

**MEMO**

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*Date* 6 October 2009

*To* **Distribution**  
*(Attn :* \_\_\_\_\_ *)*  
*Your Ref.* \_\_\_\_\_  
*dated* \_\_\_\_\_  
*Fax No.* \_\_\_\_\_  
*Total Pages* 3 + encl

**Professional Indemnity Insurance for Works Contracts  
Involving Contractor's Designs, Alternative Designs  
and Independent Checking Engineer's Services**

In line with the changes brought about by DEVB TC(W) No. 9/2007 on the requirements for Professional Indemnity Insurance (PII) in public works contracts, I should be grateful if you would draw the attention of your project officers as well as your consultants to the corresponding amendments to the standard Special Conditions of Contracts (SCCs) at Appendices C and E to ETWB TC(W) No. 25/2004 as detailed in paragraph 3 below. The standard SCE and SCC at Appendix E to TC(W) No. 9/2007 have also been slightly amended for consistency between these related standard provisions.

**Background**

2. ETWB TC(W) No. 25/2004 was promulgated in August 2004 to introduce a set of Special Conditions of Contract (SCCs) providing guidelines for the evaluation and acceptance of alternative designs from Contractors after contract award. The SCCs also include provisions on the requirement of PII to be procured by the Contractor and its Designer and Independent Checking Engineer (ICE) in connection with the Cost Savings Design to be accepted after contract award. The drafting of such PII provisions were based on TC(W) No. 6/2003 with necessary modifications to suit. In October 2007, TC(W) No. 6/2003 was superseded by TC(W) No. 9/2007 which was promulgated to revise the PII requirements to be taken out by the Contractors and its Designer and ICE. However, as the prime purpose of TC(W) 9/2007 was to tackle the difficulties encountered in procuring PII for Contractors' designs like temporary works design, design of a part of the permanent works required by the contract and alternative design invited during the tender stage, the provisions in TC(W) 9/2007 do not cover Cost Savings Designs. Since the Contractor and its Designer and ICE will also encounter similar difficulties in procuring PII for Cost Savings Design, the relevant SCCs of TC(W) No. 25/2004 should be updated in line with the changes brought about by TC(W) No. 9/2007 on the requirements for PII in public works contracts.

## Amendments

3. The amendments to these TC(W)s are summarized as follows:-

### ETWB TC(W) No. 25/2004 – Contractors' Design and Alternative Design

- (a) SCC(B), SCC(D) and SCC(F) at Appendix C are to be replaced by the revised SCC(B), SCC(D) and SCC(F).
- (b) SCC(B) and SCC(D) at Appendix E are to be replaced by the revised SCC(B) and SCC(D).

### DEVB TC(W) No. 9/2007 – Professional Indemnity Insurance for Consultancy Services, Works Contracts Involving Contractor's Design or Independent Checking Engineer's Services

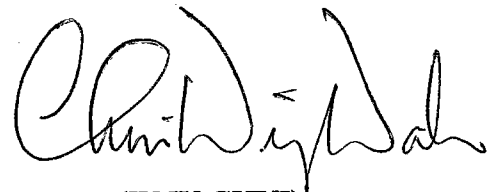
- (c) To tally with the above amendments to ETWB TC(W) No. 25/2004, the SCE and SCC(A) at Appendix E to DEVB TC(W) No. 9/2007 are to be replaced by the revised SCE and SCC(A).

\_\_\_\_\_ A copy of these revised standard provisions is attached herewith.

4. The amended standard SCE and SCCs have been considered by the Conditions of Contract Committee (CCC) with comments of its Members incorporated as appropriate.
- \_\_\_\_\_ The amendments are explained in the schedule attached at **Annex I**.

## Effective Date

5. The amendments set out in paragraph 2 above take immediate effect on new works contracts. For contracts of which tenders have been called, project officers may include the amendments if there is sufficient time to issue a tender addendum.
6. The aforesaid amendments will be subsumed in the Project Administration Handbook and the respective manuals for ArchSD and EMSD in due course.
7. For enquiries, please contact Mr. Ringo Mok, AS(WP)1, at telephone no. 2848 6244.



(W W CHUI)

for Secretary for Development

Distribution

DArchS

DCED

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DEMS

DHy

DWS

c.c.

DB

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DEP

Internal

DS(W)2 – please note in file

LA(W)

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**Schedule of Amendments**

<b>Clause</b>	<b>Amendments</b>
SCC(B) at Appendix C to ETWB TC(W) No. 25/2004	Sub-clause (3)(d) is amended to read: “(d) satisfactory evidence of professional indemnity insurance as referred to in Special Conditions of Contract Clause SCC [ ] <sup>#</sup> (i.e. the standard SCC(A) in DEVB TC(W) No. 9/2007 - Appendix E).”
SCC(D) at Appendix C to ETWB TC(W) No. 25/2004	Sub-clause (3)(d) is amended to read: “(d) satisfactory evidence of professional indemnity insurance as referred to in Special Conditions of Contract Clause SCC(F)(7).”
SCC(F) at Appendix C to ETWB TC(W) No. 25/2004	PII provisions for Cost Savings Design are revised in line with DEVB TC(W) No. 9/2007.
SCC(B) at Appendix E to ETWB TC(W) No. 25/2004	Sub-clause (3)(d) is amended to read: “(d) satisfactory evidence of professional indemnity insurance as referred to in Special Conditions of Contract Clause SCC(D)(7).”
SCC(D) at Appendix E to ETWB TC(W) No. 25/2004	PII provisions for Cost Savings Design are revised in line with DEVB TC(W) No. 9/2007.
SCC(A) at Appendix E to DEVB TC(W) No. 9/2007	Minor amendments are made to the wording for consistency between these related SCCs. ✓
SCE( ) at Appendix E to DEVB TC(W) No. 9/2007	Minor amendments are made to the wording for consistency with other related standard provisions.

**SCCs on Alternative Designs or Designs required at Pre-contract Stage**

**(To be used where tenderer's design or  
alternative designs for part of the Works are invited or are required)  
(Applicable to capital works and term contracts)**

- SCC (B)** (1) (a) Further to the General Conditions of Contract Clause 23/25\*, the Contractor shall be liable for any defect or insufficiency in the Contractor's Design and any inadequacy in the performance of the resultant work. In addition to the Contractor's responsibilities under the Contract, the Contractor shall warrant that :
- (i) all reasonable skill, care and diligence has been and will be exercised in connection with the Contractor's Design,
  - (ii) the materials and goods in connection with the Contractor's Design will be reasonably fit for the purpose for which they are intended and of good quality,
  - (iii) the Contractor's Design conforms to any performance specification or requirement referred to in the Contract, and
  - (iv) without prejudice to the generality of General Conditions of Contract Clause 30/32\* in respect of the Works, the provisions of General Conditions of Contract Clause 30/32\* are complied with in respect of the Contractor's Design and the resultant work.

Such warranty shall apply independent of any question of fault on the part of the Contractor or any sub-contractor and shall not be invalidated in any respect by any error made by the Contractor or sub-contractor in the Contractor's Design or any submission to the Engineer/Architect/Maintenance Surveyor\* for checking and/or approval.

- (b) The Contractor shall not be obliged to ensure that the Contractor's Design is fit for the purpose for which it is intended.
- (c) The Designer shall prepare all calculations and drawings relating to the Contractor's Design which shall be subject to a Check Certificate.
- (d) If at any time the Engineer/Architect/Maintenance Surveyor\* has substantial cause for dissatisfaction with the conduct or performance

of the Independent Checking Engineer, he shall notify the Employer accordingly. The Contractor shall, upon receiving written notice from the Employer, cease to employ such person, firm or company and shall immediately replace him by another whose qualifications, skill and experience are satisfactory to the Employer.

- (2) The Contractor's Design shall be compatible with the provisions of the Specification and the Drawings, provided that the Contractor may propose modifications to the Specification in respect of particular methods of construction or materials not included in the Specification or shown on the Drawings. In such cases, the Contractor shall immediately advise the Employer of such proposals through the Engineer/Architect/Maintenance Surveyor\*. The Employer's decision shall be conveyed to the Contractor in writing by the Engineer/Architect/Maintenance Surveyor\* within a reasonable period, and neither the acceptance nor rejection by the Employer of such proposals shall vitiate the Contract. Acceptance or rejection by the Employer of such proposals shall not entitle the Contractor to extra payment arising from any additional cost of the Works or extension of time arising therefrom.
- (3) Within a reasonable period prior to the commencement of that part of the Works to be constructed in accordance with the Contractor's Design, and from time to time as required by the Engineer/Architect/Maintenance Surveyor\*, the Contractor shall submit to the Engineer/Architect/Maintenance Surveyor\* :
  - (a) two certified copies of the Contractor's Design,
  - (b) Check Certificates,
  - (c) Certified Working Drawings, and
  - (d) satisfactory evidence of professional indemnity insurance as referred to in Special Conditions of Contract Clause SCC[ ]<sup>#</sup> (*i.e. the standard SCC(A) in DEVB TC(W) No. 9/2007 - Appendix E*).
- (4) The Engineer/Architect/Maintenance Surveyor\* shall, within a reasonable period, notify the Contractor in writing whether or not the documents submitted meet the requirements of the Contract. The Contractor shall not commence the construction of such works until receipt of confirmative notification in writing from the Engineer/Architect/Maintenance Surveyor\*.

- (5) Notwithstanding General Conditions of Contract Clause 7, and prior to the commencement of the part of the Works of the Contractor's Design, the Contractor shall supply to the Engineer/Architect/Maintenance Surveyor\* \_\_\_ copies of the Certified Working Drawings together with one reproducible print of each drawing and, where specified in the Contract, the soft copy of the drawings prepared in accordance with the CAD standard so specified. All drawings shall be fully figured copies with black lines on a white background of a size specified in the Contract and shall be detailed in S.I. units.
- (6) If at any time it becomes apparent to the Engineer/Architect/Maintenance Surveyor\* that any drawing and/or document submitted by the Contractor does not comply with the Contract in any respect whatsoever, then all amendments deemed necessary by the Engineer/Architect/Maintenance Surveyor\* shall be made therein by the Contractor, and such amended drawing and/or document shall be reviewed by the Designer and shall be subject to a further Check Certificate. The Contractor shall bear the full cost of complying with this sub-clause, and shall reimburse the Employer the cost of any work or design done by the Employer which has been rendered abortive by any such amendments.
- (7) If at any time it becomes apparent to the Contractor that an amendment to the Contractor's Design is required for the proper completion of that part of the Works involved in such design, then he shall :
- (a) immediately advise the Engineer/Architect/Maintenance Surveyor\* of the proposed amendment,
  - (b) resubmit documents to the Engineer/Architect/Maintenance Surveyor\* in accordance with sub-clause (3) of this Clause, provided that :
    - (i) the finished appearance of the Works shall remain substantially unaltered,
    - (ii) there shall be no additional payment made nor any extension of time granted to the Contractor, and
    - (iii) the Contractor shall bear the full cost of complying with this sub-clause, and shall reimburse the Employer the cost of any

work or design done by the Employer which has been rendered abortive by any such amendments.

- (8) On completion of the work constructed in accordance with the Contractor's Design, the Contractor shall prepare and submit to the Engineer/Architect/Maintenance Surveyor\* the 'as constructed' drawings of such work and shall supply to the Engineer/Architect/Maintenance Surveyor\* two copies and one reproducible print of each of such drawings and, where specified in the Contract, the soft copy of the drawings prepared in accordance with the CAD standard so specified.
- (9) Notwithstanding General Conditions of Contract Clause 59/61/62\*, the work to be constructed in accordance with the Contractor's Design shall be a lump sum item accompanied by a fully priced and detailed Schedule of Rates. The lump sum item shall include :
  - (a) the cost of producing the Contractor's Design,
  - (b) the cost and fees for obtaining the Check Certificates,
  - (c) the cost of providing the Engineer/Architect/Maintenance Surveyor\* with all calculations, documents (including maintenance manuals) and drawings in connection with the Contractor's Design as required by the Contract,
  - (d) the full value of the work (including without limitation, spare parts) constructed in accordance with the Contractor's Design and all the associated risks, liabilities and obligations of the Contractor under the Contract, and
  - (e) the cost of all samples and testing thereof and testing of the work constructed in accordance with the Contractor's Design.
- (10) For the avoidance of doubt, any change in the quantities in the Bills of Quantities resulting from the acceptance by the Employer of the Contractor's Design shall not entitle the Contractor to any adjustment of the rates in the said Bills of Quantities notwithstanding any other provisions in the Contract.
- (11) Variations to the works for the Contractor's Design ordered by the Engineer/Architect/Maintenance Surveyor\* shall be measured and valued at the rates ascertained in accordance with the principles of General



Conditions of Contract Clause 61/63/64\*, at or based on the rates in the Schedule of Rates submitted with the Tender. For the avoidance of doubt, amendments under sub-clause (6) of this Clause shall not be considered as variations within the meaning of this sub-clause.

- (12) (a) Except in respect of those intellectual property rights referred to in sub-clause (12)(c) of this Clause, the Contractor hereby undertakes and warrants to the Employer that the Contractor is the sole legal and beneficial owner of all intellectual property rights subsisting in the Contractor's Design.
- (b) Upon the issue of the certificate of completion of the Works or after termination, abandonment or breach of Contract, the Contractor shall be deemed to have granted to the Employer and the subsequent owners or occupiers of the Works free of all fee a transferable, non-exclusive and irrevocable licence (carrying the right to grant sub-licences) to utilize the Contractor's Design in connection with the execution of the Works and/or the subsequent alteration, extension and maintenance thereof and for no other purpose whatsoever without the prior written agreement of the Contractor. In the event of different certificates of completion having been issued for different Sections or parts of the Works pursuant to General Conditions of Contract Clause 53/55/56\*, the expression "certificate of completion" shall, for the purpose of this sub-clause, mean the last of such certificates.
- (c) To the extent that beneficial ownership of any intellectual property rights in the Contractor's Design is vested in anyone other than the Contractor, the Contractor shall procure that the relevant beneficial owner shall grant a licence together with an indemnity to the Employer and the subsequent owners or occupiers of the Works upon the same terms *mutatis mutandis* as those set out in sub-clauses (12)(b) and (12)(f) of this Clause respectively.
- (d) For the avoidance of doubt, any licence and indemnity granted pursuant to this Clause shall not be determined if the Contractor shall for any reason cease to be employed in connection with the Works.

- (e) The Contractor shall at the request of the Employer, do such acts and execute all such deeds and documents (or procure that the same be done or executed) as the Employer or the subsequent owners or occupiers of the Works may require for vesting in the Employer and the subsequent owners or occupiers of the Works all or any of the rights referred to in this Clause. The Contractor shall bear his own costs and expenses in relation thereto.
  
- (f) The Contractor hereby indemnifies the Employer against all claims, proceedings, actions, damages and losses incurred or sustained by the Employer in respect of infringement of intellectual property rights arising from the use of the Contractor's Design (irrespective of whether the intellectual property rights therein are owned by the Contractor or other parties) by the Employer for purposes referred to in sub-clause (12)(b) of this Clause. For avoidance of doubt, the indemnity herein applies where the proceedings concerned are subsequently withdrawn or settled or in the event that the allegations of infringement are subsequently found to be unsubstantiated. The Contractor shall at its own cost grant a like indemnity to the subsequent owners or occupiers of the Works upon request of the Employer.

**SCCs on Alternative Designs or Designs required at Pre-contract Stage**

**(To be used where tenderer's design or alternative designs for part of the Works are invited or are required)**

**(Applicable to capital works and term contracts)**

**SCC (D)**

Designs by the Contractor

- (1) (a) The Contractor may at any time during the continuance of the Works submit to the Engineer/Architect/Maintenance Surveyor\* in writing a Cost Savings Design proposal in respect of a part of the Works with sufficient details and justifications to show:
- (i) the time for completion of the Works or any Section thereof can be reduced, and/or
  - (ii) the future maintenance or operation cost of the Works can be reduced, and/or
  - (iii) the efficiency or value to the Employer of the completed Works can be improved, and/or
  - (iv) the Contract Sum/Value of the Works\* can be reduced by an amount of a lump sum, and/or
  - (v) social benefits such as but not limited to less disturbance to the public.

In any event, the Contractor's liability for the construction of the Works is not prejudiced and the proposal shall be of benefit to the Employer.

- (b) Any proposal shall clearly state that it is submitted for consideration under this sub-clause and shall include (i) an estimate for consideration by the Employer of the amount to which the cost of carrying out the Works, as determined in accordance with Clause 61/63/64\* of the General Conditions of Contract, that may be saved and (ii) a fully priced and detailed Schedule of Rates as referred to in sub-clause (11) of this Clause. In assessing the overall cost savings, the Employer will take into account the additional cost incurred for considering the Contractor's proposal including the Engineer/Architect/Maintenance Surveyor\*'s cost. The Cost Savings Design shall be subject to the

Engineer/Architect/Maintenance Surveyor\*'s confirmation that it is compatible with the provisions of the Specification and the Drawings. The Contractor may propose modifications to the Specification in respect of particular methods of construction or materials not included in the Specification or shown on the Drawings.

- (c) Subject to acceptance of the Cost Savings Design, (i) the overall cost savings as assessed by the Employer and (ii) any revision (on the basis of the change in value as assessed by the Employer and change in time for completion of the Works or, as the case may be, the relevant Section to which the Cost Savings Design belongs) to the daily rate of liquidated damages and/or minimum liquidated damages for the Works or, as the case may be, the relevant Section to which the Cost Savings Design belongs shall be agreed with the Contractor. Before acceptance of the Cost Savings Design, the Engineer/Architect/Maintenance Surveyor\* shall obtain confirmation from the Employer that the proposal is acceptable to the Employer and confirmation from both the Contractor and the Employer that (i) the overall cost savings and (ii) any revision as aforesaid to the daily rate of liquidated damages and/or minimum liquidated damages arising from the proposal are agreed to by both parties.
- (d) The Employer's decision to accept or reject the Cost Savings Design shall be conveyed to the Contractor in writing by the Engineer/Architect/Maintenance Surveyor\* within a reasonable period, and neither the acceptance nor rejection of such proposal shall vitiate the Contract.
- (e) If the Cost Savings Design is accepted, the agreed overall cost savings in lump sum for the part of the Works shall be equally shared between the Employer and the Contractor. For the avoidance of doubt, the acceptance of the Cost Savings Design shall not entitle the Contractor to claim additional costs or extension of time. If the proposal is rejected, the Contractor shall not be entitled to any payment or extension of time arising from his submission to the Engineer/Architect/Maintenance Surveyor\* of the proposal and the Employer shall bear his own cost for considering the proposal submitted by the Contractor under this sub-clause except that the

Contractor shall reimburse the Employer for the Engineer/Architect/Maintenance Surveyor\*'s cost in doing the same. The Employer shall be entitled to deduct such cost from any sums due to the Contractor under the Contract and/or to recover such cost as a debt from the Contractor.

- (2) (a) Further to the General Conditions of Contract Clause 23/25\*, the Contractor shall be liable for any defect or insufficiency in the Cost Savings Design and any inadequacy in the performance of the resultant work. In addition to the Contractor's responsibilities under the Contract, the Contractor shall warrant that :
- (i) all reasonable skill, care and diligence has been and will be exercised in connection with the Cost Savings Design,
  - (ii) the materials and goods in connection with the Cost Savings Design will be reasonably fit for the purpose for which they are intended and of good quality, and
  - (iii) the Cost Savings Design conforms to any performance specification or requirement referred to in the Contract, and
  - (iv) without prejudice to the generality of General Conditions of Contract Clause 30/32\* in respect of the Works, the provisions of General Conditions of Contract Clause 30/32\* are complied with in respect of the Cost Savings Design and the resultant work.

Such warranty shall apply independent of any question of fault on the part of the Contractor or any sub-contractor and shall not be invalidated in any respect by any error made by the Contractor or sub-contractor in the Cost Savings Design or any submission to the Engineer/Architect/Maintenance Surveyor\* for checking and/or approval.

- (b) The Contractor shall not be obliged to ensure that the Cost Savings Design is fit for the purpose for which it is intended.
- (c) The Designer of Cost Savings Design shall prepare all calculations and drawings relating to the Cost Savings Design which shall be subject to a Check Certificate of Cost Savings Design.

- (d) If at any time the Engineer/Architect/Maintenance Surveyor\* has substantial cause for dissatisfaction with the conduct or performance of the Independent Checking Engineer of Cost Savings Design, he shall notify the Employer accordingly. The Contractor shall, upon receiving written notice from the Employer, cease to employ such person, firm or company and shall immediately replace him by another whose qualifications, skill and experience are satisfactory to the Employer.
  
- (3) Within a reasonable period prior to the commencement of that part of the Works to be constructed in accordance with the Cost Savings Design, and from time to time as required by the Engineer/Architect/Maintenance Surveyor\*, the Contractor shall submit to the Engineer/Architect/Maintenance Surveyor\* :
  - (a) two certified copies of the Cost Savings Design,
  - (b) Check Certificates of Cost Savings Design,
  - (c) Certified Working Drawings of Cost Savings Design, and
  - (d) satisfactory evidence of professional indemnity insurance as referred to in Special Conditions of Contract Clause SCC(F)(7)<sup>#</sup>.
  
- (4) The Engineer/Architect/Maintenance Surveyor\* shall, within a reasonable period, notify the Contractor in writing whether or not the documents submitted meet the requirements of the Contract. The Contractor shall not commence the construction of such works until receipt of confirmative notification in writing from the Engineer/Architect/Maintenance Surveyor\*.
  
- (5) Notwithstanding General Conditions of Contract Clause 7, and prior to the commencement of the part of the Works of the Cost Savings Design, the Contractor shall supply to the Engineer/Architect/Maintenance Surveyor\* \_\_ copies of the Certified Working Drawings of Cost Savings Design together with one reproducible print of each drawing and where specified in the Contract, the soft copy of the drawings prepared in accordance with the CAD standard so specified. All drawings shall be fully figured copies with black lines on a white background of a size specified in the Contract and shall be detailed in S.I. units.

- (6) If at any time it becomes apparent to the Engineer/Architect/Maintenance Surveyor\* that any drawing and/or document submitted by the Contractor does not comply with the Contract in any respect whatsoever, then all amendments deemed necessary by the Engineer/Architect/Maintenance Surveyor\* shall be made therein by the Contractor, and such amended drawing and/or document shall be reviewed by the Designer of Cost Savings Design and shall be subject to a further Check Certificate of Cost Savings Design. The Contractor shall bear the full cost of complying with this sub-clause, and shall reimburse the Employer the cost of any work or design done by the Employer which has been rendered abortive by any such amendments.
  
- (7) If at any time it becomes apparent to the Contractor that an amendment to the Cost Savings Design is required for the proper completion of that part of the Works involved in such design, then he shall :
  - (a) immediately advise the Engineer/Architect/Maintenance Surveyor\* of the proposed amendment,
  
  - (b) resubmit documents to the Engineer/Architect/Maintenance Surveyor\* in accordance with sub-clause (3) of this Clause, provided that :
    - (i) the finished appearance of the Works shall remain substantially unaltered,
    - (ii) there shall be no additional payment made nor any extension of time granted to the Contractor, and
    - (iii) the Contractor shall bear the full cost of complying with this sub-clause, and shall reimburse the Employer the cost of any work or design done by the Employer which has been rendered abortive by any such amendments.
  
- (8) On completion of the work constructed in accordance with the Cost Savings Design, the Contractor shall prepare and submit to the Engineer/Architect/Maintenance Surveyor\* the 'as constructed' drawings of such work and shall supply to the Engineer/Architect/Maintenance Surveyor\* two copies and one reproducible print of each of such

drawings and where specified in the Contract, the soft copy of the drawings prepared in accordance with the CAD standard so specified.

- (9) Notwithstanding General Conditions of Contract Clause 59/61/62\*, the work to be constructed in accordance with the Cost Savings Design shall be a lump sum item accompanied by a fully priced and detailed Schedule of Rates. The lump sum item shall include :
- (a) the cost of producing the Cost Savings Design,
  - (b) the cost and fees for obtaining the Check Certificates of Cost Savings Design,
  - (c) the cost of providing the Engineer/Architect/Maintenance Surveyor\* with all calculations, documents (including maintenance manuals), and drawings in connection with the Cost Savings Design,
  - (d) the full value of the work (including without limitation, spare parts) constructed in accordance with the Cost Savings Design and all the risks, liabilities and obligations of the Contractor under the Contract, and
  - (e) the cost of all samples and testing thereof and testing of the work constructed in accordance with the Cost Savings Design.
- (10) For the avoidance of doubt, any change in the quantities in the Bills of Quantities resulting from the acceptance by the Employer of the Cost Savings Design shall not entitle the Contractor to any adjustment of the rates in the said Bills of Quantities notwithstanding any other provisions in the Contract.
- (11) Variations to the works for the Cost Savings Design ordered by the Engineer/Architect/Maintenance Surveyor\* shall be measured and valued at the rates ascertained in accordance with the principles of General Conditions of Contract Clause 61/63/64\*, at or based on the rates in the Schedule of Rates submitted with the Contractor's Cost Savings Design proposal. For the avoidance of doubt, amendments under sub-clause (6) of this Clause shall not be considered as variations within the meaning of this sub-clause.



- (12) (a) Except in respect of those intellectual property rights referred to in sub-clause (12)(c) of this Clause, the Contractor hereby undertakes and warrants to the Employer that the Contractor is the sole legal and beneficial owner of all intellectual property rights subsisting in the Cost Savings Design.
- (b) Upon the issue of the certificate of completion of the Works or after termination, abandonment or breach of Contract, the Contractor shall be deemed to have granted to the Employer and the subsequent owners or occupiers of the Works free of all fee a transferable, non-exclusive and irrevocable licence (carrying the right to grant sub-licences) to utilize the Cost Savings Design in connection with the execution of the Works and/or the subsequent alteration, extension and maintenance thereof and for no other purpose whatsoever without the prior written agreement of the Contractor. In the event of different certificates of completion having been issued for different Sections or parts of the Works pursuant to General Conditions of Contract Clause 53/55/56\*, the expression "certificate of completion" shall, for the purpose of this sub-clause, mean the last of such certificates.
- (c) To the extent that beneficial ownership of any intellectual property rights in the Cost Savings Design is vested in anyone other than the Contractor, the Contractor shall procure that the relevant beneficial owner shall grant a licence together with an indemnity to the Employer and the subsequent owners or occupiers of the Works upon the same terms *mutatis mutandis* as those set out in sub-clauses (12)(b) and (12)(f) of this Clause respectively.
- (d) For the avoidance of doubt, any licence and indemnity granted pursuant to this Clause shall not be determined if the Contractor shall for any reason cease to be employed in connection with the Works.
- (e) The Contractor shall at the request of the Employer, do such acts and execute all such deeds and documents (or procure that the same be done or executed) as the Employer or the subsequent

owners or occupiers of the Works may require for vesting in the Employer and the subsequent owners or occupiers of the Works all or any of the rights referred to in this Clause. The Contractor shall bear his own costs and expenses in relation thereto.

- (f) The Contractor hereby indemnifies the Employer against all claims, proceedings, actions, damages and losses incurred or sustained by the Employer in respect of infringement of intellectual property rights arising from the use of the Cost Savings Design (irrespective of whether the intellectual property rights therein are owned by the Contractor or other parties) by the Employer for purposes referred to in sub-clause (12)(b) of this Clause. For avoidance of doubt, the indemnity herein applies where the proceedings concerned are subsequently withdrawn or settled or in the event that the allegations of infringement are subsequently found to be unsubstantiated. The Contractor shall at its own cost grant a like indemnity to the subsequent owners or occupiers of the Works upon request of the Employer.

**SCCs on Alternative Designs or Designs required at Pre-contract Stage  
(To be used where tenderer's designs or  
alternative designs for part of the Works are invited or are required)  
(Applicable to capital works and term contracts)**

- SCC (F)**
- (1) Without limiting his obligations under the Contract, the Contractor shall effect and maintain, with well established insurers of repute, professional indemnity insurance for a minimum amount as notified by the Employer to the Contractor in respect of his obligations in relation to the Cost Savings Design to be carried out by or on behalf of the Contractor pursuant to the Contract for any one occurrence or series of occurrences arising out of any one event, or each and every claim, for a period from the date of notification of acceptance of the Cost Savings Design until [ ] years after the date of the certificate of completion.
  - (2) The Contractor shall procure that each of the Designer of Cost Savings Design and Independent Checking Engineer of Cost Savings Design appointed or engaged by the Contractor in connection with the design or checking of the Cost Savings Design, shall effect and maintain, with well established insurers of repute, professional indemnity insurance for a minimum amount as notified by the Employer to the Contractor in respect of his obligations in relation to the design or, as the case may be, checking of the Cost Savings Design, for any one occurrence or series of occurrences arising out of any one event, or each and every claim for a period from the respective dates of commencement of appointment or engagement of the Designer of Cost Savings Design and Independent Checking Engineer of Cost Savings Design until [ ] years after the date of the certificate of completion.
  - (3) The professional indemnity insurance referred to in sub-clause (1) or (2) of this Clause shall respectively be effected with an insurer or insurers acceptable to the Employer. The Contractor shall immediately inform the Employer in writing if such insurance ceases to be available or otherwise is not maintained in accordance with this Clause or for any reason becomes void or unenforceable.
  - (4) If the insurance policy effected pursuant to sub-clause (1) or (2) of this Clause is project specific, the maximum deductible/excess allowed under the insurance policy shall be limited to a maximum of 20% of the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be.
    - (5)(a) If (i) the insurance policy effected pursuant to sub-clause (1) or (2) of this Clause contains a limit of indemnity in

the aggregate for all claims for the period of insurance under the insurance policy, and (ii) the period of insurance under the insurance policy is twelve months or less, then either

- (A) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall be reinstated in full upon exhaustion of the limit of indemnity by reason of indemnity payments made on account of any claim, loss, damage, liability, cost or expense paid or payable under the insurance policy until the total amount of indemnity payable by the insurer under the insurance policy reaches 2 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or
  - (B) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall not be less than 2 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or
  - (C) the limit of indemnity for any one occurrence or series of occurrences arising out of any one event, or each and every claim under the insurance policy shall not be less than 2 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be.
- (b) If (i) the insurance policy effected pursuant to sub-clause (1) or (2) of this Clause contains a limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy, and (ii) the period of insurance under the insurance policy exceeds twelve months, then either:
- (A) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall be reinstated in full upon exhaustion of the limit of indemnity by reason of indemnity payments made on account of any claim, loss, damage, liability, cost or expense paid or payable under the insurance policy until the total amount of indemnity payable by the insurer under the insurance policy reaches 3 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or
  - (B) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall not be less than 3 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or
  - (C) the limit of indemnity for any one occurrence or series of occurrences arising out of any one event, or each and every claim under the insurance policy shall not be less than 3 times the

minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be.

- (6)(a) The Contractor shall provide to the Employer within 60 days from the date of notification of acceptance of the Cost Savings Design and thereafter, in the case where the insurance policy effected pursuant to sub-clause (1) of this Clause does not cover the entire period of insurance required under that sub-clause, within 7 days of professional indemnity insurance being effected upon the expiry of the earlier insurance policy:
- (A) an undertaking that the current insurance policy effected pursuant to sub-clause (1) of this Clause complies with the terms in this Clause in the form in Appendix [ ] to these Special Conditions of Contract; and
  - (B) a certified copy of the full insurance policy effected pursuant to sub-clause (1) of this Clause for the approval of the Employer unless the Contractor can demonstrate to the satisfaction of the Employer that it is not reasonably practicable to provide a certified copy of the full insurance policy in which event the Contractor shall provide a certificate in the form in Appendix [ ] to these Special Conditions of Contract issued by the insurer or insurance broker of the insurance policy and any information relating to the insurance policy that the Employer may reasonably require.
- (b) The Contractor shall provide to the Employer, within 60 days from the respective dates of appointment or engagement of his Designer of Cost Savings Design and Independent Checking Engineer of Cost Savings Design, and thereafter, in the case where the insurance policy effected pursuant to sub-clause (2) of this Clause does not cover the entire period of insurance required under that sub-clause, within 7 days of professional indemnity insurance being effected upon the expiry of the earlier insurance policy:
- (A) an undertaking that the current insurance policy effected pursuant to sub-clause (2) of this Clause complies with the terms of this Clause in the form in Appendix [ ] to these Special Conditions of Contract;
  - (B) a certified copy of the full insurance policy effected pursuant to sub-clause (2) of this Clause for the approval of the Employer unless the Contractor can demonstrate to the satisfaction of the Employer that it is not reasonably practicable to provide a certified copy of the full insurance policy in which event the Contractor shall provide a certificate in the form in Appendix [ ] to these Special Conditions of Contract issued by the insurer or insurance broker of the insurance policy and any information relating to the insurance policy that the Employer may reasonably require.

- (7) If the Contractor shall fail upon request to produce to the Employer satisfactory evidence that there is in force professional indemnity insurance required under this Clause, the Employer may effect and keep in force any such insurance and pay such premium as may be necessary for that purpose. The Employer shall be entitled to deduct such premium, together with expenses incurred, in accordance with the provisions of General Conditions of Contract Clause 83/86/89 [see Note 1] and/or to recover such amount as a debt from the Contractor.
- (8) In the event of different certificates of completion having been issued for [different Sections or parts of the Works/ the Works under different Works Orders] [see Note 1] pursuant to General Conditions of Contract Clause 53/55/56 [see Note 1], the expression “certificate of completion” shall, for the purpose of this Clause, mean the last of such certificates [see Note 2].
- (9) In determining the period of insurance under an insurance policy for the purpose of this Clause, any extension or renewal of the insurance policy shall be treated as a separate insurance policy and shall not have the effect of extending the period of insurance.
- (10) The provisions of this Special Conditions of Contract Clause SCC [ ] shall be further to the provisions of Special Conditions of Contract Clause SCC [ ] (*i.e. the standard SCC(A) in DEVB TC(W) No. 9/2007 – Appendix E*).

- Notes:
1. Delete as appropriate depending on the particular type of GCC to be used.
  2. a) For a works contract with a separate Section comprising only the Establishment Works, add at the end of sub-clause (8) “excluding the certificate of completion for the Establishment Works”.
  - b) For a works contract with a separate Section comprising only the Landscape Softworks and Establishment Works, add at the end of sub-clause (8) “excluding the certificate of completion for the Landscape Softworks and Establishment Works”.
  - c) For term contracts with separate Works Orders for Landscape Softworks and/or Establishment Works, add at the end of sub-clause (8) “excluding the certificates of completion for Works Orders solely for Landscape Softworks and/or Establishment Works”. This note 2(c) does not apply to term contracts which deal with Landscape Softworks and/or Establishment Works only.

**SCCs on Alternative Designs at Contract Stage**

**(To be used where tenderer's design or  
alternative designs for part of the Works are not invited or are not required)  
(Applicable to capital works and term contracts)**

**SCC (B) Alternative Designs by the Contractor**

- (1) (a) The Contractor may at any time during the continuance of the Works submit to the Engineer/Architect/Maintenance Surveyor\* in writing a Cost Savings Design proposal in respect of a part of the Works with sufficient details and justifications to show:
- (i) the time for completion of the Works or any Section thereof can be reduced, and/or
  - (ii) the future maintenance or operation cost of the Works can be reduced, and/or
  - (iii) the efficiency or value to the Employer of the completed Works can be improved, and/or
  - (iv) the Contract Sum/Value of the Works\* can be reduced by an amount of a lump sum, and/or
  - (v) social benefits such as but not limited to less disturbance to the public.

In any event, the Contractor's liability for the construction of the Works is not prejudiced and the proposal shall be of benefit to the Employer.

- (b) Any proposal shall clearly state that it is submitted for consideration under this sub-clause and shall include (i) an estimate for consideration by the Employer of the amount to which the cost of carrying out the Works, as determined in accordance with Clause 61/63/64\* of the General Conditions of Contract, that may be saved and (ii) a fully priced and detailed Schedule of Rates. In assessing the overall cost savings, the Employer will take into account the additional cost incurred for considering the Contractor's proposal including the Engineer Architect/Maintenance Surveyor's\* cost. The Cost Savings Design shall be subject to the Engineer Architect/Maintenance Surveyor's\* confirmation that it is compatible with the provisions of the Specification and the Drawings. The Contractor may propose modifications to the Specification in respect of particular methods of construction or materials not included in the Specification or shown on the Drawings.
- (c) Subject to acceptance of the Cost Savings Design, (i) the overall cost savings as assessed by the Employer and (ii) any revision (on the basis of the change in value as

assessed by the Employer and change in time for completion of the Works or, as the case may be, the relevant Section to which the Cost Saving Design belongs) to the daily rate of liquidated damages and/or minimum liquidated damages for the Works or, as the case may be, the relevant Section to which the Cost Savings Design belongs shall be agreed with the Contractor. Before acceptance of the Cost Savings Design, the Engineer/Architect/Maintenance Surveyor\* shall obtain confirmation from the Employer that the proposal is acceptable to the Employer and confirmation from both the Contractor and the Employer that (i) the overall cost savings and (ii) any revision as aforesaid to the daily rate of liquidated damages and/or minimum liquidated damages arising from the proposal are agreed to by both parties.

- (d) The Employer's decision to accept or reject the Cost Savings Design shall be conveyed to the Contractor in writing by the Engineer/Architect/Maintenance Surveyor\* within a reasonable period, and neither the acceptance nor rejection of such proposal shall vitiate the Contract.
  - (e) If the Cost Savings Design is accepted, the agreed overall cost savings in lump sum for the part of the Works shall be equally shared between the Employer and the Contractor. For the avoidance of doubt, the acceptance of the Cost Savings Design shall not entitle the Contractor to claim additional costs or extension of time. If the proposal is rejected, the Contractor shall not be entitled to any payment or extension of time arising from his submission to the Engineer/Architect/Maintenance Surveyor\* of the proposal and the Employer shall bear his own cost for considering the proposal submitted by the Contractor under this sub-clause except that the Contractor shall reimburse the Employer for the Engineer/Architect/Maintenance Surveyor's\* cost for doing the same. The Employer shall be entitled to deduct such cost from any sums due to the Contractor under the Contract and/or recover such cost as a debt from the Contractor.
- (2) (a) Further to the General Conditions of Contract Clause 23/25\*, the Contractor shall be liable for any defect or insufficiency in the Cost Savings Design and any inadequacy in the performance of the resultant work. In addition to the Contractor's responsibilities under the Contract, the Contractor shall warrant that:
- (i) all reasonable skill, care and diligence has been and will be exercised in connection with the Cost Savings Design,
  - (ii) the materials and goods in connection with the Cost Savings Design will be reasonably fit for the purpose for which they are intended and of good quality,



- (iii) the Cost Savings Design conforms to any performance specification or requirement referred to in the Contract, and
- (iv) without prejudice to the generality of General Conditions of Contract Clause 30/32\* in respect of the Works, the provisions of General Conditions of Contract Clause 30/32\* are complied with in respect of the Cost Savings Design and the resultant work.

Such warranty shall apply independent of any question of fault on the part of the Contractor or any sub-contractor and shall not be invalidated in any respect by any error made by the Contractor or sub-contractor in the Cost Savings Design or any submission to the Engineer/Architect/Maintenance Surveyor\* for checking and/or approval.

- (b) The Contractor shall not be obliged to ensure that the Cost Savings Design is fit for the purpose for which it is intended.
  - (c) The Designer shall prepare all calculations and drawings relating to the Cost Savings Design which shall be subject to a Check Certificate.
  - (d) If at any time the Engineer/Architect/Maintenance Surveyor\* has substantial cause for dissatisfaction with the conduct or performance of the Independent Checking Engineer, he shall notify the Employer accordingly. The Contractor shall, upon receiving written notice from the Employer, cease to employ such person, firm or company and shall immediately replace him by another whose qualifications, skill and experience are satisfactory to the Employer.
- (3) Within a reasonable period prior to the commencement of that part of the Works to be constructed in accordance with the Cost Savings Design, and from time to time as required by the Engineer/Architect/Maintenance Surveyor\*, the Contractor shall submit to the Engineer/Architect/Maintenance Surveyor\*:
- (a) two certified copies of the Cost Savings Design,
  - (b) Check Certificates,
  - (c) Certified Working Drawings, and
  - (d) satisfactory evidence of professional indemnity insurance as referred to in Special Conditions of Contract Clause SCC(D)(7).

- (4) The Engineer/Architect/Maintenance Surveyor\* shall, within a reasonable period, notify the Contractor in writing whether or not the documents submitted meet the requirements of the Contract. The Contractor shall not commence the construction of such works until receipt of the confirmative notification in writing from the Engineer/Architect/Maintenance Surveyor\*.
- (5) Notwithstanding General Conditions of Contract Clause 7, and prior to the commencement of the part of the Works of the Cost Savings Design, the Contractor shall supply to the Engineer/Architect/Maintenance Surveyor\* \_\_\_ copies of the Certified Working Drawings together with one reproducible print of each drawing and, where specified in the Contract, the soft copy of the drawings prepared in accordance with the CAD standard so specified. All drawings shall be fully figured copies with black lines on a white background of a size specified in the Contract and shall be detailed in S.I. units.
- (6) If at any time it becomes apparent to the Engineer/Architect/Maintenance Surveyor\* that any drawing and/or document submitted by the Contractor does not comply with the Contract in any respect whatsoever, then all amendments deemed necessary by the Engineer/Architect/Maintenance Surveyor\* shall be made therein by the Contractor, and such amended drawing and/or document shall be reviewed by the Designer and shall be subject to a further Check Certificate. The Contractor shall bear the full cost of complying with this sub-clause, and shall reimburse the Employer the cost of any work or design done by the Employer which has been rendered abortive by any such amendments.
- (7) If at any time it becomes apparent to the Contractor that an amendment to the Cost Savings Design is required for the proper completion of that part of the Works involved in such design, then he shall :
  - (a) immediately advise the Engineer/Architect/Maintenance Surveyor\* of the proposed amendment,
  - (b) resubmit documents to the Engineer/Architect/Maintenance Surveyor\* in accordance with sub-clause (3) of this Clause, provided that:
    - (i) the finished appearance of the Works shall remain substantially unaltered,
    - (ii) there shall be no additional payment made nor any extension of time granted to the Contractor, and
    - (iii) the Contractor shall bear the full cost of complying with this sub-clause,

and shall reimburse the Employer the cost of any work or design done by the Employer which has been rendered abortive by any such amendments.

- (8) On completion of the work constructed in accordance with the Cost Savings Design, the Contractor shall prepare and submit to the Engineer/Architect/Maintenance Surveyor\* the 'as constructed' drawings of such work and shall supply to the Engineer/Architect/Maintenance Surveyor\* two copies and one reproducible print of each of such drawings and, where specified in the Contract, the soft copy of the drawings prepared in accordance with the CAD standard so specified.
- (9) Notwithstanding General Conditions of Contract Clause 59/61\*, the work to be constructed in accordance with the Cost Savings Design shall be a lump sum item accompanied by a fully priced and detailed Schedule of Rates. The lump sum item shall include :
- (a) the cost of producing the Cost Savings Design,
  - (b) the cost and fees for obtaining the Check Certificates,
  - (c) the cost of providing the Engineer/Architect/Maintenance Surveyor\* with all calculations, documents (including maintenance manuals), and drawings in connection with the Cost Savings Design,
  - (d) the full value of the work (including without limitation, spare parts) constructed in accordance with the Cost Savings Design and all the associated risks, liabilities and obligations of the Contractor under the Contract, and
  - (e) the cost of all samples and testing thereof and testing of the work constructed in accordance with the Cost Savings Design.
- (10) For the avoidance of doubt, any change in the quantities in the Bills of Quantities resulting from the acceptance by the Employer of the Cost Savings Design shall not entitle the Contractor to any adjustment of the rates in the said Bills of Quantities notwithstanding any other provisions in the Contract.
- (11) Variations to the works for the Cost Savings Design ordered by the Engineer/Architect/Maintenance Surveyor\* shall be measured and valued at the rates ascertained in accordance with the principles of General Conditions of Contract Clause 61/63/64\*, at or based on the rates in the Schedule of Rates submitted with the Contractor's Cost Savings Design proposal. For the avoidance of doubt, amendments under sub-clause (6) of this Clause shall not be considered as variations within the meaning of this sub-clause.

- (12) (a) Except in respect of those intellectual property rights referred to in sub-clause (12)(c) of this Clause, the Contractor hereby undertakes and warrants to the Employer that the Contractor is the sole legal and beneficial owner of all intellectual property rights subsisting in the Cost Savings Design.
- (b) Upon the issue of the certificate of completion of the Works or after termination, abandonment or breach of Contract, the Contractor shall be deemed to have granted to the Employer and the subsequent owners or occupiers of the Works free of all fee a transferable, non-exclusive and irrevocable licence (carrying the right to grant sub-licences) to utilize the Cost Savings Design in connection with the execution of the Works and/or the subsequent alteration, extension and maintenance thereof and for no other purpose whatsoever without the prior written agreement of the Contractor. In the event of different certificates of completion having been issued for different Sections or parts of the Works pursuant to General Conditions of Contract Clause 53/55/56\*, the expression "certificate of completion" shall, for the purpose of this sub-clause, mean the last of such certificates.
- (c) To the extent that beneficial ownership of any intellectual property rights in the Cost Savings Design is vested in anyone other than the Contractor, the Contractor shall procure that the relevant beneficial owner shall grant a licence together with an indemnity to the Employer and the subsequent owners or occupiers of the Works upon the same terms *mutatis mutandis* as those set out in sub-clauses (12)(b) and (12)(f) of this Clause respectively.
- (d) For the avoidance of doubt, any licence and indemnity granted pursuant to this Clause shall not be determined if the Contractor shall for any reason cease to be employed in connection with the Works.
- (e) The Contractor shall at the request of the Employer, do such acts and execute all such deeds and documents (or procure that the same be done or executed) as the Employer or the subsequent owners or occupiers of the Works may require for vesting in the Employer and the subsequent owners or occupiers of the Works all or any of the rights referred to in this Clause. The Contractor shall bear its own costs and expenses in relation thereto.
- (f) The Contractor hereby indemnifies the Employer against all claims, proceedings, actions, damages and losses incurred or sustained by the Employer in respect of infringement of intellectual property rights arising from the use of the Cost Savings

Design (irrespective of whether the intellectual property rights therein are owned by the Contractor or other parties) by the Employer for purposes referred to in sub-clause (12)(b) of this Clause. For avoidance of doubt, the indemnity herein applies where the proceedings concerned are subsequently withdrawn or settled or in the event that the allegations of infringement are subsequently found to be unsubstantiated. The Contractor shall at its own cost grant a like indemnity to the subsequent owners or occupiers of the Works upon request of the Employer.

**SCCs on Alternative Designs at Contract Stage  
(To be used where tenderer's designs or  
alternative designs for part of the Works are not invited or are not required)  
(Applicable to capital works and term contracts)**

- SCC (D)**
- (1) Without limiting his obligations under the Contract, the Contractor shall effect and maintain, with well established insurers of repute, professional indemnity insurance for a minimum amount as notified by the Employer to the Contractor in respect of his obligations in relation to the Cost Savings Design to be carried out by or on behalf of the Contractor pursuant to the Contract for any one occurrence or series of occurrences arising out of any one event, or each and every claim, for a period from the date of notification of acceptance of the Cost Savings Design until [ ] years after the date of the certificate of completion.
  - (2) The Contractor shall procure that each of the Designer and Independent Checking Engineer appointed or engaged by the Contractor in connection with the design or checking of the Cost Savings Design, shall effect and maintain, with well established insurers of repute, professional indemnity insurance for a minimum amount as notified by the Employer to the Contractor in respect of his obligations in relation to the design or, as the case may be, checking of the Cost Savings Design, for any one occurrence or series of occurrences arising out of any one event, or each and every claim for a period from the respective dates of commencement of appointment or engagement of the Designer and Independent Checking Engineer until [ ] years after the date of the certificate of completion.
  - (3) The professional indemnity insurance referred to in sub-clause (1) or (2) of this Clause shall respectively be effected with an insurer or insurers acceptable to the Employer. The Contractor shall immediately inform the Employer in writing if such insurance ceases to be available or otherwise is not maintained in accordance with this Clause or for any reason becomes void or unenforceable.
  - (4) If the insurance policy effected pursuant to sub-clause (1) or (2) of this Clause is project specific, the maximum deductible/excess allowed under the insurance policy shall be limited to a maximum of 20% of the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be.
  - (5)(a) If (i) the insurance policy effected pursuant to sub-clause (1) or (2) of this Clause contains a limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy, and (ii) the period of insurance under the insurance policy is twelve months or less, then either:
    - (A) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall be reinstated in full upon exhaustion of the limit of indemnity by reason of indemnity payments made on account of any claim, loss, damage, liability,

- cost or expense paid or payable under the insurance policy until the total amount of indemnity payable by the insurer under the insurance policy reaches 2 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or
- (B) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall not be less than 2 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or
  - (C) the limit of indemnity for any one occurrence or series of occurrences arising out of any one event, or each and every claim under the insurance policy shall not be less than 2 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be.
- (b) If (i) the insurance policy effected pursuant to sub-clause (1) or (2) of this Clause contains a limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy, and (ii) the period of insurance under the insurance policy exceeds twelve months, then either:
- (A) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall be reinstated in full upon exhaustion of the limit of indemnity by reason of indemnity payments made on account of any claim, loss, damage, liability, cost or expense paid or payable under the insurance policy until the total amount of indemnity payable by the insurer under the insurance policy reaches 3 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or
  - (B) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall not be less than 3 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or
  - (C) the limit of indemnity for any one occurrence or series of occurrences arising out of any one event, or each and every claim under the insurance policy shall not be less than 3 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be.
- (6)(a) The Contractor shall provide to the Employer within 60 days from the date of notification of acceptance of the Cost Savings Design and thereafter, in the case where the insurance policy effected pursuant to sub-clause (1) of this Clause does not cover the entire period of insurance required under that sub-clause, within 7 days of professional indemnity insurance being effected upon the expiry of the earlier insurance policy:
- (A) an undertaking that the current insurance policy effected pursuant to sub-clause (1) of this Clause complies with the terms in this

Clause in the form in Appendix [ ] to these Special Conditions of Contract; and

- (B) a certified copy of the full insurance policy effected pursuant to sub-clause (1) of this Clause for the approval of the Employer unless the Contractor can demonstrate to the satisfaction of the Employer that it is not reasonably practicable to provide a certified copy of the full insurance policy in which event the Contractor shall provide a certificate in the form in Appendix [ ] to these Special Conditions of Contract issued by the insurer or insurance broker of the insurance policy and any information relating to the insurance policy that the Employer may reasonably require.
- (b) The Contractor shall provide to the Employer, within 60 days from the respective dates of appointment or engagement of his Designer and Independent Checking Engineer, and thereafter, in the case where the insurance policy effected pursuant to sub-clause (2) of this Clause does not cover the entire period of insurance required under that sub-clause, within 7 days of professional indemnity insurance being effected upon the expiry of the earlier insurance policy:
  - (A) an undertaking that the current insurance policy effected pursuant to sub-clause (2) of this Clause complies with the terms of this Clause in the form in Appendix [ ] to these Special Conditions of Contract;
  - (B) a certified copy of the full insurance policy effected pursuant to sub-clause (2) of this Clause for the approval of the Employer unless the Contractor can demonstrate to the satisfaction of the Employer that it is not reasonably practicable to provide a certified copy of the full insurance policy in which event the Contractor shall provide a certificate in the form in Appendix [ ] to these Special Conditions of Contract issued by the insurer or insurance broker of the insurance policy and any information relating to the insurance policy that the Employer may reasonably require.
- (7) If the Contractor shall fail upon request to produce to the Employer satisfactory evidence that there is in force professional indemnity insurance required under this Clause, the Employer may effect and keep in force any such insurance and pay such premium as may be necessary for that purpose. The Employer shall be entitled to deduct such premium, together with expenses incurred, in accordance with the provisions of General Conditions of Contract Clause 83/86/89 [see Note 1] and/or to recover such amount as a debt from the Contractor.
- (8) In the event of different certificates of completion having been issued for [different Sections or parts of the Works/the Works under different Works Orders] [see Note 1] pursuant to General Conditions of Contract Clause 53/55/56 [see Note 1], the expression “certificate of completion” shall, for the purpose of this Clause, mean the last of such certificates [see Note 2].



- (9) In determining the period of insurance under an insurance policy for the purpose of this Clause, any extension or renewal of the insurance policy shall be treated as a separate insurance policy and shall not have the effect of extending the period of insurance.
- (10) The provisions of this Special Conditions of Contract Clause SCC [ ] shall be further to the provisions of Special Conditions of Contract Clause SCC [ ]. *(i.e. the standard SCC(A) in DEVB TC(W) No. 9/2007 – Appendix E) [This sub-clause (10) of SCC(D) is to be used only if standard SCC(A) in DEVB TC(W) No. 9/2007 – Appendix E is also used for example, PII required for Contractor’s temporary works design. Otherwise sub-clause (10) will not be necessary.]*

- Notes:
1. Delete as appropriate depending on the particular type of GCC to be used.
  2.
    - a) For a works contract with a separate Section comprising only the Establishment Works, add at the end of sub-clause (8) “excluding the certificate of completion for the Establishment Works”.
    - b) For a works contract with a separate Section comprising only the Landscape Softworks and Establishment Works, add at the end of sub-clause (8) “excluding the certificate of completion for the Landscape Softworks and Establishment Works”.
    - c) For term contracts with separate Works Orders for Landscape Softworks and/or Establishment Works, add at the end of sub-clause (8) “excluding the certificates of completion for Works Orders solely for Landscape Softworks and/or Establishment Works”. This note 2(c) does not apply to term contracts which deal with Landscape Softworks and/or Establishment Works only.



**MEMO**

<i>From</i> Secretary for Development	<i>To</i> Distribution
<i>Ref</i> (01TAM-01-7) in DEVB(W) 536/70/03 Pt. 2	<i>(Attn :</i> _____ )
<i>Tel. No.</i> 2848 2106	<i>Your Ref.</i> _____
<i>Fax No.</i> 2521 9682	<i>dated</i> _____
<i>Email</i> david_sp_tong@devb.gov.hk	<i>Fax No.</i> _____
<i>Date</i> 7 January 2009	<i>Total Pages</i> 2

**ETWB TC(W) No. 25/2004  
Contractors' Designs and Alternative Designs**

In Audit Report No. 51 Audit Commission recommended that the Secretary for Development should:

- (a) remind works departments of the need to critically consider the option of inviting tenderers of works contracts to submit alternative designs during tendering, where there is potential for better value for money, in accordance with ETWB TC(W) No. 25/2004; and
- (b) consider incorporating into ETWB TC(W) No. 25/2004 the requirement for a works department to document the justifications for not inviting tenderers to submit alternative designs.

2. In accordance with ETWB TC(W) No. 25/2004, you are hereby reminded to critically consider the option of inviting tenderers of works contracts to submit alternative design during tendering, where there is potential for better value for money.

3. With immediate effect, you are required to properly document the justifications for not inviting tenderers to submit alternative designs for future reference and auditing purposes. This new requirement together with the existing ETWB TC(W) No. 25/2004 will be subsumed in the Project Administration Handbook and respective manuals for ArchSD and EMSD in due course.

4. For enquires, please contact our Mr. T. F. LEUNG, CAS(W)7, at telephone no. 28482655.

  
(David YONG)  
for Secretary for Development

Distribution

D Arch S (Attn.: Mr. W W Li)  
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c.c. TS



Ref : ETWB(W) 546/70/03  
Group : 5

9 August 2004

**Environment, Transport and Works Bureau**  
**Technical Circular (Works) No. 25/2004**

**Contractors' Designs and Alternative Designs**

**Scope**

This Circular introduces a set of mandatory Special Conditions of Contract (Appendix E of this circular) allowing the Employer to accept alternative designs from Contractors after contract award under works contracts other than design-and-build (D&B) contracts. Corresponding changes have also been made to WBTC Nos. 2/2001 and 2/2001A and the contents of these two technical circulars are now embodied in this technical circular to form a single technical circular which deals with alternative designs both at pre-contract stage and contract stage.

**Application**

2. This Circular applies to works contracts of all forms except D&B contracts. For D&B contracts, alternative designs are dealt with under GCC Clause 60(5).

**Effective Date**

3. This Circular takes effect on tenders invited on or after the date of this circular.

## **Effect on Existing Circulars**

4. This Circular replaces Works Bureau Technical Circular Nos. 2/2001 and 2/2001A – Designs and Alternative Designs by Tenderers, which are hereby cancelled. This Circular shall be read in conjunction with ETWB TC(W) No. 6/2003, Professional Indemnity Insurance.

## **Policy**

### **A. Pre-contract Stage**

1. Departments should adopt a “design and build” contract if tenderers are required or invited to provide a design or an alternative design for a substantial part of the Works, in which case this Circular does not apply.
2. Departments may, subject to the approval of an officer of D2 level or above, require tenderers to submit complete tenders incorporating their own proposals for the design of part of the Works which is not covered by the Engineer's design, in the following cases:
  - (a) where such part of the Works is in a specialist or developing field;
  - (b) where such part of the Works includes materials and construction methods, the design of which requires the specialist experience of contractors or suppliers;
  - (c) exceptionally, where the detailed design of such part of the project is insufficiently advanced and the completion of the project is urgent;
  - (d) for piling works where several solutions are available to implement the Works; and
  - (e) for works of a limited lifespan, e.g. a temporary footbridge within a larger project.
3. Where there is potential for better value for money, departments may, subject to the approval of an officer of D2 level or above, invite tenderers to submit tenders incorporating their own alternative designs for a certain part of the Works notwithstanding that a design for that part of the Works has been provided by the Engineer. Departments shall specify in the tender documents which part of the Works alternative designs are invited.

4. In requiring or inviting tenderers to submit tenders based on their own designs for part of the Works, departments should take note of the following guidelines:
  - (a) the tender documents shall contain specific and complete instructions to tenderers including a complete set of design criteria, outline drawings, survey plans and any requirements pertaining to that part of the Works for which tenderer's design proposals are required or alternative design proposals are invited (in a P.S. Clause);
  - (b) where applicable, a clear indication to tenderers of materials and methods of construction which would not be considered shall be given in the tender documents; and
  - (c) a reasonable tender period and validity period shall be allowed, consideration being given to the time required to formulate and prepare a design in sufficient detail and for a reasonable assessment to be made during the tender assessment period.
  
5. Where alternative designs for certain part of the Works are invited, tenderers may elect to submit a tender conforming with the Engineer's design and/or in accordance with the invitation an alternative tender incorporating the tenderer's alternative design for that part of the Works (hereinafter refer to conforming tender and alternative tender respectively). It is not necessary that an alternative tender must be accompanied by a conforming tender. Where there is no invitation for alternative tender or design, alternative tenders or designs shall not be considered. Departments are, however, encouraged to invite submission of alternative tenders or designs from the tenderers where there is a potential for better value for money.

#### Assessment of Alternative Tenders

6. Where alternative tenders are invited, such alternative tenders and those conforming tenders should be similarly treated during tender assessment. The Marking Scheme for tender evaluation promulgated under ETWB TC(W) No. 8/2004 shall be used for the assessment of tenders. The assessment criteria of both the conforming tenders and alternative tenders must be clearly indicated in the marking standard disclosed to the tenderers. After all tenders have been checked for correctness and compliance with the Conditions of Tender, the three most advantageous conforming tenders should be determined. If there are alternative tenders which are found to be more advantageous than any of

the three most advantageous conforming tenders, the best three of these alternative tenders will be given further consideration. In this regard, the suitability and merits of these alternative designs will be examined and it is likely that clarifications with the tenderers of these alternative tenders will be necessary during the tender assessment period with a view to identifying the strengths and weaknesses of the alternative tenders. Alternative designs which do not conform to the essential requirements of the specifications in the tender documents or alternative designs which have to be substantially amended in order to conform to the tender specifications shall be regarded as non-conforming but unintentional errors of forms or technical error of a minor nature may be corrected by the tenderer.

7. Alternative designs shall be assessed against the Engineer's design, and the following aspects shall be considered during the tender assessment:
  - (a) The cost of completed works and savings to Government,
  - (b) feasibility of the proposed alternative design,
  - (c) engineering merit of the alternative design compared to the Engineer's design,
  - (d) assessment of future maintenance costs compared to the Engineer's design,
  - (e) assessment of the appearance compared to the Engineer's design (in the case of highway structures, the appearance of the structure will be considered by the Advisory Committee on the Appearance of Bridges and Associated Structures - ACABAS),
  - (f) whether Government might incur additional expense in the event that the Engineer needs to vary adjacent works during the contract,
  - (g) assessment of the risk of a contractor's failure to perform,
  - (h) estimation of additional cost or savings of supervising the works, and
  - (i) adherence to the design criteria, specifications, and particular requirements and planning constraints.
8. On conclusion of the tender assessment, the Engineer may recommend acceptance of the alternative tender, provided that the alternative design:

- (a) is cost effective on a whole-life basis,
- (b) is aesthetically and technically acceptable,
- (c) offers acceptable standards for future maintenance, and
- (d) is designed in accordance with the Engineer's requirements and appropriate Codes of Practice.

#### General Condition of Tender

9. A general condition of tender is to be added as follows:

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

#### Special Conditions of Tender (see Appendices A & B)

10. Two sets of SCTs are given in Appendices A & B to deal with the two circumstances:

- (a) Alternative Design Invited - the SCTs given in Appendix A shall apply in circumstances where the submission of an alternative design by a tenderer should be encouraged. The tenderer may elect to submit a conforming tender and/or an alternative tender which incorporates the alternative design.
- (b) Design Required - The SCTs given in Appendix B shall apply where the tenderer is required to submit a design for part of the Works which is not covered by the Engineer's design, as opposed to the submission of an alternative to the Engineer's design.

#### Special Conditions of Contract (see Appendix C)

11. In all cases where a contractor's design forms the basis of part of a contract (i.e. cases 10(a) or (b)), the SCCs given in Appendix C shall be included in the tender documents. Please note that these SCCs deal also with Cost Savings Design submitted at Contract Stage which is the subject of Part B of this circular. The SCC(A) in Appendix B of ETWB TC(W) No. 6/2003 should also be included in the tender documents.



## Check Certificates (see Appendix D)

12. The procedures referred to in the SCTs and SCCs depend, to a considerable extent, on the independent checking of the Contractor's design by an "Independent Checking Engineer", who must certify by means of "Check Certificate(s)" that the design complies with the contractual requirements. The following standard forms of Check Certificate given in Appendix D shall be used:
  - (a) Form I: Interim Check Certificate, for use by the Independent Checking Engineer for stage certification of the Contractor's design.
  - (b) Form II: Final Check Certificate, for use by the Independent Checking Engineer where Interim Check Certificate(s) have been issued.
  - (c) Form III: Check Certificate, for use by the Independent Checking Engineer where stage certification is neither required nor proposed.
13. The standard forms of Check Certificates shall be included as Appendices to the SCCs and shall form part of the contract documents.

## **B Contract Stage**

1. At present, there are no express provisions for the acceptance of alternative designs proposed by the contractor after contract award even if they are beneficial to the Employer. If the alternative designs are to be adopted, the parties can only achieve it by entering into a supplementary agreement. The extra administrative efforts involved may discourage the advancement of Value Engineering.
2. The growing complexity of construction projects calls for a closer involvement and integration of different parties. Partnering and risk sharing are approaches being promoted in the construction industry. Government wishing to have a stronger commitment in promoting the concept of Value Engineering, a set of SCCs is hereby introduced to allow the Contractor to submit and the Employer to accept alternative designs after contract award. The resulted savings in cost, if any, shall be shared between the Employer and the contractor.

3. Before accepting the alternative design, departments shall ensure that all resultant statutory and administrative steps are completed. These may include:
  - (a) Acceptance by the Secretary or his delegated authority the design change in road layout in duly authorized road scheme under the Roads (Works, Use and Compensation) Ordinance,
  - (b) Variation of EIA report as sought by DEP and variation of EP as granted by DEP under section 13 of EIAO,
  - (c) Approval for felling/transplanting additional trees, and
  - (d) Approval from Public Fill Committee for disposal of increased quantity of construction and demolition waste, and allocation of additional works area.

Further, departments shall ensure that the alternative design:

- (a) Is cost-effective on a whole-life basis,
- (b) Has no additional cost implications,
- (c) Is environmentally, aesthetically and technically acceptable,
- (d) Offers acceptable standards for future operation and maintenance with equal or more economical efforts as the original design and acceptable to all relevant maintenance authorities, and
- (e) Is designed in accordance with the Engineer's/Architect's requirements and appropriate codes of Practice, design Manuals or guides.

If the alternative design involves work outside the scope of the contract, a supplemental agreement is required and the SPR provisions (Appendix V(B)) should be followed in terms of authority.

4. Due consideration should be given to the certainty of cost, including the future operation and maintenance costs which may be reduced. Reasons as to why the designer did not propose such alternative designs during the design stage should also be noted. Justification for accepting the alternative designs should be properly documented for future reference and auditing purposes.

5. Departments should note that Government would only get 50% of the cost saving arising from alternative designs proposed by contractors after contract award. To achieve best value for money, it is always preferred that all alternative designs are duly considered during the design and the tendering stages as referred to in Part A of this technical circular. Departments should invite tenderers to offer alternative design as far as practicable unless the departments believe that the availability of an alternative design is rather remote or early completion of tender assessment is critical for the project start.

#### Approval Authority

6. The following approval authority shall apply in accepting the contractor's alternative designs :
- Officers at D2 rank, for individual alternative design with overall cost saving to the contract not exceeding \$2M;
  - Officers at D3 rank, for individual alternative design with overall cost saving to the contract not exceeding \$3M;
  - Controlling Officers – no limit.

#### Special Conditions of Contract and Check Certificates

7. Where alternative designs are invited or designs are required from the Contractor at the time of tender, the SCCs contained in Appendix C should be used. For all other cases, the SCCs at Appendix E should be used in conjunction with the Check Certificates in Appendix D.

( C S Wai )  
**Deputy Secretary for the Environment,  
Transport and Works (Works) 2**

**ALTERNATIVE DESIGN FOR PART OF THE WORKS COVERED BY THE ENGINEER'S DESIGN**

**SPECIAL CONDITION OF TENDER**

1. The tenderer may elect to submit a tender conforming with the Engineer's design of the Works priced in accordance with the tender documents and/or in accordance with the provisions of this Special Condition of Tender an alternative tender incorporating the tenderer's alternative design for \*that/\*those part(s) of the Works identified in [set out the relevant Drawings no(s). and the relevant clause/section no(s) of the Contract documents e.g. the Specification].

2. Tenderer's alternative design must comply with the minimum conditions specified in [set out the relevant Drawings no(s). and the relevant clause/section no(s) of the Contract documents e.g. the Specification]. A tender incorporating a design which does not comply with the minimum conditions or which design requires substantial amendments in order to conform to the Specification shall be considered as a non-conforming tender.

#3. The conditions of contract, which will only apply in the event that a tender for an alternative design is accepted, are included as Special Conditions of Contract (*number to be inserted*) [*i.e. SCC(A) and SCC(B) in Appendix C of this circular*].

4. An alternative design shall:

- (a) be presented as an integral part of a separate tender for the Works,
- (b) be priced as a lump sum item and supported by a fully priced and detailed Schedule of Rates, and
- (c) be sufficiently documented to enable the Employer's decision on its acceptability.

For the purposes of (b), the tender shall provide separately the approximate quantities showing the build up of the lump sum. The said Schedule of Rates shall form the basis of interim payments and valuation of variations.

5. The tenderer shall submit such further clarifications pertaining to the alternative design as may be requested by the Engineer/Architect\* designate to enable a proper assessment of the tender to be made. Failure to do so by the tenderer may render his tender invalid.

6. Any alternative design will be treated in confidence up to the date of acceptance of the tender. The contents of unsuccessful tenders will not be divulged.

7. If the tenderer submits a tender for incorporating an alternative design, he shall identify (either in the programme required by SCT ... or in the tender) the arrangements made and the time allowed for the design and independent checking of the alternative design. He shall also submit the name and particulars of the firm or company he proposes to employ as "Independent Checking Engineer".

\* Delete where inappropriate.

# Delete this clause in case this SCT is used together with the SCT where a tenderer's design is required for part of the Works not covered by the Engineer's design. In such case the SCCs will apply irrespective of whether an alternative design is accepted or not.

**ALTERNATIVE DESIGN FOR PART OF THE WORKS NOT COVERED BY THE ENGINEER'S DESIGN**

**SPECIAL CONDITION OF TENDER**

1. The tenderer is required to submit in accordance with the provisions of this Special Condition of Tender a design for *\*that/\*those* part(s) of the Works identified in [set out the relevant Drawings no(s). and the relevant clause/section no(s). of the Contract documents e.g. the Specification].
2. Tenderer's design must comply with the minimum conditions specified in [set out the relevant Drawings no(s). and the relevant clause/section no(s) of the Contract documents e.g. the Specification]. A tender incorporating a design which does not comply with the minimum conditions or which design requires substantial amendments in order to conform to the Specification shall be considered as a non-conforming tender.
3. The attention of the tenderer is drawn to the Special Conditions of Contract Clauses (*numbers to be inserted*).
4. The tenderer's design shall :
  - (a) be priced as a lump sum item and supported by a fully priced and detailed Schedule of Rates, and
  - (b) be sufficiently documented to enable the Employer to reach a decision on its acceptability.

For the purposes of (a), the tenderer shall provide separately the approximate quantities showing the build up of the lump sum. The said Schedule of Rates shall form the basis of interim payments and valuation of variations.

5. The tenderer's design will be treated in confidence up to the date of acceptance of the tender. The contents of unsuccessful tenders will not be divulged.
6. The tenderer shall identify (either in the programme required by SCT ... or in the tender) the arrangements made and the time allowed for the design and independent checking of the design. The tenderer shall also submit the name and particulars of the firm or company he proposes to employ as "Independent Checking Engineer".

\* Delete where inappropriate.

**SCCs on Alternative Designs or Designs required at Pre-contract Stage**  
**(To be used where tenderer's designs or**  
**alternative designs for part of the Works are invited or are required)**  
**(Applicable to capital works and term contracts)**

**SCC (A)** (1) General Conditions of Contract Clause 1(1) is amended by adding the following :

"Independent Checking Engineer" means the person, firm or company employed by the Contractor and responsible for the independent checking of the Contractor's Design whose qualifications, skill and experience are deemed satisfactory by the Employer and who shall be independent of the Designer and the Contractor.

"Designer" means the person, firm or company responsible for the design of the Contractor's Design whose qualifications, skill and experience are deemed satisfactory by the Employer.

"Contractor's Design" means that part or those parts of the design of the permanent works for which the Contractor has elected or is required in accordance with the tender documents to prepare design calculations and drawings and which has been accepted by the Employer.

"Check Certificate" means a certificate, in the form specified in Appendix \* to these Special Conditions of Contract, issued by the Independent Checking Engineer certifying that the Contractor's Design has been independently checked and complies in all respects with the terms and conditions of the Contract.

"Certified Working Drawing" means a drawing prepared by the Designer and endorsed as being checked and approved by the Independent Checking Engineer.

**SCC (B)** (1) (a) Further to the General Conditions of Contract Clause 23/25\*, the Contractor shall be liable for any defect or insufficiency in the Contractor's Design and any inadequacy in the performance of the resultant work. In addition to the Contractor's responsibilities under the Contract, the Contractor shall warrant that :

- (i) all reasonable skill, care and diligence has been and will be exercised in connection with the Contractor's Design,
- (ii) the materials and goods in connection with the Contractor's Design will be reasonably fit for the purpose for which they are intended and of good quality,
- (iii) the Contractor's Design conforms to any performance specification or requirement referred to in the Contract, and
- (iv) without prejudice to the generality of General Conditions of Contract Clause 30/32\* in respect of the Works, the provisions of General Conditions of Contract Clause 30/32\* are complied with in respect of the Contractor's Design and the resultant work.

Such warranty shall apply independent of any question of fault on the part of the Contractor or any sub-contractor and shall not be invalidated in any respect by any error made by the Contractor or sub-contractor in the Contractor's Design or any submission to the Engineer/Architect/Maintenance Surveyor\* for checking and/or approval.

- (b) The Contractor shall not be obliged to ensure that the Contractor's Design is fit for the purpose for which it is intended.
  - (c) The Designer shall prepare all calculations and drawings relating to the Contractor's Design which shall be subject to a Check Certificate.
  - (d) If at any time the Engineer/Architect/Maintenance Surveyor\* has substantial cause for dissatisfaction with the conduct or performance of the Independent Checking Engineer, he shall notify the Employer accordingly. The Contractor shall, upon receiving written notice from the Employer, cease to employ such person, firm or company and shall immediately replace him by another whose qualifications, skill and experience are satisfactory to the Employer.
- (2) The Contractor's Design shall be compatible with the provisions of the Specification and the Drawings, provided that the Contractor may propose modifications to the Specification in respect of particular methods of



construction or materials not included in the Specification or shown on the Drawings. In such cases, the Contractor shall immediately advise the Employer of such proposals through the Engineer/Architect/Maintenance Surveyor\*. The Employer's decision shall be conveyed to the Contractor in writing by the Engineer/Architect/Maintenance Surveyor\* within a reasonable period, and neither the acceptance nor rejection by the Employer of such proposals shall vitiate the Contract. Acceptance or rejection by the Employer of such proposals shall not entitle the Contractor to extra payment arising from any additional cost of the Works or extension of time arising therefrom.

- (3) Within a reasonable period prior to the commencement of that part of the Works to be constructed in accordance with the Contractor's Design, and from time to time as required by the Engineer/Architect/Maintenance Surveyor\*, the Contractor shall submit to the Engineer/Architect/Maintenance Surveyor\* :
  - (a) two certified copies of the Contractor's Design,
  - (b) Check Certificates,
  - (c) Certified Working Drawings, and
  - (d) satisfactory evidence of professional indemnity insurance as referred to in Special Condition of Contract Clause SCC[]<sup>#</sup> (*i.e. the standard SCC[A] in TCW 6/2003 App B*).
- (4) The Engineer/Architect/Maintenance Surveyor\* shall, within a reasonable period, notify the Contractor in writing whether or not the documents submitted meet the requirements of the Contract. The Contractor shall not commence the construction of such works until receipt of confirmative notification in writing from the Engineer/Architect/Maintenance Surveyor\*.
- (5) Notwithstanding General Conditions of Contract Clause 7, and prior to the commencement of the part of the Works of the Contractor's Design, the Contractor shall supply to the Engineer/Architect/Maintenance Surveyor\* \_\_\_ copies of the Certified Working Drawings together with one reproducible print of each drawing and, where specified in the Contract, the soft copy of the drawings prepared in accordance with the CAD standard so specified. All drawings shall be fully figured copies with black lines on a white background of a size specified in the Contract and shall be detailed in S.I. units.

- (6) If at any time it becomes apparent to the Engineer/Architect/Maintenance Surveyor\* that any drawing and/or document submitted by the Contractor does not comply with the Contract in any respect whatsoever, then all amendments deemed necessary by the Engineer/Architect/Maintenance Surveyor\* shall be made therein by the Contractor, and such amended drawing and/or document shall be reviewed by the Designer and shall be subject to a further Check Certificate. The Contractor shall bear the full cost of complying with this sub-clause, and shall reimburse the Employer the cost of any work or design done by the Employer which has been rendered abortive by any such amendments.
- (7) If at any time it becomes apparent to the Contractor that an amendment to the Contractor's Design is required for the proper completion of that part of the Works involved in such design, then he shall :
- (a) immediately advise the Engineer/Architect/Maintenance Surveyor\* of the proposed amendment,
  - (b) resubmit documents to the Engineer/Architect/Maintenance Surveyor\* in accordance with sub-clause (3) of this Clause, provided that :
    - (i) the finished appearance of the Works shall remain substantially unaltered,
    - (ii) there shall be no additional payment made nor any extension of time granted to the Contractor, and
    - (iii) the Contractor shall bear the full cost of complying with this sub-clause, and shall reimburse the Employer the cost of any work or design done by the Employer which has been rendered abortive by any such amendments.
- (8) On completion of the work constructed in accordance with the Contractor's Design, the Contractor shall prepare and submit to the Engineer/Architect/Maintenance Surveyor\* the 'as constructed' drawings of such work and shall supply to the Engineer/Architect/Maintenance Surveyor\* two copies and one reproducible print of each of such drawings and, where specified in the Contract, the soft copy of the drawings prepared

in accordance with the CAD standard so specified.

- (9) Notwithstanding General Conditions of Contract Clause 59/61/62\*, the work to be constructed in accordance with the Contractor's Design shall be a lump sum item accompanied by a fully priced and detailed Schedule of Rates. The lump sum item shall include :
- (a) the cost of producing the Contractor's Design,
  - (b) the cost and fees for obtaining the Check Certificates,
  - (c) the cost of providing the Engineer/Architect/Maintenance Surveyor\* with all calculations, documents (including maintenance manuals) and drawings in connection with the Contractor's Design as required by the Contract,
  - (d) the full value of the work (including without limitation, spare parts) constructed in accordance with the Contractor's Design and all the associated risks, liabilities and obligations of the Contractor under the Contract, and
  - (e) the cost of all samples and testing thereof and testing of the work constructed in accordance with the Contractor's Design.
- (10) For the avoidance of doubt, any change in the quantities in the Bills of Quantities resulting from the acceptance by the Employer of the Contractor's Design shall not entitle the Contractor to any adjustment of the rates in the said Bills of Quantities notwithstanding any other provisions in the Contract.
- (11) Variations to the works for the Contractor's Design ordered by the Engineer/Architect/Maintenance Surveyor\* shall be measured and valued at the rates ascertained in accordance with the principles of General Conditions of Contract Clause 61/63/64\*, at or based on the rates in the Schedule of Rates submitted with the Tender. For the avoidance of doubt, amendments under sub-clause (6) of this Clause shall not be considered as variations within the meaning of this sub-clause.
- (12) (a) Except in respect of those intellectual property rights referred to in sub-clause (12)(c) of this Clause, the Contractor hereby undertakes and warrants to the Employer that the Contractor is the sole legal and beneficial owner of all intellectual property rights subsisting in

the Contractor's Design.

- (b) Upon the issue of the certificate of completion of the Works or after termination, abandonment or breach of Contract, the Contractor shall be deemed to have granted to the Employer and the subsequent owners or occupiers of the Works free of all fee a transferable, non-exclusive and irrevocable licence (carrying the right to grant sub-licences) to utilize the Contractor's Design in connection with the execution of the Works and/or the subsequent alteration, extension and maintenance thereof and for no other purpose whatsoever without the prior written agreement of the Contractor. In the event of different certificates of completion having been issued for different Sections or parts of the Works pursuant to General Conditions of Contract Clause 53/55/56\*, the expression "certificate of completion" shall, for the purpose of this sub-clause, mean the last of such certificates.
- (c) To the extent that beneficial ownership of any intellectual property rights in the Contractor's Design is vested in anyone other than the Contractor, the Contractor shall procure that the relevant beneficial owner shall grant a licence together with an indemnity to the Employer and the subsequent owners or occupiers of the Works upon the same terms *mutatis mutandis* as those set out in sub-clauses (12)(b) and (12)(f) of this Clause respectively.
- (d) For the avoidance of doubt, any licence and indemnity granted pursuant to this Clause shall not be determined if the Contractor shall for any reason cease to be employed in connection with the Works.
- (e) The Contractor shall at the request of the Employer, do such acts and execute all such deeds and documents (or procure that the same be done or executed) as the Employer or the subsequent owners or occupiers of the Works may require for vesting in the Employer and the subsequent owners or occupiers of the Works all or any of the rights referred to in this Clause. The Contractor shall bear his own costs and expenses in relation thereto.

- (f) The Contractor hereby indemnifies the Employer against all claims, proceedings, actions, damages and losses incurred or sustained by the Employer in respect of infringement of intellectual property rights arising from the use of the Contractor's Design (irrespective of whether the intellectual property rights therein are owned by the Contractor or other parties) by the Employer for purposes referred to in sub-clause (12)(b) of this Clause. For avoidance of doubt, the indemnity herein applies where the proceedings concerned are subsequently withdrawn or settled or in the event that the allegations of infringement are subsequently found to be unsubstantiated. The Contractor shall at its own cost grant a like indemnity to the subsequent owners or occupiers of the Works upon request of the Employer.

**SCC (C)** (1) General Conditions of Contract Clause 1(1) is amended

- (a) by adding the following :

"Independent Checking Engineer of Cost Savings Design" means the person, firm or company employed by the Contractor and responsible for the independent checking of the Cost Savings Design whose qualifications, skill and experience are deemed satisfactory by the Employer and who shall be independent of the Designer of Cost Savings Design and the Contractor.

"Designer of Cost Savings Design" means the person, firm or company responsible for the design of the Cost Savings Design whose qualifications, skill and experience are deemed satisfactory by the Employer.

"Cost Savings Design" means the design proposal to any part of the Works submitted by the Contractor under Special Condition of Contract Clause (D)(1)<sup>#</sup> and any amplification or amendment thereto and accepted by the Employer with or without amendments.

"Check Certificate of Cost Savings Design" means a certificate, in the form specified in Appendix<sup>\*</sup> \_\_\_ to these Special Conditions of Contract, issued by the Independent Checking Engineer of Cost Savings Design certifying that the Cost Savings Design has been independently checked

and complies in all respects with the terms and conditions of the Contract.

"Certified Working Drawing of Cost Savings Design " means a drawing prepared by the Designer of Cost Savings Design and endorsed as being checked and approved by the Independent Checking Engineer of Cost Savings Design.

- (b) by adding the following at the end of the definition for "Works":

"and the resultant work of the Contractor's Design and the Cost Savings Design".

**SCC (D)** Designs by the Contractor

- (1) (a) The Contractor may at any time during the continuance of the Works submit to the Engineer/Architect/Maintenance Surveyor\* in writing a Cost Savings Design proposal in respect of a part of the Works with sufficient details and justifications to show:

- (i) the time for completion of the Works or any Section thereof can be reduced, and/or
- (ii) the future maintenance or operation cost of the Works can be reduced, and/or
- (iii) the efficiency or value to the Employer of the completed Works can be improved, and/or
- (iv) the Contract Sum/Value of the Works\* can be reduced by an amount of a lump sum, and/or
- (v) social benefits such as but not limited to less disturbance to the public.

In any event, the Contractor's liability for the construction of the Works is not prejudiced and the proposal shall be of benefit to the Employer.

- (b) Any proposal shall clearly state that it is submitted for consideration under this sub-clause and shall include (i) an estimate for consideration by the Employer of the amount to which the cost of carrying out the Works, as determined in accordance with Clause 61/63/64\* of the General Conditions of Contract, that may be saved and (ii) a fully priced and

detailed Schedule of Rates as referred to in sub-clause (11) of this Clause. In assessing the overall cost savings, the Employer will take into account the additional cost incurred for considering the Contractor's proposal including the Engineer/Architect/Maintenance Surveyor\*'s cost. The Cost Savings Design shall be subject to the Engineer/Architect/Maintenance Surveyor\*'s confirmation that it is compatible with the provisions of the Specification and the Drawings. The Contractor may propose modifications to the Specification in respect of particular methods of construction or materials not included in the Specification or shown on the Drawings.

- (c) Subject to acceptance of the Cost Savings Design, (i) the overall cost savings as assessed by the Employer and (ii) any revision (on the basis of the change in value as assessed by the Employer and change in time for completion of the Works or, as the case may be, the relevant Section to which the Cost Savings Design belongs) to the daily rate of liquidated damages and/or minimum liquidated damages for the Works or, as the case may be, the relevant Section to which the Cost Savings Design belongs shall be agreed with the Contractor. Before acceptance of the Cost Savings Design, the Engineer/Architect/Maintenance Surveyor\* shall obtain confirmation from the Employer that the proposal is acceptable to the Employer and confirmation from both the Contractor and the Employer that (i) the overall cost savings and (ii) any revision as aforesaid to the daily rate of liquidated damages and/or minimum liquidated damages arising from the proposal are agreed to by both parties.
- (d) The Employer's decision to accept or reject the Cost Savings Design shall be conveyed to the Contractor in writing by the Engineer/Architect/Maintenance Surveyor\* within a reasonable period, and neither the acceptance nor rejection of such proposal shall vitiate the Contract.
- (e) If the Cost Savings Design is accepted, the agreed overall cost savings in lump sum for the part of the Works shall be equally shared between the Employer and the Contractor. For the avoidance of doubt, the acceptance of the Cost Savings Design shall not entitle the Contractor to claim additional costs or extension of time. If the proposal is rejected, the Contractor shall not be entitled to any payment or

extension of time arising from his submission to the Engineer/Architect/Maintenance Surveyor\* of the proposal and the Employer shall bear his own cost for considering the proposal submitted by the Contractor under this sub-clause except that the Contractor shall reimburse the Employer for the Engineer/Architect/Maintenance Surveyor\*'s cost in doing the same. The Employer shall be entitled to deduct such cost from any sums due to the Contractor under the Contract and/or to recover such cost as a debt from the Contractor.

- (2) (a) Further to the General Conditions of Contract Clause 23/25\*, the Contractor shall be liable for any defect or insufficiency in the Cost Savings Design and any inadequacy in the performance of the resultant work. In addition to the Contractor's responsibilities under the Contract, the Contractor shall warrant that :
- (i) all reasonable skill, care and diligence has been and will be exercised in connection with the Cost Savings Design,
  - (ii) the materials and goods in connection with the Cost Savings Design will be reasonably fit for the purpose for which they are intended and of good quality, and
  - (iii) the Cost Savings Design conforms to any performance specification or requirement referred to in the Contract, and
  - (iv) without prejudice to the generality of General Conditions of Contract Clause 30/32\* in respect of the Works, the provisions of General Conditions of Contract Clause 30/32\* are complied with in respect of the Cost Savings Design and the resultant work.

Such warranty shall apply independent of any question of fault on the part of the Contractor or any sub-contractor and shall not be invalidated in any respect by any error made by the Contractor or sub-contractor in the Cost Savings Design or any submission to the Engineer/Architect/Maintenance Surveyor\* for checking and/or approval.

- (b) The Contractor shall not be obliged to ensure that the Cost Savings Design is fit for the purpose for which it is intended.



- (c) The Designer of Cost Savings Design shall prepare all calculations and drawings relating to the Cost Savings Design which shall be subject to a Check Certificate of Cost Savings Design.
  - (d) If at any time the Engineer/Architect/Maintenance Surveyor\* has substantial cause for dissatisfaction with the conduct or performance of the Independent Checking Engineer of Cost Savings Design, he shall notify the Employer accordingly. The Contractor shall, upon receiving written notice from the Employer, cease to employ such person, firm or company and shall immediately replace him by another whose qualifications, skill and experience are satisfactory to the Employer.
- (3) Within a reasonable period prior to the commencement of that part of the Works to be constructed in accordance with the Cost Savings Design, and from time to time as required by the Engineer/Architect/Maintenance Surveyor\*, the Contractor shall submit to the Engineer/Architect/Maintenance Surveyor\* :
- (a) two certified copies of the Cost Savings Design,
  - (b) Check Certificates of Cost Savings Design,
  - (c) Certified Working Drawings of Cost Savings Design, and
  - (d) satisfactory evidence of professional indemnity insurance as referred to in Special Condition of Contract Clause SCC[F](4)<sup>#</sup>.
- (4) The Engineer/Architect/Maintenance Surveyor\* shall, within a reasonable period, notify the Contractor in writing whether or not the documents submitted meet the requirements of the Contract. The Contractor shall not commence the construction of such works until receipt of confirmative notification in writing from the Engineer/Architect/Maintenance Surveyor\*.
- (5) Notwithstanding General Conditions of Contract Clause 7, and prior to the commencement of the part of the Works of the Cost Savings Design, the Contractor shall supply to the Engineer/Architect/Maintenance

Surveyor\* \_\_\_ copies of the Certified Working Drawings of Cost Savings Design together with one reproducible print of each drawing and where specified in the Contract, the soft copy of the drawings prepared in accordance with the CAD standard so specified. All drawings shall be fully figured copies with black lines on a white background of a size specified in the Contract and shall be detailed in S.I. units.

- (6) If at any time it becomes apparent to the Engineer/Architect/Maintenance Surveyor\* that any drawing and/or document submitted by the Contractor does not comply with the Contract in any respect whatsoever, then all amendments deemed necessary by the Engineer/Architect/Maintenance Surveyor\* shall be made therein by the Contractor, and such amended drawing and/or document shall be reviewed by the Designer of Cost Savings Design and shall be subject to a further Check Certificate of Cost Savings Design. The Contractor shall bear the full cost of complying with this sub-clause, and shall reimburse the Employer the cost of any work or design done by the Employer which has been rendered abortive by any such amendments.
  
- (7) If at any time it becomes apparent to the Contractor that an amendment to the Cost Savings Design is required for the proper completion of that part of the Works involved in such design, then he shall :
  - (a) immediately advise the Engineer/Architect/Maintenance Surveyor\* of the proposed amendment,
  
  - (b) resubmit documents to the Engineer/Architect/Maintenance Surveyor\* in accordance with sub-clause (3) of this Clause, provided that :
    - (i) the finished appearance of the Works shall remain substantially unaltered,
  
    - (ii) there shall be no additional payment made nor any extension of time granted to the Contractor, and
  
    - (iii) the Contractor shall bear the full cost of complying with this sub-clause, and shall reimburse the Employer the cost of any work or design done by the Employer which has been rendered abortive by any such amendments.

- (8) On completion of the work constructed in accordance with the Cost Savings Design, the Contractor shall prepare and submit to the Engineer/Architect/Maintenance Surveyor\* the 'as constructed' drawings of such work and shall supply to the Engineer/Architect/Maintenance Surveyor\* two copies and one reproducible print of each of such drawings and where specified in the Contract, the soft copy of the drawings prepared in accordance with the CAD standard so specified.
- (9) Notwithstanding General Conditions of Contract Clause 59/61/62\*, the work to be constructed in accordance with the Cost Savings Design shall be a lump sum item accompanied by a fully priced and detailed Schedule of Rates. The lump sum item shall include :
- (a) the cost of producing the Cost Savings Design,
  - (b) the cost and fees for obtaining the Check Certificates of Cost Savings Design,
  - (c) the cost of providing the Engineer/Architect/Maintenance Surveyor\* with all calculations, documents (including maintenance manuals), and drawings in connection with the Cost Savings Design,
  - (d) the full value of the work (including without limitation, spare parts) constructed in accordance with the Cost Savings Design and all the risks, liabilities and obligations of the Contractor under the Contract, and
  - (e) the cost of all samples and testing thereof and testing of the work constructed in accordance with the Cost Savings Design.
- (10) For the avoidance of doubt, any change in the quantities in the Bills of Quantities resulting from the acceptance by the Employer of the Cost Savings Design shall not entitle the Contractor to any adjustment of the rates in the said Bills of Quantities notwithstanding any other provisions in the Contract.
- (11) Variations to the works for the Cost Savings Design ordered by the Engineer/Architect/Maintenance Surveyor\* shall be measured and valued

at the rates ascertained in accordance with the principles of General Conditions of Contract Clause 61/63/64\*, at or based on the rates in the Schedule of Rates submitted with the Contractor's Cost Savings Design proposal. For the avoidance of doubt, amendments under sub-clause (6) of this Clause shall not be considered as variations within the meaning of this sub-clause.

- (12) (a) Except in respect of those intellectual property rights referred to in sub-clause (12)(c) of this Clause, the Contractor hereby undertakes and warrants to the Employer that the Contractor is the sole legal and beneficial owner of all intellectual property rights subsisting in the Cost Savings Design.
- (b) Upon the issue of the certificate of completion of the Works or after termination, abandonment or breach of Contract, the Contractor shall be deemed to have granted to the Employer and the subsequent owners or occupiers of the Works free of all fee a transferable, non-exclusive and irrevocable licence (carrying the right to grant sub-licences) to utilize the Cost Savings Design in connection with the execution of the Works and/or the subsequent alteration, extension and maintenance thereof and for no other purpose whatsoever without the prior written agreement of the Contractor. In the event of different certificates of completion having been issued for different Sections or parts of the Works pursuant to General Conditions of Contract Clause 53/55/56\*, the expression "certificate of completion" shall, for the purpose of this sub-clause, mean the last of such certificates.
- (c) To the extent that beneficial ownership of any intellectual property rights in the Cost Savings Design is vested in anyone other than the Contractor, the Contractor shall procure that the relevant beneficial owner shall grant a licence together with an indemnity to the Employer and the subsequent owners or occupiers of the Works upon the same terms *mutatis mutandis* as those set out in sub-clauses (12)(b) and (12)(f) of this Clause respectively.
- (d) For the avoidance of doubt, any licence and indemnity granted pursuant to this Clause shall not be determined if the Contractor

shall for any reason cease to be employed in connection with the Works.

- (e) The Contractor shall at the request of the Employer, do such acts and execute all such deeds and documents (or procure that the same be done or executed) as the Employer or the subsequent owners or occupiers of the Works may require for vesting in the Employer and the subsequent owners or occupiers of the Works all or any of the rights referred to in this Clause. The Contractor shall bear his own costs and expenses in relation thereto.
  
- (f) The Contractor hereby indemnifies the Employer against all claims, proceedings, actions, damages and losses incurred or sustained by the Employer in respect of infringement of intellectual property rights arising from the use of the Cost Savings Design (irrespective of whether the intellectual property rights therein are owned by the Contractor or other parties) by the Employer for purposes referred to in sub-clause (12)(b) of this Clause. For avoidance of doubt, the indemnity herein applies where the proceedings concerned are subsequently withdrawn or settled or in the event that the allegations of infringement are subsequently found to be unsubstantiated. The Contractor shall at its own cost grant a like indemnity to the subsequent owners or occupiers of the Works upon request of the Employer.

**SCC (E)** The following amendments to the General Conditions of Contract shall be made:-

- (a) Clause 49(1) [For Capital works contracts]/Clause 51(1) [For E&M term contracts]\*  
Add “or such revised time for completion agreed under Special Conditions of Contract Clause SCC (D)<sup>#</sup>.” to the end of the sub-clause.

Clause 51(1) [for Civil term contracts]\*

Delete the “full stop” at the end of Sub-clause (a) and replace with “, or” and add sub-clause (d) “Such revised time for completion agreed under Special Conditions of Contract Clause SCC (D)<sup>#</sup>.”

Clause 51(1) [for Building term contracts]\*

Delete the “full stop” at the end of Sub-clause (b) and replace with “, or” and add sub-clause (c) “Such revised time for completion agreed under Special Conditions of Contract Clause SCC (D)<sup>#</sup>.”

(b) Clause 51(1)/53(1)/54(1)\*

Replace “too slow to ensure completion by the [prescribed]\* time or extended time for completion,” by “too slow to ensure completion by the time for completion prescribed by Clause 49/51\* or extended or revised time for completion prescribed by Clause 50/52/53\* and Special Conditions of Contract Clause SCC(D)<sup>#</sup> as the case may be,”.

(c) Clause 52(1)/54(1)/55(1)\*

Add “or such revised time as may be agreed in accordance with Special Conditions of Contract Clause SCC (D)<sup>#</sup>” immediately after “Clause 50/52/53\*” at the second line/third line\* of this sub-clause.

(d) Clause 89 [For civil and building capital works only]\*

Replace “(or extended date)” in sub-clause (3)(c)(i) by “(or, as the case may be, extended or revised date)” and to replace “(or extended date)” where it twice appears in the last paragraph of sub-clause (3) of this clause by “(or, as the case may be, extended or revised date)”.

- SCC (F)** (1) Without limiting its obligations under the Contract, the Contractor shall maintain, with well established underwriters of repute, professional indemnity insurance in an amount not less than that as notified by the Employer to the Contractor in respect of the Cost Savings Design to be carried out by or on behalf of the Contractor, for any one occurrence or series of occurrences arising out of any one event from the date as notified by the Employer to the Contractor until [ ] years after the date of the certificate of completion of the Works or, where more than one such certificate has been or is to be issued, the date of the last such certificate of completion issued pursuant to General Conditions of Contract Clause 53/55/56\* provided always that such insurance is available at reasonable commercial rates. The professional indemnity insurance shall be effected with an insurer or insurers and in terms approved in writing by the Employer, such approval not to be unreasonably withheld. The Contractor shall immediately inform the Employer if such insurance ceases to be available at reasonable

commercial rates or otherwise is not maintained in accordance with this Special Condition of Contract SCC [F]<sup>#</sup> or for any reason becomes void or unenforceable.

- (2) The Contractor shall procure that its Designer of Cost Savings Design and Independent Checking Engineer of Cost Savings Design appointed or engaged by the Contractor in connection with the design or checking of the Cost Savings Design, effect and maintain professional indemnity insurance in respect of any breach of their respective obligations in relation thereto in an amount not less than that as notified by the Employer to the Contractor for a period from the respective date of commencement of appointment or engagement of the Designer of Cost Savings Design and Independent Checking Engineer of Cost Savings Design until [ ] years after the date of the certificate of completion of the Works or, where more than one such certificate has been or is to be issued, the date of the last such certificate of completion issued pursuant to General Conditions of Contract Clause 53/55/56\*]. The professional indemnity insurance shall be effected with a reputable insurer. The Contractor shall immediately inform the Employer if such insurance ceases to be available or otherwise is not maintained in accordance with this Special Condition of Contract SCC[F]<sup>#</sup> or for any reason becomes void or unenforceable.
- (3) In the event that the insurance cover required by Special Condition of Contract SCC[F]<sup>#</sup>(1) and/or (2) ceases to be available at reasonable commercial rates, the Contractor shall effect and maintain and, as the case may be, procure the Designer of Cost Savings Design and Independent Checking Engineer of Cost Savings Design to effect and maintain, professional indemnity insurance at the maximum level of cover which is available at reasonable commercial rates, provided that the Contractor has obtained the prior agreement in writing of the Employer to such reduced level of insurance cover.
- (4) If the Contractor shall fail upon request to produce to the Employer satisfactory evidence that there is in force professional indemnity insurance required by Special Condition of Contract SCC[F]<sup>#</sup>(1) and/or (2) or as may have been agreed in accordance with Special Condition of Contract SCC[F]<sup>#</sup>(3), the Employer may effect and keep in force any such insurance and pay such premium(s) as may be necessary for that

purpose. The Employer shall be entitled to deduct such premium, together with expenses incurred, from any sums due to the Contractor under the Contract and/or to recover such amount as a debt from the Contractor.

- (5) The provisions of this Special Condition of Contract SCC[F]<sup>#</sup> shall be further to the provisions of Special Condition of Contract SCC[]<sup>#</sup>.  
(*i.e. the standard SCC(A) in TCW 6/2003 App B*)

### Legend

- # Amend to the appropriate SCC reference.
- \* Insert the Appendix reference as appropriate.
- \* Delete as appropriate depending on the particular type of GCC to be used.



Special Conditions of Contract Appendix \_\_\_\_\_

FORM I INTERIM CHECK CERTIFICATE [of Cost Savings Design]<sup>#</sup>

Form of Certificate to be used by the Independent Checking Engineer [of Cost Savings Design]<sup>#</sup> for stage certification of the Cost Savings Design/Contractor's Design\*.

1. We certify that reasonable professional skill and care has been used in the checking of the design of.....(Part of the Design) for..... (Name of structure or works), being part of the Cost Savings Design/Contractor's Design\* for .....(Contract No.) ..... (Project Title), and are satisfied that:

(a) It complies with the design criteria and Specification for the Works detailed in the Contract and the following additions agreed by the Employer:

- (i) .....
(ii) .....
(List any additions agreed and the Employer's reference)

(b) The Cost Savings Design/Contractor's Design\* has been accurately translated into the working drawings which have been checked, having regard to good detailing practice. The numbers of the drawings, attached hereto as Certified Working Drawings[of Cost Savings Design]<sup>#</sup>, are:

- .....
.....
.....
(List drawing numbers and titles)

2. We further certify that we have checked and agreed with the Designer [of Cost Savings Design]<sup>#</sup> the global design of the Cost Savings Design/Contractor's Design\* for ..... (Name of structure or works), and are satisfied that the construction of that part of the Works of the Cost Savings Design/Contractor's Design\* detailed in paragraph 1 above can be commenced without detriment to the remainder of the Cost Savings Design/Contractor's Design\*.

Signed .....
Independent Checking Engineer [of Cost Savings Design]<sup>#</sup>
.....
.....
(Name and address of Independent Checking Engineer [of Cost Savings Design]<sup>#</sup>)

Date .....

\* Delete as appropriate.
# Words in square brackets to be included as appropriate.

FORM II FINAL CHECK CERTIFICATE [of Cost Savings Design]<sup>#</sup>

Form of Certificate to be used by the Independent Checking Engineer [of Cost Savings Design]<sup>#</sup> where Interim Check Certificates [of Cost Savings Design]<sup>#</sup> have been issued.

1. We certify that reasonable professional skill and care has been used in the checking of the design of .....(Name of structure or works), being the Cost Savings Design/Contractor's Design\* for .....(Contract No.) .....(Project Title).

2. We certify that the following Interim Check Certificates [of Cost Savings Design]<sup>#</sup> have been issued:
.....
.....
.....
(Certificate No. and date) (Description of the part of the works)

3.\* We certify that the following amendments to the design and drawings have been checked and agreed by us after the issue of the Interim Check Certificate(s) [of Cost Savings Design]<sup>#</sup>:
.....
.....
.....
(Certificate No. and date) (Drawing No. and description and date of amendment)

4.\* We certify that the design has been accurately translated into the working drawings which have been checked, having regard to good detailing practices. The numbers of the drawings attached hereto as Certified Working Drawings [of Cost Savings Design]<sup>#</sup> are:
.....
.....
.....
(Drawing Number) (Description or title)(List all drawings)

5. We further certify that we are satisfied that the checking of the Cost Savings Design/Contractor's Design\* is completed.

Signed .....
Independent Checking Engineer [of Cost Savings Design]<sup>#</sup>
.....
.....
(Name and address of Independent Checking Engineer [of Cost Savings Design]<sup>#</sup>)

Date .....

\* Delete as appropriate.
# Words in square brackets to be included as appropriate.

FORM III

CHECK CERTIFICATE [of Cost Savings Design]<sup>#</sup>

Form of Certificate to be used by the Independent Checking Engineer [of Cost Savings Design]<sup>#</sup> where stage certification is neither required nor proposed.

1. We certify that reasonable professional skill and care has been used in the checking of the design .....(Name of structure or works), being the Cost Savings Design/Contractor’s Design\* for..... (Contract No.) .....(Project Title), and are satisfied that:

(a) It complies with the design criteria and Specification for the Works detailed in the Contract and the following additions agreed by the Employer:

(i) .....

(ii) .....

(List any additions agreed, and Employer's reference)

(b) The Cost Savings Design/Contractor’s Design\* has been accurately translated into the working drawings which have been checked, having regard to good detailing practices. The numbers of the drawings, attached hereto as Certified Working Drawings [of Cost Savings Design]<sup>#</sup>, are:

.....  
.....  
.....

(Drawing numbers and titles to be listed here)

2. We are satisfied that the construction of ..... (Name of structure or works) can commence.

3. We further certify that we are satisfied that the checking of the Cost Savings Design/Contractor’s Design\* is completed.

Signed .....  
Independent Checking Engineer [of Cost Savings Design]<sup>#</sup>

.....  
.....

(Name and address of Independent Checking Engineer [of Cost Savings Design]<sup>#</sup>)

Date .....

\* Delete as appropriate.

# Words in square brackets to be included as appropriate.

**SCCs on Alternative Designs at Contract Stage**  
**(To be used where tenderer's designs or**  
**alternative designs for part of the Works are not invited or are not required)**  
**(Applicable to capital works and term contracts)**

SCC (A) General Conditions of Contract Clause 1(1) is amended

(a) by adding the following:

“Independent Checking Engineer” means the person, firm or company employed by the Contractor and responsible for the independent checking of the Cost Savings Design whose qualifications, skill and experience are deemed satisfactory by the Employer and who shall be independent of the Designer and the Contractor.

“Designer” means the person, firm or company responsible for the design of the Cost Savings Design whose qualifications, skill and experience are deemed satisfactory by the Employer.

“Cost Savings Design” means the design proposal to any part of the Works submitted by the Contractor under Special Condition of Contract Clause (B)(1)<sup>#</sup> and any amplification or amendment thereto and accepted by the Employer with or without amendments.

“Check Certificate” means a certificate, in the form specified in the Appendix (see Appendix D of this Circular)<sup>\*\*</sup> to the Special Conditions of Contract, issued by the Independent Checking Engineer certifying that the Cost Savings Design has been independently checked and complies in all respects with the terms and conditions of the Contract.

“Certified Working Drawing” means a drawing prepared by the Designer and endorsed as being checked and approved by the Independent Checking Engineer.

(b) by adding the following at the end of the definition for “Works” :  
“and the resultant work of the Cost Savings Design”.

## **SCC (B) Alternative Designs by the Contractor**

- (1) (a) The Contractor may at any time during the continuance of the Works submit to the Engineer/Architect/Maintenance Surveyor\* in writing a Cost Savings Design proposal in respect of a part of the Works with sufficient details and justifications to show:
- (i) the time for completion of the Works or any Section thereof can be reduced, and/or
  - (ii) the future maintenance or operation cost of the Works can be reduced, and/or
  - (iii) the efficiency or value to the Employer of the completed Works can be improved, and/or
  - (iv) the Contract Sum/Value of the Works\* can be reduced by an amount of a lump sum, and/or
  - (v) social benefits such as but not limited to less disturbance to the public.

In any event, the Contractor's liability for the construction of the Works is not prejudiced and the proposal shall be of benefit to the Employer.

- (b) Any proposal shall clearly state that it is submitted for consideration under this sub-clause and shall include (i) an estimate for consideration by the Employer of the amount to which the cost of carrying out the Works, as determined in accordance with Clause 61/63/64\* of the General Conditions of Contract, that may be saved and (ii) a fully priced and detailed Schedule of Rates. In assessing the overall cost savings, the Employer will take into account the additional cost incurred for considering the Contractor's proposal including the Engineer Architect/Maintenance Surveyor's\* cost. The Cost Savings Design shall be subject to the Engineer Architect/Maintenance Surveyor's\* confirmation that it is compatible with the provisions of the Specification and the Drawings. The Contractor may propose modifications to the Specification in respect of particular methods of construction or materials not included in the Specification or shown on the Drawings.
- (c) Subject to acceptance of the Cost Savings Design, (i) the overall cost savings as assessed by the Employer and (ii) any revision (on the basis of the change in value as assessed by the Employer and change in time for completion of the Works or, as the

case may be, the relevant Section to which the Cost Saving Design belongs) to the daily rate of liquidated damages and/or minimum liquidated damages for the Works or, as the case may be, the relevant Section to which the Cost Savings Design belongs shall be agreed with the Contractor. Before acceptance of the Cost Savings Design, the Engineer/Architect/Maintenance Surveyor\* shall obtain confirmation from the Employer that the proposal is acceptable to the Employer and confirmation from both the Contractor and the Employer that (i) the overall cost savings and (ii) any revision as aforesaid to the daily rate of liquidated damages and/or minimum liquidated damages arising from the proposal are agreed to by both parties.

- (d) The Employer's decision to accept or reject the Cost Savings Design shall be conveyed to the Contractor in writing by the Engineer/Architect/Maintenance Surveyor\* within a reasonable period, and neither the acceptance nor rejection of such proposal shall vitiate the Contract.
  - (e) If the Cost Savings Design is accepted, the agreed overall cost savings in lump sum for the part of the Works shall be equally shared between the Employer and the Contractor. For the avoidance of doubt, the acceptance of the Cost Savings Design shall not entitle the Contractor to claim additional costs or extension of time. If the proposal is rejected, the Contractor shall not be entitled to any payment or extension of time arising from his submission to the Engineer/Architect/Maintenance Surveyor\* of the proposal and the Employer shall bear his own cost for considering the proposal submitted by the Contractor under this sub-clause except that the Contractor shall reimburse the Employer for the Engineer/Architect/Maintenance Surveyor's\* cost for doing the same. The Employer shall be entitled to deduct such cost from any sums due to the Contractor under the Contract and/or recover such cost as a debt from the Contractor.
- (2) (a) Further to the General Conditions of Contract Clause 23/25\*, the Contractor shall be liable for any defect or insufficiency in the Cost Savings Design and any inadequacy in the performance of the resultant work. In addition to the Contractor's responsibilities under the Contract, the Contractor shall warrant that:
- (i) all reasonable skill, care and diligence has been and will be exercised in connection with the Cost Savings Design,
  - (ii) the materials and goods in connection with the Cost Savings Design will be reasonably fit for the purpose for which they are intended and of good quality,

- (iii) the Cost Savings Design conforms to any performance specification or requirement referred to in the Contract, and
- (iv) without prejudice to the generality of General Conditions of Contract Clause 30/32\* in respect of the Works, the provisions of General Conditions of Contract Clause 30/32\* are complied with in respect of the Cost Savings Design and the resultant work.

Such warranty shall apply independent of any question of fault on the part of the Contractor or any sub-contractor and shall not be invalidated in any respect by any error made by the Contractor or sub-contractor in the Cost Savings Design or any submission to the Engineer/Architect/Maintenance Surveyor\* for checking and/or approval.

- (b) The Contractor shall not be obliged to ensure that the Cost Savings Design is fit for the purpose for which it is intended.
  - (c) The Designer shall prepare all calculations and drawings relating to the Cost Savings Design which shall be subject to a Check Certificate.
  - (d) If at any time the Engineer/Architect/Maintenance Surveyor\* has substantial cause for dissatisfaction with the conduct or performance of the Independent Checking Engineer, he shall notify the Employer accordingly. The Contractor shall, upon receiving written notice from the Employer, cease to employ such person, firm or company and shall immediately replace him by another whose qualifications, skill and experience are satisfactory to the Employer.
- (3) Within a reasonable period prior to the commencement of that part of the Works to be constructed in accordance with the Cost Savings Design, and from time to time as required by the Engineer/Architect/Maintenance Surveyor\*, the Contractor shall submit to the Engineer/Architect/Maintenance Surveyor\*:
- (a) two certified copies of the Cost Savings Design,
  - (b) Check Certificates,
  - (c) Certified Working Drawings, and
  - (d) satisfactory evidence of professional indemnity insurance as referred to in Special Condition of Contract Clause SCC[D](4)<sup>#</sup>.

- (4) The Engineer/Architect/Maintenance Surveyor\* shall, within a reasonable period, notify the Contractor in writing whether or not the documents submitted meet the requirements of the Contract. The Contractor shall not commence the construction of such works until receipt of the confirmative notification in writing from the Engineer/Architect/Maintenance Surveyor\*.
- (5) Notwithstanding General Conditions of Contract Clause 7, and prior to the commencement of the part of the Works of the Cost Savings Design, the Contractor shall supply to the Engineer/Architect/Maintenance Surveyor\* \_\_\_ copies of the Certified Working Drawings together with one reproducible print of each drawing and, where specified in the Contract, the soft copy of the drawings prepared in accordance with the CAD standard so specified. All drawings shall be fully figured copies with black lines on a white background of a size specified in the Contract and shall be detailed in S.I. units.
- (6) If at any time it becomes apparent to the Engineer/Architect/Maintenance Surveyor\* that any drawing and/or document submitted by the Contractor does not comply with the Contract in any respect whatsoever, then all amendments deemed necessary by the Engineer/Architect/Maintenance Surveyor\* shall be made therein by the Contractor, and such amended drawing and/or document shall be reviewed by the Designer and shall be subject to a further Check Certificate. The Contractor shall bear the full cost of complying with this sub-clause, and shall reimburse the Employer the cost of any work or design done by the Employer which has been rendered abortive by any such amendments.
- (7) If at any time it becomes apparent to the Contractor that an amendment to the Cost Savings Design is required for the proper completion of that part of the Works involved in such design, then he shall :
- (a) immediately advise the Engineer/Architect/Maintenance Surveyor\* of the proposed amendment,
  - (b) resubmit documents to the Engineer/Architect/Maintenance Surveyor\* in accordance with sub-clause (3) of this Clause, provided that:
    - (i) the finished appearance of the Works shall remain substantially unaltered,
    - (ii) there shall be no additional payment made nor any extension of time granted to the Contractor, and



- (iii) the Contractor shall bear the full cost of complying with this sub-clause, and shall reimburse the Employer the cost of any work or design done by the Employer which has been rendered abortive by any such amendments.
  
- (8) On completion of the work constructed in accordance with the Cost Savings Design, the Contractor shall prepare and submit to the Engineer/Architect/Maintenance Surveyor\* the 'as constructed' drawings of such work and shall supply to the Engineer/Architect/Maintenance Surveyor\* two copies and one reproducible print of each of such drawings and, where specified in the Contract, the soft copy of the drawings prepared in accordance with the CAD standard so specified.
  
- (9) Notwithstanding General Conditions of Contract Clause 59/61\*, the work to be constructed in accordance with the Cost Savings Design shall be a lump sum item accompanied by a fully priced and detailed Schedule of Rates. The lump sum item shall include :
  - (a) the cost of producing the Cost Savings Design,
  - (b) the cost and fees for obtaining the Check Certificates,
  - (c) the cost of providing the Engineer/Architect/Maintenance Surveyor\* with all calculations, documents (including maintenance manuals), and drawings in connection with the Cost Savings Design,
  - (d) the full value of the work (including without limitation, spare parts) constructed in accordance with the Cost Savings Design and all the associated risks, liabilities and obligations of the Contractor under the Contract, and
  - (e) the cost of all samples and testing thereof and testing of the work constructed in accordance with the Cost Savings Design.
  
- (10) For the avoidance of doubt, any change in the quantities in the Bills of Quantities resulting from the acceptance by the Employer of the Cost Savings Design shall not entitle the Contractor to any adjustment of the rates in the said Bills of Quantities notwithstanding any other provisions in the Contract.
  
- (11) Variations to the works for the Cost Savings Design ordered by the Engineer/Architect/Maintenance Surveyor\* shall be measured and valued at the rates ascertained in accordance with the principles of General Conditions of Contract Clause 61/63/64\*, at or based on the rates in the Schedule of Rates submitted with

the Contractor's Cost Savings Design proposal. For the avoidance of doubt, amendments under sub-clause (6) of this Clause shall not be considered as variations within the meaning of this sub-clause.

- (12) (a) Except in respect of those intellectual property rights referred to in sub-clause (12)(c) of this Clause, the Contractor hereby undertakes and warrants to the Employer that the Contractor is the sole legal and beneficial owner of all intellectual property rights subsisting in the Cost Savings Design.
- (b) Upon the issue of the certificate of completion of the Works or after termination, abandonment or breach of Contract, the Contractor shall be deemed to have granted to the Employer and the subsequent owners or occupiers of the Works free of all fee a transferable, non-exclusive and irrevocable licence (carrying the right to grant sub-licences) to utilize the Cost Savings Design in connection with the execution of the Works and/or the subsequent alteration, extension and maintenance thereof and for no other purpose whatsoever without the prior written agreement of the Contractor. In the event of different certificates of completion having been issued for different Sections or parts of the Works pursuant to General Conditions of Contract Clause 53/55/56\*, the expression "certificate of completion" shall, for the purpose of this sub-clause, mean the last of such certificates.
- (c) To the extent that beneficial ownership of any intellectual property rights in the Cost Savings Design is vested in anyone other than the Contractor, the Contractor shall procure that the relevant beneficial owner shall grant a licence together with an indemnity to the Employer and the subsequent owners or occupiers of the Works upon the same terms mutatis mutandis as those set out in sub-clauses (12)(b) and (12)(f) of this Clause respectively.
- (d) For the avoidance of doubt, any licence and indemnity granted pursuant to this Clause shall not be determined if the Contractor shall for any reason cease to be employed in connection with the Works.
- (e) The Contractor shall at the request of the Employer, do such acts and execute all such deeds and documents (or procure that the same be done or executed) as the Employer or the subsequent owners or occupiers of the Works may require for vesting in the Employer and the subsequent owners or occupiers of the Works all or any of the rights referred to in this Clause. The Contractor shall bear its own costs and expenses in relation thereto.

- (f) The Contractor hereby indemnifies the Employer against all claims, proceedings, actions, damages and losses incurred or sustained by the Employer in respect of infringement of intellectual property rights arising from the use of the Cost Savings Design (irrespective of whether the intellectual property rights therein are owned by the Contractor or other parties) by the Employer for purposes referred to in sub-clause (12)(b) of this Clause. For avoidance of doubt, the indemnity herein applies where the proceedings concerned are subsequently withdrawn or settled or in the event that the allegations of infringement are subsequently found to be unsubstantiated. The Contractor shall at its own cost grant a like indemnity to the subsequent owners or occupiers of the Works upon request of the Employer.

**SCC (C)** The following amendments to the General Conditions of Contract shall be made:-

- (a) Clause 49(1) [For Capital works contracts]/Clause 51(1) [For E&M term contracts]\*  
Add “or such revised time for completion agreed under Special Conditions of Contract Clause SCC (B)<sup>#</sup>.” to the end of the sub-clause.

Clause 51(1) [for Civil term contracts]\*

Delete the “full stop” at the end of Sub-clause (a) and replace with “, or” and add sub-clause (d) “Such revised time for completion agreed under Special Conditions of Contract Clause SCC (B)<sup>#</sup>.”

Clause 51(1) [for Building term contracts]\*

Delete the “full stop” at the end of Sub-clause (b) and replace with “, or” and add sub-clause (c) “Such revised time for completion agreed under Special Conditions of Contract Clause SCC (B)<sup>#</sup>.”

- (b) Clause 51(1)/53(1)/54(1)\*  
Replace “too slow to ensure completion by the [prescribed]\* time or extended time for completion,” by “too slow to ensure completion by the time for completion prescribed by Clause 49/51\* or extended or revised time for completion prescribed by Clause 50/52/53\* and Special Conditions of Contract Clause SCC(B)<sup>#</sup> as the case may be,”.
- (c) Clause 52(1)/54(1)/55(1)\*  
Add “or such revised time as may be agreed in accordance with Special Conditions of Contract Clause SCC (B)<sup>#</sup>” immediately after “Clause 50/52/53\*” at the second line/third line\* of this sub-clause.

- (d) Clause 89 [For civil and building capital works only]\*  
Replace “(or extended date)” in sub-clause (3)(c)(i) by “(or, as the case may be, extended or revised date)” and to replace “(or extended date)” where it twice appears in the last paragraph of sub-clause (3) of this clause by “(or, as the case may be, extended or revised date)”.

**SCC (D)**

- (1) Without limiting its obligations under the Contract, the Contractor shall maintain, with well established underwriters of repute, professional indemnity insurance in an amount not less than that as notified by the Employer to the Contractor in respect of the Cost Savings Design to be carried out by or on behalf of the Contractor, for any one occurrence or series of occurrences arising out of any one event from the date as notified by the Employer to the Contractor until [ ] years after the date of the certificate of completion of the Works or, where more than one such certificate has been or is to be issued, the date of the last such certificate of completion issued pursuant to General Conditions of Contract Clause 53/55/56\* provided always that such insurance is available at reasonable commercial rates. The professional indemnity insurance shall be effected with an insurer or insurers and in terms approved in writing by the Employer, such approval not to be unreasonably withheld. The Contractor shall immediately inform the Employer if such insurance ceases to be available at reasonable commercial rates or otherwise is not maintained in accordance with this Special Condition of Contract SCC [D]<sup>#</sup> or for any reason becomes void or unenforceable.
- (2) The Contractor shall procure that its Designer and Independent Checking Engineer appointed or engaged by the Contractor in connection with the design or checking of the Cost Savings Design, effect and maintain professional indemnity insurance in respect of any breach of their respective obligations in relation thereto in an amount not less than that as notified by the Employer to the Contractor for a period from the respective date of commencement of appointment or engagement of the Designer and Independent Checking Engineer until [ ] years after the date of the certificate of completion of the Works or, where more than one such certificate has been or is to be issued, the date of the last such certificate of completion issued pursuant to General Conditions of Contract Clause 53/55/56\*. The professional indemnity insurance shall be effected with a reputable insurer. The Contractor shall immediately inform the Employer if such insurance ceases to be available or otherwise is not maintained in accordance with this Special Condition of Contract SCC [D]<sup>#</sup> or for any reason becomes void or unenforceable.

- (3) In the event that the insurance cover required by Special Condition of Contract SCC[D]<sup>#</sup>(1) and/or (2) ceases to be available at reasonable commercial rates, the Contractor shall effect and maintain and, as the case may be, procure the Designer and Independent Checking Engineer to effect and maintain, professional indemnity insurance at the maximum level of cover which is available at reasonable commercial rates, provided that the Contractor has obtained the prior agreement in writing of the Employer to such reduced level of insurance cover.
- (4) If the Contractor shall fail upon request to produce to the Employer satisfactory evidence that there is in force professional indemnity insurance required by Special Condition of Contract SCC[D]<sup>#</sup>(1) and/or (2) or as may have been agreed in accordance with Special Condition of Contract SCC[D]<sup>#</sup>(3), the Employer may effect and keep in force any such insurance and pay such premium(s) as may be necessary for that purpose. The Employer shall be entitled to deduct such premium, together with expenses incurred, from any sums due to the Contractor under the Contract and/or to recover such amount as a debt from the Contractor.
- (5) The provisions of this Special Conditions of Contract SCC[A] shall be further to the provisions of Special Conditions of Contract SCC[]<sup>#</sup>. *(i.e. the standard SCC(A) in TCW 6/2003 App B) [This sub-clause (5) of SCC[D]<sup>#</sup> is to be used only if standard SCC[A] in TCW 6/2003 App B is also used for example, PII required for Contractor's temporary works design. Otherwise sub-clause (5) will not be necessary.]*

# Amend to the appropriate SCC reference.

\* Insert the Appendix reference as appropriate.

\* Delete as appropriate depending on the particular type of GCC to be used.