Architectural Services Department

THE

DISPUTE RESOLUTION ADVISOR (DRAd) SYSTEM

HANDBOOK

December 2025

Architectural Services Department

The Dispute Resolution Advisor (DRAd) System Handbook

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PART 1

APPROVAL FOR USE OF
THE DISPUTE RESOLUTION ADVISOR (DRAd)
SYSTEM
AND DRAd LISTING PROCEDURES

PART 1

APPROVAL FOR USE OF THE DISPUTE RESOLUTION ADVISOR (DRAd) SYSTEM AND THE DRAd LISTING PROCEDURES

1.1 INTRODUCTION

1.1.1 General

This Handbook provides the procedures to be followed for the Dispute Resolution Advisor (DRAd) System.

For the purpose of this Handbook, the following post designations intend to reflect the contract administrative frameworks of Architectural Services Department (ArchSD) works contracts adopting a non design and build procurement approach administered by in-house QS:-

Post	Abbreviation
Project Quantity Surveyor	PQS
Design Team Leader	DTL
Chief Architect	CA

Reference should also be made to the table appended at **Appendix 1.6** for equivalent post designations for out-sourced works contracts and/or works contracts adopting Design and Build procurement approach.

1.1.2 Approval to Use the DRAd System

For ArchSD works contracts, consent to use the DRAd system shall be obtained by the DTL from the Project Director. The adoption of the DRAd system must be approved by the Project Director under the delegated authority of Director of Architectural Services prior to any decision to incorporate DRAd provisions within a construction contract.

1.1.3 Use of the DRAd System

1.1.3.1 Before the DRAd system may be used the requirement must be established.

1.1.3.2 The requirement may be as a result of the following minimum mandatory criteria.

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

(b) the contract value should be over HK$700M, or over HK$100M for exceptional case where there is demonstrable benefit to adopt DRAd System.

[Note: The revised threshold contract value ($700M) for contracts adopting DRAd System shall apply to contracts for which tenders are invited on or after 15 March 2021.]

1.1.3.3 The adoption of the DRAd System, in itself, is not mandatory. In instances of doubt the Project Director should seek the advice of the Assistant Director (Quantity Surveying) (AD(QS)).

1.1.3.4 Subject to any transfer of costs ordered by an arbitrator under the Special Conditions of Contract in Part 5 of this Handbook governing the DRAd system, the Employer and the Contractor shall each pay 50% of the DRAd's costs, fees and expenses in respect of the DRAd services.

1.1.4 List Management

1.1.4.1 An informal (i.e. not gazetted) list of DRAds, which is updated annually, is managed by the Joint Management Committee (JMC). An up-to-date list is held by the Secretary of the JMC.

1.1.4.2 An updating exercise of the list of DRAds will be conducted, normally on annual basis, in which all the DRAds are required to submit returns on their updated personal details as in **Appendix 1.5**. Those DRAds who do not submit their returns would be assumed as not available for undertaking any further DRAd assignment and would therefore be deactivated from the List of DRAds until an application for reinstatement is received from the DRAd.

1.1.5 Selection and Appointment

Procedures for selection and appointment of DRAd under the works contract are given in PART 2 herein.

1.1.6 Performance Reporting

A reporting and review system on DRAd's performance is managed by the JMC to ensure that all DRAd consultancy assignments meet the specified performance criteria. Details are given in PART 3 herein.

1.2 PROCEDURES FOR INCLUSION ON THE LIST

1.2.1 DRAd Listing

1.2.1.1 Notification of interest for inclusion on the DRAd list may be received by either ArchSD or HKCA. Only applications from individuals and not from companies/firms will be considered. All applications shall thereafter be processed by ArchSD and finally be approved by the JMC.

1.2.1.2 The applicant shall complete and submit a standard application form at **Appendix 1.1, Proforma No. 1**.

1.2.1.3 Upon receipt of the candidate's completed application form, the Secretary, JMC should assess the application according to the admission criteria as set out in **Appendix 1.3** and submit the recommendation based on the Summary of Assessment in **Appendix 1.4** at the next JMC meeting for its consideration and advice on the suitability of the applicant for inclusion on the list.

1.2.1.4 ArchSD shall convene a JMC meeting comprising representatives of ArchSD, HKCA, a civil engineering stream Works Department. A representative of Housing Department shall be in attendance. Normally, Assistant Director (Quantity Surveying) will represent ArchSD and chair the JMC meeting. Usually, JMC meetings would be held quarterly.

1.2.1.5 The terms of reference of the JMC are :-

(a) to keep under review the procedures for the selection, appointment and administration of DRAd;

(b) to manage the list of DRAd; and

(c) to review the performance of DRAd.

Membership	Role
AD(QS), ArchSD	Chairman
Representatives of HKCA	Member
A D2 rank representative of a civil engineering stream Works Department (on a yearly rotation basis among CEDD, DSD, HyD and WSD)	Member
A representative of Housing Department	In attendance
TS/1, ArchSD and a representative of a civil engineering stream Works Department (on a yearly rotation basis among CEDD, DSD, HyD and WSD) would jointly provide secretarial support to the JMC	Secretary

1.2.1.6 The JMC considers the application and comments from Secretary, JMC and decides whether the applicant is suitable for listing.

1.2.1.7 The Secretary, JMC informs the applicant of the result and issues an updated list to HKCA.

1.2.1.8 A flowchart of the DRAd Listing Procedures is at **Appendix 1.2**.

1.3 PROCEDURES FOR REMOVAL FROM THE LIST

1.3.1 Removal

1.3.1.1 If it is found that an individual on the DRAd list has very poor performance or committed conduct which would not make him suitable as a DRAd e.g. acts of dishonesty, bankruptcy or being no longer of sound mind or body etc., then this individual shall be removed from the list.

1.3.1.2 Removal from the list shall follow the procedures set out in PART 3 of this Handbook, Paragraph 3.6.4.6.

ARCHITECTURAL SERVICES DEPARTMENT/ HONG KONG CONSTRUCTION ASSOCIATION

Application For Inclusion on the DRAd List

1. **Surname (Mr/Ms*)** _____ **Other name(s)** _____ **Chinese name (if any)** _____

   (Note : Name should be same as the one on your HKID Card or other identity document.)

2. **Tel** _____ **Fax** _____ **Mobile** _____ **E-mail** _____

   Correspondence Address

   _____

3. **Nationality** _____ **No. of years practiced in HK** _____

4. **Languages Spoken and Written** _____

5. **Academic Qualifications** **Month/Year**

   _____ _____
   _____ _____
   _____ _____
   _____ _____
   _____ _____

6. **Professional Qualifications** *(Note 1)* **Month/Year**

   _____ _____
   _____ _____
   _____ _____
   _____ _____
   _____ _____

7. **Occupation** _____

   Name of Firm _____

   Position held _____

8. Other Relevant Training/ Structured Learning in Dispute Resolution	Month/Year

9. Post Professional Qualification Experience in Construction Industry *(Note 2)*

Brief description of employment e.g. position, employer, role and projects involved	From (Year)	To (Year)

10. Construction Related Dispute Resolution Knowledge and Experience *(Note 3)*:

(a) In the capacity of Mediator or Conciliator or DRA	Month/Year

(b) In other capacity such as representative, expert witness, counsel or advisor *(Note 4)*	Month/Year

Name of Applicant: _____

(c) In the capacity of Adjudicator or Arbitrator **Month/Year**

Remarks - please provide the curriculum vitae and fill in any other relevant details or attach further information that are not covered above

I hereby declare that the information given in this application is true and I have not committed any misconduct or suspected misconduct in Hong Kong or elsewhere.

Signed by ( )

Date .....

* ***Delete as appropriate***

Guidance for Applicant

Note 1 Copies of the applicant's certificates issued by professional institutes shall be attached to the application.

For the applicant who is the fellow member of professional institutes, he or she should also provide the copy of the certificate showing when he or she became a qualified member of that institute.

Note 2 The post professional qualification experience in construction industry is counted from the date the applicant became a qualified member of construction related institutes which are acceptable to JMC. An applicant with less than 5 years' post professional qualification experience in local construction industry would not be considered for inclusion.

Note 3 Construction related dispute resolution knowledge and experience is essential for inclusion on the DRAd List. Applicants should submit relevant experience in detail for review.

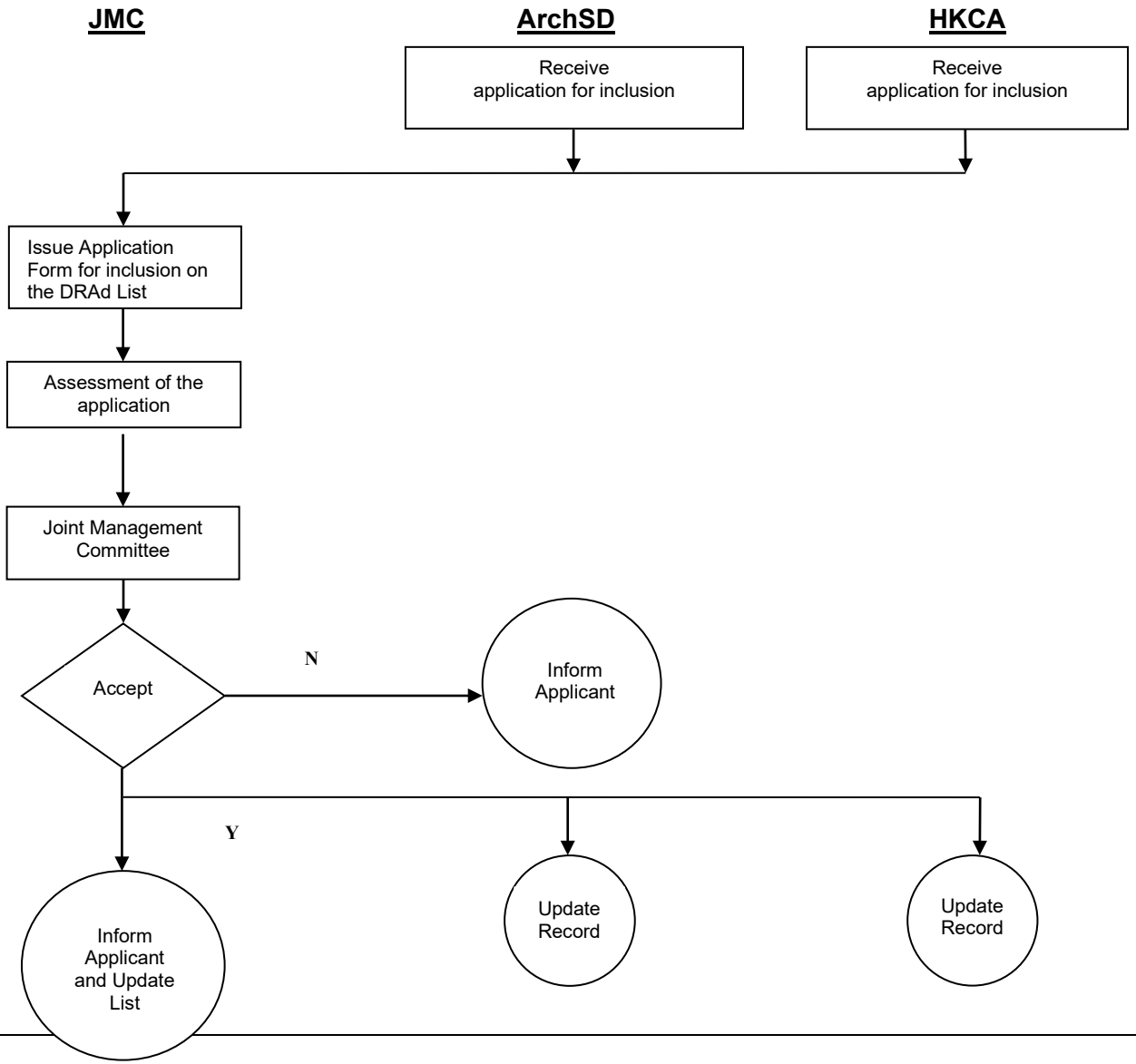
As most mediations and arbitrations are confidential, applicants are reminded to obtain the necessary approvals before such information is provided. Non-construction related dispute resolution knowledge and experience would not be considered in the application.

Details of the dispute case involved such as type of project, nature of dispute, disputed amount (to the nearest $M), and when the dispute was settled etc. shall be provided.

Construction related dispute resolution experience refers to experience in resolution of any disputes between the employer and the contractor or between the contractor and the sub-contractor arisen during the progress of construction works. Disputes on other issues, such as those relating to sales and purchase agreements, water leakage in existing buildings, procurement of mechanical plant, consultancy agreements, etc. will not be considered / counted as construction related dispute resolution experience. The JMC shall decide if necessary on whether or not a particular dispute resolution case should be considered / counted and this decision shall be final.

Note 4 The general construction contract administration experience such as preparation and assessment of contractual claims, settlement of final accounts etc. would not be considered as the applicant's construction related dispute resolution experience in other capacity such as representative, expert witness, counsel or advisor etc.

Flowchart of the DRAd Listing Procedures



Application for inclusion on the DRAd List is received by ArchSD or HKCA.

Secretary, Joint Management Committee issues application form for inclusion on the DRAd List.

If the applicant satisfies the admission criteria, it is then referred to the JMC for consideration.

Application is unsuccessful if it fails to satisfy the JMC.

Secretary, JMC informs applicant of the result. All parties update their respective records.

Joint Management Committee on Dispute Resolution Advisors [JMC]
Application for Inclusion on the DRAd List [List]

Name of Applicant : _____

Summary of Assessment

	Admission Criteria	Max Marks (Y)	Grading	Marks Scored	Remarks
1.	Construction Related Professional Qualifications	15			
2.	Other Relevant Training/ Structured Learning in Dispute Resolution	10			
3.	Post Professional Qualification Experience in construction industry	25			
4.	Construction Related Dispute Resolution Experience				
	(a) in the capacity of Mediator or Conciliator or DRA	20			
	(b) (i) in any other capacity such as Representative, Expert Witness, Counsel, Advisor, etc (in terms of case)	14			
	(ii) in any other capacity such as Representative, Expert Witness, Counsel, Advisor, etc (in terms of year)	6			
	(c) in the capacity of Adjudicators or Arbitrator	10			
5.	Others				
			Total marks scored :		
Overall recommendation : Recommended / NOT Recommended for inclusion					
Comments:					

N.B. The equivalent scores for different grades on compliance with the assessment criteria are as below :-

	Grading		*Marks Scored*		
[VG]	*Very Good*	=	*Maximum Marks (Y)*	x	*1.0*
[G]	*Good*	=	*Maximum Marks (Y)*	x	*0.7*
[F]	*Fair*	=	*Maximum Marks (Y)*	x	*0.5*
[P]	*Poor*	=	*Maximum Marks (Y)*	x	*0*

The overall passing Marks is 60. *An applicant should not be considered for inclusion if*
- the applicant has less than 5 years' post professional qualification experience in local construction industry

Personal Details of
Dispute Resolution Advisor [DRAd]

Surname (Mr/Ms*) ..... Other name(s): ..... Chinese name (if any): .....

(Note : Name should be same as the one on your HKID Card or other identity document.)

Tel: ..... Fax: ..... Mobile: ..... e-mail: .....

Correspondence Address: .....

Nationality: ..... No. of years practiced in HK: .....

Languages Spoken and Written: .....

Academic / Professional qualifications: Month/Year

.....

.....

.....

.....

.....

Position held: .....

Name of Firm: .....

Dispute Resolution Knowledge and Experience: (*Describe in not more than 200 words*)

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

I hereby declare that the information given in the above is true and I have not committed any misconduct or suspected misconduct in Hong Kong or elsewhere.

I hereby agree to release the above personal information to all the Contractors for the purpose of the Contractors' short-listing of preferred DRAds undertaking public works projects.

I hereby agree to abide by all the provisions in the Dispute Resolution Advisor (DRAd) System Handbook and any future amendments or additions thereto.

Signed by: ( )

Date : .....

* *Delete as appropriate*

Table of Equivalent Post Designations for Works Contracts Adopting Different Procurement Approach

Non Design and Build Procurement Approach			**Design and Build Procurement Approach**	
Projects Handled by In-house Architect and In-house QS	Projects Handled by Out-sourced Architect and In-house QS	Projects Handled by Out-sourced Architect and Out-sourced QS	Projects Handled by In-house QS	Projects Handled by Out-sourced QS
PQS	PQS	QS with Liaison Duties	SOR/QS	QS with Liaison Duties
DTL	SPM	SPM	SOR/SPM	SOR/SPM
CA	CPM	CPM	SO	SO

Post	Abbreviation
Project Quantity Surveyor	PQS
Design Team Leader	DTL
Chief Architect	CA
Senior Project Manager	SPM
Chief Project Manager	CPM
Supervising Officer Representative/ Quantity Surveyor	SOR/QS
Supervising Officer Representative/ Senior Project Manager	SOR/SPM
Supervising Officer	SO

PART 2

SELECTION AND APPOINTMENT PROCEDURES IN WORKS CONTRACTS

PART 2

SELECTION AND APPOINTMENT PROCEDURES IN WORKS CONTRACTS

2.1 GENERAL

A flowchart of the DRAd selection and appointment procedures is at **Appendix 2.1**.

2.2 SHORT-LISTING

2.2.1 Unless there are exceptional circumstances, "short-listing" of DRAd candidates for an individual contract is by reference to the current ArchSD/HKCA list of DRAd held by TS/1.

2.2.2 In order to establish an appropriate "list" of DRAd candidates for the contract concerned, the Project Director and the DTL shall, in conjunction with TS/1, review the long-list of Dispute Resolution Advisors (DRAd) to determine those DRAd candidates that have :-

2.2.2.1 appropriate construction background for the nature of the works contract for which the DRAd services are required;

2.2.2.2 no adverse reports regarding performance on current assignments; and

2.2.2.3 no more than three other current DRAd assignments under contracts administered by ArchSD, CEDD, DSD, HyD, EMSD, WSD, SWD and EPD (excluding Housing Department).*

2.2.3 The list of DRAd candidates established above shall be endorsed by the Assistant Director (Quantity Surveying).

2.3. INVITATION FOR SUBMISSIONS

2.3.1 After the award of the works contract, the "list' of DRAd candidates shall be provided to the Contractor by ArchSD on behalf of the Employer, for the purpose of the Contractor's short-listing of preferred candidates. Refer to **Appendix 2.2, Proforma No. 1**.

2.3.2 The Contractor shall submit a preferred list of five candidates, together with the candidates' letters confirming their agreement to be considered for the DRAd appointment. Refer to **Appendix 2.2, Proforma No. 2**.

2.3.3 ArchSD shall approach the preferred list of five candidates to obtain submissions from each candidate. Refer to **Appendix 2.3, Proforma Nos. 1 and 2** for standard enquiry documentation to be prepared by PQS.

2.3.4 Technical and fee submissions from each candidate shall include an appreciation of their anticipation of potential areas of dispute that might arise under the specific contract as well as their level of remuneration. Two copies of the technical and fee proposals are to be submitted simultaneously, one for each party to the works contract.

2.4 ASSESSMENT AND SELECTION

ArchSD and the Contractor each separately assess the submissions from the nominated candidates and prepare their own prioritized list of available preferred candidates. ArchSD's assessment and selection procedures are set out in **Appendix 2.4**.

2.5 APPOINTMENT

2.5.1 Candidate selected on the basis of the highest combined priority will be asked by PQS to confirm availability for appointment. A standard letter is attached at **Appendix 2.5, Proforma No. 1**.

2.5.2 The DRAd to be appointed shall only undertake a maximum of four DRAd assignments in the HKSARG Departments i.e. ArchSD, CEDD, DSD, HyD, EMSD, WSD, SWD and EPD (excluding Housing Department) at any one time, PQS shall check the "DRAd Current Assignment Declaration Form" submitted by the DRAd before the execution of the DRAd Agreement.*

2.5.3 The Dispute Resolution Advisor (DRAd) Agreement is drawn-up by ArchSD and signed by the three parties within the stipulated period.

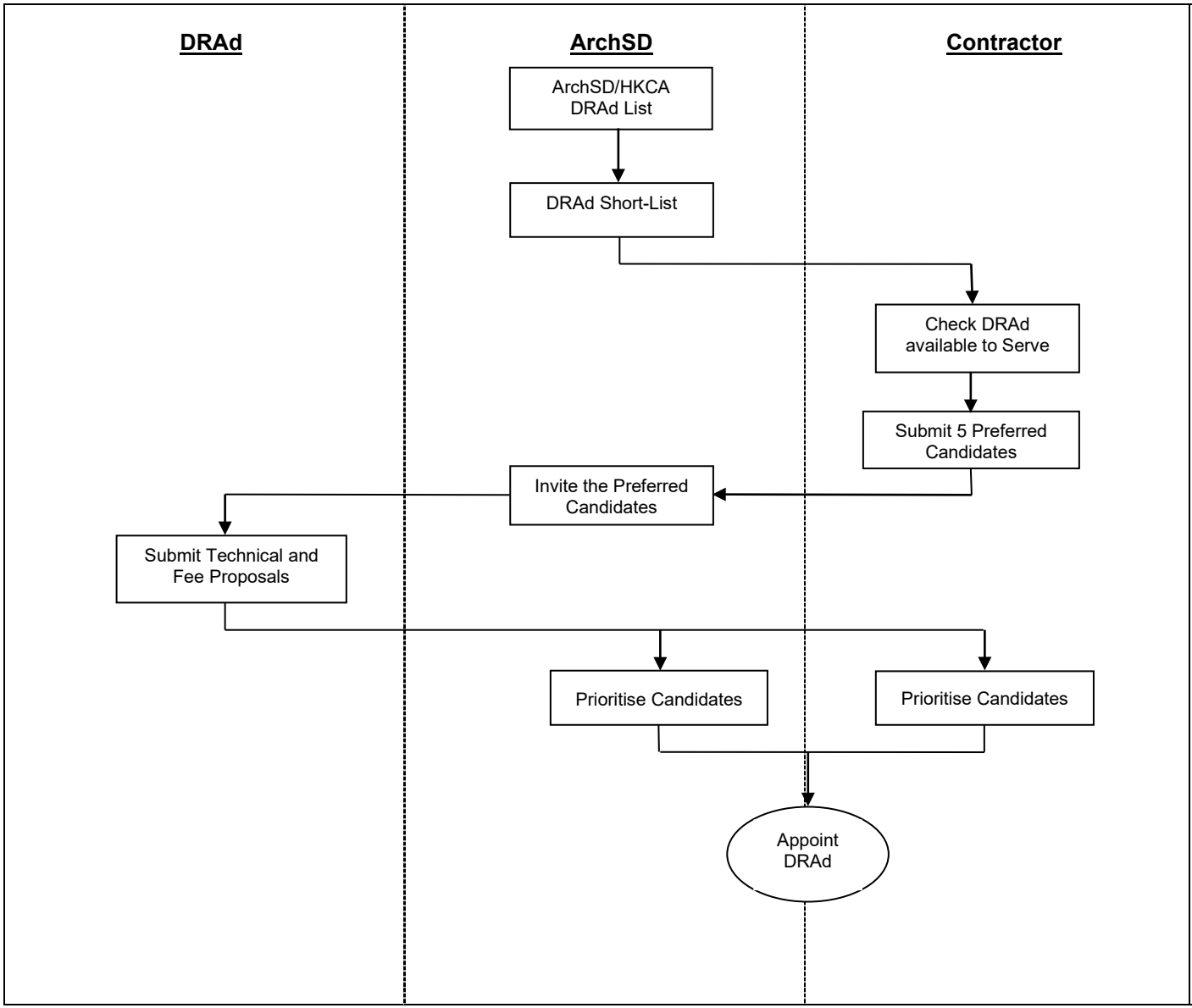
2.5.4 The PQS shall inform TS/1 of the appointment of the DRAd. TS/1 will then update the DRAd records.

2.6 FEEDBACK TO UNSUCCESSFUL CANDIDATES

Unsuccessful DRAd candidates shall be informed of their own combined priority. A standard letter is attached at **Appendix 2.5, Proforma No. 2**.

[*Note: The number of current assignments (maximum 4) shall not take into account the assignment in a completed works contract for which a period of 3 calendar months or more has elapsed calculated from the certified date of completion in respect of the whole (or the last section) of the works.]

Flowchart of the DRAd Selection and Appointment Procedures



Current DRAd long-list held by ArchSD.

ArchSD to draw up DRAd tender-list and issue this to contractor after the award of the works contract.

Contractor submits his preferred 5 DRAd candidates, together with the candidates' letters confirming their agreement to be considered for the DRAd appointment.

ArchSD invite the contractor's candidates to submit Technical and Fee Proposals.

Prioritised short-lists are drawn up respectively by ArchSD and Contractor based on DRAd candidates' submissions.

The candidate with the highest combined priority is selected as the DRAd

DISPUTE RESOLUTION ADVISOR (DRAd)

LIST OF POTENTIAL DISPUTE RESOLUTION ADVISOR

FOR

CONTRACT NO. : _____

CONTRACT TITLE : _____

The DRAd to be appointed shall only undertake a maximum of four DRAd assignments in the HKSARG Departments i.e. ArchSD, CEDD, DSD, HyD, EMSD, WSD, SWD and EPD (excluding Housing Department) at any one time.

Note *(a)* *Name, profession, address and tel/fax numbers to be listed in alphabetical order of surname.*

(b) *List of potential DRAd to be chosen from the List held by TS/1, in accordance with the criteria stated in Part 2, Paragraph 2.2 of this Handbook.*

(c) *Personal Details of DRAd (refer to Appendix 1.5 of this Handbook) is attached.*

CONFIDENTIAL

CONTRACTOR'S PREFERRED LIST OF CANDIDATES FOR APPOINTMENT AS DISPUTE RESOLUTION ADVISOR (DRAd)

Contract No. : _____

Contract Title : _____

* 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 Potential Dispute Resolution Advisors provided by the Employer.*

ARCHITECTURAL SERVICES DEPARTMENT
BY FAX AND POST

Our Ref : Date
Tel. :

Circulation : As attached list

Dear Sirs,

Contract No. : _____

Contract Title : _____

Dispute Resolution Advisor (DRAd)

Invitation Letter for Technical and Fee Proposals

We are pleased to advise that you have been shortlisted by the Contractor to submit proposals for the role of the Dispute Resolution Advisor for the captioned contract.

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

a. Schedule of Fees Proforma
b. Guidance Notes for Preparing Submissions for Appointments as Dispute Resolution Advisor (DRAd)
c. Extent of Contract, extract from preliminaries (Page No.)
d. Programme details, extract from preliminaries (Page Nos. to)
e. Special Conditions of Contract Clause SCC[ ] (total ____ pages)
f. Letter of Confirmation for Compliance with National Security

3. Please also refer to the following documents already in your possession:-

a. Standard DRAd Agreement and Schedule 1
b. Short Form Arbitration Rules

4. You are required to submit your proposals in DUPLICATE providing one copy each in sealed envelopes addressed and delivered separately to :-

- (Name)
  Assistant Director (Quantity Surveying)
  Room 3502, 35th Floor
  Queensway Government Offices
  66 Queensway
  Hong Kong

- (Name)
  (Contractor's Name and Address)

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

[*Guidance Note: Minimum 10 working days should be allowed. Otherwise, approval by an officer at D2 rank is required.*]

5. Your proposals shall be clearly marked on the outside of the sealed envelope as follows :-

"(Name)
Proposals for
Dispute Resolution Advisor
(Contract No. _____)
(Contract Title _____)"

6. Also inside the envelope containing your sealed proposal please place the Technical Proposal and Fee Proposal in SEPARATE sealed envelopes which shall be labelled :-

"(Name)
Technical Proposal for
Dispute Resolution Advisor"

and "(Name)
Fee Proposal for
Dispute Resolution Advisor"

7. The Technical Proposal shall be limited to six A4 size pages outlining your understanding and appreciation of anticipated disputes, strategy and relevant project experience to accomplish the DRAd assignment. For exceedance of the specified number of pages of Technical Proposal, all the exceeded pages shall be discarded prior to the assessment. You shall submit fee proposal by completing the Schedule of Fees attached to this letter. Advance payment in any form is not allowed.

8. In addition, if a lump sum is quoted for services rendered, including any supporting services, the equivalent hourly charge rate must be given.

9. You must clearly indicate on the Schedule of Fees whether there is / is not an element of inflation applicable to your remuneration. If inflation is applicable, the related items must be completed in accordance with the notes provided in the Schedule of Fees.

10. Please be advised that your proposals will be reviewed and assessed separately by the Employer and the Contractor. After the assessment by the Employer and Contractor, you will be advised of the outcome.

11. If the total score for the Technical Proposal obtained by the candidate is less than 50, the candidate shall be considered as having failed the technical assessment. The Fee Proposal shall not be opened and considered further.

12. You are also required to declare any interest if it is considered by you to be in actual, potential or perceived conflict with the DRAd Services for the above project. An interest declared would be carefully considered but would not automatically bar you from being further considered in the selection process.

13. Please be advised that pursuant to Clause 2.5.2 of the DRAd Handbook, the DRAd to be appointed shall only undertake a maximum of four DRAd assignments in the HKSARG Departments i.e. ArchSD, CEDD, DSD, HyD, EMSD, WSD, SWD and EPD (excluding Housing Department) at any one time. In case you are selected as DRAd for the captioned contract, you are required to submit a "DRAd Current Assignment Declaration Form" for verification prior to the execution of the DRAd Agreement.

14. The Employer is not bound to accept any proposal it may receive.

15. Submissions shall be in accordance with the requirements stated in paras. 4, 5 and 6 of this letter. Any late submissions or submissions at wrong locations will not be accepted. Please allow adequate time for your submission to be delivered to the appropriated collection points stated above. The closing time for collection as stipulated hereafter will be determined by reference to the time announced by a local radio channel. You should deposit submission before the deadline for submission. In the event a tropical cyclone warning signal No. 8 or above is hoisted or a black rainstorm warning signal is issued between 9 am and 12 noon on the submission closing date, the submission deadline will be postponed to 12 noon on the next working day.

16. You are required to confirm that you agree to abide by your Technical and Fee Proposals for a period of ninety (90) days from the due date for submission of Technical and Fee Proposals and it shall remain binding upon you and may be accepted at any time before the expiry of that period.

17. Notwithstanding anything to the contrary in this invitation, the Government reserves the right to remove a DRAd candidate from the bidding exercise on the grounds that the DRAd candidate has engaged, is engaging, or is reasonably believed to have engaged or be engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security, or otherwise the removal is necessary in the interest of national security, or is necessary to protect the public interest of Hong Kong, public morals, public order or public safety.

18. You shall submit a duly signed and witnessed confirmation for compliance with national security in the form set out in Annex A attached to this letter. Failure to comply with this paragraph may lead to invalidation of your submission. If you still fail to submit the signed and witnessed confirmation by the given due date after being requested to do so, your submission will be invalidated.

19. Documents of unsuccessful candidates will be destroyed three months after the date of the DRAd has been appointed and the Agreement signed.

20. If you are not available or you consider yourself inappropriate to act as DRAd for the above project, please advise the undersigned IMMEDIATELY stating your reasons and return all documents provided herewith.

21. Should you require any further information or clarification, please contact (name), (post) at (tel. no.).

Yours faithfully

( )
Project Director
for Director of Architectural Services

Encl.

c.c. Contractor (w/o attachments)
CA/or CPM/*
AD(QS)
TS/1

**Delete as appropriate*

Schedule of Fees

[Guidance Note: Sample Schedule of Fees based on DRAd duration of 21 months]

Contract No. : _____

Contract Title : _____

A. DRAd's Core Activity 1	Estimated Ceiling Hours[4]	Hourly Rate[4] @HK$/hour		**Amount HK$**
Initial familiarisation with the contract[3]	_____Hours			$ **(A)**
B. DRAd's Core Activity 2	Estimated no. of Hours Per Month[7]	Hourly Rate[8] @HK$/hour	No. of Months[7]	-------
Attendance at meeting and other activities[6]	10* Hours		21* Months	$ **(B)**
Total of DRAd's Core Activity 1 and 2 *i.e. = (A) + (B)*				$
C. Total Inflation for DRAd Activity[8] *(B/F from Attachment A)*				$ **(C)**

Total Notional Fee = (A) + (B) + (C) = HK$ _____

Remark : Figures in super-script refer to the respective notes provided at end of this Schedule.

Total Notional Fee is to be used for assessment of fees proposal.
Any arithmetical errors found in the Amount(s) and the calculation of the Total Notional Fee shall be corrected based on the Estimated Ceiling Hours and Hourly Rate(s), and the Total Notional Fee for assessment of fees proposal shall be adjusted accordingly.

Schedule of Fees

The following Section D and E, shall be filled in by the DRAd which he/she deems necessary in discharging his/her duties:

D. Supporting Services on a need basis[9]	Hourly Rate @ HK$ (Month 0 - 12)	Hourly Rate @ HK$ (Month 13 – 21*)
a) Programmer		
b) Quantity Surveyor		

E. Extraordinary expenses and reasonable out-of-pocket expenses[10]	Estimated amount HK$ (subject to production of documentary proof of actual cost incurred)

Schedule of Fees

Attachment A
Inflation calculation Sheet

DRAd's Core Activity 2	Month 13 – 21*[7]
Attendance at meeting and other activities	Hours[7] x nett adjustment to hourly rate x 9* months = 10* (hr.) x $ _____[#] x 9* = $C

Total Inflation carried forward to item C on the previous page	**$C**

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

* amend as appropriate and refer to Note 7

Signature of DRAd: _____ Date: _____

Name of DRAd: _____

Schedule of Fees

Notes :

1. The time spent by secretarial and clerical staff and the travelling time spent by the DRAd shall **not** be included in the estimated times for the provision of DRAd's services, whether estimated by the DRAd or the Project Quantity Surveyor (PQS)/ QS with liaison duties/ Supervising Officer Representative/Quantity Surveyor (SOR/QS)*. These times shall also not be included in the DRAd's payment application.

2. All hourly rates of services provided by the DRAd shall include allowances for the costs of secretarial and clerical staff and also allowances for travelling expenses incurred by the DRAd.

3. Initial familiarisation of contract (DRAd's Core Activity 1) is to include but not limited to the following activities conducted by the DRAd:

   3.1 Studying and understanding the contract documents;

   3.2 Holding initial briefing meeting between the contractor and the Employer/or his/her representatives; all nominated* and specialist sub-contractors shall attend this meeting;

   3.3 Conducting the first site visit;

   3.4 Preparing a report to cater for the above activities.

4. The DRAd is to fill in his/her estimated ceiling hours and hourly rate for initial familiarisation of the contract. The DRAd shall charge the actual hours spent at the hourly rate quoted. If the time spent by the DRAd is less than the estimated ceiling hours, the DRAd shall be paid for the actual time spent. If the time spent by the DRAd is more than the estimated ceiling hours, the DRAd shall only be paid for the estimated ceiling hours for the whole familiarisation process.

5. Advance payment in any form is not allowed.

6. The DRAd's Core Activity 2 shall include but not limited to:

   6.1 progress meetings, building services co-ordination meetings, any other ad hoc meetings and meetings called by any one party but without the attendance of the other party;

Schedule of Fees

6.2 site walk;

6.3 studying and reviewing correspondence, master and short-term programme;

6.4 convening meetings to deal with potential areas of dispute, facilitating the resolution of disputes and reporting on same.

7. The estimated number of hours for the DRAd's Core Activity 2 and the duration of the construction period/ maintenance period in months are to be filled in by the PQS / QS with liaison duties / SOR/QS*. The DRAd shall be paid the actual time spent by him/her in carrying out the DRAd's Core Activity 2 in accordance with the Fees Proposal.

8. There shall be no cost escalation due to inflation within the first twelve months starting from the date the DRAd Agreement is signed. The hourly rate shall include allowances for any inflation for the first 12 months. The inclusion of an inflation factor in a DRAd proposal is optional and is solely at the discretion of the candidates. If the DRAd includes an inflation element in his/her proposal, the DRAd is to show his/her build-up of inflation on a 12-month basis using the Inflation Calculation Sheet i.e. Attachment A on page 6 of this Schedule of Fees. Numerical values have to be entered for the nett adjustment of hourly rates. Reference to any indices for adjustment of fees is not acceptable.

9. The DRAd is required to fill in the hourly rates for supporting services in Section D "Supporting Services on a Need Basis" in this Schedule of Fees, which he/she deems necessary in discharging his/her duties.

10. Items of extraordinary expenses and reasonable out-of-pocket expenses actually and properly incurred for which reimbursement is necessary shall be listed in the DRAd's submission of fee proposal and will be reimbursed upon being incurred by the DRAd.

* *Delete as appropriate*

To: The Government of the Hong Kong Special Administrative Region
("Government")

Date: _____

Dear Sir/Madam,

Contract No. [ ]
[Contract Title]
Letter of Confirmation for Compliance with National Security

1. I, [(Name of the DRAd candidate) of (Address of the DRAd candidate)], refer to my submission for the above agreement.

2. I confirm that, before I sign this letter, I have read and fully understand this letter and paragraphs [insert appropriate reference] in the invitation letter.

3. I, represent and warrant that I, have not engaged, am not engaging and will not engage in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security.

4. I shall indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations and/or warranties above, including but not limited to damages for delay, costs and expenses of re-tendering and other costs incurred.

Signed by

_____
[Name of the DRAd candidate]
[Date]

in presence of:

_____
[Name of Witness]
[Occupation]
[Address]

GUIDANCE NOTES

FOR

PREPARING SUBMISSIONS FOR APPOINTMENT

AS

DSIPUTE RESOLUTION ADVISOR (DRAd)

GUIDANCE NOTES FOR PREPARING SUBMISSIONS FOR APPOINTMENT AS DISPUTE RESOLUTION ADVISOR (DRAd)

1. General approach to the appointment

Give a brief description on the general approach to the project following the various stages set out in Clause 3 below and include the following :-

(a) The Report (Special Conditions of Contract in Part 5 of this Handbook refers)

(b) Short form arbitration (Special Conditions of Contract in Part 5 of this Handbook refers)

2. Scope of the appointment

The scope of the appointment is outlined in Special Conditions of Contract in Part 5 of this Handbook and further detailed in the standard DRAd Agreement (the Agreement). The submission should amplify the dispute resolution proposals having particular regard to co-operation and joint problem solving throughout the Contract.

3. Details of services to be provided

These should be inclusive of but not limited to the following :-

(a) The initial period of familiarisation at each Section of the Contract and initial Briefing meeting conducted by DRAd

(b) Attendance at site meetings

(c) Dispute resolution meetings and activities

The amount of hours expected to be spent on item (a) above should be given. If the time on which DRAd has spent is more than the estimated ceiling hours, the DRAd shall be paid only the estimated ceiling hours for the whole familiarisation process.

In addition, if a lump sum is quoted for services rendered including supporting service, the equivalent hourly charge rate must be given.

The DRAd must clearly indicate on the Schedule of Fees whether there is/is not an element of inflation applicable to his/her remuneration. If inflation is applicable, the related items must be completed in accordance with the guidance notes provided with the Schedule of Fees.

4. Relevant Project Experience

The DRAd shall provide with the submission full details of his/her relevant construction experience which is similar in nature and/or scale to the contract for which DRAd is to be employed.

(Note: For the avoidance of doubt, the experience relating to dispute resolution would not be taken into account in the section of "Relevant Project Experience".)

5. Staffing

Whilst the day to day activities and most of the professional duties must be carried out by the DRAd, it may be appropriate for certain specialised and administrative functions to be carried out by others on his/her behalf. List the responsibilities of such staff together with their respective C.V.'s.

6. Facilities and/or staffing to be provided by the Employer and the Contractor

Upon request and as required for the execution of his/her duties, the DRAd shall be permitted to use on-site meeting rooms and office space, local telephone/facsimile and photocopying 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.

7. Any special conditions of appointment

Full details of any special conditions of appointment should be given.

8. Details of the remuneration required

The DRAd shall submit proposals with regard to remuneration required for this appointment by completing the Schedule of Fees attached to the invitation letter. The fee proposal shall include for but is not limited to initial familiarization with the Contract and attendance at meetings. Supporting services and items of extraordinary expense for which reimbursement is necessary shall be listed. Attention is drawn to Clause 9 of the Agreement and notes provided in the Schedule of Fees.

9. Advance payment

Advance payment in any form is not allowed.

Dispute Resolution Advisor (DRAd)
ArchSD Assessment and Selection Procedures

Submissions

1. Having confirmed their agreement to be considered for the DRAd appointment, the five DRAd's, nominated by the Contractor are to be invited to provide technical and fee submissions. Submissions are to be returned simultaneously to ArchSD and the Contractor.

Assessment by ArchSD of Technical Submissions

2. ArchSD will open the technical part of the submissions only initially. The opening of the submissions is undertaken by AD(QS) in the presence of the DTL and the PQS.

3. An assessment panel shall be set up and chaired by a D1 officer or above for ArchSD projects, or a D2 officer or above for other works departments projects. The chairperson is responsible to oversee the whole technical assessment process and endorse the final technical marks before submission seeking approval for fee opening. Therefore, the chairperson should preferably be non-marking. The assessment of the technical submissions shall be undertaken by individual member including DTL, SQS and TS/1. Marks will be allocated in accordance with **Appendix 2.4, Proforma No. 1**.

4. The marks of the three members of the assessment panel will then be aggregated by DTL to establish the total marks received by each of the candidates. At this stage if it is apparent that any of the submissions 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 by ArchSD of Fee Submissions

5. The fee submissions of the prospective DRAd's whose technical submissions have been deemed suitable will then be opened as in 2 above. The PQS will produce an analysis of the fee submissions in order to confirm, and/or establish lump sums for comparative purposes in the assessment process.

Ranking of Submissions by ArchSD

6. The technical and fee submissions will then be collated, to establish the final list in descending order. 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 worked example :-

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

*Note : See DRAd's Schedule of Fee

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 x 10.1% i.e. 7.68%. The weighted fee disadvantage of A compared to B is 0.25 x 20% i.e. 5.00%. The winner is therefore A.

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

7. The assessment of prospective DRAd's is then endorsed by AD(QS), listed in descending order of acceptability and the typed and endorsed list placed by AD(QS) in a sealed envelope marked :-

" Architectural Services Department
Combined Technical and Fee Assessment Result of Dispute Resolution Advisor Proposal
Contract No : _____
Contract Title :_____"

Final Mutual Selection and Appointment

8. The sealed envelope is held by AD(QS).

9. The ArchSD's and the Contractor's envelopes are then opened in the presence of the parties and the names matched for selection of candidate on the basis of the highest combined priority; number one being the highest priority, in accordance with the following worked example:-

Candidate	Acceptability Ranking No.		(1) + (2)	*Combined Priority
	by ArchSD (1)*	by Contractor (2)*		
A	1	4	5	2
B	2	1	3	1
C	3	3	6	3
D	4	5	9	5
E	5	2	7	4

* Note : No.1 being the highest priority

Candidate B with the highest combined priority shall be selected as the DRAd.

10. In the event that there are two or more candidates with the same highest combined priority, the Contractor shall decide who shall be appointed among those candidates with the same highest combined priority.

11. In the event that the candidate with the highest combined priority for any reason cannot or will not take up the DRAd position for the Contract or is considered and proposed by the Employer and agreed by the Contractor to be inappropriate or ineligible to take up the DRAd position for the Contract, then the candidate with the next highest combined priority in order of preference shall be approached for appointment. The Contractor shall not unreasonably disagree with the Employer's proposal. This process shall go on as the circumstances may so require until a DRAd is appointed.

12. A meeting is then arranged with the Contractor, DRAd and the 'Employer' to execute the Dispute Resolution Advisor (DRAd) Agreement. The Agreement shall be signed by the Project Director on behalf of the 'Employer'. The standard document is at **Appendix 2.4, Proforma No. 2**.

Restricted (Tender)

Department : _____
Contract No. : _____
Contract Title : _____

Dispute Resolution Advisor (DRAd)
Technical Assessment of Submissions

		*Scores for Candidates									
Topic	Max Score (1)	(Name)		(Name)		(Name)		(Name)		(Name)	
		Grading (2)	Marks (2)	Grading (2)	Marks (2)	Grading (2)	Marks (2)	Grading (2)	Marks (2)	Grading (2)	Marks (2)
Understanding	50										
Strategy	40										
Relevant Project Experience	10										
	Total Marks:										

Assessor's Signature : _____

Assessor's Name/Post : _____

Date : _____

Note 1 – The max score of each assessment criterion can be adjusted by the project team if justifications are provided. No adjustment on the max score shall be made after inviting technical and fee submissions.

Note 2 –

Grade		Marks
Very Good	[VG]	Max score x 1.0
Good	[G]	Max score x 0.7
Fair	[F]	Max score x 0.5
Poor	[P]	Max score x 0

Guidance Notes for Assessment Criteria on the Selection of DRAd

The purpose of these guidance notes is to maintain consistency in the assessment among assessors. It should be read in conjunction with Assessment by ArchSD of Technical Submissions in para. 2 to 4 of Appendix 2.4 of this Handbook.

1. Understanding

In assessing the aspect of "Understanding", the assessor shall have regard to:

a) Whether the proposal indicates the breadth and depth of understanding of the nature of the contract, including but not limited to considerations of the scopes of the contract and the specialist and sub-contracts, the constraints of the site and the works, the complexity of the construction methods, the contract particulars, the previous working experience with the contractor, etc.;

b) Whether the proposal reflects a thorough grasp of the potential problems, the likely areas of disputes, the expected difficulties in the interaction with the stakeholders, etc.

2. Strategy

In assessing the aspect of "Strategy", the assessor shall have regard to:

a) The practicability and effectiveness of the proposed strategy for the contract and whether such strategy could facilitate pro-active and joint effort in problem solving throughout the contract period;

b) In particular, focus on the action plans, if submitted, on meeting both parties' concern on dispute avoidance and expeditious resolution of disputes that arise;

c) The actions and measures proposed by the candidate corresponding to the problems, constraints, etc. as mentioned in the "Understanding" section of the proposal.

3. Relevant Project Experience

In assessing the "Relevant Project Experience", the assessment criteria shall be related to the experience which is similar in nature and/or scale to the contract for which DRAd is to be employed. The assessment panel shall determine the assessment criteria before inviting technical and fee submissions.

(Note: For the avoidance of doubt, the experience relating to dispute resolution would not be taken into account in the section of "Relevant Project Experience".)

Appendix 2.4
Proforma No. 2

DISPUTE RESOLUTION ADVISOR (DRAd) AGREEMENT

Appendix 2.4
Proforma No. 2

ARCHITECTURAL SERVICES DEPARTMENT
DISPUTE RESOLUTION ADVISOR (DRAd) AGREEMENT

THIS AGREEMENT is made the _____day of _____.

BETWEEN :-

(1) THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINSTRATIVE REGION (hereinafter called "the Employer") of the first part; and

(2) _____of_____
(hereinafter called "the Contractor") of the second part: and

(3) _____[Name]_____of the third part.

WHEREAS :-

A. The Employer has awarded to the Contractor Contract No. _____

_____

_____ [description of Works] (hereinafter called "the Contract") and ___[Name]___ has been provided with a complete copy of the Contract.

B. The Contract requires the Employer and the Contractor, inter alia, to enter into a written agreement with a Dispute Resolution Advisor (hereinafter called the "DRAd") to give effect to the obligations of the DRAd as provided for in the Contract.

C. The Employer and the Contractor wish to jointly appoint _____[Name]___ to perform the role of the DRAd and _____[Name]_____ has agreed to accept such appointment.

NOW IT IS HEREBY AGREED AS FOLLOWS :-

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 or as are assigned to them hereunder :-

"DRAd"	means	[Name]
"DRAd Services"	means	the functions, duties and obligations which the DRAd shall undertake under this Agreement.
"Schedule of Fees"	means	Schedule 2 hereto which sets out the details of the fees to be paid to the DRAd.

(2) Words importing the singular only also include the plural and vice versa where the context requires.

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

(4) Unless otherwise provided, all payments shall be made in Hong Kong dollars.

(5) Unless otherwise agreed in writing between all the parties hereto, all correspondence in connection with this Agreement and drawings, documents or other information provided by any party hereto shall be in English.

Entire Agreement

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

DRAd Services

3. (1) The DRAd Services to be provided by the DRAd under this Agreement shall comprise the functions, duties and obligations to be performed by the DRAd under, or necessarily inferred or implied from, this Agreement, Schedule 1 hereto and the Contract.

(2) The DRAd Services described or referred to in the Contract and, without limiting the generality of the foregoing, particularly in Special Conditions of Contract Clause [SCC#] of the Contract are deemed to be and are hereby incorporated into this Agreement.

(3) The DRAd shall carry out the DRAd Services fairly and impartially as between the Employer and the Contractor.

Duration

4. This Agreement shall come into force on the date of execution hereof, and the tenure of the DRAd shall, unless the Employer and the Contractor otherwise agree in writing, cease upon the expiry of the Maintenance Period as provided in the Contract, save that the tenure of the DRAd shall automatically be extended beyond the expiry of the said Maintenance Period for the purposes of resolving any dispute for which a Notice of Dispute has been served in accordance with sub-clause (5) of Special Conditions of Contract Clause [SCC#] of the Contract. In the event of different Maintenance Periods having been named for different Sections or in the event of more than one Maintenance Period for different Sections or parts of the Works under the Contract, the expression "Maintenance Period" shall, for the purpose of this Clause, mean the last of such Maintenance Periods.

Discharge of the DRAd

5. (1) (a) The DRAd can be discharged at any time by a joint written notice from the Employer and the Contractor.

(b) The Employer or the Contractor may discharge the DRAd unilaterally at any time after the first six months of his tenure as DRAd. If either the Employer or the Contractor wishes to discharge the DRAd after six months then the one shall be required to confer in good faith with the other regarding the discharge.

(2) If the DRAd is discharged in accordance with sub-clause (1)(a) or sub-clause 1(b) of this Clause, the DRAd shall be paid at the rate and in the manner set forth in Clause 9 hereof, for the carrying out of the DRAd Services or any part thereof up to the date of discharge.

(3) The DRAd may at any time upon giving of a one month written notice to the Employer and the Contractor terminate this Agreement.

(4) If this Agreement is terminated in accordance with sub-clause (3) hereof, the DRAd shall be paid at the rate and in the manner set forth in Clause 9 hereof, for the carrying out of the DRAd Services or any part thereof up to the date of termination.

Confidentiality

6. (1) No information or documentation given in or prepared pursuant to this Agreement or otherwise provided for the purposes of the DRAd process shall be divulged by the DRAd to any third party or used by the DRAd otherwise than for the purposes of the DRAd Services without the prior written consent of the Employer and the Contractor.

(2) Nothing that transpires during the course of the DRAd process is intended to or shall in any way affect the rights or prejudice the position of the Employer and the Contractor in any subsequent litigation or arbitration, and without derogating from the generality of the foregoing and merely by way of examples :-

(a) the Report and terms of settlement recommended by the DRAd shall not be disclosed to the Arbitrator or Courts;

(b) the fact that information of whatsoever nature was made available to the DRAd does not mean that privilege or confidentiality is waived for any subsequent litigation or arbitration; and

(c) the fact that the accuracy of information or the validity or meaning of documents was not challenged during the DRAd process does not preclude challenge in subsequent litigation or arbitration.

(3) The DRAd shall not be compelled to divulge any information or documentation referred to in Clause 6 hereof or to testify in regard to the DRAd process in any subsequent litigation or arbitration involving the Employer and the Contractor and relating to the Contract.

(4) Notwithstanding the provisions of sub-clause (3) hereof if the DRAd considers from information available to him in the DRAd process 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 persons who are engaged directly or indirectly with this project are alleged to have committed crimes in particular corruption or bribery as defined in the Prevention of Bribery Ordinance, the duty of confidentiality shall not apply.

DRAd not subsequently to act as adjudicator, arbitrator, consultant or advocate

7. The DRAd shall not be appointed as adjudicator, arbitrator, consultant or advocate in any adjudication, arbitration or Court proceedings between the Employer and the Contractor on any matter arising out of the Contract unless the Employer and the Contractor agree in writing.

Obligations of the Employer and the Contractor

8 (1) The Employer and the Contractor shall participate fully in the DRAd process set forth in Special Conditions of Contract Clause [SCC#] of the Contract and shall fully comply with the terms of this Agreement and the Contract provisions as they relate to the DRAd process and such provisions are deemed to be and are hereby incorporated into this Agreement.

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

(3) The Contractor shall procure that all contracts between him and any Specialist Sub-contractors or Nominated Sub-contractors* engaged for the execution of any part of the Works shall have a Clause requiring the Specialist Sub-contractors or Nominated Sub-contractors* to participate fully in the DRAd process set forth in the Contract and that the Specialist Sub-contractors or Nominated Sub-contractors* shall comply fully with the terms of sub-clause (2) of Special Conditions of Contract Clause [SCC#] of the Contract.

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

(5) The Employer and the Contractor shall pay the DRAd for the DRAd Services in the manner as stipulated in Clause 9 of this Agreement.

Payment

9. (1) Payments under this Agreement shall be made in accordance with the Schedule of the Fees forming part of this Agreement and at the times set out in the Schedule of Fees.

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

(3) Subject to any transfer of costs ordered by the arbitrator under sub-clause (8) of Special Conditions of Contract Clause [SCC#] of the Contract, the Employer and the Contractor shall each pay 50% of the DRAd's costs, fees and expenses in respect of the DRAd Services provided by the DRAd. If either the Employer or the Contractor fails to pay any amount due to the DRAd within 7 days after the due date, then whichever of them is not in default shall pay the amount owing to the DRAd. 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 83 of the Contract or otherwise.

(4) 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 will be made in respect of any costs, fees or expenses incurred by the DRAd in carrying out the DRAd Services.

Exclusion of Liability

10. It is agreed that the DRAd shall not be liable to the Employer or the Contractor for any act or omission in connection with the DRAd Services provided under this Agreement, save for the consequences of fraud or dishonesty.

Declaration of Interest

11. On appointment and during the currency of this Agreement, the DRAd must declare any interest if it is considered to be in actual, potential or perceived conflict with the DRAd Services. Apart from the services to be provided under this Agreement, the DRAd shall not also act as a consultant/advisor/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 DRAd to take steps to remove such a conflict.

Prevention of Bribery

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

Contracts (Rights of Third Parties) Ordinance

13. Nothing in this Agreement confers or purports to confer on any third party any benefit or any right pursuant to the Contracts (Rights of Third Parties) Ordinance (Cap.623) to enforce any term of the Agreement.

Guidance Notes:

* ***Delete as appropriate***

\# ***Insert the relevant Clause SCC No. with title "Dispute Resolution"***

SIGNED, SEALED and DELIVERED by)
the Employer by)
[insert name and appointment of officer])
in the presence of -)
) *[Signature of the officer]*[1] L.S.
)
.....)
[Name])
[Occupation])
[Address])

*(a) SIGNED, SEALED and DELIVERED)
by [insert name of sole proprietor])
trading as [name of the firm])
in the presence of -)
) *[Signature of the sole proprietor]*[1] L.S
)
.....)
[Name])
[Occupation])
[Address])

or

*(b) *Alternative A (with a Common Seal)*[1])
)
Executed and delivered)
as a deed and the COMMON SEAL)
of [name of Contractor])
was affixed in the presence of)
[ ] its [director(s) or) *[Signature of the director(s) etc]*[1] Common Seal
director and secretary or person(s) authorized to)
sign the contract by its board of directors]2)
in the presence of a witness:)
)
)
.....)
[Name])
[Occupation])
[Address])

Alternative B (without a Common Seal)[1])
)
Executed and delivered)
as a deed)
by [name of Contractor])
acting through)
[ ] (its sole director)) *[Signature of the director(s) etc]*[1]
or)
[ ] and [ ] (its directors))
or)
[ ] (its director) and)
[ ] (its company secretary)[2])
in the presence of a witness:)
)
)
.....)
[Name])
[Occupation])
[Address])

or

**(c)* SIGNED, SEALED and DELIVERED by)
[the Contractor] by [ )
])
his/her/its[3] attorney under power of attorney) *[Signature of the attorney]*[1]
dated [ ])
in the presence of -)
)
)
.....)
[Name])
[Occupation])
[Address])

L.S.

or

#(d) SIGNED, SEALED and DELIVERED by)
[name of partner/participant] being a)
partner/participant of the)
[name of the partnership/unincorporated joint)
venture])
in the presence of -)
)
)
.....)
[Name])
[Occupation])
[Address])

[Signature of the individual partner/participant] [1]

L.S

or

#(e) SIGNED, SEALED and DELIVERED by)
[name of participant] being a participant of the)
[name of the unincorporated joint venture] by [ )
], his/her/its[3] attorney)
under power of attorney dated [ )
])
in the presence of -)
)
)
.....)
[Name])
[Occupation])
[Address])
)

[Signature of the attorney] [1]

L.S

or

#(f) #Executed and delivered)
as a deed and the COMMON SEAL)
of [name of participant] being a participant)
of the [name of the unincorporated joint) *[Signature of the*
venture] was affixed in the presence of) *directors etc]* [1]
[ ] its [director(s) or)
director and secretary or person(s))
authorized to sign the contract by its)
board of directors][2])
)
in the presence of a witness:)
)
)
.....)
[Name])
[Occupation])
[Address])

Common Seal

or

#Executed and delivered)
as a deed)
by [name of participant] being a participant)
of the [name of the unincorporated joint)
venture] acting through) *[Signature of the*
[ ] (its sole director)) *directors etc]* [1]
or)
[ ] and [ ] (its directors) or)
[ ] (its director) and)
[ ] (its company secretary)[2])
)
in the presence of a witness:)
)
)
.....)
[Name])
[Occupation])
[Address])

SIGNED, SEALED and DELIVERED)
by [insert name of the DRAd])
in the presence of -)
) *[Signature of the DRAd]*[1]
) L.S
.....)
[Name])
[Occupation])
[Address])

Note: (a) For use where an individual contractor is a sole proprietor.

(b) For use where a contractor which is an incorporated company executes under its common seal.

(c) For use where a contractor, whether a firm or an incorporated company, executes through an attorney.

(d) For use where an individual joint venture participant is a sole proprietor or is a partnership itself.

(e) For use where an individual joint venture participant, whether a firm or an incorporated company, executes through an attorney.

(f) For use where an individual joint venture participant which is an incorporated company executes under its common seal.

*** When preparing this document for signature by contractor who is sole proprietor or incorporated company, delete the inappropriate attestation clause options (a), (b) or (c), and also delete the guidance wording, lettering and numbers against the remaining appropriate option.***

*# When preparing this document for signature by contractor who is partnership or unincorporated joint venture, select the appropriate form or forms in attestation clause options (d), (e) or (f) and REPEAT FOR EACH PARTICIPANT of the unincorporated joint venture, and also delete the guidance wording, lettering and numbers against the remaining appropriate option.***

---

[1] **The italic parts are not part of the execution clause. They are for guidance or information only.**

[2] **Select the correct expression for use. If none is applicable, insert an appropriate expression.**

[3] **Delete as appropriate.**

All Guidance Notes above, in bold lettering, should be deleted when preparing this document for signature.

SCHEDULE 1

FUNCTIONS, DUTIES AND OBLIGATIONS

OF THE DISPUTE RESOLUTION ADVISOR (DRAd)

SCHEDULE 1

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

1. (1) The DRAd shall carry out the functions, duties and obligations ascribed to him in Clause 3 of this Agreement and this Schedule.

(2) The DRAd shall carry out his functions, duties and obligations strictly in accordance with the terms of this Agreement and the Contract provisions as they relate to the DRAd process.

(3) The DRAd does not have the authority to impose on the Employer and the Contractor :-

(a) his opinion as to the substance of the problem or dispute in question;

(b) his proposal to solve the problem or settle the dispute.

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 DRAd is expressly required to perform functions, duties and obligations in accordance with the following proposals :-

(all as set out in DRAd's submission and subsequently agreed by Employer/Contractor)

SCHEDULE 2

SCHEDULE OF FEES

(Refer to the standard proforma at Appendix 2.3, Proforma No. 1)

Appendix 2.5
Proforma No. 1

ARCHITECTURAL SERVICES DEPARTMENT

Standard Letter

Dear Sir,

Contract No. : _____

Contract Title : _____

Appointment of Dispute Resolution Advisor

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

2. The Architect/ Supervising Officer* for this project is Chief Architect/ Chief Project Manager / (Name of the Architectural Consultant)* _____.

3. The Contractor for the project is _____.

4. Liaison with the Architectural Services Department on matters in connection with this appointment will be through (name) (PQS/ QS with liaison duties/ SOR/QS*) (Tel No.) , or such person as may be appointed from time to time by SQS/SPM*(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.

5. 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.

6. Please be advised that pursuant to Clause 2.5.2 of the DRAd Handbook, the DRAd to be appointed shall only undertake a maximum of four DRAd assignments in the HKSARG Departments i.e. ArchSD, CEDD, DSD, HyD, EMSD, WSD, SWD and EPD (excluding Housing Department) at any one time. In this respect, you are required to complete and submit within 10 days of this letter a "DRAd Current Assignment Declaration Form" (see enclosed) for verification.

7. For the avoidance of doubt, if it is subsequently found that you have more than 3 current DRAd assignments in the HKSARG Departments i.e. ArchSD, CEDD, DSD, HyD, EMSD, WSD, SWD and EPD (excluding Housing Department) at the date of this letter, you lose your eligibility for appointment as DRAd for the captioned project and this offer automatically becomes invalid.

8. Should you consider yourself eligible and 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. Alternatively, should you wish to decline this offer, please immediately inform the undersigned with reason provided.

Yours faithfully,

( )
Project Director ( )
for Director of Architectural Services

Encl.

c.c. Contractor – Please attend for signing
Secretary, JMC (TS/1, ArchSD) *[Note: This copy is to be sent **on the same day** the appointment offer letter is issued. It can be sent either by fax 3542 5400 or by email ts1@archsd.gov.hk.]*

** Delete as appropriate*

Appendix 2.5
Proforma No. 1

DRAd CURRENT ASSIGNMENT DECLARATION FORM

Contract No. : _____

Contract Title : _____

Please list out all current DRAd assignments undertaken by the undersigned in the HKSARG Departments i.e. ArchSD, CEDD, DSD, HyD, EMSD, WSD, SWD and EPD (excluding Housing Department) as at (date of appointment letter to be inserted by the project officer) as follows:-

No.	Contract No.	Contract Title	HKSARG Department	Commencement Date of DRAd Agreement (dd/mm/yy)
1.				
2.				
3.				
4.				

I hereby declare that the information given in the above is true.

Signed by: ( )

Date: ……

Appendix 2.5
Proforma No. 2

ARCHITECTURAL SERVICES DEPARTMENT

Standard Letter

Dear Sir,

Contract No. : _____

Contract Title : _____

Appointment of Dispute Resolution Advisor

I would like to thank you for your written submission for the captioned appointment and advise you that on this occasion you have not been successful.

For your reference, the combined priority you have attained in this DRAd selection exercise is No. #.

Yours faithfully,

( )
Project Director ( )
for Director of Architectural Services

c.c. Contractor

- *please insert the candidate's own combined priority. For the evaluation of combined priority, please refer to the worked example in para. 9 of Appendix 2.4.*

PART 3

PERFORMANCE REPORTING SYSTEM

PART 3

PERFORMANCE REPORTING SYSTEM

3.1 GENERAL

3.1.1 The performance of the DRAd shall be regularly assessed and an appraisal report made to Joint Management Committee (JMC) by the Chief Architect responsible for the administration of the Contract (CA). A central record shall be kept by the Secretary of the JMC.

3.1.2 In cases of unsatisfactory performance, action shall be taken in accordance with paragraphs 3.6.1 to 3.6.4.

3.2 REPORT TO JMC

3.2.1 The Secretary of the JMC shall be responsible for the administration of the reporting system including the issue of the necessary performance report forms. The completed performance reports shall be forwarded to the Secretary of the JMC at least 7 working days prior to the next JMC meeting.

3.2.2 A separate report form shall be completed for all agreements, including extensions and supplements to agreements where the service provided by the DRAd is separable and distinguishable from that provided in the original agreement.

3.2.3 Both Contractor and DRAd shall be made aware of the assessed DRAd's performance. To increase transparency on performance reporting, the CA shall send all parts of the duly completed performance report to the Contractor and DRAd once the report has been completed. The standard letters to Contractor and DRAd enclosing the Interim Report and Final Report are attached at **Appendix 3.3, Proforma Nos. 1 and 2**.

3.3 FREQUENCY OF REPORTS

Interim Reports on the DRAd's performance are required to be submitted on a quarterly basis, covering the period from start to completion or termination of the DRAd agreement. The reporting periods for such Interim Reports end on the last day of March, June, September and December. Where the completion or termination of

the DRAd agreement falls within the time of the periodic report then both the last Interim Report and the Final Report are required.

3.4 REPORTING OFFICERS

3.4.1 The preparation of reports shall be by the DTL as Reporting Officer, in consultation with subordinate staff and the report shall be endorsed by the CA.

3.4.2 Reports submitted by the Contractor shall be reported by the Contractor's site representative and endorsed by the Contractor's project manager.

3.5 REPORT FORMAT AND APPRAISAL CRITERIA

3.5.1 The report format and the criteria to be used in appraising the performance of the DRAd shall be in accordance with the procedures, standard reporting forms and guidance notes given in **Appendices 3.1 and 3.2**. Due to the wide variety of duties undertaken by the DRAd, 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 DRAd 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 CA's gradings shall reflect the strengths and weaknesses of the different aspect of performance.

3.5.2 Part A of the Performance Report **(Appendix 3.2, Proforma Nos. 1 and 2)** will be completed by the ArchSD Project Officer, while Part B will be completed by the Contractor. For administrative convenience, the ArchSD Project Officer is responsible for issuing Part B to the Contractor and submitting parts A and B to the Secretary, JMC in accordance with para. 3.2.1.

3.5.3 Section 4 "Overall Assessment" of the DRAd's performance is to be completed by the CA based on Part A and Part B of the Performance Report. However, in the event of substantially difference on the DRAd's performance (i.e. when one party rates the overall assessment of the DRAd's performance as "Acceptable" while the other party rates it as "Adverse" in Part A and Part B of the Performance Report) between ArchSD and the Contractor, the JMC will, in consultation with ArchSD and/or the Contractor as appropriate, make an "Overall

Assessment" of the DRAd's performance for the report in question.

3.6 ACTION WHERE PERFORMANCE IS UNSATISFACTORY

3.6.1 As soon as it becomes apparent that, in the opinion of the Reporting Officer, the performance of the DRAd is less than satisfactory, the Employer shall, in conjunction with the Contractor, ensure that the situation is brought to the attention of the DRAd.

3.6.2 Poor performance on the part of a DRAd may indicate a need for closer liaison. If an increased level of liaison does not result in a satisfactory improvement in performance, then the Employer, in conjunction with the Contractor, shall write to the DRAd. In certain circumstances, it may be appropriate for the Employer and the Contractor to discuss the reports with the DRAd to agree where performance might be improved. All parties shall attend such meetings. All communication regarding poor performance shall be confirmed in writing to the DRAd.

3.6.3 In case of continued poor performance, the Reporting Officer and the Contractor shall reflect the DRAd's poor performance in the performance report with indication, where applicable, that the DRAd has been informed of his unsatisfactory performance in a particular aspect(s), and the nature of the response received from the DRAd. The Reporting Officer should state in the General Comments of the performance report, a summary of the correspondence exchanged, and of any discussions that have taken place with the DRAd regarding his poor performance.

3.6.4 As the circumstances of assignments vary, the following action to be taken following unsatisfactory performance reports are not mandatory. If the following action is not taken, however, reasons are to be given on file.

3.6.4.1 As soon as it becomes apparent that a DRAd's performance is not up to the required standard, the Reporting Officer should bring it to the attention of the Employer and the Contractor, who should jointly issue a Warning Letter, highlighting the areas of concern and copy it to the Contractor and Secretary of the JMC.

3.6.4.2 1st Unsatisfactory Report

Warning Letter from the Chairman of the JMC highlighting the areas of concern. The Secretary of the JMC should also refer the matter for discussion at the next JMC meeting.

Interview - The JMC may wish to invite a DRAd to attend an interview to discuss problem areas. The Contractor must also be invited to attend.

In both instances a DRAd should be made aware that continued poor performance on the assignment may result in suspension or deletion from the list.

3.6.4.3 Subsequent Unsatisfactory Reports

Further Warning Letters, Interviews as deemed necessary by the JMC. Suspension or Deletion from the list requires the approval of the JMC.

3.6.4.4 Discharge of the DRAd as a result of unsatisfactory performance

If the DRAd is under written notice of unsatisfactory performance and after interviews has failed to improve the execution of the DRAd services in specified areas, immediate steps shall be taken by the CA to secure the discharge of the DRAd in accordance with the DRAd's employment Agreement.

3.6.4.5 Procedures for the discharge of the DRAd

The DRAd can be discharged at any time by a joint written notice from the Employer and Contractor.

The Employer or Contractor may discharge the DRAd unilaterally at any time after the first six months of his tenure as DRAd. If either the Employer or the Contractor wish to do so then the one shall be required in good faith with the other regarding the intentions and reasons of the discharge, followed by a written notice to the DRAd and copied to the other party.

3.6.4.6 Suspension and Deletion from the list as a result of unsatisfactory performance

The JMC shall convene a meeting upon receipt of a recommendation from ArchSD for the suspension or deletion of a DRAd from the list.

Whenever possible the Contractor's endorsement of the action to seek suspension or deletion should be obtained prior to ArchSD approaching the JMC.

The DRAd shall be informed of the decision in writing by the Secretary of the JMC and an updated list shall be issued to HKCA.

3.6.4.7 Resignation from DRAd Assignment

If a DRAd tenders his/her resignation from DRAd assignment, he/she will be suspended from bidding for a period of minimum twelve months. A letter will be sent to the DRAd by the Secretary of the JMC for notification of the suspension. His/her submitted bids, though being under assessment, shall not be considered further.

If the DRAd who has been suspended from bidding due to resignation from DRAd assignment wishes to be exempted from the suspension, he/she shall apply in writing to the JMC providing the reason(s) for the resignation. The JMC will review the application in its next available meeting. If necessary, the JMC may invite the DRAd to attend an interview.

Should the JMC consider the reason(s) provided by the DRAd who has tendered resignation reasonable and acceptable, the Secretary of the JMC will inform the DRAd in writing of the uplifting of suspension.

Upon expiry of the suspension period, a suspended DRAd should apply in writing for uplifting of the suspension and confirm his/ her intention to undertake DRAd assignments. The JMC shall review the application at the next available JMC meeting. The DRAd shall be informed of the result in writing by the Secretary of the JMC and an updated DRAd list shall be issued to HKCA.

DISPUTE RESOLUTION ADVISOR (DRAd)
PERFORMANCE REPORTING PROCEDURES

1.0 Performance Reporting Procedures

In order to ensure that a Dispute Resolution Advisor (DRAd) performs the services in accordance with the Agreement the following reporting procedures shall be followed.

2.0 Aspects of DRAd's Performance

Examples of the aspects of performance that may be considered appropriate are given at **Appendix 3.2**

3.0 Interim Report (see Appendix 3.2, Proforma No. 1)

3.1 A DRAd is engaged under the Standard Form of Dispute Resolution Advisor (DRAd) Agreement. Whilst the general format of Interim Report forms is the same, their detail varies in accordance with the wide duties undertaken by the DRAd.

3.2 Interim Reports on the DRAd's performance are required to be submitted on a quarterly basis, covering the period from start to completion or termination of the DRAd agreement. The reporting periods for such Interim Reports end on the last day of March, June, September and December. Where the completion or termination of the DRAd agreement is near to the time of the periodic report then both the last Interim Report and the Final Report are required.

3.3 Section 1 is the same for all Interim Report forms, and gives details pertaining to the Assignment. It shall be completed by Technical Secretary/1 and sent to the DTL (through the CA) within the last month of the report period. Any changes to the details shall be made by the Reporting Officer, in consultation with the CA or above, in such a way as to highlight them (e.g. in red ink).

3.4 Section 2 of all Interim Report forms deals with the DRAd's performance. It makes provision for the Reporting Officer to assess various aspects of the DRAd's performance that are considered important. See **Appendix 3.2** which lists those aspects of performance which may be considered as appropriate.

3.5 Part A of the Report shall be completed by the Reporting Officer, while Part B shall be completed by the Contractor. For administrative convenience, the Reporting Officer shall be responsible for issuing Part B to the Contractor and submitting Parts A and B to the Secretary of the JMC. A common set of aspects of assessment shall be agreed between the Reporting Officer and the Contractor before completing their respective reports.

3.6 The line between 'good' and 'fair', which marks the centre of the six grades, shall be seen as representing the lower end of a standard expected by the Employer. It does not necessarily represent the standard of the average DRAd. Anything less than 'fair' shall be considered adverse. The six gradings are defined thus :-

Grade		
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

3.7 A tick shall be placed by the Reporting Officer in the box considered appropriate to the aspect of the work being assessed.

3.8 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 DRAd's performance for the period under review. They may be continued overleaf if necessary.

3.9 Prior to the submission of the report to JMC, Part A of the report shall be reported by the Reporting Officer, endorsed by the CA, and forwarded to Technical Secretary/1, together with Part B previously submitted by the Contractor.

3.10 Section 4 is the "Overall Assessment" on the performance of the DRAd and this is to be completed by the CA based on Part A and Part B of the Performance Report. If the overall assessments in Part A and Part B are different, the following guidelines should be followed:-

(a) In the event that both parties rate "Acceptable" or "Adverse" in the overall assessment of Part A and Part B of the Performance Report, but the Grades are different (e.g. CA rates "B" while the Contractor rates "C"), ArchSD's overall assessment in Part A of Section 2 should prevail the overall assessment in Section 4.

(b) In the event that one party rates "Acceptable" while the other party rates "Adverse" in the overall assessment of Part A and Part B of the Performance Report, the JMC will, in consultation with ArchSD and/or the Contractor as appropriate, make an "Overall Assessment" of the DRAd's performance for the report in question.

3.11 If the party rates "Adverse" in the overall assessment of Part A or Part B of the Performance Report, the responsible party must state the details of DRAd's poor performance in the General Comments of the performance report and provide supporting documents indicating the unsatisfactory performance in a particular aspect(s) that had been brought to the DRAd's attention and the nature of the response received from the DRAd, warning letter highlighting the areas of concern, a summary of the correspondence exchanged, and of any discussions held with the DRAd regarding the performance concerned. These documentation should clearly substantiate the rationale for issuing an "Adverse" rating of the Performance Report.

4.0 Final Report (see Appendix 3.2, Proforma No. 2)

4.1 The Final Report is a summary of the DRAd's overall performance at completion of his duties relating to that contract. It is similar in format to the Interim Reports but may also be used in recommending a DRAd's suitability for future assignments. As with an Interim Report, Part A shall be reported by the Reporting Officer, endorsed by the CA, and forwarded to Technical Secretary/1, together with Part B previously submitted by the Contractor.

4.2 The Final Report follows the same format and considers the aspects of performance for that contract.

4.3 The Final Report form may also be used as a Supplementary Final Report in the event of later developments making the First Final Report, in whole or in part, invalid (e.g. when shortcomings in performance come to light after the Final Report thus invalidating the findings of that Report). In such a case, the First Final Report, although superseded, is retained for record purposes.

5.0 Administration of the Reporting System

5.1 Technical Secretary/1 of ArchSD is responsible for maintaining a file for administering the performance reporting of DRAd undertaking ArchSD projects.

5.2 For DRAd undertaking engineering works projects, a representative of a civil engineering stream Works Department (on yearly rotation basis among CEDD, DSD, HyD and WSD) would be responsible for such administration works.

5.3 For ArchSD projects, Technical Secretary/1 shall receive details, through the DTL, of the appointment of a new DRAd. The details provided shall be sufficient to complete Section 1 of the Interim Report form showing clearly, the duties to be undertaken by the DRAd and the expected expiry date of the last Maintenance Period of the works contract.

5.4 For ArchSD projects, Technical Secretary/1 shall send the forms individually to the DTL, through the CA, within the month prior to the expected deadline for reporting (unless otherwise instructed by the JMC).

5.5 The reports shall be held on “Restricted” files - one for each DRAd - and these shall be made available to DTL for the purpose of short-listing of DRAd.

ARCHITECTUAL SERVICES DEPARTMENT
EXAMPLE OF ASPECTS OF PERFORMANCE THAT MAY BE CONSIDERED APPROPRIATE TO THE DISPUTE RESOLUTION ADVISOR (DRAd)

ASPECTS OF PERFORMANCE

1. Assimilation of the Employer's and Contractor's procedures
2. Assimilation of project details
3. Adherence to DRAd System procedures
4. Collaboration with associated consultants
5. Adherence to the Employer's and Contractor's procedures
6. Performance at site and/or design team meetings
7. Encouragement of collaboration of site level representatives
8. Promptness in resolving problems
9. Adequacy of site visitation/inspection
10. Competence in handling claims
11. Efficiency in resolving difference and disagreements at site level
12. Quality of the written report to senior management (the Report)
13. Quality of the non-binding recommendation or evaluation
14. Quality of the recommendation on another form of dispute resolution
15. Quality of services from other DRAd contract team members
16. Others (specify)

[Guidance Note: The Reporting Officer/ Contractor's Site Representative should select the appropriate aspects of performance in assessing the DRAd's performance in Interim and Final Reports on DRAd's Performance.]

	ARCHITECTURAL SERVICES DEPARTMENT **INTERIM REPORT ON DRAd'S PERFORMANCE** **FOR QUARTER ENDING _____**	**RESTRICTED (CONTRACT)**

1	**Dispute Resolution Advisor (DRAd)**		Ref
Contract Title			Contract No.
Name of DRAd		Estimated fee $	
		Date of Commencement of the Works	
Commencement Date of DRAd Agreement		Estimated Completion Date of the Works	
		Expected expiry date of the last Maintenance Period	

2	**DRAd's Performance (PART A - Completed by ArchSD)**	**ACCEPTABLE**				**ADVERSE**	
		A	B	C	D	E	F
Aspects of Performance							
OVERALL ASSESSMENT OF DRAd PERFORMANCE BY ARCHSD							

3	**General Comments (PART A - Completed by ArchSD)**
	Reported by: _____ **(Reporting Officer)** **Title:** _____ **Date:** _____ **Endorsed by:** _____ **(Chief Architect / Chief Project Manager / Supervising Officer*)** **Title:** _____ **Date:** _____

**** Delete as appropriate***

	ARCHITECTURAL SERVICES DEPARTMENT **INTERIM REPORT ON DRAd'S PERFORMANCE** **FOR QUARTER ENDING _____**	**RESTRICTED (CONTRACT)**

1	**Dispute Resolution Advisor (DRAd)**		Ref
Contract Title			Contract No.
Name of DRAd		Estimated fee $	
		Date of Commencement of the Works	
Commencement Date of DRAd Agreement		Estimated Completion Date of the Works	
		Expected expiry date of the last Maintenance Period	

2	**DRAd's Performance (PART B - Completed by Contractor)**	**ACCEPTABLE**				**ADVERSE**	
		A	B	C	D	E	F
Aspects of Performance							
OVERALL ASSESSMENT OF DRAd PERFORMANCE BY CONTRACTOR							

3	**General Comments (PART B - Completed by Contractor)**	
		Reported by: _____ **(Contractor's Site Representative)** **Date: _____** **Endorsed by: _____** **(Contractor's Project Manager)** **Date: _____**

4	**OVERALL ASSESSMENT BY THE CHIEF ARCHITECT / CHIEF PROJECT MANAGER/ SUPERVISING OFFICER* OFARCHSD** **OR JOINT MANAGEMENT COMMITTEE***	**ACCEPTABLE**				**ADVERSE**	
		A	B	C	D	E	F

In the light of substantial difference in the overall assessment by the ArchSD and the Contractor, the above report was considered by the JMC at a meeting held on _____. Taking into account the reports submitted by the ArchSD and the Contractor in Section 2 (Parts A and B) and Section 3 (Parts A and B), the overall assessment of the JMC is recorded at Section 4 above. *

Signed: _____
(Chairman, JMC)
Date: _____

****Delete as appropriate***

Appendix 3.2
Proforma No.2

	ARCHITECTURAL SERVICES DEPARTMENT **FINAL REPORT ON DRAd'S PERFORMANCE**	**RESTRICTED (CONTRACT)**

1	**Dispute Resolution Advisor (DRAd)**		Ref
Contract Title			Contract No.
Name of DRAd		Fee $	
		Date of Commencement of the Works	
Commencement Date of DRAd Agreement		Date of Completion of the Works	
		Expiry date of the last Maintenance Period	

2	**DRAd's Performance (PART A - Completed by ArchSD)**	**ACCEPTABLE**				**ADVERSE**	
ASSESSMENT TO BE ON WHOLE OF COMMISSION		A	B	C	D	E	F
Aspects of Performance							
OVERALL ASSESSMENT OF DRAd PERFORMANCE BY ARCHSD							

3	**General Comments (PART A - Completed by ArchSD)**
	Reported by:_____ **(Reporting Officer)** **Title:** _____ **Date:** _____ **Endorsed by:** _____ **(Chief Architect / Chief Project Manager / Supervising Officer*)** **Title:** _____ **Date:** _____

**** Delete as appropriate***

	ARCHITECTURAL SERVICES DEPARTMENT **FINAL REPORT ON DRAd'S PERFORMANCE**	**RESTRICTED (CONTRACT)**

1	**Dispute Resolution Advisor (DRAd)**	Ref
Contract Title		Contract No.

Name of DRAd	Fee $	
	Date of Commencement of the Works	
Commencement Date of DRAd Agreement	Date of Completion of the Works	
	Expiry date of the last Maintenance Period	

2	**DRAd's Performance (PART B - Completed by Contractor)**	**ACCEPTABLE**				**ADVERSE**	
ASSESSMENT TO BE ON WHOLE OF COMMISSION		A	B	C	D	E	F
Aspects of Performance							
OVERALL ASSESSMENT OF DRAd PERFORMANCE BY CONTRACTOR							

3	**General Comments (PART B - Completed by Contractor)**	
		Reported by: _____ **(Contractor's Site Representative)** **Date:** _____ **Endorsed by:** _____ **(Contractor's Project Manager)** **Date:** _____

4	**OVERALL ASSESSMENT BY THE CHIEF ARCHITECT / CHIEF PROJECT MANAGER / SUPERVISING OFFICER* OF ARCHSD** **OR JOINT MANAGEMENT COMMITTEE ***	**ACCEPTABLE**				**ADVERSE**	
		A	B	C	D	E	F

In the light of substantial difference in the overall assessment by the ArchSD and the Contractor, the above report was considered by the JMC at a meeting held on _____. Taking into account the reports submitted by the ArchSD and the Contractor in Section 2 (Parts A and B) and Section 3 (Parts A and B), the overall assessment of the JMC is recorded at Section 4 above. *

Signed: _____
(Chairman, JMC)
Date: _____

Delete as appropriate

ARCHITECTURAL SERVICES DEPARTMENT

Standard Letter

[Contractor Name and Address]

[DRAd Name and Address]

Dear Sir,

Contract No. : _____

Contract Title : _____

Interim Report on DRAd's Performance
(1st/2nd/3rd/4th Quarter of *[year]*)

Enclosed please find a copy of the Interim Report on DRAd's Performance for the captioned Contract for the period *[date]* to *[date]* for your information.

Yours faithfully,

( )

Chief Architect/ Chief Project Manager/ Supervising Officer*

for Director of Architectural Services

Encl.

**Delete as appropriate*

ARCHITECTURAL SERVICES DEPARTMENT

Standard Letter

[Contractor Name and Address]

[DRAd Name and Address]

Dear Sir,

Contract No. : _____

Contract Title : _____

Final Report on DRAd's Performance

Enclosed please find a copy of the Final Report on DRAd's Performance for the captioned Contract for your information.

Yours faithfully,

( )

Chief Architect/ Chief Project Manager/ Supervising Officer*

for Director of Architectural Services

Encl.

**Delete as appropriate*

PART 4

CONTRACT ADMINISTRATION PROCEDURES

PART 4

CONTRACT ADMINISTRATIVE PROCEDURES

4.1 PURPOSE OF THE DISPUTE RESOLUTION ADVISOR (DRAd) SYSTEM

The Dispute Resolution Advisor (DRAd) System is intended to foster co-operation between all parties to the contract, that is the Employer, the Contractor and any Nominated Sub-contractor or Specialist Sub-contractor. The DRAd System is also intended to minimize the number of claims, disputes and disruption to the Works, and to ensure the cost-effective and expeditious resolution of disputes that do arise.

4.2 SPECIALIST SUB-CONTRACTORS AND NOMINATED SUB-CONTRACTORS

All contracts between the Contractor and any Specialist Sub-contractor or Nominated Sub-contractor engaged for the execution of any part of the Works shall have a Clause requiring the Specialist Sub-contractor or Nominated Sub-contractor to participate fully in the DRAd system.

4.3 SELECTION AND APPOINTMENT OF DRAd

4.3.1 A DRAd shall be appointed within * days (** insert time limit to appoint DRAd subject to a maximum of 60 days, to be decided by the project team*) from the award of the Contract. The DRAd shall be an individual with general construction experience, and an individual with 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 Specialist Sub-contractor or Nominated Sub-contractor who may be engaged to execute any part of the Works and shall not have any actual or perceived conflict of interest.

4.3.2 DRAd selection and appointment procedures in works contracts set out in PART 2 of this Handbook.

4.4 PARTIES TO ENTER INTO A DRAd AGREEMENT

The Employer and the Contractor shall be required to enter into a Dispute Resolution Advisor (DRAd) Agreement with the DRAd which shall, inter alia, give effect to the obligations of the DRAd. The DRAd Agreement is at **Appendix 2.4**, **Proforma No. 2**.

4.5 PAYMENT OF DRAd FEES

Subject to any transfer of costs ordered by the arbitrator pursuant to Article 20(b) of the Short Form Arbitration Rules appended hereto the Employer and the Contractor shall each pay 50% of the DRAd fees and expenses in respect of the DRAd services provided to them as described in Dispute Resolution Advisor Agreement. If either the Employer or the Contractor fails to pay any amount due by them within 7 days after the due date, then whichever of them is not in default shall pay the amount owing to the DRAd. 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 83 or otherwise.

4.6 TENURE OF DRAd

4.6.1 The tenure of the DRAd shall, unless the Employer and the Contractor otherwise agree in writing, cease upon the expiry of the Maintenance Period, save that the tenure of the DRAd shall automatically be extended beyond the expiry of the said Maintenance Period for the purposes of resolving any dispute for which a Notice of Dispute has been served in accordance with Clauses under 4.8 of these Procedures. The DRAd can be discharged at any time by a joint written notice from the Employer and the Contractor. The Employer or the Contractor may discharge the DRAd unilaterally at any time after the first six months of his tenure as DRAd. If either the Employer or the Contractor wishes to discharge the DRAd after the first six months then the one shall be required to confer in good faith with the other regarding the discharge.

4.6.2 In the event of different Maintenance Periods having been named for different Sections or in the event of more than one Maintenance Period for different Sections or parts of the Works under the Contract, the expression "Maintenance Period" shall, for the purpose of this Clause, mean the last of such Maintenance Periods.

4.6.3 If the DRAd is discharged pursuant to Clause 4.6.1 of these Procedures, or resigns from the position, or is otherwise unable to fulfill his obligations, the Employer and the Contractor shall choose another DRAd pursuant to Clause 4.3.2 of these Procedures, save that the replacement DRAd shall be appointed within * days (* *insert time limit to appoint DRAd subject to a maximum of 60 days, to be decided by the project team*) after the date of discharge or resignation or incapacity of the incumbent DRAd.

4.7 DUTIES AND OBLIGATIONS OF THE DRAd

The DRAd shall carry out the duties and obligations ascribed to him in the Dispute Resolution Advisor (DRAd) agreement at **Appendix 2.4, Proforma No. 2**.

4.8 DISPUTE RESOLUTION PROCESS

4.8.1 If either the Employer or the Contractor disputes any decision, instruction, order, direction or certificate of the Supervising Officer or certificate or valuation by the Surveyor, the disputes shall be resolved pursuant to Clauses under 4.8 and 4.9 of these Procedures.

4.8.2 The site level representatives of the Employer and the Contractor shall first attempt to settle the dispute on their own. With respect to any dispute the Employer and the Contractor shall have the obligation to attempt in good faith to resolve the dispute during the 28 day period following the Supervising Officer's decision, instruction, order, direction or certificate or the Surveyor's certificate or valuation. If the site level representatives cannot settle the dispute, the aggrieved party may file a Notice of Dispute following the termination of such efforts to reach agreement but in no event later than the end of this 28 day period. For the purposes of this Clause, a "Notice of Dispute" shall be a notice in writing from the Employer to the Contractor or from the Contractor to the

Employer as the case may be setting out brief self-explanatory details of the matter in dispute. The Notice of Dispute shall be copied to the DRAd. If the Notice of Dispute is not served within the time period aforesaid, the Supervising Officer's decision, instruction, order, direction or certificate or the Surveyor's certificate or valuation shall be become final and binding on both the Employer and the Contractor. The term 'site level representative of the Employer' shall include the Supervising Officer and/or Surveyor and their representatives.

4.8.3 If the dispute cannot be settled by site level representatives of the Employer and the Contractor on their own, either the Employer or the Contractor shall serve a Notice of Dispute. The DRAd shall promptly meet with the site level representatives of the Employer and the Contractor, and if appropriate, with the site representatives of any relevant Specialist Sub-contractor or Nominated Sub-contractor, to attempt to resolve the dispute at site level. The DRAd shall have access to those records that are material to the dispute. The DRAd shall have flexibility in the choice of a dispute resolution approach that he can use to help to settle the dispute.

4.8.4 If the dispute cannot be resolved at site level within 14 days from the service of the Notice of Dispute, the DRAd shall within 3 days from the expiry of that 14-day period send a written report (hereinafter called "the Report") to the non-site senior officers of the Employer and the Contractor. The Report shall be concise and shall analyse the dispute. It shall identify the key issues in dispute and the perceptions of the DRAd as to the obstacles to settlement. If requested in writing by both the Employer and the Contractor, the DRAd shall within 3 days from such request also provide either a non-binding recommendation for a resolution or a non-binding evaluation of the merits of the dispute. The DRAd may show a draft of the Report to the site level personnel before it is served to the non-site senior officers. The Report of the DRAd shall not be admissible in any subsequent arbitration or litigation, except pursuant to Article 20(b) of the Short Form Arbitration Rules appended hereto.

4.8.5 Within 7 days from receipt of the Report from the DRAd, the non-site senior officers shall meet in order to attempt to settle the dispute. The DRAd shall only attend this meeting if the Employer and the Contractor request in writing that he do so. The DRAd shall also be available to attend separate meetings with the Employer or with the Contractor to respond to questions about the Report.

4.8.6 If the dispute is not settled within 21 days from date of the service of the Report to the non-site senior officers, the DRAd may recommend to the Employer and the Contractor another form of dispute resolution that, in his judgment may be a more effective means of resolving the dispute than the short form arbitration referred to in Clause 4.9 of these Procedures. The Employer and the Contractor shall not be obliged to accept the recommendation of the DRAd. In the absence of a settlement or of the adoption of another dispute resolution approach, the Employer and the Contractor shall participate in the short form arbitration described in Clause 4.9 of these Procedures. The arbitration shall take place within 28 days from the date that non-site senior officer settlement efforts have terminated.

4.8.7 The arbitrator shall be selected by the Employer and the Contractor, including any Specialist Sub-contractor or Nominated Sub-contractor who may be obliged to participate in the arbitration and be bound by the determination of the arbitrator. The DRAd shall assist the Employer and the Contractor in choosing an arbitrator. The DRAd shall determine whether, under the circumstances of the particular dispute, the Contractor and the Specialist Sub-contractor or Nominated Sub-contractor have an identity of interest such that they shall be treated as one party for the purposes of selecting an arbitrator. If the Employer and the Contractor cannot agree on the arbitrator, then the arbitrator shall be appointed upon the written application of either the Employer or the Contractor by the Hong Kong International Arbitration Centre, or, alternatively, where a party proposes and the other party concurs then the arbitrator shall be appointed in accordance with the HKIAC list system for the appointment of arbitrators.

4.9 SHORT FORM ARBITRATION

The short form arbitration which shall be governed by the “Short Form Arbitration Rules” at **Appendix 4.1.**

4.10 TIME FRAME FOR CLAIM EVALUATION, ASCERTAINMENT OR DETERMINATION

Notwithstanding General Conditions of Contract Clauses 48, 50, 61 and 63, Supervising Officer's/ Surveyor's claims evaluation, ascertainment and determinations that may arise under the Contract shall be provided to the Contractor within 56 days. Details refer to Special Conditions of Contract in Part 5 of this Handbook.

4.11 REFERENCE TO MEDIATION OR ARBITRATION

If any dispute or difference of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract or the carrying out of the Works including any dispute as to any decision, instruction, order, direction, certificate of the Supervising Officer or certificate or valuation by the Surveyor of which Notice of Dispute is not given until after the expiry of the Maintenance Period or after termination or abandonment of the Contract, whichever is the later and which dispute or difference cannot be resolved under the provisions of the Clauses under 4.8 of these Procedures the dispute or difference shall be resolved in mediation or arbitration. Details refer to Special Conditions of Contract in Part 5 of this Handbook.

ARCHITECTURAL SERVICES DEPARTMENT
SHORT FORM ARBITRATION RULES

Article

Preliminary

1. These rules (the "Rules") shall apply to arbitrations arising out of or in connection with the ..... (title and address of project) ..... at ..... for the Government of the Hong Kong Special Administrative Region, Contract No. ..... (Programme No. .....)(the "Contract'), whether by hearing or on documents-only.

2. In the Rules all words and expressions shall have the same meaning as in the Contract unless otherwise provided or where the context otherwise requires. Any interpretation and application of these Rules shall be consistent with General Conditions of Contract Clause 86 (as amended by Special Conditions of Contract Clause SCC59). In the event of conflict, General Conditions of Contract Clause 86 (as amended by Special Conditions of Contract Clause SCC59] shall govern.

3. The place of the arbitration shall be the Hong Kong Special Administrative Region.

4. (a) For the purposes of the Rules the Employer and the Contractor or the Employer and the sub-contractor, via the Contractor or the Employer and the Contractor and any Specialist Sub-contractor and/or Nominated Sub-contractor shall be called the "parties to the disputes".

   (b) For the purposes of the Rules whichever of the Employer or the Contractor, served the "Notice of Dispute", pursuant to sub-clause 5(b) of General Conditions of Contract Clause 86 (as amended by Special Conditions of Contract Clause SCC59) shall, unless otherwise agreed, be termed the "Claimant".

   (c) If the reference to arbitration, pursuant to sub-clause (6)(a) of General Conditions of Contract Clause 86 (as amended by Special Conditions of Contract Clause SCC59) involves more than one distinct claim or issue, the "Claimant" shall be whichever of the Employer or the Contractor is designated as such by the DRAd.

Article

(d) If the reference to arbitration involves any Specialist Sub-contractor and/or Nominated Sub-contractor and in the circumstances of the particular dispute the DRAd considers that the Contractor and any Specialist Sub-contractor and/or Nominated Sub-contractor do not have an identity of interest, the "Claimant" or "Claimants" or "Respondent" or "Respondents" shall, as the case may be, be designated as such by the DRAd.

Commencement of Arbitration and Appointment of Arbitrator

5. (a) If the Employer and the Contractor have not agreed to adopt another dispute resolution approach the Commencement Date of the arbitration shall be deemed to be that date immediately following the failure to settle the dispute pursuant to sub-clause (5)(f)(i) of General Conditions of Contract Clause 86 (as amended by Special Conditions of Contract Clause SCC59), or immediately following the expiration of the 14 days period following the date the Report is sent to the senior officers pursuant to sub-clause (5)(e) of General Conditions of Contract Clause 86 (as amended by Special Conditions of Contract Clause SCC59), whichever is the earlier.

(b) The Employer and the Contractor shall attempt to select and agree upon the appointment of an Arbitrator.

(c) If the dispute involves the interests of a Specialist Sub-contractor and/or Nominated Sub-contractor even though the claim is formally made by the Contractor, and under the circumstances of the dispute the DRAd considers that the Contractor and Specialist Sub-contractor and/or Nominated Sub-contractor have an identity of interest such that they should be treated as one party for the purposes of the arbitration then the Employer and the Specialist Sub-contractor and/or Nominated Sub-contractor and not the Contractor shall select and agree upon an Arbitrator.

(d) In the event that the dispute involves any Specialist Sub-contractor and/or Nominated Sub-contractor and the DRAd considers that the Specialist Sub-contractor and/or Nominated Sub-contractor and the Contractor do not have an identity of interest then the Specialist Sub-contractor and/or Nominated Sub-contractor, the Contractor and the Employer shall select and agree upon an Arbitrator.

Article

(e) If the parties to the dispute are unable to agree upon an Arbitrator within 7 days of the Commencement Date, then the Arbitrator shall be appointed upon the written application of either the Employer or the Contractor by the Hong Kong International Arbitration Centre ("HKIAC") or, alternatively, where a party proposes and the other party concurs then the Arbitrator shall be appointed in accordance with the HKIAC list system for the appointment of arbitrators.

Procedure Generally

6. The Arbitrator shall be provided with a copy of the Rules by the DRAd and unless the Arbitrator is of the opinion that a preliminary meeting is necessary, all procedural matters not dealt with in the Rules shall, failing agreement between the parties, be settled by directions of the Arbitrator set out in correspondence.

Site Visit

7. The Arbitrator may at any time during the course of the arbitration conduct a site visit, if he considers that such a visit may assist him in understanding the dispute.

Interlocutory Matters

8. Within 3 days of the Arbitrator's acceptance of his appointment, the Claimant shall submit to the Arbitrator and to the Respondent a Statement of Claim case file containing:

   (i) a brief statement of that party's principal arguments of fact and law and of the remedies sought; and
   (ii) copies of all relevant documents on which that party will rely;

9. Within 5 days of receipt of the Claimant's Statement of Claim case file, the Respondent shall submit to the Arbitrator and to the Claimant a Statement of Defence case file containing:

   (i) a brief statement of his principal arguments of fact and law; and
   (ii) copies of all relevant documents on which that party will rely;

Article

10. Within 3 days of receipt of the Respondent's Statement of Defence case file, the Claimant shall submit:

    (i) any reply that the party wishes to make; and
    (ii) any other relevant documents on which that party will rely for this purpose.

11. The Arbitrator may, at his discretion, permit the parties to make further replies to each other's cases, but shall in exercising this power have regard to the intention of the Rules that the hearing shall take place within 28 days from the Commencement Date.

12. The Arbitrator may require the parties to submit to him and to each other such further documents or information as he considers to be necessary to his decision.

Election of Oral Hearing or Documents-Only Procedure

13. The parties to the dispute may elect to present their case to the Arbitrator either by way of an oral hearing or by way of documents-only. The election of the parties to the dispute is binding subject to the provisions of Article 22. In the event the parties to the dispute are unable to agree as to which procedure to elect the Arbitrator shall determine the procedure.

Oral Hearing

14. Where the parties elect a procedure by way of an oral hearing, the Arbitrator shall fix a date for the hearing at the earliest opportunity, which hearing date shall not be more than 28 days from the Commencement Date.

Documents-Only

15. Where the procedure is to be by way of documents-only, the Arbitrator may call the parties to an informal hearing for the purpose of seeking further clarification of statements made in the case files. Such informal hearing shall not be more than 28 days from the Commencement Date.

Article

The Arbitration Hearing

16. The arbitration shall, subject to provisions of Article 21, be conducted and concluded in one day.

(a) On the morning of the arbitration hearing, the Claimant or his representatives shall have 2 hours to make a presentation of his claim to the Arbitrator. During his presentation, the Claimant shall not be permitted to produce any documents or cost records which have not already been provided to the Respondent. The Claimant shall be permitted to produce any analysis or description of his claim which has been prepared for the purpose of his presentation.

(b) The Respondent and his representatives shall have 1 hour to ask the Claimant questions about his claim and his presentation. Thereafter the Arbitrator shall have ½ hour to ask the Claimant questions about his claim and his presentation.

(c) After lunch the Respondent or his representatives shall have 2 hours to make a presentation of his case to the Arbitrator. During his presentation, the Respondent shall not be permitted to produce any documents or cost records which have not already been provided to the Claimant. The Respondent shall be permitted to produce any analysis or description of his case which has been prepared for the purpose of his presentation.

(d) The Claimant and his representatives shall have 1 hour to ask the Respondent questions about his case and his presentation. Thereafter the Arbitrator shall have ½ hour to ask the Respondent questions about his case and his presentation.

(e) If either party wishes to call evidence he may do so, but must not exceed the time limits set out above. Any questioning of witnesses by other parties or the Arbitrator shall be counted as part of the time allowed under sub-articles (b) and (d), and the time allowed to them to ask questions at the end of the presentation shall be reduced accordingly.

17. Subject to the above time limitation, the Arbitrator may conduct the arbitration in such manner as the Arbitrator deems reasonable and in accordance with the rules of natural justice.

Article

Place of Meetings and Hearings

17A. The place of meetings and hearings in the arbitration shall be Hong Kong unless the parties otherwise agree.

An Award arising out of an Oral Hearing or Documents-Only Arbitration

18. Subject to section 72 of the Arbitration Ordinance (Cap.609), the Arbitrator shall within 7 days of the hearing or, in the case of a documents-only arbitration, within 7 days of the last submission of documents or the holding of an informal hearing whichever is later, make an award. The award shall be in writing and unless the parties otherwise agree or the award is an award on agree terms under section 66(1) of the Arbitration Ordinance (Cap. 609) shall contain a concise reasoned decision with sufficient detail so that the parties may appreciate the reasons for the award.

Costs

19. Subject to Article 20(a) the Arbitrator shall, unless the parties otherwise agree, determine the costs of the award and the costs of the reference and who shall pay them.

Transfer of the Arbitration Costs and the Cost of the DRAd Report

20. (a) After the conclusion of the arbitration hearing or, in the case of a documents-only arbitration within 3 days of the last submission of documents or after the holding of an informal hearing, whichever is later but prior to the publication of the award pursuant to Article 18 either party may apply, in writing to the Arbitrator for the Arbitrator to render an award save as to costs. Such application shall be copied to the other party. The Arbitrator shall consider the request and afford the party not making the request an opportunity for comment. If the Arbitrator considers the request reasonable he shall make and publish an award on the dispute but shall not make an award as to costs. He shall then convene a separate meeting to hear evidence on the transfer of costs. Such meeting should normally be held within 7 days of the date of publication of the award.

Article

(b) At the meeting the parties shall be entitled to present evidence to demonstrate that the award of costs should not follow the event and that some or all costs should be transferred. In addition the parties shall be permitted to show to the Arbitrator the DRAd Report produced pursuant to sub-clause 5(e)(i) of General Conditions of Contract Clause 86 (as amended by Special Conditions of Contract Clause SCC59) of the Contract. If the Arbitrator considers that the losing party in the arbitration has pursued a patently unreasonable argument then the Arbitrator shall as part of his award of costs order that one of the parties pay the whole of the costs of the DRAd services in writing the Report and meeting with the senior officers. The Arbitrator may also transfer all or part of the costs of the award and costs of the reference.

Disputes Involving More Than Two Parties or More Than One Distinct Claim or Issue

21. In disputes involving more than two parties who do not have an identity of interest or more than one distinct claim or issue the parties to the dispute shall agree upon the maximum length of time for the arbitration hearing which shall be as short as possible. The parties to the dispute shall agree or failing agreement the Arbitrator shall determine the maximum length of time for the arbitration hearing and the nature and timing of the interlocutory procedures save that the arbitration hearing shall take place within 42 days of the date of the Commencement Date. The Arbitrator shall fairly allocate the amount of time within the arbitration hearing between the parties to the dispute.

General

22. If, during the course of the arbitration, the Arbitrator concludes that the dispute is incapable of proper resolution in accordance with the Rules, he shall advise the parties of his alternative proposals for the conduct of the arbitration. The arbitration shall, unless otherwise directed by the Arbitrator, continue from the point already reached.

23. The Arbitrator shall have the power to extend any of the time limits stipulated in these Rules or time limits agreed upon by the parties pursuant to Article 21.

Article

Confidentiality

24. The arbitration proceedings are private and confidential between the parties and the arbitrator. Subject to the provisions of section 18 of the Ordinance and these Rules, no information relating to the arbitration shall be disclosed by any person without the written consent of each and every party to the arbitration. Disclosures are permissible where disclosures –

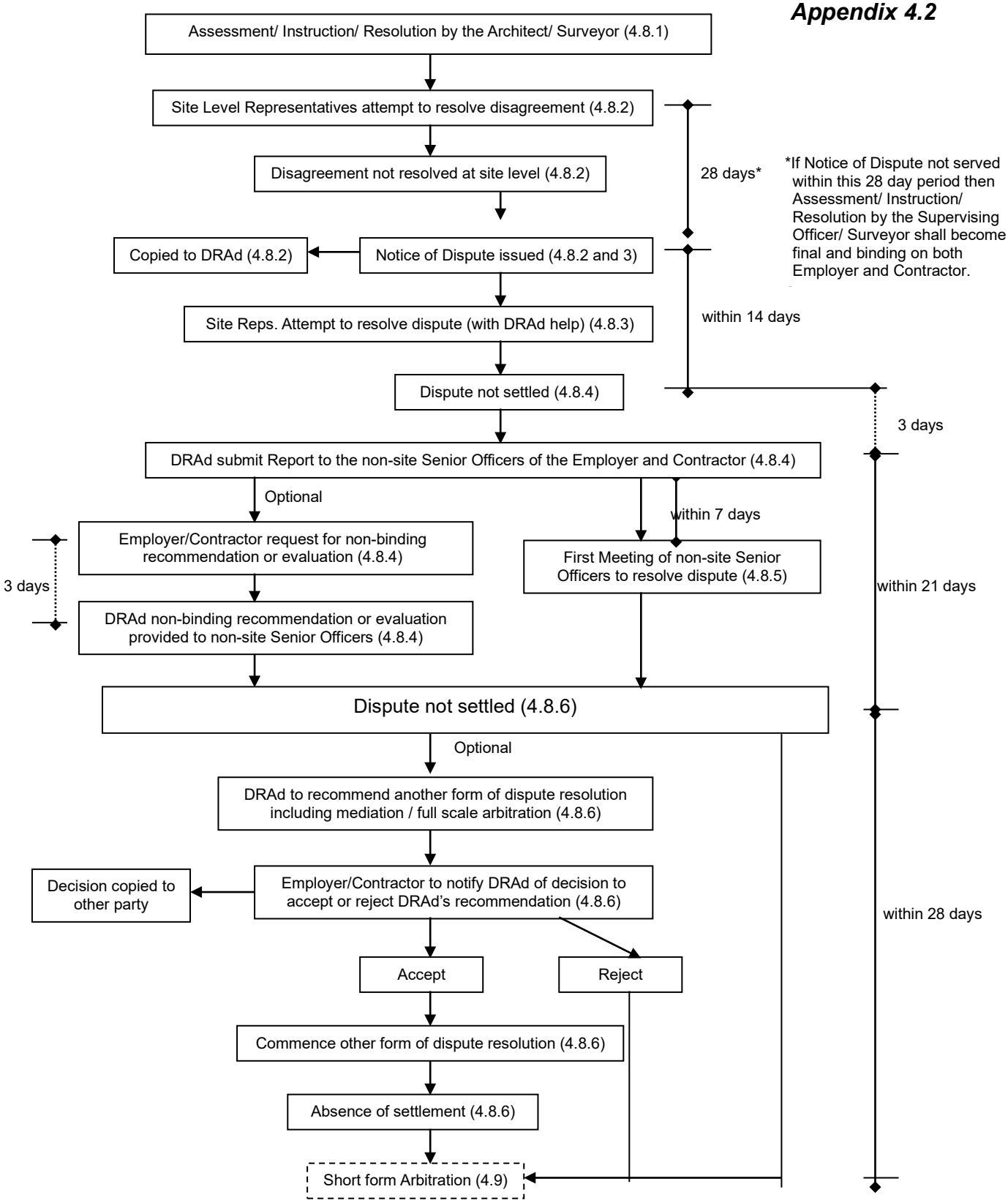
    (a) are necessary for implementation or enforcement;

    (b) are required by the parties' auditors or for some other legitimate business reason;

    (c) are required by any order of the courts of Hong Kong or other judicial tribunal;

    (d) which are necessary for the making of claims against any third party or to defend a claim brought by any third party.

25. Notwithstanding Article 24 and subject to the following provisions, the party comprising the Government of the Hong Kong Special Administrative Region (the Government party) may disclose the outline of any dispute with the other party or, as the case may be, parties and the outcome of the arbitration to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said Committee, the Government party shall inform the other party or, as the case may be, parties. Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the outcome of the arbitration without the written consent of the other party or, as the case may be, parties but such consent shall not be unreasonably withheld. The other party or, as the case may be, parties shall be deemed to have given his or their consent to disclosures on the expiry of the first 6 months from the date of the outcome of the arbitration. The other party or, as the case may be, parties may, if he or they consider(s) necessary to protect the sensitive nature of certain information relating to him or them, request the Government party to disclose such specified information to the said Committee strictly on a confidential basis. If the Government party considers that there are legitimate grounds to accede to any such request, the Government party shall convey the request to the said Committee for its consideration.



( ) See 4.8 and 4.9 of Part 4 of this Handbook

FLOWCHART OF THE DISPUTE RESOLUTION PROCESS

PART 5

STANDARD
TENDER / CONTRACT DOCUMENTS
(For Non Design and Build Project)

Special Conditions of Contract and Guidance Note for use in contracts adopting the DRAd system

SCC59 General Conditions of Contract Clause 86 is deleted and replaced by the following : Dispute resolution

(1) In order to foster co-operation between the Employer and the Contractor and among Specialist Sub-contractors and Nominated Sub-contractors who may be engaged for the execution of any part of the Works, to minimize the volume of claims, disputes and disruptions to the Works, and to ensure the cost-effective and expeditious resolution of those disputes that do arise, the Dispute Resolution Advisor (DRAd) system, as set forth in this Clause, shall be implemented.

(2) All contracts between the Contractor and any Specialist Sub-contractor or Nominated Sub-contractor engaged for the execution of any part of the Works shall have a Clause requiring the Specialist Sub-contractor or Nominated Sub-contractor to participate fully in the DRAd system set forth herein. The Specialist Sub-contractor or Nominated Sub-contractor shall attend the regular meetings required by sub-clause (4)(b) of this Clause if the progress of the Works dictates. Any Specialist Sub-contractor or Nominated Sub-contractor shall attend the regular meetings required by sub-clause (4)(b) of this Clause if the DRAd requests such any attendance in writing. Any Specialist Sub-contractor or Nominated Sub-contractor shall attend a meeting relating between the Employer and the Contractor in which he is involved, if the DRAd requests such attendance in writing. Any Specialist Sub-contractor or Nominated Sub-contractor shall resolve any claims he has against the Contractor which arise out of a dispute between the Contractor and the Employer over the Specialist Sub-contractor's or Nominated Sub-contractor's works by the process required by sub-clause (5) of this Clause and shall be bound by the results of that process.

(3) (a) A DRAd shall be appointed within * days **[* insert time limit to appoint DRAd subject to a maximum of 60 days, to be decided by the project team]** of the award of the Contract. The DRAd shall be an individual with general construction experience and

knowledge, and an individual with dispute resolution skills. He shall be neutral and independent of both parties. He cannot be an employee of either the Employer or Contractor or any Specialist Sub-contractor or Nominated Sub-contractor who may be engaged for the execution of any part of the Works and shall not have any actual conflict of interest.

(b) After award of the Contract, the Employer will provide the Contractor a list of DRAd. Based on the list, the Contractor shall select five DRAd candidates and advise the Employer together with confirmation letters from the selected DRAd candidates indicating their agreement to bid for the DRAd work for the Contract within seven days after receiving the Employer's list.

(c) The Employer will approach the Contractor's selected candidates to obtain submissions from each DRAd candidate in accordance with the Guidance Notes as attached in Appendix # to the Special Conditions of Contract. **[Guidance Note: Refer to the 'Guidance Notes for Preparing Submissions for Appointment as Dispute Resolution Advisor (DRAd)' as attached to standard form QS/DR.020.]**

(d) The DRAd candidate shall submit two copies of the technical and fee proposals simultaneously, one for the Contractor and one for the Employer.

(e) The Employer and the Contractor shall jointly select a DRAd candidate by agreement through a ranking system as described herein. The Employer and the Contractor shall each rank the DRAd candidates who have made the submissions in order of preference with the most preferred DRAd candidate receiving the lowest number. The Contractor shall meet with the Employer within seven days after the closing date for the DRAd candidates' submissions. The ranking of the DRAd candidates by both parties shall be revealed in the meeting. The DRAd candidate with the lowest combined number shall be chosen and approached for appointment. In the event that the DRAd candidate with the lowest combined number for any reason cannot or will not take up the DRAd position for the Contract or is considered and proposed by the Employer and agreed by the Contractor to be inappropriate or ineligible to take up the DRAd position for the Contract, then the DRAd candidate with the next lowest combined number in order of

preference shall be approached for appointment. The Contractor shall not unreasonably disagree with the Employer's proposal. This process shall go on as the circumstances may so require until a DRAd is appointed. Should the Employer and the Contractor fail to agree on a suitable DRAd within the period specified in sub-clause (3)(a) of this Clause then the DRAd shall be appointed upon the written application of either the Employer or the Contractor by the Hong Kong International Arbitration Centre.

(f) A meeting will then be arranged with the Contractor, the chosen DRAd and the Employer to execute the Dispute Resolution Advisor Agreement. A pro-forma of this Agreement is attached at Appendix # to the Special Conditions of Contract. **[Guidance Note: Refer to DRAd System Handbook Appendix 2.4 Proforma No. 2.]**

(g) The tenure of the DRAd shall, unless the Employer and the Contractor otherwise agree in writing, cease upon the expiry of the Maintenance Period, save that the tenure of the DRAd shall automatically be extended beyond the expiry of the said Maintenance Period for the purposes of resolving any dispute for which a Notice of Dispute has been served in accordance with sub-clause (5) of this Clause. The DRAd can be discharged at any time by a joint written notice from the Employer and the Contractor. The Employer or the Contractor may discharge the DRAd unilaterally at any time after the first six months of his tenure as DRAd. If either the Employer or the Contractor wishes to discharge the DRAd after six months then the one shall be required to confer in good faith with the other regarding the discharge. In the event of different Maintenance Periods having been named for different Sections or in the event of more than one Maintenance Period for different Sections or parts of the Works under the Contract, the expression "Maintenance Period" shall, for the purpose of this Clause, mean the last of such Maintenance Periods.

(h) If the DRAd is discharged pursuant to sub-clause (3)(g) of this Clause, or resigns from the position, or is otherwise unable to fulfill his obligations, the Employer and the Contractor shall choose another DRAd pursuant to the procedures set forth in sub-clauses (3)(b) to (3)(f) of this Clause, save that the replacement DRAd shall be appointed within * days **[***

insert time limit to appoint DRAd subject to a maximum of 60 days, to be decided by the project team] after the date of discharge or resignation or incapacity of the incumbent DRAd.

(4) (a) The DRAd shall spend a sufficient amount of time at the beginning of each section of the Works on the Site to become familiar with the relevant personnel, including the Supervising Officer, the Supervising Officer's Representative, the Surveyor, the Surveyor's Representative, the liaison from the end-user's administration (where appropriate), and the representatives of the Contractor and some or all of the Specialist Sub-contractors or Nominated Sub-contractors. The DRAd shall also become familiar with the construction, design and programme for that section of the Works, including all plans for the co-ordination of building services.

(b) The DRAd shall meet on monthly basis with the Employer and the Contractor either separately or together to attempt to resolve problems that arise before they become formal disputes and to anticipate problems that may arise in the future. The DRAd shall meet more frequently with the Employer and the Contractor if either of them request such a meeting. Such request shall be in writing.

(5) (a) If either the Employer or the Contractor disputes any decision, instruction, order, direction or certificate of the Supervising Officer or certificate or valuation by the Surveyor, the disputes shall be resolved pursuant to the procedures set forth in sub-clauses (5) and (6) of this Clause.

(b) The site level representatives of the Employer and the Contractor shall first attempt to settle the dispute on their own. With respect to any dispute the Employer and the Contractor shall have the obligation to attempt in good faith to resolve the dispute during the 28 day period following the Supervising Officer's decision, instruction order, direction or certificate or the Surveyor's certificate or valuation. If the site level representatives cannot settle the dispute, the aggrieved party may file a Notice of Dispute following the termination of such efforts to reach agreement but in no event later than the end of this 28 day period. For the purposes of this Clause, a "Notice of Dispute" shall be a notice in writing from the Employer to the Contractor

or from the Contractor to the Employer as the case may be setting out brief self-explanatory details of the matter in dispute. The Notice of Dispute shall be copied to the DRAd. If the Notice of Dispute is not served within the time period aforesaid, the Supervising Officer's decision, instruction, order, direction or certificate or the Surveyor's certificate or valuation shall become final and binding on both the Employer and the Contractor.

(c) If the dispute cannot be settled by site level representatives of the Employer and the Contractor on their own, either the Employer or the Contractor shall serve a Notice of Dispute. The DRAd shall promptly meet with the site level representatives of the Employer and the Contractor, and if appropriate, with site representatives of any relevant Specialist Sub-contractor or Nominated Sub-contractor, to attempt to resolve the dispute at site level. The DRAd shall have access to those records that are material to the dispute. The DRAd shall have flexibility in the choice of a dispute resolution approach that he can use to help to settle the dispute.

(d) For the purpose of this Clause, the reference to the term 'site level representative of the Employer' shall include the Supervising Officer and/or Surveyor and their representatives.

(e) (i) If the dispute cannot be resolved at site level within 14 days from the service of the Notice of Dispute, the DRAd shall within 3 days from the expiry of that 14-day period send a written report (hereinafter called "the Report") to non-site senior officers of the Employer and the Contractor. The Report shall be concise and shall analyse the dispute. It shall identify the key issues in dispute and the perceptions of the DRAd as to the obstacles to settlement. If requested in writing by both the Employer and the Contractor, the DRAd shall within 3 days from such request also provide either a non-binding recommendation for a resolution or a non-binding evaluation of the merits of the dispute. The DRAd may show a draft of the Report to the site level personnel before it is served to the non-site senior officers. The Report of the DRAd shall not be admissible in any subsequent arbitration or litigation, except as set forth in sub-clause (8) of this Clause.

(ii) Within 7 days upon receipt of the Report from the DRAd, the non-site senior officers shall meet in order to attempt to settle the dispute. The DRAd shall only attend this meeting if the Employer and the Contractor request in writing that he do so. The DRAd shall also be available to attend separate meetings with the Employer or with the Contractor to respond to questions about the Report.

(f) (i) If the dispute is not settled within 21 days of date of the service of the Report to the non-site senior officers, the DRAd may recommend to the Employer and the Contractor another form of dispute resolution that, in his judgement may be a more effective means of resolving the dispute than the short form arbitration described in sub-clause (6) of this Clause. The Employer and the Contractor shall not be obliged to accept the recommendation of the DRAd. In the absence of a settlement or of the adoption of another dispute resolution approach, the Employer and the Contractor shall participate in the short form arbitration described in sub-clause (6) of this Clause. The arbitration shall take place within 28 days of the date that non-site senior officer settlement efforts have terminated.

(ii) The arbitrator shall be selected by the Employer and the Contractor, including any Specialist Sub-contractor or Nominated Sub-contractor who may be obliged to participate in the arbitration and be bound by the determination of the arbitrator. The DRAd shall assist the Employer and the Contractor in choosing an arbitrator. The DRAd shall determine whether, under the circumstances of the particular dispute, the Contractor and the Specialist Sub-contractor or Nominated Sub-contractor have an identity of interest such that they shall be treated as one party for the purposes of selecting an arbitrator. If the Employer and the Contractor cannot agree on the arbitrator, then the arbitrator shall be appointed upon the written application of either the Employer or the Contractor by the Hong Kong International Arbitration Centre ("HKIAC"), or, alternatively, where a party proposes and the other party concurs then the arbitrator shall be appointed in accordance with the HKIAC list system for the appointment of arbitrators.

(6) The short form arbitration shall be governed by the "Short Form Arbitration Rules" set out in the Architectural Services Department's Standard Form No. QS/TD.400 at **Appendix [ ]** hereto and shall for all types of disputes have the following characteristics :

(a) The hearing shall involve one or, with the written agreement of the Employer and the Contractor, at most, a limited number of distinct claims or issues.

(b) If the hearing involves one claim or issue, the arbitration shall be conducted and concluded in, at most, one day. If it involves more than one distinct claim or issue, the Employer and the Contractor shall agree on a maximum length of time for the hearing, which shall be as short as possible. Failing agreement the arbitrator shall fix the time. In determining the maximum time for the length of the hearing, account shall be taken as to whether, under the circumstances of the particular dispute, the Contractor and the Specialist Sub-contractor or Nominated Sub-contractor have an identity of interest such that they shall be treated as one party for the purposes of making a presentation.

(c) Each of the Employer and the Contractor and, if appropriate, the Specialist Sub-contractor, or Nominated Sub-contractor shall have the opportunity to present his case to the arbitrator, either through written presentation, oral evidence or the use of affidavits and documents.

(d) The arbitrator shall fairly allocate the amount of time within the day for each presentation as well as for questions and dialogue with the Employer and the Contractor and if applicable the Specialist Sub-contractor or Nominated Sub-contractor. The arbitrator may otherwise conduct the arbitration in such a manner as he deems reasonable and in accordance with the rules of natural justice.

(e) Subject to section 72 of the Arbitration Ordinance, the arbitrator shall have 7 days from the date of the hearing to make an award. The award shall be in writing and unless the Employer and the Contractor agree otherwise or the award is an award on agreed terms under section 66(1) of the Arbitration Ordinance, shall contain a concise reasoned decision with sufficient detail so that each of the Employer and the Contractor

may appreciate the reasons for the outcome of the award.

(f) The decision of the arbitrator shall be final and binding on the Employer and the Contractor and, if applicable, the Specialist Sub-contractor or Nominated Sub-contractor shall in the absence of an award to the contrary, be implemented forthwith.

(7) Certain evidence as set forth herein, even if relevant, shall be privileged and not admissible during the course of the arbitration. The Report of the DARd, as well as any prior expressions of his views, shall not be admissible in the arbitration, except as set forth in sub-clause (8) of this Clause. Any statements of the Employer, Contractor, Specialist Sub-contractor or Nominated Sub-contractor representatives regarding the issue in dispute that are made in a meeting with the DRAd after the service of the Notice of Dispute or that were otherwise made in confidence to the DRAd, as well as any settlement offers made by the Employer, the Contractor, Specialist Sub-contractor or Nominated Sub-contractor, shall also be inadmissible in the arbitration. The DRAd cannot be called as a witness in an arbitration.

(8) The DRAd Report, may be admissible only if it is relevant to the issue of whether the costs of the DRAd involvement with respect to a particular dispute may be transferred from the Employer to the Contractor or from the Contractor to the Employer as the case may be. The arbitrator has the authority to transfer the costs of the DRAd services in writing the Report and meeting with the senior officers, to whichever of the Employer or the Contractor is the losing party if he determines that the losing party has pursued a patently unreasonable argument. The DRAd Report may be admissible only after the arbitration award, save for the award as to costs, has been made and published and then only if the arbitrator believes that it is appropriate to take evidence as to whether costs should be transferred. The provisions of this sub-clause shall also apply in respect of the transfer of the costs of the DRAd involvement where the arbitration involves more than two parties.

(9) The costs of the reference and the award shall be at the discretion of the arbitrator.

(10) Notwithstanding any provision to the contrary, the following time frames shall apply in respect of the following types of claims evaluation, ascertainment and determinations that may arise under the Contract.

(a) With respect to any Surveyor's determination arising under Clause 61 of the General Conditions of Contract relating to an evaluation by the Surveyor of a variation, the Surveyor'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 Supervising Officer and such determination shall be provided to the Contractor within 56 days thereafter. If the Surveyor considers that he reasonably requires information from the Contractor to assist in the determination, the Surveyor shall request such information in writing within 7 days of the issuance of the variation by the Supervising Officer. The Contractor shall provide within 7 days of receipt of the request any information that the Surveyor may reasonably require to assist in this determination. In the absence of the information requested, the Surveyor may make his determination based on the information otherwise available to him.

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

The Employer and the Contractor may agree that any claim by the Contractor for additional payment may be submitted and considered concurrently with any Contractor's request, made pursuant to sub-clause (10)(e) of this Clause, in such event the Surveyor's ascertainment of the Cost incurred shall be provided to the Contractor within 56 days of the request made pursuant to sub-clause (10)(e) of this Clause.

(c) With respect to any Surveyor's determination, including any requirement to ascertain Cost pursuant to Clause 48(2) of the General Conditions of Contract, the Contractor shall serve notice to the Surveyor within 28 days of it becoming apparent that the event will give rise to a possible claim, and the Surveyor's determination or ascertainment of the Cost incurred shall be provided to the Contractor within 56 days thereafter, if not already so provided. In the event that it is necessary to keep contemporary records pursuant to Clause 64(3) of the General Conditions of Contract to support the claim and the Surveyor would, in the absence of such records, be unable to determine or ascertain the Cost incurred, the Employer and the Contractor may, pursuant to sub-clause (10)(f) of this Clause extend the time frame for the Surveyor's determination or ascertainment.

(d) With respect to the situation described under sub-clauses 10(a), (b) and (c) of this Clause, if the Surveyor does not provide an evaluation, ascertainment or determination within the time period prescribed, the Contractor may submit a written notice of appeal as of the expiration of that period, or he may wait until the evaluation, ascertainment or determination is provided. In either event the Contractor shall have 28 days as of the evaluation, ascertainment or determination, or as of the end of the 56 day period within which the Surveyor was to make an evaluation, ascertainment or determination, within which to submit a Notice of Dispute.

(e) Should the Contractor wish to apply for a grant by the Architect pursuant to General Conditions of Contract Clause 50, the Contractor shall give notice to the Supervising Officer within 28 days of it has arisen that the delaying event will give rise to a possible claim. The Supervising Officer shall provide his decision on the grant to the Contractor within 56 days of the

Contractor's notice. If the Supervising Officer considers that he reasonably requires further information from the Contractor to assist in the determination of the extension of time the Supervising Officer shall request such information within 7 days of the date of receipt of the Contractor's notice. The Contractor shall provide within 7 days of receipt of the request any information the Supervising Officer may reasonably require to assist in the determination. In the absence of the information requested, the Supervising Officer may make his determination based upon the information otherwise available to him.

In the event that :

(i) the delay has a continuing effect and the Supervising Officer is unable to determine the full extent of the extension of time, the Supervising Officer 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 sub-clause (10)(f) of this Clause extend the time frame for the Supervising Officer's grant.

(f) The Employer and the Contractor may agree to extend any of the time frames set forth in this Clause. Such agreement shall be in writing and copied to the DRAd. 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 DRAd in writing prior to the expiry of the time frame in question that there is a disagreement and the DRAd shall be empowered to determine whether an extension to the time frame is in all the circumstances reasonable and if so, the amount of such extension. Both the Employer and the Contractor shall be bound by the DRAd's determination.

(11) The arbitrator appointed shall have full power to open up, review and revise any decision (other than a decision under Clause 46(3) of the General Conditions of Contract not to vary the Works), instruction, order, direction, certificate of the Supervising Officer or certificate or valuation by the Surveyor and neither the Employer nor the Contractor shall be limited in proceedings before such arbitrator to the evidence or arguments put before the DRAd.

(12) The Employer and the Contractor shall be required to enter into a written agreement with the DRAd which shall, inter alia, give effect to the obligations of the DRAd.

(13) Subject to any transfer of costs ordered by the arbitrator under sub-clause (8) of this Clause the Employer and the Contractor shall each pay 50% of the DRAd fees and expense in respect of the DRAd services provided to them described in this Clause. If either the Employer or the Contractor fails to pay any amount due by them within 7 days after the due date, then whichever of them is not in default shall pay the amount owing to the DRAd. 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 83 of the Contract or otherwise.

(14) If any dispute or difference of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract or the carrying out of the Works including any dispute as to any decision, instruction, order, direction, certificate of the Supervising Officer or certificate or valuation by the Surveyor of which Notice of Dispute is not given until after the expiry of the Maintenance Period or after termination or abandonment of the Contract, whichever is the later and which dispute or difference cannot be resolved under the provisions of sub-clause (5) of this Clause the dispute or difference shall be resolved in mediation or arbitration as hereinafter provided. Either the Employer or the Contractor may within 28 days of the service of the Notice of Dispute refer the dispute or difference to mediation in accordance with

and subject to The Government of the Hong Kong Special Administrative Region Construction Mediation Rules or any modification thereof being in force at the date of such request. If the matter cannot be resolved by mediation, or if either the Employer or the Contractor does not wish the matter to be referred to mediation then either the Employer or the Contractor may refer the matter to arbitration in accordance with and subject to the provisions of the Arbitration Ordinance and any such reference shall be deemed to be a submission to arbitration within the meaning of such Ordinance. Any reference to arbitration shall be made within 90 days of :-

(a) the receipt of a request for mediation and subsequently the recipient of such request having failed to respond, or

(b) the refusal to mediate, or

(c) the failure of the mediation to produce a result acceptable to the Employer and the Contractor, or

(d) the abandonment of the mediation.

Subject to the two immediately succeeding paragraphs, the Domestic Arbitration Rules (2014) of the Hong Kong International Arbitration Centre (the Arbitration Rules) shall apply to any arbitration instituted in accordance with this sub-clause.

Notwithstanding any provision of the Arbitration Rules, the place of meetings and hearings in the arbitration shall be Hong Kong unless the parties otherwise agree.

Article 20.1 of the Arbitration Rules shall be deleted and replaced by:

‘20.1(a) The arbitration proceedings are private and confidential between the parties and the arbitrator. Subject to the provisions of section 18 of the Ordinance and these Rules, no information relating to the arbitration shall be disclosed by any person without the written consent of each and every party to the arbitration. Disclosures are permissible where disclosures –

(a) are necessary for implementation or enforcement;

(b) are required by the parties' auditors or for some other legitimate business reason;

(c) are required by any order of the courts of Hong Kong or other judicial tribunal;

(d) which are necessary for the making of claims against any third party or to defend a claim brought by any third party.

20.1(b) Notwithstanding Article 20.1(a) and subject to the following provisions, the party comprising the Government of the Hong Kong Special Administrative Region (the Government party) may disclose the outline of any dispute with the other party and the outcome of the arbitration to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said Committee, the Government party shall inform the other party. Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the outcome of the arbitration without the written consent of the other party but such consent shall not be unreasonably withheld. The other party shall be deemed to have given his consent to disclosures on the expiry of the first 6 months from the date of the outcome of the arbitration. The other party may, if he considers necessary to protect the sensitive nature of certain information relating to him, request the Government party to disclose such specified information to the said Committee strictly on a confidential basis. If the Government party considers that there are legitimate grounds to accede to the other party's request, the Government party shall convey the request to the said Committee for its consideration.'

The arbitrator appointed shall have full power to open up, review and revise any decision (other than decision under Clause 46(3) of the General Conditions of Contract not to vary the Works), instruction, order, direction, certificate of the Supervising Officer or certificate or valuation by the Surveyor.

In the event of different Maintenance Periods having been named for different Sections or in the event of more than one Maintenance Period for different Sections or parts of the Works under the Contract, the expression "Maintenance Period" shall, for the purpose of this Clause, mean the last of such Maintenance Periods.

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

(16) For the purposes of this Clause, "Arbitration Ordinance" means the Arbitration Ordinance (Cap.609) or any statutory modification thereof for the time being in force.