

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*. In the contract :

Definitions

“Assistant Clerical Officer (Labour Relations)” means any person, or persons appointed from time to time by the *Project Manager* and notified in writing to the *Contractor* to act as the Assistant Clerical Officer (Labour Relations) for the purpose of the contract.

Modified from SCC65A and SDEV’s memo ref. (02YWL-01-2) in DEVB(W) 510/17/01

Project Offices to review to include this sub-clause where appropriate

“Change in Law” means any addition or amendment to any enactment, regulations, by-laws or rules listed in Appendix [*insert appropriate reference*] attached to these *additional conditions of contract*:

ETWB TC(W) No. 23/2004

Modified from SCC60(1)

- made on or after the date 10 days prior to the tender closing date; or
- made before the date 10 days prior to the tender closing date and the commencement date of which is only ascertainable on or after the date 10 days prior to the tender closing date and the contract does not expressly provide for the parties’ respective rights and obligations in relation to compliance with such addition or amendment upon its commencement.

A1
(Cont'd)

“Erratically priced” means the situation where an **item/activity* or certain **items/activities* in pricing documents submitted in accordance with NEC Clause 26, and Clauses C9 and C11 of these *additional conditions of contract* are priced or structured in such a way as to suggest significant and unjustified:

- (a) inconsistency, irregularity or non-uniformity as compared with **item/activity* or **items/activities* of the same or similar nature in the same pricing document or another pricing documents submitted by the *Contractor* for the contract; or
- (b) deviation from prevailing market prices in respect of the same or similar *item/activity* or *items/activities*.

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

GCC1(1)

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

GCC1(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.

Modified from SCC U2 at Annex A1 of SDEV’s memo ref. DEVB(Trg) 133/3(10) of 23.1.2017

“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 Articles of Agreement.

For efficacy of the contract

LAD(W)’s advice of 27.1.2014

“Particular Specification” means the “Particular Specification” forming Annex [*insert appropriate reference*] to the Scope.

Commonly adopted in NEC contracts

A1
(Cont'd)

“Site Workers” means the construction workers engaged for construction work on the Site who are registered under the Construction Workers Registration Ordinance (“CWRO”) (Cap. 583) and includes those drivers and truck drivers who are registered construction workers under the CWRO, whether or not registered for a trade division, and are not self-employed persons, employed by the *Contractor* or its subcontractor of all tiers including Specialist Subcontractors, for Providing the Works on the Site.

“SOP Provisions” means the Security of Payment Provisions in Appendix *[insert appropriate reference]* to these *additional conditions of contract*.

“SOP Clause” means a clause in the Security of Payment Provisions in Appendix *[insert appropriate reference]* to these *additional conditions of contract*.

“subcontractors” means all types of subcontractors, irrespective of tiers, *[including Specialist Subcontractors]**.

* Delete as appropriate

“Tender” means the *Contractor’s* tender for the contract.

“Tender” means the *Contractor’s* tender for the contract, including for the avoidance of doubt the technical resources and technical proposals submitted in accordance with General Conditions of Tender Clause *[insert appropriate reference]*.

“the Government”, “the Hong Kong Government” or “the Government of Hong Kong” mean “the Government of the Hong Kong Special Administrative Region”.

DEVB TC(W) No.
6/2021

Commonly adopted
in NEC contracts

The term
“Subcontractor”
under ECC
11.2(19) only cover
first tier of
subcontractors

GCC1(1)

To be used when
tenders are not
evaluated using a
marking scheme

GCC1(1) amended
by SCC54(14)

To be used when
tenders are
evaluated using a
marking scheme

SCC2(2)

A1
(Cont'd)

“utility undertaking” means any person, undertaking, company, organisation or government department and includes any office, division, sub-division, section, sub-section, unit or group within a government department which engages in or is so engaged in supplying or providing utilities (including electricity, lighting, traffic control, telecommunications, cable television, gas, water, drainage, sewerage and tramway) and any associated work and the supply or provision of which does not form part of the *works* under the contract, including the contractors and subcontractors of such person, undertaking, company, organisation or government department.

SCC2(1)

In these *additional conditions of contract*:

For efficacy of the contract

"Clause" means a clause of these *additional conditions of contract* unless indicated otherwise.

A2	(1)	The submissions on technical resources and technical proposals made by the <i>Contractor</i> in the tender shall form part of the Scope provided by the <i>Contractor</i> but shall be subject to the provisions of other contract documents. The <i>Contractor</i> shall, subject to sub-clauses <i>[insert appropriate reference]</i> of this Clause, Provide the Works in accordance with the said submissions.	Technical Resources and Technical Proposals	ETWB TC(W) No. 8/2004 Appendix C & SDEV's memo ref. DEVB(W)546/84/0 1 of 30.10.2009
	(2)	The <i>Contractor</i> shall provide the team structure and staff including <i>key persons</i> as submitted by the <i>Contractor</i> in its tender submissions on technical resources or necessarily inferred therefrom.		Modified from SCC54
	(3)*	The <i>Contractor</i> shall provide all Equipment including but not limited to those as submitted by the <i>Contractor</i> in its tender submissions on technical resources or necessarily inferred therefrom which are necessary or desirable for the satisfactory execution and timely Completion of the <i>works</i> .		To be used when tenders are evaluated using a marking scheme
	(3A)	If any Equipment classified as essential Equipment in accordance with <i>[insert appropriate reference]</i> of the Particular Specification is not identified in the <i>Contractor's</i> technical submission on technical resources, or if any Equipment classified as essential Equipment in accordance with <i>[insert appropriate reference]</i> of the Particular Specification proposed by the <i>Contractor</i> in its technical submission on technical resources does not meet the minimum requirements specified in <i>[insert appropriate reference]</i> of the Particular Specification, it shall propose to the <i>Project Manager</i> for acceptance a model or substitute model, as the case may be of such essential Equipment together with documentary evidence to demonstrate that such proposed essential Equipment meets the minimum requirements specified in <i>[insert appropriate reference]</i> of the Particular Specification. The <i>Project Manager</i> shall determine any savings of cost to the <i>Contractor</i> , if any, due to the aforesaid changes. The savings of cost to the <i>Contractor</i> as determined by the <i>Project Manager</i> shall be deducted from the Prices.		*A2(3) and (5) only for tenderers requiring submission of a proposal on Equipment which is to be assessed and marked.

- A2** (3B) If any *key person* is not identified in the *Contractor's* tender submissions on technical resources, or if any *key person* submitted by the *Contractor* in its tender submissions on technical resources does not meet the minimum qualification/experience requirements specified in the Scope, the *Contractor* shall submit the name, relevant qualifications and experience of a proposed person or substitute person, as the case may be, who meets the minimum qualification/experience requirements specified in the Scope to the *Project Manager* for acceptance within seven days of the Contract Date. The *Project Manager* shall determine any savings of cost to the *Contractor*, if any, due to the aforesaid changes. The savings of cost to the *Contractor* as determined by the *Project Manager* shall be deducted from the Prices.
- (Cont'd)
- (4) In the event the *Contractor* is unlikely to provide or maintain any of the team structure, staff including *key persons* submitted by the *Contractor* in its tender submissions on technical resources or necessarily inferred therefrom, it shall report to the *Project Manager* as soon as practicable and propose for the *Project Manager's* acceptance a substitute person having experience and qualification comparable with the person who is leaving the *Contractor's* team. The *Project Manager* shall determine any savings of cost to the *Contractor*, if any, due to the aforesaid changes. The savings of cost to the *Contractor* as determined by the *Project Manager* shall be deducted from the Prices.
- (5)* In the event the *Contractor* is unlikely to provide or maintain any Equipment submitted by the *Contractor* in its tender submissions on technical resources or necessarily inferred therefrom, it shall report to the *Project Manager* as soon as practicable and propose for the *Project Manager's* acceptance modifications or amendments to the tender submissions on technical resources. The *Project Manager* shall determine any savings of cost to the *Contractor*, if any, due to the aforesaid changes. The savings of cost to the *Contractor* as determined by the *Project Manager* shall be deducted from the Prices.

- A2** (6) If it is legally or physically impossible for the *Contractor* to execute the *works* in accordance with the technical proposals, the *Contractor* shall make necessary modifications or amendments to the technical proposals for the execution of the *works* and shall inform the *Project Manager* in writing. Any such modifications or amendments to the technical proposals shall conform to the Scope.
- (Cont'd)
- (7) If the *Contractor* shall decide not to execute the *works* in accordance with the technical proposals for any other reasons, the *Contractor* shall make necessary modifications or amendments to the technical proposals for the execution of the *works* and shall inform the *Project Manager* in writing. Any such modifications or amendments to the technical proposals shall conform to the Scope.
- (8) In the execution of the *works* in accordance with the technical proposals or the technical proposals modified or amended as provided in sub-clauses (6) or (7) of this Clause, the *Contractor* shall strictly comply with the contract to the satisfaction of the *Project Manager* and shall strictly comply with and adhere to the *Project Manager's* instructions on any matter relating to the technical proposals or the modified or amended technical proposals as provided in sub-clauses (6) or (7) of this Clause.
- (9) The *Contractor* shall within 21 days when so requested by the *Project Manager* give detailed information on the estimated cost of execution in accordance with the technical proposals and the cost of execution in accordance with the technical proposals modified or amended as provided in sub-clauses (6) or (7) of this Clause. The *Project Manager* shall determine the savings of cost to the *Contractor* arising from the modified or amended technical proposals referred to in sub-clause (6) or (7) of this Clause based on the information so provided by the *Contractor* and its professional knowledge and judgment. The savings of cost to the *Contractor* as determined by the *Project Manager* shall be deducted from the Prices.

- A2** (10) The *Contractor* shall not be entitled to, except and to the extent that the *Contractor* is in compliance with an instruction given by the *Project Manager* changing the Scope under NEC Clause 60.1(1) of the contract, any change to the Prices or the Completion Date for the execution of the *works* in a manner which differs from the tender submissions on technical resources or technical proposals (including the technical proposals modified or amended as provided in sub-clauses (6) or (7) of this Clause) or both.
- (Cont'd)
- (11) Not Used.
- (12) Any provision in the tender submissions on technical resources and technical proposals purporting to impose any obligation on the *Client*, the *Project Manager* or the *Supervisor* which is not an obligation of the *Client*, the *Project Manager* or the *Supervisor*, as the case may be, under the other documents forming part of the contract shall have no effect and shall not be binding on the *Client*, the *Project Manager* or the *Supervisor*, as the case may be.
- (13) Any provision in the tender submissions on technical resources and technical proposals purporting to confer any right or option on the *Contractor* which is not a right or option of the *Contractor* under the other documents forming part of the contract shall have no effect.
- (14) Not Used.
- (15) In the event of conflict between the tender submissions on technical resources and technical proposals made by the *Contractor* in the tender and any other document forming part of the contract, the tender submissions on technical resources and technical proposals shall prevail only in the case where such submissions impose higher requirements in terms of quality or quantity than those specified under or pursuant to the other documents forming part of the contract or impose requirements on the part of the *Contractor* more onerous than those specified under or pursuant to the other documents forming part of the contract and in all other cases the other document forming part of the contract shall prevail. For the avoidance of doubt, the *Contractor* Provides the Works in accordance with the provisions of this sub-clause shall not constitute a compensation event.

A3	(1) Neither the <i>Contractor</i> nor any of its employees, agents, associates, subcontractors of all tiers and consultants, and any other persons engaged in connection with the contract (collectively, “Related Persons” and each a “Related Person”) shall use or divulge any Confidential Information other than in the proper performance of the contract. The restrictions on disclosure contained in this Clause A3 shall not apply: (a) to a disclosure of any Confidential Information to a Related Person in circumstances where such disclosure is necessary for the proper performance of the <i>Contractor</i> ’s duties and obligations under the contract, provided that the <i>Contractor</i> has imposed on the Related Person an absolute and legally binding obligation to refrain from disclosing the Confidential Information to a third party; (b) to a disclosure of any Confidential Information already known to the recipient other than as a result of disclosure by the <i>Contractor</i> or a Related Person in breach of its duty of confidence under this Clause A3 or otherwise; (c) to a disclosure of any Confidential Information which is or becomes public knowledge other than as a result of disclosure by the <i>Contractor</i> or a Related Person in breach of its duty of confidence under this Clause A3 or otherwise; (d) to a disclosure of any Confidential Information in circumstances where such disclosure is required pursuant to any law, regulation, rule of any relevant stock exchange, or an order of a court or arbitral authority of a competent jurisdiction; or (e) to a disclosure of any Confidential Information with the prior written consent of the Government. (2) Any disclosure of Confidential Information to the <i>Contractor</i> or to any Related Person shall be in strict confidence, and on a “need to know” basis and shall extend only so far as may be necessary for the purpose of the contract.	Information not to be Divulged	ETWB TC(W) No. 3/2004 Modified from GCC8(2) and SCC50 SDEV’s memo ref. DEVB(W) 546/83/01 dated 8.6.2023
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- (3) The *Contractor* shall take all necessary measures (including but not limited to security measures, and contractual provisions contained in subcontracts of any tier or other relevant contracts where appropriate) to ensure that Confidential Information is not used or divulged by the *Contractor* and each Related Person other than in the proper performance of the contract.
- (4) The *Contractor* shall ensure that each Related Person is aware of and complies with the provisions of this Clause A3 and the Official Secrets Ordinance (Cap. 521).
- (5) If so requested by the *Client*, the *Contractor* shall –
 - (a) execute in favour of the *Client*, a separate confidentiality agreement on the terms and in the form prescribed by the *Client*; and
 - (b) procure a Related Person to execute in favour of the *Client* a separate confidentiality agreement on the terms and in the form prescribed by the *Client*.
- (6) The *Contractor* shall promptly notify the *Client* of any breach or suspected breach of this Clause A3 by the *Contractor* or any Related Person. The *Contractor* and each Related Person shall give the *Client*, its authorized users, assigns and successors-in-title all reasonable assistance in connection with any action or proceedings the *Client* or any of its authorized users, assigns and successors-in-title may take to pursue against any party a breach or suspected breach of this Clause A3.

- (7) The *Contractor* and each Related Person shall comply with the Personal Data (Privacy) Ordinance (Cap. 486) (“PDPO”). Neither the *Contractor* nor any Related Person shall use any personal data provided by the *Client*, the *Project Manager*, the *Supervisor* or a delegate of any of them (each a “Data Owner”) for any purpose other than that specified by the Data Owner or for the proper performance of the *Contractor*’s obligations under the contract. A Data Owner may, from time to time or prior to provision of any personal data, require the *Contractor* to demonstrate that adequate measures are in place to ensure compliance with the PDPO and that all personal data is protected against any inadvertent or unauthorised access, processing, erasure, loss and use. A Data Owner may prescribe restrictions on or conditions of use of the personal data, or instruct the *Contractor* to ensure security of the personal data. The *Contractor* shall comply, and shall procure that each Related Person will comply, with these restriction, conditions and instructions. Such compliance shall not constitute a compensation event in any case.
- (8) The provisions of this Clause A3 shall survive the Completion or termination of this contract (howsoever occasioned) and shall continue in full force and effect notwithstanding such Completion or termination.
- (9) Unless otherwise specified in the contract, the *Client*, the *Project Manager*, the *Supervisor* and a delegate of any of them may use any information provided by the *Contractor* under the contract but they shall not divulge such information except for the purpose of:
- (a) the contract;
 - (b) carrying out any repair, amendment, extension or other work connected with the *works*;
 - (c) complying with the *Client*’s obligations under the Code on Access to Information and as it may be amended from time to time; or
 - (d) promoting or publicising the *works*, including but not limited to publication in media and participation in competitions, symposiums and exhibitions.

- (10) Without prejudice to any other provision of the contract, the *Contractor* shall indemnify and keep the *Client* and its authorised users, assigns and successors-in-title fully and effectively indemnified against any and all proceedings, actions, claims, demands, losses, liabilities, damages, costs, legal costs, professional and other expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses) of any nature whatsoever which the *Client* or any of its authorised users, assigns and successors-in-title may suffer, sustain or incur (whether or not directly or consequentially) as a result of or in relation to any breach of confidence (whether under the contract or otherwise) or this Clause A3 by the *Contractor* or a Related Person.
- (11) In this Clause A3, “Confidential Information” means any information, drawings, specifications, documents, contracts, design materials and data (including without limitation any personal particulars, records and personal data (as defined in the PDPO) and materials of any nature (in or on whatever media)) accessible by the *Contractor* under the contract or provided by the *Client*, the *Project Manager*, the *Supervisor* or a delegate of any of them for the purposes of or in the course of performing the contract.

A4	(1) Notwithstanding sub-clause (9) of Clause [A3] ¹ of these <i>additional conditions of contract</i> , but subject to the following provisions, the <i>Client</i> may disclose the outline of any dispute and the terms of settlement for which a settlement agreement has been reached with the <i>Contractor</i> or the outcome of the arbitration or any other means of resolution of dispute to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said Committee, the <i>Client</i> shall inform the <i>Contractor</i> . 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 <i>Contractor</i> but such consent shall not be unreasonably withheld. The <i>Contractor</i> shall be deemed to have given its 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 <i>Contractor</i> may, if it considers necessary to protect the sensitive nature of certain information relating to it, request the <i>Client</i> to disclose such specified information to the said Committee strictly on a confidential basis. If the <i>Client</i> considers that there are legitimate grounds to accede to the <i>Contractor's</i> request, the <i>Client</i> shall convey the request to the said Committee for its consideration.	Disclosure of Dispute or Settlement Terms by Client	ETWB TC(W) No. 29/2003 Modified from SCC49
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¹ Insert appropriate reference which refers to Clause A3 of this document regarding “Information not to be Divulged”.

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| A5 | <p>(1) Subject to sub-clause (3) below, any contract rates or related information provided by the <i>Contractor</i> in connection with the contract may be used by the <i>Client</i> for the sole purpose of cost estimation or cost analysis for its other works which may or may not be connected with the contract.</p> <p>(2) Subject to sub-clause (3) below, the <i>Client</i> may also furnish such information to any third party engaged by the <i>Client</i> for the sole purpose of cost estimation or cost analysis provided that it shall obtain from such third party an undertaking to maintain the confidentiality of the same and not to use it for any other purpose.</p> <p>(3) In connection with the use and/or furnishing of the contract rates and related information under sub-clause (1) and/or sub-clause (2) above, the <i>Client</i> shall ensure that the contract number, title and the <i>Contractor's</i> name are not used or furnished.</p> | <p>Contract Information for Cost Estimation or Cost Analysis for Client's Other Works</p> | <p>WBTC No. 3/2002
Modified from
SCC40</p> |
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A6	(1)	Nothing in the 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 the contract.	Contracts (Rights of Third Parties) Ordinance	SDEV's memo ref. DEVB(W) 505/10/01 dated 28.8.2015
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- A7**
- (1) Notwithstanding the inclusion of contingency sums, provisional sums and forecast total of the Prices in the Grand Summary of the **bill of quantities/*activity schedule*, the contingency sums, provisional sums and forecast total of the Prices shall not form part of the contract.
- (2) The contingency sums and provisional sums are allowed as contingencies for the purpose of internal administration of the *Client* under the Stores and Procurement Regulations only. The forecast total of the Prices is included for tender evaluation purpose only and shall not affect the tendered total of the Prices which shall remain contractually binding. The tenderer shall not rely on any information supplied to it on the contingency sums, provisional sums or forecast total of the Prices as estimated changes to the Prices due to the effect of compensation events or other estimated payment which shall be assessed in accordance with the relevant contract terms.
- Contingency sums, provisional sums and forecast total of the Prices**

- A8**
- (1) If the *Contractor* failed to submit the Estimates for Tender Price Index (“ETPI”) in accordance with Special Conditions of Tender Clause SCT [20][#] with its tender, the *Contractor* shall, upon request by the *Project Manager*, submit within 14 days from the date of the request a ETPI fully priced as to each of the items, extended, cast and totaled as appropriate. The ETPI should be in the form as set out in **Appendix [][#]** to Special Conditions of Tender. The Standard Method of Measurement for Civil Engineering Works 1992 Edition as amended by its subsequent corrigenda and as further amended in accordance with the General Preambles and the Particular Preambles in **Appendix [][#]** to Special Conditions of Tender apply to the ETPI. Such Standard Method of Measurement, General Preambles and Particular Preambles shall only be used for the preparation of the ETPI and shall not form part of the contract.
- (2) The *Contractor* shall ensure its ETPI contains a summary (“Summary of ETPI”) at the end stating the total amount of all bills, which shall be the same as the tendered total of the Prices as stated in the “Grand Summary of the *activity schedule*”.
- (3) If errors and/or omissions are found in the ETPI, the *Contractor* shall, upon request by the *Project Manager*, submit further information and clarification related to the ETPI within the time for the communication as required in this contract or within such further time proposed by the *Contractor* and accepted by the *Project Manager*.
- (4) The ETPI is compiled by the *Client* for the purposes of (a) cost estimation and cost analysis for its works projects which may or may not be connected with this contract; and/or (b) compiling price indices (including tender price indices) for use by the Government and the public [(a) and (b) are collectively referred to as the “**stated purposes**” in Clause [A8][#] of these *additional conditions of contract*]. The *Contractor* agrees that all information provided by the *Contractor* in the ETPI could be used by the *Client* for the stated purposes.
- Estimates for Tender Price Index (ETPI)**
- Only applicable for works tenders of Group C contracts issued under **CEDD, HyD, WSD and DSD** and adopting ECC Options A or C, where the tender price information are required for compilation of the CEWTPI.
- [#] Insert as appropriate

- (5) The *Contractor* further agrees that the *Client* may furnish all information provided by the *Contractor* in the ETPI to any third party for the stated purposes after obtaining from such third party an undertaking to keep such information confidential and not to use the same for any purpose other than the stated purposes. However, the contract number, the contract title and the *Contractor's* name (if any) provided in the ETPI will not be disclosed to such third party.

- (6) The ETPI and anything stated therein shall **NOT** form part of this contract and shall **NOT** be taken into account in the performance of this contract except for Clause [A8][#] of these *additional conditions of contract*. Regardless of any other provisions in this contract, the *Contractor* shall not make any claim for payment or otherwise against the *Client* on the basis of the ETPI or anything stated therein.

Section B – Powers and Duties of *Client*, *Project Manager* and *Supervisor*

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| B1 | (1) | Before carrying out any of its duties or exercising any of its powers under the contract, the <i>Project Manager</i> may be required under the terms of its appointment by the <i>Client</i> /under the internal rules of the <i>Client</i> to obtain confirmation that the <i>Client</i> has no objection to the <i>Project Manager</i> 's proposed course of action and, in the event of an objection, to act in accordance with the <i>Client</i> 's direction. | <i>Project Manager</i>'s powers | ETWB TC(W) No. 6/2010

Modified from GCC2 and SCC73(2) |
| | (2) | The <i>Project Manager</i> is required under the terms of its appointment by the <i>Client</i> /under the internal rules of the <i>Client</i> to obtain confirmation of no objection from the <i>Client</i> and, in the event of an objection, to act in accordance with the <i>Client</i> 's direction before permitting the <i>Contractor</i> to introduce an extra tier of subcontracting in accordance with Clause [C7] ¹ of these <i>additional conditions of contract</i> and NEC Clause 26. | | |
| | (3) | The <i>Project Manager</i> is required under the terms of its appointment by the <i>Client</i> /under the internal rules of the <i>Client</i> to obtain confirmation of no objection from the <i>Client</i> and, in the event of an objection, to act in accordance with the <i>Client</i> 's direction before giving any instruction changing the Scope or taking any other action which may commit the <i>Client</i> to an increase or a decrease in the Prices under the contract by a sum estimated to exceed HK\$1,000,000. This requirement shall not be applicable where the instruction changing the Scope or other action is considered by the <i>Project Manager</i> to be essential on grounds of safety or other emergency in circumstances when it is impracticable to refer the matter to the <i>Client</i> beforehand. | | |
| | (4) | The <i>Project Manager</i> may, subject to any prior contrary instructions given by the <i>Client</i> to the <i>Project Manager</i> , give any instruction changing the Scope or taking any other action which may commit the <i>Client</i> to an increase or a decrease in the Prices under the contract without the need to obtain confirmation of no objection from the <i>Client</i> if the value of such instruction or commitment is estimated not to exceed HK\$1,000,000. | | |

- B1** (4A) The *Project Manager* is required under the terms of its appointment by the *Client*/under the internal rules of the *Client* to obtain confirmation of no objection from the *Client* and, in the event of an objection, to act in accordance with the *Client*'s direction before accepting alternative disposal grounds proposed by the *Contractor* in accordance with [insert appropriate reference] of the Particular Specification.
- (4B) The *Project Manager* is required under the terms of its appointment by the *Client*/under the internal rules of the *Client* to obtain confirmation of no objection from the *Client* and, in the event of an objection, to act in accordance with the *Client*'s direction before issuing instruction on implementation of the Section Subject to Excision in accordance with Clause [B5]² of these *additional conditions of contract*.
- (5) The *Contractor*'s rights under the contract shall not be prejudiced in any way by any failure on the part of the *Project Manager* to comply with the requirements set out in this Clause or any other requirements of its appointment by the *Client*.
- (6) Except as expressly stated in the contract, the *Project Manager* shall have no power to amend the terms and conditions of the contract nor to relieve the *Contractor* of any of its obligations under the contract.

¹ Insert appropriate reference which refers to Clause C7 of this document regarding "Limiting Tiers of Subcontracting".

² Insert appropriate reference which refers to Clause B5 of this document regarding "Section subject to Excision".

B2 All damages (including delay damages), costs, charges, expenses, debts or sums for which the *Contractor* is liable to the *Client* under any provision of the contract may be deducted by the *Client* from monies due to the *Contractor* under the contract including amounts retained and the *Client* shall have the power to recover any balance not so deducted from monies due to the *Contractor* under any other contract between the *Client* and the *Contractor*.

Recovery of Money Due to Client Modified from GCC83

All damages (including delay damages), costs, charges, expenses, debts or sums for which the *Contractor* is liable to the *Client* under any provision of any other contract between the *Contractor* and the *Client* may be deducted by the *Client* from monies due to the *Contractor* under the contract, including amounts retained.

B3	The <i>Project Manager</i> may give an instruction after Completion to the <i>Contractor</i> which changes the Scope in respect of work not done at Completion or Defects before the Defects Certificate is issued if such a change is in the opinion of the <i>Project Manager</i> desirable for or to achieve the satisfactory Completion and functioning of the <i>works</i> .	Changing Scope before issue of Defects Certificate after Completion	S for W's memo ref. WB(W) 209/32/110 dated 15.5.2001 & 17.5.2001 Modified from SCC36(2)
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- B4**
- (1) Except as provided in sub-clause (2) of this Clause, the *Client* shall not terminate under NEC Clause X11.1 for convenience in order to Provide the Works itself or to arrange for another contractor to Provide the Works.
- (2) The *Client* is entitled to terminate under NEC Clause X11.1 for convenience and thereafter to Provide the Works itself or to arrange for another contractor to Provide the Works if the *Project Manager* shall certify in writing to the *Client* that in its opinion Completion will be delayed by a period of not less than one year due to interfacing problems or programme slippages of associated works outside the scope of the contract.
- (3) The *Contractor* shall, in any subcontract or other contract made by it in connection with or for the purposes of the contract, reserve the power to terminate such subcontract or other contract in the event of the termination by the *Client* for convenience upon terms similar to the terms of NEC Clause X11. The *Contractor* shall not be entitled to compensation for any expenditure, liability, and/or loss resulting from non-compliance with this requirement.
- (4) Payment to the *Contractor* under NEC Clause 53.1 shall be in full and final settlement of all claims, costs and charges incurred by the *Contractor* as a result of the contract.
- Right of *Client* to Terminate for Convenience** ETWB TCW No. 23/2004
Modified from SCC59

B5	<p>(1) “Section Subject to Excision” means a <i>section</i> of the <i>works</i> which is identified as such with details in the Scope, but the implementation of which has not been decided upon by the <i>Client</i> at the time the tender documents are issued and which shall only be implemented upon a subsequent decision of the <i>Client</i>, followed by a written instruction from the <i>Project Manager</i>.</p> <p>(2) The <i>Contractor</i> shall allow for the work within the Section Subject to Excision in its programme submitted in accordance with NEC Clause 31.</p> <p>(3) The <i>Project Manager</i> may, within the time stated in the Contract Data for ordering the Section Subject to Excision (commencing from and including the <i>starting date</i>), instruct the <i>Contractor</i> to proceed with the work within that <i>section</i>.</p> <p>(4) The <i>Contractor</i> shall not execute the work within the Section Subject to Excision without the <i>Project Manager</i>’s instruction in writing in accordance with sub-clause (3) of this Clause, but upon receipt of the instruction:</p> <p style="padding-left: 40px;">(a) the <i>Contractor</i> shall execute and complete that work within the Section Subject to Excision on or before the <i>completion date</i> for that <i>section</i> as stated in the Contract Data or such Completion Date as changed in accordance with the contract; and</p> <p style="padding-left: 40px;">(b) the contract shall thereafter be construed in every way as if work within the Section Subject to Excision had at all times formed part of the <i>works</i>.</p> <p>(5) In the event that the <i>Project Manager</i> does not issue an instruction in accordance with sub-clause (3) of this Clause:</p> <p style="padding-left: 40px;">(a) the <i>Contractor</i> shall not thereafter be obliged to execute and complete the work within the Section Subject to Excision;</p> <p style="padding-left: 40px;">(b) this shall not constitute a compensation event and for avoidance of doubt, the <i>Contractor</i> shall not be entitled to any payment or other compensation or relief of or attributable to the work within the Section Subject to Excision;</p>	<p>Section Subject to Excision</p> <p>LWBTC No. 6/89 and SDEV’s memo ref. (02B2H-01-5) in DEVB(W) 510/10/01 dated 9.3.2011</p> <p>Modified from SCC7</p> <p>Optional for contracts with <i>section</i> subject to excision</p>
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B5
(Cont'd)

- (c) the Prices shall be reduced by the total of *the lump sum prices for each of the activities on the Activity Schedule [for Options A and C] / *the lump sums and the amounts obtained by multiplying the rates by the quantities for the items in the Bill of Quantities [for Options B and D] for the work within the Section Subject to Excision;
- (d) the contract shall thereafter be construed in every way as if the work within the Section Subject to Excision had not at any time formed part of the contract and all references thereto shall have no effect;
- (e) the *Contractor* shall review the programme submitted in accordance with NEC Clause 31 and, where appropriate, submit a revised programme to the *Project Manager* in accordance with NEC Clause 32; and
- (f) the *Contractor* shall review each of the other documents submitted in accordance with the provisions of the contract and, where appropriate, submit an amended or varied version of the same to the *Project Manager*.

* Delete as appropriate.

Section C – Assignment and Subcontracting

C1	Not Used.	Relocated to the Standard Amendment to ECC4 Core clause 28.1.
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- C2**
- (1) The *Contractor* shall not subcontract the whole of the *works*. The *Contractor* shall be permitted, unless expressly prohibited by the contract, to subcontract part of the *works*, either on the basis of the provision by the subcontractor of labour and materials or of the provision of labour.
- (2) The *Contractor* may subcontract a part of the *works* on the basis of provision of appliances or things required to Provide the Works but not including materials or other things intended to form or forming part of the *works*, provided that such subcontracting is not expressly prohibited by the *Project Manager* in writing within a period of 14 days from receipt by the *Project Manager* of a request in writing from the *Contractor*.
- (3) Notwithstanding that the contract has not prohibited subcontracting under sub-clause (1) of this Clause and the *Project Manager* has not prohibited subcontracting, the *Project Manager*, if in its opinion it considers it necessary, has full power to order the removal of any subcontractor from the Site and/or Providing the Works, which power shall not be exercised unreasonably.
- (4) It shall be the duty of the *Contractor* if so required by the *Project Manager* to furnish the *Project Manager* with full particulars of any subcontractor employed or to be employed on the *works*.
- Subcontracting** Modified from GCC4

- C3** (1) If the *Contractor* is not included in the “List of Approved Suppliers of Materials and Specialist Contractors for Public Works” (“the Approved Specialist List”) maintained by the *Client* for:
- [Please list the type(s) of materials and specialist work and the Category(ies), Group(s), Class(es) and status as appropriate]*
- or the “List of Approved Contractors for Public Works” maintained by the *Client* for:
- [Please list the Category(ies), Group(s) and status as appropriate]*
- then it shall, subject to Clauses [C4, C5, C6 and C9]¹ and NEC Clause 26, enter into written subcontract(s) with listed contractor(s), in the relevant Group(s), Category(ies) and, where appropriate, Class(es) and status, for the execution of the respective part(s) of the *works*. Provided that the *Contractor* shall not without the written consent of the *Project Manager* enter into a subcontract with a listed contractor who is then suspended from tendering (whether by way of mandatory or voluntary suspension) in respect of the work in the relevant Group, Category and, where appropriate, Class and status.
- In relation to any part of the *works* listed above in this sub-clause (1), “listed contractor” is a contractor included on the “List of Approved Suppliers of Materials and Specialist Contractors for Public Works” or “List of Approved Contractors for Public Works” as the case may be.
- (2) The *Contractor* shall notify the *Project Manager* in writing of the engagement of a listed contractor within 7 days of the commencement date of the relevant subcontract.

Specialist Subcontractors

S for W’s memos ref. WB(W) 209/32/110 dated 23.3.2001 and 2.5.2001

Modified from SCC14A, 14B & 14C

Optional for contracts requiring Specialist Subcontractors

¹ Insert appropriate reference which refers to Clauses C4, C5 and C6 of this document regarding “ISO 9000 Certification for Subcontractor”, “Subcontractor Management Plan” and “Registered Specialist Trade Contractors Scheme” for all main Options and Clause C9 of this document regarding “Tendering requirements for subcontracting” for Options C and D.

- C4**
- (1) The listed contractor to be engaged in accordance with Clause [C3]¹ of these *additional conditions of contract* for [specify the relevant categories and/or groups of works] shall either:
- ISO 9000 Certification for Subcontractor**
- WBTC No. 13/2001,
- (a) have obtained an ISO 9001:2015 certificate acceptable to the *Client* with the scope of certification acceptable to the *Project Manager*; or
- SDEV's memo ref. DEVB(W) 520/83/01 dated 4.4.2018.
- (b) (i) have obtained a confirmation from a certification body acceptable to the *Client*, stating that a full review of the Quality Manual of its Hong Kong office has been carried out in Hong Kong and such Quality Manual has been found to be in conformity with ISO 9000 the requirements of the ISO 9001:2015; and
- Modified from SCC29
- (ii) submit an undertaking to the *Project Manager* that within three months of the execution of the subcontract, it would book with the certification body the date of audit ISO 9001:2015 certification, with detailed documented quality system procedures ready at the time of booking.
- Optional to be used with Clause C3
- (2) (a) If the works specified in sub-clause (1) of this Clause are to be carried out by the *Contractor* itself, in which case the *Contractor* must be listed in the relevant category and/or group, it shall within three months of the acceptance of tender, book with a certification body acceptable to the *Client* the date of audit for the ISO 9001:2015 certification, with detailed documented quality system procedures ready at the time of booking. If the respective works are to be carried out through a subcontract by a listed contractor, then the *Contractor* shall procure that the listed contractor shall carry out such booking within three months of execution of the subcontract.
- (b) Notwithstanding any other provisions in the contract, compliance with sub-clause (2)(a) of this Clause shall be a condition precedent to the *Contractor's* entitlement to any payment, or any further payment, as the case may be, for the works specified in sub-clause (1) of this Clause.

C4
(Cont'd)

- (c) Sub-clauses (2)(a) and (2)(b) of this Clause are not applicable if the *Contractor* has already obtained ISO 9001:2015 certification on or before the acceptance of the tender or, as the case may be, the listed contractor has already obtained the ISO 9001:2015 certification on or before the date of execution of the subcontract.

¹ Insert appropriate reference which refers to Clause C3 of this document regarding “Specialist Subcontractors”.

- C5**
- (1) The *Contractor* shall within 30 days of the Contract Date submit a Subcontractor Management Plan (SMP) to the *Project Manager* for information and comments, if any.
- (2) The *Contractor* shall then submit quarterly the updated SMP, until the issuance of the certificate of Completion or where there is more than one such certificate, the issuance of the last certificate of Completion, to the *Project Manager* for information and comments, if any. Should there be any major changes in the *Contractor*'s subcontracting arrangement during the period before the next quarterly reporting, the *Contractor* shall notify immediately such changes to the *Project Manager* in writing. The quarterly updated SMP required under this sub-clause (2) shall be submitted within one month from each quarterly period. For the avoidance of doubt, the first quarterly period shall commence from the date of submission of the SMP by the *Contractor* pursuant to sub-clause (1). Any interim notification of changes by the *Contractor* shall not affect its obligation to submit the quarterly updated SMP. In case there is no change to the previous SMP, the *Contractor* shall declare such status in writing instead of submitting the same SMP again.
- (3) The SMP submitted under sub-clauses (1) and (2) of this Clause shall contain detailed information as required by the Guidelines on Scope and Contents of the Subcontractor Management Plan at Appendix [insert appropriate reference] to these additional conditions of contract.
- (4) The *Project Manager* may upon receipt of the SMP comment on the SMP and notify the *Contractor* of such comments in writing. If the *Project Manager* is of the opinion that the SMP submitted under sub-clauses (1) and (2) of this Clause does not meet the requirements of the contract, the *Project Manager* may, by written notice, require the *Contractor* to revise or update the SMP and the *Contractor* shall comply with that requirement within 14 days of the date of notice. No acceptance of the SMP is required from the *Project Manager*.
- (5) Subject to the provisions of other *additional conditions of contract*, the *Contractor* shall ensure that its Subcontractors shall not subcontract the whole of the works subcontracted to them.
- Subcontractor Management Plan** ETWB TCW No. 47/2002 as modified by "Enhancement Measures for Subcontractor Management Plan (SMP)" in SDEV's memo ref. () in DEVB(W) 109/11/01 Pt. 9 dated 19 Dec 2008
- Modified from SCC44
- SDEV's memo ref. DEVB(W) 510/94/02 dated 6.9.2023

- C5** (6) The *Contractor* shall employ its own staff to manage and supervise its Subcontractors.
- (Cont'd)** (7) The *Contractor* shall, upon written request by the *Project Manager* (which may be issued by the *Project Manager* from time to time or at any time), produce to the *Project Manager* documentary proof to demonstrate to the satisfaction of the *Project Manager* that the *Contractor* has complied with all the provisions in the latest SMP submitted under sub-clauses (1) and (2) of this Clause. Such documentary proof includes, but is not limited to, documents of subcontracts, reports from Subcontractors on their further subcontracting arrangement and daily attendance records of site workers. For the purpose of determining the extent of documentary proof, the *Project Manager* shall make reference to the guidelines on documentary proof to demonstrate the compliance of the provisions in the SMP at Appendix *[insert appropriate reference]* to these *additional conditions of contract*. The *Project Manager* may make as many separate written requests as it thinks fit. The provisions of this sub-clause shall be without prejudice to sub-clause (4) of Clause [C2]¹ of these *additional conditions of contract*.

¹ Insert appropriate reference which refers to Clause C2 of this document regarding “Subcontracting”.

C6	(1)	<p>For the purpose of this Clause, the following words and expressions shall have the meaning hereby assigned to them:</p> <p>“RSTCS¹” means the Registered Specialist Trade Contractors Scheme managed by the Construction Industry Council and as referred to in the Rules and Procedures applicable to the aforesaid Registered Specialist Trade Contractors Scheme.</p> <p>“Group 1”, “Group 1 (Advanced)” and “Group 2” mean the classification of contractors into Group 1, Group 1 (Advanced) and Group 2 under each trade of the Register of Specialist Trade Contractors.</p> <p>[“Gondola (Permanent)” and “Gondola (Temporary)” mean the trade of “gondola (permanent)” and “gondola (temporary)” respectively under the RSTCS as promulgated by the Construction Industry Council from time to time.]³</p> <p>[“Levelling and Setting Out” means the trade of “levelling and setting out” under the RSTCS as promulgated by the Construction Industry Council from time to time.]⁴</p> <p>[“Building Maintenance” and “Interior Fitting-out” mean the trade of “building maintenance” and “interior fitting-out” respectively under the RSTCS as promulgated by the Construction Industry Council from time to time.]⁵</p>	<p>Engagement of Subcontractors who are registered under the respective trades and groups available in the Registered Specialist Trade Contractors Scheme (RSTCS)</p>	<p>WBTC No. 13/2004</p> <p>SDEV’s memo ref. DEVB(W) 510/94/02 dated 6.9.2023</p> <p>Modified from SCC at Annex A of the above memo (which supersedes SCC 57)</p>
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C6 (2)
(Cont'd)

Where the *Contractor* is to subcontract part of the *works*, performance of which involves trades available in the RSTCS, the *Contractor* shall only engage, for the purposes of execution of such part of the *works*, a Subcontractor who has satisfied all of the following criteria:

- (i) the Subcontractor is the subcontractor stated in the *Contractor's* latest updated submission of the Subcontractor Management Plan;
- (ii) the Subcontractor has completed registration under the relevant trades available in the RSTCS before the commencement of the work under the relevant subcontracts; and
- (iii) if the Subcontractor is registered under a trade^[5], except [⁴[³ Gondola (Permanent) and Gondola (Temporary),]³ Levelling and Setting Out,⁴ Building Maintenance and Interior Fitting-out,⁵ in the Register of Specialist Trade Contractors, and if the value of relevant subcontract exceeds the tender limit of Group 1, the Subcontractor has been admitted into Group 1(Advanced) or Group 2, and if the value of relevant subcontract exceeds the tender limit of Group 1 (Advanced), the Subcontractor has been admitted into Group 2, before the commencement of the work under the relevant subcontract.

The *Contractor* shall not engage a Subcontractor who is suspended or in the process of an appeal against his suspension from registration in the RSTCS unless the suspension is lifted before the commencement of the work under the relevant subcontracts. The foregoing shall also apply to the *Contractor's* engagement of Specialist Subcontractors in Clause [C3]² of these *additional conditions of contract*.

C6 (3)
(Cont'd)

The *Contractor* shall ensure that where any part of the part of the *works* subcontracted to a Subcontractor engaged under sub-clause (2) performance of which involves trades available in the RSTCS is further subcontracted (irrespective of any tier), only subcontractors (irrespective of any tier) who have satisfied all of the following criteria are engaged for the purposes of execution of such part of the part of the *works*:

- (i) the Subcontractor is the subcontractor stated in the *Contractor's* latest updated submission of the Subcontractor Management Plan;
- (ii) the Subcontractor has completed registration under the relevant trades available in the RSTCS before the commencement of the work under the relevant further subcontracts; and
- (iii) if the Subcontractor is registered under a trade^[5], except [⁴[³ Gondola (Permanent) and Gondola (Temporary),]³ Levelling and Setting Out,⁴ Building Maintenance and Interior Fitting-out,⁵ in the Register of Specialist Trade Contractors, and if the value of relevant subcontract exceeds the tender limit of Group 1, the Subcontractor has been admitted into Group 1(Advanced) or Group 2, and if the value of relevant subcontract exceeds the tender limit of Group 1 (Advanced), the Subcontractor has been admitted into Group 2, before the commencement of the work under the relevant subcontract

The *Contractor* shall also ensure that a Subcontractor (irrespective of any tier) who is suspended or in the process of an appeal against his suspension from registration in the RSTCS shall not be engaged for the aforesaid further subcontracting (irrespective of any tier) unless the suspension is lifted before the commencement of the work under the relevant further subcontracts.

**C6
(Cont'd)**

Internal Notes:

- # Insert appropriate reference.
1. Upon the launch of the RSTCS by the CIC on 1 April 2019, seven trades, viz. (1) Concreting; (2) Concreting Formwork; (3) Curtain Wall; (4) Demolition; (5) Erection of Concrete Precast Component; (6) Reinforcement Bar Fixing; and (7) Scaffolding are included under the Register of Specialist Trade Contractors. One more trade, i.e. (8) Plastering, has been included since 1 January 2021. Two more trades, i.e. (9) Suspended Ceiling and (10) Tower Crane (Erecting, Dismantling, Altering Height), have been included since 1 April 2022. One more trade, i.e. (11) Building Drainage Installation, has been included since 1 September 2022. Three more trade, i.e. (12) Truss Out Scaffolding, (13) Gondola (Permanent) and (14) Gondola (Temporary), have been included since 1 January 2023. One more trade, i.e. (15) Levelling and Setting Out, has been included since 1 March 2023. With effect from 1 October 2023, two new trades, i.e. (16) Building Maintenance and (17) Interior Fitting-out, will be added to the Register of Specialist Trade Contractors.
 2. Insert appropriate reference which refers to Clause C3 of Library of Standard Additional Conditions of Contract for NEC ECC regarding “Specialist Subcontractors”.
 3. The words in square brackets should be deleted for contracts for which tenders will be invited on or after 1 October 2023, i.e. the tender limits of Group 1 and Group 2 should be observed for all trades including Gondola (Permanent) and Gondola (Temporary), except Levelling and Setting Out, Building Maintenance, and Interior Fitting-out. (SDEV’s memo ref. DEVB(W) 510/94/02 dated 1-12-2022 refers)
 4. The words in square brackets should be deleted for contracts for which tenders will be invited on or after 1 December 2023, i.e. the tender limits of Group 1 and Group 2 should be observed for all trades including Levelling and Setting Out, Building Maintenance, and Interior Fitting-out. (SDEV’s memo ref. DEVB(W) 510/94/02 dated 1-2-2023 refers)

5. The words in square brackets should be deleted for contracts for which tenders will be invited on or after 1 July 2024, i.e. the tender limits of Group 1, Group 1 (Advanced) and Group 2 should be observed for all trades including Building Maintenance, and Interior Fitting-out. (SDEV's memo ref. DEVB(W) 510/94/02 dated 6-9-2023 refers)

- C7**
- (1) For the purpose of this Clause, the first tier of subcontracting means the contracts between the *Contractor* and its subcontractors. The second tier means the subcontracts between any of the subcontractors of the first tier and their subcontractors. The foregoing shall apply with necessary modifications to subsequent tiers of subcontracting.
- (2) Notwithstanding Clauses [C2 to C11]¹ of these *additional conditions of contract* and NEC Clause 26 on subcontracting and subject to sub-clause (3) of this Clause, the subcontracting of any part of the *works* by the *Contractor* is limited as follows:
- (a) subcontracting of any part of the *works* requiring entry of human beings into confined space that forms part of a sewerage or drainage system [or any part of the *works* involving [state clearly the project-specific high-risk operations(s)]²]* is limited to the first tier of subcontracting; and
 - (b) subcontracting of any part of the *works* not falling under sub-clause (2)(a) above is limited to two tiers (i.e. the first tier and second tier) of subcontracting.
- (3)
- (a) The *Contractor* may submit a proposal to the *Project Manager* for an extra tier of subcontracting for any part of the *works* which has been subcontracted in compliance with the limit in sub-clauses (2)(a) or (2)(b), whichever is applicable, of this Clause and with other provisions of this contract.
 - (b) The *Project Manager* is not obliged to consider the *Contractor's* proposal for an extra tier of subcontracting unless the proposal is submitted in writing to the *Project Manager* at least 14 days before the subcontractor of the relevant tier of subcontracting enters into any subcontract for the extra tier of subcontracting and the proposal is accompanied by an explanation with supporting evidence on the need for the extra tier of subcontracting.
- Limiting Tiers of Subcontracting** SDEV's memo ref. DEVB(W) 510/17/01 dated 19.4.2021

**C7
(Cont'd)**

- (c) A proposal which has been made in strict compliance with sub-clause (3)(b) above is taken to have been accepted by the *Project Manager* if acceptance is not expressly withheld by the *Project Manager* in writing within 14 days from the date of receipt by the *Project Manager* of the *Contractor's* proposal.
- (d) The withholding of acceptance of the *Contractor's* proposal for any reason by the *Project Manager* does not constitute a compensation event nor does it relieve the *Contractor* from any liability or obligation under this contract.
- (4) The *Contractor* complies with and ensures that all subcontractors (irrespective of tier) comply with the provisions of this Clause. If the *Contractor* or any of the subcontractors (irrespective of tier) fails to comply with the provisions of this Clause, the *Project Manager* has, without prejudice to the generality of the provisions of Clause C2(3) of the *additional conditions of contract* and any other rights and remedies, full power to order the removal of any subcontractor which has been engaged in contravention of any of the provisions of this Clause from the Site and/or the *works*.
- (5) In this Clause, unless the context otherwise requires, "confined space" has the same meaning as that adopted in the Factories and Industrial Undertakings (Confined Spaces) Regulation (Cap. 59AE).

Internal Notes:

- * Delete as appropriate.
1. Insert appropriate references which refer to Clause C2 to C11 of this document and the latest provisions on subcontracting under additional conditions of contract.
 2. Subject to the approval of Works Branch of the Development Bureau, project officers can insert project-specific high-risk operations, e.g. demolition, scaffolding work or working in confined spaces, etc. Project officers shall provide justifications including past accident records involving such high-risk operations and obtaining prior endorsement of an officer at D2 rank or above in Works Departments.

C8	(1) Without prejudice to the generality of Clause [C2] ¹ of these <i>additional conditions of contract</i> and NEC Clause 26, if any part of the <i>works</i> is subcontracted by the <i>Contractor</i> , the <i>Contractor</i> shall ensure that a clause on payment of wages of Site Workers in the form appearing in Appendix [<i>insert appropriate reference (see Annex to SDEV's memo ref. (02VKU-01-3) in DEVB(W)510/17/01 dated 16.12.2016)</i>] to these <i>additional conditions of contract</i> hereto is included in all subcontracts entered into with the <i>Contractor</i> . For subcontractors at any lower tier of subcontracting, the <i>Contractor</i> shall take all reasonable steps to ensure that such clause in the form appearing in Appendix [<i>insert appropriate reference (see Annex to SDEV's memo ref. (02VKU-01-3) in DEVB(W)510/17/01 dated 16.12.2016)</i>] to these <i>additional conditions of contract</i> hereto is included in all subcontracts at lower tiers of subcontracting.	Subcontract Conditions	SDEV memo (02VKU-01-3) in DEVB(W)510/17/01 dated 16.12.2016 Modified from SCC of the above memo (which supersedes SCC69)
	(2) The <i>Contractor</i> shall ensure that all subcontractors engaged by the <i>Contractor</i> who are involved in the contract shall include, observe and comply with the provisions which are in the terms of Clause [A] in Appendix [<i>insert appropriate reference (see Annex to SDEV's memo ref. (02VKU-01-3) in DEVB(W)510/17/01 dated 16.12.2016)</i>] to these <i>additional conditions of contract</i> in the relevant subcontracts. For subcontractors at any lower tier of subcontracting, the <i>Contractor</i> shall take all reasonable steps to ensure that subcontractors who are involved in the relevant subcontracts of the contract shall include, observe and comply with the provisions in the relevant subcontracts which are mutatis mutandis in the terms of Clause [A].		Project Offices to review to include Clause C8 where appropriate
	(3) The <i>Contractor</i> shall submit copies of the relevant subcontracts of the contract to the <i>Project Manager</i> for the purpose of checking if the subcontract provisions referred to in sub-clauses (1) and (2) of this Clause are included in the relevant subcontracts as required under sub-clauses (1) and (2) of this Clause. Upon request by the <i>Project Manager</i> , the <i>Contractor</i> shall provide the original documents of the relevant subcontracts for inspection by the <i>Project Manager</i> .		

- C8** (4) The *Contractor* shall comply with and shall ensure that all subcontractors engaged by the *Contractor* shall comply with the provisions of this Clause; and shall, if necessary, within reasonable time enter into a supplemental agreement with its subcontractor to ensure that the subcontract complies with the requirements in sub-clauses (1) and (2) of this Clause and shall take all reasonable steps to ensure that subcontractors at any lower tier of subcontracting shall include, observe and enter into a supplemental agreement if necessary and as required under this sub-clause.
- (5) If the *Contractor* or any of the subcontractors (irrespective of any tier) fails to comply with the provisions of this Clause, the *Project Manager* shall, without prejudice to any other rights and remedies, have full power to order the removal of the subcontractor from the Site and/or the *works*.

¹ Insert appropriate reference which refers to Clause C2 of this document regarding “Subcontracting”.

C9	<p>(1) Without prejudice to the requirements in other provisions of the contract relating to subcontracting (including but not limited to the requirements of Clause C3 of these <i>additional conditions of contract</i>), if the <i>Contractor</i> intends to subcontract any of the <i>works</i>, it shall comply with this Clause C9:</p> <p>(a) when the <i>Contractor's</i> estimate for a subcontract does not exceed \$1,000,000, the <i>Contractor</i> may select a subcontractor without inviting tenders;</p> <p>(b) when the <i>Contractor's</i> estimate for a subcontract exceeds \$1,000,000, the <i>Contractor</i> shall submit its estimate for part of the <i>works</i> proposed to be subcontracted for acceptance by the <i>Project Manager</i> at least two weeks before it invites tenders for the subcontract. A reason for not accepting the <i>Contractor's</i> estimate is that the estimate is not justified. The <i>Contractor</i> shall invite not less than three tenderers to submit tenders for the subcontract and shall select the conforming tender with the lowest tender price.</p> <p>(c) In conducting an invitation to tender under sub-clause (b) above:</p> <p>(i) where the <i>works</i> to be subcontracted is the <i>works</i> referred to in Clause C3 of these <i>additional conditions of contract</i>, the <i>Contractor</i> shall only invite tenders from contractors that comply with the requirements set out in the said Clause C3 that are applicable to such <i>works</i>;</p> <p>(ii) where <i>works</i> other than that referred to in Clause C3 is to be subcontracted, the <i>Contractor</i> shall invite tenders from:</p>	<p>Tender Requirements for Subcontracting</p>	<p>To impose subcontracting procedures for Options C and D and for compensation events under Options A and B</p> <p>Project Offices may make adjustment subject to comments or endorsement from the Inter-departmental Working Group and/or the Steering Committee where appropriate.</p>
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C9
(Cont'd)

(A) contractors on the “List of Approved Contractors for Public Works” or the “List of Approved Suppliers of Materials and Specialist Contractors for Public Works” of the relevant category, group and class and not suspended from tendering (whether by way of mandatory or voluntary suspension) in respect of the work in the relevant category, group and class; or

(B) contractors who possess experience in the *works* to be subcontracted by the *Contractor*, or who are technically competent for the *works* to be subcontracted by the *Contractor*. The *Contractor* shall obtain necessary documentary evidence to demonstrate the tenderers’ experience and technical capability.

(1A) The *Contractor* shall provide details of the proposed tenderers, including:

- (i) tenderers’ names;
- (ii) the categories, groups and classes of the tenderers in the “List of Approved *Contractors* for Public Works” or the “List of Approved Suppliers of Materials and Specialist Contractors for Public Works” and the status in the lists (i.e. confirmed, probationary, suspended, etc.), if applicable; and
- (iii) documentary evidence including job references of tenderers’ past project, scope of works of each project, amount of works undertaken by the tenderers in each project, if appropriate, and / or other information demonstrating tenderers’ experience and technical capability, if applicable,

to the *Project Manager* for acceptance before inviting tenders. A reason for not accepting the list of the proposed tenderers is that any of the proposed tenderers does not comply with the minimum qualification and experience requirements, or more potential tenderers should be included in the list of the proposed tenderers.

C9 (2)
(Cont'd)

- When the *Contractor* subcontracts the *works* by inviting tenders, the tender invitations shall indicate clearly the address and telephone number of the office from which tender documents and further particulars shall be obtained, the exact location of the tender box in which tenders shall be deposited and the closing date and time for the receipt of tenders. The tender box shall be located in the common area within the joint site office of the *Project Manager/Supervisor* and the *Contractor's* staff or another location as directed by the *Project Manager*. Late tender or tenders submitted to places other than the designated tender box shall not be considered.
- (3) All tenders for subcontracts shall be in sealed envelopes. The tenders shall be opened in the presence of both the *Project Manager's* staff and the *Contractor's* staff.
- (4) Before inviting any tender for subcontracts by the *Contractor*, the following details shall be agreed with the *Project Manager*:
- (a) size of the tender box;
 - (b) security measures for the tender box and the arrangement for safe custody of the tenders received and subsequently opened;
 - (c) subcontract number to be assigned and marked on tender envelopes for easy identification;
 - (d) number of copies of submitted tenders required to be kept by the *Project Manager*.
- (5) When the number of tenders received is less than the minimum number specified in sub-clause (1) of this Clause or the *Contractor* proposes to select a conforming tender which does not offer the lowest tender price, the *Contractor* shall notify the *Project Manager*. In the former case, the *Project Manager* shall decide within 3 weeks if it is justified that more tenders cannot be obtained and shall inform the *Contractor* whether to select the conforming tender for the subcontract with the lowest tender price amongst the tenders submitted. In the latter case, the *Project Manager* shall decide within 3 weeks if it is acceptable and shall inform the *Contractor* whether to select the conforming tender which does not offer the lowest tender price.

C9
(Cont'd)

- (6) The *Contractor* before inviting any tender for any subcontract shall submit to the *Project Manager* for comments and acceptance its procedures for selecting Subcontractors for the purpose of preventing corruption practices. The *Contractor* shall observe and comply with the relevant requirements as highlighted in Section A6.5.2 of the Practice Notes for New Engineering Contract (NEC) – Engineering and Construction Contract (ECC) for Public Works Projects in Hong Kong published by the Development Bureau when proposing its procedures unless otherwise accepted by the *Project Manager*.
- (7) The *Contractor* shall issue the responses to all questions raised by the tenderers and the revised tender documents if appropriate to all tenderers to ensure fairness and transparency of the tender exercises for subcontracts. The *Contractor* is prohibited from making amendments to the amount of *works* items or tender prices of the received tenders for subcontracts after tender opening, except corrections for tender errors accepted by the *Project Manager*.
- (8) The *Contractor* shall co-operate fully with the ICAC, allow the ICAC the right of access to all documents and records maintained by the *Contractor* in relation to the tendering of subcontracts and provide such access to all documents and records as may be required by the ICAC staff for the purpose of preventing corruption practices.
- (9) The *Contractor* shall ensure that the tender prices and rates of the subcontracts are competitively tendered or open market prices or rates, without activities or items which are substantially over-priced or under-priced, or erratically priced. Upon request by the *Project Manager*, the *Contractor* shall submit the relevant information of the subcontract(s), including but not limited to the tender prices, pricing documents and other tender information obtained from the tenderers, for the *Project Manager*'s consideration.

C9 (Cont'd) (10) The *Contractor* shall declare if any of the tenderers for the subcontract(s) is its associated company. If the *Contractor* proposes its associated companies to be allowed to participate in the tender exercise(s) for the subcontract(s), it shall submit full justifications for acceptance by the *Project Manager* before inviting any tender for any subcontract *[and post-tender interviews under Clause C9A of these *additional conditions of contract* shall not be conducted in the tender exercise(s)]. The term “associated company” or “associated companies” in relation to the *Contractor* means any company which is the holding company or subsidiary company or sister company of the *Contractor*. A “sister company” means a company which is a subsidiary of or otherwise belongs to the same holding company of the *Contractor*. The existence of a holding-subsidiary relationship shall be determined in accordance with the provisions in sections 13 to 15 of the Companies Ordinance (Cap. 622). All tenders for the subcontracts should be assessed on an equal basis unless otherwise accepted by the *Project Manager*.

*include the words in [square brackets] if Clause C9A is adopted in these *additional conditions of contract*.

- (11) The *Contractor* shall state in the tender documents for the subcontracts that any qualification of the tender may cause the tender to be disqualified. Subject to acceptance by the *Project Manager*, the *Contractor* may approach a tenderer in seeking clarification on the purpose or meaning of particular statements or remarks in its tender, reminding it of possible disqualification of its tender and seeking an unequivocal withdrawal of any qualification by a reasonable deadline.
- (12) The latest edition of the Standard Form of Domestic Sub-contract published by the Hong Kong Construction Association shall be used in all subcontracts unless otherwise accepted by the *Project Manager*.
- (13) The *Contractor* shall include the probity clauses of these *additional conditions of contract*, including Clause A3 on ‘Information not to be Divulged’, Clause D14 on ‘Offering Gratuities’, Clause D15 on ‘Ethical Commitment’ and Clause D16 on ‘*Contractor’s* Interim Statements’, in all tenders for subcontracts and subcontract documents.

- C9** (14) If the *Contractor* subcontracts emergency works in relation to public health, public safety, and/or removal of imminent risk to any person, any property and/or the environment, the *Contractor* shall notify the *Project Manager* in writing and seek the *Project Manager's* acceptance to dispense with any procedure set out in this Clause C9. Any dispensation accepted by the *Project Manager* shall not constitute a compensation event and for the avoidance of doubt, the *Contractor* shall not be entitled to any additional time or cost arising from or relating to such dispensation.
- (Cont'd)**

C9 (15)
(Cont'd)

- (a) If prior to the Contract Date, the *Contractor* has pursuant to Special Conditions of Tender Clause SCT [18] proposed a Subcontractor for the item(s) stipulated as subject to pre-bid arrangement in Appendix [S] to the *additional conditions of contract* and the *Client* considers the requirements in Special Conditions of Tender Clause SCT [18] are satisfied (“such Subcontractor”), the *Contractor* submits such Subcontractor in accordance with NEC Clause 26.2 to the *Project Manager* for acceptance and sub-clauses (1) to (12) and (14) of this Clause C9 do not apply to subcontracting of the item concerned to such Subcontractor.
- (b) If after the Contract Date, the *Contractor* becomes aware that any such Subcontractor cannot undertake such items in unforeseen circumstances, or such Subcontractor is not accepted by the *Project Manager* pursuant to NEC Clause 26.2, it shall submit a proposal for subcontracting to the *Project Manager* for acceptance. The proposal shall include, but not limited to, the rationale for change of such Subcontractor, the programme, the *Contractor*’s estimate for the subcontract and any further justifications for the proposal if required by the *Project Manager*. After the *Project Manager*’s acceptance of such proposal, the *Contractor* may subcontract such *works* in accordance with the procedures set out in this Clause C9. Any cost savings as a result of any change of such Subcontractor, which is calculated as the difference between the lump sum prices for such *works* as shown in the *Activity Schedule [for Option C] / *Bill of Quantities [for Option D] and the lump sum prices for the same *works* under the proposed subcontract, as assessed by the *Project Manager*, shall be deducted from the total of the Prices. Nevertheless, the total of the Prices shall not in any case be increased due to a change of such Subcontractor pursuant to this sub-clause (15)(b).

Note:

Use these Sub-clauses (15)(a) and (b) only if pre-bid arrangement for Subcontractor is adopted.

* Delete as appropriate.

**C9
(Cont'd)**

(c) If the *Contractor* indicates in Contract Data Part two (Section 1) that it is prepared to undertake any of the item(s) stipulated as subject to Mandatory Pre-bid Arrangement in Part [B] of Appendix [S] to the *additional conditions of contract* by itself, and the *Contractor* cannot undertake such item(s) by itself in unforeseen circumstances and decides to subcontract such *works* after the Contract Date, the same procedure, including submission requirement, selection of Subcontractor and the adjustment of the total of the Prices, as stated in this sub-clause (15)(b) shall be followed.

Use this Sub-clause (15)(c) only if Mandatory Pre-bid Arrangement for Subcontractor is adopted.

(16) Save for sub-clause (13), this Clause is only applicable to the *works* for the compensation events to be subcontracted, which will be assessed on the Defined Cost plus the resulting Fee basis, unless otherwise accepted by the *Project Manager*.

Note:
Use this Sub-clause (16) for Options A and B and not used in Options C and D.

- C9A** (1) Subject to the approval of the *Project Manager*, the *Contractor* may conduct post-tender interviews with tenderers for subcontracts. The *Contractor* shall submit the scope and procedures for conducting post-tender interviews to the *Project Manager* for comments and acceptance. For the purposes of this clause, “post-tender interview” refers to a meeting conducted by the *Contractor* after tender opening in the presence of the representative of the *Supervisor* or the *Project Manager* to ensure that the tenderer fully understands the requirements of the relevant subcontract.
- (2) The post-tender interview shall follow the procedures set out below unless the *Project Manager* requires otherwise:

**Post-Tender
Interview**

Note:
Optional. Upon approval of a D2 officer, this ACC may be adopted.

C9A
(Cont'd)

- (a) The *Contractor* shall declare, in the form set out in Appendix [X], any interest if it is considered to be in actual, apparent, potential or perceived conflict with the *Client's* interest to obtain the most advantageous tender in the subcontracting exercise, including any interest or association the *Contractor*, the *Contractor's* associated companies, associates or associated persons may have with any tenderer.

“associated company” or “associated companies” in relation to the *Contractor* shall take the meaning as set out in sub-clause (9) above.

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

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

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

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

“control” in relation to another person means holding office as 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;
- (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 person;

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.

C9A
(Cont'd)

- (b) Each of the staff of the *Contractor* involved in preparing subcontract tender documentation, assessing the subcontract tenders, or conducting post-tender interview(s) shall also declare, in the form set out in Appendix [X], whether they have any actual, potential or perceived conflict with the *Client's* interest to obtain the most advantageous tender in the subcontracting exercise.
 - (c) Save as otherwise agreed between the *Project Manager* and the *Contractor*, all tenderers will be invited for the post-tender interviews;
 - (d) The *Contractor* shall maintain comprehensive documentation of the post-tender interviews. Without limiting the forgoing, the *Contractor* shall record the discussions held at each post-tender interview. The relevant tenderer and the *Contractor* are required to confirm that the records are correct by signing on the same with the signature witnessed by the representative of the *Supervisor* or the *Project Manager* at the end of the post-tender interview;
 - (e) The *Contractor* and the representative of the *Supervisor* or the *Project Manager* conducting the interview shall sign an undertaking to undertake to the *Client* to keep in strict confidence all information obtained during the post-tender interviews and shall only use any such information with the prior written consent from the *Client*; and
 - (f) If any of the tenderers for a subcontract is the associated companies of the *Contractor*, no post-tender interview shall be allowed for that subcontract.
- (3) The *Contractor* may, subject to the approval of the *Project Manager*, change the tender documents for a subcontract (including but not limited to the items of work), after taking into account the information obtained at the post-tender interviews for that subcontract. Nonetheless, commercially sensitive information or intellectual property including designs or any part thereof will neither be solicited from the subcontract tenderers nor incorporated into the tender documents.

- C9A (Cont'd)** (4) The *Contractor* shall issue response(s) to questions raised at the post-tender interviews to all tenderers to ensure fairness and transparency, irrespective of whether or not the tenderer has attended the post-tender interview. Tenderers invited for the post-tender interviews shall then be invited to submit a revised tender price. In case the tender documents are revised after the post-tender interviews, all tenderers shall then be invited to submit their respective revised tender prices.
- (5) For the avoidance of doubt, this Clause C9A applies to subcontracts under Clause C9 and subcontracts under Clause C11.

Appendix []

To: *The Project Manager*

In accordance with *additional conditions of contract* Clause [C9A(2)(a) / C9A(2)(b)] *, [I / we] * would like to declare that [I / we, the *Contractor*, / I, a member of the staff of the *Contractor* involved in preparing subcontract tender documentation, in assessing the subcontract tenders or in conducting post-tender interviews],* have [*note: adopt Option A or Option B below as appropriate*]

[Option A]

no actual, apparent, potential or perceived conflict with the *Client's* interest to obtain the most advantageous tender in the subcontracting exercise.

[Option B]

the following actual / apparent / potential / perceived conflict with the *Client's* interest to obtain the most advantageous tender in the subcontracting exercise:

[Persons / companies] * with [whom / which] * [I / our Company, our associated companies, associates or associated persons] * have official dealings:

Personal relationship or the [persons / companies] * with [me / our associates or associated persons] * (e.g. relative):

C9A
(Cont'd)

Business relationship of the [persons / companies] * with our Company, our associated companies, associates or associated persons (e.g. supplier):

Other relevant information

[My/ our] * proposed remedial action for the above actual / apparent / potential / perceived conflict with justification:

*[To be signed by:
the authorized signatory of the Contractor for making the declaration under ACC Clause C9A(2)(a); and each of the staff of the Contractor for making the declaration under ACC Clause C9A(2)(b).
Please use separate declaration forms for Clauses C9A(2)(a) and C9A(2)(b). Kindly use a separate declaration for each staff of the Contractor.]*

(Name of the Contractor) _____

(Name of the Authorized Signatory of the Contractor) _____

(Position of the Authorized Signatory of the Contractor) _____

(Date) _____

(Name of the Staff) _____

(Position of the Staff) _____

(Date) _____

* *Delete as appropriate*

- C10** (1) The *Contractor* shall ensure that the following conditions are included in the tender conditions for inviting tenders for any subcontract in the first tier:
- “ (i) (a) Subject to sub-clause (1)(ii) of this Clause, the tenderer shall not communicate to any person other than the *Contractor* or the *Client* the amount of the tender price or any part thereof until the tenderer is notified by the *Contractor* of the outcome of the tender exercise.
- (b) Further to paragraph (a) of this sub-clause, the tenderer shall not fix the amount of the tender price or any part thereof by arrangement with any other person, make any arrangement with any person about whether or not it or that other person will or will not submit a tender or otherwise collude with any person in any manner whatsoever in the tendering process.
- (c) Any breach of or non-compliance with this sub-clause by the tenderer shall, without affecting the tenderer’s liability for such breach or non-compliance, invalidate its tender.
- (ii) Sub-clause (i)(a) of this Clause shall have no application to the tenderer’s communications in strict confidence with:
- (a) its own insurers or brokers to obtain an insurance quotation for computation of tender price;
- (b) its consultants or subcontractors to solicit their assistance in preparation of tender submission; and
- (c) its bankers in relation to financial resources for the above subcontract.
- (iii) The tenderer shall submit with its tender a duly signed and witnessed letter in the form set out in Appendix [insert appropriate reference] to these *additional conditions of contract*.
- Anti-collusion** To impose anti-collusion provisions in first tier subcontracts for Options C and D and compensation events under Options A and B
- Modified from GCT 26

C10
(Cont'd)

- (iv) The tenderer shall indemnify and keep indemnified the *Contractor* against all losses, damages, costs or expenses arising out of or in relation to any breach of or non-compliance with sub-clause (i) of this Clause by the tenderer, including but not limited to additional costs due to price escalation, costs and expenses of re-tendering and other costs incurred.”

Appendix []

To: _____ (“Contractor”)

Date: _____

Dear Sir/Madam,

Subcontract No.: _____

Title: _____

[I/We]¹, [(name of the tenderer) of (address of the tenderer)]² refer to [my/our]¹ tender for the above subcontract.

[I/We]¹ confirm that, before [I/we]¹ sign this letter, [I/we]¹ have read and fully understand this letter and the anti-collusion clause in the tender conditions.

[I/We]¹, represent and warrant that in relation to the tender for the above subcontract:

- (i) [I/We]¹, other than the Excepted Communications referred to in the last paragraph of this letter, have not communicated and will not communicate to any person other than the Contractor or the *Client* the amount of the tender price or any part thereof until [I/we]¹ have been notified by the Contractor of the outcome of the tender exercise;
- (ii) [I/We]¹ have not fixed and will not fix the amount of the tender price or any part thereof by arrangement with any person;
- (iii) [I/We]¹ have not made and will not make any arrangement with any person as to whether [I/we]¹ or that other person will or will not submit a tender; and

C10
(Cont'd)

- (iv) [I/We]¹ have not otherwise colluded and will not otherwise collude with any person in any manner whatsoever in the tendering process.

[I/We]¹ shall indemnify and keep indemnified the Contractor against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations and/or warranties above, including but not limited to delay damages, costs and expenses of re-tendering and other costs incurred.

In this letter, the expression “Excepted Communications” means [my/our]¹ communications in strict confidence with:

- (i) [my/our]¹ own insurers or brokers to obtain an insurance quotation for computation of tender price;
- (ii) [my/our]¹ consultants or subcontractors to solicit their assistance in preparation of tender submission; and
- (iii) [my/our]¹ bankers in relation to financial resources for the above subcontract.

Signed for and on behalf of [name of tenderer] by
[name and position of the signatory]³

Name of Witness: _____

Signature of Witness: _____

Occupation: _____

1. Delete as appropriate
2. Where the tenderer comprises two or more persons or companies acting in partnership, joint venture or otherwise, this part in square brackets should be expanded to include the respective names and addresses of such persons or as the case may be companies.
3. Where the tenderer comprises two or more persons or companies acting in partnership, joint venture or otherwise, all such persons or as the case may be companies must sign.”

C10 (Cont'd) (2) The *Contractor* shall, upon written request by the *Project Manager*, submit to the *Project Manager* all duly signed letters submitted by the tenderers as set out in this Clause.

(3) This Clause is only applicable to the work for the compensation events to be subcontracted, which will be assessed on the Defined Cost plus the resulting Fee basis, unless otherwise accepted by the *Project Manager*.

Sub-clause (3) is only applicable to Option A and Option B and not used in other main Option.

C11	(1)	<p>Without prejudice to the <i>Contractor's</i> obligations under the provisions of other <i>additional conditions of contract</i> on subcontracting, the <i>Contractor</i> shall adopt a competitive process in selecting suppliers of Plant and Materials, Equipment, and insurance covered by item 8A of the Schedule of Cost Components or, where applicable the Short Schedule of Cost Components. Within 21 days of the Contract Date, the <i>Contractor</i> shall submit a proposal on the competitive process for selection of suppliers of Plant and Materials, Equipment and insurance to the <i>Project Manager</i> for acceptance. The <i>Contractor</i> shall comply with the accepted process throughout the contract. If, for any item of Plant and Materials, Equipment and insurance for which the <i>Contractor</i> encounters genuine difficulties to comply with the accepted process, the <i>Contractor</i> shall notify the <i>Project Manager</i> in writing, and seek the <i>Project Manager's</i> acceptance to waive the accepted process, which acceptance shall not be unreasonably withheld. Any deviation from the process as accepted by the <i>Project Manager</i> shall not constitute a compensation event.</p>	Tender Requirements for Suppliers of Plant and Materials, Equipment and Insurance	<p>To impose supplier procurement procedures to Options C and D and for compensation events under Options A and B</p>
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C11
(Cont'd)

- (2) The *Contractor* shall ensure that the tender prices and rates of the subcontracts are competitively tendered or open market prices or rates, without activities or items which are substantially over-priced or under-priced, or erratically priced. Upon request by the *Project Manager*, the *Contractor* shall submit the relevant information of the subcontract(s), including but not limited to the tender prices, pricing documents and other tender information obtained from the tenderers, for the *Project Manager's* consideration. The *Contractor* shall declare if any of the tenderers for the subcontracts is its associated company. If the *Contractor* proposes its associated companies to be allowed to participate in the tender exercise(s) for the subcontract, it shall submit full justifications for acceptance by the *Project Manager* before inviting any tender for any subcontract *[and post-tender interviews under Clause C9A of these *additional conditions of contract* shall not be conducted in the tender exercise(s)]. The term “associated company” or “associated companies” in relation to the *Contractor* means any company which is the holding company or subsidiary company or sister company of the *Contractor*. A “sister company” means a company which is a subsidiary of or otherwise belongs to the same holding company of the *Contractor*. The existence of a holding-subsidiary relationship shall be determined in accordance with the provisions in sections 13 to 15 of the Companies Ordinance (Cap. 622). All tenders for the subcontracts should be assessed on an equal basis unless otherwise accepted by the *Project Manager*.

*include the words in [square brackets] if Clause C9A is adopted to these *additional conditions of contract*.

- (3) The *Contractor* shall state in the tender documents for the subcontracts that any qualification of the tender may cause the tender to be disqualified. Subject to acceptance by the *Project Manager*, the *Contractor* may approach a tenderer in seeking clarification on the purpose or meaning of particular statements or remarks in its tender, reminding the tenderer of possible disqualification of its tender and seeking an unequivocal withdrawal of any qualification by a reasonable deadline.

C11 (4)
(Cont'd)

- (a) If prior to the Contract Date, the *Contractor* has pursuant to Special Conditions of Tender Clause SCT [18] proposed a supplier for the item(s) stipulated as subject to pre-bid arrangement in Appendix [S] to the *additional conditions of contract* and the *Client* considers the requirements in Special Conditions of Tender Clause SCT [18] are satisfied (“such supplier”), the *Contractor* selects such supplier to undertake the supply of such item and sub-clauses (1) to (3) of this Clause C11 do not apply to subcontracting of the item concerned to such supplier.
- (b) If the *Contractor* becomes aware that any such supplier cannot supply such item in unforeseen circumstances, it shall submit a proposal for selection of suppliers to the *Project Manager* for acceptance. The proposal shall include, but not limited to, the rationale for change of such supplier, the programme, the *Contractor’s* estimate for the supply and any further justifications for the proposal if required by the *Project Manager*. After the *Project Manager’s* acceptance of such proposal, the *Contractor* may select supplier for such item in accordance with the procedures set out in this Clause C11. Any cost saving as a result of any change of such supplier, which is calculated as the difference between the lump sum prices for such item as shown in the *Activity Schedule [for Option C] / */Bill of Quantities [for Option D] and the lump sum prices for the same item under the proposed subcontract, as assessed by the *Project Manager*, shall be deducted from the total of the Prices. Nevertheless, the total of the Prices shall not in any case be increased due to a change of such supplier pursuant to this sub-clause (4)(b).
- (c) If the *Contractor* indicates in Contract Data Part two (Section 1) that it is prepared to supply any of the items under Mandatory Pre-bid Arrangement as listed in Part B of Appendix [S] to these *additional conditions of contract* by itself, and the *Contractor* cannot supply such item by itself in unforeseen circumstances and decides to select supplier for such item after the Contract Date, the same procedure, including submission requirement, selection of supplier and the adjustment of the total of the Prices, as stated in this sub-clause (4)(b) shall be followed.

Note:
Use these Sub-clauses (4)(a) and (b) only if pre-bid arrangement for supplier is adopted.

* Delete as appropriate.

Use this Sub-clause (4)(c) only if Mandatory Pre-bid Arrangement for supplier is adopted.

C11 (5) This Clause is only applicable to the subcontracts
(Cont'd) related to the compensation events, which will be
assessed on the Defined Cost plus the resulting Fee
basis, unless otherwise accepted by the *Project*
Manager.

Note:
Sub-clause (5) is
only applicable to
Options A and B
and not used in
Options C and D.

Section D – General Obligations

- D1** (1) The *Contractor* shall provide a team of suitably qualified and experienced staff to manage and supervise the contract throughout the execution of the *works*. All members of the *Contractor's* management team (refer to as “the Team” in this Clause) shall be under the direct employment of the *Contractor*. In case the *Contractor* is in the form of unincorporated joint venture, employees under the direct employment of any or all of the joint venture participants are deemed to be under direct employment of the *Contractor*. The Team shall comprise sufficient number of suitably qualified and experienced staff in the following disciplines¹ :-
- (State minimum qualification requirements in the Particular Specification for each discipline if considered necessary.)*
- (a) Construction Manager;
 - (b) Site Agent;
 - (c) Site Engineer;
 - (d) Site Superintendent;
 - (e) Site Supervisor;
 - (f) Surveyor;
 - (g) Quantity Surveyor;
 - (h) Foremen;
 - (i) Safety Officer and Safety Supervisor;
 - (j) Environmental Officer and Environmental Supervisor;
 - (k) Geotechnical Engineer and Geotechnical Supervisor;
 - (l) Technical Manager; and
 - (m) Coordinator for dealing with Excavation Permit Management System and application for Excavation Permit.
- [Project Office to update as appropriate.]
- (2) All members of the Team are prohibited to be given a subcontract to any part of the *works* or to have a vested interest in any of the subcontractors irrespective of tiers under the contract [including Specialist Subcontractors]².
- Contractor's Management Team**
- SDEV's memo ref (027RU-01-3) in DEVB(W) 510/17/01 dated 16.7.2010
- Modified from SCC68 & 68A
- Project Offices to review to include Clause D1 where appropriate

D1
(Cont'd)

- (3) Within 14 days of the *starting date*, the *Contractor* shall submit to the *Project Manager* a list of staff with all necessary details proposed for the Team referred to in sub-clause (1) of this Clause. The corresponding submission for the *Contractor's key persons* shall be made in accordance with NEC Clause 24.3.
- (4) The *Contractor* shall either provide documentary proof on the employment status of the staff proposed for the Team, such as employment contracts, tax returns, payment of salaries and the like upon request by the *Project Manager* or provide a formal declaration to the effect that such a staff member is indeed under the direct employment of the *Contractor*. In case the *Contractor* is in the form of unincorporated joint venture, employees under the direct employment of any or all of the joint venture participants are deemed to be under direct employment of the *Contractor*. The declaration shall be signed by a person authorized to sign tenders on behalf of the *Contractor*.
- (5) With the exception of the Construction Manager, all members of the Team shall be full time³ on Site during site working hours.
- (6) The *Contractor* shall inform the *Project Manager* forthwith of any changes made to any of the members of the Team.
- (7) The *Contractor* shall also provide suitably qualified and experienced staff in the following disciplines for providing assistance to the Team:
 - (a) Liaison Officer;
 - (b) Site Clerk; and
 - (c) Any other staff responsible for management, administration, planning, coordination or supervision of the Site, the *works* and the contract, preparation of technical, financial and contractual submissions and operation of the *Contractor's* site accommodation

[Project Office to update as appropriate.]

The relevant requirements under sub-clauses (2) to (6) of this Clause are also applicable to these assistants to the Team.

D1
(Cont'd)

¹ Add/delete disciplines as appropriate.

² Delete as appropriate

³ Consider whether some of the staff may only be needed part time, such as surveyors.

D2	Except when otherwise specified in the contract the <i>Contractor</i> shall pay all tonnage and other royalties, rent and other payments or compensation (if any) for getting stone, sand, gravel, clay or other materials required for the works.	Patents Rights and Royalties	Modified from GCC28
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D3	(1) The <i>Contractor</i> shall give all notices and pay all licences, levies, premiums or other fees required to be given or paid by reason of any enactment or any regulations or bye-laws of any local or other duly constituted authority in relation to the <i>Contractor</i> to Provide the Works and by the rules and regulations of all public bodies and statutory authorities whose property or rights are affected or may be affected in any way by the <i>Contractor</i> to Provide the Works, including any new fee and any change in existing fees <ul style="list-style-type: none">• made on or after the date 10 days prior to the tender closing date; or• made before the date 10 days prior to the tender closing date and the commencement date of which is only ascertainable on or after the date 10 days prior to the tender closing date.	Giving of Notices and Payment of Fees	ETWB TCW No. 23/2004 Modified from SCC60(2)
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D4

The *Contractor* shall conform in all respects with:

- the provisions of any enactment,
- the regulations or bye-laws of any local or duly constituted authority, and
- the rules and regulations of such public bodies and statutory authorities as are referred to in Clause [D3]¹ of these *additional conditions of contract*

**Compliance
with
Enactments
and
Regulations**

ETWB TCW
23/2004

Modified from
GCC 30 &
SCC60(3)

and any additions or amendments thereto or any new enactment, regulations, bye-laws or rules made during the continuance of the *works*, which are applicable to the *works* and shall be responsible for the payment of all penalties and fines and discharge of all liabilities under such enactment, regulations, bye-laws or rules and shall keep the *Client* indemnified against all penalties and fines and liabilities of every kind for breach of any such enactment, regulations, bye-laws or rules. For the avoidance of doubt, the *Contractor* shall, under no circumstances, be paid by the *Client* for any penalties, fines and liabilities under such enactment, regulations, bye-laws or rules nor shall the Prices or rates be adjusted for that purpose unless otherwise provided elsewhere in the contract.

¹ Insert appropriate reference which refers to Clause D3 of this document regarding “Giving of Notices and Payment of Fees”.

D5	Any notice required to comply with any enactment or the rules and regulations of the Government of the Hong Kong Special Administrative Region or other competent authority and which the <i>Contractor</i> may have to exhibit either for the benefit of the public or for the benefit of its employees shall be written in English and Chinese.	Notices to be in English and Chinese	Modified from GCC31
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D6	<p>(1) “Safety Plan” means a document, including any revised or updated version, setting out details of the safety management system that the <i>Contractor</i> will implement on the Site, together with any other measures and information required by the contract to ensure safety and health to Provide the Works.</p> <p>(2) The <i>Contractor</i> shall submit within 14 days of the Contract Date three copies of a draft Safety Plan to the <i>Supervisor</i>.</p> <p>(3) Within 7 days from the submission of the draft Safety Plan, the <i>Contractor</i> shall arrange and hold an ad hoc meeting (or meetings if necessary) with the <i>Supervisor</i> to discuss the draft Safety Plan. Where the <i>Supervisor</i> is of the opinion that the draft Safety Plan does not meet the requirements of the contract it shall request that the <i>Contractor</i> remedy the deficiency prior to submitting the Safety Plan to the <i>Supervisor</i>.</p> <p>(4) The <i>Contractor</i> shall submit within 35 days of the Contract Date six copies of the Safety Plan to the <i>Supervisor</i>.</p> <p>(5) The <i>Contractor</i> shall review the Safety Plan at monthly intervals and shall revise and update the Safety Plan if necessary.</p> <p>(6) The <i>Contractor</i> shall comply with the Safety Plan and ensure its employees and subcontractors comply with the Safety Plan. The <i>Contractor</i> shall provide any other party working on the Site including utility undertakings with a copy of the Safety Plan and shall request those parties comply with it. The <i>Contractor</i> shall report any person who fails to comply with the Safety Plan to the <i>Supervisor</i>.</p> <p>(7) If the <i>Supervisor</i> is of the opinion that the Safety Plan does not meet the requirements of the contract, the <i>Supervisor</i> may by notice in writing require the <i>Contractor</i> to revise or update the Safety Plan and the <i>Contractor</i> shall comply with that requirement within 7 days of the date of the notice.</p>	<p>Safety Plan</p>	<p>Appendix II(a), Chapter 3, Construction Site Safety Manual for capital works contracts with Safety Plan requirement</p> <p>Modified from SCC23(1) to (9)</p> <p>Sub-clause(10) is applicable only to Options A and B with Pay for Site Safety Scheme</p>
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D6
(Cont'd)

- (8) The *Contractor* shall provide all facilities, access and assistance to the *Supervisor* to periodically verify that the Safety Plan is being properly and fully implemented. If the *Supervisor* is of the opinion that the Safety Plan is not being properly and fully implemented and the failure may adversely affect the safety and health of any person or the safety of any property on or adjacent to the Site, the *Supervisor* may notify the *Contractor* in writing of such failure and the *Contractor* shall then take all necessary steps to rectify that failure immediately. For the avoidance of doubt, these do not limit or take away from the *Supervisor* any power under the contract.
- (9) This Clause shall not relieve the *Contractor* from any of its obligations or responsibilities under the contract.
- (10)* The *Contractor* shall be entitled to the sums set out in the Site Safety section of the [*insert Activity Schedule or Bill of Quantity as appropriate*] provided that the *Contractor* shall have complied to the extent specified for each item.

D7	(1)	<p>“Establishment Works” means the regular inspections, cultivations and other operations specified to be performed during the period stated in the Scope for such inspections, cultivations and other operations.</p> <p>“Landscape Hardworks” means paving, tree grilles, tree guards and tree rings and any other items identified as such in the Scope.</p> <p>“Landscape Softworks” means all work of a horticultural nature and shall include placing, cultivation and preparation of topsoil and subsoil layer, supply and planting of trees, shrubs, grass and other plant materials and any work essentially associated with it.</p> <p>“Landscape Works” means Landscape Softworks, Landscape Hardworks and Establishment Works.</p>	Establishment Works	<p>Modified from SCC16</p> <p>For contracts with Landscape Works</p> <p>Sub-clause (2) is used when the Establishment Works is not required to complete for Completion</p>
	(2)*	<p>The Establishment Works form part of the <i>works</i> but do not comprise work which the <i>Contractor</i> is required to complete for Completion.</p>		
	(3)	<p>As soon as in the opinion of the <i>Project Manager</i> the Landscape Softworks shall have been completed, the <i>Project Manager</i> shall notify the <i>Contractor</i> in writing of the date for commencement of the Establishment Works which shall be undertaken during the period stated in the Scope. Such date for commencement shall be the day immediately following the date of completion of the Landscape Softworks.</p>		

- D8**
- (1) Within three months of the Contract Date, the *Contractor* shall book with a certification body acceptable to the *Client* the date of audit for the ISO 9001:2015 certification; with detailed documented quality system procedures ready at the time of booking. If the *Contractor* is a joint venture, the date of audit for the ISO 9001:2015 certification shall mean that of the specified participant or shareholder in the statement submitted in accordance with Special Conditions of Tender Clause *[Insert the clause number of the SCT dealing with ISO 9000 certification for the Contractor]*.
- ISO 9000 Certification for the Contractor**
- WBTC No. 13/2001
- SDEV's memo ref. DEVB(W) 520/83/01 dated 4.4.2018 and DEVB(W) 510/33/02 dated 14.2.2020.
- Modified from SCC28
- (2) Notwithstanding any other provisions in the contract, compliance with sub-clause (1) of this Clause shall be a condition precedent to the *Contractor's* entitlement to any payment or any further payment as the case may be under the contract **[provided that this condition precedent does not apply to the advance payment under Secondary Option Clause X14.]*
- * include the words in [square brackets] only when Secondary Option Clause X14 is adopted
- (3) Sub-clauses (1) and (2) of this Clause are not applicable if the *Contractor* or, where the *Contractor* is a joint venture, its specified participant or shareholder has already obtained the ISO 9001:2015 certification on or before the Contract Date.

D9 Not used.

D10	<p>(1) “Public Cleaning Areas” means those public areas of the Site where no work is carried out other than cleaning by the <i>Contractor</i> and which have to be maintained open to the general public throughout the progress of the <i>works</i>, the extent of which is specified in <i>[insert appropriate clause no. of the Scope]</i>. For the avoidance of doubt, Site includes Public Cleaning Areas.</p> <p>(2) “Daily Cleaning” means daily cleaning and tidying up of the Site in accordance with <i>[insert appropriate clause no. of the Scope]</i>. Any instruction given by the <i>Project Manager</i> due to such cleaning and tidying up work performed outside the <i>boundaries of the site</i> shall not constitute a compensation event.</p> <p>(3) “Weekly Tidying” means weekly overall cleaning and tidying up of the Site in accordance with <i>[insert appropriate clause no. of the Scope]</i>.</p> <p>(4) “Cleaning Day” means a day on which “Daily Cleaning” is to be carried out.</p> <p>(5) “Cleaning Week Day” means a day on which “Weekly Tidying” is to be carried out.</p> <p>(6) From the <i>starting date</i> to the Completion Date, the <i>Contractor</i> shall, unless otherwise instructed by the <i>Supervisor</i> (except on a General Holiday) carry out either Daily Cleaning or Weekly Tidying. The time for commencing Weekly Tidying and the day of every week for the Cleaning Week Day shall be agreed with the <i>Supervisor</i> within seven days after the date for the <i>starting date</i>. If a day on which the Weekly Tidying is scheduled falls on a General Holiday, then it shall be carried out on the day following which is not a General Holiday.</p> <p>(7) The <i>Supervisor</i> has absolute discretion to instruct the <i>Contractor</i> to cease or suspend all or part of the Daily Cleaning and/ or Weekly Tidying of the Site at any time during the contract. Such instruction shall not constitute a compensation event.</p>	<p>Site Cleanliness and Tidiness</p>	<p>DEVB TC(W) No. 8/2010</p> <p>Modified from SCC41</p> <p>DEVB’s memo ref. DEVB(W) 505/91/01 dated 17.5.2017</p> <p>[Optional. Upon approval of a D2 officer, this ACC may be adopted if it is considered that the cleanliness and tidiness in the proximity of the Site may cause undue nuisance and impact to the public and thus arouse public interest, or there are other specific circumstances of the Sites.</p>
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D10
(Cont'd)

- (8) The *Supervisor* has the power to instruct the *Contractor* to clean and tidy up the areas around the Site if, in the judgment of the *Supervisor*, the rubbish and debris are likely to be connected with the *works* or disposed of by the persons working on the Site, and the *Contractor* shall not be entitled to claim for compensation events due to such cleaning and tidying up work performed outside the *boundaries of the site*.
- (9) The *Contractor* shall only be entitled to payment for one day of “Daily Cleaning” or “Weekly Tidying”, but not more of either, for the cleaning and tidying up work carried out by the *Contractor* on any one Cleaning Day or Cleaning Week Day. An instruction given by the *Project Manager* due to such cleaning and tidying up work performed outside the *boundaries of the site* shall not constitute a compensation event.

D11A	All structural concrete for incorporation into the <i>works</i> shall be produced at a certified plant and supplied by a concrete supplier certified under the Quality Scheme for the Production and Supply of Concrete by Hong Kong Quality Assurance Agency or other certification bodies accredited by the Hong Kong Accreditation Service.	Quality Assurance for Structural Concrete	ETWB TC(W)No. 57/2002 Modified from SCC5A For all public works contracts (except for those located at remote areas such as outlying islands or where the volume of structural concrete involved is less than 50m ³)
OR			
D11B	The <i>Contractor</i> shall submit to the <i>Project Manager</i> for acceptance within 30 days of the Contract Date a quality system for production and supply of structural concrete for incorporation into the <i>works</i> . The quality system shall contain detailed information as required by the Quality System for Production and Supply of Structural Concrete at Appendix [<i>insert appropriate reference and see Annex 1 to Appendix A of ETWB TCW No. 57/2002</i>] to these <i>additional conditions of contract</i> . All structural concrete shall be produced and supplied in accordance with the quality system accepted by the <i>Project Manager</i> .	Quality Assurance for Structural Concrete	Modified from SCC5B For all other contracts including structural concrete

D12	(1) Where the <i>Contractor</i> is a partnership or an unincorporated joint venture, the liability of each partner of the partnership or participant of the unincorporated joint venture under the contract shall be joint and several.	Joint and Several Liability of Partners and Unincorporated Joint Venture Participants	ETWB TC(W) No. 5/2003 Modified from SCC45
	(2) In relation to such <i>Contractor</i> only, the Articles of Agreement for use in the contract shall be in the form as attached at Appendix [<i>insert appropriate reference</i>] to these <i>additional conditions of contract</i> , with such modification as may be necessary.		
	(3) For the purpose of this Clause, the expression “unincorporated joint venture” and “participant” shall bear the same meanings as those given in paragraph 6(a) of the Environment, Transport and Works Bureau Technical Circular (Works) No. 50/2002 on Contractors’ Joint Venture.”		

- D13**
- (1) The *Supervisor* will record daily in the *Project Manager's* site diary information with regard to labour, Equipment, Plant and Materials, utilities, work carried out and instructions issued to the *Contractor* and all other facts that may affect the progress or quality of the *works*.
- (2) The authorized agent or representative of the *Contractor* shall sign the site diary daily indicating its agreement to the information recorded. If the authorized agent or representative of the *Contractor* does not agree with any of the items recorded in the site diary it may draw reference to the points of disagreement in writing in the site diary.
- (3) The *Contractor* shall, as and when called upon to do so by the *Supervisor*, make available to the *Supervisor* or such other person as the *Supervisor* may direct, such information as the *Supervisor* considers necessary to enable it properly to keep and maintain its site record, but in any event and without prejudice to the generality of the foregoing, the *Contractor* shall deliver to the office of the *Supervisor* by not later than 1.00 p.m. on each working day a return in such form as the *Supervisor* may prescribe showing in detail the numbers of the several classes of labour on the Site that day together with the numbers of the several classes of labour so employed during the preceding twenty-four hours who were not included in the return for the previous day together with such information concerning materials, equipment and other such matters as the *Supervisor* may require.
- Site Diary and Labour Returns**
- Modified from GCC32

D14	(1)	If the <i>Contractor</i> or any of its agents or employees shall be found to have offered or given any advantage, gratuity, bonus, discount, bribe or loan of any sort to any agent or employee of the <i>Client</i> or to the <i>Project Manager</i> or to any member of the <i>Project Manager's</i> staff or to the <i>Supervisor</i> or to any member of the <i>Supervisor's</i> staff, the <i>Client</i> may terminate forthwith the <i>Contractor's</i> obligation to Provide the Works as if for any of the reasons R1-R15 under NEC Clause 91, and hold the <i>Contractor</i> liable for any loss or damage which the <i>Client</i> may thereby sustain.	Offering Gratuities	Modified from GCC37
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D15	<p>(1) The <i>Contractor</i> shall prohibit its employees, agents, and subcontractors who are involved in the contract from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance, Cap 201 when conducting business in connection with the contract.</p> <p>(2) The <i>Contractor</i> shall require its employees, agents and subcontractors who are involved in the contract to declare in writing to the <i>Contractor</i> any conflict or potential conflict between their personal/financial interests and their duties in connection with the contract. In the event that such conflict or potential conflict is disclosed in a declaration, the <i>Contractor</i> shall forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed.</p> <p>(3) The <i>Contractor</i> shall prohibit its employees who are involved in the contract from engaging in any work or employment other than in the performance of the contract, with or without remuneration, which could create or potentially give rise to a conflict between their personal/financial interests and their duties in connection with the contract. The <i>Contractor</i> shall also require its subcontractors and agents to impose similar restriction on their employees by way of a contractual provision.</p> <p>(4) The <i>Contractor</i> shall take all necessary measures (including by way of contractual provisions and/or providing training workshops where appropriate) to ensure that its employees, agents and subcontractors are aware of the prohibitions in this Clause.</p> <p>(5) The <i>Contractor</i> shall ensure that the provisions in this Clause are incorporated in any subcontract to the effect that the subcontractor has the same obligations under the subcontract as the <i>Contractor</i> under this Clause.</p>	<p>Ethical Commitment</p>	<p>ETWB TC(W) No. 3/2004</p> <p>Modified from SCC51</p>
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D16	The <i>Contractor</i> shall submit and procure its subcontractors to submit a signed declaration in a form prescribed or accepted by the <i>Client</i> to confirm compliance with the provisions on ethical commitment and confidentiality in Clauses [A3 and D15] ¹ at a frequency of once every month. If the <i>Contractor</i> fails to submit or fails to procure the subcontractors to submit the declaration as required, the <i>Client</i> shall be entitled to withhold payment until such declaration is submitted and the <i>Contractor</i> shall not be entitled to interest in that period.	Contractor's Interim Statements	ETWB TC(W) No. 3/2004 Modified from SCC52
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¹ Insert appropriate references which refer to Clauses A3 and D15 of this document regarding “Information not to be divulged” and “Ethical Commitment” respectively.

D17	The <i>Contractor</i> acknowledges that it has been reminded that dishonesty, theft and corruption on its part or those of its employees, agents or subcontractors who are involved in the contract may lead to prosecution under, without limitation, section 9 of the Prevention and 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	ETWB TC(W) No. 3/2004 Modified from SCC53
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D18

- (1) For the purpose of this Clause and except when the context otherwise requires,
- “Authority” means the Authority referred to in the Ordinance.
- “Economic Cost” means the economic costs referred to in Schedule 3 of the Ordinance.
- “Excavation Permit” means any excavation permit issued by the Authority in respect of the work required to Provide the Works or any part thereof under the Ordinance, including any extension and amendment of the excavation permit.
- “Nominated Permittee” has the same meaning as “nominated permittee” defined in the Ordinance.
- “Ordinance” means the Land (Miscellaneous Provisions) Ordinance, Cap. 28.
- “Permittee” has the same meaning as “permittee” defined in the Ordinance.
- “Street Maintained by the Highways Department” has the same meaning as “street maintained by the Highways Department” defined in the Ordinance.
- (2) (a) Where excavation in a Street maintained by the Highways Department that requires an Excavation Permit under the Ordinance is required for carrying out the work required to Provide the Works, the *Contractor* shall request the *Client* to apply for the Excavation Permit from the Authority. The *Client* shall be the Permittee and the *Contractor* shall be nominated by the *Client* as the Nominated Permittee of the Excavation Permit. The *Contractor* shall not withhold its consent to the nomination and agreement to comply with the conditions in the Excavation Permit or, in the case where such consent and agreement have been given, shall not withdraw its consent to the nomination and agreement to comply with the conditions in the Excavation Permit. The *Contractor* shall take all necessary actions to comply with the conditions stipulated in the Excavation Permit including those conditions applicable to the Permittee and shall use its best endeavours to assist the *Client* and its agents, employees or workers to comply with the same.

Permits for Excavation Works under Land (Miscellaneous Provisions) Ordinance Cap. 28

SDEV’s memo ref. (02B0P-01-7) in DEVB(W) 510/70/01 dated 18.03.2011

Modified from SCC clause under the above memo (which supersedes SCC48)

for contracts involving application for Excavation Permits under the Land (Miscellaneous Provisions) Ordinance Cap. 28

D18
(Cont'd)

- (b) Where excavation in land other than Street Maintained by the Highways Department that requires Excavation Permit under the Ordinance is required to Provide the Works, the *Contractor* shall apply to the Authority for an Excavation Permit or for an exemption under section 10B of the Ordinance as the case may be required for work to Provide the Works or a relevant part thereof and, where an Excavation Permit has been applied for, the *Contractor* shall be the Permittee.
- (3) If the *Contractor* has defaulted in one of the following ways, the *Contractor* shall be considered as having substantially failed to comply with its obligations for the purposes of NEC Clause 91.2, R11 (without prejudice to the generality of R11) :
- has unreasonably withheld or withdrawn its consent to be the Nominated Permittee of and its agreement to comply with the conditions in the Excavation Permit for excavation in Street Maintained by the Highways Department required for work to Provide the Works or any part thereof , or
 - has failed to obtain the approval to be a Nominated Permittee from or has its approval withdrawn by the Authority in relation to any Excavation Permit for excavation in Street Maintained by the Highways Department required for work to Provide the Works or any part thereof.

D18
(Cont'd)

- (3A) Notwithstanding sub-clause (3) of this Clause, if the *Contractor* shall have unreasonably withheld or withdrawn its consent to be the Nominated Permittee of and its agreement to comply with the conditions in any Excavation Permit for excavation in Street Maintained by the Highways Department required to Provide the Works or any part thereof, or if the *Contractor* shall have failed to obtain the approval to be a Nominated Permittee from or have its approval withdrawn by the Authority in relation to any Excavation Permit for excavation in Street Maintained by the Highways Department required to Provide the Works or any part thereof, the *Project Manager* may give the *Contractor* 14 days' notice to rectify such situation. If the *Contractor* fails to comply with such notice, the *Client* may but shall not be obliged to carry out such works by its own workers or to nominate other contractors to be the Nominated Permittee and shall have such works carried out by those other contractors. Without prejudice to any other remedy, all additional expenditure properly incurred by the *Client* in having such works carried out shall be recoverable by the *Client* from the *Contractor*.
- (4) In relation to any Excavation Permit referred to in sub-clause 2(a) of this Clause or any extension in respect thereof,
- (a) save as expressly provided elsewhere in the contract, the *Client* shall pay all prescribed fees under the Ordinance except that the *Client* shall be entitled to recover from the *Contractor* the prescribed fees for such Excavation Permit as may be required for carrying out any maintenance work including any work of repair or rectification, or making good any defect, imperfection, shrinkage, settlement or other fault and the necessity for such work is, in the *Project Manager's* opinion, due to the use of materials or workmanship not in accordance with the contract or due to neglect or failure on the part of the *Contractor* to comply with any obligation expressed or implied on the *Contractor's* part under the contract;

D18
(Cont'd)

- (b) the *Project Manager* shall notify the *Contractor* when an Excavation Permit has been obtained. If during the course of the work or during the continuance of the contract a revision to an Excavation Permit has become necessary, the *Contractor* shall notify the *Project Manager* immediately;
- (c) the *Contractor* shall, when required by the *Project Manager* in writing and before the commencement of any work covered by the Excavation Permit, send to the Authority pursuant to section 10I of the Ordinance a notice in writing using the prescribed form enclosed in Appendix [insert appropriate reference] to these *additional conditions of contract* or, if so required by the *Project Manager*, using such other form as may be required by the *Project Manager* giving its consent to be the Nominated Permittee of the Excavation Permit and agreement to comply with the conditions in the Excavation Permit;
- (d) the *Contractor* shall advise the *Project Manager* promptly the need for an extension to an Excavation Permit and request the *Client* to apply for such extension for the satisfactory Completion of the *works*;
- (e) the *Contractor* shall render all necessary assistance to the *Client* in the process of any application for an Excavation Permit or any extension in respect thereof, including supply of all necessary information to the *Project Manager*;
- (f) the *Client* shall not be liable in any way for failing to submit any application for an Excavation Permit and any extension in respect thereof unless the *Contractor* shall have complied with its obligations under sub-clause 2(a) and sub-clause (4)(a), (b), (c), (d) and (e) of this Clause and shall have allowed the *Client* sufficient time to prepare the application; and

D18
(Cont'd)

- (g) the *Client* shall be entitled to recover from the *Contractor* any fees including Economic Cost paid by the *Client* for an extension in respect of a permit referred to in sections 10A(3) and 10D(4) of the Ordinance and may but shall not be bound to deduct the amount either in whole or in part in accordance with the provisions of Clause [B2]¹ of these *additional conditions of contract*.

Provided that the *Client* shall return any refund from the Authority of any fees including Economic Cost so recovered or deducted. The *Contractor* shall provide all necessary assistance or information to the *Client* to assist it in applying to the Authority for any review under the Ordinance for the purpose of refund of fees including Economic Cost.

Provided further that on application of the *Contractor* the *Project Manager* is of the opinion that the need for such extension is partly or wholly caused by:

- (i) the progress of the work being materially affected by an instruction given by the *Project Manager* changing the Scope; or
- (ii) a disturbance for which the *Client*, the *Project Manager*, the *Supervisor* or Others engaged by the *Client* in supplying materials or in executing work directly connected with but not forming part of the *works* required to Provide the Works is responsible,

the *Project Manager* shall determine a fair share of the fees including Economic Cost to be borne by the *Client* who shall return such share to the *Contractor*.

For the avoidance of doubt, the opening up for inspection of any work covered up or put out of view, or the testing of materials or workmanship not required by the contract but directed by the *Project Manager* or the *Supervisor* shall not be regarded as a disturbance within the meaning of paragraph (ii) in the last proviso to this sub-clause (4)(g) of this Clause unless the inspection or test not required by the contract showed that the work, materials or workmanship were in accordance with the contract.

- D18** (5) In relation to any Excavation Permit referred to in sub-clause (2)(b) of this Clause or any extension in respect thereof, the *Contractor* shall pay all prescribed fees under the Ordinance.
- (Cont'd)**
- (5A) In relation to any Excavation Permit under sub-clause (2)(a) or (2)(b) of this Clause and without prejudice to any other provision in the contract, the *Contractor* shall conform in all respects with the conditions stipulated in any Excavation Permit which are applicable to any works to Provide the Works to the extent that such conditions are to be observed by the *Contractor* under the Ordinance or under the contract and shall indemnify and keep indemnified the *Client*, its agents, employees and workers against all penalties or liabilities of every kind for breach of any such conditions stipulated in any Excavation Permit, whether such conditions are stipulated in the Excavation Permit to be observed by the Permittee, the Nominated Permittee or both the Permittee and the Nominated Permittee if and to the extent that such breach is attributable to the act, default or neglect of the *Contractor*, its agents, employees or workers, its Subcontractors at all tiers, or the agents, employees or workers of its subcontractors at all tiers.
- (6) The *Contractor* shall continue to be responsible for liaising with utility undertakings and other relevant parties identified in the Scope in connection with the carrying out of the works to Provide the Works, including without limitation co-ordinating and agreeing a programme with the relevant utility undertakings or other parties where such is applicable.
- (7) It is incumbent upon the *Contractor* to plan and programme its work to cater for restrictions imposed by the Authority.
- (8) The *Contractor* shall allow for in its plan and programme its obligation to comply with this Clause (including without limitation sub-clause (2)(a) and (b) and sub-clause (4)(a), (b), (c), (d) and (e) and sub-clauses (5A), (6) and (7) of this Clause) and the time that may be taken by the Authority to process the application for an Excavation Permit and any extension in respect thereof.

D18 (9) Notwithstanding sub-clause (2)(a) of this Clause, the
(Cont'd) *Client* may apply for an Excavation Permit for the carrying out the work to Provide the Works in the absence of a request to do so from the *Contractor*. For the avoidance of doubt, the obligations of the *Contractor* under this Clause remain unchanged (with the exception of making request to the *Client* in respect of application for the Excavation Permit) if the *Client* chooses to apply for an Excavation Permit of its own volition whether before, on, or after the Contract Date.

¹ Insert appropriate reference which refers to Clause B2 of this document regarding “Recovery of Money Due to *Client*”.

D19	<p>(1) “Constructional Plant” means all appliances or things of whatsoever nature required to Provide the Works but does not include materials or other things intended to form or forming part of the <i>works</i> or vehicles engaged in transporting any personnel, Constructional Plant, materials or other things to or from the Site.</p> <p>(2) In respect of any item or items of Constructional Plant brought onto the Site, the <i>Contractor</i> shall upon written request by the <i>Project Manager</i> (which may be issued by the <i>Project Manager</i> from time to time or at any time during the continuance of the work) produce to the <i>Project Manager</i> proof of ownership of such item or items of Constructional Plant to the satisfaction of the <i>Project Manager</i> or, where any item of Constructional Plant is not solely owned by the <i>Contractor</i>, a written undertaking, in a form accepted by the <i>Client</i>, from the owner of the relevant item of Constructional Plant to the <i>Client</i> that:</p> <p>(a) the owner of the Constructional Plant will consent to the assignment by the <i>Contractor</i> to the <i>Client</i> of the benefit of any hiring or hire-purchase or other agreement made with the <i>Contractor</i> in respect of the relevant Constructional Plant in the event of termination by the <i>Client</i> in accordance with the provisions of the contract or the abandonment of the contract by the <i>Contractor</i> before Completion of the <i>works</i>; and</p> <p>(b) subject to any assignment under paragraph (a) of this sub-clause, the owner of the Constructional Plant will permit the <i>Client</i>, or any other contractor employed by the <i>Client</i>, to use the relevant Constructional Plant for the purpose of Completion of the <i>works</i>.</p>	<p>Hired and Hire-purchase Constructional Plant</p>	<p>ETWB TC(W) No. 9/2004</p> <p>Modified from GCC1(1) and SCC56</p>
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The *Project Manager* may make as many separate written requests as it thinks fit during the continuance of the *works*.

D19
(Cont'd)

- (3) In the event that the *Project Manager* shall certify in writing to the *Client* that the *Contractor* has failed to comply with any written request referred to in sub-clause (2) of this Clause within 28 days of the date of issue of the written request and without prejudice to any other rights or remedies available to the *Client*, the *Client* may, subject to the proviso to this sub-clause, withhold a sum equal to 5 percent of the amount due to the *Contractor* from each interim payment otherwise due to the *Contractor* in accordance with the contract until such time as such failure to comply with the relevant *written* request is rectified to the satisfaction of the *Project Manager* or until the item or, as the case may be, all the items of Constructional Plant specified in the relevant written request shall be removed from the Site by the *Contractor* in accordance with the provisions of the contract, whichever is the earlier and upon such time the total sum withheld by the *Client* shall be returned to the *Contractor* without interest in the next interim payment. Provided that the total sum withheld by the *Client* on the ground of failure to comply with any written request referred to in sub-clause (2) of this Clause shall not exceed an amount equal to the market value or as the case may be the total market value of the relevant item or items of Constructional Plant as determined by the *Project Manager* and notified in writing by the *Project Manager* to the *Client* and the *Contractor*.
- (4) The application of sub-clauses (2) and (3) of this Clause is limited to items of Constructional Plant which, in the *Project Manager's* opinion, are essential to the Completion of the *works* and are difficult to replace in the event of termination under section 9 "Termination" of NEC Clauses.

D20	<p>(1) “Environmental Management Plan” means the Environmental Management Plan (EMP) referred to in this Clause, including any revised or updated version thereof, prepared by the <i>Contractor</i> in accordance with the Scope.</p> <p>(2) The <i>Contractor</i> shall prepare a draft EMP in accordance with the Scope [<i>and the Outline EMP</i>]¹ and submit []² copies of the draft EMP to the <i>Supervisor</i> for comments within 21 days of the Contract Date.</p> <p>(3) If the <i>Supervisor</i> is of the opinion that the draft EMP does not meet the requirements of the contract, it shall request the <i>Contractor</i> to revise the draft EMP by notice in writing and the <i>Contractor</i> shall revise the draft EMP and re-submit within 7 days of the date of the notice.</p> <p>(4) The <i>Contractor</i> shall finalize the EMP within 45 days of the Contract Date and submit []² hard copies of the EMP and a soft copy in Microsoft Word format to the <i>Supervisor</i>.</p> <p>(5) The <i>Contractor</i> shall review and update the EMP monthly and submit []² hard copies of the updated part of the EMP and a soft copy in Microsoft Word format to the <i>Supervisor</i>.</p> <p>(6) The <i>Contractor</i> shall provide all facilities, access and assistance to the <i>Supervisor</i> to periodically verify the EMP implementation. If the <i>Supervisor</i> is of the opinion that the EMP is not properly implemented, the <i>Supervisor</i> shall notify the <i>Contractor</i> in writing of such failure and the <i>Contractor</i> shall take all necessary steps promptly to rectify the failure.</p> <p>(7) The submission of EMP shall not relieve the <i>Contractor</i> from any of its obligations or responsibilities under the contract.</p>	<p>Environmental Management Plan</p>	<p>SETW’s memo (014G7-01-1) in ETWB(W) 517/91/01 dated 19.6.2006</p> <p>Modified from SCC63</p> <p>For contracts with Pay for Environmental Scheme</p>
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D20
(Cont'd)

(8) The *Contractor* shall comply with the EMP and ensure compliance with the provision of the necessary environmental measures as specified in the contract in Providing the Works, including compliance by its employees and subcontractors of all tiers. The *Contractor* shall provide any other parties working on the Site, including utility companies, with a copy of the EMP and shall request those parties to comply with it. The *Supervisor* shall have the power to order any person who, or plant or equipment which, fails to comply with the EMP to be removed from the Site.

(9)³ For work involving demolition, the *Contractor* shall submit a method statement for the work as part of the EMP to the *Supervisor* for approval prior to the commencement of the demolition on the Site. The *Contractor* shall include in the method statement the sequence of demolition and the work programme to facilitate effective recovery of reusable and/or recyclable portions of C&D materials at the earliest stage, so as to minimise the need for subsequent sorting, and specify the measures to minimise nuisance affecting the immediate vicinity. Particular attention shall be given to materials that will cause contamination or ill-health to workers. C&D materials arising from demolition debris shall be separated into the following categories:

- (i) broken concrete
- (ii) other inert materials, e.g. blockwork, brickwork etc.
- (iii) metals, e.g. reinforcement bars, mechanical and electrical fittings, building services fittings, hardware etc.
- (iv) general refuse
- (v) hazardous materials

¹ Insert 'and the Outline EMP' in case of tenders selected based on a marking scheme where the Outline EMP is part of the *Contractor*'s technical proposal.

² Insert the number of required copies. The number of required copies should be kept to the minimal to save paper.

³ This sub-clause is to be used if the *works* involve demolition.

D21	<p>(1) Subject to Clause <i>[insert appropriate clause reference]</i> of the Particular Specification for B5 diesel, all Equipment powered by diesel fuel, whether they belong to the <i>Contractor</i> or its subcontractors, must only be replenished with ultra low sulphur diesel (ULSD) (defined as diesel fuel containing not more than 0.005% by weight of sulphur) when working on the Site. The <i>Contractor</i> shall maintain a summary record of all delivery notes of ULSD delivered to the Site, including those ordered by its subcontractors, together with the details of consumption of such fuel by individual Equipment on the Site and the date of arrival and departure of the Equipment to and from the Site. The record of fuel deliveries shall be supported by the original receipts of delivery notes from oil companies. Both the record and delivery receipt shall be kept on the Site for inspection by the <i>Supervisor</i> or its site supervisory staff upon request.</p> <p>(2) The <i>Supervisor</i> may order at any time any number of fuel samples to be taken from any diesel-operated Equipment, fuel tank and/or container on the Site, except those which the <i>Contractor</i> can substantiate that the Equipment, fuel tank and container concerned has/have been brought to the Site recently according to the summary record maintained pursuant to sub-clause (1) of this Clause, and has/have never been replenished with any fuel since its arrival. The sulphur content of the fuel samples shall be tested by a HOKLAS accredited laboratory using internationally recognized testing methods such as ASTM D2622, ISO 14596 and ISO 20884. The laboratory to carry out the test shall be proposed by the <i>Contractor</i> and agreed by the <i>Supervisor</i>.</p>	<p>Use of Ultra Low Sulphur Diesel</p>	<p>SETW's memo (014G7-01-1) in ETWB(W) 517/91/01 dated 19.6.2006</p> <p>Modified from SCC64</p> <p>For contracts with Pay for Environmental Scheme</p>
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D22	<p>(1) Where the <i>Contractor</i> is an incorporated joint venture it shall within fourteen (14) days of the Contract Date provide to the <i>Client</i> a joint venture guarantee in the form set out in Appendix [<i>insert the relevant appendix to the tender documentation. See Appendix D of SETW's memo ref. (01656-01-3) in ETWB(W)511/34/01 dated 4 August 2006 for the Form of Joint Venture Guarantee</i>] to these <i>additional conditions of contract</i> executed by all the shareholders of the <i>Contractor</i>. For the purposes of this Clause, the expressions “incorporated joint venture” and “shareholder” appearing herein shall bear the same meanings as those given in paragraph 6 of the Environment, Transport and Works Bureau Technical Circular (Works) No. 50/2002 on Contractors’ Joint Venture.</p> <p>(2) Notwithstanding any other provisions of the contract, failure by the <i>Contractor</i> to provide a joint venture guarantee in strict accordance with sub-clause (1) of this Clause shall constitute a breach of the contract entitling the <i>Client</i> to damages and shall entitle the <i>Client</i> to terminate the contract forthwith by notice in writing to that effect and the <i>Contractor</i> shall not be entitled to any compensation whatsoever as a consequence of such termination.</p> <p>(3) The <i>Contractor</i> shall not make any changes to the percentage participation of each participant or shareholder in the joint venture during the continuance of the contract unless prior written consent from the <i>Client</i> is obtained in accordance with sub-clause (4) of this Clause.</p> <p>(4) In the event that the <i>Contractor</i> considers a change to the percentage participation of each participant or shareholder in the joint venture is necessary because</p> <p>(a) any participant or shareholder in the joint venture shall become bankrupt or have a receiving order made against it or shall present its petition in bankruptcy or shall make an arrangement with or assignment in favour of its creditors or shall agree to carry out the contract under a committee of inspection of its creditors or (being a corporation) shall go into liquidation (other than a voluntary liquidation for the purposes or amalgamation or reconstruction); and</p>	<p>Contractors’ Joint Venture</p>	<p>ETWB TCW No. 50/2002 (as amended in SETW memo ref. (01656-01-3) in ETWB(W)511/34/01 dated 4.8.2006)</p> <p>Modified from SCC31</p>
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D22
(Cont'd)

(b) satisfactory Completion of the *works*,

the *Contractor* shall write to the *Client* with detailed substantiation requesting the *Client's* consent before any changes are made. The *Client* may in its absolute discretion accept or reject the request but shall within 14 days from the date of receipt of such request inform the *Contractor* in writing whether consent is given.

D23

Not Used.

D24

- (1) The *Contractor* warrants to the *Client* that:
- (a) the design including but not limited to the *Contractor's* logo and/or any logo of a subcontractor employed by the *Contractor* to carry out any part of the *works*, manufacture and supply of the site uniform (hereinafter collectively referred to in this Clause as “design of the site uniform”) in accordance with Clause *[insert appropriate clause no]* of the Particular Specification does not and will not infringe any Intellectual Property Rights of any party; and
 - (b) in respect of the design of the site uniform including but not limited to the supply or use of any materials or articles by the *Contractor*, the Intellectual Property Rights of which are vested in a third party:
 - (i) the *Contractor* has or shall have obtained a valid and continuing licence under which the *Contractor* is entitled to sub-license the third party Intellectual Property Rights for itself and for the *Client*, its authorized users, assigns and successors-in-title; or
 - (ii) the *Contractor* has or shall have obtained the grant of all necessary clearances for itself and for the *Client*, its authorized users assigns and successors-in-title prior to the supply or use of such materials or articles.
- (2) The *Contractor* shall indemnify the *Client*, its authorized users, assigns and successors-in-title and keep the *Client*, its authorized users, assigns and successors-in-title fully and effectively indemnified against all actions, costs, claims, demands, damages, expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings (where the settlement has first been proposed or approved in writing by/on behalf of the *Contractor*) and liabilities of whatsoever nature arising out of or in connection with any allegation and/or claim that the design of the site uniform, its possession or use infringes any Intellectual Property Rights of any party.

**Intellectual
Property Rights
relating to Site
Uniform**

SDEV memo ref.
DEVB(Trg)
133/3 (10) of
23.1.2017

Modified from
SCC U1 at
Annex A1 of the
above memo

- D24** (3) For the avoidance of doubt, the design, manufacture, supply and/or use by the *Contractor* of the anti-heat stress uniform of the Hong Kong Polytechnic University referred to in Clause *[insert appropriate clause no]* of the Particular Specification, shall not in any way relieve the *Contractor* from the warranty under sub-clause (1) above or the indemnity under sub-clause (2) above.
- (4) The provisions of this Clause shall survive Completion or termination and shall continue in full force and effect notwithstanding such Completion or termination.

- | | | | |
|------------|---|------------------------|---|
| D25 | (1) The <i>Contractor</i> shall not dispose of construction and demolition materials generated by the Site at any place other than the disposal grounds designated in the contract or directed by the <i>Project Manager</i> or such alternative disposal grounds as proposed by the <i>Contractor</i> and accepted by the <i>Project Manager</i> in accordance with [<i>insert appropriate reference</i>] of the Particular Specification. | Disposal Ground | DEVB TC(W)
No. 6/2010

Modified from
SCC 73 |
| | (2) Notwithstanding any other provisions in the contract, the <i>Project Manager's</i> acceptance or non-acceptance of any alternative disposal ground proposed by the <i>Contractor</i> shall not in any way relieve the <i>Contractor</i> of any duty or responsibility under the contract nor entitle the <i>Contractor</i> to any adjustment of the Prices or Completion Dates. | | |

D26	(1) This <i>additional condition of contract</i> shall apply to works within the Railway Protection Area as shown in the Scope and shall be read in conjunction with the contract.	Works within the Railway Protection Area	DEVB TC(W) No. 1/2019 Modified from SCC 22
	(2) Further to Clause [A1] ¹ of these <i>additional conditions of contract</i> , the following words and expressions shall have the meaning hereby assigned to them except when the context otherwise requires:- “Competent Person” means the person assigned by the MTR Corporation Limited from time to time for the purposes of Clause [insert appropriate reference] of the Particular Specification for works within the Railway Protection Area. “Isolation” means isolation of the electrical equipment, which is the disconnection of a section of such equipment from all sources of electricity supply. “MTRCL” means the MTR Corporation Limited. “Possession” means possession of a specific section of track or tracks under the sole control of a Competent Person trained and qualified by MTRCL. “Railway” means all the railway lines in the Hong Kong Special Administrative Region operated by MTRCL. “Railway Protection Area” means the area enclosed by the railway protection boundary as shown on railway protection plans, which is situated approximately 30 m outside the outer surface of the railway structures/installations, the railway fence/wall, or the nearest rail if there is no railway fence/wall, but it encompasses the whole of any lot as appropriate where any part lies within the 30 m distance. At the railway stations, the area enclosed by the boundary is more extensive. The railway protection plans can be inspected at MTRCL or viewed from the official website of MTRCL. “Restriction” means train speed restriction, which is a limitation of the normal permitted speed of rail traffic over a specified length of the railway track.		<u>NOTE:</u> This ACC only applies to public works contracts with works within the Railway Protection Area. Refer to TC(W) No. 1/2019 for details.

D26
(Cont'd)

- (3) (a) The *Contractor* shall have regard to the Particular Specification for *works* within the Railway Protection Area and shall comply strictly with the requirements as set out therein. The *Contractor* shall comply with any instructions given by MTRCL through the *Project Manager* with regard to planning, method of working, safety requirements and on any other matters which may affect the operation of the railway. Provided that if a situation occurs which in the opinion of either the *Contractor* or MTRCL may give rise to or actually constitute an emergency and either the *Contractor* or MTRCL considers that it is not practicable to communicate through the *Project Manager*, then the *Contractor* and MTRCL may communicate directly with each other and MTRCL may give a direct instruction to the *Contractor* to carry out any remedial or other work or repairs and such instruction shall be regarded for the purposes of the contract as an instruction from the *Project Manager*.
- (b) Should the *Contractor* be unwilling or unable at once to comply with a direct instruction from MTRCL under the provisions of this Clause, the *Contractor* shall not prevent and shall permit MTRCL or MTRCL's workers or contractors to carry out the remedial works or other works or repairs required by the direct instruction.
- (c) If in the opinion of the Project Manager, the Contractor was obligated under the contract to carry out the remedial or other works or repairs referred to in sub-clause(3)(b), all costs and charges which are in the opinion of the *Project Manager* properly incurred by the MTRCL in carrying out the same shall on demand be paid by the *Contractor* to the *Client* or may be deducted by the *Client* from any monies due or which may become due to the *Contractor* whether under this or any other contract(s) with the *Client*, including amounts retained.
- (d) The *Contractor* shall notify the *Project Manager* as soon as possible of any direct instruction received from MTRCL under the provisions of this Clause.

D26
(Cont'd)

- (4) (a) Where any part of the *works* has to be carried out during the period of Restriction, Possession or Isolation and the period of such Restriction, Possession or Isolation is set out in the contract, the *Contractor* shall plan and execute that part of the *works* so that such period is not exceeded and so that no further periods are required.
- (b) If no period of Restriction, Possession or Isolation is set out in the contract, the *Contractor* shall before commencing any work through the *Project Manager* liaise with MTRCL who will decide if any part of the *works* is to be carried out during a period of Restriction, Possession or Isolation. MTRCL may alter or cancel the said period whenever MTRCL considers necessary. The decision of MTRCL in that event shall be binding on the *Contractor*. Any claims by the *Contractor* for a compensation event shall be supported by such contemporaneous records as may reasonably be necessary for consideration by the *Project Manager* in consultation with MTRCL.
- (c) After the method of carrying out the works has been agreed with MTRCL (and taking into account any provisional arrangements which had been made), the *Contractor* shall in all cases other than for emergency works submit written notice of its programme of works, which shall include details of any Restriction, Possession or Isolation previously notified as being necessary by MTRCL, to MTRCL at least ten calendar weeks in advance of the proposed commencement of works within the Railway Protection Area.
- (d) Where an entry into the area where there is a period of Restriction, Possession or Isolation is necessary, the *Contractor* shall be responsible for initiating the necessary action to obtain the requisite approval from MTRCL. The *Contractor* shall be solely responsible for all delays caused through failure to submit the necessary application for approval, submission of inadequate information or late submission of any such application.

D26
(Cont'd)

- (e) The *Contractor* shall organise the execution of the work during any period of a Restriction and/or Possession and/or Isolation so that MTRCL will be able to remove such Restriction, Possession or Isolation at the time set out in the contract or the time previously agreed by MTRCL. Should the *Contractor* in the opinion of the *Project Manager* or MTRCL not make sufficient or adequate arrangements (including the provision of standby plant) for completing the whole or any stage of the works within the time set out in the contract or agreed with MTRCL, MTRCL may at its discretion cancel the Restriction and/or Possession and/or Isolation, or MTRCL may employ other contractor(s) to finish or carry out such works as is necessary to enable the Restriction and/or Possession and/or Isolation to end at the earliest possible moment.
 - (f) A period of Restriction and/or Possession and/or Isolation cannot normally be extended, and if the *Contractor* fails to carry out the works during any such period it shall be required to re-apply to MTRCL for a further period of Restriction and/or Possession and/or Isolation.
 - (g) All expenses which in the opinion of the *Project Manager* are properly incurred by MTRCL as a result of MTRCL making necessary arrangements in accordance with sub-clause (4)(e) to assist the *Contractor* or carrying out any necessary work in accordance with sub-clause (4)(e) shall on demand be paid by the *Contractor* to the *Client* or may be deducted by the *Client* from any monies due or which may become due to the *Contractor* whether under this or any other contract(s) with the *Client*, including amounts retained.
- (5) (a) MTRCL shall have the right to cancel or alter the date and the timing of any Restriction, Possession or Isolation whether such date and timing are set out in the contract or have been previously agreed, if in its opinion, it is necessary to do so for the safe and uninterrupted running of rail traffic. In such an event MTRCL shall make alternative arrangements as soon as practicable.

D26
(Cont'd)

- (b) Subject to any default by the *Contractor* under sub-clause (4)(e), if the *Contractor* suffers delay or incurs expense due to MTRCL cancelling or altering at short notice the date or the timing of any Restriction, Possession or Isolation set out in the contract or previously agreed by MTRCL, the *Project Manager* shall on application by the *Contractor* and following receipt from the *Contractor* of particulars, as full and detailed as possible, value and certify such sum, if any, as the *Project Manager* considers fair and reasonable.

¹ Insert appropriate reference which refers to Clause A1 of this document regarding “Definitions”.

D27	(1)	Any claim received by the <i>Client</i> or the <i>Project Manager</i> in respect of matters for which the <i>Contractor</i> is required under the contract to indemnify the <i>Client</i> will be passed to the <i>Contractor</i> who shall likewise inform the <i>Client</i> and the <i>Project Manager</i> of any such claim which is submitted directly to it by a claimant. The <i>Contractor</i> shall keep the <i>Client</i> and the <i>Project Manager</i> informed as to the progress made towards settlement.	Third Party Claims in Respect of Damage on and to Agricultural Lands	WBTC No. 28/92 Modified from SCC 13
	(2)	When a claim involves alleged damage to crops or property on agricultural lands the District Lands Officer shall be informed by the <i>Project Manager</i> , and representative or representatives of the District Lands Office will be present at the negotiations and any payment in settlement of the claim shall be made through the District Lands Officer to the claimant. The <i>Contractor</i> shall do everything necessary including notifying its insurers, if any, of the claim received, to ensure that the claim is settled without delay. If in the opinion of the <i>Client</i> the <i>Contractor</i> or its insurers, if any, are delaying settlement, the <i>Client</i> may make direct payment to the claimant in settlement of all outstanding amounts which in the opinion of the <i>Client</i> are due to it and shall without prejudice to any other method of recovery have the right to deduct by way of set-off, in accordance with the provisions of Clause [B2] ¹ , the sums so paid.		for contracts where the possibly of damage to agricultural crops and/or property on agricultural lands might arise

¹ Insert appropriate reference which refers to Clause B2 of this document regarding “Recovery of Money Due to *Client*”.

- D28** (1) For the purposes of this Clause:
- “PFSPMS” means the Pay for Safety Performance Merit Scheme;
- “performance-tied payment items” means the performance-tied payment items listed in the *incentive schedule* for Performance-tied Payment Items of the PFSPMS in Appendix *[insert appropriate reference]* to the Contract Data Part one.
- (2) The PFSPMS is included in the contract with the aim of encouraging the *Contractor* through payment for the performance-tied payment items for achieving better safety performance. The *Contractor* shall comply with the provisions of this Clause and *[insert appropriate reference]* of the Particular Specification “Report on Safety Performance and Payment for Performance-tied Payment Items” for participation in the PFSPMS.
- (3) The *Contractor* shall submit Monthly Reports on Safety Performance (each of such reports is hereinafter referred to in this Clause as “Monthly Report”) and relevant documentary proof for the performance-tied payment items as required by *[insert appropriate reference]* of the Particular Specification “Report on Safety Performance and Payment for Performance-tied Payment Items” and NEC Clause X20.2 for acceptance by the *Project Manager*.
- (4) The *Project Manager* shall assess the amounts for the performance-tied payment items submitted in each Monthly Report in accordance with the Assessment Rules for the Performance-tied Payment Items of the PFSPMS and the *incentive schedule* for the Performance-tied Payment Items of the PFSPMS in Appendix *[insert appropriate reference]* to the Contract Data Part one in accordance with NEC Clause X20.4 and notify the *Contractor* of the assessed amounts. The *Contractor* shall include the assessed amounts in its next application for payment statement submitted in accordance with NEC Clause 50.2.
- Pay for Safety Performance Merit Scheme (PFSPMS)** SDEV’s memo ref. (02LSV-01-1) in DEVB(W) 516/70/03 dated 22.11.2013

D28
(Cont'd)

- (5) (a) If the *Contractor* or the *Project Manager* considers that adjustment of any of the Monthly Reports, including those submitted and agreed by the *Project Manager* previously, is required, the *Contractor* shall revise and re-submit the relevant Monthly Report to the *Project Manager* for correction and acceptance. Any amounts for the performance-tied payment items previously certified by the *Project Manager* under NEC Clause 51.1 shall be corrected accordingly.
- (b) Any accident which is suspected to be a reportable accident shall be counted as a reportable accident in the Monthly Report for the month in which the accident occurs. Without prejudice to the generality of sub-clause (5)(a) above, if it is subsequently concluded that the accident is not a reportable accident, the *Contractor* shall revise and re-submit the relevant Monthly Report to the *Project Manager* for correction and acceptance. Any amounts for the performance-tied payment items previously certified by the *Project Manager* under NEC Clause 51.1 shall be corrected accordingly.
- (6) The amounts assessed by the *Project Manager* and notified to the *Contractor* in respect of the performance-tied payment items in accordance with this Clause shall not be included in the Price for Work Done to Date for the calculation of the price adjustment for inflation under NEC Clause [X]¹. For the avoidance of doubt, any correction to the Monthly Report under sub-clauses (5)(a) and (5)(b) of this Clause shall not be included in the calculation of the price adjustment for inflation under NEC Clause [X]¹.
- (7) Further to NEC Clause 50.6, the *Project Manager* shall have the power to correct any wrongly assessed amount due in a later payment certificate of the amounts previously certified for the performance-tied payment items if it is for the time being dissatisfied with the documentary proof for those items submitted by the *Contractor*.

- D28** (8) The *Project Manager* shall finalise the assessment of the performance-tied payment items within the time period required by the contract for the issue of the last payment certificate. Effect shall be given to such assessment in the calculation of the amount due from the *Client* to the *Contractor* or from the *Contractor* to the *Client* as the case may be under the last payment certificate issued.
- (Cont'd)**

¹ NEC Clause X1.3 for Option A/B and NEC Clause X1.4 for Option C/D.

- D29** (1) For the purposes of this Clause D29 of these *additional conditions of contract*, the following words and expressions shall have the meaning hereby assigned to them:
- “approved prefabrication yard” means a prefabrication yard included in the List;
- “the List” means the List of Approved Steel Reinforcing Bar Prefabrication Yards maintained by the Government;
- “rebar” means a steel reinforcing bar; and
- “prefabricated rebar product” includes cut and bent rebar, reinforcement cage and threaded/coupled rebar produced in an off-site prefabrication yard.
- (2) Subject to the provisions of this *additional condition of contract*, prefabricated rebar products supplied by an approved prefabrication yard may be used for any part or parts of the *works*. The *Contractor* shall not use prefabricated rebar product supplied by yards not on the List for any part of *works*. Should the *Contractor* opt to use prefabricated rebar products for any part or parts of *works*, it shall engage an approved prefabrication yard to supply the prefabricated rebar products and submit a proposal (hereinafter referred to in this Clause as “the *Contractor’s* proposal”) including but not limited to the following information to the *Project Manager* prior to the supply of prefabricated rebar products to the Site:
- (a) the name of the approved prefabrication yard to be engaged by the *Contractor* (hereinafter referred to in this Clause as “the said approved prefabrication yard”);
 - (b) the part or parts of the *works* where the prefabricated rebar products produced by the said approved prefabrication yard are to be used (hereinafter referred to in this Clause as “the works concerned”);
 - (c) whether cutting and bending of rebars at the said approved prefabrication yard are involved;

**Use of Off-site
Prefabricated
Steel Reinforcing
Bar Products
Supplied by
Approved Steel
Reinforcing Bar
Prefabrication
Yard**

DEVB TC(W)
No. 10/2018

D29
(Cont'd)

- (d) whether carrying out of the fabrication of reinforcement cages or threading / coupling of rebars using reinforcement connectors at the said approved prefabrication yard is involved; if affirmative, records showing the approved prefabrication yard has obtained separate approval from the Government for such fabrication process(es) to be carried out at the approved prefabrication yard; and
 - (e) the storage and traceability system of rebar products within the Site for identifying the rebars and prefabricated rebar products produced by the said approved prefabrication yard and other rebars for on-site cutting and bending or for fabrication of reinforcement cages or threading / coupling of rebars using reinforcement connectors for on-site installation. The *Contractor* shall seek the approval of the *Project Manager* for such storage and traceability system prior to the delivery of prefabricated rebar products to the Site.
- (3) Further to sub-clause (2) above, upon delivery of the prefabricated rebar products to the Site, the *Contractor* shall submit to the *Project Manager* the documents showing that such prefabricated rebar products are produced by the said approved prefabrication yard and are in compliance with the quality assurance scheme of the said approved prefabrication yard, and the prefabricated rebar products are in compliance with the Construction Standard CS2 / BS 4449 / BS 4482 / BS 8666 including amendments thereto and replacement thereof and other relevant prevailing technical memorandums, practice notes, codes of practice, specifications and etc. issued by the Government.
- (4) The requirements pertaining to submission of particulars of reinforcement and testing of reinforcement under the contract shall not apply in respect of the cut and bent rebars produced by the said approved prefabrication yard for the works concerned. Those requirements not to be applied include but are not limited to the following:

D29
(Cont'd)

[Remark: Please adopt the provisions below if General Specification for Civil Engineering Works 2006 Edition is used under your contract. Please update or revise as appropriate as per the latest version of the General Specification applicable to your contract.]

- (a) Submissions
General Specification for Civil Engineering Works 2006 Edition Clauses 15.12 and 15.17(a), (e) and (f); and
 - (b) Testing
General Specification for Civil Engineering Works 2006 Edition Clauses 15.30, 15.31, 15.32, 15.33A, 15.36 and 15.37.
- (5) Where the *Contractor's* proposal involves the carrying out of the fabrication of reinforcement cages or threading / coupling of rebars using reinforcement connectors at the said approved prefabrication yard:
- (i) the *Contractor* shall ensure that the said approved prefabrication yard has obtained separate approval from the Government for such fabrication process(es) to be carried out at the said approved prefabrication yard and shall include such records as required under sub-clause (2)(d) above when submitting the *Contractor's* proposal to the *Project Manager* under sub-clause (2) above;
 - (ii) the requirements pertaining to the submission of particulars of reinforcement and testing of reinforcement under the contract, including but not limited to those listed in sub-clause (4) above, shall not apply in respect of reinforcement cages, if any, produced by the said approved prefabrication yard for the works concerned; and
 - (iii) the requirements pertaining to the submission of particulars of reinforcement connectors and testing of reinforcement connectors under the contract shall not apply in respect of the threaded / coupled rebars, if any, produced by the said approved prefabrication yard for the works concerned. Those requirements not to be applied include but are not limited to the following:

D29
(Cont'd)

[Remark: Please adopt the provisions below if General Specification for Civil Engineering Works 2006 Edition is used under your contract. Please update or revise as appropriate as per the latest version of the General Specification applicable to your contract.]

(a) Submissions

General Specification for Civil Engineering Works 2006 Edition Clauses 15.15 and 15.17(d); and

(b) Testing

General Specification for Civil Engineering Works 2006 Edition Clauses 15.30, 15.31, 15.32, 15.35 and 15.40.

- (6) Save as expressly provided in sub-clauses (3) to (5) above, the engagement by the *Contractor* of the said approved prefabrication yard to supply prefabricated rebar products shall not relieve the *Contractor* from any liability or obligation under the contract and shall not in any way limit or exclude any right or remedy which the *Client* may have against the *Contractor* under the contract.
- (7) In the event that the said approved prefabrication yard is removed from the List, the *Contractor* shall not use any rebar products produced on or after the date of removal from the List by the prefabrication yard concerned in the *works*. For the avoidance of doubt, the removal of the said approved prefabrication yard from the List is not a compensation event. The *Contractor* shall not be entitled to any changes to Key Dates, Completion Date or the Prices arising out of or in connection with the removal of the prefabrication yard concerned from the List.

- D30**
- (1) In this Clause -
- (a) “approved” has the meaning given by section 2 of the Air Pollution Control (Non-road Mobile Machinery)(Emission) Regulation;
- (b) “exempted” has the meaning given by section 2 of the Air Pollution Control (Non-road Mobile Machinery)(Emission) Regulation;
- (c) “kW” means kilowatt;
- (d) “non-road mobile machinery” has the meaning given by section 2 of the Air Pollution Control (Non-road Mobile Machinery)(Emission) Regulation;
- (e) “rated engine power output” means the maximum net power of an engine.
- (2) Subject to sub-clause (3), machinery of the types and quantities listed below must be approved non-road mobile machinery:
- (a) all generators on the Site,
- (b) all air compressors on the Site,
- (c) all of excavators on the Site, and
- (d) all crawler cranes on the Site
- which are powered by internal combustion engines and the rated engine power output of which is greater than 19 kW but not greater than 560 kW.
- (3) The *Project Manager* may permit the use of exempted non-road mobile machinery for any type of machinery listed above if it is satisfied that there is no feasible alternative. The *Project Manager*’s permission under this sub-clause may cover the whole or part of the quantity specified in sub-clause (2) above in respect of the type of machinery concerned.
- (4) Nothing in this Clause shall derogate from or in any way affect the obligation of the *Contractor* to comply with the applicable law in Hong Kong, including the obligation of the *Contractor* to comply with the Air Pollution Control (Non-road Mobile Machinery)(Emission) Regulation (Cap. 311Z) in respect of all non-road mobile machinery on the Site.
- Use of non-road mobile machinery approved under the Air Pollution Control (Non-road Mobile Machinery) (Emission) Regulation**
- DEVB TC(W) No. 1/2015
- Mandatory for use in capital works contracts including design and build contracts with estimated contract value exceeding \$200 million.

D31 Not used.

D32	<p>(1) If the <i>Project Manager</i> certifies Special Payment for any Relevant Imported Item in a <i>Project Manager's</i> certificate and the amount certified as due to the <i>Contractor</i> in the <i>Project Manager's</i> certificate has been paid by the <i>Client</i>, the <i>Contractor</i> shall deliver the Relevant Imported Item to the Site within 6 months from the date of payment.</p> <p>(2) Subject to sub-clause (3), if the <i>Contractor</i> fails to comply with sub-clause (1), then, without prejudice to any other right or remedy that the <i>Client</i> may have against the <i>Contractor</i>, the <i>Client</i> is entitled to deduct the Special Payment made by the <i>Client</i> for that Relevant Imported Item from payments due to the <i>Contractor</i> in 6 equal monthly instalments, or to otherwise recover the amount of the Special Payment made from the <i>Contractor</i>.</p> <p>(3) On the expiry or earlier termination of the contract for any reason, all Special Payments made by the <i>Client</i> for Relevant Imported Items that are not yet delivered by the <i>Contractor</i> to the Site on the date of expiry or termination of the contract shall be immediately recoverable by the <i>Client</i> from the <i>Contractor</i> as a debt.</p> <p>(4) The <i>Project Manager</i> may cease to accept any new application for Special Payment for Relevant Imported Items on giving the <i>Contractor</i> not less than 30 days' written notice in advance. The date on which the cessation takes effect is hereinafter referred to as the "Cessation Date".</p> <p>(5) With effect from the Cessation Date, the <i>Contractor</i> shall not make, and the <i>Project Manager</i> shall not accept, any new application for Special Payment. Notwithstanding the cessation, the <i>Project Manager</i> shall continue to process an application for Special Payment that is submitted before the Cessation Date and for which an assessment has not yet been made by the <i>Project Manager</i> under NEC Clause 50.</p>	<p>Relevant Imported Items</p>	<p>SDEV memo ref. DEVB(W) 510/33/02 dated 8.7.2022</p> <p>For use in Options A and B</p>
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- D33**
- (1) The *Contractor* shall not impose charges of any form on any subcontractor, or deduct any amount from the payment to which any subcontractor is entitled, for reporting accidents and processing any claims for compensation under the Employees' Compensation Ordinance (Cap. 282) on behalf of the subcontractor. For the avoidance of doubt, subcontractor in this clause D33 means all types of subcontractors, irrespective of tiers.
 - (2) The *Contractor* shall ensure that the provisions at Appendix [*insert appropriate reference*] of these *additional conditions of contract* are included *mutatis mutandis* in all subcontracts entered into with its subcontractors. The *Contractor* shall, if necessary, within a reasonable time enter into a supplemental agreement with its subcontractors to comply with the requirements in this sub-clause.
 - (3) For subcontracts at any lower tiers of subcontracting, the *Contractor* shall take all reasonable steps to ensure that the provisions at Appendix [*insert appropriate reference*] of these *additional conditions of contract* are included *mutatis mutandis* in all such subcontracts. The *Contractor* shall take all reasonable steps to ensure that subcontractors at any lower tiers of subcontracting shall, if necessary, within a reasonable time enter into a supplemental agreement to include the provisions at Appendix [*insert appropriate reference*] of these *additional conditions of contract mutatis mutandis* in all such subcontracts.
 - (4) Upon request by the *Project Manager*, the *Contractor* shall provide the original documents of the subcontracts to the *Project Manager*, for inspection.

Prohibition of Imposing Administrative Charges for Reporting of Site Accidents and Elimination of Under-reporting of Site Accidents

SDEV's memo
ref. DEVB(W)
516/80/03 dated
3.8.2022

D33
(Cont'd)

- (5) Where injury by accident arising out of and in the course of the employment is caused to any person employed to Provide the Works or in connection with the contract, the *Contractor* shall notify the Commissioner for Labour in such form and manner as required by the law and report the matter to the *Project Manager* in the form prescribed in this contract without delay. This sub-clause shall apply irrespective of whether the person is in the employ of the *Contractor* or a subcontractor, and whether the person claims for compensation.
- (6) The *Contractor* shall make necessary arrangements to ensure that all subcontractors report all accidents on the Site involving their employees via their upper tier subcontractors (if applicable) to the *Contractor* without delay. Such arrangement shall be incorporated in the Safety Plan and Subcontractor Management Plan required under the contract.
- (7) The *Client* shall not be liable for or in respect of any damages or compensation payable at law in respect of or in consequence of any accident or injury to any worker or other person in the employ of the *Contractor* or any subcontractors save and except an accident or injury resulting from any act or default of the *Client*, his agents or employees and the *Contractor* shall indemnify and keep indemnified the *Client* against all such damages and compensation, save and except as aforesaid and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- (8) The compliance of this clause D33 of these *additional conditions of contract* by the *Contractor* is entirely without prejudice to and do not relieve the *Contractor* from any of its obligations or responsibilities under the contract, the Factories and Industrial Undertakings Ordinance (Cap. 59), the Occupational Safety and Health Ordinance (Cap. 509) and the Employees' Compensation Ordinance (Cap. 282), and all their subsidiary legislation.

Section E - Labour

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|-----------|-----|---|-----------------------------|---------------------|
| E1 | (1) | The <i>Contractor</i> shall make its own arrangements in regard to the provision of such labour, skilled and unskilled, as may be required to Provide the Works and shall use all diligence in arranging for a sufficient and suitable supply of such labour but all such arrangements shall be in accordance with general local usage and subject to such regulations as the Government of the Hong Kong Special Administrative Region may from time to time require to be observed. | Engagement of Labour | Modified from GCC39 |
| | (2) | As far as practicable all labour both skilled and unskilled shall be engaged in Hong Kong. | | |

E2	(1)	Further to NEC Clause 26.1 and Clause E1 of these <i>additional conditions of contract</i> , the <i>Contractor</i> shall ensure the employment and provision of registered skilled workers, registered skilled workers (provisional), registered semi-skilled workers, registered semi-skilled worker (provisional) (as defined in section 2(1) of the Construction Workers Registration Ordinance (Cap 583)) for each of the relevant specified trade division at the Site is at all times in accordance with the minimum percentage requirement specified in <i>[insert appropriate reference]</i> of the Particular Specification.	Employment of Skilled Workers	DEVB TC No. 4/2017
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E3	<p>(1) The <i>Contractor</i> shall pay rates of wages and observe hours and conditions of labour which are not less favourable than the general level of wages, hours and conditions observed by other employers whose general circumstances in the trade or industry in which the <i>Contractor</i> is engaged are similar.</p> <p>(2) The <i>Contractor</i> shall in respect of all persons employed by it, whether in carrying out the contract or otherwise, in every workshop or other place occupied or used by it for Providing the Works comply with the general conditions required by this Clause.</p> <p>(3) The <i>Contractor</i> shall be responsible for the observance of this Clause by subcontractors employed in the carrying out of the <i>works</i>.</p> <p>(4) In the event of default being made in the payment of any money in respect of wages of any person employed by the <i>Contractor</i> in and for carrying out the contract and if a claim therefore is filed in the office of the Labour Department and proof thereof (including, where the claim is disputed by the <i>Contractor</i> or it is found necessary by the Commissioner for Labour, proof of final determination of the claim by an award or order of the Labour Tribunal or as the case may be the Minor Employment Claims Adjudication Board or a judgment of the District Court or, where the matter is subsequently further disputed by way of appeal, by a judgment of the Court of First Instance or the Court of Appeal) is furnished to the satisfaction of the Commissioner for Labour, the <i>Client</i> may, failing payment of the said money by the <i>Contractor</i>, make payment of such claim on behalf of the <i>Contractor</i> to that person and any sums so paid shall be recoverable by the <i>Client</i> from the <i>Contractor</i>.</p>	Fair Wages	Modified from GCC40
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E4	<p>(1) The <i>Supervisor</i> may arrange the issue of passes to the <i>Contractor</i> for the admission of workers to the Site or to any part thereof and in such event any person who fails to show its pass on demand to any duly authorized person may be refused admission.</p> <p>(2) If required <i>by</i> the <i>Supervisor</i> the <i>Contractor</i> shall submit a list of the names of all its workers requiring passes together with two photographs of each person and shall satisfy the <i>Supervisor</i> of their bona fides and identity.</p> <p>(3) Any pass so issued shall be returned at any time on the demand of the <i>Supervisor</i> and in any case on Completion of the <i>works</i> or on the cessation of the bearer's employment on the <i>works</i>.</p>	Passes	Modified from GCC41
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E5	(1)	The <i>Contractor</i> shall employ at least the minimum number of technician apprentices and building or civil engineering graduates and comply with other requirements in relation to their employment as specified in the Scope.	Technician Apprentices and Building and Civil Engineering Graduates	ETWB TC(W) No. 12/2003
	(2)	Where the <i>Contractor</i> employs the technical apprentice(s) pursuant to sub-clause (1) of this Clause, the <i>Contractor</i> shall ensure that all employed technician apprentice(s) attend a course of instruction at an approved technical institution leading to the award of either a Higher Certificate in Building Studies, Civil Engineering, Building Services or other comparable alternative qualification.		Modified from SCC47
	(3)	Where the <i>Contractor</i> employs the building or civil engineering graduate(s) pursuant to sub-clause (1) of this Clause, the <i>Contractor</i> shall ensure that all employed graduate(s) are provided with practical training on site for a minimum of 12 months or 70% of the time between the first <i>access date</i> and the Completion Date, whichever is longer, and follow established training guidelines for the relevant disciplines as far as possible.		Mandatory for capital works contracts exceeding \$50M

E6	(1)	<p>Subject to those Casual Workers referred to in Particular Specification Section <i>[insert appropriate reference]</i> on “Casual Workers”, all Site Workers shall be engaged in accordance with <i>[insert appropriate reference]</i> of the Particular Specification on “Payment of Wages of Site Workers”. Such Site Workers shall be engaged with a written employment contract with their respective employers who shall be either the <i>Contractor</i> or any of its subcontractors of all tiers as submitted in the Subcontractors’ Management Plan. The terms of the employment contract shall be not less favourable to the terms provided in the Specimen Employment Contract at Appendix <i>[insert appropriate reference]</i> to these <i>additional conditions of contract</i> as far as the Site Workers are concerned. Payment of wages shall be made at least once per month. Employment contracts which stipulate a payment cycle less frequent than once per month will not be permitted under the contract.</p> <p>(2) The <i>Contractor</i> shall ensure that all workers who are self-employed persons engaged to work on the Site shall each be covered by a personal accident insurance plan with a minimum coverage of HK\$1,000,000 by either extending the <i>Contractor’s</i> employee compensation insurance policy or its third party liability and all risks insurance policy. Alternatively the <i>Contractor</i> shall arrange a separate personal accident insurance plan for all self-employed workers for a minimum cover of HK\$1,000,000 in the form specified in Appendix <i>[insert appropriate reference]</i> to these <i>additional conditions of contract</i> and shall maintain such policy for the duration of the self-employed workers being engaged in the contract. The <i>Contractor</i> shall inform the <i>Project Manager</i> immediately when the insurance policy of a self-employed worker has expired together with evidence showing its renewal as appropriate.</p> <p>(3) Truck drivers engaged for any part of the <i>works</i> (excluding those truck drivers engaged by suppliers to deliver material to the Site) may select to be a Site Worker or a self-employed person.</p> <p>(4) Not Used.</p>	Payment of Wages of Site Workers	<p>SDEV’s memos ref. (02VKU-01-3) in DEVB(W) 510/17/01 dated 16.12.2016 and (02YWL-01-2) in DEVB(W) 510/17/01 dated 5.2.2018</p> <p>Modified from SCC67A</p> <p>Project Offices to review to include this Clause where appropriate</p>
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**E6
(Cont'd)**

- (5) Within 14 days of the *starting date*, the *Contractor* shall make necessary arrangements with a bank to implement the arrangement on payment of wages to Site Workers in accordance with Particular Specification Section *[insert appropriate reference]* on “Payment of Wages of Site Workers”. The *Contractor* shall submit a written declaration that all Site Workers’ wages payable have been paid when the *Contractor* submits the transaction records to the *Project Manager*. Site Workers who are not able to open a personal bank account in Hong Kong shall be paid by personal cash cheques in accordance with Particular Specification Section *[insert appropriate reference]*.
- (5A) The *Contractor* shall provide suitably qualified staff to act as Assistant Clerical Officer (Labour Relations) referred to in Section *[insert appropriate reference no.]* of the Particular Specification to monitor payment of wages
- (6) Failure to comply with Particular Specification Section *[insert appropriate reference]* by any of the subcontractors (irrespective of tiers) may render the removal of the subcontractor by the *Project Manager* from the Site and/or any part of the *works*.

Sub-clause (5A) only applicable to those contracts requiring the *Contractor* to provide Assistant Clerical Officers (Labour Relations) (e.g. in-house managed contracts)

E6
(Cont'd)

- (7) (a) In the event of default being made in the payment of any wages of any Site Workers employed by the *Contractor* or any of the subcontractors in and for carrying out the contract and if a claim therefore is filed in the office of the Labour Department and proof thereof (including, where the claim is disputed by the *Contractor* or by any of the responsible subcontractors, as the case may be, or it is found necessary by the Commissioner for Labour, proof of final determination of the claim by an award or order of the Labour Tribunal or as the case may be the Minor Employment Claims Adjudication Board or a judgment of the District Court or, where the matter is subsequently further disputed by way of appeal, by a judgment of the Court of First Instance or the Court of Appeal) is furnished to the satisfaction of the Commissioner for Labour, provided that the subject incident of default in payment of wages is reported to the Assistant Clerical Officer (Labour Relations) within 7 working days (Sundays and public holidays excluded) of the final due date for payment as prescribed under section 23 of the Employment Ordinance (Cap 57), the *Client* may, after the *Contractor* or the subcontractor, as the case may be, who is in default of paying any wages to the Site Workers, make payment of such wages or claim for wages on behalf of the *Contractor* or the subcontractor to the Site Workers and any sums so paid shall be recoverable by the *Client* as a debt from the *Contractor*.
- (b) For the avoidance of doubt, Site Workers employed by the *Contractor* are not subject to the reporting requirement to the Assistant Clerical Officer (Labour Relations) under sub-clause (7)(a) of this Clause.

E6
(Cont'd)

- (c) For the further avoidance of doubt, where any self-employed worker is found by the Labour Tribunal or as the case may be the Minor Employment Claims Adjudication Board or a judgment of the District Court or, where the matter is subsequently further disputed by way of appeal, by a judgment of the Court of First Instance or the Court of Appeal to be an employee instead of a self-employed worker, sub-clause (7)(a) of this Clause shall apply to that self-employed worker provided that the subject incident of default in payment of wages is similarly reported to the Assistant Clerical Officer (Labour Relations) within 7 working days (Sundays and Public Holidays excluded) of the final date for payment under section 23 of the Employment Ordinance (Cap 57).

E7 Not Used.

E8 Not used.

- E9**
- (1) Subject to sub-clause (2) of this Clause, the *Contractor* shall within 6 months from the *starting date* as notified by the *Project Manager* (hereinafter referred to in this Clause as “the 6-month period”) employ a minimum total of *[insert the number where appropriate]* ECMTS Graduates to work on the Site in a trade in which they graduated under the Enhanced Construction Manpower Training Scheme (hereinafter referred to in this Clause as “ECMTS”). For the purposes of this Clause:
- Employment of CIC’s Graduates** SDEV’s memo ref. DEVB(Trg) 133/4 (9) dated 7.12.2012
- (a) “ECMTS Graduate” means a graduate who has successfully completed a training course conducted by the Construction Industry Council under the ECMTS not more than 6 months preceding the date on which the graduate is first employed to work on the Site in accordance with this Clause, and for the avoidance of doubt, “ECMTS Graduate” does not include any graduate who has completed a training course conducted by a contractor or subcontractor under the Contractor Cooperative Training Scheme administered by the Construction Industry Council; and
- (b) an ECMTS Graduate shall be taken as having successfully completed the relevant training course on the issue date specified in the certificate issued by the Construction Industry Council under the ECMTS.
- (2) An ECMTS Graduate employed by a subcontractor of the *Contractor* within the 6-month period to work on the Site in accordance with the provisions of this Clause shall be counted towards the minimum total number of ECMTS Graduates specified in sub-clause (1) of this Clause. For the purposes of this Clause, “subcontractor” means any subcontractor, irrespective of tier, including any Specialist Subcontractor.
- (3) Subject to sub-clause (5) of this Clause, each ECMTS Graduate shall be employed to work on the Site for at least 12 months (hereinafter referred to in this Clause as “the minimum 12-month employment period”). During the employment of the ECMTS Graduate, the *Contractor* or its subcontractor, as the case may be, shall pay the ECMTS Graduate a wage of no less than the higher of the following:

E9
(Cont'd)

- (a) HK\$10,000 per month for the first 6 months of the ECMTS Graduate's employment and then a wage of no less than HK\$15,000 per month thereafter; or
 - (b) the minimum wage as provided in the Minimum Wage Ordinance (Cap. 608).
- (4) If, within the 6-month period, the total number of ECMTS Graduate employed by the *Contractor* and its subcontractors in accordance with this Clause is below the minimum total number specified in sub-clause (1) of this Clause for a reason beyond the reasonable control of the *Contractor*, the *Contractor* shall demonstrate to the *Project Manager* that it has used all reasonable endeavours to comply with this Clause and seek the acceptance of the *Project Manager* to defer the employment of the remaining ECMTS Graduates under this Clause.
- (5) (a) If the *Contractor* or its subcontractor, as the case may be, is unable to employ the ECMTS Graduate to work on the Site for at least 12 months for any of the reasons listed below in this sub-clause (5)(a), the *Contractor* or its subcontractor, as the case may be, may subject to sub-clauses (5)(b) and (5)(c) below employ the ECMTS Graduate for a shorter period:
- (i) there is no work or insufficient work under the contract in the trade in which the ECMTS Graduate graduated; or
 - (ii) the ECMTS Graduate resigns on its own accord; or
 - (iii) the ECMTS Graduate is incapacitated by physical or mental illness or is otherwise unable or unfit to discharge the duties of a ECMTS Graduate; or
 - (iv) the ECMTS Graduate has committed any act for which the *Contractor* or its subcontractor, as the case may be, is entitled to terminate the employment contract without notice or payment in lieu under the law.

E9
(Cont'd)

- (b) If any ECMTS Graduate is employed for a period shorter than the minimum 12-month employment period, the *Contractor* or its subcontractor, as the case may be, shall within 2 months after the date on which the employment of such ECMTS Graduate ends, replace such ECMTS Graduate with a new ECMTS Graduate for the remaining time under the minimum 12-month employment period, unless:
 - (i) there is no work or insufficient work under the contract that is suitable for an ECMTS Graduate; or
 - (ii) the remaining time under the minimum 12-month employment period is less than 2 months; or
 - (iii) the ECMTS Graduate is incapacitated by physical or mental illness or is otherwise unable or unfit to discharge the duties of a ECMTS Graduate; or
 - (iv) otherwise accepted by the *Project Manager*.
- (c) If the *Contractor* or its subcontractor, as the case may be, is unable to replace the ECMTS Graduate in accordance with sub-clause (5)(b) of this Clause for a reason beyond the reasonable control of the *Contractor*, the *Contractor* shall demonstrate to the *Project Manager* that it has used all reasonable endeavours to comply with sub-clause (5)(b) of this Clause and seek the acceptance of the *Project Manager* to defer the replacement of the ECMTS Graduate.
- (6) The *Contractor* shall submit the names and particulars, as required by the *Project Manager*, of the ECMTS Graduates employed to work on the Site.

E9
(Cont'd)

- (7) The *Contractor* shall notify the *Project Manager* in writing of any change in the employment terms of an ECMTS Graduate or of the intention of an ECMTS Graduate, the *Contractor* or its subcontractor to terminate the employment contract of the ECMTS Graduate to work on the Site, within 3 working days of the *Contractor* or its subcontractor knowing the change or intention, whichever is earlier, and provide with the written notification under this sub-clause (7) the reason for the change of employment terms or termination of the employment contract.
- (8) Nothing in this Clause shall derogate from or in any way affect the respective obligations of the *Contractor* and its subcontractors to comply with the applicable law in Hong Kong, including relevant employment, labour and anti-discrimination legislation.

Section F – Contractor’s Design, Cost Savings Design, Professional Indemnity Insurance, Temporary Works Design and Intellectual Property Rights

<p>F1</p>	<p>(1) "Independent Checking Engineer" means the person, firm or company employed by the <i>Contractor</i> and responsible for the independent checking of the <i>Contractor's Design</i> whose qualifications, skill and experience are deemed satisfactory by the <i>Client</i> and who shall be independent of the Designer and the <i>Contractor</i>.</p> <p>"Designer" means the person, firm or company responsible for the design of the <i>Contractor's Design</i> whose qualifications, skill and experience are deemed satisfactory by the <i>Client</i>.</p> <p>"<i>Contractor's Design</i>" means that part or those parts of the design of the permanent works for which the <i>Contractor</i> has elected or is required in accordance with the Scope to prepare design calculations and drawings and which has been accepted by the <i>Client</i>, including, where appropriate any further design which the <i>Contractor</i> has to carry out as a result of any amendment to the design required under sub-clause (6) or (7) of Clause [F2]¹ of these <i>additional conditions of contract</i> and / or any change to the works for the <i>Contractor's Design</i> instructed by the <i>Project Manager</i>.</p> <p>"Check Certificate" means a certificate, in the form specified in Appendix [<i>insert appropriate reference</i>] to these <i>additional conditions of contract</i>, issued by the Independent Checking Engineer certifying that the <i>Contractor's Design</i> has been independently checked and complies in all respects with the terms and conditions of the contract.</p> <p>"Certified Working Drawing" means a drawing prepared by the Designer and endorsed as being checked and approved by the Independent Checking Engineer.</p>	<p>Contractor's Design – Definitions</p>	<p>DEVB TC(W) No. 3/2014</p> <p>[Optional if the <i>Contractor's</i> designs or alternative designs are allowed]</p>
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¹ Insert appropriate reference which refers to Clause F2 of this document regarding "*Contractor's Design*".

F2	(1)	(a)	<p>The <i>Contractor</i> shall have in respect of any defect or insufficiency in the <i>Contractor's Design</i> the like liability to the <i>Client</i>, whether under statute or otherwise, as would an appropriate professional designer holding itself out as competent to take on the <i>Contractor's Design</i>, provided always that:</p> <p>(i) where the <i>Client</i> has relied upon the <i>Contractor</i> to select equipment, plant, materials and goods required by the <i>Contractor's Design</i> to be incorporated in the works the <i>Contractor</i> shall ensure that all such equipment, plant, materials and goods are reasonably fit for the purpose for which they are intended and of good quality; and</p> <p>(ii) subject to sub-clause (1)(a)(i) above and without prejudice to the generality of the warranty of the <i>Contractor</i> referred to in the second paragraph of this sub-clause (1)(a) in no circumstances shall the <i>Contractor</i> be obliged to ensure that the <i>Contractor's Design</i> is fit for the purpose for which it is intended.</p> <p>In addition, the <i>Contractor</i> shall warrant that the <i>Contractor's Design</i> and its resultant work conforms to any performance specification or requirement referred to in the contract and, without prejudice to the generality of Clause [D4]¹ of these <i>additional conditions of contract</i> in respect of the <i>works</i>, the provisions of Clause [D4]¹ of these <i>additional conditions of contract</i> are complied with in respect of the <i>Contractor's Design</i> and the resultant work.</p>	Contractor's Design	<p>DEVB TC(W) No. 3/2014</p> <p>[Optional if the <i>Contractor's</i> designs or alternative designs are allowed]</p>
		(b)	<p>The liability and warranty of the <i>Contractor</i> referred to in sub-clause (1)(a) above shall apply independent of any question of fault on the part of the <i>Contractor</i> or any subcontractor and shall not be invalidated in any respect by any error made by the <i>Contractor</i> or subcontractor in the <i>Contractor's Design</i> or any submission to the <i>Project Manager</i> for checking and/or approval.</p>		
		(c)	<p>The Designer shall prepare all calculations and drawings relating to the <i>Contractor's Design</i> which shall be subject to a Check Certificate.</p>		

F2
(Cont'd)

- (d) If at any time the *Project Manager* has substantial cause for dissatisfaction with the conduct or performance of the Independent Checking Engineer, it shall notify the *Client* accordingly. The *Contractor* shall, upon receiving written notice from the *Client*, cease to employ such person, firm or company and shall immediately replace it by another whose qualifications, skill and experience are satisfactory to the *Client*.
- (2) The *Contractor's* Design shall be compatible with the provisions of the Scope, provided that the *Contractor* may propose modifications to the Scope in respect of particular methods of construction or materials not included in the Scope. In such cases, the *Contractor* shall immediately advise the *Client* of such proposals through the *Project Manager*. The *Client's* decision shall be conveyed to the *Contractor* in writing by the *Project Manager* within a reasonable period, and neither the acceptance nor rejection by the *Client* of such proposals shall vitiate the contract. Acceptance or rejection by the *Client* of such proposals shall not entitle the *Contractor* to claim for compensation events.
- (3) Within a reasonable period prior to the commencement of that part of the *works* to be constructed in accordance with the *Contractor's* Design, and from time to time as required by the *Project Manager*, the *Contractor* shall submit to the *Project Manager* :
- (a) two certified copies of the *Contractor's* Design,
 - (b) Check Certificates,
 - (c) Certified Working Drawings, and
 - (d) satisfactory evidence of professional indemnity insurance as referred to in Clause [F5]² of these *additional conditions of contract*.
- (4) The *Project Manager* shall, within a reasonable period, notify the *Contractor* in writing whether or not the documents submitted meet the requirements of the contract. The *Contractor* shall not commence the construction of such works until receipt of confirmative notification in writing from the *Project Manager*.

- F2** (5) Prior to the commencement of the part of the *works* of the *Contractor's Design*, the *Contractor* shall supply to the *Project Manager* [*insert number of copies required*] copies of the Certified Working Drawings together with one reproducible print of each drawing and, where specified in the contract, the soft copy of the drawings prepared in accordance with the CAD standard so specified. All drawings shall be fully figured copies with black lines on a white background of a size specified in the contract and shall be detailed in S.I. units.
- (Cont'd)
- (6) If at any time it becomes apparent to the *Project Manager* that any drawing and/or document submitted by the *Contractor* does not comply with the contract in any respect whatsoever, then all amendments deemed necessary by the *Project Manager* shall be made therein by the *Contractor*, and such amended drawing and/or document shall be reviewed by the Designer and shall be subject to a further Check Certificate. The *Contractor* shall bear the full cost of complying with this sub-clause, and shall reimburse the *Client* the cost of any work or design done by the *Client* which has been rendered abortive by any such amendments.
- (7) If at any time it becomes apparent to the *Contractor* that an amendment to the *Contractor's Design* is required for the proper completion of that part of the *works* involved in such design, then it shall :
- (a) immediately advise the *Project Manager* of the proposed amendment,
 - (b) resubmit documents to the *Project Manager* in accordance with sub-clause (3) of this Clause, provided that :
 - (i) the finished appearance of the *works* shall remain substantially unaltered,
 - (ii) there shall be no compensation events entitled to the *Contractor*, and
 - (iii) the *Contractor* shall bear the full cost of complying with this sub-clause, and shall reimburse the *Client* the cost of any work or design done by the *Client* which has been rendered abortive by any such amendments.

- F2** (8) On completion of the work constructed in accordance with the *Contractor's Design*, the *Contractor* shall prepare and submit to the *Project Manager* the 'as constructed' drawings of such work and shall supply to the *Project Manager* two copies and one reproducible print of each of such drawings and, where specified in the contract, the soft copy of the drawings prepared in accordance with the CAD standard so specified.
- (Cont'd)
- (9) The work to be constructed in accordance with the *Contractor's Design* shall be priced as a lump sum [*for related activities in the *activity schedule (for Option A/C)* or *for related items in the *bill of quantities (for Option B/D)* – *Amend where appropriate*] accompanied by a fully priced and detailed Schedule of Rates. The lump sum price for such [*activities/*items – *Amend where appropriate*] shall include:
- (a) the cost of producing the *Contractor's Design*,
 - (b) the cost and fees for obtaining the Check Certificates,
 - (c) the cost of providing the *Project Manager* with all calculations, documents (including maintenance manuals) and drawings in connection with the *Contractor's Design* as required by the contract,
 - (d) the full value of the work (including without limitation, spare parts) constructed in accordance with the *Contractor's Design* and all the associated risks, liabilities and obligations of the *Contractor* under the contract, and
 - (e) the cost of all samples and testing thereof and testing of the work constructed in accordance with the *Contractor's Design*.
- *Please amend to suit the appropriate Option.*
- (10) For the avoidance of doubt, any change in the Scope resulting from the acceptance by the *Client* of the *Contractor's Design* shall not be a compensation event notwithstanding any other provisions in the contract.

- F2** (11) The *Contractor's* Design shall be deemed part of the Scope provided by the *Contractor*. For the avoidance of doubt, amendments under sub-clause (6) of this Clause shall not be considered as compensation events.
- (Cont'd)**
- (12) (a) Except in respect of those Intellectual Property Rights referred to in sub-clause (12)(c) of this Clause, the *Contractor* hereby undertakes and warrants to the *Client* that the *Contractor* is the sole legal and beneficial owner of all Intellectual Property Rights subsisting in the *Contractor's* Design.
- (b) Upon the issue of the certificate of Completion of the *works* or after termination, abandonment or breach of contract, the *Contractor* shall be deemed to have granted to the *Client*, its authorized users and the subsequent owners and occupiers of the *works* free of all fees a transferable, non-exclusive, worldwide perpetual and irrevocable licence (carrying the right to grant sub-licences) to utilize, use and copy the *Contractor's* Design, the resultant works of such design, "as constructed" drawings referred to in sub-clause (8) of this Clause and other drawings and documents (including maintenance manuals) provided by the *Contractor* in connection with the execution of the *works* and/or the subsequent alteration, extension and maintenance thereof and for any purpose connected with construction, use, maintenance, alteration or demolition of the *works* (unless otherwise stated in the Scope) and for other purpose as stated in the Scope and the contract. In the event of different certificates of Completion having been issued for different *sections* or parts of the *works* pursuant to NEC Clause 30.2, the expression "certificate of Completion" shall, for the purpose of this sub-clause, mean the last of such certificates.

F2
(Cont'd)

- (c) To the extent that legal and beneficial ownership of any Intellectual Property Rights in the *Contractor's* Design, the resultant works of such design, “as constructed” drawings referred to in sub-clause (8) of this Clause and other drawings and documents (including maintenance manual) provided by the *Contractor* is vested in anyone other than the *Contractor*, the *Contractor* shall procure at its own cost and expense that the relevant legal and beneficial owner shall grant a licence together with an indemnity to the *Client*, its authorized users and the subsequent owners and occupiers of the *works* upon the same terms mutatis mutandis as those set out in sub-clauses (12)(b) and (12)(f) of this Clause respectively.
- (d) For the avoidance of doubt, any licence and indemnity granted pursuant to this Clause shall not be determined if the *Contractor* shall for any reason cease to be employed in connection with the *works*.
- (e) The *Contractor* shall at the request of the *Client*, do such acts and execute all such deeds and documents (or procure that the same be done or executed) as the *Client* or the subsequent owners or occupiers of the *works* may require for granting to the *Client*, its authorized users and the subsequent owners and occupiers of the *works* all or any of the rights referred to in this Clause. The *Contractor* shall bear its own costs and expenses in relation thereto.
- (f) The *Contractor* hereby indemnifies the *Client* against all claims, proceedings, actions, damages, costs and losses incurred or sustained by the *Client* in respect of infringement or alleged infringement of Intellectual Property Rights arising from the use or possession of the *Contractor's* Design (irrespective of whether the Intellectual Property Rights therein are owned by the *Contractor* or other parties) by the *Client* for purposes referred to in sub-clause (12)(b) of this Clause. For avoidance of doubt, the indemnity herein applies where the proceedings concerned are subsequently withdrawn or settled or in the event that the allegations of infringement are subsequently found to be unsubstantiated. The *Contractor* shall at its own cost grant a like indemnity to the *Client's* authorized users, the subsequent owners or occupiers of the *works* upon request of the *Client*.

F2
(Cont'd)

- (g) The *Contractor* warrants that:-
- (i) the provision of the *Contractor's* Design or any part or component of the resultant works of such design or any machine, work, method or material or anything whatsoever required for any works by the *Contractor*, its subcontractors or the manufacturers of any proprietary product or system required or selected by it to Provide the Works and/or in the performance of the contract and the use, operation or possession and/or the alteration, extension or maintenance by the *Client*, its authorized users and subsequent owners or occupiers of the *works*, of the *Contractor's* Design or any part(s) thereof and the resultant works of such design, or any machine, work, method or material or anything whatsoever required for any works provided by the *Contractor*, its subcontractors or the manufacturers of any proprietary product or system required or selected by it will not infringe any Intellectual Property Rights or any other rights of any person; and
 - (ii) in respect of any article, component, process or invention in the *Contractor's* Design or the resultant works of such design or any machine, work, method or material or anything whatsoever required for any works developed, adopted, produced or used by the *Contractor*, its subcontractors or the manufacturers of any proprietary product or system required or selected by it to Provide the Works and/or in the performance of the contract, the Intellectual Property Rights of which are vested in a third party, the *Contractor*, its subcontractors or the manufacturers have or shall have obtained a valid and continuing licence under which they are entitled to use the relevant article, component, process or invention to Provide the Works and/or in the performance of the contract and the *Client*, its authorized users and the subsequent owners and occupiers of the works are entitled to use, operate and possess, and/or alter, extend and maintain the *Contractor's* Design or any part(s) thereof and the resultant works of such design, or any machine, work, method or material or anything whatsoever required for any works provided by the *Contractor*, its

**F2
(Cont'd)**

subcontractors or the manufacturers of any proprietary product or system required or selected by it.

- (h) The *Contractor* shall irrevocably waive, and undertake to procure at its own cost and expense all authors of the *Contractor's* Design to irrevocably waive, all moral rights (whether past, present or future) in such items. The waiver shall operate in favour of the *Client*, its authorized users and the subsequent owners and occupiers of the *works* and shall take effect upon the grant of licence to the *Client*, its authorized users and the subsequent owners and occupiers of the *works*.
 - (i) The provisions of sub-clause (12) of this Clause shall survive the Completion or termination and shall continue in full force and effect notwithstanding such Completion or termination.
- (13) Sub-clause (12) of this Clause shall be without prejudice to Clause [F8]³ of these *additional conditions of contract*.

¹ Insert appropriate reference which refers to Clause D4 of this document regarding "Compliance with Enactments and Regulations".

² Insert appropriate reference which refers to Clause F5 of this document regarding "Professional Indemnity Insurance in respect to *Contractor's* Design".

³ Insert appropriate reference which refers to Clause F8 of this document regarding "Intellectual Property Rights".

F3	(1)	<p>"Independent Checking Engineer of Cost Savings Design" means the person, firm or company employed by the <i>Contractor</i> and responsible for the independent checking of the Cost Savings Design whose qualifications, skill and experience are deemed satisfactory by the <i>Client</i> and who shall be independent of the Designer of Cost Savings Design and the <i>Contractor</i>.</p> <p>"Designer of Cost Savings Design" means the person, firm or company responsible for the design of Cost Savings Design whose qualifications, skill and experience are deemed satisfactory by the <i>Client</i>.</p> <p>"Cost Savings Design" means the design proposal to any part of the <i>works</i> submitted by the <i>Contractor</i> under Clause [F4]¹ of these <i>additional conditions of contract</i> and any amplification or amendment thereto and accepted by the <i>Client</i> with or without amendments, including, where applicable, any further design which the <i>Contractor</i> has to carry out as a result of any amendment to the design required under sub-clause (6) or (7) of Clause [F4]¹ and / or any change to the works for the Cost Savings Design instructed by the <i>Project Manager</i>.</p> <p>"Check Certificate of Cost Savings Design" means a certificate, in the form specified in Appendix [<i>insert appropriate reference</i>] to these <i>additional conditions of contract</i>, issued by the Independent Checking Engineer of Cost Savings Design certifying that the Cost Savings Design has been independently checked and complies in all respects with the terms and conditions of the contract.</p> <p>"Certified Working Drawing of Cost Savings Design" means a drawing prepared by the Designer of Cost Savings Design and endorsed as being checked and approved by the Independent Checking Engineer of Cost Savings Design.</p>	<p>Cost Savings Design – Definitions</p>	<p>DEVB TC(W) No. 3/2014</p> <p>[Optional if the <i>Contractor</i>'s cost savings designs are allowed]</p>
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¹ Insert appropriate reference which refers to Clause F4 of this document regarding "Cost Savings Design".

F4	(1)	(a)	<p>The <i>Contractor</i> may at any time during the continuance of the <i>works</i> submit to the <i>Project Manager</i> in writing a Cost Savings Design proposal in respect of a part of the <i>works</i> with sufficient details and justifications to show:</p> <ul style="list-style-type: none">(i) the Prices can be reduced by an amount of a lump sum, and/or(ii) the time for Completion of the whole of the <i>works</i> or any <i>section</i> thereof can be reduced, and/or(iii) the future operation and maintenance cost of the works can be reduced, and/or(iv) the efficiency or value to the <i>Client</i> of the <i>works</i> can be improved, and/or(v) the construction productivity can be enhanced and/or the requirement for manpower resources can be reduced, and/or(vi) any other social benefits. <p>In any event, the <i>Contractor's</i> liability for Providing the Works is not prejudiced and the proposal shall be of benefit to the <i>Client</i>.</p>	Cost Savings Design	DEVB TC(W) No. 3/2014 [Optional if the <i>Contractor's</i> cost savings designs are allowed]
		(b)	<p>Any proposal shall clearly state that it is submitted for consideration under this sub-clause and shall include (i) an estimate for consideration by the <i>Client</i> of the amount of the cost of Providing the Works that may be saved, (ii) a fully priced and detailed Schedule of Rates as referred to in sub-clause (9) of this Clause, (iii) deletion(s) required for the original pricing document, and (iv) an estimate of any addition in future operation and maintenance cost. In assessing the overall cost savings, the <i>Client</i> will take into account the additional cost incurred for considering the <i>Contractor's</i> proposal including the <i>Project Manager's</i> cost and addition in future operation and maintenance cost. The Cost Savings Design shall be subject to the <i>Project Manager's</i> confirmation that it is compatible with the provisions of the Scope. The <i>Contractor</i> may propose modifications to the Scope in respect of particular methods of construction or materials not included in the Scope.</p>		

F4
(Cont'd)

- (c) Subject to acceptance of the Cost Savings Design, (i) the overall cost savings as assessed by the *Client* and (ii) any revision (on the basis of the change in value as assessed by the *Client* and change in the Completion Date) to the daily rate of delay damages and/or minimum delay damages for the *works* or, as the case may be, the relevant *section* to which the Cost Savings Design belongs shall be agreed with the *Contractor*. Before acceptance of the Cost Savings Design, the *Project Manager* shall obtain confirmation from the *Client* that the proposal is acceptable to the *Client* and confirmation from both the *Contractor* and the *Client* that (i) the overall cost savings and (ii) any revision as aforesaid to the daily rate of delay damages and/or minimum delay damages arising from the proposal are agreed by both parties.
- (d) The *Client's* decision to accept or reject the Cost Savings Design shall be conveyed to the *Contractor* in writing by the *Project Manager* within six weeks or a longer period to which the *Contractor* has agreed, and neither the acceptance nor rejection of such proposal shall vitiate the contract.
- (e) If the Cost Savings Design is accepted, the Prices shall be reduced by the total amount of the agreed construction cost savings in lump sum for the part of the *works* immediately. The agreed construction cost savings shall be equally shared between the *Client* and the *Contractor*, the *Project Manager's* cost and addition in future operation and maintenance cost shall be borne by the *Contractor*, and the Completion Date shall be adjusted as agreed between the *Client* and the *Contractor* (and the Accepted Programme deemed adjusted accordingly). Upon Completion of the whole of the *works*, the *Contractor's* share in the agreed construction cost savings due to the Cost Savings Design, after the deduction of the total of the *Project Manager's* cost and any addition in future operation and maintenance cost for a design life in net present value, shall be paid to the *Contractor*. For the avoidance of doubt, the acceptance of the Cost Savings Design shall not be a compensation event. If the proposal is rejected, the *Contractor* shall not be entitled to any compensation event arising from its submission to the *Project Manager* of the proposal and the *Client* shall bear its own cost

Sub-clause (e)
for Options A
and B and “**Not
Used**” for
Options C and D

F4
(Cont'd)

for considering the proposal submitted by the *Contractor* under this sub-clause except that the *Contractor* shall reimburse the *Client* for the *Project Manager's* cost in doing the same. The *Client* shall be entitled to deduct such cost from any sums due to the *Contractor* under the contract and/or to recover such cost as a debt from the *Contractor*.

- (f) If the Cost Savings Design is accepted, the Completion Date shall be adjusted as agreed between the *Client* and the *Contractor* (and the Accepted Programme deemed adjusted accordingly). The Prices shall remain unchanged. The *Contractor* shall reimburse the *Client* for the total of the *Project Manager's* cost and any additional in future operation and maintenance cost for a design life in net present value resulted from the Cost Savings Design. The *Client* shall be entitled to deduct such cost from any sums due to the *Contractor* under the contract and/or to recover such cost as a debt from the *Contractor* upon completion of the part of the *works* related to Cost Saving Design. Upon Completion of the whole of the *works*, the *Contractor's* share due to the Cost Savings Design, after the deduction of the total of the *Project Manager's* cost and any addition in future operation and maintenance cost for a design life in net present value, shall be included in the *Project Manager's* assessment under with NEC Clause 54. For the avoidance of doubt, the acceptance of the Cost Savings Design shall not be a compensation event. If the proposal is rejected, the *Contractor* shall not be entitled to any compensation event arising from its submission to the *Project Manager* of the proposal and the *Client* shall bear its own cost for considering the proposal submitted by the *Contractor* under this sub-clause except that the *Contractor* shall reimburse the *Client* for the *Project Manager's* cost in doing the same. The *Client* shall be entitled to deduct such cost from any sums due to the *Contractor* under the contract and/or to recover such cost as a debt from the *Contractor*.

Sub-clause (f)
for Options C
and D and “**Not
Used**” for
Options A and B

F4 (2)
(Cont'd)

- (a) The *Contractor* shall have in respect of any defect or insufficiency in the Cost Savings Design the like liability to the *Client*, whether under statute or otherwise as would an appropriate professional designer holding itself out as competent to take on the and Cost Savings Design, provided always that:
- (i) where the *Client* has relied upon the *Contractor* to select equipment, plant, materials and goods required by the Cost Savings Design to be incorporated into the *works* the *Contractor* shall ensure that all such equipment, plant, materials and goods are reasonably fit for the purpose for which they are intended and of good quality; and
 - (ii) subject to sub-clause (2)(a)(i) above and without prejudice to the generality of the warranty of the *Contractor* referred to in the second paragraph of this sub-clause (2)(a) in no circumstance shall the *Contractor* be obliged to ensure that the Cost Savings Design is fit for the purpose for which it is intended.

In addition, the *Contractor* shall warrant that the Cost Savings Design and its resultant work conforms to any performance specification or requirement referred to in the contract and, without prejudice to the generality of Clause [D4]¹ of the *additional conditions of contract*, the provisions of Clause [D4]¹ of the *additional conditions of contract* are complied with in respect of the Cost Savings Design and the resultant work.

- (b) The liability and warranty of the *Contractor* referred to in sub-clause 2(a) above shall apply independent of any question of fault on the part of the *Contractor* or any subcontractor and shall not be invalidated in any respect by any error made by the *Contractor* or subcontractor in the Cost Savings Design or any submission to the *Project Manager* for checking and/or acceptance.
- (c) The Designer of Cost Savings Design shall prepare all calculations and drawings relating to the Cost Savings Design which shall be subject to a Check Certificate of Cost Savings Design.

**F4
(Cont'd)**

- (d) If at any time the *Project Manager* has substantial cause for dissatisfaction with the conduct or performance of the Independent Checking Engineer of Cost Savings Design, it shall notify the *Client* accordingly. The *Contractor* shall, upon receiving written notice from the *Client*, cease to employ such person, firm or company and shall immediately replace it by another whose qualifications, skill and experience are satisfactory to the *Client*.
- (3) Within a reasonable period prior to the commencement of that part of the *works* to be constructed in accordance with the Cost Savings Design, and from time to time as required by the *Project Manager*, the *Contractor* shall submit to the *Project Manager* :
- (a) two certified copies of the Cost Savings Design,
 - (b) Check Certificates of Cost Savings Design,
 - (c) Certified Working Drawings of Cost Savings Design, and
 - (d) satisfactory evidence of professional indemnity insurance as referred to in Clause [F6]² of the *additional conditions of contract*.
- (4) The *Project Manager* shall, within a reasonable period, notify the *Contractor* in writing whether or not the documents submitted meet the requirements of the contract. The *Contractor* shall not commence the construction of such part of the *works* until receipt of confirmative notification in writing from the *Project Manager*.
- (5) Prior to the commencement of the part of the *works* of the Cost Savings Design, the *Contractor* shall supply to the *Project Manager* [*insert number of copies required*] copies of the Certified Working Drawings of Cost Savings Design together with one reproducible print of each drawing and where specified in the contract, the soft copy of the drawings prepared in accordance with the CAD standard so specified. All drawings shall be fully figured copies with black lines on a white background of a size specified in the contract and shall be detailed in S.I. units.

F4 (6)
(Cont'd)

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

- F4 (Cont'd)** (9) The work to be constructed in accordance with the Cost Savings Design shall be priced as a lump sum for [*related activities in the Activity Schedule (*for Option A/C*) or *for related items in the Bill of Quantities (*for Option B/D*) – Amend where appropriate] accompanied by a fully priced and detailed Schedule of Rates. The lump sum price for such [*activities/*items – Amend where appropriate] shall include:
- (a) the cost of producing the Cost Savings Design,
 - (b) the cost and fees for obtaining the Check Certificates of Cost Savings Design,
 - (c) the cost of providing the *Project Manager* with all calculations, documents (including maintenance manuals), and drawings in connection with the Cost Savings Design,
 - (d) the full value of the work (including without limitation, spare parts) constructed in accordance with the Cost Savings Design and all the risks, liabilities and obligations of the *Contractor* under the contract, and
 - (e) the cost of all samples and testing thereof and testing of the work constructed in accordance with the Cost Savings Design.

Remark:

**Please amend to suit the appropriate Option.*

- (10) For the avoidance of doubt, any change to the Scope resulting from the acceptance by the *Client* of the Cost Savings Design shall not be a compensation event notwithstanding any other provisions in the contract.
- (11) The Cost Savings Design shall be deemed part of the Scope provided by the *Contractor*. For the avoidance of doubt, amendments under sub-clause (6) of this Clause shall not be considered as compensation events.
- (12) (a) Except in respect of those Intellectual Property Rights referred to in sub-clause (12)(c) of this Clause, the *Contractor* hereby undertakes and warrants to the *Client* that the *Contractor* is the sole legal and beneficial owner of all Intellectual Property Rights subsisting in Cost Savings Design.

F4
(Cont'd)

- (12) (b) Upon the issue of the certificate of Completion of the *works*, or after termination, abandonment or breach of contract, the *Contractor* shall be deemed to have granted to the *Client*, its authorized users and the subsequent owners and occupiers of the *works* free of all fees a transferable, non-exclusive, worldwide, perpetual and irrevocable licence (carrying the right to grant sub-licenses) to utilize, use and copy the Cost Savings Design, the resultant works of such design, “as constructed” drawings referred to in sub-clause (8) of this Clause and other drawings and documents (including maintenance manuals) provided by the *Contractor* in connection with the construction of the *works* and/or the subsequent alteration, extension and maintenance thereof and for any purpose connected with construction, use, maintenance, alteration or demolition of the *works* (unless otherwise stated in the Scope) and for other purpose as stated in the Scope and the contract. In the event of different certificates of Completion having been issued for different *sections* or parts of the *works* pursuant to NEC Clause 30.2, the expression "certificate of Completion" shall, for the purpose of this sub-clause, mean the last of such certificates.
- (c) To the extent that legal and beneficial ownership of any Intellectual Property Rights in the Cost Savings Design, the resultant works of such design, “as constructed” drawings referred to in sub-clause (8) of this Clause and other drawings and documents (including maintenance manual) provided by the *Contractor* is vested in anyone other than the *Contractor*, the *Contractor* shall procure at its own cost and expense that the relevant legal and beneficial owner shall grant a licence together with an indemnity to the *Client*, its authorized users and the subsequent owners and occupiers of the *works* upon the same terms *mutatis mutandis* as those set out in sub-clauses (12)(b) and (12)(f) of this Clause respectively.

F4
(Cont'd)

- (d) For the avoidance of doubt, any license and indemnity granted pursuant to this Clause shall not be determined if the *Contractor* shall for any reason cease to be employed in connection with the *works* or the *Contractor's* obligation to Provide the Works be terminated.
- (e) The *Contractor* shall at the request of the *Client*, do such acts and execute all such deeds and documents (or procure that the same be done or executed) as the *Client* or the subsequent owners or occupiers of the *works* may require for granting to the *Client*, its authorized users and the subsequent owners and occupiers of the *works* all or any of the rights referred to in this Clause. The *Contractor* shall bear its own costs and expenses in relation thereto.
- (f) The *Contractor* hereby indemnifies the *Client* against all claims, proceedings, actions, damages, costs and losses incurred or sustained by the *Client* in respect of infringement or alleged infringement of Intellectual Property Rights arising from the use or possession of the Cost Savings Design (irrespective of whether the Intellectual Property Rights therein are owned by the *Contractor* or other parties) by the *Client* for purposes referred to in sub-clause (12)(b) of this Clause. For avoidance of doubt, the indemnity herein applies where the proceedings concerned are subsequently withdrawn or settled or in the event that the allegations of infringement are subsequently found to be unsubstantiated. The *Contractor* shall at its own cost grant a like indemnity to the *Client's* authorized users, the subsequent owners or occupiers of the works upon request of the *Client*.
- (g) The *Contractor* warrants that:-
 - (i) the provision of the Cost Savings Design or any part or component of the resultant works of such design or any machine, work, method or material or anything whatsoever required for any works by the *Contractor*, its subcontractors or the manufacturers of any proprietary product or system required or selected by it to Provide the Works and/or in the performance of the contract and the use, operation or possession and/or the alteration, extension or maintenance by the *Client*, its authorized users and subsequent owners or

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(Cont'd)

occupiers of the *works*, of the Cost Savings Design or any part(s) thereof and the resultant works of such design, or any machine, work, method or material or anything whatsoever required for any works provided by the *Contractor*, its subcontractors or the manufacturers of any proprietary product or system required or selected by it will not infringe any Intellectual Property Rights or any other rights of any person; and

(ii) in respect of any article, component, process or invention in the Cost Savings Design or the resultant works of such design or any machine, work, method or material or anything whatsoever required for any works developed, adopted, produced or used by the *Contractor*, its subcontractors or the manufacturers of any proprietary product or system required or selected by it to Provide the Works and/or in the performance of the contract, the Intellectual Property Rights of which are vested in a third party, the *Contractor*, its subcontractors or the manufacturers have or shall have obtained a valid and continuing licence under which they are entitled to use the relevant article, component, process or invention to Provide the Works and/or in the performance of the contract and the *Client*, its authorized users and the subsequent owners and occupiers of the works are entitled to use, operate and possess, and/or alter, extend and maintain the Cost Savings Design or any part(s) thereof and the resultant works of such design, or any machine, work, method or material or anything whatsoever required for any works provided by the *Contractor*, its subcontractors or the manufacturers of any proprietary product or system required or selected by it.

(h) The *Contractor* shall irrevocably waive, and undertake to procure at its own cost and expense all authors of the Cost Savings Design to irrevocably waive, all moral rights (whether past, present or future) in such items. The waiver shall operate in favour of the *Client*, its authorized users and the subsequent owners and occupiers of the *works* and shall take effect upon the grant of licence to the *Client*, its authorized users and the subsequent owners and occupiers

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(Cont'd)**

of the *works*.

- (i) The provisions of sub-clause (12) of this Clause shall survive the Completion or termination and shall continue in full force and effect notwithstanding such Completion or termination.
- (13) Sub-clause (12) of this Clause shall be without prejudice to Clause [F8]³ of these *additional conditions of contract*.

¹ Insert appropriate reference which refers to Clause D4 of this document regarding “Compliance with Enactments and Regulations”.

² Insert appropriate reference which refers to Clause F6 of this document regarding “Professional Indemnity Insurance in respect to Cost Savings Design”.

³ Insert appropriate reference which refers to Clause F8 of this document regarding “Intellectual Property Rights”.

F5	(1)	Without limiting its obligations under the contract, the <i>Contractor</i> shall effect and maintain, with well established insurers of repute, professional indemnity insurance for a minimum amount of <i>[insert the amount]</i> in respect of its obligations in relation to the design of any part or all of the <i>works</i> to be carried out by or on behalf of the <i>Contractor</i> pursuant to the contract, except the Cost Savings Design and Temporary Works, for any one occurrence or series of occurrences arising out of any one event, or each and every claim, for a period from the Contract Date until <i>[insert the time]</i> years after the date of Completion of the whole of the <i>works</i> .	Professional Indemnity Insurance in respect of Contractor's Design	DEVB TC(W) No. 9/2007 SDEV's memo ref. (02245-01-13) in DEVB(W)510/3 4/01 dated 6.10.2009 Modified from SCC72
	(2)	The <i>Contractor</i> shall procure that the Designer and Independent Checking Engineer appointed or engaged by the <i>Contractor</i> in connection with the design or checking of the design of any part or all of the <i>works</i> , except the Cost Savings Design and Temporary Works, shall effect and maintain, with well established insurers of repute, professional indemnity insurance for a minimum amount of <i>[insert the amount]</i> in respect of its obligations in relation to the design or, as the case may be, checking of the design of any part or all of the <i>works</i> , except the Cost Savings Design and Temporary Works, for any one occurrence or series of occurrences arising out of any one event, or each and every claim for a period from the respective date of commencement of appointment or engagement of the Designer and Independent Checking Engineer until <i>[insert the time]</i> years after the date of Completion of the whole of the <i>works</i> .		[Optional if the <i>Contractor's</i> designs or alternative designs are allowed]
	(3)	The professional indemnity insurance referred to in sub-clause (1) or (2) of this Clause shall respectively be effected with an insurer or insurers acceptable to the <i>Client</i> . The <i>Contractor</i> shall immediately inform the <i>Client</i> in writing if such insurance ceases to be available or otherwise is not maintained in accordance with this Clause or for any reason becomes void or unenforceable.		
	(4)	If the insurance policy effected pursuant to sub-clause (1) or (2) of this Clause is project specific, the maximum deductible/excess allowed under the insurance policy shall be limited to a maximum of 20% of the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be.		

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(Cont'd)

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

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(Cont'd)

- (A) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall be reinstated in full upon exhaustion of the limit of indemnity by reason of indemnity payments made on account of any claim, loss, damage, liability, cost or expense paid or payable under the insurance policy until the total amount of indemnity payable by the insurer under the insurance policy reaches 3 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or
 - (B) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall not be less than 3 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or
 - (C) the limit of indemnity for any one occurrence or series of occurrences arising out of any one event, or each and every claim under the insurance policy shall not be less than 3 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be.
- (6) (a) The *Contractor* shall provide to the *Client* within 60 days from the Contract Date and thereafter, in the case where the insurance policy effected pursuant to sub-clause (1) of this Clause does not cover the entire period of insurance required under that sub-clause, within 7 days of professional indemnity insurance being effected upon the expiry of the insurance policy:
- (A) an undertaking that the current insurance policy effected pursuant to sub-clause (1) of this Clause complies with the terms in this Clause in Form *[insert appropriate reference]* in Appendix *[insert appropriate reference]* to these *additional conditions of contract* ; and

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(Cont'd)**

- (B) a certified copy of the full insurance policy effected pursuant to sub-clause (1) of this Clause for the acceptance of the *Client* unless the *Contractor* can demonstrate to the satisfaction of the *Client* that it is not reasonably practicable to provide a certified copy of the full insurance policy in which event the *Contractor* shall provide a certificate in Form *[insert appropriate reference]* in Appendix *[insert appropriate reference]* 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 *Client* may reasonably require.

- (b) The *Contractor* shall provide to the *Client*, within *[insert the time]* days from the respective dates of appointment or engagement of its Designer and Independent Checking Engineer, and thereafter, in the case where the insurance policy effected pursuant to sub-clause (2) of this Clause does not cover the entire period of insurance required under that sub-clause, within 7 days of professional indemnity insurance being effected upon the expiry of the earlier insurance policy:
 - (A) an undertaking that the current insurance policy effected pursuant to sub-clause (2) of this Clause complies with the terms of this Clause in Form *[insert appropriate reference]* in Appendix *[insert appropriate reference]* to these *additional conditions of contract*;

 - (B) a certified copy of the full insurance policy effected pursuant to sub-clause (2) of this Clause for the acceptance of the *Client* unless the *Contractor* can demonstrate to the satisfaction of the *Client* that it is not reasonably practicable to provide a certified copy of the full insurance policy in which event the *Contractor* shall provide a certificate in Form *[insert appropriate reference]* in Appendix *[insert appropriate reference]* 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 *Client* may reasonably require.

**F5
(Cont'd)**

- (7) If the *Contractor* shall fail upon request to produce to the *Client* satisfactory evidence that there is in force professional indemnity insurance required under this Clause, the *Client* may effect and keep in force any such insurance and pay such premium as may be necessary for that purpose. The *Client* shall be entitled to deduct such premium, together with expenses incurred, in accordance with the provisions of Clause [B2]¹ of the *additional conditions of contract* and/or to recover such amount as a debt from the *Contractor*.
- (8) In the event of different certificates of Completion having been issued for different sections or parts of the *works* pursuant to NEC Clause 30.2, the expression "certificate of Completion" shall, for the purpose of this Clause, mean the last of such certificates.
- (9) In determining the period of insurance under an insurance policy for the purpose of this Clause, any extension or renewal of the insurance policy shall be treated as a separate insurance policy and shall not have the effect of extending the period of insurance.

¹ Insert appropriate reference which refers to Clause B2 of this document regarding "Recovery of Money Due to *Client*".

F6	<p>(1) Without limiting its obligations under the contract, the <i>Contractor</i> shall effect and maintain, with well established insurers of repute, professional indemnity insurance for a minimum amount as notified by the <i>Client</i> to the <i>Contractor</i> in respect of its obligations in relation to the Cost Savings Design to be carried out by or on behalf of the <i>Contractor</i> pursuant to the contract for any one occurrence or series of occurrences arising out of any one event, or each and every claim, for a period from the date of notification of acceptance of the Cost Savings Design until <i>[insert the time]</i> years after the date of Completion of the whole of the <i>works</i>.</p> <p>(2) The <i>Contractor</i> shall procure that the Designer of Cost Savings Design and Independent Checking Engineer of Cost Savings Design appointed or engaged by the <i>Contractor</i> in connection with the design or checking of the Cost Savings Design shall effect and maintain, with well established insurers of repute, professional indemnity insurance for a minimum amount as notified by the <i>Client</i> to the <i>Contractor</i> in respect of its obligations in relation to the design or, as the case may be, checking of the Costs Savings Design, for any one occurrence or series of occurrences arising out of any one event, or each and every claim for a period from the respective date of commencement of appointment or engagement of the Designer of Cost Savings Design and Independent Checking Engineer of Cost Savings Design until <i>[insert the time]</i> years after the date of Completion of the whole of the <i>works</i>.</p> <p>(3) The professional indemnity insurance referred to in sub-clause (1) or (2) of this Clause shall respectively be effected with an insurer or insurers acceptable to the <i>Client</i>. The <i>Contractor</i> shall immediately inform the <i>Client</i> in writing if such insurance ceases to be available or otherwise is not maintained in accordance with this Clause or for any reason becomes void or unenforceable.</p> <p>(4) If the insurance policy effected pursuant to sub-clause (1) or (2) of this Clause is project specific, the maximum deductible/excess allowed under the insurance policy shall be limited to a maximum of 20% of the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be.</p>	<p>Professional Indemnity Insurance in respect of Cost Savings Design</p>	<p>DEVB TC(W) No. 3/2014</p> <p>SDEV's memo ref. (02245-01-13) in DEVB(W)510/3 4/01 dated 6.10.2009</p> <p>Modified from SCC72</p> <p>[Optional if the <i>Contractor's</i> Cost Savings Designs are allowed]</p>
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(Cont'd)

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

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(Cont'd)

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

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(Cont'd)

- (B) a certified copy of the full insurance policy effected pursuant to sub-clause (1) of this Clause for the acceptance of the *Client* unless the *Contractor* can demonstrate to the satisfaction of the *Client* that it is not reasonably practicable to provide a certified copy of the full insurance policy in which event the *Contractor* shall provide a certificate in Form *[insert appropriate reference]* in Appendix *[insert appropriate reference]* 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 *Client* may reasonably require.
- (b) The *Contractor* shall provide to the *Client*, within *[insert the time]* days from the respective dates of appointment or engagement of its Designer of Cost Savings Design and Independent Checking Engineer of Cost Savings Design, and thereafter, in the case where the insurance policy effected pursuant to sub-clause (2) of this Clause does not cover the entire period of insurance required under that sub-clause, within 7 days of professional indemnity insurance being effected upon the expiry of the earlier insurance policy:
- (A) an undertaking that the current insurance policy effected pursuant to sub-clause (2) of this Clause complies with the terms of this Clause in Form *[insert appropriate reference]* in Appendix *[insert appropriate reference]* to these *additional conditions of contract*;
- (B) a certified copy of the full insurance policy effected pursuant to sub-clause (2) of this Clause for the acceptance of the *Client* unless the *Contractor* can demonstrate to the satisfaction of the *Client* that it is not reasonably practicable to provide a certified copy of the full insurance policy in which event the *Contractor* shall provide a certificate in Form *[insert appropriate reference]* in Appendix *[insert appropriate reference]* 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 *Client* may reasonably require.

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(Cont'd)

- (7) If the *Contractor* shall fail upon request to produce to the *Client* satisfactory evidence that there is in force professional indemnity insurance required under this Clause, the *Client* may effect and keep in force any such insurance and pay such premium as may be necessary for that purpose. The *Client* shall be entitled to deduct such premium, together with expenses incurred, in accordance with the provisions of Clause [B2]¹ of the *additional conditions of contract* and/or to recover such amount as a debt from the *Contractor*.
- (8) In the event of different certificates of Completion having been issued for different sections or parts of the *works* pursuant to NEC Clause 30.2, the expression "certificate of Completion" shall, for the purpose of this Clause, mean the last of such certificates.
- (9) In determining the period of insurance under an insurance policy for the purpose of this Clause, any extension or renewal of the insurance policy shall be treated as a separate insurance policy and shall not have the effect of extending the period of insurance.

¹ Insert appropriate reference which refers to Clause B2 of this document regarding "Recovery of Money Due to *Client*".

- F7**
- (1) “Temporary Works” means all temporary work of every kind required for the construction, Completion and maintenance of the *works*.
- (2) When considered necessary by the *Contractor* or specified in the contract or subsequently ordered by the *Project Manager* or the *Supervisor*, the design of any Temporary Works shall be checked and certified by an engineer independent of the *Contractor* and not associated with the design of the Temporary Works.
- (3) The design so certified shall be referred to as the certified design. The independent checking engineer shall be a professionally qualified engineer and a member of the Hong Kong Institution of Engineers or equivalent, whom the *Contractor* considers has suitable experience and be acceptable to the *Project Manager*.
- (4) The independent checking engineer before certifying the design of any Temporary Works in the checking certificate shall :
- (a) examine the *Contractor's* detailed design and method statements concerning the design, erection, use and removal of the Temporary Works, and
 - (b) consider the ground conditions, the adequacy of foundations and support of the Temporary Works and any other factors which may affect the stability and safety of such Temporary Works during their erection, use and removal
- so that it shall be able to certify that the Temporary Works are properly and safely designed using all reasonable skill and care.
- (5) Before commencing construction of any such Temporary Works identified as requiring independent certification, the *Contractor* shall submit to the *Project Manager* in sufficient time for the *Project Manager* to comply with sub-clause (6):
- Independent Checking of the Design, Erection, Use and Removal of Temporary Works**
- WBTC No. 3/97
Modified from GCC1(1) and SCC26

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(Cont'd)

- (a) design details and method statements concerning the design, erection, use and removal of the Temporary Works, and
 - (b) the original checking certificate signed by both the independent checking engineer and by or on behalf of the *Contractor*.
- (6) The *Project Manager* shall examine the documentation referred to in sub-clause (5) and shall satisfy itself that it contains no obvious deficiency and that the independent checking engineer has carried out its duties set out in sub-clause (4). Upon being so satisfied the *Project Manager* shall issue its consent in writing for such work to commence, which shall be issued with due regard to the *Contractor's* programme and the *Contractor's* actions under sub-clause (5).
- (7) The *Contractor* shall ensure that such Temporary Works are erected, used and removed in accordance with the certified design and method statements. If the *Contractor* wishes to deviate from the certified design, the *Contractor* shall submit to the *Project Manager* further certification that any change has been properly and safely designed and has been checked and found satisfactory by the independent checking engineer, in accordance with its duties set out in sub-clause (4), prior to the commencement of construction of such Temporary Works in accordance with sub-clause (5).
- (8) In all cases where the loading of such Temporary Works is applied as a separate operation after completion of their construction, before such loading is applied, the *Contractor* shall submit to the *Project Manager* a further certificate signed by or on behalf of the *Contractor* and by the independent checking engineer confirming that the same has been constructed in accordance with the certified design. In all cases where the loading is an integral part of the construction of such Temporary Works, the *Contractor* shall submit to the *Project Manager* such a certificate as soon after the construction of the same as is reasonably possible.
- (9) No checking certificate certified by the independent checking engineer, with or without amendment, shall absolve the *Contractor* from its liability under the contract for the design, erection, use or removal of the Temporary Works.

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(Cont'd)

- (10) Where the *Project Manager* requires, the *Contractor* shall provide a method statement for any Temporary Works not subject to an independent check and including but not limited to excavation and temporary access structures.

- (11) If at any time and for any reason related to the work of the independent checking engineer, the *Project Manager* is dissatisfied with the performance of the independent checking engineer, the *Project Manager* shall notify the *Contractor* in writing giving reasons for such dissatisfaction. If the independent checking engineer does not remedy the situation within a reasonable time, the *Project Manager* may, by a further notice in writing, require the *Contractor* to dismiss the independent checking engineer and the *Contractor* shall do so with immediate effect and not re-employing it again in connection with the *works* and shall replace the independent checking engineer with a replacement selected in accordance with sub-clause (2).

F7A	<p>(1) Without limiting its obligations under the contract, the <i>Contractor</i> shall effect and maintain, with well established insurers of repute, professional indemnity insurance for a minimum amount of [state the amount] in respect of its obligations in relation to the design of any part or all of the Temporary Works to be carried out by or on behalf of the <i>Contractor</i> pursuant to the contract as described in Clause F7 of <i>additional conditions of contract</i> for any one occurrence or series of occurrences arising out of any one event, or each and every claim, for a period from the Contract Date until 6 years after the date of Completion of the whole of the <i>works</i>.</p> <p>(2) The <i>Contractor</i> shall procure that the designer and independent checking engineer appointed or engaged by the <i>Contractor</i> in connection with the design or checking of the design of any part or all of the Temporary Works, shall effect and maintain, with well established insurers of repute, professional indemnity insurance for a minimum amount of [state the amount] in respect of its obligations in relation to the design or, as the case may be, checking of the design of any part or all of the Temporary Works, for any one occurrence or series of occurrences arising out of any one event, or each and every claim for a period from the respective date of commencement of appointment or engagement of the designer and independent checking engineer until 6 years after the date of Completion of the whole of the <i>works</i>.</p> <p>(3) The professional indemnity insurance referred to in sub-clause (1) or (2) of this Clause shall respectively be effected with an insurer or insurers acceptable to the <i>Client</i>. The <i>Contractor</i> shall immediately inform the <i>Client</i> in writing if such insurance ceases to be available or otherwise is not maintained in accordance with this Clause or for any reason becomes void or unenforceable.</p> <p>(4) If the insurance policy effected pursuant to sub-clause (1) or (2) of this Clause is project specific, the maximum deductible/excess allowed under the insurance policy shall be limited to a maximum of 20% of the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be.</p>	<p>Professional Indemnity Insurance in respect of design of Temporary Works</p>	<p>DEVB TC(W) No. 9/2007</p> <p>Optional depends on the risk level, guidelines given in DEVB TC(W) No. 9/2007</p>
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- F7A** (5) (a) If (i) the insurance policy effected pursuant to
(Cont'd) sub-clause (1) or (2) of this Clause contains a limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy, and (ii) the period of insurance under the insurance policy is twelve months or less, then either:
- (A) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall be reinstated in full upon exhaustion of the limit of indemnity by reason of indemnity payments made on account of any claim, loss, damage, liability, cost or expense paid or payable under the insurance policy until the total amount of indemnity payable by the insurer under the insurance policy reaches 2 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or
 - (B) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall not be less than 2 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or
 - (C) the limit of indemnity for any one occurrence or series of occurrences arising out of any one event, or each and every claim under the insurance policy shall not be less than 2 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be.
- (b) If (i) the insurance policy effected pursuant to sub-clause (1) or (2) of this Clause contains a limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy, and (ii) the period of insurance under the insurance policy exceeds twelve months, then either:

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(Cont'd)

- (A) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall be reinstated in full upon exhaustion of the limit of indemnity by reason of indemnity payments made on account of any claim, loss, damage, liability, cost or expense paid or payable under the insurance policy until the total amount of indemnity payable by the insurer under the insurance policy reaches 3 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or
 - (B) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall not be less than 3 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or
 - (C) the limit of indemnity for any one occurrence or series of occurrences arising out of any one event, or each and every claim under the insurance policy shall not be less than 3 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be.
- (6) (a) The *Contractor* shall provide to the *Client* within 60 days from the Contract Date and thereafter, in the case where the insurance policy effected pursuant to sub-clause (1) of this Clause does not cover the entire period of insurance required under that sub-clause, within 7 days of professional indemnity insurance being effected upon the expiry of the insurance policy:
- (A) an undertaking that the current insurance policy effected pursuant to sub-clause (1) of this Clause complies with the terms in this Clause in Form 1 in Appendix [*insert appropriate reference*] to these *additional conditions of contract* ; and

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(Cont'd)

- (B) a certified copy of the full insurance policy effected pursuant to sub-clause (1) of this Clause for the acceptance of the *Client* unless the *Contractor* can demonstrate to the satisfaction of the *Client* that it is not reasonably practicable to provide a certified copy of the full insurance policy in which event the *Contractor* shall provide a certificate in Form 2 in Appendix [*insert appropriate reference*] 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 *Client* may reasonably require.

- (b) The *Contractor* shall provide to the *Client*, within 60 days from the respective dates of appointment or engagement of its designer and independent checking engineer, and thereafter, in the case where the insurance policy effected pursuant to sub-clause (2) of this Clause does not cover the entire period of insurance required under that sub-clause, within 7 days of professional indemnity insurance being effected upon the expiry of the earlier insurance policy:
 - (A) an undertaking that the current insurance policy effected pursuant to sub-clause (2) of this Clause complies with the terms of this Clause in Form 1 in Appendix [*insert appropriate reference*] to these *additional conditions of contract*;

 - (B) a certified copy of the full insurance policy effected pursuant to sub-clause (2) of this Clause for the acceptance of the *Client* unless the *Contractor* can demonstrate to the satisfaction of the *Client* that it is not reasonably practicable to provide a certified copy of the full insurance policy in which event the *Contractor* shall provide a certificate in Form 2 in Appendix [*insert appropriate reference*] 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 *Client* may reasonably require.

F7A
(Cont'd)

- (7) If the *Contractor* shall fail upon request to produce to the *Client* satisfactory evidence that there is in force professional indemnity insurance required under this Clause, the *Client* may effect and keep in force any such insurance and pay such premium as may be necessary for that purpose. The *Client* shall be entitled to deduct such premium, together with expenses incurred, in accordance with the provisions of Clause B2 of the *additional conditions of contract* and/or to recover such amount as a debt from the *Contractor*.
- (8) In the event of different certificates of Completion having been issued for different *sections* or parts of the *works* pursuant to NEC Clause 30.2, the expression "certificate of Completion" shall, for the purpose of this Clause, mean the last of such certificates.
- (9) In determining the period of insurance under an insurance policy for the purpose of this Clause, any extension or renewal of the insurance policy shall be treated as a separate insurance policy and shall not have the effect of extending the period of insurance.

- F8**
- (1) The *Contractor* shall be fully responsible for its design under the contract (including the *Contractor's* Design and Cost Savings Design) as well as the general performance of the contract. The *Contractor* shall not infringe any Intellectual Property Rights of any person, whether or not the design (including the *Contractor's* Design or Cost Savings Design) or any machine, work, method or material or anything whatsoever required for any works is developed, adopted, produced or used by itself, its subcontractors or the manufacturers of any proprietary product or system selected by it to Provide the Works and/or in the performance of the contract.
- Intellectual Property Rights** LAD(W)'s comments
- (2) The *Contractor* warrants that:-
- (a) the provision of the design (including the *Contractor's* Design and Cost Savings Design) or any part or component of the resultant works of such design or any machine, work, method or material or anything whatsoever required for any works by the *Contractor*, its subcontractors or the manufacturers of any proprietary product or system required or selected by it to Provide the Works and/or in the performance of the contract and the use, operation or possession and/or the alteration, extension or maintenance by the *Client*, its authorized users and subsequent owners or occupiers of the *works*, of the design (including the *Contractor's* Design and Cost Savings Design) or any part(s) thereof and the resultant works of such design, or any machine, work, method or material or anything whatsoever required for any works provided by the *Contractor*, its subcontractors or the manufacturers of any proprietary product or system required or selected by it will not infringe any Intellectual Property Rights or any other rights of any person; and

- F8** (2) (b) in respect of any article, component, process or invention in the design (including the *Contractor's* Design and Cost Savings Design) or the resultant works of such design or any machine, work, method or material or anything whatsoever required for any works developed, adopted, produced or used by the *Contractor*, its subcontractors or the manufacturers of any proprietary product or system required or selected by it to Provide the Works and/or in the performance of the contract, the Intellectual Property Rights of which are vested in a third party, the *Contractor*, its subcontractors or the manufacturers have or shall have obtained a valid and continuing licence under which they are entitled to use the relevant article, component, process or invention to Provide the Works and/or in the performance of the contract and the *Client*, its authorized users and the subsequent owners and occupiers of the *works* are entitled to use, operate and possess, and/or alter, extend and maintain the design (including the *Contractor's* Design and Cost Savings Design) or any part(s) thereof and the resultant works of such design, or any machine, work, method or material or anything whatsoever required for any works provided by the *Contractor*, its subcontractors or the manufacturers of any proprietary product or system required or selected by it.

F8
(Cont'd)

- (3) The *Contractor* shall indemnify the *Client*, its authorized users and the subsequent owners and occupiers of the *works* and keep the *Client*, its authorized users and the subsequent owners and occupiers of the *works* fully and effectively indemnified against all proceedings, actions, costs, claims, demands, damages, losses, expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses) and any compensation and costs which may be agreed to be paid in settlement of any proceedings and liabilities of whatsoever nature arising out of or in connection with any allegation and/or claim that the use of the design (including the *Contractor's* Design and Cost Savings Design) or any part(s) thereof or the resultant works of such design or any machine, work, method or material or anything whatsoever required for any works developed, adopted, produced or used by the *Contractor*, its subcontractors or the manufacturers of any proprietary product or system required or selected by it to Provide the Works and/or in the performance of the contract, or the use, operation or possession and/or the alteration, extension or maintenance by the *Client*, its authorized users and subsequent owners or occupiers of the *works*, of the design (including the *Contractor's* Design and Cost Savings Design) or any part(s) thereof or the resultant works of such design, or any machine, work, method or material or anything whatsoever required for any works provided by the *Contractor*, its subcontractors or the manufacturers of any proprietary product or system required or selected by it infringes any Intellectual Property Rights or any other right of any person.
- (4) The *Contractor* shall irrevocably waive, and undertake to procure at its own cost and expense all authors of the design (including the *Contractor's* Design and Cost Savings Design) to irrevocably waive, all moral rights (whether past, present or future) in such items. The waiver shall operate in favour of the *Client*, its authorized users and the subsequent owners and occupiers of the *works* and shall take effect upon the grant of licence to the *Client*, its authorized users and the subsequent owners and occupiers of the *works*.
- (5) The provisions of this Clause shall survive the Completion or termination and shall continue in full force and effect notwithstanding such Completion, or termination.

Section G – Settlement of Disputes

G1A

Not used.

Replaced by
Security of
Payment under
DEVB TC(W)
No. 6/2021.

See ACC G1B

G1B	(1) Without prejudice to the right of the <i>Contractor</i> to refer any payment dispute to adjudication under SOP Clause 10 and subject to sub-clause (1A), if any dispute or difference of any kind whatsoever shall arise between the <i>Client</i> and the <i>Contractor</i> in connection with or arising out of the contract or the carrying out of the <i>works</i> including any dispute as to any decision, instruction, order, direction, certificate or valuation by the <i>Project Manager</i> whether during the progress of the <i>works</i> or after their Completion and whether before or after the termination, abandonment or breach of the contract, it shall be referred to and settled by the <i>Project Manager</i> who shall state its decision in writing and give notice of the same to the <i>Client</i> and the <i>Contractor</i> . Unless the contract shall have been already terminated or abandoned or a right to suspend or reduce the rate of progress is being exercised by the <i>Contractor</i> (excluding its suppliers or subcontractors at any tiers) under SOP Clause 37, the <i>Contractor</i> shall in every case continue to proceed with the <i>works</i> with all due diligence and it shall give effect forthwith to every such decision of the <i>Project Manager</i> made under this sub-clause. Such decision shall be final and binding upon the <i>Contractor</i> and the <i>Client</i> unless, until and to the extent revised or superseded by any agreement in writing between the Parties, decision of an adjudicator arising from an adjudication under the SOP Provisions, or arbitration award. If the <i>Project Manager</i> shall fail to give such decision for a period of 28 days after being requested to do so or if either the <i>Client</i> or the <i>Contractor</i> be dissatisfied with any such decision of the <i>Project Manager</i> , then either the <i>Client</i> or the <i>Contractor</i> may within 28 days after receiving notice of such decision, or within 28 days after the expiry of the said decision period of 28 days, as the case may be, 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 or any modification thereof being in force at the date of such request.	Settlement of Disputes	Adopt Clause G1B for works contract which is subject to DEVB TC(W) No. 6/2021. Clause G1A shall not be used.
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G1B
(Cont'd)

- (1A) (a) Payment disputes which have been determined by a decision of the *Adjudicator* shall not be referred to and settled by the *Project Manager* under sub-clause (1) of this Clause (whether included in a wider dispute or otherwise).
- (b) If a payment dispute is determined by a decision of the *Adjudicator* after reference of the payment dispute (or a dispute which includes the payment dispute) to the *Project Manager* under sub-clause (1) of this Clause but before the *Project Manager* has given its decision on the same, the *Project Manager* shall not give any decision on the same under sub-clause (1) of this Clause. For the avoidance of doubt, the *Project Manager* not giving decision on the payment dispute pursuant to this sub-clause (1A) is not a failure to give a decision under sub-clause (1) of this Clause and the payment dispute cannot be referred to mediation or arbitration, and sub-clauses (3)(e) and (3)(f) of this Clause are not applicable.
- (1B) The *Client* or the *Contractor* may, within 28 days after the day on which an adjudication decision under the SOP Provisions is delivered by the *Adjudicator*, 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 or any modification thereof being in force at the date of such request.
- (1C) For the avoidance of doubt, a decision by the *Adjudicator* that it has no jurisdiction to adjudicate all or any part of a payment dispute is not a determination made by the *Adjudicator* of that payment dispute for the purposes of this Clause and an arbitrator appointed pursuant to this Clause is not bound by any decisions made by the *Adjudicator* as to the *Adjudicator's* jurisdiction in relation to a payment dispute.
- (2) If the matter cannot be resolved by mediation, or if either the *Client* or the *Contractor* do not wish the matter to be referred to mediation then either the *Client* or the *Contractor* 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.

- G1B** (3) Any reference to arbitration shall be made within 90 days of:
- (Cont'd)**
- (a) the receipt of a request for mediation and subsequently the recipient of such request having failed to respond, or
 - (b) the refusal to mediate, or
 - (c) the failure of the mediation proceedings to produce a settlement acceptable to the *Client* and the *Contractor*, or
 - (d) the abandonment of the mediation, or
 - (e) where the *Project Manager* has failed to give a decision within the 28 days allowed under sub-clause (1) of this Clause after being requested to do so, the expiry of the subsequent period of 28 days for the *Client* or the *Contractor* to request that the matter be referred to mediation, and neither the *Client* nor the *Contractor* having requested mediation within that subsequent period of 28 days, or
 - (f) where the *Project Manager* has given a decision within the 28 days allowed under sub-clause (1) of this Clause, the expiry of the period of 28 days after receipt of the notice of the *Project Manager's* decision for the *Client* or the *Contractor* to request that the matter be referred to mediation, and neither the *Client* nor the *Contractor* having requested mediation within that period of 28 days, or
 - (g) where a payment dispute has been determined by the *Adjudicator* in accordance with the SOP Provisions, the expiry of the period of 28 days allowed under sub-clause (1B) for the *Client* or the *Contractor* to request that the matter be referred to mediation, and neither the *Client* nor the *Contractor* having requested mediation within that period of 28 days.

**G1B
(Cont'd)**

- (4) The arbitrator appointed shall have full power to open up, review and revise any decision, instruction, order, direction, certificate or valuation by the *Project Manager* or the *Supervisor* and neither party shall be limited in the proceedings before such arbitrator to the evidence or arguments put before the *Project Manager* or the *Supervisor* for the purpose of obtaining the *Project Manager's* or the *Supervisor's* decision above referred to or limited to the evidence and arguments put before any *Adjudicator*. Save as provided for in sub-clauses (5) and (6) of this Clause no steps shall be taken in the reference to the arbitrator until after the Completion or alleged Completion of the *works* unless with the written consent of the *Client* and the *Contractor*.

Provided that:

- (a) the giving of a certificate of Completion shall not be a condition precedent to the taking of any step in such reference;
- (b) no decision given by the *Project Manager* or the *Supervisor* shall disqualify it from being called as a witness and giving evidence before the arbitrator on any matter whatsoever relevant to the dispute or difference so referred to the arbitrator as aforesaid.
- (5) In the case of any disputes or difference as to the exercise of the *Project Manager's* powers of determination of the *Contractor's* employment, the reference to the arbitrator may proceed notwithstanding that the *works* shall not then be or be alleged to be complete.
- (6) In the case where the contract has been terminated or abandoned, the reference to the arbitrator may proceed notwithstanding that the *works* shall not then be or be alleged to be complete.
- (7) (a) Subject to paragraph (b) and (c) 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.

**G1B
(Cont'd)**

(b) 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.

(c) 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.

G1B
(Cont'd)

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

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

(9) 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”.

“payment dispute” means a payment dispute as defined in SOP Clause 9.

G2 Not used.

SDEV's memo
ref. DEVB(W)
510/83/03 dated
11.2.2021

Section P – Security of Payment

<u>P1</u>	(1)	The contract incorporates the SOP Provisions which form part of these <i>additional conditions of contract</i> .	Security of Payment	This clause applies to works contract which is subject to DEVB TC(W) No. 6/2021.
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Section Q – Proposal on Innovation and Technology

- Q1** (1) For the purpose of this Clause, the following words and expressions shall have the meaning hereby assigned to them:-
- Proposal on Innovation and Technology** SDEV’s memo ref. DEVB(W) 506/30/07 dated 20.4.2023
- “I&T Proposal” means a proposal to adopt an innovation or technology which:-
- (a) is additional to or more advanced than the requirements in the Scope; and
 - (b) could enhance site safety, site supervision efficiency or decarbonisation.
- “Innovation and Technology Register” is a register of I&T Proposals which are notified by the *Project Manager* or the *Contractor*.
- (2) The *Contractor* and the *Project Manager* give written notice to the other when either makes an I&T Proposal. The *Project Manager* enters I&T Proposals in the Innovation and Technology Register. Notification of an I&T Proposal for which a compensation event has previously been notified is not required.
- (3) (a) The *Project Manager* prepares a first Innovation and Technology Register and issues it to the *Contractor* within four weeks of the first notification of an I&T Proposal. The *Project Manager* instructs the *Contractor* to attend a first innovation and technology meeting within two weeks of the issuance of the first Innovation and Technology Register.
- (b) Later innovation and technology meetings are held if either the *Project Manager* or *Contractor* instructs the other to attend an innovation and technology meeting.
- (c) The *Project Manager* or *Contractor* may invite any person to attend an innovation and technology meeting.

- (4) At an innovation and technology meeting, those who attend co-operate in:-
- (a) considering each I&T Proposal in the Innovation and Technology Register, including but not limited to exploring the potential benefits as well as cost and time implications of adopting each I&T Proposal;
 - (b) deciding on the I&T Proposals to be adopted; and
 - (c) deciding which I&T Proposals can be removed from the Innovation and Technology Register.
- (5) The *Project Manager* revises the Innovation and Technology Register to record the decisions made at each innovation and technology meeting and issues the revised Innovation and Technology Register to the *Contractor* within one week of the innovation and technology meeting. If a decision needs a change to the Scope, the *Project Manager* instructs the change at the same time as the revised Innovation and Technology Register is issued.