

Section A – Definitions and Contract Documents

A1

Unless otherwise specified, the terms and definitions used in these *additional conditions of contract* shall be the same as those used in the *conditions of contract*.

Definitions

“Black Rainstorm Warning” means a warning issued by the Director of the Hong Kong Observatory of a heavy rainstorm in, or in the vicinity of, Hong Kong by the use of the heavy rainstorm signal commonly referred to as black.

Section 71 of the Interpretation and General Clauses Ordinance (Cap. 1)

“DEVB” means the Development Bureau of the Government of the Hong Kong Special Administrative Region.

“Dispute” means any dispute or difference of any kind whatsoever between the Parties arising out of or in connection with this contract and/or the *services* including, without limitation, any dispute as to any decision, notification, certificate, assessment, instruction, order or direction or alleged failure to provide the same by the *Employer* or *Employer’s Agent*, as the case may be, whether during the progress of the *services* or after Completion and whether before or after the termination of this contract or the *Consultant’s* obligation to Provide the *Services*, or the abandonment or breach of this contract by either the *Employer* or the *Consultant*.

“ETWB” means the previous Environment, Transport and Works Bureau of the Government of the Hong Kong Special Administrative Region, which is now DEVB.

“Gale Warning” means a warning of the occurrence of a tropical cyclone in, or in the vicinity of, the Hong Kong Special Administrative Region, by the use of any of the tropical cyclone warning signals referred to in Section 5(1)(a)(i) of the Judicial Proceedings (Adjournment during gale warnings) Ordinance (Cap. 62).

Section 71 of the Interpretation and General Clauses Ordinance (Cap. 1) and Section 2 of the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance (Cap. 62)

**A1
(Cont'd)**

“General Holiday” means every Sunday and other day which is a general holiday by virtue of the General Holidays Ordinance (Cap. 149).

Section 3 of the Interpretation and General Clauses Ordinance (Cap. 1)

“Government” means the Government of the Hong Kong Special Administrative Region.

GCE 1

“Intellectual Property Rights” means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights, whether now known or created in future (of whatever nature and wherever arising), and in each case whether registered or unregistered and including applications for the grant of any such rights.

“NEC Clause” means a clause in the *conditions of contract* as more particularly identified in the Contract Data Part one, as amended or supplemented by the Schedule to the Memorandum of Agreement, but a reference to NEC Clause in this document shall exclude these *additional conditions of contract*.

For efficacy of the contract

“Resident Site Staff” means those persons employed by the *Consultant* pursuant to clauses C1 and C2 of these *additional conditions of contract*.

For consultancies involving employment of Resident Site Staff by the *Consultant* only

A2

The contents list, index, marginal notes or headings in any documents forming part of this contract shall not in any way vary, limit or extend the interpretation of this contract.

**Marginal
headings**

Modified from
GCE 3

A3

Where this contract requires a party to provide, give, submit or similar a notice, quotation, acceptance or other document on or by a date or within a period which expires on a date which is a General Holiday or on which a Black Rainstorm Warning or Gale Warning is issued then the party shall have until the next day which is not a General Holiday and on which no Black Rainstorm Warning or Gale Warning is issued to comply with the requirement. Where a period for undertaking such an act or doing such a thing is 6 days or less, no General Holiday, Black Rainstorm Warning or Gale Warning shall be taken into account in calculating the time taken to perform the act or do the thing required. For the avoidance of doubt, a period of days from the happening of any event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done. The provisions of this clause shall not apply to the extent that this contract requires the performance of any part of the *services* and the issue of any related documentation on General Holidays.

**Computation
of time**

A4

The *Consultant* when called upon to do so shall enter into and execute the Memorandum of Agreement which shall be prepared at the cost of the *Employer* in the form provided with the tender documents with such modifications as may be necessary.

Memorandum of Agreement Modified from GCE 6

Section B – General Obligations

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| B1 | The <i>Consultant</i> shall answer all reasonable enquiries received from the <i>Employer's Agent</i> . The <i>Consultant</i> shall render reports at such intervals as required by the <i>Employer's Agent</i> when asked to do so and shall assist the <i>Employer's Agent</i> to form an opinion as to the manner in which he is proceeding with this contract. | Information to be supplied by the Consultant | Modified from GCE 11 |
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B2

In addition to the *Consultant's* obligation to attend risk reduction meetings in accordance with NEC Clause 15.2, the *Consultant* shall, if reasonably possible, attend or be represented at all other meetings convened by the *Employer's Agent* or identified in the Scope as meetings to be attended by the *Consultant*, and shall advise and assist the *Employer* or the *Employer's Agent* on all matters relating to the *services*.

Attendance at meetings

Modified from GCE 13

B3

The *Consultant* shall at all times give to the *Employer's Agent* and any persons duly authorised by the *Employer's Agent*, reasonable facilities to inspect or view any works and the site of any works and all plans, drawings, specifications, records, works information, service information, site information and the like and all correspondence relevant to any works by contractors in relation to the *services*.

Facilities for inspection

Modified from GCE 14

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| B4 | <p>(A) Pursuant and further to the <i>Consultant's</i> obligations at NEC Clause 13.6, for the <i>period for retention</i>, the <i>Consultant</i> shall store the Documents in accordance with the accepted storage and retrieval proposal referred to in sub-clause (B) of this clause.</p> <p>(B) The <i>Consultant</i> shall before the Completion Date or within 28 days of any earlier request from the <i>Employer's Agent</i> submit a storage and retrieval proposal to the <i>Employer's Agent</i> for acceptance. The proposal may be accepted by the <i>Employer's Agent</i> with or without conditions. On acceptance the <i>Consultant</i> shall, subject to this clause, deal with the Documents in strict accordance with the accepted storage and retrieval proposal.</p> <p>(C) The <i>Consultant</i> shall give assistance to public officers authorized by the <i>Employer</i> to locate, retrieve, inspect or copy such Documents and shall answer queries or supply information reasonably requested by such officers on the concerned Documents.</p> <p>(D) Upon and notwithstanding the expiry of the <i>period for retention</i>, the <i>Consultant</i> shall first obtain the written consent of the <i>Employer's Agent</i> before destroying any of the Documents. If so instructed by the <i>Employer's Agent</i>, the <i>Consultant</i> shall deliver any or all of such Documents to the <i>Employer's Agent's</i> designated store.</p> <p>(E) The <i>Consultant</i> shall notify the <i>Employer's Agent</i> immediately in case of any accidents or incidents leading to the loss or damage of any of the Documents. The <i>Consultant</i> shall also inspect the Documents at regular intervals not exceeding three years to ensure that they are in good condition and shall report to the <i>Employer's Agent</i> promptly in case of any sign of deterioration.</p> <p>(F) The <i>Employer's Agent</i> may before the expiry of the <i>period for retention</i> request that any of the Documents be transferred from the <i>Consultant</i> to the <i>Employer's Agent's</i> designated store.</p> <p>(G) Notwithstanding sub-clauses (A) to (F) of this clause, the <i>Consultant</i> may propose from time to time the destruction of certain Documents or classes of Documents and the <i>Employer's Agent</i> may at his discretion consent to such destruction, such consent to be in writing.</p> | <p>Retention of Documents and inspection</p> <p>Modified from SCE "Retention of documents and inspection"</p> <p>(ETWB TC(W) No. 30/2004)</p> |
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- B4 (Cont'd)**
- (H) The *Employer's Agent* shall have power to instruct the amendment of or change to the accepted storage and retrieval proposal. Should the *Employer's Agent* instruct such amendment or change such instruction by the *Employer's Agent* is deemed to be an instruction changing the Scope under NEC Clause 60.1(1).

 - (I) For the avoidance of doubt, the Prices cover all of the obligations in relation to Documents under this contract, except instructions issued under sub-clause (H) of this clause.

 - (J) In this clause, "Documents" means drawings, specifications, reports, records, files, measurement books and accounts and other documents however generated and whether generated by or received by the *Consultant* in relation to this contract or in respect of any works contract.

- B5**
- (A) The *Consultant* shall, as may be necessary for the successful completion of his obligations under this contract, consult Others including but not limited to, all authorities (such as public utility companies, statutory bodies, Government departments and organisations, etc.) having rights or powers in connection with, and bodies or persons affected by this contract, the *services* or works to which this contract relates.
- (B) The *Consultant* shall consult all persons and bodies listed in the Scope or who may be appointed by the *Employer* or nominated by the *Employer's Agent* with regard to any particular aspect of this contract, the *services* or works to which this contract relates and in consequence thereof make such changes in the delivery of or the production of any material to be provided by the *Consultant* as may be necessary unless otherwise instructed by the *Employer's Agent*.
- Consultation** Modified from GCE 19

B6

The *Consultant* shall obtain the written acceptance of the *Employer's Agent* prior to entering into any commitment to *expenses*.

**Written
acceptance**

Modified from
GCE 18

B7

The *Employer's Agent* shall give to the *Consultant* general instructions as to the *Employer's* procedures relevant to this contract and the *services*. The *Consultant* shall follow the *Employer's* procedures so far as possible and shall obtain the prior acceptance in writing of the *Employer's Agent* to major departures from such procedures. Nothing in this clause shall be deemed to affect the responsibility of the *Consultant* to Provide the Services.

Instructions Modified from
and procedure GCE 23

B8

The *Consultant* when acting as the Project Manager, Service Manager and/or his delegate or similar for any works contract shall obtain prior approval or acceptance in writing from the *Employer's Agent* for the order of any variation or other basis for additional time or payment, the issue of any instruction giving rise to a compensation event, the issue of any Task Order or for the commitment otherwise of the *Employer's Agent* to expenditure under the works contract, if the value of such order, instruction, Task Order, or commitment is estimated to exceed the sum specified in the Scope, or if not specified in the Scope, as advised in writing by the *Employer's Agent*. With the exception that in emergencies such prior approval or acceptance shall not be required, provided that the order, instruction, Task Order, or commitment is essential and that it is impractical to seek the prior approval or acceptance of the *Employer's Agent*.

Approval or acceptance of variations, claims, compensation events, tasks and/or other expenditure

Modified from GCE 24

For consultancies involving works contract only

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| B9 | <p>(A) Notwithstanding the requirements of clause B8 of these <i>additional conditions of contract</i>, the <i>Consultant</i> when acting as the Project Manager, Service Manager and/or his delegate or similar for any works contract shall:</p> <p>(i) refer the details of every variation, compensation event, Task Order or any commitment otherwise of the <i>Employer</i> to expenditure under the works contract, including the reasons for it and its estimated value, to the <i>Employer</i> for information as soon as the <i>Consultant</i> becomes aware of this information;</p> <p>(ii) as soon as the value or assessment of any variation, compensation event, Task Order or commitment otherwise of the <i>Employer</i> to expenditure under the works contract, has been determined, refer the details of the valuation or assessment to the <i>Employer</i> for information;</p> <p>(iii) report to the <i>Employer</i> all claims for additional payment made or notifications of and quotations for compensation events given by the contractor and refer to the principles underlying his assessment or valuation of each claim or notified compensation event to enable the <i>Employer</i> to provide his view of the matter prior to the assessment or valuation being notified to the contractor; and</p> <p>(iv) report to the <i>Employer</i> all delays to the progress of the contract works (including individual tasks) and refer the assessed extension of time for completion or change to the Completion Date, if any, to enable the <i>Employer</i> to provide his view of the matter prior to the award or grant of an extension of time for completion or assessment of the compensation event being notified to the contractor.</p> <p>(B) The foregoing referrals and reporting to the <i>Employer</i> shall be in writing.</p> | <p>Referral of variations, claims, compensation events, tasks and/or other expenditure</p> | <p>Modified from SCE “Referral of variations and claims”</p> <p>For consultancies involving works contract only</p> |
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B10

The *Consultant* shall not have the right to assign or transfer the benefit and obligations of this contract or any part thereof.

Non-assignment

Modified from GCE 37

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| B11 | <p>(A) The <i>Consultant</i> hereby irrecoverably authorizes consents and agrees that the <i>Employer</i> or the <i>Employer’s Agent</i>, as the case may be, may, whenever the <i>Employer</i> or the <i>Employer’s Agent</i>, as the case may be, considers appropriate, or upon request by any person (written or otherwise) and without further reference to the <i>Consultant</i>, disclose to any person in such form and manner as the <i>Employer</i> or the <i>Employer’s Agent</i>, as the case may be, deems fit:</p> <p style="margin-left: 40px;">(i) the Price for Services Provided to Date, <i>expenses</i> and other amounts payable by the <i>Employer</i> for engaging the <i>Consultant</i>;</p> <p style="margin-left: 40px;">(ii) the tendered total of the Prices submitted by the <i>Consultant</i> [for Option A or C]*/ the notional tendered total of the Prices submitted by the <i>Consultant</i> [for Option G]*; and</p> <p style="margin-left: 40px;">(iii) the <i>Employer’s Agent’s</i> forecasts of the anticipated total amount payable to the <i>Consultant</i> for completing his obligations under this contract whether based on any forecasts provided by the <i>Consultant</i> or otherwise.</p> <p>(B) The <i>Consultant</i> hereby waives and foregoes his right, if any, to make any claims against the <i>Employer</i> or the <i>Employer’s Agent</i>, as the case may be, for the losses, damages, costs, charges, liabilities, demands, proceedings and actions that may arise out of or in consequence of such disclosure by the <i>Employer</i> or the <i>Employer’s Agent</i>, as the case may be.</p> <p>* Delete as appropriate.</p> | <p>Disclosure of amount payable to the Consultant</p> | <p>Modified from SCE “Disclosure of fee payable to the Consultant”</p> |
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| B12 | (A) | Without limiting his obligations and responsibilities or his liability to indemnify the <i>Employer</i> under this contract, the <i>Consultant</i> shall effect and maintain with well established insurers of repute, professional indemnity insurance of the minimum amount and on the terms stated in the Contract Data Part one in respect of his obligations in relation to the <i>services</i> or any part thereof. The professional indemnity insurance shall be effected with an insurer or insurers acceptable to the <i>Employer</i> . The <i>Consultant</i> shall immediately inform the <i>Employer</i> in writing if such insurance ceases to be available at reasonable commercial rates or otherwise is not maintained in accordance with this clause or for any reason becomes void or unenforceable. | Professional indemnity insurance | Modified from SCE “Professional indemnity insurance” (DEVB TC(W) No. 9/2007) |
| | (B) | If the insurance policy is project specific, the maximum deductible/excess allowed under the policy shall not exceed 20% of the minimum amount required as stated in the Contract Data Part one. | | |
| | (C) | (a) If (i) the insurance policy 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: (1) 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 (A) of this clause; or (2) 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 (A) of this clause; or (3) 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 (A) of this clause. | | |

B12
(Cont'd)

- (b) If (i) the insurance policy 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:
- (1) 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 (A) of this clause; or
 - (2) 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 (A) of this clause; or
 - (3) 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 (A) of this clause.
- (D) The *Consultant* shall provide to the *Employer* within 60 days from the Contract Date and thereafter, in the case where the insurance policy does not cover the entire requisite period as specified in the Contract Data Part one, 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 complies with the terms in this clause in a form in **Appendix 1** to these *additional conditions of contract*; and

B12
(Cont'd)

- (b) a certified copy of the full insurance policy for the acceptance of the *Employer* unless the *Consultant* 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 *Consultant* shall provide a certificate in a form in **Appendix 2** to these *additional 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.

- (E) If the *Consultant* shall fail upon request to produce to the *Employer* satisfactory evidence that there is in force professional indemnity insurance required under this contract, 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 clause B16 of these *additional conditions of contract* and/or to recover such amount as a debt due from the *Consultant*.

- (F) In determining the period of insurance under an insurance policy for the purpose of this contract, 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.

- B13** (A) Pursuant and further to NEC Clause 40.1, within three months of the Contract Date, the *Consultant* shall book with a certification body acceptable to the *Employer*, the date of audit for the ISO 9001:2015 certification or its currently available version; with detailed documented quality system procedures ready at the time of booking. If the *Consultant* is a joint venture, the certification audit referred to in this sub-clause shall mean that of the participant or shareholder whose quality system shall be implemented by the joint venture as specified in the declaration submitted with the *expression of interest / *consultancy proposals.
- * Delete as appropriate.
- (B) Notwithstanding any other provisions of this contract, compliance with sub-clause (A) of this clause shall be a condition precedent to the *Consultant's* entitlement to any payment or any further payment as the case may be under this contract. **[for Option A]**
- Notwithstanding any other provision of this contract, compliance with sub-clause (A) of this clause shall be a condition precedent to the *Consultant's* entitlement to any payment or any further payment as the case may be under this contract provided that this condition precedent does not apply to the Advance Payment under Secondary Option X14. **[for Option C incorporating Secondary Option X14]**
- (C) Sub-clauses (A) and (B) of this clause are not applicable if the *Consultant* or, where the *Consultant* is a joint venture, his specified participant or shareholder has already obtained ISO 9001:2015 certification or its currently available version on or before the Contract Date.

Non-certified consultants for ISO 9000 certification requirement

Modified from SCE "Requirement for ISO 9000 certification"

Update to ISO:9001:2015 standard promulgated under DEVB's memo ref. DEVB(W)520/83/01 dated 4.4.2018

DEVB's memo ref. DEVB(PS)106/43 dated 10.3.2022 for payment upon signing of consultancy Agreements

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| B14 | <p>(A) Pursuant and further to NEC Clause 40.1, within three months of the Contract Date, the <i>Consultant</i> shall apply to the relevant certification body for revision of his current scope of ISO 9001:2015 certification or its currently available version to cover site activities service; with detailed documented quality system procedures ready at the time of applying for revision. If the <i>Consultant is</i> a joint venture, the ISO 9001:2015 certification or its currently available version referred to in this sub-clause shall mean the certification of the participant or shareholder whose quality system shall be implemented by the joint venture as specified in the declaration submitted with the *expression of interest / *consultancy proposals.</p> <p>* Delete as appropriate.</p> <p>(B) Notwithstanding any other provision of this contract, compliance with sub-clause (A) of this clause shall be a condition precedent to the <i>Consultant’s</i> entitlement to any payment or any further payment as the case may be under this contract. [for Option A]</p> <p>Notwithstanding any other provision of this contract, compliance with sub-clause (A) of this clause shall be a condition precedent to the <i>Consultant’s</i> entitlement to any payment or any further payment as the case may be under this contract provided that this condition precedent does not apply to the Advance Payment under Secondary Option X14. [for Option C incorporating Secondary Option X14]</p> <p>(C) Sub-clauses (A) and (B) of this clause are not applicable if:</p> <p style="padding-left: 40px;">(i) site activities service is not required to be provided by the <i>Consultant</i> under this contract; or</p> <p style="padding-left: 40px;">(ii) the scope of ISO 9001:2015 certification or its currently available version of the <i>Consultant</i> or, where the <i>Consultant</i> is a joint venture, his specified participant or shareholder has already been revised by the relevant certification body to cover site activities service on or before the Contract Date.</p> | <p>Scope of certification for ISO 9000 certification requirement</p> | <p>Modified from SCE “Requirement for ISO 9000 certification” (WBTC No. 13/2001)</p> <p>Update to ISO:9001:2015 standard promulgated under DEVB’s memo ref. DEVB(W)520/83/01 dated 4.4.2018</p> <p>DEVB’s memo ref. DEVB(PS)106/43 dated 10.3.2022 for payment upon signing of consultancy Agreements</p> |
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| B15 | <p>(A) The <i>Employer</i> shall become the absolute and exclusive owner of all material provided by the <i>Consultant</i> and all Intellectual Property Rights subsisting therein free from all encumbrances save those Intellectual Property Rights belonging to a third party in respect of which sub-clause (C) of this clause shall apply.</p> <p>(B) The <i>Consultant</i> hereby undertakes and warrants to the <i>Employer</i> that he is, except where the beneficial ownership of any Intellectual Property Rights subsisting in any material provided by the <i>Consultant</i> is vested in anyone other than the <i>Consultant</i> as referred to in sub-clause (C) of this clause, the sole legal and beneficial owner of all Intellectual Property Rights in all material provided by the <i>Consultant</i>.</p> <p>(C) The <i>Consultant</i> hereby further undertakes and warrants to the <i>Employer</i> that to the extent that beneficial ownership of any Intellectual Property Rights subsisting in any material provided by the <i>Consultant</i> are vested in anyone other than the <i>Consultant</i>, the <i>Consultant</i> shall procure that the beneficial owner shall grant to the <i>Employer</i> and any person as the <i>Employer</i> may instruct:</p> <ul style="list-style-type: none">(i) a transferable, non-exclusive, royalty-free and irrevocable licence (carrying the right to grant sub-licences) to utilise the Intellectual Property Rights in such material provided by the <i>Consultant</i> for all purposes contemplated under or in connection with this contract or expressly agreed to in writing by the relevant beneficial owner thereof; and(ii) an indemnity upon the same terms mutatis mutandis as that set out in sub-clause (E) of this clause. <p>For the avoidance of doubt, any such licence and indemnity granted shall not be determined if the <i>Consultant</i> is instructed to stop or not to start any work pursuant to NEC Clause 33.1, or if this contract is terminated pursuant to NEC Clause 90 or otherwise.</p> <p>(D) The <i>Consultant</i> shall, at the request of the <i>Employer</i>, do such acts and execute all such deeds and documents (or procure that same be done or executed) as the <i>Employer</i> may require to vest any or all of the rights referred to in this clause in the <i>Employer</i> or any other person as the <i>Employer</i> may instruct.</p> | <p>Exclusive ownership</p> | <p>Modified from SCE “Exclusive ownership”</p> |
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- B15 (Cont'd)** (E) The *Consultant* hereby indemnifies the *Employer* against all claims, proceedings, actions, damages and losses incurred or sustained by the *Employer* arising from the use of material provided by the *Consultant* and the Intellectual Property Rights subsisting therein (whether owned by the *Consultant* or third parties) provided that in respect of those Intellectual Property Rights referred to in sub-clause (C) of this clause, the liability of the *Consultant* under this sub-clause shall be limited to liability arising from uses for the purposes contemplated under or in connection with this contract, or expressly agreed to in writing by the relevant beneficial owner thereof. The indemnity herein shall survive the termination of this contract (however occasioned) and shall continue in full force and effect notwithstanding such termination.
- (F) Solely for the purposes of this clause, “material provided by the *Consultant*” means all reports, drawings, specifications, documents, software, certificates and other items (whether or not such reports, drawings, documents, software, certificates or other items are in completed forms or otherwise) which are to be produced by the *Consultant* under or in connection with this contract. In the event of termination or suspension of this contract, the *Consultant* shall immediately upon request deliver to the *Employer* all such material which has not yet been delivered to the *Employer* including all works in progress and incomplete material.

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| B16 | (A) | All damages, losses, costs, expenses, debts or sums for which the <i>Consultant</i> is liable to the <i>Employer</i> under any provision of this contract may be deducted by the <i>Employer</i> from any amounts due to the <i>Consultant</i> under this contract and the <i>Employer</i> shall have the power to recover any balance not so deducted from any amounts due or monies due to the <i>Consultant</i> under any other Government consultancy agreement or other contract between the Parties. | Setting off money due to the Government from defaulting Consultant | Modified from SCE “Setting off money due to the Government from defaulting consultants” |
| | (B) | All damages, losses, costs, expenses, debts or sums for which the <i>Consultant</i> is liable to the <i>Employer</i> under (or for breach of) any provision of any other consultancy agreement or other contract between the Parties may be set off or deducted by the <i>Employer</i> from the amount due to the <i>Consultant</i> under this contract. | | |

- B17** (A) Except as necessary for the performance of the *services* the *Consultant* shall not (except with the prior written consent or as instructed by the *Employer's Agent*) disclose the terms and conditions of this contract or any report, document, specification, drawing, plan, software, data or other particulars furnished by or on behalf of the *Employer* in connection therewith, or any such or similar information generated or produced by the *Consultant* pursuant to this contract, to any person other than a person employed or engaged by the *Consultant* in carrying out this contract, an agent of the *Consultant*, any accepted Subconsultant or the *Consultant's* accountants, insurers and legal advisers.
- (B) Any disclosure to any person, agent, Subconsultant, accountant, insurer, legal adviser permitted under sub-clause (A) of this clause shall be in strict confidence and shall be on a "need to know" basis and extend only so far as may be necessary for the purposes of this contract.
- (C) The *Consultant* shall take all necessary measures (including by way of contractual provisions where appropriate) to ensure that his directors, employees, agents, Subconsultants, accountants, insurers and legal advisers as mentioned in sub-clause (A) of this clause are aware of and shall comply with the confidentiality and non-disclosure provisions contained in this contract. If required by the *Employer*, the *Consultant* undertakes to procure for and on behalf of the *Employer* a confidentiality agreement in a form to be prescribed by the *Employer* from any director, employee, agent, Subconsultant, accountant, insurer and legal adviser to whom any confidential information is to be disclosed.
- (D) Pursuant and further to NEC Clause 71.1, the *Consultant* shall not without the prior written consent of the *Employer's Agent* publish, either alone or in conjunction with any other person, in any newspaper, magazine, periodical or through any electronic medium, any article, photograph or illustration relating to this contract.
- Confidentiality** Modified from
SCE
"Confidentiality"

(ETWB TC(W)
No. 3/2004A)

- B17 (Cont'd)** (E) If the *Consultant* has provided the *Employer* with documents or information which he has declared in writing to be confidential and stamped accordingly whether in relation to his practice or special circumstances or for other good causes, unless the *Employer's Agent* within two months of receipt of such documents or information by notice in writing disagrees, then that documents or information will be treated as confidential. In relation to Disputes between the Parties, the *Employer* may subject to the following provisions disclose the outline of any Dispute and the terms of settlement for which a settlement agreement has been reached with the *Consultant* or the outcome of the arbitration or any other means of resolution of Dispute to the Public Accounts Committee of the Legislative Council upon his request. Before disclosures are made to the said Committee, the *Employer* shall inform the *Consultant*. Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the settlement agreement, arbitration award or, as the case may be, outcome of other means of resolution of Dispute without the written consent of the *Consultant* but such consent shall not be unreasonably withheld. The *Consultant* shall be deemed to have given his consent to disclosures on the expiry of the first 6 months from the date of the settlement agreement, arbitration award or, as the case may be, outcome of other means of resolution of Dispute. The *Consultant* may, if he considers it necessary to protect the sensitive nature of certain information relating to him, request the *Employer* to disclose such specified information to the said Committee strictly on a confidential basis. If the *Employer* considers that there are legitimate grounds to accede to the *Consultant's* request, the *Employer* shall convey the request to the said Committee for its consideration.
- (F) The *Consultant* shall indemnify and keep indemnified the *Employer* against all loss, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever the *Employer* may suffer, sustain or incur, whether direct or consequential, arising out of or in connection with any breach by the *Consultant* or his directors, employees, agents, Subconsultants, accountants, insurers or legal advisers of NEC Clause 71.1 or this clause.
- (G) The provision of this clause shall survive the termination of this contract (however occasioned) and shall continue in full force and effect notwithstanding such termination.

B18

The *Consultant* shall prohibit his directors, employees, agents and Subconsultants who are involved in this contract from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance, Cap 201. The *Consultant* shall also caution his directors, employees, agents and Subconsultants against soliciting or accepting any excessive hospitality, entertainment or inducements which would impair his impartiality in relation to this contract. The *Consultant* shall take all necessary measures (including by way of contractual provisions and/or providing training workshops where appropriate) to ensure that his directors, employees, agents and Subconsultants are aware of the aforesaid prohibition and will not solicit or accept any advantages, excessive hospitality etc when conducting business in connection with this contract.

Prevention of bribery

Modified from SCE “Prevention of bribery”

(ETWB TC(W) No. 3/2004A)

B19

The *Consultant* shall submit a signed declaration in a form prescribed as **Appendix 3** to these *additional conditions of contract* or agreed by the *Employer* to confirm compliance with the provisions on confidentiality and prevention of bribery as stated in clauses B17 and B18 of these *additional conditions of contract* when demand is made for payment under this contract at a frequency, which shall not be more frequent than once per month, as specified by the *Employer*. If the *Consultant* fails to submit the declaration as required, the *Employer* shall be entitled to withhold payment until such declaration is submitted and the *Consultant* shall not be entitled to interest in that period.

Declaration of ethical commitment

Modified from SCE “Declaration of ethical commitment”

(ETWB TC(W) No. 3/2004A)

B20

The *Consultant* acknowledges that he has been reminded that dishonesty, theft and corruption on his part or those of his directors, employees, agents or Subconsultants who are involved in this contract may lead to prosecution under, without limitation, section 9 of the Prevention of Bribery Ordinance, Cap 201; section 17, section 18D or section 19 of the Theft Ordinance, Cap 210 and section 161 of the Crimes Ordinance, Cap 200. These offences commonly carry upon conviction terms of imprisonment.

Acknowledgement of being notified of the ethical requirements

Modified from SCE
“Acknowledgement of being notified of the ethical requirements”

(ETWB TC(W)
No. 3/2004A)

B21 (A) On appointment and during the term of this contract and for * **【 6 】** months after Completion, the *Consultant* must declare any interest if it is considered to be in actual, apparent, potential or perceived conflict with the *Consultant's* obligation to Provide the Services, including any interest or association the *Consultant*, his associated companies, his associates or associated persons or any of his Subconsultants may have with any contractors, suppliers, specialist contractors or sub-contractors. The *Consultant* shall during the term of this contract and for * **【 6 】** months after Completion forthwith notify the *Employer* in writing and keep the *Employer* notified of all or any facts which may reasonably be considered to give rise to a situation where the financial or other interest of the *Consultant*, his associated companies, his associates or associated persons or any of his Subconsultants, conflict or compete, or may conflict or compete, with the *Consultant's* obligations and duties to the *Employer* under this contract.

Conflict of interest and debarring

Modified from SCE “Conflict of interest and debarring”

(ETWB TC(W) No. 18/2005)

For purpose of this clause, the “term of this contract” shall mean the period from the Contract Date until Completion as certified by the *Employer* under NEC Clause 30.2.

* Amend as appropriate.

(B) The *Consultant* shall not, and shall ensure that his associated companies, his associates or associated persons or any of his Subconsultants shall not, during the term of this contract and for * **【 6 】** months after Completion, undertake any services, tasks or jobs or do anything whatsoever for or on behalf of any third party (other than in the proper performance of this contract), which touches, concerns or affects the *services* or which may reasonably be seen to touch, concern or affect the *services*, except with the prior written agreement of the *Employer's Agent* which agreement shall not be unreasonably withheld.

* Amend as appropriate.

(C) Without prejudice to the generality of sub-clause (B) of this clause, the *Consultant* shall not (whether on his own or through his associated companies, associates or associated persons or in joint venture with others), and shall ensure that his Subconsultants shall not,

B21
(Cont'd)

- (i) undertake or compete for the role of a contractor or supplier or otherwise be involved as a shareholder of the contractor or supplier, in a subsequent procurement of any services and/or goods arising out of or relating to this contract;
- (ii) undertake any services for a contractor (including acting as a sub-contractor) or supplier in respect of a contract between that contractor or supplier and the *Employer* for which the *Consultant* is providing a service arising out of or relating to this contract; and
- (iii) undertake any services for, including without limitation provision of advice to, a bidder bidding for a contract arising out of or relating to this contract.

except with the prior written agreement of the *Employer*.

In the event that the *Consultant* has advised on the preparation of the tender, including tender specifications and tender assessment, the *Consultant* undertakes that under no circumstances will he bid, participate or be financially involved in that or a related tender exercise.

The *Consultant* shall take all necessary steps to ensure that under no circumstances will his associated companies, associates, associated persons and Subconsultants participate or be financially involved in the tender exercise referred to in the preceding subparagraphs.

B21
(Cont'd)

- (D) The *Consultant* shall render his advice or recommendations pursuant to this contract to the *Employer* on an impartial basis without giving favour to any particular product, services or equipment in which the *Consultant* has a commercial interest or to any third party with whom the *Consultant* has a commercial interest, including but not limited to those who engaged the *Consultant* in consulting services related to private works. The *Consultant* shall notify the *Employer* immediately and in writing and keep the *Employer* notified of any actual, apparent, potential or perceived conflict he or his associated companies, associates or associated persons or any of his Subconsultants may have in, or any association or connection they or the aforesaid persons may have with, any of the services, products or equipment proposed or recommended by the *Consultant* under this contract or any of third party with whom the *Consultant* has a commercial interest. The *Consultant* shall obtain from each and every one of his directors, employees, agents and Subconsultants who are involved in this contract a binding undertaking to observe this sub-clause.
- (E) The *Consultant* shall require his directors, employees, agents and Subconsultants who are involved in this contract to declare in writing to the *Consultant* and keep the *Consultant* informed regularly of any actual, apparent, potential or perceived conflict between his personal/ financial interests and his duties in connection with this contract, including all or any facts which may reasonably be considered to give rise to a situation which the financial interests of such persons, conflict or compete, or may conflict or compete, with the *Consultant's* duties to the *Employer* under this contract. In the event that such conflict is disclosed in a declaration, the *Consultant* shall forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict so disclosed.
- (F) The *Consultant* shall prohibit his directors and employees who are involved in this contract from engaging in any work or employment other than in the performance of this contract with or without remuneration, which could give rise to any actual, apparent, potential or perceived conflict between his personal/financial interests and his duties under or in connection with this contract. The *Consultant* shall require his agents and Subconsultants to impose similar restriction on their directors and employees by way of a contractual provision.

B21 (Cont'd) (G) The *Consultant* shall take all necessary measures (including by way of contractual provisions where appropriate) to ensure that his directors, employees, agents and Subconsultants who are involved in this contract are aware of the provisions under sub-clauses (B) to (F) of this clause. Where the *Consultant* has appointed Subconsultants named in the Contract Data, or where the *Consultant* has obtained the written acceptance of the *Employer's Agent* to appoint Subconsultants to undertake any part of the *services*, under NEC Clause 24, the *Consultant* shall take all necessary steps to procure and ensure that such Subconsultants enter into similar covenants mutatis mutandis, as those set out in this clause, and the *Consultant* shall take all necessary steps to enforce such covenants.

B21
(Cont'd)

(H) In this clause,

“associated company” or “associated companies” in relation to the *Consultant* means

any company which is the holding company or subsidiary company or sister company of the *Consultant*. A “sister company” means a company which belongs to the same holding company as the *Consultant*.

“associate” or “associates” in relation to the *Consultant* means

- (i) any partner of the *Consultant*; or
- (ii) any company one or more of whose directors is in common with one or more of the directors of the *Consultant*.

“associate person” or “associated persons” in relation to the *Consultant* means

- (i) any person who has control, directly or indirectly, over the *Consultant*; or
- (ii) any person who is controlled, directly or indirectly, by the *Consultant*; or
- (iii) any person who is controlled by, or has control over, a person at (i) or (ii) above.

“control” in relation to another person means holding office as a director or the power of a person to secure

- (i) by means of the holding of shares or interests or the possession of voting power in or in relation to that or any other person; or
- (ii) by virtue of powers conferred by any constitution, memorandum or articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that or any other persons;

that the affairs of the first-mentioned person are conducted in accordance with the wishes of that other person.

“director” means any person occupying the position of director by whatever name called and without limitation a de facto or shadow director.

B21 (I) The *Consultant* shall submit a signed declaration in the form prescribed in **Appendix 4** to these *additional conditions of contract* (with only such amendments thereto as may previously have been agreed in writing by the *Employer*) to confirm compliance with the provisions as stated in sub-clauses (A) to (H) of this clause, when demand is made for payment under this contract at a frequency, which shall not be more frequent than once per month, as specified by the *Employer*. If the *Consultant* fails to submit the declaration as required, the *Employer* shall be entitled to withhold payment until such declaration is submitted and the *Consultant* shall not be entitled to interest in that period.

(Cont'd)

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|------------|-----|--|-------------------------------|--|
| B22 | (A) | <p>Where the <i>Consultant</i> is a non-resident corporation or, where the <i>Consultant</i> is an unincorporated joint venture or partnership or sole proprietorship, any one of the participants or partners or the sole proprietor is a non-resident (whether as declared in the <i>Consultant's</i> proposals or as subsequently notified to or discovered by the Government), the Government shall withhold a percentage equivalent to the prevailing Hong Kong profits tax rate applicable to an unincorporated and incorporated business at the time the <i>services</i> are rendered (for the details of the prevailing profits tax rates, please refer to the website of the Inland Revenue Department www.ird.gov.hk) of any amount payable to the <i>Consultant</i>, whether by way of lump sum, instalments or discounted payments, but exclusive of any reimbursement of <i>expenses</i>, if any, in respect of the <i>services</i> performed/provided in Hong Kong for the settlement of Hong Kong profits tax chargeable on the amount. Any balance representing the excess of amounts so withheld in the basis period of the year of assessment over the <i>Consultant's</i> tax liability for that year will be returned to the <i>Consultant</i> without interest within a reasonable time upon final determination and settlement of his tax liabilities.</p> | <p>Tax withholding</p> | <p>Modified from SCE “Tax withholding”</p> <p>(ETWB TC(W) No. 34/2004)</p> |
| | (B) | <p>The <i>Consultant</i> acknowledges and consents that in the event that the <i>Consultant</i> is a non-resident corporation or, where the <i>Consultant</i> is an unincorporated joint venture or partnership or sole proprietorship, any one of the participants or partners or the sole proprietor is a non-resident, such data (including but not limited to their names, nature of engagement, contract period, Prices, correspondence address (both local and overseas) and the amount of tax withheld) will be notified/provided to the Inland Revenue Department for tax assessment and collection purposes.</p> | | |
| | (C) | <p>The <i>Consultant</i> shall notify the <i>Employer</i> immediately whenever there is any change during the currency of this contract in his resident status or the sole proprietor’s resident status or, where the <i>Consultant</i> is an unincorporated joint venture or partnership, in any one of the participants’ or partners’ resident status, from that declared in the <i>Consultant's</i> proposals.</p> | | |
| | (D) | <p>“Non-resident” means in the case of an individual, one who maintains a place of abode outside Hong Kong; and in the case of a corporation, one which is not incorporated in Hong Kong.</p> | | |

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| B23 | <p>(A) All drawings, designs, plans, specifications, works information, site information, bill of quantities, activity schedules or other documents, matters, things or material prepared by the <i>Consultant</i> for or in connection with any invitation for tenders shall not be used for such purpose unless they shall first have been accepted by the <i>Employer’s Agent</i>.</p> <p>(B) Any major revisions to such accepted drawings, designs, plans, specifications, works information, site information, bill of quantities, activity schedules or other documents, matters, things or material prepared by the <i>Consultant</i> shall not be used for any purpose unless they have been accepted by the <i>Employer’s Agent</i>.</p> <p>(C) The <i>Consultant</i> shall, when so requested by the <i>Employer’s Agent</i>, submit to the <i>Employer’s Agent</i> for acceptance such drawings, designs, plans, specifications, works information, site information, bill of quantities, activity schedules or other documents, matters, things or material prepared by the <i>Consultant</i> as a direct requirement of this contract as the <i>Employer’s Agent</i> may specify or require.</p> <p>(D) No such acceptance by the <i>Employer’s Agent</i> shall affect the <i>Consultant’s</i> obligation to Provide the Services.</p> | <p>Acceptance of documents</p> | <p>Modified from SCE “Approval of documents”</p> <p>For consultancies involving works contract or service contract only</p> |
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| B24 | (A) | The <i>Consultant</i> shall respond to queries on the findings and conclusions of this contract raised during the period defined in the Scope for such queries by the <i>Employer's Agent</i> or any person who may be appointed by the <i>Employer</i> or nominated by the <i>Employer's Agent</i> for any phase of the Project. | Response to queries | Modified from GCE 20 For consultancies involving subsequent stage of the Project only |
| | (B) | The <i>Consultant</i> shall use his best endeavours to respond to queries on the findings and conclusions of this contract raised after the period defined in the Scope for such queries by the <i>Employer's Agent</i> or any person who may be appointed by the <i>Employer</i> or nominated by the <i>Employer's Agent</i> . | | |

B25 (A) “Phase Subject to Incorporation” means a phase designated in the Scope (the details of which are known, but the implementation of which has not been decided upon by the *Employer* at the time the documents inviting submissions for consultancy services are issued) which shall only be implemented upon a written instruction from the *Employer* issued pursuant to sub-clause (B) of this clause.

Phases subject to incorporation Modified from SCE “Phase subject to incorporation”

For consultancies involving phases subject to incorporation only

(B) The *Employer* may, within the relevant time stated below, instruct the *Consultant* in writing to proceed with the *services* comprised within a Phase Subject to Incorporation.

Phase Subject to Incorporation

Time for ordering Phase Subject to Incorporation
(Within stated number of months after the Contract Date)

XXX

XX months

XXX

XX months

(C) In the event that the *Employer* issues an instruction in accordance with sub-clause (B) of this clause:

(i) the *Consultant* shall provide the *services* comprised within the relevant Phase Subject to Incorporation upon receipt of the instruction and shall complete that phase by the relevant Key Date;

(ii) this contract shall thereafter be construed in every way as if the relevant Phase Subject to Incorporation had at all times formed part of the *services*; and

(iii) the amount due for the *services* associated with the relevant Phase Subject to Incorporation shall be assessed and the payments shall be made in accordance with NEC Clauses 50 and 51.

(D) In the event that the *Employer* does not issue an instruction in accordance with sub-clause (B) of this clause:

(i) the *Consultant* shall not thereafter be obliged to execute and complete the *services* comprised within the relevant Phase Subject to Incorporation;

(ii) the Prices shall be reduced by the total of the lump

sum prices for each of the activities on the Activity Schedule for the work within the relevant Phase Subject to Incorporation;

- (iii) the *Employer's* decision not to issue an instruction in accordance with sub-clause (B) of this clause shall not constitute a compensation event and for avoidance of doubt, the *Consultant* shall not be entitled to any payment or other compensation or relief of or attributable to the *Employer's* decision;
- (iv) this contract shall thereafter be construed in every way as if the relevant Phase Subject to Incorporation had not at any time formed part of the *services* and all references thereto shall be of no effect;
- (v) the *Consultant* shall submit a revised programme to the *Employer* for acceptance;
- (vi) the *Consultant* shall review all drawings and other documents relating to the *services* which have been submitted to the *Employer* and if appropriate, revise and submit an amended or varied version of the same to the *Employer*.

B26

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

**Contracts
(Rights of
Third Parties)
Ordinance**

DEVB's memo ref. DEVB(PS) 106/43 dated 9.10.2015

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| B27 | <p>(A) Without prejudice to the generality of clause B1 of these <i>additional conditions of contract</i>, the <i>Consultant</i> shall submit to the <i>Employer’s Agent</i> details of all staff deployed and/or to be deployed in the performance of the <i>services</i> in the form, manner and for the purposes specified in the Scope.</p> <p>(B) The <i>Consultant</i> or any of the Subconsultants, including any staff employed by them in the performance of the <i>services</i>, shall be deemed to have read the <i>additional conditions of contract</i>, the relevant part of the Scope, particularly the personal information collection statement (hereinafter referred to as “the Statement”) in the form specified, and have given their consent to the <i>Employer</i> to disclose to any parties for the purposes as stated in the Statement without further reference to the <i>Consultant</i> or any of the Subconsultants, including any staff employed by them.</p> <p>(C) The <i>Consultant</i> shall submit to the <i>Employer’s Agent</i>, when the information in sub-clause (A) of this clause are submitted, a signed declaration in a form prescribed or approved by the <i>Employer’s Agent</i> (a sample of which is attached in Appendix 5 to these <i>additional conditions of contract</i>) to confirm that the information in sub-clause (A) of this clause submitted is true to the best of <i>Consultant’s</i> knowledge and belief and is adherence to the staffing proposal made at the tender stage (or as subsequently updated to suit the latest development of the contract) and to confirm that the <i>Consultant</i> and any of the Subconsultants, including all staff employed in the performance of the <i>services</i> are aware of this clause, the relevant part of the Scope, particularly the Statement, and have given consent to the <i>Employer</i> to disclose to any parties for the purposes as stated in the Statement.</p> <p>(D) The <i>Consultant</i> shall waive and forego his right, if any, to make any claims against the <i>Employer</i> for any losses, damages, costs, charges, liabilities, demands, proceedings and actions that may arise out of or in consequence of such disclosure by the <i>Employer</i>.</p> | <p>Submission of Manpower Input</p> <p>Modified from SCE clause in Appendix 3.20K of EACSB Handbook promulgated via DEVB TC(W) No. 5/2018)</p> |
|------------|---|---|

Section C – Resident Site Staff

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|-----------|-----|---|--|--|
| C1 | (A) | Where this contract or the Scope requires the <i>Consultant</i> to provide a part of the <i>services</i> in relation to recruitment, employment and management of Resident Site Staff (hereinafter referred to as “RSS” in this contract) under direct employment by the <i>Consultant</i> , the <i>Consultant</i> shall do so in accordance with clauses C1 and C2 of these <i>additional conditions of contract</i> , the Scope and the Schedule of Resident Site Staff Standards and Duties. | Recruitment, Employment and Management of Resident Site Staff | Modified from SCE (DEVB TC(W) No. 4/2008 and DEVB TC(W) No. 3/2011 as amended by DEVB’s memo ref. DEVB(PS) 106/15/3 dated 7.1.2022) For consultancies involving employment of Resident Site Staff only |
| | (B) | The <i>Consultant</i> shall be responsible for the acts, default and neglects of all RSS in connection with any works under this contract. | | |

C1 (Cont'd) (C) The *Consultant* shall comply with the procedures and arrangements for recruitment, employment, management, reimbursement and remuneration for its direct employment of RSS in accordance with the latest version of the Management Handbook for Direct Employment of Resident Site Staff by Consultants for Public Works Projects promulgated by the Development Bureau (Works Branch) or equivalent as at the deadline for submission of the Technical and Fee Proposals (hereinafter referred to as “RSS Management Handbook” in this contract). The RSS Management Handbook is posted on the website of the Development Bureau or equivalent under the heading “Standard Consultancy Documents” in the “Publications” section, and can be found in the following link or its update as advised by the *Employer’s Agent*:

https://www.devb.gov.hk/en/publications_and_press_releases/publications/standard_consultancy_document/index.html

The RSS Management Handbook will be updated from time to time after the deadline for submission of the Technical and Fee Proposals when the existing works policies are modified. Changes to the arrangements on recruitment, employment, management, reimbursement and remuneration for direct employment of RSS by the *Consultant* in this contract or new arrangements introduced by the Development Bureau (Works Branch) or equivalent before the Completion of this contract shall, subject to any instruction(s) by the *Employer’s Agent* to the *Consultant*, be implemented by the *Consultant* from the date the changes or new arrangements take effect.

C2 (A) The reimbursement and remuneration to the *Consultant* for such part of the *services* in relation to recruitment, employment and management of RSS shall be in accordance with this clause. For the avoidance of doubt, except as provided in this clause, no payment shall be made to the *Consultant* in respect of any part of the *services* in relation to recruitment, employment and management of RSS.

Reimbursement and Remuneration for the *Consultant’s* Recruitment, Employment and Management of Resident Site Staff

C2 (Cont'd) (B) For the avoidance of doubt, the RSS on-cost and other reimbursable expenditures in relation to such part of the *services* in relation to recruitment, employment and management of RSS shall be excluded from the Prices and the Price for Services Provided to Date. Notwithstanding that the notional value for RSS on-cost, calculated on the basis of the *RSS on-cost rates* tendered by the *Consultant* in the Contract Data Part two (Section 2), was taken into account by the *Employer* in assessing the *Consultant's* Technical and Fee Proposals for this contract, the *Employer* has no obligation whatsoever to instruct any part of the *services* in relation to recruitment, employment and management of RSS. Notwithstanding that the actual RSS establishment size and composition determined in accordance with the Scope may deviate from the notional RSS establishment size and composition as stated in the Guidelines on Preparation of Fee Proposal, any deviation between the actual RSS establishment size and composition determined in accordance with the Scope and the notional RSS establishment size and composition as stated in the Guidelines on Preparation of Fee Proposal shall not constitute a compensation event and the *Consultant* shall not be entitled to any payment or other compensation or relief of or attributable to the *Employer's* decision.

C2 (Cont'd) (C) The *Consultant* shall be reimbursed for actual payment of salaries and fringe benefits of RSS, advertising costs for recruitment of RSS and expenses for specified training courses for RSS provided that:

- (i) the *Consultant* shall obtain the prior written acceptance of the *Employer's Agent* on the proposals for the whole RSS establishment and its revisions in accordance with the Scope and the proposed reimbursement caps on salaries and fringe benefits for each RSS proposed to be employed in accordance with this clause prior to entering into any commitment to expenditure for which there is a provision for reimbursement in this clause;
- (ii) the total of the accumulated reimbursement applied and the estimated reimbursement to be applied for each calendar year shall not exceed the respective annual reimbursement ceiling (which is the aggregate total of various reimbursement caps on salary and fringe benefits of RSS, advertising costs for recruitment of RSS and expenses for specified training courses for RSS accepted by the *Employer's Agent*); and
- (iii) the *Consultant* shall observe and comply with the conditions and mechanisms for determination of various reimbursement caps and reimbursement as stipulated in this clause.

Sections 4.1 to 4.11 and associated appendixes of the RSS Management Handbook shall form a part of this clause. The terms below in the RSS Management Handbook shall have the following respective meaning in this contract:

| Term in the RSS Management Handbook | Meaning in this contract |
|--|---------------------------------|
| the "Consultant" | the " <i>Consultant</i> " |
| the "managing department" | the " <i>Employer's Agent</i> " |
| "the consultancy agreement" | "this contract" |

C2 (Cont'd) (D) The *Consultant* shall be remunerated RSS on-cost each month for such part of the *services* in respect of the recruitment, employment and management of RSS, subject to price adjustments under sub-clause (E) of this clause. The monthly amount shall be the sum of the products obtained by multiplying the number of man-months of RSS provided and managed in the month of the rank as described in Column A below by the respective *RSS on-cost rates* tendered by the *Consultant* in the Contract Data Part two (Section 2). Column B describes the collective ranks of RSS directly employed by the *Consultant* and Government staff posted to the *Consultant* by the *Employer* as appropriate. Unless stated otherwise, the *RSS on-cost rates* in the Contract Data Part two (Section 2) are all-inclusive in respect of such part of the *services* in relation to recruitment, employment and management of RSS.

**C2
(Cont'd)**

| | Column A - Rank | Column B - Collective Rank |
|--|--|----------------------------------|
| RSS directly employed by the <i>Consultant</i> | PRE, CRE, CRA | R1 |
| | SRE, SRE(E&M), SRE(G), SRA, SRLA, SRQS, SRLS | R2 |
| | RE, RE(E&M), RE(G), RA, RLA, RQS, RLS, RCTO, RSIOW, RSCOW, RPSO, RPTO, RSIO | R3 |
| | ARE, ARE(E&M), ARE(G), ARA, ARLA, ARQS, ARLS, RIOW, RAIOW, RSFO, RFOI, RSSO, RCOW, RACOW, RSTO, RSO, RTO, RIO, REO, RAEO, RAO, RSCO, RCO | R4 |
| | RWSI, RWSII, RFOII, RACO, RACO(LR), RCA, RPSII, Resident Artisan, Resident Chainman, Resident Laboratory Assistant | R5 |
| Government Staff posted to the <i>Consultant</i> by the <i>Employer</i> under Section 4.11 of the RSS Management | CEG, GEG, LSG, SEG | R10 |

Handbook

**C2
(Cont'd)**

[Add or delete ranks and/or collective ranks as may be necessary to suit the need of the consultancy agreement by the managing department.]

- (E) The *RSS on-cost rates* shall be subject to adjustment in accordance with NEC Clause X1.

- (F) The *Consultant* shall prepare monthly forecasts of the estimated expenditure on reimbursement for such part of the *services* in relation to recruitment, employment and management of *RSS*, which will have been paid by the *Consultant* before the end of the following calendar month in accordance with sub-clause (C) of this clause and associated *RSS on-cost* in accordance with sub-clauses (D) and (E) of this clause. Within the first five working days of each calendar month, the *Consultant* shall submit the forecast and application for payment for such reimbursement and *RSS on-cost* one calendar month in advance to the *Employer's Agent* if appropriate. An explanation of the changes made since the previous forecast is submitted with each forecast. The *Consultant* shall correct any incorrectly estimated amount of reimbursement and *RSS on-cost* in a later application for payment but no interest will be paid on the difference between the incorrectly estimated amount and the correct amount. Applications for payment shall be processed in accordance with NEC Clauses 50 and 51.

A reason for withholding processing of any application for reimbursement and *RSS on-cost* is that more information is needed in order to assess the *Consultant's* submissions fully. A reason for not accepting any application for reimbursement and *RSS on-cost* is that the *Consultant's* submission does not comply with clause C1 or C2 of these *additional conditions of contract* or the *services* provided by the *Consultant* does not comply with the Scope where appropriate.

C2 (Cont'd) (G) The *Consultant* shall keep and submit the following records to the *Employer's Agent* in each payment application for the estimated expenditure on reimbursement and RSS on-cost in the following calendar month pursuant to sub-clause (F) of this clause:

- estimates and accounts of payments of such reimbursement and RSS on-cost;
- proof that the payments have been made for the last payment application; and
- other declarations and records as required in this clause and the Scope.

Section D – Dispute Resolution

| | | | |
|------------------|--|--------------------------------------|---|
| <p>D1</p> | <p>(A) If any Dispute shall arise between the Parties in connection with or arising out of this contract, either Party shall be entitled to refer the Dispute to the <i>Employer</i> and a partner or director of the <i>Consultant</i>, who shall meet within 21 days of such matter being referred to them.</p> <p>(B) If the Dispute cannot be resolved within 2 months of a meeting under sub-clause (A) of this clause or upon written agreement that the Dispute cannot be resolved, either Party may at any time thereafter request that the matter be referred to mediation in accordance with and subject to The Government of the Hong Kong Special Administrative Region Construction Mediation Rules (the Mediation Rules) or any modification thereof being in force at the date of such request.</p> <p>(C) If the matter cannot be resolved by mediation, or if either Party does not wish the matter to be referred to mediation then either Party may within the time specified herein require that the matter shall be referred to arbitration in accordance with and subject to the provisions of the Arbitration Ordinance and any such reference shall be deemed to be a submission to arbitration within the meaning of such Ordinance. Any such reference to arbitration shall be made within 90 days of either the refusal to mediate, or the failure of the mediation.</p> <p>(D) (i) Subject to paragraphs (ii) and (iii) of this sub-clause, the Domestic Arbitration Rules (2014) of the Hong Kong International Arbitration Centre (the Arbitration Rules) shall apply to any arbitration instituted in accordance with this clause.</p> <p>(ii) Notwithstanding any provision of the Arbitration Rules, the place of meetings and hearings in the arbitration shall be Hong Kong unless the Parties otherwise agree.</p> | <p>Settlement of Disputes</p> | <p>Modified from SCE “Settlement of disputes”</p> |
|------------------|--|--------------------------------------|---|

D1
(Cont'd)

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

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

- (a) are necessary for implementation or enforcement;
- (b) are required by the Parties' auditors or for some other legitimate business reason;
- (c) are required by any order of the courts of Hong Kong or other judicial tribunal;
- (d) are necessary for the making of claims against any third party or to defend a claim brought by any third party.

20.1(b) Notwithstanding Article 20.1(a) of the Arbitration Rules and subject to the following provisions, the *Employer* may disclose the outline of any Dispute with the *Consultant* and the outcome of the arbitration to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said Committee, the *Employer* shall inform the *Consultant*. Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the outcome of the arbitration without the written consent of the other Party but such consent shall not be unreasonably withheld. The other Party shall be deemed to have given his consent to disclosures on the expiry of the first 6 months from the date of the outcome of the arbitration. The other Party may, if he considers necessary to protect the sensitive nature of certain information relating to him, request the *Employer* to disclose such specified information to the

said Committee strictly on a confidential basis. If the *Employer* considers that there are legitimate grounds to accede to the other Party's request, the *Employer* shall convey the request to the said Committee for its consideration.

20.1(c) For the purpose of Articles 20.1(a) and 20.1(b) of the Arbitration Rules, the words “Parties”, “Dispute”, “*Employer*” and “*Consultant*” shall bear the same meanings as respectively assigned to them in this contract.

- D1** (E) All the provisions in Schedule 2 to the Arbitration
(Cont'd) Ordinance shall apply to any arbitration instituted in
accordance with this clause.
- (F) For the purposes of this clause, “Arbitration Ordinance” means the Arbitration Ordinance (Cap. 609) or any statutory modification thereof for the time being in force.

Appendix 1 – Sample Letter of Undertaking

To the Government of the Hong Kong Special Administrative Region

Dear Sirs,

Insert name of *Consultant*

Insert Contract number and details

Insert policy no. and name of insurer

LETTER OF UNDERTAKING

We hereby undertake that the above professional indemnity insurance policy effected pursuant to sub-clause (A) of clause B12 of the *additional conditions of contract* clause of the above contract complies with the terms of the said clause B12 of the *additional conditions of contract*.

Yours faithfully,

Yours faithfully
For and on behalf of (insert name of Insurer / Insurance Broker as applicable)

* Delete as appropriate

Appendix 3 – Sample Declaration Form by the *Consultant* on his compliance with the ethical commitments requirements (to be attached to the payment application submitted by the *Consultant*)

To: the *Employer*

Agreement No.:

Title:

In accordance with clause B19 of the *additional conditions of contract* of the above contract

(1) We confirm that we have complied with the following provisions and have ensured that our directors, employees, agents and Subconsultants are aware of the following provisions:

- (a) Prohibiting our directors, employees, agents and Subconsultants who are involved in this contract from offering, soliciting or accepting any advantage as defined in section 2 of the Prevention of Bribery Ordinance, Cap 201 when conducting business in connection with this contract ;
- (b) Taking all measures as necessary to protect any confidential/privileged information or data entrusted to us by or on behalf of the *Employer*, or any such or similar information generated or produced by us pursuant to this contract, from being divulged to a third party other than those allowed in this contract.

(2) We further confirm that we have ensured that our accountants, insurers and legal advisers are aware of the provisions requiring us taking all measures as necessary to protect any confidential/privileged information or data entrusted to us by or on behalf of the *Employer*, or any such or similar information generated or produced by us pursuant to this contract, from being divulged to a third party other than those allowed in this contract.

(Name of the *Consultant*)

(Name of the Signatory)

(Position of the Signatory)

(Date)

Appendix 4 – Sample Declaration Form by the *Consultant* on his compliance with the conflict of interest avoidance and debarring requirements (to be attached to the payment application submitted by the *Consultant*)

To: the *Employer*

Agreement No.:

Title:

In accordance with clause B21 of the *additional conditions of contract* of the above contract, we confirm and declare that we have complied with the provisions stated therein. We further confirm and declare that we have taken action to ensure that our associated companies, associates or associated persons, Subconsultants, employees and agents are aware of the provisions therein stipulated including the following:

- (a) our associated companies, associates or associated persons or any of our Subconsultants shall not, during the term of this contract and for * **【6】** months thereafter, undertake any services, tasks or jobs or do anything whatsoever for or on behalf of any third party (other than in the proper performance of this contract), which touches, concerns or affects the *services* or which may reasonably be seen to touch, concern or affect the *services*, except with the prior written agreement of the *Employer*;

* Amend as appropriate.

- (b) our associated companies, associates or associated persons, and any of our Subconsultants shall not,
 - (i) undertake or compete for the role of a contractor or supplier or otherwise be involved as a shareholder of the contractor or supplier, in a subsequent procurement of any services and/or goods arising out of or relating to this contract;
 - (ii) undertake any services for a contractor (including acting as a sub-contractor) or supplier in respect of a contract between that contractor or supplier and the *Employer* for which we are providing a service arising out of or relating to this contract;
 - (iii) undertake any services for, including without limitation provision of advice to, a bidder bidding for a contract arising out of or relating to this contract;

except with the prior written agreement of the *Employer*;

- (c) we are under an obligation to render advice or recommendations pursuant to this contract to the *Employer* on an impartial basis without giving favour to any particular product, services or equipment in which we have a commercial interest or to any third party with whom we have a commercial interest, including but not limited to those who engaged us in consulting services related to private works. We also have an obligation to notify the *Employer* immediately and in writing and keep the *Employer* notified of any actual, apparent, potential or perceived conflict we or our associated companies, associates or associated persons or any of our Subconsultants may have in, or any association or connection we or the aforesaid persons may have with, any of the services, products or equipment proposed or recommended by us under

this contract or any third party with whom we have a commercial interest. Each and every one of our directors, employees, agents and Subconsultants who are involved in this contract have given a binding undertaking to observe the aforesaid;

- (d) our directors, employees, agents and Subconsultants who are involved in this contract are required to declare in writing to us and keep us informed regularly any actual, apparent, or potential or perceived conflict between their personal/financial interests and their duties in connection with this contract, including all or any facts which may reasonably be considered to give rise to a situation which the financial interests of such persons, conflict or compete, or may conflict or compete, with our duties to the *Employer* under this contract. In the event that such conflict is disclosed in a declaration, we are under an obligation to forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict so disclosed; and

- (e) our directors and employees who are involved in this contract are prohibited from engaging in any work or employment other than in the performance of this contract with or without remuneration, which could create or potentially give rise to any actual, apparent, potential or perceived conflict between their personal/financial interests and their duties in connection with this contract. Our agents and Subconsultants are required to impose similar restriction on their directors and employees by way of a contractual provision.

(Name of the *Consultant*)

(Name of the Signatory)

(Position of the Signatory)

(Date)

Appendix 5 – Sample Declaration Form by the *Consultant* on his compliance with requirements on the submission of manpower input (to be attached to the manpower input submitted by the *Consultant*)

To: the *Employer's Agent*

Agreement No.:

Title:

In accordance with clause B27 of the *additional conditions of contract* of the above contract:

- (1) We confirm that the information regarding manpower input deployed and/or to be deployed for this contract as indicated in the manning schedule updated as at end of **【 month 】** is true to the best of our knowledge and belief and is adherence to the staffing proposal made at the tender stage (or as subsequently updated to suit the latest development of this contract).

- (2) We further confirm that we and any of our Subconsultants, including any staff employed in the performance of the *services*, are aware of clause B27 of the *additional conditions of contract*, the relevant part of the Scope, particularly the personal information collection statement concerned, and have given consent to the *Employer* to disclose to any parties for the purposes as stated in the Statement without further reference to us or any of our Subconsultants, including any staff employed.

(Name of the *Consultant*)

(Name of the Signatory)

(Position of the Signatory)

(Date)