

Project Administration Handbook for Civil Engineering Works**2020 Edition****AMENDMENT NO. 2/2022****CHAPTER 4****PROJECT DESIGN AND ESTIMATES****PARAGRAPH 4****GUIDELINES AND POLICIES RELATED TO DESIGN**

(a) Para. 4.6.5

Add “/Slopes” after “ Projects Incorporating Permanent Reinforced Fill Structures ” at the heading.

Delete the following first to sixth paragraphs:

The long-term strength and stress-strain characteristics of many reinforcing products (e.g. polymeric reinforcing products) suitable for used in permanent reinforced fill are temperature and time dependent. These products are required to be certified by CEDD before they are used in permanent reinforced fill structures and slopes in Government projects. Individual product certificates specify the products' long-term design strengths and the conditions for use in Hong Kong. Metallic reinforcing products, the long-term strength and stress-strain characteristics of which are well established, do not require certification.

Notwithstanding certification, a structure or slope incorporating a certified reinforcing product will still need to be adequately designed by the designers, and checked by the GEO, CEDD.

Reinforcing products whose characteristics are temperature and time dependent require extensive and long-term testing well in advance of the normal design phase of a project. The certification system examines the effects of material variability, construction damage, environmental effects on material durability, and other special factors including hydrolysis, creep and stress rupture that are related to these reinforcing products. Reinforcing products that have been found satisfactory for use in permanent reinforced fill structures and slopes are certified by the CEDD. Requirements for compliance testing are also stipulated in the certificates. The list of certified reinforcing products and their details could be found at the CEDD Website.

The certification system ensures consistent and satisfactory standards in the provision of these products, facilitates their specification, and saves time for designers, contractors, manufacturers, suppliers and the Government by eliminating repetitive checking of project proposals.

When reinforcement types requiring certification are adopted in permanent reinforced fill design, the contract document should require the use of reinforcing products certified by the DCED. The model specification for reinforcing elements as recommended in Appendix A of Geoguide 6 can be used as a reference for the preparation of particular specification.

In the design, consideration should be given to ways of ensuring that the reinforcing products are not disrupted by future installation of drains or utilities. The department responsible for maintenance should be consulted at an early stage where the reinforced fill structure or slope is proposed. On completion of the works, the project department should also highlight in the slope maintenance manual any specific requirements to protect the reinforcing products, and alert the maintenance department of such requirements accordingly.

Delete “. The submission should include drawings, design calculations, the specification for the reinforced fill, and a copy of the certificate of the reinforcing product (if applicable). ” **after** “ETWB TCW No. 29/2002” **in the second last paragraph.**

Delete “A submission may be made” **before** “in two stages”, **replace** “relevant” **with** “details of” **and** “details” **with** “(polymeric product accepted by CEDD or metallic product)” **before and after** “reinforcing product”, **and delete** “In the case of reinforcing products requiring certification, the submission should also include a copy of the certificate together with justifications that the design complies with the conditions stipulated in the certificate.” **in the last paragraph.**

Add the following paragraphs after the last paragraph:

In the design, consideration should be given to ways of ensuring that the reinforcing products are not disrupted by future installation of drains or utilities. The department responsible for maintenance should be consulted at an early stage where the reinforced fill structure / slope is proposed. On completion of the works, the project department should also highlight in the slope maintenance manual any specific requirements to protect the reinforcing

products, and alert the maintenance department of such requirements accordingly.

Polymeric reinforcing products have temperature- and time-dependent long-term strength and stress-strain characteristics. These products require extensive and long-term testing well in advance of the normal design phase of a project and are required to be assessed and accepted by CEDD before they are used in permanent reinforced fill structures / slopes in Government projects.

The assessment process for prior acceptance examines polymeric reinforcing products with respect to the effects of material variability, construction damage, environmental effects on material durability, and other special factors including hydrolysis, creep and stress rupture. Design data sheets of accepted polymeric reinforcing products are issued by CEDD, specifying individual products' long-term design strengths, requirements for compliance testing and the conditions for use in Hong Kong. A product register which contains design data sheets of accepted polymeric reinforcing products can be found on CEDD Website. Metallic reinforcing products, of which the long-term strength and stress-strain characteristics are well established, do not require prior acceptance for use in Government projects.

When polymeric reinforcing products are adopted in permanent reinforced fill design, the contract document should require the use of polymeric reinforcing products accepted by CEDD. The model specification for reinforcing elements as recommended in Appendix A of Geoguide 6 can be used as a reference for the preparation of particular specification. The design submission of reinforced fill structure / slope to GEO should include a copy of the design data sheets of the accepted polymeric reinforcing products together with justifications that the design complies with the conditions stipulated in the design data sheets.

CHAPTER 5

CONTRACT DOCUMENTS

PARAGRAPH 5

CONDITIONS OF CONTRACT

(b) Para. 5.2.2

Replace “and” with “, ”, add “and 10.3.2022” before and after “5.3.2021” respectively and replace “between 1 March 2020 and 31 August 2022. A review on the need to continue the relief measure will be undertaken in mid-2022.” with “on or after 1.3.2020 until further

notice.” in the eighteenth paragraph.

Replace “and” with “, ”, add “and 10.3.2022” before and after “5.3.2021” respectively and replace “between 20 April 2020 and 31 August 2022. A review on the need to continue the relief measure will be undertaken in mid-2022.” with “on or after 20.4.2020 until further notice.” in the nineteenth paragraph.

PARAGRAPH 9

SPECIAL TOPICS

(c) Para. 9.43.4

Add “ and 10.3.2022” after “As stated in SDEV’s memo ref () in DEVB(W) 510/33/02 dated 5.3.2021” and replace “will be invited between 1 March 2020 and 31 August 2022 ” with “on or after 1.3.2020 until further notice.” in the first paragraph.

Delete “A review on the need to continue the above relief measure will be undertaken in mid-2022.” of the third paragraph.

(d) Para. 9.43.5

Add “ and 10.3.2022” after “As stated in SDEV’s memo ref () in DEVB(W) 510/33/02 dated 5.3.2021” and replace “will be invited between 1 March 2020 and 31 August 2022 ” with “on or after 1.3.2020 until further notice.” in the first paragraph.

Replace “NEC3” with “NEC” in the second paragraph.

Add the following paragraph after the second paragraph:

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

Delete the following paragraph:

A review on the need to continue the above relief measure will be undertaken in mid-2022.

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

PARAGRAPH 12 REFERENCES

(e)

Add the following references:

SDEV’s memo ref. () in DEVB(W) 510/33/02 dated 10.3.2022	Extension of Interim Relief Measure to Assist the Construction Industry – Advance Payment under New Capital Works Contracts
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SDEV’s memos ref. () in DEVB(W) 510/33/02 dated 10.3.2022	Extension of Interim Relief Measure to Assist the Construction Industry – Advance Payment under New Term Contracts
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APPENDICES

(f) Appendix 5.47A

Replace “between” with “on or after” and delete “ and 31 August 2022 (both dates inclusive)” before and after “1 March 2020” respectively in the first paragraph.

Replace “A review on the need to continue the relief measure will be undertaken in mid-2022.” with “This relief measure will be implemented until further notice.” in footnote 2.

(g) Appendix 5.47E

Add the appendix given in Annex A to this Amendment.

- (h) Appendix 5.47F **Add the appendix given in Annex B to this Amendment.**

CHAPTER 6

TENDER PROCEDURE

PARAGRAPH 7

ACCEPTANCE OF TENDER

- (i) Para. 7.3 (h) **Replace “and” with “,” and add “and ()” before and after “(03969)” respectively.**

Replace “and” with “,” and add “and 10.3.2022” before and after “12.5.2021” respectively.

PARAGRAPH 12

REFERENCES

- (j) **Add the following reference:**

SDEV’s memo ref() in DEVB(W) 510/33/02 dated 10.3.2022	Extension of Interim Relief Measure to Assist the Construction Industry Streamlining the Approval Process of Contract Assignment
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APPENDICES

- (k) Appendix 6.17 **Delete “during the period 1 February 2020 – 31 August 2022 both dates inclusive” after “Letter of Acceptance to be issued”, replace “ SDEV’s memo ref. (0348H-01) and (03969) in DEVB(W) 510/33/02 dated 3.1.2020 and 12.5.2021” with “ SDEV’s memos ref. (0348H-01), (03969) and () in DEVB(W) 510/33/02 dated 3.1.2020, 12.5.2021 and 10.3.2022” in Note #.**

CHAPTER 7

CONTRACT MANAGEMENT

PARAGRAPH 7

CONTRACT PAYMENTS

- (l) Para 7.7 **Delete “31.3.2020, 7.4.2020, 28.5.2020, 5.6.2020 and” and add “, 10.3.2022 and 15.3.2022” after “5.3.2021” under the heading.**

Add the sub-heading “Extension of the “advance payment” mechanism” after the third paragraph.

Add the following paragraphs after the fifth

paragraph:**“Special advance payment (5th wave)” arrangement**

Similar to the arrangement promulgated under SDEV’s memo ref. () in DEVB(W) 510/33/02 dated 27 February 2020, SDEV introduced a one-off “special advance payment (5th wave)” arrangement for ongoing capital works contracts further to his memo of the same series dated 15 March 2022. To enable proper implementation of the one-off “special advance payment (5th wave)” arrangement, a supplementary agreement shall be executed between the contracting parties through exchange of correspondences following the sample letter at Appendix 7.76 or 7.77, 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. For contracts adopting NEC4, necessary amendments to Appendix 7.77 shall be made and clearance by LAD(W) may be sought in case of doubt. In case project teams consider it not appropriate to implement the “special advance payment (5th wave)” 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 (5th wave)” 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 (5th wave)” arrangement shall apply to all ongoing capital works contracts awarded on or before **31 December 2021**, irrespective of whether a similar advance payment has been made before pursuant to SDEV’s memos ref. DEVB(W) 510/33/02 dated 14 February 2020 or 27 February 2020.

With reference to SDEV’s memo ref. () in DEVB(W) 510/33/02 dated 10 March 2022, further to his memo of the same series dated 14 February 2020 and 5 March 2021, SDEV further extended the “advance payment” mechanism until further notice. In other words, capital works contracts meeting the relevant ambit shall adopt the “advance payment” mechanism.

Delete the following paragraphs before the last paragraph:

With reference to SDEV's memo ref. () in DEVB(W) 510/33/02 dated 31 March 2020 and 28 May 2020, further to his memo of the same series dated 27 February 2020, SDEV extended the "special advance payment" arrangement to cover ongoing term contracts. To enable proper implementation of the "special advance payment" arrangement, a supplementary agreement shall be executed between the contracting parties through exchange of correspondences following the sample letter at Appendix 7.76 or 7.77, as appropriate, with reference to the following table. 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 with no works orders that meet the revised criteria in Appendix 7.78, high risk of re-entry, very poor performance of the contractor, etc. The "special advance payment" arrangement shall apply to all ongoing term contracts awarded before 1 April 2020.

	For GCC Contracts	For NEC3 Contracts	Remark
(i)	Appendix 7.76A	Appendix 7.77A	Use when the sample letter under SDEV's memo dated 31.3.2020 has not been signed as at 28.5.2020.
(ii)	Appendix 7.76B	Appendix 7.77B	Use when the sample letter under SDEV's memo dated 31.3.2020 has been signed as at 28.5.2020 ⁴ .

With reference to SDEV's memo ref. () in DEVB(W) 510/33/02 dated 5 March 2021, further to his memos of the same series dated 31 March 2020 and 28 May 2020, SDEV extended the period of "special advance payment" arrangement for Works Orders issued under the ongoing term contracts. Pursuant to the aforementioned memos, the "special advance payment" arrangement shall apply to ongoing term contracts awarded before 1 April 2020. Under these contracts, Works Orders satisfying the prescribed criteria issued on or before 31 March 2021 are eligible for making "special advance payment". The end date will be extended by one more year (i.e. till 31 March 2022), if the Overall Cap of HK\$10M has not been reached.

For term contracts awarded in the period between 1 April 2020 and 31 March 2021, for which a similar advance payment arrangement has been adopted, the end date of the arrangement will also be extended to 31 March 2022 if the Overall Cap of HK\$10M has not been reached.

To enable proper implementation of the extended “special advance payment” arrangement, a supplementary agreement shall be executed between the contracting parties through exchange of correspondences following the sample letters at Appendix 7.76 or 7.77, as appropriate, with reference to the following table:

	For GCC Contracts	For NEC3 [#] Contracts	Remarks
(i)	Appendix 7.76C	Appendix 7.77C	For term contracts awarded before 1 April 2020 (where supplementary agreements pursuant to SDEV’s memo dated 28 May 2020 have been executed).
(ii)	Appendix 7.76D	Appendix 7.77D	For term contracts awarded in the period between 1 April 2020 and 31 March 2021 (where the relevant provisions for contracts under SDEV’s memos dated 5 June 2020 or dated 7 April 2020, as the case may be, have been included in the contracts).

Note

For contracts adopting NEC4, necessary amendments to Appendix 7.77C / Appendix 7.77D shall be made and clearance by LAD(W) shall be sought.

In case officers responsible for administering term contracts consider it not appropriate to extend the “special advance payment” arrangement under individual term 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, for

example, contracts with no Works Orders eligible for making advance payment, high risk of re-entry, very poor performance of the contractor, etc.

With reference to SDEV's memos ref. () in DEVB(W) 510/33/02 dated 7 April 2020 and 5 June 2020 respectively, further to his memo of the same series dated 31 March 2020, SDEV further extended the interim relief measure of "advance payment" mechanism to cover new term contracts adopting selecting tendering. The relevant provisions for contracts adopting GCC and NEC3 are set out at Appendix 5.47C and 5.47D of PAH Chapter 5 respectively. For contracts adopting NEC4, necessary amendments to Appendix 5.47D of PAH Chapter 5 shall be made and clearance by LAD(W) shall be sought. The interim measure shall apply to new term contracts for which tenders are invited on or after 20 April 2020. For contracts which are currently under tendering stage or have been awarded on or after 1 April 2020 that cannot be covered by the relief measure as promulgated in SDEV's memo dated 31 March 2020, departments may, where situation permits, incorporate the provisions in the contracts by way of tender addendum or supplementary agreement, as appropriate. The revised criteria for eligible works orders are given in Appendix 7.79. In case officers responsible for administering term contracts consider it not appropriate to implement the "advance payment" arrangement under individual term contracts, approval from an officer at D2 rank or above shall be obtained, with justifications kept in the file records. The interim measure will be implemented up to 31 August 2021. A review on its effectiveness will be undertaken before that date.

With reference to SDEV's memo ref. () in DEVB(W) 510/33/02 dated 5 March 2021, further to his memos of the same series dated 7 April 2020 and 5 June 2020, SDEV extended the "advance payment" mechanism by one more year till 31 August 2022. In other words, term contracts meeting the relevant ambit and with tenders to be invited on or before 31 August 2022 shall adopt the "advance payment" mechanism. SDEV will review the need to continue the above relief measure in mid-2022.

Add the following paragraph before the last paragraph:

With reference to SDEV's memo ref. () in DEVB(W) 510/33/02 dated 10 March 2022, further to his memo of the same series dated 3 January 2020 and 12 May 2021, SDEV further extended the interim relief measure to

streamline the approval process of contract assignment **until further notice**. In other words, the paragraph granting the in-principle consent to contractors for an assignment pursuant to SDEV's memo dated 3 January 2020 may be incorporated in the Letter of Acceptance to be issued if applicable.

PARAGRAPH 22 REFERENCES

(m)

Delete the following references:

SDEV's memo ref. () in DEVB(W) 510/33/02 dated 7.4.2020 and 5.6.2020	Interim Relief Measure to Assist the Contraction Industry – Advance Payment under New Term Contracts
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SDEV's memo ref. () in DEVB(W) 510/33/02 dated 31.3.2020 and 28.5.2020	Interim Relief Measure to Assist the Contraction Industry – Special Advance Payment under Ongoing Term Contracts
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SDEV's memo ref. () in DEVB(W) 510/33/02 dated 5.3.2021	Extension of Interim Relief Measure to Assist the Construction Industry – Special Advance Payment under Ongoing Term Contracts
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SDEV's memo ref. () in DEVB(W) 510/33/02 dated 5.3.2021	Extension of Interim Relief Measure to Assist the Construction Industry – Advance Payment under New Term Contracts
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Add the following references:

SDEV's memo ref. () in DEVB(W) 510/33/02 dated 10.3.2022	Extension of Interim Relief Measure to Assist the Construction Industry – Advance Payment under New Capital Works Contracts
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SDEV's memo ref. () in DEVB(W) 510/33/02	Extension of Interim Relief Measure to Assist the Construction Industry – Streamlining the Approval Process of Contract
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dated 10.3.2022	Assignment
SDEV's memo ref. () in DEVB(W) 510/33/02 dated 15.3.2022	Interim Relief Measure to Combat the 5 th Wave of the COVID-19 Pandemic – Special Advance Payment for Ongoing Capital Works Contracts

APPENDICES

- (n) Appendix 7.76 **Add the new appendix given in Annex C to this Amendment.**
- (o) Appendix 7.76A **Replace the appendix with that given in Annex D to this Amendment.**
- (p) Appendix 7.76B **Replace the appendix with that given in Annex E to this Amendment.**
- (q) Appendix 7.76C **Replace the appendix with that given in Annex F to this Amendment.**
- (r) Appendix 7.76D **Replace the appendix with that given in Annex G to this Amendment.**
- (s) Appendix 7.77 **Add the new appendix given in Annex H to this Amendment.**
- (t) Appendix 7.77A **Replace the appendix with that given in Annex I to this Amendment.**
- (u) Appendix 7.77B **Replace the appendix with that given in Annex J to this Amendment.**
- (v) Appendix 7.77C **Replace the appendix with that given in Annex K to this Amendment.**
- (w) Appendix 7.77D **Replace the appendix with that given in Annex L to this Amendment.**
- (x) Appendix 7.78 **Replace the appendix with that given in Annex M to this Amendment.**
- (y) Appendix 7.79 **Replace the appendix with that given in Annex N to this Amendment.**

CHAPTER 8 **TERM CONTRACT WORKS****PARAGRAPH 5** **TERM CONTRACTS**

- (z) Para 5.6 **Replace “and” with “,” and add “and 10.3.2022” after “5.3.2021” in the second paragraph.**

PARAGRAPH 6 **REFERENCES**

- (aa) **Add the following references:**

SDEV’s memo ref. () in DEVB(W) 510/33/02 dated 10.3.2022	Extension of Interim Relief Measure to Assist the Construction Industry – Special Advance Payment under Ongoing Term Contracts
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SDEV’s memo ref. () in DEVB(W) 510/33/02 dated 10.3.2022	Extension of Interim Relief Measure to Assist the Construction Industry – Advance Payment under New Term Contracts
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**Quality Management & Standards Unit
Civil Engineering and Development Department
10 June 2022**

APPENDIX 5.47E CONTRACT PROVISIONS FOR NEW ARRANGEMENT ON ADVANCE PAYMENT FOR TERM CONTRACTS ADOPTING GCC (for new term contracts with tenders to be invited on or after 31.3.2022)

The following Notes to Tenderers and Special Conditions of Contract shall be included in the tender documents for all term contracts adopting General Conditions of Contract for Term Contracts for Civil Engineering Works (2002 Edition), General Conditions of Contract for Term Contract for Building Works (2004 Edition) and General Conditions of Contract for E&M Works (2007 Edition).

Notes to Tenderers

Tenderers' attention is drawn to Special Conditions of Contract Clause [x][#] setting out the details of advance payment to the Contractor and the repayment arrangement thereof.

Special Conditions of Contract¹

SCC[x][#] –

- (1) Within 14 calendar days after the commencement of the Contract Period (“Application Period”), the Contractor may make no more than one request for an advance payment from the Employer in accordance with the provisions of this clause. The advance payment shall be in an amount that is the lesser of (i) an amount equal to five percent (5%) of the Estimated Average Annual Expenditure, and (ii) HK\$10,000,000. The Estimated Average Annual Expenditure shall be determined in accordance with Appendix [][#] to the Special Conditions of Contract.
- (2) A request for an advance payment under sub-clause (1) shall be in the form of a written statement [set out in [][#]/setting out the amount of payment requested]^{*} duly signed by the Contractor (“Advance Payment Statement”) and submitted to the [Engineer/Maintenance Surveyor]^{*} within the Application Period. The Contractor is not entitled to any advance payment if the Advance Payment Statement is submitted after the expiry of the Application Period.
- (3) Within 21 days after the delivery of the Advance Payment Statement to the [Engineer/ Maintenance Surveyor]^{*}, if the [Engineer/ Maintenance Surveyor]^{*} is satisfied that the Advance Payment Statement is submitted in accordance with sub-clause (2) [and the conditions in Special Conditions of Contract Clause [][#] are satisfied]², he shall issue to the Employer a certificate certifying the amount of advance payment calculated in

¹ If the standard SCC [] on Security or sureties is adopted, the use of this SCC on advance payment will need to be reviewed in consultation with DEVB.

² Please insert other conditions precedent to payment if applicable.

accordance with sub-clause (1), which is to be paid to the Contractor in response to the Advance Payment Statement. The Employer shall pay the amount so certified (“Advance Payment”) to the Contractor within 21 days after his receipt of the certificate issued by the [Engineer/ Maintenance Surveyor]*. The Employer shall not be liable to pay the Contractor any interest if for any reason whatsoever, any Advance Payment is made after the 21-day period aforesaid.

- (4) Notwithstanding any other provisions of the Contract but subject to sub-clauses (6) and (7) below, the amount of Advance Payment shall be fully accounted for and offset against payments certified by the [Engineer/ Maintenance Surveyor]* as due to the Contractor under the Contract during the Deduction Period specified in paragraph (i) below (collectively, “Certified Payments” and each a “Certified Payment”). Unless otherwise decided by the [Engineer/ Maintenance Surveyor]*¹

(i) the Deduction Period shall be a period of [12][#] months commencing from the date falling 6 months after the commencement date of the Contract Period;

(ii) a deduction shall be made from each of the first [12][#] Certified Payments certified in the Deduction Period; and

(iii) the amount to be deducted from each Certified Payment shall be calculated by dividing the amount of Advance Payment by [12][#]²

- (5) No deduction shall be regarded to have been made to a Certified Payment for the purpose of this Clause unless and until the Employer has paid the Contractor the balance of the Certified Payment, or if no such sum is payable by the Employer, the Employer has acknowledged the amount calculated in accordance with sub-clause (4)(iii) has been otherwise duly accounted for.

- (6) The Contractor shall pay the Employer the balance of any Advance Payment not yet deducted from the Certified Payments immediately upon occurrence of any of the following events:

¹ The Engineer/ Maintenance Surveyor may take the forecast applications for payment to be submitted by the Contractor into consideration when exercising his discretion in agreeing other repayment arrangement with the Contractor.

² For the repayment arrangement, the project team is given the discretion to determine (i) the Deduction Period, (ii) the Certified Payments from which the deductions are made and (iii) the amount to be deducted from each Certified Payment. The project team may make alternative arrangement to suit their particular term contracts taking into consideration of the circumstances like payment mechanism, funding source, etc. Subject to the project team’s determination on the repayment arrangement, normally, the deduction shall be made in 12 instalments equal to 1/12 of the advance payment within the 12-month period. Unless otherwise approved by DEVB, the 12-month period for repayment should not be adjusted shorter than 6 months or longer than 18 months. The project team should ensure that the advance payment will be deducted in full from interim payment(s).

- (i) termination of the Contract;
 - (ii) the Contractor's abandonment of the Contract; and
 - (iii) determination of the Contractor's employment in accordance with General Conditions of Contract Clause [84/87]*.
- (7) The [Engineer/ Maintenance Surveyor]* may adjust the amount to be deducted from each Certified Payment and/or the number of Certified Payments to which deductions may be made under sub-clause (4) to ensure that the Advance Payment is fully accounted for and offset against the Certified Payments by the end of the Deduction Period. If at any time the [Engineer/ Maintenance Surveyor]* is of the opinion that notwithstanding the adjustments, it is unlikely that the Advance Payment can be fully accounted for and offset against the Certified Payments by the end of the Deduction Period, the [Engineer/ Maintenance Surveyor]* shall immediately notify the Employer and the Contractor in writing. In such event, the Employer is entitled to offset the whole or part of such Advance Payment not yet deducted from Certified Payments against monies due to the Contractor under the Contract or any other contract between the Employer and the Contractor.
- (8) Sub-clause (2) of Special Conditions of Contract Clause []# on ISO 9000 Certification for the Contractor is deleted and replaced by the following:

“Notwithstanding any other provisions in the Contract, compliance with sub-clause (1) of this Clause shall be a condition precedent to the Contractor's entitlement to any payment or any further payment as the case may be under the Contract provided that this condition precedent does not apply to the Advance Payment under Special Conditions of Contract Clause [x] #.”
- (9) Special Conditions of Contract Clause []# on submission of signed declaration to confirm compliance with the provisions on ethical commitment and confidentiality is deleted and replaced by the following:

“The Contractor shall submit a signed declaration in a form prescribed or approved by the Employer to confirm the Contractor's compliance with the provisions on ethical commitment and confidentiality in Special Conditions of Contract Clauses []# and []#. The first signed declaration shall be submitted with the Advance Payment Statement. Thereafter, the signed declaration shall be submitted once every []# months after the commencement of the Contract Period and together with the Contractor's interim statement then due. If the Contractor fails to submit the duly signed declaration with the

Advance Payment Statement, the Employer is entitled to withhold payment of the Advance Payment until such declaration is submitted.”

Amendment to Appendix [] to Special Conditions of Contract – Security of Payment (SOP) Provisions¹

The following provision shall be inserted after SOP Clause 2(2)(b) in Appendix [][#] to Special Conditions of Contract Clause [][#] on Security of Payment Provisions:

“(c) the date, which is the commencement of the Contract Period, for the advance payment under Special Conditions of Contract Clauses [X][#].”

- * Delete/ Modify as appropriate
- # Insert as appropriate.

¹ In the SOP provisions set out in Annex C of DEVB TC(W) 6/2021, for (i) term contracts using GCC for Term Contracts for Civil Engineering Works, 2002 Ed. or GCC for Term Contracts for E&M Engineering Works, 2007 Ed., and (ii) term contracts using GCC for Term Contracts for Building Works, 2004 Ed. (using Clauses 79B and 80B), SOP Clause 2(2)(c) has to be deleted if the advance payment under term contracts promulgated in DEVB’s memos of 5.6.2020 and 5.3.2021 is not adopted. A new SOP Clause 2(2)(c) should be included in contracts adopting advance payment mechanism promulgated in this memo.

Appendix to Special Conditions of Contract

Notwithstanding any other provision of the Contract, for the purpose of Special Conditions of Contract Clause [x][#], the Estimated Average Annual Expenditure shall be determined as follows:-

Version A

[Note: The definition of “Estimated Average Annual Expenditure” in Version A is drafted based on the sample format of Grand Summary of the Schedule of Percentages (attached at Annex A) where the “Total Value for Tender Assessment” is expressed in monetary value. Amendments should be made to suit the requirements of different term contracts and to match with the pricing document adopted in the contract.]

“Estimated Average Annual Expenditure” is an amount equal to the Total Value for Tender Assessment (excluding contingency sums and provisional sums) divided by the number of years in the Contract Period, where:

- (i) Total Value for Tender Assessment (excluding contingency sums and provisional sums) is [the amount set out in the Grand Summary of the Schedule of Percentages opposite “Subtotal of above (A)”]** after correction in accordance with relevant correction rules specified in the tender documents if any; and
- (ii) for the purpose of Special Conditions of Contract [x][#], the number of years in the Contract Period is []¹.

Version B

[Note: The definition of “Estimated Average Annual Expenditure” in Version B is drafted based on the sample format of the Schedule of Percentages (attached at Annex B) where the “Total Values for Tender Assessment” is the summation of the Value of Tender Assessment in column (7) of the Schedule of Percentages. Amendments should be made to suit the requirements of different term contracts and to match with the pricing document adopted in the contract.]

“Estimated Average Annual Expenditure” is an amount equal to the Estimated Total Expenditure (excluding contingency sums and provisional sums) multiplied by (1 + the Total Value for Tender Assessment (in percentage)) divided by the number of years in the Contract Period, where

- (i) Estimated Total Expenditure (excluding contingency sums and

¹ The amount to be inserted shall be determined based on the number of months in the Contract Period (an incomplete month shall not be taken into account) divided by 12 and the result shall be rounded to nearest 0.5 year.

provisional sums) is []^{#1}; and

- (ii) Total Value for Tender Assessment (in percentage) is [the summation of the values in column [7][#] of the Schedule of Percentages]^{**} after correction in accordance with relevant correction rules specified in the tender documents if any; and
- (iii) for the purpose of Special Conditions of Contract [x][#], the number of years in the Contract Period is []².

Insert as appropriate.

** Revise as appropriate

¹ The amount to be inserted shall be determined based on the Estimated Total Expenditure as specified under standard General Conditions of Tender on “Estimated Total Expenditure” with deduction of contingency sums and provisional sums, if there is any.

² The amount to be inserted shall be determined based on the number of months in Contract Period (an incomplete month shall not be taken into account) divided by 12 and the result shall be rounded to nearest 0.5 year.

Annex A – Sample Format of Grand Summary of the Schedule of Percentages in Term Contracts (GCC form)

Page	Description	Value for Tender Assessment (\$ M)
...	...	
	Sub-total of above (A) [To be calculated based on the weighting factors and the contract percentages, the estimated total expenditure but excluding the estimated contingency sums and provisional sums]	
	Contingency sum* (B)	<i>Insert by project office before tender invitation</i>
	Provisional sum for price adjustment for inflation* (C)	<i>Insert by project office before tender invitation</i>
	Sub-total of all contingency sums and provisional sums above* (D) = (B) + (C)	
	Total Value for Tender Assessment (TVTA) for tender assessment purpose* (E) = (A) + (D)	To be completed by the Engineer designate after receipt of tender

*Remarks:

- (1) The contingency sums, provisional sums and Total Value for Tender Assessment (TVTA) shall not form part of this contract. Please refer to Special Conditions of Contract Clause [].

Annex B – Sample Format of Schedule of Percentages (GCC form)**Schedule of Percentages**

Section No. of Schedule of Rates	Item No. of Schedule of Rates	Section Percentage (whole number) (%)	Adjustment Percentage (whole number) (%)	Contract Percentage (%)	Weighting Factor	Value for Tender Assessment (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
SECTION 01			*PLUS / MINUS %			
SECTION 02						
SECTION 03						
SECTION 04						
SECTION 05						
SECTION 07						
SECTION 08						
SECTION 09						
SECTION 10						
SECTION 11						
SECTION 12						
SECTION 14						
SECTION 16						
SECTION 19						
SECTION 22						
SECTION 24						
SECTION 26						
SECTION 27						
SECTION 28						
				Total	1.000	

*Delete or modify as appropriate

APPENDIX 5.47F CONTRACT PROVISIONS FOR NEW ARRANGEMENT ON ADVANCE PAYMENT FOR TERM CONTRACTS ADOPTING NEC3/4 (for new term contracts with tenders to be invited on or after 31.3.2022)

Notes to Tenderers

Tenderers' attention is drawn to Clause [D32]# of the *additional conditions of contract* setting out the details of advance payment to the *Contractor* and the repayment arrangement thereof.

Inclusion of a new *additional conditions of contract*¹

Clause No.	Details
[D32]#	<p>(1) Within 14 calendar days after the <i>starting date</i> (“Application Period”), the <i>Contractor</i> may make no more than one request for an advance payment from the <i>Employer*</i> in accordance with the provisions of this clause. The advance payment shall be in an amount that is the lesser of (i) an amount equal to five percent (5%) of the Estimated Average Annual Expenditure, and (ii) HK\$10,000,000. The Estimated Average Annual Expenditure shall be determined in accordance with Appendix []# to the <i>additional conditions of contract</i>.</p> <p>(2) A request for an advance payment under sub-clause (1) shall be in the form of a written statement [set out in []#/setting out the amount of payment requested]* duly signed by the <i>Contractor</i> (“Advance Payment Statement”) and submitted to the <i>Service Manager</i> within the Application Period. The <i>Contractor</i> is not entitled to any advance payment if the Advance Payment Statement is submitted after the expiry of the Application Period.</p> <p>(3) If the <i>Service Manager</i> is satisfied that the Advance Payment Statement is submitted in accordance with sub-clause (2) [and the conditions in Clause []# of the <i>additional conditions of contract</i> are satisfied]², the <i>Service Manager</i> certifies in the Advance Payment Statement the amount of advance payment calculated in accordance with sub-clause (1) within [one week]³ of the date of his receipt of the Advance Payment Statement.</p> <p>(4) Subject to sub-clause (5), the <i>Employer*</i> pays the amount so certified (“Advance Payment”) to the <i>Contractor</i> within [three weeks]⁴ from the date the <i>Service Manager</i> certifies the Advance Payment Statement. The <i>Employer*</i> is not liable to pay the <i>Contractor</i> any interest if for any reason whatsoever, an Advance Payment is made after the three-week</p>

¹ If a performance bond is required, the use of this *additional condition of contract* on advance payment will need to be reviewed in consultation with DEVB.

² Please insert other conditions precedent to payment if applicable.

³ The payment processing time can be shortened subject to the lead-time required by individual project team.

⁴ The payment processing time can be shortened subject to the lead-time required by individual project team.

period aforesaid. For the avoidance of doubt, late payment of the Advance Payment to *the Contractor* does not constitute a compensation event.

(5) *The Contractor* must submit with the Advance Payment Statement a declaration signed by the *Contractor* in a form prescribed and accepted by the *Employer** to confirm compliance with the provisions on confidentiality and ethical commitment in Clauses [A3 and D15]#. If the *Contractor* fails to submit the duly signed declaration with the Advance Payment Statement, the *Employer** is entitled to withhold payment of the Advance Payment until such declaration is submitted.

(6) Notwithstanding any other provisions of this contract but subject to sub-clauses (8) and (9) below, the amount of Advance Payment shall be fully accounted for and offset against payments certified by the *Service Manger* as due to the *Contractor* under this contract during the Deduction Period specified in paragraph (i) below (collectively, “Certified Payments” and each a “Certified Payment”). Unless otherwise decided by the *Service Manager*¹:

[i] the Deduction Period is a period of [12]# months commencing from the date falling 6 months after the *starting date*;

[ii] a deduction is made from each of the first [12]# Certified Payments certified in the Deduction Period; and

[iii] the amount to be deducted from each Certified Payment is calculated by dividing the amount of Advance Payment by [12]#².

(7) No deduction shall be regarded to have been made to a Certified Payment for the purpose of this Clause unless and until the *Employer** has paid the *Contractor* the balance of the Certified Payment, or if no such sum is payable by the *Employer**, the *Employer** has acknowledged the amount calculated in accordance with sub-clause (6)(iii) has been otherwise duly accounted for.

(8) *The Contractor* shall pay the *Employer** the balance of any Advance Payment not yet deducted from the Certified Payments immediately upon the expiry or earlier termination of this contract.

1 The Service Manager may take the forecast applications for payment to be submitted by the Contractor into consideration when exercising his discretion in agreeing other repayment arrangement with the Contractor.

2 For the repayment arrangement, the project team is given the discretion to determine (i) the Deduction Period, (ii) the Certified Payments from which the deductions are made and (iii) the amount to be deducted from each Certified Payment. The project team may make alternative arrangement to suit their particular term contracts taking into consideration of the circumstances like payment mechanism, funding source, etc. Subject to the project team's determination on the repayment arrangement, normally, the deduction shall be made in 12 instalments equal to 1/12 of the advance payment within the 12-month period. Unless otherwise approved by DEVB, the 12-month period for repayment should not be adjusted shorter than 6 months or longer than 18 months. The project team should ensure that the advance payment will be deducted in full from interim payment(s).

	<p>(9) The <i>Service Manager</i> may adjust the amount to be deducted from each Certified Payment and/or the number of Certified Payments to which deductions may be made under sub-clause (6) to ensure that the Advance Payment is fully accounted for and offset against the Certified Payments by the end of the Deduction Period. If at any time the <i>Service Manager</i> is of the opinion that notwithstanding the adjustments, it is unlikely that the Advance Payment can be fully accounted for and offset against the Certified Payments by the end of the Deduction Period, the <i>Service Manager</i> immediately notifies the <i>Employer*</i> and the <i>Contractor</i>. In such event, the <i>Employer*</i> is entitled to offset the whole or part of such Advance Payment not yet deducted from Certified Payments against monies due to the <i>Contractor</i> under this contract or any other contract between the <i>Employer*</i> and the <i>Contractor</i>.</p>
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Amendment to Core Clause 93.1

93.1	Add	<p>At the end</p> <p>“but after deduction of the balance of any Advance Payment not yet deducted from the Certified Payments.”</p>
------	-----	--

Amendment to additional conditions of contract

ACC Clause D8(2) should be deleted and replaced by the following:

“Notwithstanding any other provisions in this contract, compliance with sub-clause (1) of this Clause shall be a condition precedent to the *Contractor*’s entitlement to any payment or any further payment as the case may be under this contract provided that this condition precedent does not apply to the advance payment under Clause [D32]# of these *additional conditions of contract*.”

Amendment to Appendix []# to additional conditions of contract – Security of Payment (SOP) Provision¹

The following provision is inserted after SOP Clause 2(2)(a) in Appendix []# to Clause []# of the *additional conditions of contract* on Security of Payment Provisions:

“the date, which is the *starting date*, for the advance payment under Clause [D32]# of the *additional conditions of contract*.”

* Use “*Employer*” for NEC3 TSC and “*Client*” for NEC4 TSC

Insert as appropriate.

¹ In the SOP provisions set out in Annex C of DEVB TC(W) 6/2021, for NEC 3 TSC, SOP Clause 2(2)(b) has to be deleted if the advance payment under term contracts promulgated in DEVB’s memos of 5.6.2020 and 5.3.2021 is not adopted. A new SOP Clause 2(2)(b) should be included in NEC 3 TSCs adopting advance payment mechanism promulgated in this memo.

Appendix to the *additional conditions of contract*

Notwithstanding any other provision of this contract, for the purpose of Clause [D32][#] of the *additional conditions of contract*, the Estimated Average Annual Expenditure shall be determined as follows:-

Version A

[Note: The definition of “Estimated Average Annual Expenditure” in Version A is drafted based on the sample format of Grand Summary of the Schedule of Percentages (attached at Annex A) where the “Total Value for Tender Assessment” is expressed in monetary value. Amendments should be made to suit the requirements of different term contracts and to match with the pricing document adopted in the contract.]

“Estimated Average Annual Expenditure” is an amount equal to the Total Value for Tender Assessment (excluding contingency sums and provisional sums) divided by the number of years in the *service period*, where

- (i) Total Value for Tender Assessment (excluding contingency sums and provisional sums) is [the amount set out in the Grand Summary of the Schedule of Percentages opposite “Subtotal of above (A)”]** after correction in accordance with relevant correction rules specified in the tender documents if any; and
- (ii) for the purpose of Clause [x][#] of the *additional conditions of contract*, the number of years in the *service period* is []¹

Version B

[Note: The definition of “Estimated Average Annual Expenditure” in Version B is drafted based on the sample format of the Schedule of Percentages (attached at Annex B) where the “Total Values for Tender Assessment” is the summation of the Value of Tender Assessment in column (7) of the Schedule of Percentages. Amendments should be made to suit the requirements of different term contracts and to match with the pricing document adopted in the contract.]

“Estimated Average Annual Expenditure” is an amount equal to the Estimated Total Expenditure (excluding contingency sums and provisional sums) multiplied by (1 + the Total Value for Tender Assessment (excluding contingency sums and provisional sums) (in percentage) divided by the Total Weighting Factor (excluding contingency sums and provisional sums)) divided by the number of years in the *service period*, where

- (i) Estimated Total Expenditure (excluding contingency sums and provisional sums) is [][#];
- (ii) Total Value for Tender Assessment (excluding contingency sums and provisional sums) (in percentage) is [the amount set out in column [7]][#] of

¹ The amount to be inserted shall be determined based on the number of months in the *service period* (an incomplete month shall not be taken into account) divided by 12 and the result shall be rounded to nearest 0.5 year.

the Schedule of Percentages opposite “Total Value for Tender Assessment (excluding contingency sums and provisional sums)”]** after correction in accordance with relevant correction rules specified in the tender documents if any;

- (iii) Total Weighting Factor (excluding contingency sums and provisional sums) is []¹; and
- (iv) for the purpose of Clause [x][#] of the *additional conditions of contract*, the number of years in the *service period* is []²

Insert as appropriate.

** Revise as appropriate

¹ The amount set out in column [6] of the Schedule of Percentages opposite “Total Value for Tender Assessment (excluding contingency sums and provisional sums)” shall be inserted.

² The amount to be inserted shall be determined based on the number of months in the *service period* (an incomplete month shall not be taken into account) divided by 12 and the result shall be rounded to nearest 0.5 year.

Annex A – Sample Format of Grand Summary of the Schedule of Percentages in NEC TSC Contracts

Page	Description	Value for Tender Assessment
...	...	
	Sub-total of above (A) [To be calculated based on the weighting factors and the <i>contract percentages</i> , the estimated total expenditure but excluding the estimated contingency sums and provisional sums]	
	Contingency sum for Defined Cost for compensation events* (B)	<i>Insert by project office before tender invitation</i>
	Contingency sum for Fee for compensation events* (C) = (B) x <i>fee percentage</i> inserted by the tenderer in the Contract Data Part two	
	Provisional sum for price adjustment for inflation under Secondary Option X1* (D)	<i>Insert by project office before tender invitation</i>
	Sub-total of all contingency sums and provisional sums above* (E) = (B) + (C) + (D)	
	Forecast total of the Prices** / Total Value for Tender Assessment (TVTA)** for tender assessment purpose* (F) = (A) + (E)	To be completed by the <i>Service Manager</i> designate after receipt of tender

*Remarks:

- (1) The contingency sums, provisional sums and forecast total of the Prices** / Total Value for Tender Assessment (TVTA)** shall not form part of this contract. Please refer to Clause [A7] of the *additional conditions of contract*.

**Delete as appropriate

Annex B – Sample Format of Schedule of Percentages (NEC form)**Schedule of Percentages**

Section No. of Schedule of Rates in Price List	Item No. of Schedule of Rates in Price List	Section Percentage (whole number) (%)	Adjustment Percentage (whole number) (%)	<i>contract percentage</i> (whole number) (%)	Weighting factor	Value for Tender Assessment (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
SECTION 01			*PLUS / MINUS %			
SECTION 02						
SECTION 03						
SECTION 04						
SECTION 05						
SECTION 07						
SECTION 08						
SECTION 09						
SECTION 10						
SECTION 11						
SECTION 12						
SECTION 14						
SECTION 16						
SECTION 19						
SECTION 22						
SECTION 24						
SECTION 26						
SECTION 27						
SECTION 28						
Total Value for Tender Assessment excluding contingency sums and provisional sums **						(A)
Contingency sum for Defined Cost for compensation events**				/	(B)	/
Contingency sum for Fee for compensation events** (C) = (B) × <i>fee percentage</i>				/		(C)
Provisional sum for price adjustment for inflation**				/		(D)
Total Value for Tender Assessment (TVTA) ** (E) = (A) + (C) + (D)				/	1.0000	(E)

* Delete whichever is inapplicable

** The contingency sums, provisional sums and Total Value for Tender Assessment (TVTA) shall not form part of this contract. Please refer to Clause [A7] of the *additional conditions of contract*.

APPENDIX 7.76 SAMPLE LETTER ON IMPLEMENTATION OF SPECIAL ADVANCE PAYMENT (5th WAVE) UNDER ONGOING CAPITAL WORKS CONTRACTS ADOPTING GCC
(Ref.: SDEV’s memo ref. () in DEVB(W) 510/33/02 dated 15.3.2022)

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

To: [insert] (“**Contractor**”)

Date:

Dear Sirs,

[Contract Title and Contract No.]

Special Advance Payment (5th Wave)

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

2. In response to the 5th wave of the COVID-19 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 for the 5th Wave 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. [This one-off special advance payment for the 5th Wave is separate and distinctive from the advance payment made under Clause [insert] of these Special Conditions of Contract.]¹.

3. As subcontractors are also facing similar hardship, the Contractor is required to share the special advance payment for the 5th Wave 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). The Contractor will be requested to provide records to demonstrate his performance in this regard.

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 for the 5th Wave of COVID-19

- (1) The Contractor may request the Employer to make a one-off advance payment for the 5th Wave of COVID-19 (“**Advance Payment (5th Wave)**”) to the Contractor of the amount of [insert]. The Contractor shall submit a statement to the [Engineer/Surveyor]² requesting payment of the

¹ To be incorporated where advance payment arrangement specified in SDEV’s memo dated 14 February 2020 or SDEV’s memo dated 27 February 2020 have been incorporated in the contract.

² Delete as appropriate.

Advance Payment (5th Wave). Within [7 days]³ of the date of delivery of the Advance Payment (5th Wave) Statement to the [Engineer/Surveyor]², the [Engineer/Surveyor]² shall if he is satisfied that the Advance Payment (5th Wave) 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]⁴ the Employer shall pay the Advance Payment (5th Wave) to the Contractor. If a certified payment is late, or if a payment is late because the [Engineer/Surveyor]² does not certify payment which he should certify, no interest is payable on such late payment.

- (2) Subject to sub-clauses (3) and (4) below, the Advance Payment (5th Wave) 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]⁵ until the Advance Payment (5th Wave) is fully repaid.
 - (3) The Advance Payment (5th Wave) 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]² 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 (5th Wave), or upon the Advance Payment (5th Wave) 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 (5th Wave) or any part thereof against monies due to the Contractor under the Contract or any other contract between the Employer and the Contractor.
 - (5) For the avoidance of doubt, the operation of this clause is separate and distinctive from the advance payment made under Clause [insert] of these Special Conditions of Contract.]¹
- [(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 and]¹ the Advance Payment (5th Wave) under Clause [insert] of these Special Conditions of Contract.”⁶

³ The payment processing time can be shortened subject to the lead-time required by individual project team.

⁴ The payment processing time can be shortened subject to the lead-time required by individual project team.

⁵ The month/year should be counted back from the Completion Date (including if changes already granted). The amount of Advance Payment (5th Wave) should be repaid in six instalments or such other number as the project team considers appropriate having regard to the project specific circumstances.

⁶ 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)

- (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 Clause [insert] of these Special Conditions of Contract and]¹ Advance Payment (5th Wave) Statement under Clause [insert] of these Special Conditions of Contract.”

5. Except as amended by this letter, all the terms and conditions of the Contract [as amended by Supplementary Agreement Nos....]⁷ shall continue to be binding on the parties and shall remain in full force and effect.

6. Save as expressly provided herein, nothing in this letter shall give rise to any right or entitlement of the Contractor to claim any payment, compensation, relief, Cost or extension of time on the basis of or arising out of or in connection with this letter. The Employer’s rights under the Contract shall not be prejudiced in any way by this letter.

IN WITNESS WHEREOF this letter has been executed as a deed⁸ by the parties on the date first above written

[Please adopt appropriate execution clauses.]

has already been complied with by the Contractor before the date of this letter.

⁷ To be incorporated where there is/are previous supplementary agreement(s).

⁸ 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 TCW 7/2014 is applicable.

APPENDIX 7.76A NOT USED

APPENDIX 7.76B NOT USED

APPENDIX 7.76C NOT USED

APPENDIX 7.76D NOT USED

APPENDIX 7.77 SAMPLE LETTER ON IMPLEMENTATION OF SPECIAL ADVANCE PAYMENT (5th WAVE) UNDER ONGOING CAPITAL WORKS CONTRACTS ADOPTING NEC3
(Ref.: SDEV's memo ref. () in DEVB(W) 510/33/02 dated 15.3.2022)

From: The Government of the Hong Kong Special Administrative Region ("**Employer**")

To: [insert] ("**Contractor**")

Date:

Dear Sirs,

[Contract Title and Contract No.]

Special Advance Payment (5th Wave)

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

2. In response to the 5th wave of the COVID-19 epidemic (the 5th Wave) 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 for the 5th Wave 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. [This one-off special advance payment for the 5th Wave is separate and distinctive from the advance payment paid under Secondary Option [X14].]¹

3. As Subcontractors are also facing similar hardship, the *Contractor* is required to share the special advance payment for the 5th Wave 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). The *Contractor* will be requested to provide records to demonstrate his performance in this regard.

4. With effect from the date of this letter, the *Employer* and the *Contractor* ("**the parties**") agree the following amendments to this contract:

- (a) Secondary Option X14A is added with the provisions set out below which are hereby incorporated into this contract:

"Option X14A: Advance payment to the *Contractor* for the 5th Wave of COVID-19

Advance payment to the *Contractor* for the 5th Wave of COVID-19 X14A

X14A.1 The *Contractor* may request the *Employer* to make a one-off advance payment for the 5th Wave of COVID-19 ("**Advance Payment (5th Wave)**") to the *Contractor* of the amount of [insert].

¹ To be incorporated where advance payment arrangement specified in SDEV's memo dated 14 February 2020 or SDEV's memo dated 27 February 2020 have been incorporated in the contract.

- X14A.2 (a) The *Contractor* submits to the *Project Manager* a statement requesting payment of the Advance Payment (5th Wave).
- (b) The *Project Manager* certifies payment within [two weeks]² of the date of receipt of the Advance Payment (5th Wave) Statement.
- (c) The *Employer* pays the Advance Payment (5th Wave) to the *Contractor* within [three weeks]³ from the date the *Project Manager* certifies the Advance Payment (5th Wave) 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 (5th Wave) 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*.

X14A.3 Subject to Clause X14A.4 below, the Advance Payment (5th Wave) is repaid to the *Employer* by the *Contractor* in instalments, each in the amount of [insert]⁴. An instalment is included in each amount due assessed as from [insert month/year] until the Advance Payment (5th Wave) has been repaid.

X14A.4 If at any time the *Project Manager* is of the opinion that the repayment mechanism stated in Clause X14A.3 will not be sufficient to recover the entire amount of the Advance Payment (5th Wave), the *Employer* is entitled to set off the entire amount of the Advance Payment (5th Wave) or any part thereof against monies due to the *Contractor* under this contract or any other contract between the *Employer* and the *Contractor*.”

[X14A.5 For the avoidance of doubt, the operation of this clause is separate and distinctive from the advance payment made under Secondary Option [X14].]¹”

- [(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 and]¹ the Advance Payment (5th Wave) under Secondary Option X14A.”⁵

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.

⁴ The month/year should be counted back from the Completion Date (including if changes already granted). The amount of Advance Payment (5th Wave) 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(a) will become Clause 4 if ACC Clause D8(1) has already been complied with by the *Contractor* before the date of this letter.

- (c) “X14A,” 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....]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 or changes to the Completion Date, Key Dates or the Prices on the basis of or arising out of or in connection with this letter. The *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 deed⁷ by the parties the day and year first above written

[Please adopt appropriate execution clauses.]

⁶ To be incorporated where there is/are previous supplementary agreement(s).

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 TCW 7/2014 is applicable.

APPENDIX 7.77A NOT USED

APPENDIX 7.77B NOT USED

APPENDIX 7.77C NOT USED

APPENDIX 7.77D NOT USED

APPENDIX 7.78 NOT USED

APPENDIX 7.79 NOT USED