, the *Service Manager* instructs the change at the same time as the revised Innovation and Technology Register is issued.

[#]Delete/revise as appropriate.

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