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Mr Thomas C W TSE
Secretary General
the Hong Kong Construction Association
3/F, 180-182 Hennessy Road
Wanchai
Hong Kong

3 August 2010

Dear *Thomas,*

Dispute Resolution Advisor System in Civil Engineering Works Contracts

Revised Guideline for the Use of DRA system & Monitoring and Evaluation Mechanism

The Dispute Resolution Advisor (DRA) system was introduced to civil engineering contracts in 2005 under a pilot scheme. Currently, five trial contracts have been completed and 24 trial contracts are still on-going.

2. To promote a wider use of the DRA system in public works contracts, we have recently completed a review on the system and identified areas for improvements, including list management, selection and appointment, timeframe for determining variations and performance reporting system for DRAs. In this connection, we have revised the "Guideline for the use of the Dispute Resolution Advisor (DRA) system with the GCC for Civil Engineering Works (1999 Edition)" and circulated the draft revision to your Association and works departments for comments. Please note that comments received from you by email on 22 July 2010 and works departments have been taken on board and incorporated into the revised guideline where appropriate. A summary of our responses to your comments is attached at **Annex A** for your reference. Please also note that the revised guideline is to be read in conjunction with the "Dispute Resolution Advisor System Handbook", which is being updated by ArchSD for promulgation in due course.



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3. The revised guideline shall take immediate effect and apply to both existing and new contracts. One of the major features of this revision is the new requirements on the performance reporting system for DRAs. According to the revised guideline, the first batch of DRA performance reports to be prepared by works departments should cover the period between 1 July 2010 and 30 September 2010. A hard copy and a CD Rom containing an electronic copy of the revised guideline are also attached at **Annex B** for your retention.

4. For your information, we have collaborated with works departments to establish a monitoring and evaluation mechanism with a view to collecting useful information for reviewing the effectiveness of the DRA system in civil engineering contracts. We are also mindful of the supply of qualified and experienced DRAs. To encourage enlisting, we approached the Hong Kong International Arbitration Centre (HKIAC) which subsequently organized training courses for DRAs in October 2009 and January 2010. Works departments have also helped invite candidates with high calibre to apply for inclusion into the list of DRAs. With these concerted efforts, the number of listed DRAs has recently hit a record high figure. Amongst others, the number of DRAs with civil engineering background has been substantially increased from 7 nos. in 2009 to 16 nos. by the end of June 2010. We will continue to closely monitor the supply of DRAs and liaise with works departments to identify suitable trial contracts for the pilot scheme.

5. I would take this opportunity to thank for your Association's continuing support to our pilot scheme. If you have any queries regarding the above, please feel free to contact Mr Ringo Mok, AS(WP)1, at 2848 6244 or the undersigned.

Yours faithfully,



(Michael HUI)

for Secretary for Development

Encl.

c.c. - w/o encl.

D Arch S (Attn.: Ms Sheron LI)
DCED (Attn.: Mr Edwin TONG)
D of DS (Attn.: Mr W TSUI)
DHy (Attn.: Mr Daniel CHUNG)
DWS (Attn.: Mr C H NG)

Internal (please note in file)

DS(W)2
CAS(W)4
AS(WP)1

Revised Guideline for the use of the DRA system with GCC for Civil Engineering Works

Comments and Responses

HKCA's Comment		WB's Response	
<p>Hong Kong Construction Association (HKCA) Comments from Mr Wei Sun of HKCA by email dated 22 July 2010</p>			
Clause 7	Inclusion of new provisions for DRA performance reporting system and regulating action.	No comments.	Noted with thanks.
Clause 7.6.3	Inclusion of new provisions for the Works Department to provide the Contractor and the DRA with a copy of the duly completed performance report including Part A, Part B and the overall assessment.	No comments.	Noted with thanks.
Appendix 3, Clause 2.1	The time limit for selection and appointment of DRA is amended for flexibility.	A DRA shall be appointed within 60 days. Where the "60" days is inserted in Clause 2.1, the footnote can then be deleted.	WB defers the determination of the period to Works Departments on a contract-by-contract basis, subject to a maximum of 60 days.
Appendix 4, Clause 13	The conflict of interest provision is amended. This revised version is agreed by the ICAC and supported by JMC members at its meeting on 25 Jun 2010.	No comments.	Noted with thanks.

WB's Response	HKCA's Comment		
Agreed and amended.	Delete the words "the" and "a" as highlighted in red from Clause 14. Please refer to Remarks 1 below.	The prevention of bribery provision is amended. This revised version is agreed by the ICAC and supported by JMC members at its meeting on 25 Feb 2010.	Appendix 4, Clause 14
Noted with thanks.	No comments.	The reference to the scenario of having more than one maintenance certificate is deleted.	Appendix 3, Clause 5.1 Appendix 4, Clause 6.1
Since the tenure of DRA ceases upon the date of issue of the maintenance certificate and there could be more than one Maintenance Period under a contract, a reference to the last Maintenance Period in the DRA performance report is considered appropriate.	Delete the word "last" from "Estimated Expiry Date of the Last Maintenance Period" in all the Proformas.	New Appendix for standard forms, guidance notes and performance aspects.	Appendix 14
Since the issue requires further discussion by the JMC and consultation with Works Departments, it will be dealt with separately.	A minimum fee equivalent to 3 hours of work should be paid to the DRA for each visit as discussed at the 25.6.2010 meeting.	DRA fees	DRA fees

HKCA's Comment			WB's Response
Appendices 1, 2, 5, 6, 7, 8, 9, 10, 11, 12 & 13	No amendments have been made to these Appendices.	No comments.	Noted with thanks.

- End -

Annex B

**THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION
DEVELOPMENT BUREAU**

**GUIDELINE FOR THE USE OF THE
DISPUTE RESOLUTION ADVISOR SYSTEM**

WITH

**GENERAL CONDITIONS OF CONTRACT
FOR CIVIL ENGINEERING WORKS**

(1999 EDITION)

PILOT SCHEME

July 2010

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1. **INTRODUCTION**

1.1. **DISPUTE RESOLUTION ADVISOR SYSTEM**

- (a) The then Environment, Transport and Works Bureau has introduced the Dispute Resolution Advisor System (“the System”) in civil engineering contracts on a pilot scheme basis since 2005.
- (b) The System on conflict avoidance is modelled on the DRAd system which is being used by the Architectural Services Department (ArchSD) in building contracts.
- (c) The System’s features include the:
 - (i) introduction into the Contract of a Dispute Resolution Advisor (“DRA”) who is jointly appointed by the Contractor and the Employer and whose role is to foster co-operation between the Contractor and the Employer and their consultants and sub-contractors, minimise the number of claims, avoid conflicts in the first instance and settle disagreements or disputes as they emerge and before they turn into formal disputes which require actions under the General Conditions of Contract Clause 86;
 - (ii) amendment of the Settlement of Disputes clause, General Conditions of Contract Clause 86 to permit the introduction of voluntary adjudication¹; and
 - (iii) amendment of General Conditions of Contract Clauses 48, 50, 61 and 63 to provide for the introduction of time limits for the making and determination of certain claims, evaluations, ascertainties and determinations.

¹ Depending on the review of the pilot schemes, it is expected that voluntary adjudication would be introduced as standard contract provision in future.

1.2 **CONTRACTS IN WHICH THE SYSTEM IS TO BE INCORPORATED**

The Development Bureau is maintaining a list of selected pilot civil engineering works contracts for the adoption of the System. Basically, selection criteria for incorporation of the System are as follows:

- (a) the nature of the Works should be complicated that disputes are likely to arising during the course of contract; and
- (b) the Contract Sum is estimated to exceed HK\$200 million, or exceed HK\$100M for exceptional case where a Directorate grade 2 officer or above considers that the complexity and extent of the Works warrant the incorporation of the System.

1.3 **FINANCIAL APPROVALS**

- (a) Employment of individuals as consultants in works contracts is outside the ambit of the SPR and the EACSB. In the event that a DRA is employed in the name of an individual person as consultants, the Controlling Officers have the authority to approve the appointment of DRA and the procedures set out in this Guideline shall be followed.
- (b) The Employer and the Contractor shall each pay 50% of the DRA's costs, fees and expenses in respect of the DRA services.

2. **PREPARATION OF TENDER DOCUMENTS**

2.1. **INTRODUCTION**

Where the Works Department has decided to incorporate the System and the financial approvals have been obtained the tender documents shall include the following.

2.2 NOTES TO TENDERERS

The Notes to Tenderers in **Appendix 1** shall be included in the tender documents.

2.3 SPECIAL CONDITION OF CONTRACT

(a) The Special Conditions of Contract (SCCs) in **Appendix 2** shall be included in the tender documents and which for the avoidance of doubt includes the following annexes:

(i.) Annex A – Procedures for Dispute Resolution Advisor System in **Appendix 3**; and

(ii.) Annex B – Draft Dispute Resolution Advisor Agreement in **Appendix 4** which shall also include the Schedule of Fees in **Appendix 7**.

(b) Voluntary adjudication would be used together with the DRA system to provide an additional dispute resolution measure. As such SCCs [X] and [Y] which have been specifically prepared for the voluntary adjudication system should also be included in the tender document.

(c) As to the Draft Dispute Resolution Advisor Agreement the Works Department shall with respect to:

(i) **Schedule 1**

include any special Services required for the particular Contract and which are not set out in Clause 1.3 of Appendix 3.

(ii) **Schedule 2**

complete the following with respect to the Schedule of Fees to be sent to the DRA Candidates as part of the invitation to submit a proposal for the position of DRA.

- (1) The Estimated number of hours per month in the column for DRA's Services 2.
- (2) The Estimated Contract Period in Months in the column for DRA's Services 2 (the same figure shall be inserted and replace the value marked # in Appendix 7).
- (3) In the Notes at Clause 9.2 insert the figures to be inserted for the limit of expenses.

3. SHORT LIST FOR DRA CANDIDATES

3.1 During the pilot scheme, the Works Department shall prepare the short list of DRA candidates referred to in the Notes to Tender:

(a) by reference to the list of DRA held by the ArchSD, selecting those persons who have suitable experience in engineering projects and who:

- (i) have no more than three other current DRA assignments under contracts administered by ArchSD/CEDD/ DSD/HyD/WSD, and
- (ii) have not received any adverse reports in those current DRA assignments.

or

(b) in exceptional circumstances with prior consent from the Principal Assistant Secretary (Works) 3 of the Development Bureau, by reference to other suitable qualified candidates whose experience is known to the Works Department and who:

- (i) have no more than three other current DRA assignments under contracts administered by ArchSD/CEDD/ DSD/HyD/WSD, and

- (ii) have not received any adverse reports in those current DRA assignments.

3.2 A short list of 10 candidates shall be prepared before the contract award so that it can be sent to the contractor in accordance with the Special Condition of Contract.

4. **ACCEPTANCE OF CONTRACTOR'S TENDER AND SELECTION OF DISPUTE RESOLUTION ADVISOR**

4.1 **DRA CANDIDATES TO BE INVITED TO SUBMIT PROPOSALS FOR POSITION OF DRA**

- (a) A DRA shall be appointed within (*) days (* insert time limit to appoint DRA subject to a maximum of 60 days, to be decided by the project team) of the award of the Contract. On the same day as issuing the letter of acceptance of Tender, the Works Department will provide the Contractor the shortlist of DRA as mentioned in paragraph 3.2 above. The Contractor shall within seven days after receiving the list of DRA select five candidates from the list and advise the Works Department together with a confirmation letter from the selected candidates indicating their agreement to bid for the DRA work for the Contract.
- (b) The Works Department will approach the Contractor's selected candidates to obtain proposals from each candidate in accordance with the letter in **Appendix 5**, the Guidance Notes in **Appendix 6** and the Schedule of Fees in **Appendix 7**.
- (c) Two copies of the technical and fee proposals to be submitted simultaneously, one for each party to the contract.

4.2 **ASSESSMENT OF PROPOSALS SUBMITTED BY DRA CANDIDATES**

The Works Departments and the Contractor shall each rank the candidates who have made the proposals in order of preference

with the most preferred candidate receiving the lowest number. Works Department's assessment and selection procedures are set out in **Appendix 8**.

5 APPOINTMENT, SERVICES, TENURE, REMUNERATION, DISCHARGE OR RESIGNATION OF DISPUTE RESOLUTION ADVISOR

- 5.1 The DRA shall be agreed and appointed in accordance with the Special Condition of Contract and in particular Annex A (Procedures for Dispute Resolution Advisor System).
- 5.2 The Works Department shall then write to the successful DRA candidate in accordance with the letter in **Appendix 9**.
- 5.3 The Works Department shall also write to the unsuccessful DRA candidates in accordance with the letter in **Appendix 10**.
- 5.4 The Works Department shall also raise a Departmental Order for Provision of Services (GF 220) for the ordering of DRA Services under Stores and Procurement Regulation 285 so that funds can be allocated from the Project Vote.
- 5.5 The Services, tenure, remuneration, discharge or resignation of the DRA are all set out in the Special Condition of Contract.
- 5.6 The Works Department shall arrange for the DRA Agreement to be signed by the three parties within the stipulated period. A standard DRA Agreement is attached as **Appendix 4**.
- 5.7 If for whatever reasons, the selected DRA declines to take up the offer before formal appointment despite the confirmation in Clause 4.1(a) above, the second ranked DRA on the combined list shall be chosen and appointed. Such incident shall be properly recorded in the performance assessment form of the first selected DRA.
- 5.8 During the pilot scheme stage, Works Departments shall, upon appointment of the DRA, inform the Principal Assistant Secretary (Works) 3 of the Development Bureau and the Secretary of the Joint Managing Committee the name of DRA appointed.

- 5.9 A flow chart showing the full process of the selection and appointment of DRA is shown in **Appendix 11**.

6 DISPUTE RESOLUTION PROCESS

- 6.1 The key role of the DRA is to avoid conflicts and prevent disputes from occurring using all his proactive approaches. However in the event that formal disputes between the Employer and the Contractor do occur, they shall be dealt with under Clause 6 of **Appendix 3**. A flow chart showing the various activities under the dispute resolution process is shown in **Appendix 12**.

7 PERFORMANCE REPORTING SYSTEM AND REGULATING ACTION

7.1 General

- 7.1.1 The performance of the DRA shall be regularly assessed by the appropriate Directorate Grade officer responsible for the administration of the contract. A central record shall be kept by the Secretaries (i.e. one for engineering works projects and one for ArchSD's projects) of the Joint Managing Committee (JMC). For engineering works projects, a representative of a civil engineering stream Works Department (on yearly rotational basis among CEDD, DSD, HyD and WSD) shall take up the Secretary role and be responsible for such administration work. Technical Secretary/1 of ArchSD shall take up the Secretary role for ArchSD's projects.

- 7.1.2 The performance reports shall be held on "Restricted" files. Upon request, the performance reports shall be made available to project officers of Works Departments for the purpose of selection and appointment of DRA in public works projects.

7.2 Interim Report

Interim reports are required to be submitted for every quarter covered by the period from start to completion of the DRA agreement. The reporting periods for such quarterly reports end on the last day of March, June, September and December.

7.3 Final Report

In addition to the Interim Report for the last reporting quarter, a final report shall also be submitted together with the last Interim Report upon completion or termination of the DRA agreement. The purpose of the Final Report is to give an overall assessment on the performance of a DRA throughout the entire duration of his service provided.

7.4 Report to JMC

The completed interim and final reports shall be forwarded to the Secretary of the JMC at least 7 working days prior to the next JMC meeting.

7.5 Reporting Officer

Performance reports shall be prepared by the Project Officer (Reporting Officer) and countersigned by an officer of Directorate Grade D2 or above (Countersigning Officer) of the works department administering the contract. Reports prepared and submitted by the Contractor shall be signed by the Site Agent and countersigned by the Project Manager of the Contractor.

7.6 Report Format, Guidance Notes and Performance Aspects

7.6.1 The report format to be used and guidance notes for appraising the performance of the DRA are given in **Appendix 14**. Due to the wide variety of duties undertaken by the DRA, the Reporting Officer may wish to comment on other aspects not covered on the standard form. The space provided under “General Comments” is for such an occasion. The overall assessment made on the DRA shall be appropriate to the gradings given, i.e. between A (outstanding) and F (unsatisfactory). Whilst it is accepted that the overall assessment is subjective, the Reporting Officer’s and Countersigning Officer’s gradings shall reflect the strengths and weaknesses of the different aspects of performance.

7.6.2 Part A of the Performance Report shall be completed by the Reporting Officer, while Part B shall be completed by the Contractor. For administrative convenience, the Reporting Officer shall issue Part B to the Contractor and submit both Part A

and Part B to the Secretary of the JMC. A common set of aspects of assessment shall be agreed between the Reporting Officer and the Contractor for the purpose of assessing and reporting the performance of the DRA. Examples of aspects of performance which may be considered as appropriate are given in **Appendix 14**.

7.6.3 Section 4 is the “Overall Assessment” on the performance of the DRA and this is to be completed by the Countersigning Officer based on Part A and Part B of the Performance Report. However, in the event of substantial difference on the DRA’s performance (i.e. when one party rates the overall assessment of the DRA’s performance as “Acceptable” while the other party rates it as “Adverse” in Part A and Part B of the Performance Report) between a works department and the Contractor, the JMC will, in consultation with the works department and/or the Contractor as appropriate, make an “Overall Assessment” of the DRA’s performance for the report in question. The Reporting Officer shall provide the Contractor and the DRA with a copy of the duly completed performance report including Part A, Part B and the overall assessment.

7.7 Action where Performance is Unsatisfactory

7.7.1 As soon as it becomes apparent that, in the opinion of the Countersigning Officer of works department, the performance of the DRA is unsatisfactory, the Countersigning Officer shall, in conjunction with the Contractor, ensure that the situation is brought to the attention of the DRA.

7.7.2 Subject to agreement between the works department and the Contractor on the unsatisfactory performance of the DRA, a DRA should be forewarned on his unsatisfactory performance, as far as possible, before the issue of an adverse report on the overall performance of the DRA. The warning should be in the form of a letter signed by the Countersigning Officer of the works department and copied to the Contractor and the Secretary of the JMC. The warning letter should clearly state that the agreement between the works department and the Contractor on the unsatisfactory performance of the DRA. The adverse reports should be adequately justified with facts and evidence. A

summary of the correspondence exchanged and discussions taken place with the DRA regarding his poor performance should be clearly stated in the Performance Report.

- 7.7.3 The JMC will consider taking appropriate regulating actions against those DRAs with unsatisfactory performance, such as suspension and deletion from the list.

APPENDIX 1

NOTES TO TENDERERS

[] **Dispute Resolution Advisor System**

1. The Contract incorporates the Dispute Resolution Advisor System all as stipulated in the Special Condition of Contract [A].
2. A list of candidates for the position of Dispute Resolution Advisor (“DRA”) will be sent to the Contractor after the award of the Contract.

APPENDIX 3 (Amended July 2010)

**ANNEX A TO SPECIAL CONDITION OF CONTRACT
PROCEDURES FOR DISPUTE RESOLUTION ADVISOR (DRA) SYSTEM**

1. DRA Services

1.1 Definition of Services

The services to be performed by the DRA under the Contract shall comprise the duties and powers set out or necessarily implied from the Contract and the DRA Agreement (“Services”).

1.2 Generally

The role of the DRA is to foster co-operation between the Contractor and the Employer and their consultants and sub-contractors, minimise the number of claims, avoid conflicts in the first instance and settle disagreements or disputes as they emerge and before they become Disputes which shall be dealt with in accordance with Special Conditions of Contract Clauses [X] and [Y].

1.3 Particular Services

Without limitation the DRA Services include:

- (a) To study and understand the documents forming the Contract.
- (b) To spend a sufficient amount of time on the Site to become familiar with the relevant personnel, including the Engineer, the Engineer’s Representative, the liaison with the end-user’s administration (where appropriate), and the representatives of the Contractor and some or all of the sub-contractors.
- (c) To attend an initial briefing meeting between the Contractor and the Employer/or his representatives (all Nominated and Specialist Sub-contractors shall attend this meeting).
- (d) To attend selectively at progress meetings, co-ordination meetings and any other ad hoc meetings.
- (e) To meet on a monthly basis with the Employer and the Contractor either separately or together to attempt to resolve problems that arise before they become disputes and to anticipate problems that may arise in the future. The DRA shall meet more frequently with the Employer and the Contractor if either requests such a meeting. Such request shall be in writing.
- (f) To conduct Site walks.

- (g) To study and review the programme including short term and rolling programmes.
- (h) To prepare reports to the Contractor and the Employer.
- (i) To study and review selective correspondence generated by the Contractor and the Employer.
- (j) To use all practicable and proactive measures to prevent dispute from occurring.
- (k) To hold meetings as and when the DRA considers necessary for the purpose of avoiding conflicts or settling disagreements. The Contractor, the Employer, the Engineer or their representatives shall attend the meeting if so invited by the DRA. Such invitation shall be in writing.
- (l) To provide independent views to the Employer's Report Review Committee on the Contractor's performance under the Contract in respect of "Progress" and "Claims Attitude", upon receipt of Contractor's appeal on the Engineer's assessment.
- (m) Other Services more particularly set out in Schedule 1 of the DRA Agreement.
- (n) Other Services to be reasonably inferred from the Contract and the DRA Agreement.

2. Selection and Appointment of DRA

- 2.1 A DRA shall be appointed within []¹ days of the award of the Contract or within such additional time as may be agreed by the Contractor and the Employer. The DRA shall have experience in the construction industry and possess dispute resolution skills. He shall be neutral and independent of both parties. He cannot be an employee of either the Employer or Contractor or of any Sub-contractor or Nominated Sub-contractor who will be engaged to execute any part of the Works and shall not have any actual or perceived conflict of interest.
- 2.2 The Employer shall on the same day as issuing the letter of acceptance of the Tender provide the Contractor with a list of ten possible DRA candidates. The Contractor shall within seven days select five candidates from the Employer's list and advise the Employer in writing using the prescribed form set out in Appendix []² together with a confirmation letter from the selected candidates indicating their agreement to submit a proposal for the position of DRA on being invited by the Employer and has subject to consideration of the invitation to be provided by the Employer no conflict of interest.

¹ To be decided and inserted by the project team of the Employer subject to a maximum of 60 days *[this footnote is not to be included]*

² i.e. Appendix 13 in this Guidelines *[this footnote is not to be included]*

- 2.3 The Employer shall invite each of the DRA candidates nominated by the Contractor to submit a proposal for the position of DRA.
- 2.4 Technical and fee proposals from each DRA candidate should include an appreciation of potential areas of dispute that might arise under the Contract as well as their level of remuneration. Two copies of the technical and fee proposals shall be submitted simultaneously, one for each party to the Contract.
- 2.5 The Employer and the Contractor shall jointly select a DRA by agreement through a ranking system as described herein. The Employer and the Contractor shall each rank the candidates who have made proposals in order of preference with the most preferred candidate receiving the lowest number.
- 2.6 The Employer and the Contractor shall be at liberty to adopt different marking schemes for the assessment of the DRA. Where the Employer has rejected a DRA candidate on the basis of his technical proposal, the Contractor agrees that such DRA candidate will not be selected and appointed and the Contractor shall also disregard that candidate when ranking the DRA candidates.
- 2.7 The Contractor shall meet with the Employer within seven days after the closing date for receipt of proposals from DRA candidates. At the meeting the Employer and the Contractor shall reveal their respective rankings of the DRA candidates. The DRA candidate with the lowest combined score shall be appointed. The successful candidate shall be advised by the Employer on the appointment.
- 2.8 If there is more than one DRA candidate with the lowest combined number, the Employer and the Contractor shall attempt to agree who shall be appointed. Failing agreement either the Employer or the Contractor may write to the Secretary General of the Hong Kong International Arbitration Centre (HKIAC) who shall select the DRA from those candidates with the lowest combined number. The HKIAC may charge a fee, which can be reviewed from time to time, for making such selection. Any fee so charged shall be paid jointly by the Employer and the Contractor.
- 2.9 Where the successful DRA candidate for any reason cannot or will not take up the DRA position, the DRA candidate with the next lowest combined number in order of preference shall be invited to take up the DRA position. Should that person for any reason be unable to accept the appointment, the candidate with the next lowest combined number in order of preference shall be approached and so on until a DRA is appointed.

3. Parties to enter into a DRA Agreement

The Employer and the Contractor shall enter into a Dispute Resolution Advisor Agreement (“the DRA Agreement”) in the form set out in Annex B to this Special Condition of Contract modified as may be agreed between the Employer, Contractor on the one hand and the DRA candidate on the other. Should agreement cannot be reached on the modifications, the final DRA Agreement shall be determined by the Employer.

4. Payment of DRA Fees

The Employer and the Contractor shall each pay 50% of the DRA costs, fees and expenses in respect of the Services provided to them as described in the DRA Agreement. If either the Employer or the Contractor fails to pay any amount due to the DRA within 7 days after the due date, then whichever of them is not in default shall pay the amount owing to the DRA. This amount shall then be a debt due from whichever has not paid the debt to the other. Should the Employer make such a payment as a result of the Contractor’s default, he shall, in addition to any other rights he may have, be entitled to deduct the amount paid from any monies due from the Employer to the Contractor under General Conditions of Contract Clause 79 or otherwise.

5. Tenure of DRA

5.1 The tenure of the DRA shall, unless the Employer and the Contractor otherwise agree in writing, cease upon the date of issue of the maintenance certificate pursuant to Clause 80 of the General Conditions of Contract. Irrespective of the above, the DRA may be discharged at any time by a joint written notice from the Employer and the Contractor. The Employer or the Contractor may discharge the DRA unilaterally at any time after the first six months of his tenure as DRA. As a precondition to such discharge, however, the party wishing to discharge the DRA shall first meet with the other party to the Contract to advise of the intention to discharge and the reasons for the proposed discharge. After the meeting, should the party still wish to discharge the DRA the party may do so by giving the DRA notice in writing specifying the effective date of the discharge, such notice to be copied to the other party to the Contract.

5.2 If the DRA is discharged pursuant to Clause 5.1 of these Procedures, or resigns from the position, or is otherwise unable to fulfill his obligations, the Employer and the Contractor shall choose another DRA pursuant to Clause 2 of these Procedures, or they may so agree to appoint the DRA candidate who has made submission in the earlier DRA selection exercise in order of preference as defined in Clause 2.5. The replacement DRA shall be appointed within 30 days of the date of discharge or resignation or incapacity of the incumbent DRA.

6. Dispute Resolution Process

6.1 Amendment to General Conditions of Contract

- (a) General Conditions of Contract Clause 1(1) shall be amended by Special Condition of Contract Clause [X].
- (b) General Conditions of Contract Clause 86 shall be amended by Special Condition of Contract Clause [Y].

6.2 Dispute Avoidance and Settlement

- (a) The contracting parties shall endeavour to settle any differences or disputes between them through mutual understanding and the promotion of good working relationship. This could be done with or without the assistance of the DRA throughout the contract period. However in the event that, despite of the proactive effort of the DRA, any Dispute has arisen, it shall be referred to the Engineer in accordance with the provisions set out in Special Conditions of Contract Clause [Y].
- (b) If the Engineer shall fail to give such decision for a period of 28 days after being requested to do so or if either the Employer or the Contractor be dissatisfied with any such decision of the Engineer then the contracting parties may choose the most suitable form of dispute resolution measures which may include mediation, adjudication or arbitration all in accordance with the procedures set out in the Special Conditions of Contract Clause [Y].

7. Amendment of General Conditions of Contract Clauses 48, 50, 61 and 63

7.1 Introduction of time limits for Engineer to make decision or valuation

Further to General Conditions of Contract Clauses 48, 50, 61 and 63, the following time limits shall apply in respect of the following types of claims evaluation, ascertainment and determinations that may arise under the Contract.

7.2 General Conditions of Contract Clause 61

- (a) With respect to any Engineer's determination, arising under General Conditions of Contract Clause 61 relating to any valuation by the Engineer of a variation, the Engineer's duty to determine the sum which in his opinion shall be added to or deducted from the Contract Sum shall commence with the issuance of the variation by the Engineer and such determination shall be provided to the Contractor within 56 days thereafter.
- (b) If the Engineer considers that he reasonably requires information from the Contractor to assist in the determination, the Engineer shall request such information in writing within 7 days of the issuance of the variation by the Engineer.

- (c) The Contractor shall provide within 7 days of receipt of the request any information that the Engineer may reasonably require to assist in this determination.
- (d) In the absence of the requested information, the Engineer may make his determination based on the information otherwise available.

7.3 General Conditions of Contract Clause 63

- (a) With respect to any Engineer's ascertainment, pursuant to General Conditions of Contract Clause 63 relating to an evaluation by the Engineer of a claim by the Contractor arising out of a grant by the Engineer of an extension of time pursuant to General Conditions of Contract Clause 50, the Contractor shall submit his claim, to the Engineer within 28 days after the Engineer's notice and the Engineer's evaluation of the claim shall be provided to the Contractor within 56 days of receipt of the Contractor's claim.
- (b) If the Engineer considers that he reasonably requires further information from the Contractor to assist in the evaluation, the Engineer shall request such information in writing within 7 days of the date of receipt of the Contractor's claim.
- (c) The Contractor shall provide within 7 days of receipt of the request any information the Engineer may reasonably require to assist in the evaluation.
- (d) In the absence of the requested information, the Engineer may make his evaluation based upon the information otherwise available.

7.4 General Conditions of Contract Clause 48(2)

- (a) With respect to any other Engineer's determination or ascertainment, including any requirement to ascertain Cost pursuant to General Conditions of Contract Clause 48(2), the Contractor shall serve notice to the Engineer within 28 days after happening of the events giving rise to a claim, and the Engineer's determination of the sum which in his opinion shall be added to or deducted from the Contract Sum or ascertainment of the Cost incurred, as the case may be, shall be provided to the Contractor within 56 days thereafter, if not already so provided.
- (b) If the Engineer considers that he reasonably requires further information from the Contractor to assist in the determination the Engineer shall request such information within 7 days of the date of receipt of the Contractor's notice.
- (c) The Contractor shall provide within 7 days of receipt of the request any information the Engineer may reasonably require to assist in the determination.

- (d) In the event that it is necessary to keep contemporary records pursuant to General Conditions of Contract Clause 64(3) to support the claim and the Engineer would, in the absence of such records, be unable to determine the sum which in his opinion shall be added to or deducted from the Contract Sum or ascertain the Cost incurred, as the case may be, the Employer and the Contractor may, pursuant to Clause 7.7 extend the time limit for the Engineer's determination or ascertainment.

7.5 Failure of Engineer to provide determination or ascertainment

If the Engineer does not provide a determination or ascertainment within the time period prescribed in this Clause 7, the Contractor may request for the assistance of the DRA whose main duty is to avoid conflicts or differences from turning into Disputes, or he may wait until the determination or ascertainment is provided.

7.6 General Conditions of Contract Clause 50

- (a) Should the Contractor apply for an extension of time for completion pursuant to General Conditions of Contract Clause 50, the Engineer shall provide his decision on the extension of time for completion to the Contractor within 56 days of the Contractor's notice.
- (b) If the Engineer considers that he reasonably requires further information from the Contractor to assist in the determination of the extension of time the Engineer shall request such information within 7 days of the date of receipt of the Contractor's notice.
- (c) The Contractor shall provide within 7 days of receipt of the request any information the Engineer may reasonably require to assist in the determination.
- (d) In the absence of the information requested, the Engineer may make his determination based upon the information otherwise available.
- (e) In the event that:
 - (i) the delay has a continuing effect and the Engineer is unable to determine the full extent of the extension of time, the Engineer may first grant an interim extension of time; or
 - (ii) the circumstances are such that it is unclear if an extension of time will be required then the Employer and the Contractor may pursuant to Clause 7.7 extend the time limit for the Engineer's grant.

7.7 Extension of time limit

- (a) The Employer and the Contractor may agree to extend any of the time limits set out in this Clause 7. Such agreement shall be in writing and copied to the DRA.

- (b) If the Employer and the Contractor are unable to agree such extension then either the Employer or the Contractor, as the case may be, shall inform the DRA in writing prior to the expiry of the time limit in issue, that there is a disagreement and the DRA shall be empowered to determine whether an extension to the time limit is in all the circumstances reasonable and if so, the amount of such extension.
- (c) The Employer and the Contractor shall be bound by the DRA's determination and both parties agree that neither shall refer such a decision to the Engineer pursuant to the Special Condition of Contract Clause [Y].

8. Sub-contractors and Nominated Sub-contractors

8.1 Where the Contractor sub-contracts any part of the Works in accordance with Clause 4 of the General Condition of Contract the Contractor shall include the following clause (with only such modifications as may be agreed by the Employer) in any and all such sub-contracts and shall use his best endeavours to ensure that the terms and conditions of the clause are observed:

- “(1) The sub-contractor acknowledges that a Dispute Resolution Advisor (DRA) has been appointed in the Contract between the Employer and the Contractor. The role of the DRA is to foster co-operation between the Contractor and the Employer and their consultants and sub-contractors in order to prevent or at least minimise disputes that may arise in the course of the Contract.
- (2) The sub-contractor shall where requested by the Contractor or the DRA:
 - (a) attend and participate in meetings with the DRA alone or with the DRA, the Contractor, the Employer and such other parties as the DRA directs,
 - (b) provide documents or copies of documents to the DRA on the DRA's request, and
 - (c) negotiate in and deal in good faith using its best endeavours with respect to any issue or dispute which arises between the Contractor and it where such issue or dispute affects or may affect any issue or dispute between the Contractor and the Employer.
- (3) The sub-contractor acknowledges that the DRA will not and shall not assist in the resolution of issues or disputes between the Contractor and the sub-contractor which do not and will not affect any issue or dispute between the Contractor and the Employer.

- (4) The Sub-contractor undertakes to the Contractor that he will maintain in strict confidence any information provided to him by the DRA or by the Contractor or Employer in the course of meetings held with the DRA.”.

9. Engineer to co-operate with DRA

It shall be part of the Engineer’s (and of the Engineer’s Representatives) duties and powers to co-operate with the DRA.

APPENDIX 4 (Amended July 2010)

ANNEX B TO SPECIAL CONDITION OF CONTRACT

DISPUTE RESOLUTION ADVISOR (DRA) AGREEMENT

THIS AGREEMENT is made the ____ day of _____

BETWEEN:

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION (“the Employer”); and

_____ of _____ (“the Contractor”); and

_____ [Name of DRA] _____

and where referred to collectively called “the parties”.

WHEREAS:

- A. The Employer has awarded to the Contractor Contract No. _____ (“the Contract”) and _____ [Name of DRA] _____ has been provided with an extract of the contract document showing the extent of the Contract and programme details.
- B. The Contract requires the Employer and the Contractor to enter into a written agreement with a Dispute Resolution Advisor (“DRA”) to give effect to the obligations of the DRA as provided for in the Contract.
- C. The Employer and the Contractor wish to jointly appoint _____ [Name of DRA] _____ as DRA and _____ [Name of DRA] _____ has agreed to accept such appointment on the following terms and conditions now set out.

NOW IT IS AGREED AS FOLLOWS:

1. **Definitions and Interpretation**

1.1 Unless the context otherwise requires, in construing this Agreement words and expressions

shall have the same meanings as those assigned to them in the Contract.

1.2 Should there be any ambiguity or issue of precedence in the interpretation of this Agreement between the Contract and this Agreement, this Agreement shall prevail.

1.3 This Agreement shall be governed by and construed according to the laws for the time being in force in Hong Kong.

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

1.5 Unless otherwise provided, all payments shall be made in Hong Kong dollars.

1.6 Except where the context otherwise requires reference to “Clause” in this Agreement shall mean a reference to a “Clause” in this Agreement.

1.7 Except where the context otherwise requires a reference to “Schedule” in this Agreement shall mean a Schedule annexed to this Agreement and for the avoidance of doubt Schedules 1 and 2 annexed to this Agreement form part of this Agreement and shall be interpreted as such.

2. **Entire Agreement**

This Agreement comprises the entire agreement of the parties and replaces and supersedes all prior negotiations, representations and agreements (whether oral or in writing).

3. **Appointment of the Dispute Resolution Advisor**

The Employer and the Contractor jointly appoint [Name of DRA] as DRA and [Name of DRA] accepts such appointment in consideration for the fees set out in Clause 11 and the Schedule of Fees at Schedule 2 (“Schedule of Fees”) and on the terms and conditions set out in this Agreement.

4. **Services**

The services to be performed by the DRA under this Agreement shall comprise the duties and powers set out or necessarily implied from this Agreement and as particularly set out in Schedule 1 and the Contract (“Services”).

5. **DRA to carry out Services fairly and impartially**

The DRA shall carry out the Services fairly and impartially as between the Employer and the Contractor.

6. **Tenure**

6.1 Subject to Clause 7 the tenure of the DRA shall commence from the date upon which the Agreement is executed and cease upon the date of issue of the maintenance certificate pursuant to Clause 80 of the General Conditions of Contract (“GCC”).

7. **Discharge of DRA**

7.1 The DRA may be discharged:

- (a) at any time by a joint written notice from the Employer and the Contractor to the DRA, and
- (b) the Employer or the Contractor may discharge the DRA unilaterally at any time commencing from the first day after six months from the date of the execution of this Agreement. As a precondition to such discharge, however, the party wishing to discharge the DRA shall first meet with the other party to the Contract to advise of the intention to discharge and the reasons for the proposed discharge. After the meeting should the party still wish to discharge the DRA the party may do so by giving the DRA notice in writing specifying the effective date of the discharge, such notice to be copied to the other party to the Contract.

7.2 The DRA may at any time upon giving a one month written notice to the Employer and the Contractor resign from his position as DRA.

8. **Confidentiality**

8.1 The DRA shall not divulge any information about this Agreement or the Contract to any third party except where the Employer and the Contractor both give their written consent or where it is necessary for the performance of the Services.

8.2 Nothing done by the DRA in the performance of the Services or by the Contractor or the Employer in relation to the DRA’s Services is intended to or shall in any way affect the rights of or prejudice the position of the Employer and the Contractor in any subsequent litigation or

arbitration including without limitation that the parties acknowledge and agree that:

- (a) legal professional privilege is not waived by the act of providing any documentation to the DRA if that documentation would in the ordinary course of any arbitration or Court proceedings be protected by legal professional privilege from discovery and inspection,
- (b) the fact that the accuracy of information or the validity or meaning of documents is not challenged during the performance of the DRA's Services does not preclude challenge in subsequent litigation or arbitration.

8.3 Notwithstanding the provisions of Clause 8.2, if from information provided or made available to him in the performance of the Services the DRA considers that the safety of any person is or may be at risk as a result of actual or alleged action or omission in the Works, or that any person who is involved directly or indirectly with the Contract or this Agreement may have committed crimes in particular corruption or bribery as defined in the Prevention of Bribery Ordinance, the duty of confidentiality shall not apply.

9. **DRA not subsequently to act as adjudicator, arbitrator, consultant or advocate**

The Contractor and the Employer agree that they shall not appoint the DRA as adjudicator, arbitrator, consultant or advocate in any adjudication, arbitration or Court proceedings in relation to the Contract unless the Employer and the Contractor first agree in writing.

10. **Obligations of the Employer and the Contractor**

10.1 The Employer and the Contractor shall co-operate with the DRA and use their best endeavours to ensure that their consultants and sub-contractors co-operate with the DRA.

10.2 The Employer and the Contractor shall use their best endeavours to ensure the timely supply to the DRA of all information and documentation as the DRA may reasonably require for the purpose of the Services and shall keep the DRA informed on all matters and information relating to the Services which they are aware of in order for the DRA to properly undertake the Services.

10.3 The Contractor shall procure that all contracts between him and any sub-contractor (including for the avoidance of doubt any Nominated Sub-contractor) engaged for the execution of any part of the Works shall insert the clauses so stated in Clause 8 of Annex A of the Special Conditions of Contract on the DRA System.

10.4 The Employer and the Contractor shall comply with all requests and decisions reasonably made or given by the DRA so far as they relate to procedural matters arising from the Services to be provided by the DRA but shall not be obliged to accept any opinion expressed by the DRA as to the substance of the problems or dispute in question nor are they bound to agree to any settlement proposed by the DRA.

11. **Payment**

11.1 Payments under this Agreement shall be made in accordance with and at the times set out in the Schedule of Fees.

11.2 The DRA shall maintain full and accurate records of the time spent by him in connection with the provision of the Services and shall produce such records to the Employer and the Contractor for inspection at all reasonable times on request.

11.3 The Employer and the Contractor shall each pay fifty percent (50%) of the DRA's costs, fees and expenses in respect of the Services.

11.4 If either the Employer or the Contractor fail to pay any amount due to the DRA within seven (7) days after the due date then whichever of them is not in default shall pay the amount owing to the DRA. This amount shall then be a debt due from whichever has not paid the debt to the other. Should the Employer make such a payment as a result of the Contractor's default, it shall, in addition to any other rights it may have, be entitled to deduct the amount paid from any monies due from the Employer to the Contractor under General Conditions of Contract Clause 79 of the Contract or otherwise.

11.5 For the avoidance of doubt, it is hereby declared and agreed that except for payment specified in the foregoing provisions of this Clause, no additional payments shall be made in respect of any costs, fees or expenses incurred by the DRA in carrying out the Services.

11.6 If the DRA is discharged in accordance with sub-clause 7.1, or if the DRA resigns in accordance with sub-clause 7.2, the DRA shall be paid at the rate and in the manner set forth in this Clause 11 for the carrying out of the DRA Services or any part thereof up to the date of discharge or date of resignation as the case may be.

12. **Exclusion of Liability**

It is agreed that the DRA shall not be liable to the Employer or the Contractor for any act or omission in connection with the performance of his Services except for the consequences of any fraud or dishonesty.

13. **Declaration of Interest**

On appointment and during the currency of this Agreement, the DRA must declare any interest if it is considered to be in actual, potential or perceived conflict with the DRA Services. Apart from the services to be provided under this Agreement, the DRA shall not also act as a consultant/adviser/ service provider of the Employer, the Contractor or any sub-contractors for any matters arising out of or in relation to the Contract during the currency of this Agreement. Provided that if a material conflict is considered by the Employer and/or the Contractor to be in existence, the Employer and/or the Contractor can require the DRA to take steps to remove such a conflict.

14. **Prevention of Bribery**

The DRA is not allowed to solicit or accept advantage as defined in the Prevention of Bribery Ordinance and he should avoid soliciting or accepting any excessive hospitality, entertainment or inducements which could impair his impartiality in relation to Government projects. The DRA shall inform his employees who are engaged directly or indirectly on the formulation and implementation of Government projects that the soliciting or accepting of advantage as defined in the Prevention of Bribery Ordinance is not permitted. The DRA shall also caution his employees against soliciting or accepting any excessive hospitality, entertainment or inducements which could impair his impartiality in relation to Government projects.

SIGNED, SEALED and DELIVERED)

by the Employer by [Name and Position i.e. *Government Engineer*])

In the presence of:)

[Name of witness])

witness : _____)

SEALED with the **COMMON SEAL** of)

[*name of Contractor*])

and **SIGNED** by)

[_____] its [*director(s) or*])

director and secretary or person(s) authorized to)

sign the contract by its board of directors])

In the presence of:)

SIGNED by [*Name of DRA*])

In the presence of:)

)

* For guidelines on execution of all public works contracts under seal, please refer to ETWB TCW No. 54/2002. Works departments are advised to seek legal advice if they are in doubt.

SCHEDULE 1

**FUNCTIONS, DUTIES AND OBLIGATIONS
OF THE DISPUTE RESOLUTION ADVISOR (DRA)**

1. (1) The DRA shall carry out the functions, duties and obligations strictly in accordance with the terms of this Agreement and the Contract.
- (2) The DRA does not have the authority to impose on the Employer and the Contractor his opinion as to the substance of any problem or dispute in question;

2. **Details of the services offered**

In so far as it does not contradict with the terms of this Agreement and the Contract provisions the DRA is expressly required to perform functions, duties and obligations in accordance with the following proposals :-

(all as set out in DRA's proposal plus any special conditions that are subsequently agreed by Employer/Contractor)

SCHEDULE 2

SCHEDULE OF FEES

(all as set out in DRA's proposal and subsequently agreed by the Employer and the Contractor)

APPENDIX 5

**LETTER OF INVITATION TO DRA CANDIDATE
TO SUBMIT A PROPOSAL FOR POSITION OF DRA**

**[Name of Department]
BY FAX AND POST**

Our Ref : _____ Date _____
Tel. : _____

Circulation : As attached list

Dear Sirs,

Contract No. :
Contract Title :
Dispute Resolution Advisor (DRA)

We are pleased to advise that you have been shortlisted by the Contractor of the above Contract to submit a proposal for the role of the Dispute Resolution Advisor (DRA) for the captioned Contract.

Please find attached for information copies of the following documents :-

- Extent of Contract, extract from preliminaries (_____ pages)
- Programme details, extract from preliminaries (_____ pages)
- Guidance Notes for DRA Candidate on preparing application for position of DRA (_____ pages)
- Schedule of Fees
- Special Condition of Contract Clause SCC[A] - Dispute Resolution Advisor and Annexes
- Special Condition of Contract Clause SCC [X] and [Y] –Definition of Dispute and Settlement of Disputes (_____ pages)

You are required to submit your proposals in DUPLICATE providing one copy each in sealed envelopes addressed to :-

- (Name and Address)
(Employer)
- (Name and Address)
(Contractor)

by 12:00 noon Friday, _____ (Date in Full).

The sealed envelope containing your proposals shall be clearly marked on the outside as follows :-

“ Proposals for
Dispute Resolution Advisor
(Contract No. _____)
(Contract Title _____)”

Also inside the envelope containing your proposals please place the technical proposal and fee proposal in SEPARATE sealed envelopes which shall be labelled :-

“ Technical proposal for
Dispute Resolution Advisor”

and “ Fee proposal for
Dispute Resolution Advisor”

Your technical proposal shall outline your understanding, appreciation of anticipated disputes, strategy and input necessary to accomplish the DRA assignment and shall be limited to four A4 size pages. You shall submit your fee proposal by completing the Schedule of Fees attached to this letter. Advance payment in any form is not allowed.

Please be advised that your proposals will be reviewed and assessed separately by the Employer and the Contractor who may use different marking schemes. After the assessment by the Employer and Contractor, you will be advised of the outcome.

If you are not available or you consider yourself inappropriate to act as DRA for the above Contract due to “conflict of interest” or on any other grounds, please advise the undersigned IMMEDIATELY stating your reasons with the return of documents.

Neither the Employer nor the Contractor shall be liable to you for the reimbursement of any cost or expense incurred by you for the preparation of the proposal.

The Employer reserves the right to reject any DRA candidate on the basis of an unsatisfactory technical proposal.

Should you require any further information or clarification, please contact the Senior Engineer _____ (name) _____ at _____ (tel. no.) _____ .

Such further information or clarification will be provided in writing and we reserve the right to provide such information or clarification to other candidates for this position.

The information provided to you on a confidential basis and shall not be disclosed by you to a third party save and except where it is necessary for the preparation of your application.

Yours faithfully

(_____)

[The Employer’s Representative]

Encl.

c.c. Contractor (w/o attachments)

APPENDIX 6

GUIDANCE NOTES FOR DRA CANDIDATE ON PREPARING A PROPOSAL FOR POSITION OF DRA

1. The DRA candidate shall prepare a:

1.1 technical proposal, and a

1.2 fee proposal

and submit such proposals in accordance with the procedures set out in the letter of invitation.

2. **Technical Proposal**

2.1 The technical proposal shall not exceed four A4 size pages and shall be type written in Times New Roman Font 14 with paragraphs spaced at 1.5.

2.2 The scope of the appointment is set out in the Special Condition of Contract (including for the avoidance of doubt the annexes to it).

2.3 The candidate shall identify by reference principally to the programme details the potential areas for dispute.

2.4 The candidate shall give a brief description on his understanding of the Contract and the likely potential areas of dispute and summarise his strategies for the prevention of such potential disputes from occurring.

2.5 The technical proposal shall summarise the Services that the candidate anticipates will need to be provided and the estimates hours per month the candidate considers he will need to provide those services including without limitation:

- (a) in the initial period of familiarisation with the Contract,
- (b) the initial briefing meeting to be conducted by the DRA,
- (c) attendance at Site meetings,

- (d) attendance on Site, the offices of the Employer, the Engineer, the Contractor or his sub-contractors (including Nominated sub-contractors), and
- (e) any specific dispute prevention meetings

2.6 It is intended that the DRA is to provide most of the services personally. However, it may be appropriate for certain specialised and administrative functions to be carried out by others on his behalf. If the candidate anticipates that such staff will be required he shall list the potential staff members along with a summary of their duties and a copy of each individual's curriculum vitae.

2.7 Upon request and as required for the execution of his duties, the DRA shall be permitted to use on-site meeting rooms and office space, local telephone/facsimile and photocopy facilities, car-parking (parking on-site is subject to prior arrangement with the Contractor) as well as the services of any on-site secretarial/clerical support staff.

2.8 The candidate shall state any special conditions of appointment he requires.

3. **Fee Proposal**

3.1 The candidate is referred to Clause 11 of the Dispute Resolution Advisor Agreement and the Schedule of Fees.

3.2 As to Services 1 as defined in the Schedule of Fees, the candidate shall insert:

- (a) in the Estimated Ceiling Hours column the number of hours that he estimates it will take him to complete those services in the time set out in the initial familiarisation period, and
- (b) in the Hourly Rate column the rate per hour for the performance of the services.

3.3 As to Services 2 as defined in the Schedule of Fees, the candidate shall insert in the Hourly Rate column the rate per hour for the performance of the services.

3.4 If the candidate does not wish to claim any element for inflation (except for any

element built into his Hourly Rate claimed in the first twelve months of the Contract Period) he shall insert the words “nil” in the Schedule of Fees in the row entitled “C. Total inflation for DRA Services”.

- 3.5 If the candidate wishes to claim any element of inflation (in addition to any element built into his Hourly Rate claimed in the first twelve months of the Contract Period) he shall submit with his application a build-up of inflation for the period beyond the first 12-month in accordance with attachment A in the Schedule of Fees
- 3.6 The total notional fee shall be used for assessment of fee proposal by the Employer.
- 3.7 The candidate shall insert on a need basis in row D “Supporting Services” of the Schedule of Fees, reference to the specialisation of any construction professional that he may require to assist him in the performance of the Services e.g. programmer, quantity survey, etc. The candidate shall also insert an hourly rate for each such professional for the anticipated periods in which their services may be required.
- 3.8 The candidate shall insert in row E “Extraordinary Expenses and reasonable out of pocket expenses” a list of and the approximate value of such anticipated expenses.
- 3.9 In the alternative to the above the candidate may in respect of Services 1, Services 2 or Total Inflation for DRA insert a lump sum (excluding supporting services and disbursements).

APPENDIX 7**Schedule of Fees**

Contract No. : _____
 Contract Title : _____

A. DRA's Services 1	Estimated Ceiling Hours	Hourly Rate @ HK\$		Amount HK\$
Initial familiarisation with the contract	_____ Hours		--	\$ = A
B. DRA's Services 2	Estimated no. of Hours Per Month	Hourly Rate @ HK\$	Estimated Contract Period Months	--
Attendance at meeting and other activities	10 Hours^		21 [#]	\$ = B
Total of DRA's Services 1 and 2 i.e. = \$A + \$B	--	--	--	\$ = A + B
C. Total Inflation for DRA Services	--	--	--	\$ = C B/F from attachment A
Total Notional Fee = \$A + \$B + \$C = \$ _____				

D. Supporting Services on a need basis	Hourly Rate @ HK\$ (Month 0 to 12)	Hourly Rate @ HK\$ (Month 13 to 21[#])

^ # Figures quoted are just examples

E. Extraordinary expenses and reasonable out-of-pocket expenses	Estimated amount HK\$ (subject to production of documentary proof of actual cost incurred)

Signature: _____ Date: _____

Name: _____

Attachment A
Inflation calculation Sheet

DRA's Services 2	Month 13 to 21 [#]
Attendance at meeting and other activities	Hours x nett adjustment to hourly rate [*] x (21 [#] -12) months = 10 [^] (hr.) x \$ _____ [*] x (21 [#] - 12) = \$C

Total Inflation carried forward to item C on Page 3	\$C
---	------------

* rate to be applied to the whole period for Month 13 to 21[#], if applicable

[^] # Figures quoted are just examples

Notes

1. **Notes form part of Schedule of Fees**

- 1.1 These Notes form part of the Schedule of Fees.
- 1.2 The Schedule of Fees shall be read in conjunction with Clause 11 of the DRA Agreement of which it forms part.

2. **Payment generally**

- 2.1 Advance payment in any form is not permitted.
- 2.2 The DRA shall be entitled to render an invoice to the Employer and the Contractor at the end of each calendar month setting out his request for payment and a breakdown of hours and Services rendered in accordance with the term and conditions of the DRA Agreement.
- 2.3 The Employer and the Contractor shall satisfy themselves on the number of hours reasonably incurred and shall pay their share of the DRA's fees in accordance with the DRA Agreement.

3. **Services**

3.1 **Generally**

For the purposes of the Schedule of Fees the DRA shall distinguish between Services 1 and Services 2 as defined below.

3.2 **Services 1**

Services 1 are Services relating to the DRA's initial familiarization with the Contract and include but are not limited to the following Services to be performed by the DRA:

- (a) Studying and understanding the contract documents.
- (b) Holding initial briefing meeting between the contractor and the Employer/or his representatives (all nominated and specialist sub-contractors shall attend this meeting).
- (c) Conducting the first visit to the Site.
- (d) Studying master programme.

- (e) Preparing a report on the above Services to be provided to the Contractor and the Employer to cater for the above activities.

3.3 **Services 2**

Services 2 include but are not limited to the following Services to be performed by the DRA:

- (a) Attending progress meetings, co-ordination meetings, any other ad hoc meetings and meetings called by any one party but without the attendance of the other party.
- (b) Site walks.
- (c) Studying and reviewing correspondence.
- (d) Studying and reviewing master programme and any revised programme, short term and rolling programmes.
- (e) Convening and attending meetings to deal with potential areas of dispute.

4. **Estimated Hours Column**

4.1 **General**

The time spent by secretarial and clerical staff and the travelling time spent by the DRA shall **not** be included in the estimated times for the provision of DRA's services, whether estimated by the DRA or the Employer. These times shall also not be included in the DRA's payment application.

4.2 **Services 1**

The DRA shall be entitled to charge on the basis of his actual hours reasonably incurred in the performance of the Services but shall not exceed in total the number of hours stated in the Estimated Ceiling Hours column.

4.3 **Services 2**

The DRA shall charge on the basis of actual hours reasonably incurred in the performance of the Services.

5. **Hourly Rate**

Hours inserted in the Hourly Rate column include for the Services provided by the DRA and shall include allowances for the costs of secretarial and clerical staff and also allowances for travelling expenses incurred by the DRA and his employees or agents. The hourly rate shall apply throughout the Contract Period.

6. **Estimated Contract Period column**

- 6.1 The Estimated Contract Period is that estimated by the Employer before the commencement of the Works.
- 6.2 For avoidance of doubt, the tenure for the DRA shall be as set out in Clause 6 of the DRA Agreement.

7. **Inflation**

- 7.1 There shall be no increase in hourly rate due to inflation within the first twelve months starting from the date the DRA Agreement is signed. The hourly rate shall include allowances for any inflation for the first 12 months.
- 7.2 The inclusion of an inflation factor in a DRA proposal is optional and is solely at the discretion of the candidates. If the DRA includes an inflation element in his/her proposal, he shall show his/her build-up of inflation on a 12-month basis using the Inflation Calculation Sheet at Attachment A. Numerical values have to be entered for the nett adjustment of hourly rates. Reference to any indices for adjustment of fees is not acceptable.
- 7.3 Notwithstanding the actual Contract period may exceed the Estimated Contract Period the rate adjusted for inflation shall apply without further adjustment for the duration of the actual Contract period.

8. **Supporting Services**

- 8.1 The DRA shall obtain the written consent of both the Contractor and the Employer prior to his employment of a construction professional to assist him.
- 8.2 The DRA shall be entitled to claim the cost of the construction professional and other experts deemed necessary at a reasonable rate to be accepted by the Employer and Contractor with reference to the Hourly Rate inserted in the Schedule of Fees and based on hours reasonably incurred by that construction professional.
- 8.3 The DRA is not limited to the types of specialisation listed in the Schedule of Fees but shall not be entitled to an hourly rate in excess of the highest rate listed in the Schedule of Fees such rate to be agreed with both the Employer and the Contractor in writing before the professional is retained.
- 8.4 Notwithstanding the actual Contract period may exceed the Estimated Contract Period the revised hourly rate for the period commencing from the thirteenth month of the performance of the DRA's Services shall apply without further adjustment for the duration of the actual Contract period.

9. **Extraordinary expenses and reasonable out-of-pocket expenses**

- 9.1 The DRA is entitled to be reimbursed for all items of extraordinary and reasonable out of pocket expenses actually and properly incurred for the provision of the Services.
- 9.2 The DRA is not limited to the types of extraordinary and reasonable out of pocket expenses listed in the Schedule of Fees but in cases where there such expenses exceed \$[] he shall obtain the prior written consent of both the Employer and the Contractor.
- 9.3 Documentary evidence of the incurring of such extraordinary and reasonable out of pocket expenses is required

10. **Lump Sum**

Where the DRA has inserted a lump sum he shall be entitled to payment for his Services up to the amount of the lump sum only.

APPENDIX 8

Dispute Resolution Advisor (DRA) Works Department Assessment and Selection Procedures

Proposals

1. The five DRA candidates' nominated by the Contractor are to be invited to provide technical and fee proposals in respect of the DRA appointment. Proposals are to be returned simultaneously to the Works Department and the Contractor.
2. If any nominated DRA is not available, the Works Department will ask the Contractor to submit a substitute selected from the DRA short-list. A minimum of five proposals are required. In the event that the nominated substitute is considered not appropriate, only those candidates who have submitted proposals shall be considered, subject to the approval of an officer of a status not lower than an Assistant Head of Department (D2).

Assessment by Works Department of Technical Proposals

3. Works Department will open the technical part of the proposals only initially.
4. An assessment panel comprises at least three members shall be formed. An assessment of the technical proposals will be undertaken individually by the panel members. Marks will be allocated in accordance with **Attachment 1**. For the avoidance of doubt, consultant staff should not be members of the assessment panel.
5. The marks of the three members of the assessment panel will then be aggregated to establish the total marks received by each of the candidates. At this stage if it is apparent that any of the proposals do not appear to be suitable from a technical aspect (i.e. scored a mark that equates to less than 50%) then their fee proposal will not be considered and will be returned to the candidate unopened.

Assessment of Fee Proposals

6. The fee proposals of the prospective DRA's whose technical proposals have been deemed suitable will then be opened. The total notional fee as submitted by the prospective DRA in the Schedule of Fees shall be used to establish the lump sums for comparative purposes in the assessment process.

Ranking of Proposals by Works Department

7. The technical and fee proposals will then be collated, to establish the final list in descending order with the one scoring highest on technical marks on top. The weighting of the two elements of the proposal will be technical 75% and fee 25%.

The first ranked candidate is then compared with the second ranked candidate in accordance with the following example :-

Candidate	Technical Points	* Total Notional Fee (\$100,000.00)	Comparison	
			Technical	Fee
A	87	6	$(87-79)/79 = 10.1\%$	$(6-5)/5 = 20\%$
B	79	5		

*Note : The total notional fee shall be the values as shown on the Schedule of Fees :-

It is seen that A is technically 10.1% better than B, but 20% less advantageous than B on fee. The weighted technical advantage of A over B is $0.75 \times 10.1\%$, i.e. 7.68%. The weighted fee disadvantage of A compared to B is $0.25 \times 20\%$, i.e. 5.00%. The winner is therefore A.

The winner is then compared with the 3rd candidate in a similar manner, etc.

8. The assessment of prospective DRA's is then endorsed by an officer of D2 or above listed in descending order of acceptability and the typed and endorsed list placed by that officer in a sealed envelope marked :-

“ [Name of Works Department]
 Proposal for Dispute Resolution Advisor
 Project Title.....
 Contract No.....”

Final Mutual Selection and Appointment

9. The Works Department and the Contractor shall meet within 7 days after the closing date for the DRA proposals. The envelopes are then opened in the presence of the parties and the names matched for selection of candidate on the basis of the lowest combined number; number one being the highest priority.

ATTACHMENT 1

Restricted (Tender)

Contract No. :
Project Title :

**Dispute Resolution Advisor (DRA)
 Technical Assessment of Proposals**

Topic	Equivalent Score			*Scores for Candidates				
	Good	Average	Poor	(Name)	(Name)	(Name)	(Name)	(Name)
Understanding	50	25	0					
Strategy	40	20	0					
Staffing, Facilities and Special Conditions of Appointment	10	5	0					
Total								

Assessor's Signature : _____

Assessor's Name/Post : _____

Date : _____

* Scores must be good, average or poor in accordance with the 'equivalent scores' as suggested. No 'intermediate' scores are allowed.

APPENDIX 9

LETTER TO DRA CANDIDATE
OFFERING APPOINTMENT AS DRA

Dear Sir,

Appointment of Dispute Resolution Advisor

(Contract No. _____)

Project Title _____

On behalf of the Employer and the Contractor, I am authorized to offer you appointment as Dispute Resolution Advisor (DRA) for the above contract.

The Engineer for the contract is _____.

The Contractor for the contract is _____.

Liaison with the [Name of Works Department] on matters in connection with this appointment will be through _____ (name) (SE) _____ (Tel No.) _____, or such person as may be appointed from time to time by _____ CE/(Post) _____. You will of course be expected to liaise directly and closely with other project team members and the Contractor during the course of the project. Please arrange to quote the project's contract no. in all documents, correspondence, etc.

You are reminded that, as a general policy, importation of labour from outside Hong Kong SAR is not allowed by the Immigration Department, save that in some special deserving circumstances, the Director of Immigration may permit the importation of key management and technical personnel on a temporary basis.

Should you be willing to accept this offer, you are invited to attend the office (time) or (date) _____ in (Room No.) _____ for the purpose of signing the Agreement.

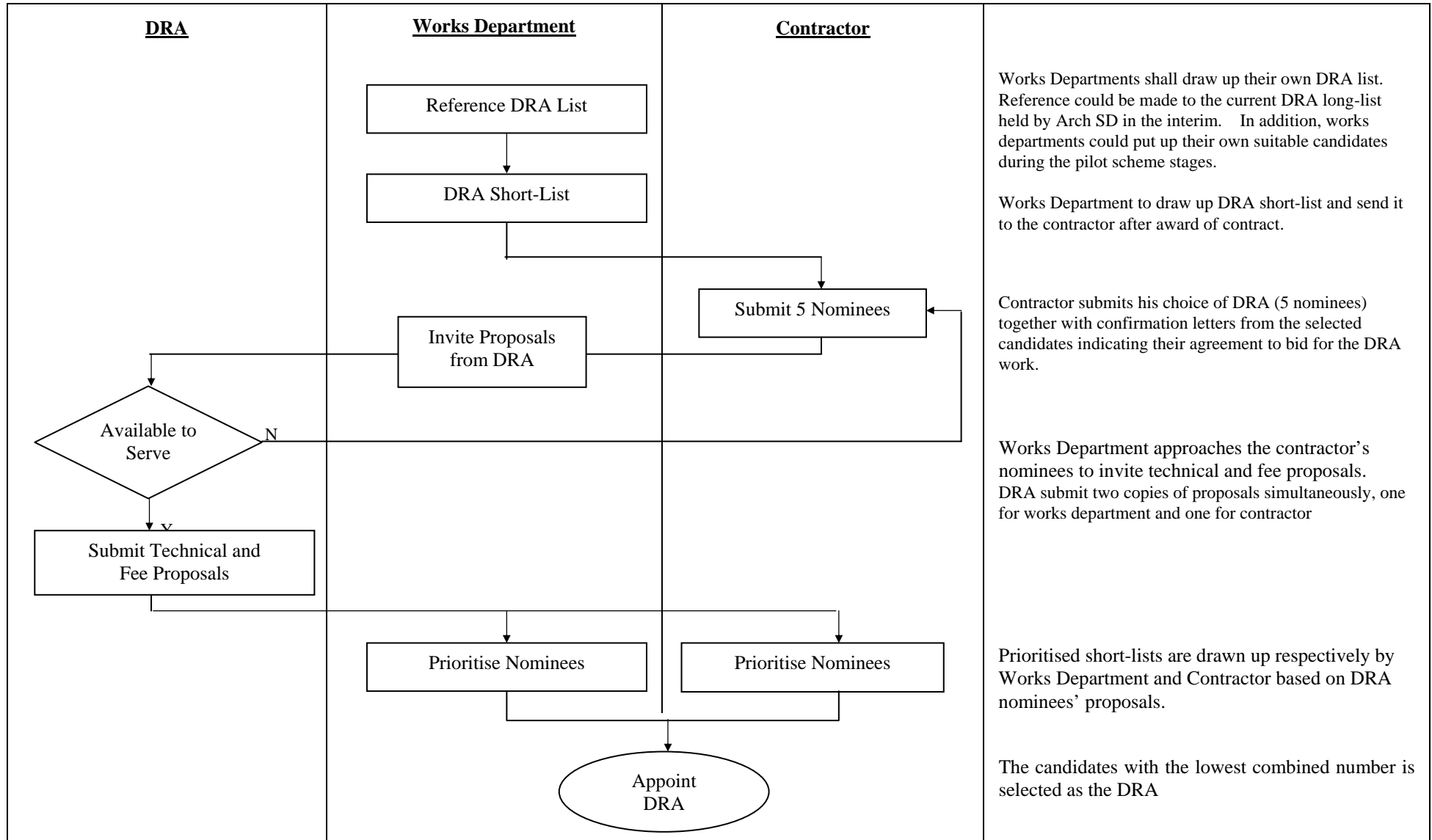
Yours faithfully,

(_____)

The Employer's Representative

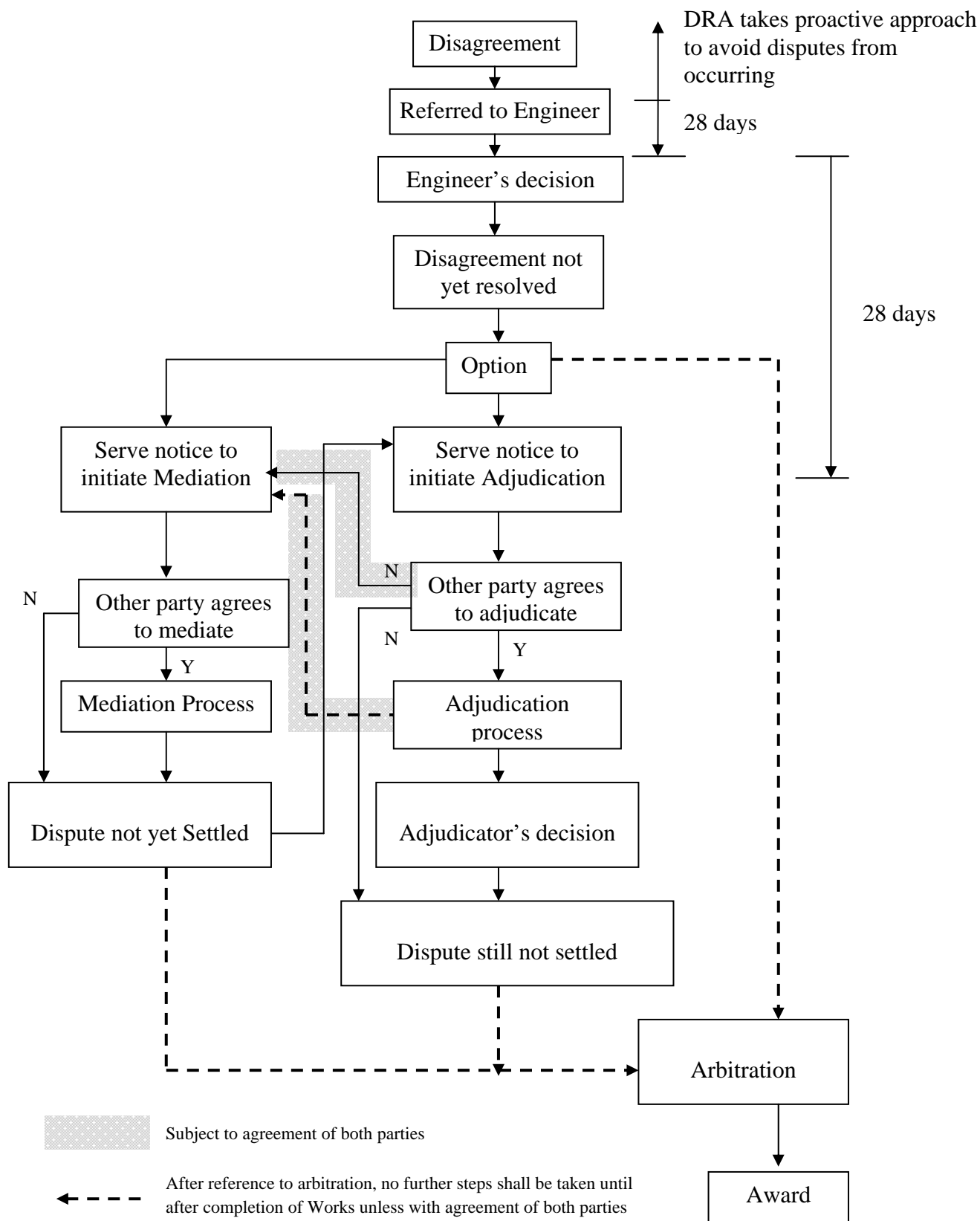
c.c. Contractor - Please attend for signing

Appendix 11
FLOW CHART FOR DRA SELECTION AND APPOINTMENT PROCEDURES



APPENDIX 12

FLOWCHART OF THE DISPUTE RESOLUTION PROCESS



Note: This chart is just for illustration only and shall NOT be included in any contract document nor shall it be taken into consideration in the interpretation or construction of GCC Clause 86 as amended by the SCC.

APPENDIX 13

**CONTRACTOR'S PREFERRED LIST OF CANDIDATES
FOR APPOINTMENT AS DISPUTE RESOLUTION ADVISOR**

FOR CONTRACT NO.

* Names of Preferred Candidates

1.
2.
3.
4.
5.

(Name and Position)

(Contractor's Name)

Date : _____

* NOTE : The Contractor shall insert in ALPHABETICAL ORDER the full names of five Dispute Resolution Advisors (5 No. only) chosen from the List of Dispute Resolution Advisors received from the Employer. The Contractor shall also provide confirmatory letters from the 5 candidates stating that they will apply for the position of DRA, are not employed by the Employer or Contractor or of any Sub-contractor or Nominated Sub-contractor who will be engaged to execute any part of the Works and have no actual or perceived conflict of interest.

APPENDIX 14

PERFORMANCE REPORT

STANDARD FORMS, GUIDANCE NOTES AND PERFORMANCE ASPECTS

1. Standard Form of Interim Report (Proforma No.1)
2. Standard Form of Final Report (Proforma No.2)
3. Aspects of Performance

DRA Performance Interim Report - Proforma No.1

Name of Works Department # INTERIM REPORT ON DRA'S PERFORMANCE FOR QUARTER ENDING _____				RESTRICTED (CONTRACT)					
1	Dispute Resolution Advisor (DRA) information			File No:					
DRA Name:				Report No:					
Contract No:			Commencement Date of DRA Agreement:						
Contract Title:									
Scope of the Works:									
Estimated total DRA fee:									
Commencement Date of the Works:									
Estimated Date of Substantial Completion of the Works:									
Estimated Expiry Date of the Last Maintenance Period:									
2	DRA's Performance (PART A - Completed by Works Department)			ACCEPTABLE		ADVERSE			
				A	B	C	D	E	F
Aspects of Performance									
OVERALL ASSESSMENT:									
3	General Comments (PART A - Completed by Works Department)			Name: _____ (Reporting Officer)					
				Signed: _____					
				Date: _____					
				Name: _____ (Countersigning Officer)					
				Signed: _____					
				Date: _____					

* Delete as appropriate

Amend as appropriate

<i>Name of Works Department #</i> INTERIM REPORT ON DRA'S PERFORMANCE FOR QUARTER ENDING _____				RESTRICTED (CONTRACT)					
1	Dispute Resolution Advisor (DRA) information				File No:				
DRA Name:				Report No:					
Contract No:			Commencement Date of DRA Agreement:						
Contract Title:									
Scope of the Works:									
Estimated total DRA fee:									
Commencement Date of the Works:									
Estimated Date of Substantial Completion of the Works:									
Estimated Expiry Date of the Last Maintenance Period:									
2	DRA's Performance (PART B - Completed by Contractor)				ACCEPTABLE		ADVERSE		
				A	B	C	D	E	F
Aspects of Performance									
OVERALL ASSESSMENT:									
3	General Comments (PART B - Completed by Contractor)				Name: _____ (Contractor's Site Representative) Signed: _____ Date: _____ Name: _____ (Contractor's Project Manager) Signed: _____ Date: _____				
4	OVERALL ASSESSMENT BY THE WORKS DEPARTMENT/ JOINT MANAGEMENT COMMITTEE*				ACCEPTABLE		ADVERSE		
				A	B	C	D	E	F
Section 4 is the "Overall Assessment" on the DRA's performance. Subject to no substantial difference on the DRA's performance (i.e. when one party rates the overall assessment of the DRA's performance as "Acceptable" while the other party rates it as "Adverse" in Part A and Part B of the Performance Report) between Works Department and the Contractor, Section 4 is to be completed by the Countersigning Officer of Works Department taking into account Part A and Part B of the Report.				Name: _____ (Countersigning Officer) Signed: _____ Date: _____					

<p>In the event of substantial difference on the DRA's performance between Works Department and the Contractor, the JMC will, in consultation with the Works Department and/or the Contractor as appropriate, make an "Overall Assessment" of the DRA's performance and complete Section 4.</p> <p>The above report was considered by the JMC at its meeting held on _____. Taking into account the reports submitted by the Works Department and the Contractor, the overall assessment of the JMC is recorded at Section 4 above.</p> <p><i>* Delete as appropriate</i> <i># Amend as appropriate</i></p>	<p>Name: _____ (Chairman, JMC)</p> <p>Signed: _____</p> <p>Date: _____</p>
--	---

NOTES:

1. The Reporting Officer and Contractor's Site Representative should select the appropriate aspects of performance in assessing the DRA's performance in Interim and Final Reports on DRA's Performance.
2. A tick shall be placed by the Reporting Officer in the box considered appropriate to the aspect of the work being assessed. A grading shall be given alongside 'overall assessment'.
3. Section 3 is for general comments which shall be consistent with, and shall amplify, the grading given, particularly any extreme cases, and generally summarise the DRA's performance during the reporting period.
4. Grades

A	(Outstanding)	Exceptionally effective
B	(Very good)	More than generally effective but not positively outstanding
C	(Good)	Generally effective
D	(Fair)	Performs duties moderately well and without serious shortcomings
E	(Not quite adequate)	Definite weaknesses make him not quite good enough to get by
F	(Unsatisfactory)	Definitely not up to the duties expected of him

Name of Works Department # FINAL REPORT ON DRA'S PERFORMANCE		RESTRICTED (CONTRACT)					
1	Dispute Resolution Advisor (DRA) information	File No:					
	DRA Name:	Report No:					
	Contract No:	Commencement Date of DRA Agreement:					
	Contract Title:						
	Scope of the Works:						
	Estimated total DRA fee:						
	Commencement Date of the Works:						
	Estimated/Actual* Date of Substantial Completion of the Works:						
	Estimated/Actual* Expiry Date of the Last Maintenance Period:						
2	DRA's Performance (PART A - Completed by Works Department)	ACCEPTABLE				ADVERSE	
		A	B	C	D	E	F
	Aspects of Performance						
	OVERALL ASSESSMENT:						
3	General Comments (PART A - Completed by Works Department)	Name: _____ (Reporting Officer) Signed: _____ Date: _____ Name: _____ (Countersigning Officer) Signed: _____ Date: _____					
	* Delete as appropriate # Amend as appropriate						

Name of Works Department # FINAL REPORT ON DRA'S PERFORMANCE	RESTRICTED (CONTRACT)
---	----------------------------------

1	Dispute Resolution Advisor (DRA) information	File No:					
DRA Name:		Report No:					
Contract No:		Commencement Date of DRA Agreement:					
Contract Title:							
Scope of the Works:							
Estimated total DRA fee:							
Commencement Date of the Works:							
Estimated Date of Substantial Completion of the Works:							
Estimated Expiry Date of the Last Maintenance Period:							
2	DRA's Performance (PART B - Completed by Contractor)	ACCEPTABLE				ADVERSE	
		A	B	C	D	E	F
Aspects of Performance							
OVERALL ASSESSMENT:							
3	General Comments (PART B - Completed by Contractor)	Name: _____ (Contractor's Site Representative) Signed: _____ Date: _____ Name: _____ (Contractor's Project Manager) Signed: _____ Date: _____					
4	OVERALL ASSESSMENT BY THE WORKS DEPARTMENT/ JOINT MANAGEMENT COMMITTEE*	ACCEPTABLE				ADVERSE	
		A	B	C	D	E	F
Section 4 is the "Overall Assessment" on the DRA's performance. Subject to no substantial difference on the DRA's performance (i.e. when one party rates the overall assessment of the DRA's performance as "Acceptable" while the other party rates it as "Adverse" in Part A and Part B of the Performance Report) between Works Department and the Contractor, Section 4 is to be completed by the Countersigning Officer of Works Department taking into account Part A and Part B of the Report.		Name: _____ (Countersigning Officer) Signed: _____ Date: _____					

<p>In the event of substantial difference on the DRA's performance between Works Department and the Contractor, the JMC will, in consultation with the Works Department and/or the Contractor as appropriate, make an "Overall Assessment" of the DRA's performance and complete Section 4.</p> <p>The above report was considered by the JMC at its meeting held on _____. Taking into account the reports submitted by the Works Department and the Contractor, the overall assessment of the JMC is recorded at Section 4 above.</p> <p><i>* Delete as appropriate</i> <i># Amend as appropriate</i></p>	<p>Name: _____ (Chairman, JMC)</p> <p>Signed: _____</p> <p>Date: _____</p>
--	---

NOTES:

1. The Reporting Officer and Contractor's Site Representative should select the appropriate aspects of performance in assessing the DRA's performance in Interim and Final Reports on DRA's Performance.
2. A tick shall be placed by the Reporting Officer in the box considered appropriate to the aspect of the work being assessed. A grading shall be given alongside 'overall assessment'.
3. Section 3 is for general comments which shall be consistent with, and shall amplify, the grading given, particularly any extreme cases, and generally summarise the DRA's performance during the reporting period.
4. Grades

A	(Outstanding)	Exceptionally effective
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C	(Good)	Generally effective
D	(Fair)	Performs duties moderately well and without serious shortcomings
E	(Not quite adequate)	Definite weaknesses make him not quite good enough to get by
F	(Unsatisfactory)	Definitely not up to the duties expected of him

3. ASPECTS OF PERFORMANCE

3.1 Examples of aspects of performance that may be considered appropriate for the purpose of reporting the performance of DRA are as follows-

1. Assimilation of Client's and Contractor's procedures
2. Assimilation of project details
3. Quality of preliminary user/site studies
4. Collaboration with associated consultants
5. Adherence to Client's and Contractor's procedures
6. Performance at site and/or design team meetings
7. Adherence to programme/plan of work
8. Relationship with Contractor
9. Relationship with Architect/Surveyor/Engineer*
10. Promptness in resolving problems
11. Adequacy of site visitation/inspection
12. Competence in handling claims
13. Efficiency in resolving dispute at site level
14. Quality of the written report (the Report)
15. Quality of the non-binding recommendation or evaluation
16. Quality of the recommendation on another form of dispute resolution
17. DRA contract team
18. Others (specify)