



# **Construction Innovation and Technology Fund**

## **Terms and Conditions**

**December 2021 Issue**

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# Construction Innovation and Technology Fund Terms and Conditions

## Chapter I DEFINED TERMS AND INTERPRETATION

### 1.1. Defined Terms

**Agreement** means the agreement between the CIC and the Successful Applicant comprising the Application Framework, the Application Form (together with the Declaration) submitted by the Applicant, the Notification of Approval and these Terms and Conditions (as may from time to time be amended or supplemented).

**Applicant** means a company or an organization that has submitted an Application Form to apply for the Funding.

**Application Form** means the application form available on the CITF Website for Applicants to apply for the Funding.

**Application Framework** means the framework document setting out the particulars of the Funding (including the funding mode and ceilings) that can be accessed on the CITF Website.

**Approved Project** means a Project for which Funding is approved by the CIC.

**CIC** means the Construction Industry Council.

**CIC Website** means <http://www.cic.hk>.

**CITF** means the Construction Innovation and Technology Fund.

**CITF Website** means <https://www.citf.cic.hk>.

**Declaration** means the declaration provided by the Applicant.

**Funding** means the CITF funds contribution provided by the CIC to the Successful Applicant to wholly or partially reimburse its expenditure in executing the Approved Project.

**Government** means the Government of Hong Kong.

**Hong Kong** means the Hong Kong Special Administrative Region of the People's Republic of China.

**Intellectual Property Rights** means patents, trademarks, service marks, trade names, design rights, copyrights, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights of whatever nature and wheresoever arising, whether now known or hereafter created, and in each case whether registered or unregistered and including applications for the grant of any such rights.

**Notification of Approval** means a written communication issued by the CIC to the Successful Applicant notifying its CITF application has been approved.

**Participants** mean persons enrolled in an Approved Project under applications on Manpower Development.

**Project** means a project, event, campaign, conference, training, visit or any other activity carried out by the Applicant, solely or in conjunction with a third party or third parties, in furtherance of its objectives.

**Successful Applicant** means the Applicant whose CITF application has been approved by the CIC.

**Terms and Conditions** means these terms and conditions constituting part of the Agreement.

**Warranties** means the warranties contained in clause 12.2.1

below.

## 1.2. Interpretation

1.2.1. In these Terms and Conditions, except where the context otherwise requires:

- (a) words importing the plural shall include the singular and vice versa;
- (b) words importing any gender shall include the other genders; and
- (c) headings are for ease of reference only and do not affect interpretation.

1.2.2. No principles of construction shall apply to the disadvantage of a party because that party was responsible for the preparation of these Terms and Conditions or any part of it.

## Chapter II INTRODUCTION

- 2.1. The construction sector in Hong Kong plays a pivotal role in supporting our community and economic development. To address multi-challenges including an ageing workforce, skilled workers shortage, rising construction costs as well as safety and environmental concerns, there is a need to incentivise the transformation of the construction industry through innovation and technology.
- 2.2. In 2018, the Development Bureau of the Government ("**DEVB**") set up the HK\$1 billion CITF, which aims to encourage wider adoption of innovative construction methods and technology in the construction industry ("**Technology Adoption**"), and to build up the capacity of industry practitioners (ranging from skilled workers to professionals) and tertiary students in construction-related disciplines through developing an innovative culture and cultivating an innovative mindset to embrace new technology for the continuous improvement of the construction industry ("**Manpower Development**").
- 2.3. Leveraging on its platform as an effective tool in promoting the latest construction technologies, the DEVB has commissioned the CIC as the implementation partner for the implementation of the CITF. To discharge its duties, CIC has established the CITF Secretariat which is dedicated to provide support to the daily operations of the CITF.
- 2.4. All applications will be processed by the CITF Secretariat, and will be reviewed and approved by the vetting sub-committee on the CITF ("**Vetting Sub-Committee**"). The vetting process will be overseen by the management committee on the CITF ("**Management Committee**") and the steering committee led by the Permanent Secretary for Development (Works) ("**Steering Committee**"). Decisions by the CIC on the applications are final and not subject to appeal.

- 2.5. Applicants must note that applications may not be approved, or if approved, the Funding amount granted may be different from the proposed funding amount in the applications. Applicants must also note that completion reports may not be accepted, or if accepted, the Funding amount may not be disbursed in full.
- 2.6. After submission of an Application, the Applicant may wait for the Notification of Approval before incurring or committing any expenditure for the Project under application. However, should an Applicant choose to incur or commit any expenditure before the Notification of Approval is given (if given at all), it will do so on condition that approval should not be presumed and the applicant agrees to bear all the risks and consequents that the application may be rejected in whole or in part. Should the application be approved (either wholly or partly), Funding will only be disbursed according to the Application Framework for the approved items of the Project after the date of application.

## **Chapter III      OBJECTIVES**

- 3.1      The CITF provides support to projects and activities in the construction industry which have not benefited under any other Government funding schemes already available.
  
- 3.2      The CITF will fund projects and activities which are in line with the following strategic directions in driving the development of the construction industry, namely—
  - 3.2.1.      encouraging the adoption of innovative construction methods and technology in the construction industry to promote productivity, uplift built quality, improve site safety and enhance environmental performance; and
  
  - 3.2.2.      enhancing the capacity of practitioners to harness technology for continuous improvement in the construction industry.

## Chapter IV      **MODE OF FUNDING**

### 4.1      Mode of Funding

- 4.1.1      Depending on the type of the relevant Approved Project, Successful Applicants will be reimbursed by the CITF either on a co-funding basis (i.e. the CITF will bear a maximum of 70% of the total costs of the Approved Project or the applicable funding cap, whichever is lower) or by way of cash rebate.
- 4.1.2      In relation to applications on Manpower Development, subject to clause 5.5 below, Successful Applicants will only be reimbursed by the CITF of the net approved project cost after deducting the actual income during the project period and the amount of sponsorship and/or funding from other sources for the Approved Project (if any).
- 4.1.3      To encourage the use of local technological innovations and products, the CITF will bear a higher maximum ratio of 80% (as opposed to the ratio of 70% in general cases) of the total costs of the Approved Project which involves the adoption of locally developed innovations or products. For the purpose of the CITF, local research and development projects which have been approved and completed under relevant funding schemes of the Innovation and Technology Fund ("**ITF**") administered by the Innovation and Technology Commission of the Government will be deemed to be locally developed innovations or products. For other locally developed innovations or products which are not supported by the ITF, Applicants will be required to provide information to substantiate that such innovations or products are developed in

Hong Kong or by local talents or by local universities or tertiary institutions. The Vetting Sub-Committee will assess whether such innovation or product can qualify for the higher maximum matching ratio of 80% on a case-by-case basis.

- 4.2 Funding for an Approved Project will be disbursed according to the Application Framework.
- 4.3 For details, please refer to Chapter VIII and the Application Framework.

## **Chapter V ELIGIBILITY**

5.1 Unless the CITF Secretariat recommends to the Steering Committee that an exception be granted under clause 7.1.3 below, an application must satisfy all requirements set out in clauses 5.2 or 5.3 (as may be applicable) and clauses 5.4 to 5.5 below.

### **5.2 Applications on Technology Adoption**

5.2.1 Applicants for applications on Technology Adoption must be:

- (a) levy-paying contractors which have paid levy for construction works under the Construction Industry Council Ordinance (Cap. 587) to the CIC in the 24 months preceding the time of application;
- (b) specialist trade contractors and subcontractors which are registered with the CIC and hold a valid registration at the time of application;
- (c) consultants on the lists maintained by Government and professional bodies, including
  - (i) the Engineering and Associated Consultants Selection Board;
  - (ii) the Architectural and Associated Consultants Selection Board;
  - (iii) the Band 3 Architectural Consultants and the list of Registered Practices maintained by the Hong Kong Institute of Architects;
  - (iv) the Band 3 Architectural Consultants maintained by the Association of Architectural Practices Ltd;
  - (v) member companies of the Association of Consultant Quantity Surveyors;
  - (vi) member companies of the Hong Kong Institute of Surveyors;
  - (vii) member companies of the Association of Consulting Engineers of Hong

Kong; or (viii) member companies of the Association of Registered Engineering Consultants; or

- (d) other players, including material suppliers<sup>1</sup>, in the construction process may be considered on a case-by-case basis.

5.2.2 Applicants for applications on Technology Adoption are required to have one or more awarded or on-going construction contract(s) to implement the adoption of the technology except for applications in relation to experiential use of Building Information Modelling (BIM) technology.

### 5.3 Applications on Manpower Development

5.3.1 Applicants for applications on Manpower Development must be:

- (a) local Hong Kong higher education institutions;
- (b) professional institutions (such as the Hong Kong Institute of Architects, the Hong Kong Institution of Engineers and the Hong Kong Institute of Surveyors);
- (c) trade associations;
- (d) unions; or
- (e) quasi-governmental or statutory organisations (for organizing local collaborative courses

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<sup>1</sup> Eligibility of material suppliers: a) the production process and processing facilities of the material supplier should be wholly or substantially locally-based; and b) the innovative or new technology adopted by the material supplier should be able to add value to the construction process conducive to improve productivity, build quality, safety and environmental performance for local construction projects through automation, industrialisation or digitisation technologies.

only).

5.3.2 Applications on Manpower Development must be targeted at one or more of the following groups of beneficiaries:

- (a) full-time undergraduates, post-graduates and academic staff in construction-related disciplines of local Hong Kong higher education institutions;
- (b) construction professionals holding membership of professional class or above of construction-related professional bodies<sup>2</sup>;
- (c) technicians and site supervisory personnel<sup>3</sup>; or
- (d) Registered Skilled Workers holding a valid construction workers registration card issued under the Construction Workers Registration Ordinance (Cap. 583).

5.3.3 Where the Project under an application on Manpower Development is to be held outside Hong Kong, the participants must be Hong Kong permanent residents. This requirement is not applicable to the Project to be held in Hong Kong and therefore expatriates may join.

5.4 Each application shall have only ONE Applicant. The Applicant is required to list out in its application all other parties (if any) that it will collaborate with in carrying out the Project and each party's respective role and contribution.

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<sup>2</sup> Including The Hong Kong Institution of Engineers, The Hong Kong Institute of Architects, The Hong Kong Institute of Surveyors, and The Hong Kong Institute of Construction Managers, or an overseas professional body having reciprocal recognition agreement with an above-mentioned local professional body.

<sup>3</sup> Practitioners below professional class of the construction-related professional bodies but above workers level in general will fall within the definition of technicians and site supervisory personnel.

## 5.5 Double Subsidy

- 5.5.1 To avoid double funding/subsidy, a Project or any part thereof which will receive or has received public money from any other Government funding schemes will not be eligible to apply for the CITF.
  
- 5.5.2 The Applicant will only be eligible to CITF funding for costs net of other non-Government financial support (whether in the form of equity or loan financing, grant or sponsorship or any other form) which has been granted for the same Project or any part thereof.

## **Chapter VI            APPLICATION**

### **6.1            Application**

6.1.1            The Applicant must submit all information and documents that are required to be provided by the Application Form and these Terms and Conditions.

#### **6.1.2            Liaison Officer**

(a)            In submitting its application, the Applicant must nominate a liaison officer for each Project.

(b)            If the application is approved, the liaison officer will be responsible for:

(i)            overseeing the Approved Project generally;

(ii)            monitoring the Applicant's expenditure and ensuring that the Funding is properly used to reimburse the expenditure for the Approved Project in accordance with the approved budget (if any), these Terms and Conditions and any terms and conditions which may be imposed by the Vetting Sub-Committee;

(iii)            answering enquiries from the CITF Secretariat; and

(iv)            attending progress meetings for the Approved Project, if required by the CIC.

#### **6.1.3            Budget**

(a)            Where applicable, the Applicant is required to submit a proposed budget for each Project

showing all estimated expenditure and income, with appropriate justifications for such expenditure and income.

- (b) All monetary figures must be in Hong Kong dollars.
- (c) When preparing the budget, all expenditure items are to be grouped under the required categories as set out in the Application Framework. Only specified reimbursable cost items will be covered by CITF funds.

6.1.4 The Applicant is required to declare in its application whether it has received or is receiving public money from government funding schemes, for the Project which is the subject of its application or any part thereof.

## 6.2 Timing for Application

6.2.1 The CITF, established in October 2018, is intended to be open for applications for five years.

## 6.3 Application Procedures

6.3.1 Applications are to be submitted through the CITF Portal via the CITF Website.

6.3.2 The Application Form is available in English and Chinese. The Applicant may choose to complete the Application Form in either language.

6.3.3 No application fee will be charged.

6.3.4 The Applicant will be requested by the CITF Secretariat to provide supplementary information (including documents) from time to time to facilitate the application

vetting process. Where the Applicant fails to provide any such information within reasonable time, its application will be declined without notice.

- 6.3.5 The Application Form and all documents submitted by Applicants will be retained by the CITF Secretariat for record and audit purposes and will not be returned to the applicant. Applicants should make copies of these documents for their own record.

#### 6.4 Re-submission

- 6.4.1 A declined application may be resubmitted only if the content of the application has been revised substantially or if the Applicant is able to provide additional information in response to the comments or enquiries made by the Vetting Sub-Committee and/or the Management Committee in their previous assessments. In its resubmitted application, the Applicant must set out clearly the differences between the resubmitted application and the previously declined application.
- 6.4.2 A resubmitted application will be considered afresh as a new application.

## Chapter VII VETTING AND ASSESSMENT PROCEDURES

### 7.1 Vetting Procedures

- 7.1.1 Upon receipt of an application, the CITF Secretariat will conduct a preliminary assessment and may seek clarification or supplementary information (including documents) from the Applicant. Where an Applicant fails to provide any such information within reasonable time, its application will be declined without notice.
- 7.1.2 Unless an exception is granted pursuant to clause 7.1.3, an application must satisfy all eligibility requirements set out in Chapter V ("**Eligibility Requirements**") in order to be eligible to be considered by the Vetting Sub-Committee.
- 7.1.3 If an application does not meet all the Eligibility Requirements, the CITF Secretariat shall refer the application to the Vetting Sub-Committee which may, in its absolute discretion, recommend to the Management Committee that an exception to the Eligibility Requirements (whether in whole or in part and whether subject to conditions or otherwise) be granted for that application. The Management Committee may then, in its absolute discretion, make a further recommendation to the Steering Committee. An exception will be granted if, the Steering Committee, having considered the recommendations of the Management Committee and in its absolute discretion, considers that an exception will achieve the objectives of the CITF.
- 7.1.4 If the CITF Secretariat is satisfied that an application meets all the Eligibility Requirements or if the Steering Committee has granted an exception for that application, the CITF Secretariat will

submit the application together with its comments to the Vetting Sub-Committee and Management Committee for their consideration.

- 7.1.5 The Vetting Sub-Committee comprises professionals, representatives from the private and public sectors, academics, and other persons of relevant expertise in the construction industry. It assesses and approves or rejects applications, and may seek advice from the Management Committee where appropriate.
- 7.1.6 The Applicant may be required to attend assessment panel meetings to present its application and answer questions from the Vetting Sub-Committee.
- 7.1.7 The Vetting Sub-Committee and the Management Committee only have the authority to approve application(s) submitted during the funding period as set out in clause 6.2.1 above.
- 7.1.8 The CIC has the sole discretion to approve or reject an application for any Project or any part thereof, and where a Project is approved whether wholly or in part, the CIC shall in its absolute discretion determine the amount of Funding to be granted.

## 7.2 Assessment Criteria

- 7.2.1 Applications will be approved depending on their individual merits.
- 7.2.2 The CIC reserves the right to reject an application on grounds including but not limited to:
  - (a) the application is incomplete or contains incorrect information or fails to comply with the requirements set out in the Agreement;

- (b) a petition is presented or a proceeding is commenced or an order is made against or a resolution is passed for the winding up or bankruptcy of the Applicant;
- (c) a false, inaccurate or incomplete statement or representation is contained in the application or a promise or proposal is made recklessly or knowing that the Applicant will not be able to fulfill or deliver such promise or proposal;
- (d) the Applicant has the intention of artificially splitting an application for the same Project into two or more applications to circumvent the funding ceiling.

7.2.3 If an application has breached or is alleged to have breached any third party's Intellectual Property Rights, the application will not be processed further and may be rejected unless such breach or allegation is resolved to the satisfaction of the CITF Secretariat.

7.2.4 In considering an application, due consideration will be given to the following factors, wherever applicable:

- (a) in relation to an application on Technology Adoption:
  - (i) the potential of the Project in promoting productivity, uplifting built quality, improving site safety and enhancing environmental performance;
  - (ii) whether the potential benefits to be

accrued from the Project can serve the interests of the construction industry as a whole, in addition to the commercial interests of the Applicant; and

- (iii) whether the Project is cost-effective;
- (b) in relation to an application on Manpower Development:
  - (i) whether the Project is non-profit making; and
  - (ii) whether the budget is reasonable and realistic with itemised cost breakdown and detailed justifications for costs;
- (c) whether the objectives of the Project are in line with the strategic directions in driving the development of the construction industry as set out in clause 3.2 above;
- (d) whether value can be added to the Project with the CITF funding support;
- (e) whether the Project which is the subject of the application or any part thereof has been funded or will be funded by other sources; and
- (f) any other factors which are relevant and contribute towards the objectives of the CITF.

### 7.3 Avoidance of Conflict of Interest

- 7.3.1 To avoid any conflict of interest, members of the Steering Committee, the Management Committee and the Vetting Sub-Committee will be required to

declare whether they are directly or indirectly related to an Applicant and if so, such member may be required to refrain from participating in the discussion and decision-making of any application submitted by such Applicant.

#### 7.4 Notification of Results

7.4.1 The Applicant will be informed of its application result normally within 60 calendar days after the receipt of the Application Form and all required information by the CITF Secretariat.

7.4.2 If an application is rejected, the Applicant will be notified in writing.

7.4.3 If an application is approved and recommended for funding support, the Applicant will receive the Notification of Approval together with any terms and conditions that may be imposed by the Vetting Sub-Committee.

#### 7.5 Withdrawal of Application

7.5.1 The Applicant may withdraw its application by notifying the CITF Secretariat in writing. All Funding already disbursed to the Applicant must be returned to the CIC with interest accrued in accordance with clause 11.3.2 within 30 calendar days from the date of such written notice.

## **Chapter VIII      AGREEMENT AND DISBURSEMENT OF FUNDING**

### **8.1      Agreement**

- 8.1.1      The Applicant agrees to be bound by all the provisions of the Application Framework, the Application Form (together with the Declaration), the Notification of Approval and these Terms and Conditions once it has submitted its application.
- 8.1.2      Upon receipt of the Notification of Approval, the Agreement comprising the Application Framework, the Application Form (together with the Declaration), the Notification of Approval and these Terms and Conditions shall constitute a binding agreement between the Successful Applicant and the CIC. The Successful Applicant is bound by and shall comply with all the provisions of the Agreement
- 8.1.3      The CIC reserves the right to supplement, revise or amend any provisions of the Agreement from time to time without prior notice.
- 8.1.4      In the event of any inconsistency between the documents comprising the Agreement, the order of precedence shall be:
- (a) the Notification of Approval;
  - (b) the Guide to Application and Application Framework;
  - (c) the Terms and Conditions; and
  - (d) the Application Form.

8.1.5 In the event of any inconsistency between the English version and Chinese version of any provision of the Agreement, the English version shall take prevail.

## 8.2 Disbursement of Funding

8.2.1 The Successful Applicant must properly and timely record all expenditures in respect of the Approved Project and properly keep all required documents including receipts and other documents as may be necessary to substantiate the incurrence of expenditures.

8.2.2 Subject to clause 8.2.3 below, the Successful Applicant will receive the Funding by way of reimbursement after it has received the Notification of Approval and the Applicant has submitted all required documents to the CITF Secretariat.

8.2.3 Subject to clause 11.2 below, disbursement of the instalment(s) of the Funding (where applicable) will be made in accordance with the Application Framework.

8.2.4 The CITF Secretariat reserves the right to withhold any disbursement of Funding to the Successful Applicant if there is any delay in submission of the required documents (in general Successful Applicant should submit reimbursement request within three months to the date of the Notification of Approval) or if in the CITF Secretariat's opinion the required documents submitted does not comply with its requirements.

8.2.5 Only specified costs are allowable under the CITF funding. Details are specified in the Application Framework.

## **Chapter IX            PUBLICITY AND ACKNOWLEDGEMENT**

- 9.1        Successful Applicants will be required to share its experience in implementing the Approved Project and to provide the CITF Secretariat with information about the Approved Project. The CITF Secretariat may publicise such information including on the CITF Website for public information.
- 9.2        The Successful Applicant shall acknowledge the funding support from the CITF in all of its applicable marketing and publicity activities as well as publications (including but not limited to press releases, promotional materials, websites, etc.) in accordance with the acknowledgement format required by the CITF Secretariat. The Successful Applicant must mention the name of the CITF in all of its publications and is required to inform and send a prototype to the CITF Secretariat for its approval in writing prior to the production of the publication(s). Prior written consent shall be obtained from the CIC if any references are made in relation to the Government or the CIC.
- 9.3        The Successful Applicant shall provide the CITF Secretariat with details of the achievements of the Approved Project, if any, including but not limited to promoting productivity, uplifting built quality, improving site safety, enhancing environmental performance and enhancing capacity of existing and prospective practitioners, etc. The CITF Secretariat may from time to time disclose to the public details of such achievements including through the CITF Website or by publications or by showcases at exhibitions for publicity and reference purposes. The CITF Secretariat may also publicise the details of the Approved Project and contact information of the Successful Applicant including on the CITF Website for public information.

## **Chapter X            OBLIGATIONS**

### **10.1        Project Implementation**

10.1.1        The Successful Applicant shall perform, conduct or otherwise carry out the Approved Project in accordance with the Agreement. Should there be any circumstances that hinder the Successful Applicant from doing so, it shall immediately notify the CITF Secretariat in writing.

### **10.2        Reporting Requirements**

10.2.1        The Successful Applicant will be required to submit progress reports (if applicable) and completion reports. For Successful Applicant receiving Funding of more than HK\$500,000 in a single application on Technology Adoption (except cash rebates for Prefabricated Steel Rebar, financial subsidy for entry of MiC systems to the Building Department (BD)'s Lists of Pre-accepted MiC Systems and financial subsidy for costs involved by consultants in implementing MiC projects) and Successful Applicant receiving Funding of any amount in an application on Manpower Development, an audited financial report duly certified by auditors has to be submitted together with the completion report.

10.2.2        The progress report (if required) and completion report must be prepared in a standard format provided and stipulated by the CITF Secretariat.

10.2.3        The progress report (if required) must include details on the progress of the Approved Project and a financial statement prepared on cash basis on the latest financial position of the Approved Project.

- 10.2.4 The completion report and the final audited financial report duly certified by auditors (if required) must be submitted within 9 months upon the completion of the Approved Project for Manpower Development and 12 months from the date of first disbursement request for Technology Adoption. The Successful Applicant will be informed of the evaluation of its final reimbursement application within 30 calendar days after the receipt of the completion report and all necessary information required by the CITF Secretariat.
- 10.2.5 The completion report must include details of the results, performance, achievements and/or evaluation of the Approved Project. The audited financial report (if required) must certify that the Funding has been fully and properly applied to the Approved Project in accordance with the Agreement. The audited financial report (if required) shall be prepared in accordance with the standards published by the Hong Kong Institute of Certified Public Accountants. Such financial report shall contain an audited statement of the total expenditure and income (if any) of the Approved Project.
- 10.2.6 Successful Applicants may be required to give a presentation(s) of the outcome of their Approved Project to the CIC upon request.
- 10.2.7 The expenditure expected to be or actually incurred for external audit relating to the Approved Project and arising from compliance with the provisions of the Agreement could be included in the budget (if any) and may be reimbursed accordingly, subject to the following requirements:
- (a) for Funding of less than HK\$1 million, a

maximum of HK\$5,000 to be included in the budget (if any) and be reimbursed;

- (b) for Funding between HK\$1 million and HK\$5 million, a maximum of HK\$10,000 to be included in the budget (if any) and be reimbursed; and
- (c) for Funding of more than HK\$5 million, a maximum of HK\$20,000 to be included in the budget (if any) and be reimbursed.

10.2.8 The Successful Applicant must keep all financial statements, books and records of the Approved Project for at least seven years after either the completion date of the Approved Project or the termination date of the Agreement, whichever is later, or as otherwise specified by the CITF Secretariat within that seven-year period, and allow for inspection at any time.

10.2.9 The Successful Applicant shall allow the CIC and its authorized representatives access to all or any of the books of accounts, payment records, personnel records and any other relevant documents in connection with or arising from the Approved Project.

10.2.10 The Director of Audit of the Audit Commission of Hong Kong may conduct an examination on the economy, efficiency and effectiveness with which the applicant has used the Funding. The Director of Audit shall have a right of access at all reasonable times to all such information (including documents) in the custody or control of the Applicant as he may reasonably require for conducting an examination and shall be entitled to require, from any person holding or being accountable for any such

information, such information or explanation as he considers reasonably necessary for that purpose. The Director of Audit may report to the Permanent Secretary of Works of the DEVB and the President of the Legislative Council the results of any examinations conducted by him.

- 10.2.11 Successful Applicants may be required to complete and return a post-project evaluation questionnaire for its Approved Project to report on the comments of the Approved Project by the beneficiaries, and to provide quantitative measurement on the benefits to the construction industry as a whole.

### 10.3 Procurement Procedures

- 10.3.1 Where applicable, the Applicant must ensure that all procurements for goods are carried out in an unbiased and fair manner and must comply with the following procedures unless the CITF Secretariat agrees otherwise:

- (a) for every procurement the aggregate value of which does not exceed HK\$50,000, quotation in written form from at least one supplier or service providers must be obtained;
- (b) for every procurement the aggregate value of which is over HK\$50,000 but not exceeding HK\$200,000, quotations in written form from at least two suppliers or service providers must be obtained; and
- (c) for every procurement the aggregate value of which is over HK\$200,000, quotations in written form from at least three suppliers or service providers must be obtained.

In all of the scenarios set out in sub-clauses (a) to (c) above, the supplier or service provider (as the case may be) that has submitted the lowest bid should be selected. Applicants shall provide full justifications if failing to submit the required quotations or accept the lowest conforming offer.

10.3.2 In case the Applicant intends to procure goods or services from a particular supplier or service provider, it must submit for the CITF Secretariat's consideration details, including but not limited to its relationship with the supplier or service provider concerned and justifications for not complying with the open procurement process set out in clause 10.3.1 above.

10.3.3 All quotations obtained in relation to the Approved Project must be kept for a period of at least seven years from the completion of the Approved Project or the date of termination of the Agreement, whichever is later, and shall be made available without delay for the CITF Secretariat's inspection upon request.

#### 10.4 Title to Equipment

10.4.1 All title to and ownership of the equipment procured under the Approved Project shall vest with the Successful Applicant. Nevertheless the CIC reserves the right not to release the Funding if the equipment procured is left idle or misused. In the event that the Successful Applicant becomes bankrupt or insolvent or is being wound up, the CIC shall be entitled to the sales proceeds obtained from the disposal of the equipment in proportion to the Funding already paid to the Successful Applicant.

10.4.2 The Successful Applicant is forbidden to transfer,

sell or lease, with a view to making profits, the equipment procured under the Approved Project within the first three years of its procurement.

## 10.5 Intellectual Property Rights

10.5.1 The Successful Applicant is required to inform the CITF Secretariat of any intellectual property rights that may arise under the performance of the Approved Project and how such intellectual property rights would be handled, including in terms of ownership, acquisition, use and access rights. The Vetting Sub-Committee may impose terms and conditions in the Agreement on this aspect. The results, deliverables and related information of the Approved Project may be made available to the public.

## 10.6 Insurance

10.6.1 The Successful Applicant shall ensure that it and its subcontractors, agents or other personnel involved in the Approved Project have adequate insurance coverage for its operational and business risks including contractors' all risk insurance, third party liability insurance, employees' compensation insurance, directors and officers liability insurance and any other insurance necessary or ordinarily taken for the execution of a project in the nature of the Approved Project. Such insurance shall cover all personnel whether they are employed by the Successful Applicant or its subcontractors.

## **Chapter XI      PROJECT VARIATION**

### **11.1      Modification and Amendment**

11.1.1      The Approved Project is required to be carried out strictly in accordance with the Agreement. Any modification to the Approved Project, including but not limited to changes of commencement or completion dates, key project staff, key equipment, scope, methodology, deliverables or budget, will require prior written approval of the CITF Secretariat.

11.1.2      For any modification to the Approved Project, the liaison officer on behalf of the Successful Applicant must update the details of the Approved Project on the CITF Portal within 14 calendar days upon the occurrence of such modification. The CIC reserves the right not to reimburse or make payment or otherwise compensate for the Approved Project where the Successful Applicant has failed to provide such update within the required timeframe.

11.1.3      The Funding will not be increased in the event that the actual expenditure exceeds the original estimate. If the actual expenditure is less than the original estimate, the CITF Secretariat has the sole discretion to reduce the final Funding amount.

11.1.4      The Successful Applicant's failure to comply with the application proposal or the Agreement will entitle the CIC to abstain from releasing the Funding to the Successful Applicant.

### **11.2      Suspension or Termination of Funding**

11.2.1      The CIC reserves the right to suspend the Funding or any part of it to the Successful Applicant if in the

sole opinion of the CIC:

- (a) the Successful Applicant has failed, or is, in the opinion of the CIC, likely to fail, to execute the Approved Project or any part thereof;
- (b) the documents submitted by the Successful Applicant in relation to its reimbursement application do not meet the standards or requirements specified in the Agreement or otherwise required by the CITF Secretariat; or
- (c) the Successful Applicant has failed to submit its reimbursement application within a reasonable time.

11.2.2 The CIC reserves the right to terminate the Funding to the Successful Applicant if an event of default (see clause 11.2.4 below) has occurred and the Successful Applicant has failed to remedy the event of default within a reasonable time, or in any event within 14 calendar days upon the occurrence of such event.

11.2.3 The CIC reserves the right to suspend or terminate the Funding to the Successful Applicant by serving one month's notice to this effect at any time and demand immediate return of all or part of the disbursed Funding with interest accrued in accordance with clause 11.3.2. The Successful Applicant will be liable for any loss and damage the CIC may suffer.

11.2.4 An event of default referred to in clause 11.2.2 above includes but is not limited to the following:

- (a) the Successful Applicant fails to comply with any of the terms and conditions in the Agreement;
- (b) the Successful Applicant is, in the opinion of the CIC, in breach of any of the Warranties;
- (c) the Successful Applicant fails to commence or proceed diligently with the Approved Project;
- (d) there is, in the opinion of the CIC, a slim chance of completion of the Approved Project in accordance with the approved application proposal or the Agreement;
- (e) the Successful Applicant has failed, or is, in the opinion of the CIC, likely to fail, to execute the Approved Projects or any part thereof;
- (f) the original objectives of the Approved Projects are no longer relevant to the needs of the construction industry as a result of material change in the circumstances;
- (g) the objectives and relevance of the Approved Projects have been compromised due to material changes in the circumstances;
- (h) the Successful Applicant becomes bankrupt or insolvent or is being wound up, or undergoes or will undergo liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction) or receivership, or if a petition for liquidation, winding-up, bankruptcy or receivership has been filed against the Successful Applicant;

- (i) there is, in the opinion of the CIC, a need to terminate the Funding as a matter of public interest; and
- (j) any other events that entitle the CIC to suspend or terminate the Funding to the Successful Applicant under these Terms and Conditions.

11.2.5 Upon suspension or termination of the Funding, the Agreement shall cease to have effect and no funds will be made available to the Successful Applicant, but without prejudice to:

- (a) any right, action, claim or remedy accrued to or shall accrue to the CIC prior to such suspension or termination or thereafter including those arising from any non-compliance by the Successful Applicant with the Agreement; and
- (b) any provisions of the Agreement which are required by the context or are otherwise expressed to continue in force and effect notwithstanding the completion of the Approved Project or the suspension or termination of the Funding.

### 11.3 Management of the Funding

11.3.1 The CIC reserves the right to require the Successful Applicant to return the Funding, in whole or in part, together with interest accrued in accordance with clause 11.3.2 below if any of the following events occurs:

- (a) the Successful Applicant's non-compliance

with all or any of the terms and conditions as set out in the Agreement;

- (b) the suspension or termination of the Funding by the CIC pursuant to clause 11.2 above;
- (c) without prejudice to the generality of the foregoing, any Funding disbursed which has not been disbursed in accordance with the Application Framework; or
- (d) any warranty or representation made by the Successful Applicant in its application or in the Agreement or in the completion report is incorrect, incomplete, misleading or false.

11.3.2 Interest shall accrue from the date of disbursement by the CIC of the Funding up to the date of actual refund in full by the Successful Applicant, at the best lending rate quoted by the Hong Kong and Shanghai Banking Corporation. Such interest shall accrue on a daily basis and in a year of 365 days.

11.3.3 The CITF Secretariat or other Government departments or bureaus will take into account any record of mishandling of public funds or lack of discipline in financial management or non-compliance with the terms and conditions of the Agreement or any other irregularities when considering future applications from the same Applicant.

## Chapter XII MISCELLANEOUS PROVISIONS

### 12.1 Prevention of Bribery and Anti-collusion

12.1.1 The Applicant shall observe the Prevention of Bribery Ordinance (Cap. 201) ("**PBO**") and shall prohibit its employee(s), sub-consultant(s), subcontractor(s), agent(s), supplier(s), service provider(s) and other personnel who are in any way involved in the Approved Project from offering to or soliciting or accepting from any person any money, gifts or advantage as defined in the PBO in the conduct of or in relation to the Approved Project. In the event of any breach or non-compliance of this sub-clause, the CIC may disapprove the Applicant's application or, if the application has been approved, withdraw the Notice of Approval or suspend or terminate the Funding. The Applicant shall be liable for any loss or damage suffered or incurred by the CIC arising out of any breach or non-compliance of this sub-clause by its employee(s) or agent(s) or sub-consultant(s) or subcontractor(s) or supplier(s) or service provider(s) or other personnel who are in any way involved in the Approved Project.

12.1.2 The offer of an advantage to the CIC with a view to influencing the approval of an application is an offence under the PBO. Any such offer by any of the Applicant(s) or their employee(s) or agent(s) or sub-consultant(s) or subcontractors(s) or supplier(s) or service provider(s) or other personnel who are in any way involved in the Approved Project will render the application null and void. The CIC may also withdraw the Notification of Approval and hold the Applicant concerned liable for any loss or damage which the CIC may suffer.

12.1.3 The Applicant shall not communicate to any person other than the sub-consultant or subcontractor or supplier or service provider which submitted the relevant quotation(s), the proposed amount of funding in its application or adjust such amount by arrangement with any other person, or make any arrangement with any other person about whether or not that other person should or should not submit a CITF application, or otherwise collude with any other person in any manner whatsoever in the application process. Any breach of or non-compliance with this sub-clause by the Applicant shall, without affecting the Applicant's liability for such breach or non-compliance, invalidate its application.

## 12.2 Representations and Warranties

12.2.1 The authorised signatory of the Successful Applicant represents and warrants that:

- (a) it does and shall conduct and complete the Approved Projects in an impartial, timely and diligent manner;
- (b) all statements and representations made by it or on its behalf in its application and all information (including documents) supplied by it or on its behalf in the course of application or conducting the Approved Project, or otherwise contained in the progress report(s), completion report or financial statements are true, accurate and complete;
- (c) it does and shall comply, and does and shall ensure every person employed or engaged by it for the purposes of the Approved Project

complies with all applicable laws and regulations in the conduct of the Approved Project; and

- (d) it does and shall duly comply with the Agreement and all terms and conditions therein do and shall constitute legally binding and valid obligations on its part.

12.2.2 Each of the Warranties:

- (a) remains in full force after the date of the Agreement; and
- (b) is and will not be affected by any investigation made or could have been made by or on behalf of the CIC or any information of which the CIC has knowledge, actual or constructive.

12.2.3 The Successful Applicant acknowledges that the CIC enters into the Agreement in reliance on the Warranties.

12.3 Indemnity

12.3.1 If the application is approved, the Successful Applicant shall indemnify and keep the CIC indemnified from and against:

- (a) all and any losses, claims, actions, investigations, demands, damages, costs, expenses, proceedings, threatened, brought or instituted against the CIC or suffered or incurred by the CIC arising out of or in connection with the breach of any of the provisions of the Agreement; and

- (b) all liabilities (including liability to pay compensation and damages), damages, losses, costs, charges and expenses which the CIC may suffer or incur (including all legal and other costs, charges, and expenses, on a full indemnity basis, which the CIC may pay or incur in relation to any claim, action or proceeding instituted by or against the CIC), which in any case arise directly or indirectly from, or as a result of, or in connection with, or which relate in any way to –
- (i) any accidental damage to property or personal injury or death suffered by any person in the connection with or in course of or as a result of any activity (indoor or outdoor) organised or carried out by the Successful Applicant in the performance or purported performance of the Approved Project;
  - (ii) the breach by the Successful Applicant of any provision in the Agreement;
  - (iii) the negligence, recklessness, or willful misconduct of the Successful Applicant or of any of its employees, agents, consultants or contractors in the conduct of the Approved Project; or
  - (iv) the Approved Project or the deliverables or materials developed or produced or created therein or any part thereof infringes or is alleged to infringe the Intellectual Property Rights of a third party.

## 12.4 Liability of CIC

12.4.1 The CIC shall not be held liable for any disputes (contractual or otherwise), settlement, arbitration, mediation or litigation for matters arising between the Applicant and any of the Applicant's directors, officers, employees, subcontractors, agents or other personnel.

12.4.2 No indemnity claims or claims of any other kind may be made against the CIC by the Applicant or any of the Applicant's directors, officers, employees, subcontractors, agents or other personnel.

## 12.5 Personal Data and Project Information

12.5.1 By submitting the Application Form, the Applicant shall be deemed to have consented to the disclosure of information in relation to the Project for law enforcement purpose, regardless of whether or not the application is successful.

12.5.2 By submitting the Application Form, the Applicant shall also be deemed to have consented to the publication of information of the Approved Project (including but not limited to name of the Successful Applicant, granted Funding amount, title of the Approved Project and type(s) of technology adopted) on the CITF Website for public information after the Notification of Approval is given.

12.5.3 The personal data provided as part of the application process will be used by the CIC to process the application, and to conduct research and surveys, and to enforce its rights and powers under the Agreement. The provision of personal data in the application is obligatory. If the Applicant does not provide sufficient information, the CIC may not

be able to process and/or consider its application.

12.5.4 The Applicant shall ensure the collection, handling and use of the personal data of its Participants or other personnel in relation to the execution of the Approved Project are in accordance with the provisions of the Personal Data (Privacy) Ordinance (Cap. 486) ("**PDPO**"). This includes the transfer of the personal data to the CIC and through the CIC to entities which are relevant to the application including the DEVB which is the bureau responsible for the CITF.

12.5.5 Applicants and Participants have the right of access and correction with respect to personal data as provided for in Sections 18 and 22 and Principle 6 of Schedule 1 of the PDPO. Their right of access includes the right to obtain a copy of the personal data provided in the application.

12.5.6 Written data access and correction requests should be addressed to Assistant Director – Industry Development at Construction Industry Council, 38/F, COS Centre, 56 Tsun Yip Street, Kwun Tong, Kowloon, Hong Kong.

## 12.6 Relationship of the Parties

12.6.1 If the application is successful, the Successful Applicant enters into the Agreement with the CIC as a grantee and shall not represent itself as an employee, servant, agent or partner of the CIC.

12.6.2 All rights and powers of the CIC under the Agreement may be exercised by the CITF Secretariat or such other CITF committees as specified herein. The CITF Secretariat acts for the CIC. All powers exercised by the CITF Secretariat

are exercised for and on behalf of the CIC.

## 12.7 Assignment

12.7.1 No Successful Applicant may assign transfer, dispose of or otherwise deal with any or all of its rights or obligations under the Agreement, or purport to do so without the prior written consent of the CIC, which consent shall be given or withheld at the CIC's absolute discretion.

## 12.8 Settlement of Dispute

12.8.1 In relation to any dispute or difference arising out of or in connection with the Agreement, the parties shall first attempt to resolve the dispute or difference amicably by good faith negotiations between their respective senior representatives. In the event that the dispute or difference remains unresolved 28 days after the commencement of such negotiations, the dispute or difference shall then be referred to mediation at the Hong Kong International Arbitration Centre ("**HKIAC**") and in accordance with its Mediation Rules. If either party refuses to mediate, or if the mediation is abandoned by either party or by the mediator or is otherwise concluded without the dispute or difference being resolved, then such dispute or difference shall be referred to and determined by arbitration at the HKIAC in accordance with the HKIAC's Domestic Arbitration Rules effective at such time and the Arbitration Ordinance (Cap. 609) or any statutory modification thereof for the time being in force, and any such reference shall be deemed to be a submission to arbitration within the meaning of such Ordinance. Any such reference to arbitration shall be made within 90 days of either the refusal to mediate or the failure of the mediation.

12.9 Governing Law

12.9.1 The Agreement shall be governed by and construed in accordance with the laws of Hong Kong.

12.10 Third Party Rights

12.10.1 The Agreement is made for the benefit of the parties and is not intended to benefit any third party or be enforceable by any third party. A third party who is not a party to the Agreement shall not have any right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) or otherwise to enforce any right under or relating to the Agreement.

12.11 Severability

12.11.1 Any term or part of a term of the Agreement that is illegal or unenforceable may be severed from the Agreement and the remaining terms or parts of the term shall continue in force.