CHAPTER 5 CONTRACT DOCUMENTS

PARAGRAPH 5 CONDITIONS OF CONTRACT

(a) Para. 5.2.2 Delete the fifteenth paragraph.

Add the following paragraph before the last paragraph:

The SCC for advance payment mechanism as an interim relief measure to assist the construction industry is promulgated in SDEV’s memo ref. ( ) in DEVB(W) 510/33/02 dated 14.2.2020, and should be included into the capital works contracts for which the tenders are to be invited on or after 1 March 2020. The interim measure will be implemented for a period of 18 months (i.e. up to 31 August 2021). A review on its effectiveness will be undertaken before August 2021.

PARAGRAPH 6 SPECIFICATION

(b) Para. 6.2 Replace “tradesman” with “industry”, “scheme” with “schemes” and “3/2017” with “6/2019” in item (xlviii).

PARAGRAPH 9 SPECIAL TOPICS

(c) Para. 9.43 Replace “and” with “,” after “dated 8.3.2011” and add “and SDEV’s memo ref. ( ) in DEVB(W) 510/33/02 dated 14.2.2020” after “dated 20.7.2012” under the heading.

Replace “as follows” with “stated in paragraphs 9.43.1, 9.43.2 and 9.43.3” in the last sentence of last paragraph.

(d) Para. 9.43.4 Add a new paragraph 9.43.4 after paragraph 9.43.3 as follows:

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. This interim measure shall apply to contracts for which tenders will be invited on or after 1 March 2020. In respect of contracts under tender stage for which tenders have been invited before the aforementioned effective date, departments may, where situation permits, incorporate this interim measure provision in the contracts by way of tender addendum.

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, necessary amendments to Appendix 5.47B shall be made and clearance by LAD(W) shall be sought.

The interim measure will be implemented up to 31 August 2021. A review on its effectiveness will be undertaken before August 2021.

(e) Para. 9.46
Replace “TRADESMAN” with “INDUSTRY” and “SCHEME” after “SCHEMES” in the heading.


PARAGRAPH 11 MISCELLANEOUS

(f) Para. 11.4
Add “AND ELECTRONIC SUBMISSION OF TENDER RETURNS IN REMOVABLE MEDIA” and the reference “(Subsumed from ETWB TCW No. 11/2005 and SDEV’s memo ref. ( ) in DEVB(W) 546/94/01 dated 19.12.2019)” in and after the heading respectively.

(g) Para. 11.4.1
Add the following title for the new paragraph 11.4.1 after the heading:

11.4.1 Electronic Dissemination of Tender Documents

Delete “Section 3 of the Dissemination Procedures at” after “format contained in” and replace “1 to ETWB TCW No. 11/2005” with “6.34 of PAH Chapter 6” in the first paragraph.
Add the following after the first paragraph:

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.

(h) Paras. 11.4.2 & 11.4.3

Add the following new paragraphs 11.4.2 and 11.4.3 after paragraph 11.4.1:

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 5.58.

A tenderer shall prepare his tender submission in accordance with Clause 4 of the General Conditions of Tender promulgated under ETWB TCW No. 26/2004. He may submit his tender return in either hard copy format or electronic files format as follows:
<table>
<thead>
<tr>
<th>Type of Document in Tender Return</th>
<th>Format of submission allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Form of Tender</td>
<td>In hard copy format only.</td>
</tr>
<tr>
<td>(b) Bills of Quantities or Schedule of Rates</td>
<td>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.</td>
</tr>
<tr>
<td>(c) Other documents</td>
<td>In hard copy format or in electronic format</td>
</tr>
</tbody>
</table>

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 5.58.

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 promulgated under ETWB TCW No. 26/2004 and submit the complete tender return to the designated tender box as required by the Gazette Notification or the Letter of Invitation or the Tender Notice.

11.4.3 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.
PARAGRAPH 12

REFERENCES

(i) Delete the following references:

ETWB TCW No. 11/2005 Electronic Dissemination of Tender Documents and Electronic Submission of Tender Returns on Removable Media

DEVB TCW No. 3/2017 Implementation of Mandatory Construction Tradesman Collaborative Training Scheme in Public Works Contracts

Add the following references:

DEVB TCW No. 6/2019 Implementation of Mandatory Construction Industry Collaborative Training Schemes in Public Works Contracts

SDEV’s memo ref. () in DEVB(W) 546/94/01 dated 19.12.2019 Electronic Dissemination of Tender Documents and Electronic Submission of Tender Returns on Removable Media - Updated Data Format Requirements

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

APPENDICES


(k) Appendix 5.47A Add “Appendix 5.47A” in Annex A.

(l) Appendix 5.47B Add “Appendix 5.47B” in Annex B.
CHAPTER 6  TENDER PROCEDURE

PARAGRAPH 1  TENDER PROCEDURE CHECKLIST

(m) Para. 1  Replace “ETWB TCW No. 11/2005” with “Appendix 6.34” in Item No. 4.4 of the table.

PARAGRAPH 4  TENDERING

(n) Para. 4.1.3  Replace “ETWB TCW No. 11/2005” with “Appendix 6.34” and “Appendix 2A of ETWB TCW No. 11/2005” with “Annex 1 of Appendix 6.34” in the eighth paragraph.


PARAGRAPH 5  ACTION DURING TENDER PERIOD

(o) Para 5.2  Replace “Appendix 1 of ETWB TCW No. 11/2005” with “Appendix 6.34” in the last paragraph of Item (c).

PARAGRAPH 6  EXAMINATION OF AND REPORT ON TENDERS


Replace “(Ref.: ETWB TCW No. 11/2005 for guidelines on examination of electronic submission of tender return on removable media.)” with “in Appendix 6.34” in the first paragraph.

PARAGRAPH 11  MISCELLANEOUS

(q) Para 11.7  Replace “Appendix 3 of ETWB TCW No. 11/2005” with “Annex 3 of Appendix 6.34” in the last paragraph.
PARAGRAPH 12  REFERENCES

Delete the following reference:

ETWB TCW No. 11/2005  Electronic Dissemination of Tender Documents and Electronic Submission of Tender Returns on Removable Media

Add the following reference:

SEDV’s memo ref. () in DEVB (W) 546/94/01 dated 19.12.2019  Electronic Dissemination of Tender Documents and Electronic Submission of Tender Returns on Removable Media

APPENDICES

Appendix 6.34  Add “Appendix 6.34” in Annex C.

CHAPTER 7  CONTRACT MANAGEMENT

PARAGRAPH 7  CONTRACT PAYMENTS

Para 7.7  Add the reference “(Ref.: SDEV’s memo ref. () in DEVB(W) 510/33/02 dated 14.2.2020 with Annex B (Version 2) updated on 25.2.2020 and SDEV’s memo ref. () in DEVB(W) 510/33/02 dated 27.2.2020)” after the heading.

Add the following paragraphs after the second paragraph:

To assist the construction industry in the midst of the economic downturn in early 2020, SDEV introduced an interim relief measure of an “advance payment” mechanism in capital works contracts adopting selective tendering, with a contract period of not less than 12 months under SDEV’s memo ref. () in DEVB(W) 510/33/02 dated 14 February 2020 with Annex B (Version 2) updated on 25 February 2020. The measure allows the Contractor to request an advance payment from the Employer after the execution of the Articles of Agreement. The relevant provisions for contracts adopting GCC and NEC3 are set out at Appendix 5.47A and 5.47B of PAH
Chapter 5 respectively. For contracts adopting NEC4, necessary amendments to Appendix 5.47B of PAH Chapter 5 shall be made and clearance by LAD(W) shall be sought. The interim relief measure shall apply to contracts for which tenders invited on or after 1 March 2020. In respect of contracts under tender stage for which tenders have been invited before the aforementioned effective date, departments, may, where situation permits, incorporate the interim relief measure provision in the contracts by way of tender addendum. The interim measure will be implemented for a period of 18 months (i.e. up to 31 August 2021). A review on its effectiveness will be undertaken before August 2021.

SDEV extended the “advance payment” mechanism to cover ongoing capital works contracts with a contract period of not less than 12 months under SDEV’s memo ref. () in DEVB(W) 510/33/02 dated 27 February 2020. To enable proper implementation of the one-off “special advance payment” arrangement, a supplementary agreement shall be executed between the contracting parties through exchange of correspondences following the sample letter at Appendix 7.74 or 7.75, as appropriate. In this connection, project teams should take into consideration the specific circumstances of individual contracts, such as the outstanding value of works and the remaining contract period, and make necessary adjustments to the arrangement as set out in the sample letter as appropriate. In case project teams consider it not appropriate to implement the “special advance payment” arrangement under individual contracts, approval from an officer at D2 rank or above shall be obtained. The justifications for not adopting the “special advance payment” arrangement may include contracts nearing substantial completion, outstanding value of works being less than 2%, high risk of re-entry, seriously poor performance of the contractor, etc. The “special advance payment” arrangement shall apply to all ongoing capital works contracts with tenders invited before 1 March 2020.

**PARAGRAPH 22**

**REFERENCES**

Add the following references:

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
SDEV’s memo ref. () in DEVB (W) 510/33/02 dated 27.2.2020

Interim Relief Measure to Assist the Construction Industry – Special Advance Payment under Ongoing Capital Works Contracts

APPENDICES

(v) Appendix 7.74 Add “Appendix 7.74” in Annex D.

(w) Appendix 7.75 Add “Appendix 7.75” in Annex E.

Quality Management & Standards Unit
Civil Engineering and Development Department
26 March 2020
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 of not less than 12 months and for which tenders are to be invited between 1 March 2020 and 31 August 2021 (both dates inclusive) 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] months.

48 Contract period refers to the period stated in the Tender Notice.
49 The proposed advance payment shall be put on trial for a period of 18 months, to be reviewed afterwards.
50 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.
(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.
APPENDIX 5.47B  CONTRACT PROVISIONS ON ADVANCE PAYMENT (FOR 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

<table>
<thead>
<tr>
<th>NEC ECC Clause No.</th>
<th>Action</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Option X14</td>
<td>Replace</td>
<td>The title and sub-title of “Advanced payment” to “Advance payment”</td>
</tr>
<tr>
<td>X14.1</td>
<td>Replace</td>
<td>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.”</td>
</tr>
</tbody>
</table>
| 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 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:

“Nowithstanding 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 $\frac{1}{51}$ of the advance payment.

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51 Departments shall determine the number of instalments, which shall not be less than 6, to suit the nature, size and characteristics of individual contract.
APPENDIX 6.34 ELECTRONIC DISSEMINATION OF TENDER DOCUMENTS AND ELECTRONIC SUBMISSION OF TENDER RETURNS ON REMOVABLE MEDIA
(Subsumed from ETWB TCW No. 11/2005 and SDEV’s memo ref. ( ) in DEVB(W) 546/94/01 dated 19.12.2019)

1. Introduction

1.1 Definitions

1.1.1 In this appendix, unless the context otherwise requires-

(a) "Architect/Engineer/Maintenance Surveyor/Supervising Officer Designate" means the person who will perform the duty of the Architect, Engineer, Maintenance Surveyor or the Supervising officer for a Works Contract being tendered.

(b) "Authorized Service Provider" means a non-government organization which has signed a service agreement with DEVB on the provision of electronic dissemination services for EDP.

(c) “CD-ROM” means CD-ROM media complying with ISO 9660 standard and/or DVD-ROM media in DVD+R or DVD-R format.

(d) "Digital Signature" means a digital signature as defined in section 2 of the Electronic Transactions Ordinance (Cap. 553) satisfying the requirements stipulated in Section 6 of that Ordinance. "Digitally Signed" should be interpreted accordingly.

(e) "Editable File" means an electronic file which is stored in file formats that are editable using mainstream computer applications for office automation and computer-aided drafting.

(f) "Electronic Dissemination Package" (or "EDP") means the collection of electronic files comprising:-

(i) files containing the contents of a set of Tender Documents;

(ii) the licence conditions on using the files in Clause 1.1.1(f)(i) above; and

(iii) supporting files containing information on using the files in Clause 1.1.1(f) (i) above.

(g) "Eligible Tenderer" means a tenderer who is eligible to submit tender for a works contract.

(h) "Image File" means an electronic file which is stored in file formats that capture the printed image of the document.

(i) "Map Data" means any map and land boundary data in which Lands Department has copyright. Map Data do NOT include any data from other sources including any land surveys commissioned by a Works Department.

(j) "Organizational e-Cert" means a digital certificate issued under the name of an organization by a recognized certification authority as defined under Section 2 of the Electronic Transactions Ordinance (Cap. 553).
Annex C

1.2 Scope

1.2.1 This document stipulates the procedures for the dissemination of Tender Documents for Works Contracts managed by a Works Department.

1.2.2 Tender Documents for Works Contracts should be disseminated through each of the following channels-

(a) Direct Dissemination – Tender Documents in the form of hard copy and EDP should be issued to tenderers eligible to submit tenders for Works Contracts; and

(b) Dissemination through Authorized Service Providers – Tender Documents in the form of EDP only should be disseminated through Authorized Service Providers.

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

1.3 Structure of document

1.3.1 This document is structured as follows-

(a) Section 1 – Introduction;

(b) Section 2 – Electronic Dissemination Procedures, which describes the procedures to be followed by a Works Department in disseminating electronic tender documents;

(c) Section 3 – Electronic Dissemination Packages, which describes the procedures for packaging the electronic tender documents for dissemination;

(d) Section 4 – Authorized Service Providers, which focuses mainly on the procedures to be followed by DEVB in appointing authorized service providers for disseminating electronic tender documents;

(e) Annexes-

(i) Annex 1 – Licence Conditions for Electronic Dissemination Packages Distributed Through Direct Dissemination;

(ii) Annex 2 – Licence Conditions for Electronic Dissemination Packages Distributed Through Authorized Service Providers; and

(iii) Annex 3 – Service Agreement for Dissemination of Electronic Dissemination Packages.

2. Electronic Dissemination Procedures

2.1 Purpose

2.1.1 This section describes the procedures to be followed by a Works Department in disseminating electronic tender documents.

2.2 Preparation of EDP

2.2.1 The electronic version of Tender Documents for Works Contracts should be disseminated in the form of EDP's prepared in accordance with the manner and format contained in Section 3.

2.2.2 EDP's containing the following documents should be issued -

(a) the original version of tender documents; and

(b) any Tender Addenda issued in accordance with the Conditions of Tender.

2.3 Direct Dissemination

2.3.1 A Works Department that manages a Works Contract should issue the EDP as well as the hard copy of Tender Documents for the contract to Eligible Tenderers. The EDP and the hard copy should be issued free of charge. Requests for additional electronic copies of tender drawings should be charged in accordance with the provisions of the prevailing DEVB technical circular on charges of electronic drawings. Request for additional electronic copies of other types of Tender Documents should be charged at the rates prescribed from time to time.
by the relevant authorities. Request for additional hard copies should be charged at the rates prescribed from time to time by the relevant authorities.

2.4 Dissemination through Authorized Service Provider

2.4.1 DEVB may from time to time enter into service agreements with non-government organizations (including, without limitations, construction industry trade associations and commercial entities) for-

(a) distribution of EDP's through their web sites (Internet dissemination services);

(b) distribution of duplicates of EDP's (replication services); and

(c) providing value-added services through their web sites using the contents of the EDP's (value-added services).

2.4.2 Hard copies of Tender Documents should not be issued to Authorized Service Providers.

2.4.3 The procedures for negotiating service agreements are set out in Section 4.

2.4.4 Service agreements will be made using the standard agreement in Annex 3. The list of Authorized Service Providers is posted on DEVB's web site at https://www.devb.gov.hk/en/construction_sector_matters/electronic_services/e_procurement/e_procurement_of_public_works_contracts/dissemination_through.asp/index.html.

2.5 Issue of EDP's

2.5.1 When EDP's are issued to Eligible Tenderers, the Works Department should issue at the same time the same EDP's to Authorized Service Providers using the Issue Notice stipulated in Schedule 2 to Annex 3. An EDP should be issued with the attachment of a set of licence conditions in Annex 1 or Annex 2 where appropriate, duly completed by the Works Department in accordance with the footnotes therein.

2.5.2 In accordance with the service agreement, Authorized Service Providers should submit, within 7 working days of the Tender Closing Date, a Return Notice as stipulated in Schedule 3 to Annex 3 to the Works Department. The Works Department should retain the Return Notice for record purposes.

3. Electronic Dissemination Packages

3.1 General Guidelines

3.1.1 Notwithstanding the procedures for preparing EDP’s as described in this Section, the following guidelines are applicable to electronic copies of all tender documents except CAD drawings:

(a) The EDP files should be considered as an e-book of the corresponding hard copy of tender documents. Number of files constituting each Part (Clause 3.7.6 below) of the tender documents should be minimized.

(b) The followings serve as reference when compiling EDP files on textual information, Bill of Quantities and images:
(i) Sections of each Part of the tender documents other than Bill of Quantities, etc., that are standardized and not subject to changes to suit particular contract, should be combined into one single file. If, e.g., Section xxx of Part yyy will be different for different contracts, it is recommended to combine all Sections before Section xxx into one file, Section xxx in a separate file and the remaining Sections in another file. Only three files will cover the whole part in this example.

(ii) It is recommended to have one Excel workbook for the Bills of Quantities / Schedule of Rates/Plant and Labour Schedule / Equipment Schedule.

(iii) Image files should be reviewed to see if they could be combined meaningfully into a multi-page image file with a view to reducing the number of files in an EDP.

(iv) Due to operational constraints such as time available in checking the merged file of different documents produced by different professional disciplines, each Part of the tender document may be split according to the disciplines. Yet, the principle of minimizing the number of EDP files should be adhered to.

3.2 Contents

3.2.1 The original set of Tender Documents in electronic format should contain the electronic version of-

(a) a set of tender documents;
(b) the license conditions for EDP; and
(c) the supporting information described in section 3.8 below for using the EDP.

3.2.2 The Tender Addendum in electronic format should contain electronic version of-

(a) the covering letter for the Tender Addendum;
(b) the amendment sheets issued with the Tender Addendum;
(c) the license conditions for EDP; and
(d) the supporting information described in section 3.8 below for using the EDP.

3.3 Media

3.3.1 EDP's should be distributed on write once type CD-ROM's. Re-writable media shall not be used. The CD-ROM shall be logically closed such that no subsequent change can be made to the EDP.

3.3.2 The label for the CD-ROM's should contain the following information:

(a) the EDP reference number as specified in section 3.6 below
(b) the Contract number and the Contract title
(c) CD-ROM sequence number in the form of "Disk x of y" where x is the sequence number of the CD-ROM and y is the total number of CD-ROM's in the EDP. This will be useful in identifying individual CD-ROM when an EDP contains more than one CD-ROM.
3.3.3 For EDP that will be used for direct dissemination, i.e. EDP issued directly to Eligible Tenderers, the distribution media should be contained in envelopes or other similar enclosures and sealed with labels containing the following notice –

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

3.4 Data formats

3.4.1 The data formats\(^2\) and associated versions of documents / files to be adopted in EDP’s should adhere to the latest OGCIO Interoperability Framework which can be downloaded from the OGCIO website:


The current data formats for the various types of documents in EDP's are stipulated as follows:

<table>
<thead>
<tr>
<th>Type of File</th>
<th>Editable File Format</th>
<th>Image File Format</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bills of Quantities, Schedule of Rates and any other schedules</td>
<td>Microsoft Excel format (.xls) ISO/IEC 29500:2008 format (.xlsx)</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Other text documents</td>
<td>Microsoft Rich Text Format (RTF) Microsoft Word format (.doc) ISO/IEC 29500:2008 format (.docx)</td>
<td>Adobe Portable Document Format (PDF) v1.5, 1.6 or 1.7 (ISO 32000-1)</td>
</tr>
<tr>
<td>Scanned text documents</td>
<td>Not applicable</td>
<td>Adobe Portable Document Format (PDF) v1.5, 1.6 or 1.7 (ISO 32000-1)</td>
</tr>
<tr>
<td>Drawings</td>
<td>Microstation DGN format AutoCAD format Autodesk Drawing Exchange Format (DXF) Initial Graphic Exchange Specification (IGES)</td>
<td>Adobe Portable Document Format (PDF) v1.5, 1.6 or 1.7 (ISO 32000-1)</td>
</tr>
<tr>
<td>Building Information Modelling (BIM)</td>
<td><em>(Procuring Department to define and insert)</em></td>
<td>Not Applicable(^3)</td>
</tr>
</tbody>
</table>

\(^2\) Internal Note for procuring departments: The data formats and associated versions of documents / files to be adopted in EDP’s should be updated to the latest OGCIO Interoperability Framework as appropriate.

\(^3\) For files generated by BIM, please refer to the file format required for the respective types of documents.
### Type of File | Editable File Format | Image File Format
--- | --- | ---
Scanned drawings | Not applicable | Adobe Portable Document Format (PDF) v1.5, 1.6 or 1.7 (ISO 32000-1)
Animation | HTML5 | Not Applicable
Video, movie | MPEG-1 (ISO 11172) MPEG-4 (ISO 14496) | Not Applicable
Slide presentation | Microsoft PowerPoint format (.ppt) ISO/IEC 29500:2008 format (.pptx) | Adobe Portable Document Format (PDF) v1.5, 1.6 or 1.7 (ISO 32000-1)

3.4.2 To facilitate electronic tender preparation by tenderers and subsequent processing of electronic tender return, the files for "Bills of Quantities, Schedule of Rates and any other schedules" should be prepared in Excel format, unless prior agreement is made with DEVB. Cells which are not intended for data entry by tenderers should be locked and protected from being updated. The file should be structured and formatted to enable the use of verification tools that the works departments may adopt to facilitate checking of unauthorized changes to locked cells.

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

3.4.4 The contents of each document in an EDP, where applicable, shall be hosted in two file formats as shown in section 3.4.1-

(a) Editable File format— which is in file formats that are editable by mainstream computer applications for office automation and computer-aided drafting; and

(b) Image File format – which in file formats that capture the printed image of the documents.

3.4.5 As the conversion of drawing files to PDF may slightly distort the scale of the drawing elements, line scales in both horizontal and vertical directions should be included in drawings files to enable the tenderers to ascertain the correction factors to compensate for the distortion.

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

3.5 Digital Signature

3.5.1 For the purpose of authentication, all files in an EDP should be Digitally Signed.

3.5.2 For in-house contracts, the Digital Signatures for Signed Files should be applied by officers authorized by the Architect/Engineer/Maintenance Surveyor/Supervising Officer Designate. For contracts managed by consultants,  

---

4 For files generated by BIM, please refer to the file format required for the respective types of documents.

5 Please ensure that appropriate viewers / codecs are openly accessible to the tenderers (e.g. as freeware downloadable from the Internet), and should provide a pointer to the viewer / codecs as necessary.
the signatures should be applied by employees of the consultants at professional or more senior ranks.

3.5.3 Organizational e-Cert shall be used for the purpose of applying Digital Signatures.

3.6 Reference Number

3.6.1 Each EDP should be identified by a unique reference number consisting of the following fields-

(a) Standard prefix consisting of the letters "EDP";
(b) Contract number, that is the contract number for the Works Contract;
(c) Serial number to be assigned as follows-
   (i) EDP for original set of Tender Documents – 0; and
   (ii) EDP for Tender Addendum – reference assigned to the addendum.

3.6.2 The following examples illustrate the rules in section 3.6.1 above-

<table>
<thead>
<tr>
<th>Tender Documents</th>
<th>EDP Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>EDP issued with original set of tender documents for DC/98/12</td>
<td>EDP-DC/98/12-0</td>
</tr>
<tr>
<td>EDP issued with Tender Addendum No. 2 for DC/98/12</td>
<td>EDP-DC/98/12-2</td>
</tr>
</tbody>
</table>

3.7 File Naming Convention

General provisions

3.7.1 EDP files but excluding model drawing files should be named in accordance with the conventions in the following sections. However, Works Departments may adapt or extend these conventions to suit their requirements.

3.7.2 File names of the model drawing files should comply with the CAD Standard for Works Projects.

3.7.3 File names should consist of fields separated by the dash character ("-").

3.7.4 Characters that are not allowed in file names should be replaced with the underscore character ("_ ").

3.7.5 The type identifier of an Editable File is "E" and the type identifier of an Image File is "I".

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

<table>
<thead>
<tr>
<th>Part</th>
<th>Part Identifier</th>
</tr>
</thead>
<tbody>
<tr>
<td>General specification</td>
<td>GS</td>
</tr>
<tr>
<td>Standard method of measurement</td>
<td>SMM</td>
</tr>
<tr>
<td>Articles of agreement</td>
<td>AA</td>
</tr>
<tr>
<td>General conditions of contract</td>
<td>GCC</td>
</tr>
<tr>
<td>General conditions of tender</td>
<td>GCT</td>
</tr>
<tr>
<td>Special conditions of tender</td>
<td>SCT</td>
</tr>
<tr>
<td>Form of tender</td>
<td>FTR</td>
</tr>
</tbody>
</table>
### 3.7.7 File names should include version numbers that may consist of alphabets, numerals or a combination of both.

#### Drawing files

- **Type identifier**
- **Drawing number** conforming with the CAD Standard for Works Projects
- **Part identifier**
- **Version number**

#### Tender Addenda

- **Type identifier**
- **Contract number**
- **Part identifier for Tender Addenda**
- **Tender Addendum number** – the reference number assigned to the Tender Addendum; and
- **Component number** – a field for distinguishing the different files containing the contents of a Tender Addendum.

#### Other types of files

- **Type identifier**
- **Contract number**
- **Part identifier**
- **Component number** – a field for distinguishing the different files containing the contents of Tender Documents; and
- **Version number**

### 3.8 Supporting Information

#### 3.8.1 Each EDP should include a "Readme" file, named "README.RTF", that should be prepared in Rich Text Format, Digitally Signed and stored in the root directory of every CD-ROM. This file should contain at least the following information (or reference to other files on the CD-ROM on the following information):
(a) general guidance on the use of EDP's (e.g. the file naming convention, directory structure of the EDP, software name and version for viewing the file);

(b) a list of all documents in the EDP with the following information-
   (i) brief description of the content of the document; and
   (ii) disk no. (if the EDP contain more than one CD-ROM) and filename with full path information for the Signed Image File and Signed Editable File;

(c) Revision history – summary of the revisions made to the files including the Tender Addenda making the revisions;

(d) information on the proper setting for viewing, editing, and printing the EDP files, including, without limitations-
   (i) the type of printer to be used for printing the files;
   (ii) the paper sizes;
   (iii) requirements for special fonts; and
   (iv) any special printing instructions (e.g. the adjustment settings such as “Shrink oversized pages to paper size”, “Expand small pages to paper size”, etc. when printing PDF files);

(e) the name and telephone number of subject officer responsible for the tender for enquiry purpose.

3.9 Intellectual Property Issues

3.9.1 Files containing Map Data should be designated as Special Files in the licence conditions in Annex 1 and Annex 2 to prevent re-distribution by the tenderers and customers of Authorized Service Providers.

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

4. Authorized Service Providers

4.1 Purpose

4.1.1 This section describes the procedures for appointing Authorized Service Providers.

4.2 Overview

4.2.1 DEVB may enter from time to time service agreements with non-government organizations for re-dissemination of EDP's. These organizations may include non-commercial establishments or commercial entities.

4.2.2 An Authorized Service Provider may provide the following types of services to its customers using EDP's-

   (a) Replication Service (RS), which is the making of physical duplicates of EDP's for re-distribution;
(b) Internet Dissemination Service (IDS), which is the dissemination of EDP's through the web sites of the Authorized Service Provider; and
(c) Value Added Service (VAS), which is the provision of value added service using information in the EDP.

4.2.3 Non-government organizations may apply for appointment as an Authorized Service Provider in accordance with the procedures set out in the following stages-

(a) submission of application;
(b) assessment of application by DEVB; and
(c) conclusion of service agreement.

4.3 Submission of application

4.3.1 A non-government organization should submit to DEVB in writing an application prepared in accordance with the following outline-

(a) General information
   (i) the nature of the organizations;
   (ii) the purposes of the application;

(b) Scope of services, describing the services that the organization intends to provide, including-
   (i) whether the organization intends to provide RS;
   (ii) whether the organization intends to provide IDS; and
   (iii) whether the organization intends to provide VAS and the nature of such services;

(c) Service Proposal
   (i) General
      (1) authenticating the identity of parties using RS, IDS and VAS;
      (2) keeping records of the contents provided to users of RS, IDS and VAS;
      (3) securing the customers' acceptance of the Licence Conditions before allowing them to use the RS, IDS and VAS;
      (4) arrangements for advising downloaders of the issue of Tender Addenda in a timely manner;
   (ii) RS
      (1) the target clients for RS;
      (2) the proposal for providing RS including the proposed service levels; and
      (3) the proposed charges for RS;
   (iii) IDS
      (1) the address of the hosting web site that will provide IDS;
      (2) the target clients for the service;
      (3) the proposals for providing IDS including proposed service levels; and
(4) the proposed charges for IDS;
(iv) VAS
   (1) the address of the hosting website that will provide VAS;
   (2) the details of the proposed VAS;
   (3) the target clients for VAS;
   (4) the proposal for providing VAS, including service levels; and
   (5) the proposed charges for VAS.

4.3.2 The service level proposals should include, without limitations-
(a) RS, IDS and VAS - The turnaround times for making updates available
   upon the receipt of Issue Notice for EDP stipulated in Schedule 2 to Annex
   3;
(b) IDS and VAS – Appropriate performance indicators, including, without
   limitations-
   (i) bandwidths dedicated to IDS and VAS;
   (ii) downloading speeds; and
   (iii) response time to enquiries.

4.4 Assessment of application
4.4.1 DEVB should assess the suitability of an application on the basis of the following
   considerations-
   (a) nature of the organization and its connection with the construction
       industry;
   (b) purposes of providing the Internet dissemination services, replication
       services and value-added services;
   (c) capability for providing satisfactory levels of service to users;
   (d) the adequacy of the proposals for providing the various services, in
       particular the proposed levels of services;
   (e) reputation of the organization; and
   (f) whether such authorization will have detrimental effects on the image of
       DEVB and Works Departments.

4.5 Conclusion of Service Agreement
4.5.1 If an application is accepted, DEVB may enter into a service agreement with the
   organization. The agreement should be prepared on the basis of the pro-forma
   agreement in Annex 3.
Annex 1 to Appendix 6.34

Licence Conditions
for Electronic Dissemination Packages
Distributed Through Direct Dissemination

EDP Reference - 6

1. This set of "Licence Conditions for Electronic Dissemination Packages Distributed Through Direct Dissemination" may be cited as the "Licence Conditions".

2. In these conditions, unless the context otherwise requires-
   (a) "Contract" means the works contract named in Schedule 1 hereto.
   (b) "Digital Signature" means a digital signature as defined in section 2 of the Electronic Transactions Ordinance (Cap. 553) satisfying the requirements stipulated in Section 6 of that Ordinance. "Digitally Signed" should be interpreted accordingly.
   (c) "Distribution Medium" means the removable electronic storage medium containing all or part of the files of an EDP.
   (d) "Editable File" means an electronic file which is stored in file formats that are editable using mainstream computer applications for office automation and computer-aided drafting.
   (e) "Electronic Dissemination Package" (or "EDP") means the electronic files in Schedule 2 hereto containing the contents of the Tender Documents, the supporting information for using these electronic files and these Licence Conditions.
   (f) "Employer" means the Government of the Hong Kong Special Administrative Region.
   (g) "Image File" means an electronic file which is stored in file formats that capture the printed image of the document.
   (h) "Licensee" means the person who has collected from the Employer and uses the EDP and includes, if the person acts on behalf of another person, that other person.
   (i) "Relevant File" means an electronic file that-
      (i) is derived from duplication of any files in the EDP; or
      (ii) contains any contents extracted from any files in the EDP.
   (j) "Signed Editable File" means a file listed under the column "Signed Editable File" in Schedule 2 hereto containing the Digitally Signed version of an Editable File.
   (k) "Signed Image File" means a file listed under the column "Signed Image File" in Schedule 2 hereto containing the Digitally Signed version of an Image File.
   (l) "Special File" means a file listed in Schedule 3 hereto.

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

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

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

5. The Licensee shall indemnify and keep indemnified the Employer against all losses, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Employer whether direct or consequential arising out of any disputes or other claims or proceedings against the Employer by any third party by reason of any breach by the Licensee of Clause 4 hereof.

6. (1) The licence for using the EDP shall expire within seven working days of the occurrence of a Triggering Event.
   (2) Sub-clause (1) shall not apply if the Licensee is nominated as a sub-contractor or supplier in a tender submitted by a tenderer who is holding a valid licence to use the EDP (the "Relevant Licence"). In this case, the licence of the Licensee shall expire with the Relevant Licence. If
there are more than one Relevant Licences, the licence shall expire with the last Relevant Licence.

(3) On or before the expiration date of the licence, the Licensee shall-
   
   (a) either destroy the Relevant Files in his possession or retain them as archives; and

   (b) ensure that all sub-licensees have either destroyed the Relevant Files in their possession or retained these files for archive purpose

7. Any files kept as archives pursuant to Clause 6 shall not be used for any other purpose.

8. Subject to the following conditions, the Licensee may license other persons as Sub-licensees to use the EDP-

   (a) The Licensee shall obtain from each Sub-licensee an undertaking in writing that the Sub-licensee shall not use the EDP for any purpose other than for the purpose of preparing the Tender;

   (b) The Licensee shall be liable to the Employer for the breach of the undertaking referred to in sub-clause (a) of this Clause by the Sub-licensees as if the breach were committed by the Licensee;

   (c) The Licensee shall indemnify and keep the Employer indemnified against all losses, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Employer whether direct or consequential arising out of any disputes or other claims or proceedings against the Employer by any third party by reason of any breach of the undertaking referred to in sub-clause (a) of this Clause by the Sub-licensees as if the breach were committed by the Licensee;

   (d) Provided that:

      (i) The Licensee shall not license any Sub-licensee to use the Special Files enumerated in Schedule 3 hereto; and

      (ii) The Licensee shall not grant any Sub-licensee the right to license other parties to use the EDP.
<table>
<thead>
<tr>
<th>Schedule 1&lt;sup&gt;2&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract No. _____________________________</td>
</tr>
<tr>
<td>Contract Title ___________________________</td>
</tr>
<tr>
<td>Department ________________________________</td>
</tr>
<tr>
<td>Tender Closing Date&lt;sup&gt;8&lt;/sup&gt; ____________________________</td>
</tr>
</tbody>
</table>

<sup>7</sup> To be completed by department.
<sup>8</sup> Please also fill in the time.
### Schedule 2 – Electronic Dissemination Package

<table>
<thead>
<tr>
<th>Tender Documents</th>
<th>Version no.</th>
<th>Signed Image File(^9)</th>
<th>Signed Editable File(^1)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\(^9\) To be completed by department

\(^10\) the location and filename in the EDP (includes disk no., if the EDP contain more than one CD-ROM, and filename with full path information)

\(^11\) the location and filename in the EDP (includes disk no., if the EDP contain more than one CD-ROM, and filename with full path information)
Schedule 3 – Special Files\textsuperscript{12}
\textit{(Files not to be re-distributed by tenderers)}

\textit{(List the file names of the special files in the EDP)}

\textsuperscript{12} To be completed by department
Licence Conditions
for Electronic Dissemination Packages
Distributed Through Authorized Service Providers

EDP Reference - 13

1. This set of "Licence Conditions for Electronic Dissemination Packages Distributed Through Authorized Service Providers" may be cited as the "Licence Conditions".

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

13 To be inserted by department
(k) "Signed Editable File" means a file listed under the column "Signed Editable File" in Schedule 2 hereto containing the Digitally Signed version of an Editable File.

(l) "Signed Image File" means a file listed under the column "Signed Image File" in Schedule 2 hereto containing the Digitally Signed version of an Image File.

(m) "Special File" means a file listed in Schedule 3 hereto.

(n) "Sub-licensee" means a party licensed by the Licensee to use the EDP.

(o) "Tender" means a tender that may be submitted for the Contract.

(p) "Tender Addendum" means a set of documents and its attachments in the form of electronic files issued before the Tender Closing Date to amend the tender documents.

(q) "Tender Closing Date" means the date and time set for the return of tender for the Contract.

(r) "Tender Documents" means the documents in the EDP issued for the tendering of the Contract, including:-

(i) the invitation to submit tenders and other documents issued together with it; and

(ii) Tender Addenda.

(s) "Triggering Event" means one of the following events-

(i) The Licensee does not submit a Tender by the Tender Closing Date;

(ii) The Licensee receives notification from the Employer that his Tender is invalid;

(iii) The Licensee receives notification from the Employer that his Tender is not accepted;

(iv) The Licensee withdraws his Tender; or

(v) The execution of the Articles of Agreement for the Contract.

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

4. Subject to the provisions hereof, the Employer grants the Licensee, free of charge, a non-exclusive and revocable licence for using the EDP solely for the purpose of preparing the Tender. Save as aforesaid, all other rights in the EDP are reserved by the relevant copyright owners.

5. The Licensee shall indemnify and keep indemnified the Employer against all losses, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Employer whether direct or
consequential arising out of any disputes or other claims or proceedings against the Employer by any third party by reason of any breach by the Licensee of Clause 4 hereof.

6. (1) The licence for using the EDP shall expire within seven working days of the occurrence of a Triggering Event.

(2) Sub-clause (1) shall not apply if the Licensee is nominated as a sub-contractor or supplier in a tender submitted by a tenderer who is holding a valid licence to use the EDP (the "Relevant Licence"). In this case, the licence of the Licensee shall expire with the Relevant Licence. If there are more than one Relevant Licences, the licence shall expire with the last Relevant Licence.

(3) On or before the expiration date of the licence, the Licensee shall-

(a) either destroy the Relevant Files in his possession or retain them as archives; and

(b) ensure that all sub-licensees have either destroyed the Relevant Files in their possession or retained these files for archive purpose.

7. Any files kept as archives pursuant to Clause 6 shall not be used for any other purpose.

8. Subject to the following conditions, the Licensee may license other persons as Sub-licensees to use the EDP-

(a) The Licensee shall obtain from each Sub-licensee an undertaking in writing that the Sub-licensee shall not use the EDP for any purpose other than for the purpose of preparing the Tender;

(b) The Licensee shall be liable to the Employer for the breach of the undertaking referred in sub-clause (a) of this Clause by the Sub-licensees as if the breach were committed by the Licensee;

(c) The Licensee shall indemnify and keep the Employer indemnified against all losses, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Employer whether direct or consequential arising out of any disputes or other claims or proceedings against the Employer by any third party by reason of any breach of the undertaking referred to in sub-clause (a) of this Clause by the Sub-licensees as if the breach were committed by the Licensee;

(d) Provided that:-

(i) The Licensee shall not license any Sub-licensee to use the Special Files enumerated in Schedule 3 hereto; and

(ii) The Licensee shall not grant any Sub-licensee the right to license other parties to use the EDP.
Schedule 1\textsuperscript{14}  
Contract No. ____________________________________
Contract Title __________________________________
Department _____________________________________
Tender Closing Date\textsuperscript{15} __________________________

\textsuperscript{14} To be completed by department
\textsuperscript{15} Please also fill in the time.
### Schedule 2 – Electronic Dissemination Package\(^{16}\)

<table>
<thead>
<tr>
<th>Tender Documents</th>
<th>Version no.</th>
<th>Signed Image File(^{17})</th>
<th>Signed Editable File(^{18})</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

\(^{16}\) To be completed by department  
\(^{17}\) the location and filename in the EDP (includes disk no., if the EDP contain more than one CD-ROM, and filename with full path information)  
\(^{18}\) the location and filename in the EDP (includes disk no., if the EDP contain more than one CD-ROM, and filename with full path information)
Schedule 3 – Special Files
(Files not to be re-distributed by tenderers)
(List the file names of the special files in the EDP)

19 To be completed by department
Annex 3 to Appendix 6.34

Service Agreement
for Dissemination of Electronic Dissemination Packages

Agreement No. – [to be assigned]

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

RECITALS

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

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

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

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires-

(a) "Customer" means a person who uses RS, IDS or VAS.

(b) "Duplicate" means a removable medium or a set of removable media which is an exact duplicate of an EDP.

(c) "Electronic Dissemination Package" (or "EDP") means a removable electronic storage medium hosting the electronic files of the tender documents of a Works Contract issued by the Grantor through an Issue Notice.

(d) "Hosting Web Site" means the web site for hosting the IDS and VAS.

(e) "Internet Dissemination Service" (or "IDS") means the dissemination of the whole or parts of EDP's through a Hosting Web Site.

(f) "Issue Notice" means a notice in the form as set out in Schedule 2 hereto.

(g) "Licence Conditions" means the licence conditions stipulated in the Issue Notice for using an EDP.

(h) "Relevant File" means an electronic file that is derived from duplication of any files in the EDP or contains any contents extracted from any files in the EDP.

(i) "Replication Service" (or "RS") means the production of Duplicates and distributing them to Customers.

(j) "Return Notice" means a notice in the form as set out in Schedule 3 hereto.

(k) "Licensed Services" means RS, IDS and VAS.

(l) "Service Proposal" means the Grantee's proposal on the service level of RS, IDS and VAS to be offered by the Grantee to their Customers.

(m) "Technical Specification" means a set of basic service requirements that the Grantee shall meet for providing RS, IDS and VAS.
(n) "Tender Closing Date" means the date and time set for the return of the tender stipulated in an Issue Notice.

(o) "Value-added Services" (or "VAS") means the value-added services to be provided by the Grantee using the contents of the EDP's.

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

1.3 The headings or notes in this Agreement are for ease of reference only and shall not limit or extend the interpretation of this Agreement.

2. Service Level

2.1 The Licensed Services provided by the Grantee shall comply with the Technical Specification contained in Schedule 1 hereto.

2.2 The Grantee shall provide the Licensed Services in accordance with the terms of this Agreement and the annexed Service Proposal dated [insert date of Service Proposal]. The Service Proposal shall form an integral part of this Agreement for all purposes.

2.3 In the event of any inconsistency between the provisions of this Agreement (excluding the Service Proposal) and those of the Service Proposal, the former shall prevail.

3. Issue of EDP's

3.1 The Grantor may issue EDP to the Grantee from time to time through the Issue Notices in Schedule 2 hereto. Upon receiving an Issue Notice, the Grantee shall collect at his own cost the EDP stated in the notice from the Grantor.

4. Licence

4.1 Upon the issue of an Issue Notice, the Grantor grants to the Grantee free-of-charge a non-exclusive and revocable licence for using the EDP stated in the notice to provide the Licensed Services.

4.2 The licence granted in accordance with Clause 4.1 for an EDP shall expire within seven working days of the Tender Closing Date stipulated in the Issue Notice.

5. Return Notice

5.1 Upon the expiration of the licence, the Grantee shall return the completed Return Notice and shall include therein-

(a) a list showing the names and addresses of Customers who have obtained EDP's or parts of an EDP through RS, IDS or VAS;

(b) confirmation that all undistributed Duplicates have been destroyed; and

(c) confirmation that the EDP issued with the Issue Notice and the Relevant Files have either been destroyed, or kept by the Grantee as archive.

5.2 EDP's kept as archive may be used for verifying the authenticity of the Duplicates made from the EDP and for locating source of computer viruses and shall not be used for any other purposes.

5.3 Relevant Files kept as archive shall not be used for any other purposes.
6. **Provision of Licensed Services**

6.1 The Grantee shall provide the Licensed Services in accordance with the terms of this Agreement and the Service Proposal.

6.2 The Grantor may by written notice request the Grantee to provide evidence of compliance. The Grantee shall provide evidence to the satisfaction of the Grantor within 5 working days of such notice.

6.3 The Grantee shall provide the Grantor with all reasonable assistance in verifying compliance with Sub-Clause 6.1, including giving reasonable access to sections of the Hosting Web Site.

7. **Indemnity**

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

8. **Warranty**

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

9. **Termination**

9.1 The Grantor may terminate any licence granted pursuant to this Agreement by serving on the Grantee a 7-day notice in writing to this effect. Furthermore, the Grantor may terminate or revoke any licence granted forthwith by serving a notice in writing on the Grantee under any of the following circumstances-

   (a) the Grantee shall fail to perform or observe any of the obligations on its part to be performed or observed under this licence provided that in the case of a breach which is capable of being remedied, such breach has remained unremedied for a period of more than 10 days after written notice to remedy the same has been given to the Grantee;

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

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

10. **Assignment**

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

11. **Notices**

11.1 All notices arising out of or in connection with this Agreement shall be served-

   upon the Grantor, at [insert address of Environment, Transport and Works Bureau]; and

   upon the Grantee, at [insert address].
IN WITNESS HEREOF the parties hereto have hereunto set their hands the day and year first above written.

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

Signed by for and on behalf of the Grantee in the presence of: 

_____________________
Name: Director
_____________________
Name: Director/Secretary
Schedule 1
Technical Specification

1. Authentication

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

2. Acceptance of Licence Conditions

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

3. Tender Addendum

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

4. Replication Services

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

4.2 Each Duplicate shall be distributed by the Grantee-

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

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

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

5. Internet Dissemination Service (IDS)

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

5.2 An exact copy of all files in the EDP shall be available in the Hosting Web Site for downloading by Customer using IDS. The Grantee shall maintain the original file and directory structure of the EDP when disseminating the EDP through IDS.
Schedule 2 - Issue Notice for EDP

Issue Notice for EDP

To- [Name and address of Grantee]

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

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

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

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

Yours faithfully,

([Name])
for [Head of Department or Office Head]

---------------------------------------------------------------------------------------------------------------------------------------

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

To- [Department]

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

(chop of Grantee & date)
[Name of Grantee]
Schedule 3 - Return Notice for EDP

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

EDP Reference – [reference to be inserted]

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

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

<table>
<thead>
<tr>
<th>No. of Duplicates made</th>
<th>No. of Duplicates distributed</th>
</tr>
</thead>
</table>

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

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

The following Customers have obtained duplicates of the EDP-

[insert names and addresses of Customers]

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

[insert names and addresses of Customers]
Chop of Grantee

Signed for and on behalf of Grantee

Signature
Name
Designation
Tel. No.
Fax No.
Date
Address
Annex C

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Annex 4 to Appendix 6.34

Appendix [&]20 to the General Conditions of Tender
Requirements for Tender Submission in Electronic Format

The following requirements apply if the tender submission is made in electronic format in accordance with Clause 4 of the General Conditions of Tender (GCT).

1. In this Appendix, unless the context otherwise requires-


   (b) "Editable File" means an electronic file which is stored in file formats that are editable using mainstream computer applications for office automation and computer-aided drafting.

   (c) "Image File" means an electronic file which is stored in file formats that capture the printed image of the document.

   (d) "Electronic Submission Package" (or "ESP") means the collection of the following files hosted in a CD-ROM:-
      (i) all electronic files forming part of the tender return submitted by a tenderer; and
      (ii) supporting files containing information on using the files in Clause 1(d)(i) above.

   (e) "Organizational e-Cert" means a digital certificate issued under the name of an organization by a recognized certification authority as defined under Section 2 of the Electronic Transactions Ordinance (Cap. 553).

   (f) "Tender Addendum" means a set of documents and its attachments in the form of hard copy or electronic files issued before the Tender Closing Date to amend the tender documents.

   (g) "Tender Closing Date" means the date and time set for the return of the tender.

   (h) "Tender Documents" means the documents in the form of hard copy or electronic files issued for the tendering of Works Contracts, including:-
      (i) the invitation to submit tenders and other documents issued together with it; and
      (ii) Tender Addenda.

2. ESP shall be submitted on write once type CD-ROMs and all CD-ROMs should be clearly labelled or marked to indicate the tender reference, the name of the tenderer, and the disk number if more than one CD-ROM is submitted. Each CD-ROM shall have a "README.rtf" file in the root directory prepared in Word Format. This file shall contain at least the following information:

   (a) general guidance on the use of the electronic files in the ESP (e.g. the file naming convention, directory structure of the CD-ROM, software name and version for viewing the file);

20 Insert appendix number
21 For use when the use of DVD-ROM is allowed for submission.
(b) a list of all documents submitted in the ESP with the following information-

(i) brief description of the contents of the document; and

(ii) disk number (if the submission contains more than one CD-ROM) and filename with full path information for the Editable File and/or the Image File.

(c) information on the proper setting for viewing, editing, and printing the electronic files, including, without limitations-

(i) the printer to be used for printing the files;

(ii) the paper sizes;

(iii) requirements for special fonts;

(iv) any special printing instructions (e.g. the adjustment settings such as “Shrink oversized pages to paper size”, “Expand small pages to paper size”, etc. when printing PDF files); and

(v) software name and version for viewing the digitally signed files.

3. ESP for the tender shall be submitted in two copies such that one copy of the ESP shall be clearly stamped "ORIGINAL" and the copy of the ORIGINAL ESP shall be clearly stamped "COPY" respectively on the CD-ROM labels.

4. Tenderers shall only use the write once type CD-ROM media for the preparation of ESP. Re-writable media shall not be used. The CD-ROM shall be logically closed such that no subsequent change can be made to the ESP.

5. CD-ROM shall be properly packed and protected to avoid physical damage during the tender submission process.

6. The CD-ROMs and the electronic files of an ESP shall not contain any computer instructions, including but not limited to-

(a) computer viruses / malware; and

(b) macros, scripts and fields that depend on the execution environment and the execution of which will cause changes to the electronic file itself or the information system displaying the electronic record.

7. Tenderers shall submit documents in electronic form using the data formats\(^{22}\) stipulated as follows-

---

\(^{22}\) Internal Note for procuring departments: The data formats and associated versions of documents / files to be adopted in ESP’s should be updated as appropriate and should adhere to the latest OGCIO Interoperability Framework which can be downloaded from the OGCIO website: https://www.ogcio.gov.hk/en/our_work/infrastructure/e_government/if/interoperability_framework.html
<table>
<thead>
<tr>
<th>Type of Document</th>
<th>Editable File Format</th>
<th>Image File Format</th>
<th>Remark</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bills of Quantities; Schedule of Rates</td>
<td>Microsoft Excel format (.xls); ISO/IEC 29500:2008 format (.xlsx)</td>
<td>Not applicable</td>
<td>Please also read paragraphs 9 to 12 below.</td>
</tr>
<tr>
<td>Other Schedules</td>
<td>Microsoft Excel format (.xls); ISO/IEC 29500:2008 format (.xlsx)</td>
<td>Adobe Portable Document Format (PDF) v1.5, 1.6 or 1.7 (ISO 32000-1)</td>
<td>Please also read Note 1 and Note 2 below.</td>
</tr>
<tr>
<td>Text documents</td>
<td>Rich Text Format; Microsoft Word format (.doc); ISO/IEC 29500:2008 format (.docx)</td>
<td>Adobe Portable Document Format (PDF) v1.5, 1.6 or 1.7 (ISO 32000-1)</td>
<td>Please also read Note 1 and Note 2 below.</td>
</tr>
<tr>
<td>Drawings</td>
<td>Microstation DGN format; AutoCAD format; Autodesk Drawing Exchange Format (DXF); Initial Graphic Exchange Specification (IGES)</td>
<td>Adobe Portable Document Format (PDF) v1.5, 1.6 or 1.7 (ISO 32000-1)</td>
<td>Please also read Note 1 and Note 2 below.</td>
</tr>
<tr>
<td>Building Information Modelling (BIM)</td>
<td>(Procurement Department to define and insert)</td>
<td>Not Applicable</td>
<td>Please also read Note 3 below.</td>
</tr>
<tr>
<td>Animation</td>
<td>HTML5</td>
<td>Not applicable</td>
<td>Please also read Note 2 and 4 below.</td>
</tr>
<tr>
<td>Video, movie</td>
<td>MPEG-1 (ISO 11172); MPEG-4 (ISO 14496)</td>
<td>Not applicable</td>
<td>Only raw MPEG-1 or MPEG-4 file is accepted. File format in VCD/DVD video disc directory structure is not acceptable and will not be considered. Please also read Note 2 and 4 below.</td>
</tr>
<tr>
<td>Slide presentation</td>
<td>Microsoft PowerPoint format (.ppt); ISO/IEC 29500:2008 format (.pptx)</td>
<td>Adobe Portable Document Format (PDF) v1.5, 1.6 or 1.7 (ISO 32000-1)</td>
<td>Please also read Note 1 below.</td>
</tr>
</tbody>
</table>

23 Either AutoCAD or Microstation may be deleted if the receiving department cannot support the drawing file format.
8. As the conversion of drawing files to Adobe Portable Format (PDF) may slightly distort the scale of the drawing elements, line scales in both horizontal and vertical directions should be included in drawings files to enable correction factors to be made to compensate for distortion.

9. For the avoidance of doubt, Bills of Quantities and Schedule of Rates shall only be submitted in Editable File format, i.e. the Excel format.

10. Tenderers shall prepare the electronic files for Bills of Quantities and Schedule of Rates using the electronic files in Excel format in the Tender Documents provided by the Employer. Tenderers shall not modify cells that are locked and protected, failing which shall constitute a qualified tender.

11. If the Tender Documents provided by the Employer does not contain the electronic files of Bills of Quantities and Schedule of Rates in Excel format, tenderers shall submit their Bills of Quantities and Schedule of Rate in hard copy format using the hard copy Tender Documents supplied by the Employer.

12. Notwithstanding paragraph 6 above, the electronic files for Bills of Quantities and Schedule of Rates may contain simple arithmetic for automatic calculation of the totals and sub-totals. However, any reference made in the arithmetic formula shall be within the same file and the automatic calculation shall not be dependent on other files.

13. File compression programs should not be used to compress files.

14. All electronic files in the ESP submitted under the tender shall be digitally signed in accordance with Section 2 of the Electronic Transactions Ordinance (Cap. 553) satisfying the requirements stipulated in Section 6 of that Ordinance. Organizational e-Cert issued under the name of the tenderer shall be used for the
purpose of applying digital signatures. The Organizational e-Cert corresponding to the digital signatures must be valid as at the Tender Closing Date. The list of recognized certificates is available at OGCIO’s website: www.ogcio.gov.hk/en/regulation/eto/ca/rec_certs.
From: The Government of the Hong Kong Special Administrative Region ("Employer")

To: [insert] ("Contractor")

Date:

Dear Sirs,

[Contract Title and Contract No.]

The Employer and the Contractor have entered into the above Contract ("Contract") on [date].

2. In response to the novel coronavirus epidemic and with a view to minimising the impact on the cash flow of the Contractor, the Employer is desirous of making a one-off special advance payment to the Contractor, upon his request, in an amount equal to 2% of the Contract Sum less Provisional Sums and the Contingency Sum, which is capped at HK$30,000,000.

3. As subcontractors are also facing similar hardship, the Contractor is required to share the special advance payment with its subcontractors appropriately to ease their burden in such a difficult time. The Contractor’s cooperation 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 the following amendments to the Contract:

(a) The following clause is added to the Special Conditions of Contract as Clause SCC [insert]:

"SCC [ ] Advance payment to the Contractor

(1) The Contractor may request the Employer to make a one-off advance payment to the Contractor of the amount of [insert]. The Contractor shall submit a statement to the [Engineer/Surveyor] requesting payment of the advance payment. 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 Advance Payment Statement is in order and accompanied by a signed Declaration as required under Clause [insert] of these Special Conditions of Contract, 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.

1 Delete as appropriate.
2 The payment processing time can be shortened subject to the lead-time required by individual project team.
3 The payment processing time can be shortened subject to the lead-time required by individual project team.
(2) Subject to sub-clauses (3) and (4) below, the advance payment shall be deducted by the Employer from interim and/or final payments due to the Contractor in instalments, each in the amount of [insert]. The deduction shall be made starting from [month/year]\(^4\) until the advance payment is fully repaid.

(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) If at any time the [Engineer/Surveyor]\(^1\) is of the opinion that the repayment mechanism stated in sub-clause (2) 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-clause (3) 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 the Contract or any other contract between the Employer and the Contractor.

[(b) Sub-clause (2) of Special Conditions of Contract Clause [SCC 28] is hereby 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 Clause [insert] of these Special Conditions of Contract.”]\(^5\)

(c) The first sentence of Special Conditions of Contract Clause [SCC 52] is deleted and replaced 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 50 and SCC 51] of these Special Conditions of Contract as part of the Contractor’s interim statement at a frequency of once every [insert] months and as part of the Contractor’s Advance Payment Statement under Special Conditions of Contract Clause [insert].”

5. Except as amended by this letter, all the terms and conditions of the Contract [as amended by Supplementary Agreement Nos….]\(^6\) 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

\(^4\) The month/year should be counted back from the Completion Date (including if changes already granted). The amount of advance payment should be repaid in six instalments or such other number as the project team considers appropriate having regard to the project specific circumstances.

\(^5\) Sub-clause 4(b) of the letter should be deleted and sub-clause 4(c) will become sub-clause 4(b) if SCC 28((1) has already been complied with by the Contractor before the date of this letter.

\(^6\) To be incorporated where there is/are previous supplementary agreement(s).
under the Contract shall not be prejudiced in any way by this letter.

IN WITNESS WHEREOF this letter has been executed as a deed\(^7\) by the parties on the date first above written

[Please adopt appropriate execution clauses.]

\(^7\) 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.
APPENDIX 7.75  SAMPLE LETTER ON IMPLEMENTATION OF SPECIAL ADVANCE PAYMENT UNDER ONGOING CAPITAL WORKS CONTRACTS ADOPTING NEC3  
(Ref.: SDEV’s memo ref. () in DEVB(W) 510/33/02 dated 27.2.2020)

From: The Government of the Hong Kong Special Administrative Region (“Employer”)

To: [insert] (“Contractor”)

Date:

Dear Sirs,

[Contract Title and Contract No.]

The Employer and the Contractor have entered into the above contract (“this contract”) on [date].

2. In response to the novel coronavirus epidemic and with a view to minimising the impact on the cash flow of the Contractor, the Employer is desirous of making a one-off special advance payment to the Contractor, upon his request, in an amount equal to 2% of the tendered total of the Prices as set out in Contract Data Part two, which amount is capped at HK$30,000,000.

3. As Subcontractors are also facing similar hardship, the Contractor is required to share the special advance payment with its Subcontractors appropriately to ease their burden in such a difficult time. The Contractor’s cooperation 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 the following amendments to the Contract:

(a) The provisions of Secondary Option X14 are replaced by the provisions set out below which are hereby incorporated into this contract:

“Option X14 Advance payment to the Contractor

Advance payment X14

X14.1 The Contractor may request the Employer to make a one-off advance payment to the Contractor of the amount of [insert].

X14.2 (a) The Contractor submits to the Project Manager a statement requesting payment of the advance payment.

(b) The Project Manager certifies payment within [two weeks] of the date of receipt of the Advance Payment Statement.

(c) The Employer pays the advance payment to the Contractor within

---

1 The payment processing time can be shortened subject to the lead-time required by individual project team.
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[three weeks]\(^2\) from the date the Project Manager certifies the Advance Payment Statement. 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 compliance with the provisions on ethical commitment and confidentiality in Clauses [A3 and D15] of the additional conditions of contract.

X14.3 Subject to Clause X14.4 below, the advance payment is repaid to the Employer by the Contractor in instalments, each in the amount of [insert]\(^3\). An instalment is included in each amount due assessed as from [insert month/year] until the advance payment has been repaid.

X14.4 If at any time the Project Manager is of the opinion that the repayment mechanism stated in Clause X14.3 will not be sufficient to recover the entire amount of the advance payment, 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 this contract or any other contract between the Employer and the Contractor."

[(b) Clause D8(2) of the additional conditions of contract is hereby 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 X14.”]\(^4\)

(c) “X14,” is hereby added after “Secondary Options” at the first bullet point in Clause 1 of Contract Data Part one.

5. Except as amended by this letter, all the terms and conditions of this contract [as amended by Supplementary Agreement Nos….]\(^5\) 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

---

\(^2\) The payment processing time can be shortened subject to the lead-time required by individual project team.

\(^3\) The month/year should be counted back from the Completion Date (including if changes already granted). The amount of advance payment should be repaid in six instalments or such other number as the project team considers appropriate having regard to the project specific circumstances.

\(^4\) Sub-clause 4(b) of the letter should be deleted and sub-clause 4(a) will become Clause 4 if ACC Clause D8(1) has already been complied with by the Contractor before the date of this letter.

\(^5\) To be incorporated where there is/are previous supplementary agreement(s).
this letter. The Employer’s rights under this contract shall not be prejudiced in any way by this letter.

IN WITNESS WHEREOF this letter has been executed as a deed\(^6\) by the parties the day and year first above written

[Please adopt appropriate execution clauses.]

\(^6\) 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.