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 this contract:

“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:

● 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 this contract does not expressly provide for the parties’ respective rights and obligations in relation to compliance with such addition or amendment upon its commencement.

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

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

“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.

“Labour Relations Officer” 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 Labour Relations Officer for the purpose of this contract.

Definitions

ETWB TC(W) No. 23/2004
Modified from SCC60(1)

GCC1(1)

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

Modified from SCC65A
Project Offices to review to include this sub-clause where appropriate
“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.

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

“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 his subcontractor of all tiers including Specialist Subcontractors, for Providing the Works on the Site.

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

* Delete as appropriate

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

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

For efficacy of the contract

LAD(W)’s advice of 27.1.2014

Commonly adopted in NEC contracts

Commonly adopted in NEC contracts

The term “Subcontractor” under ECC 11.2(17) 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)
“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 this contract, including the contractors and subcontractors of such person, undertaking, company, organisation or government department.

In these additional conditions of 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 Contractor in the tender shall form part of the Works Information provided by the Contractor but shall be subject to the provisions of other contract documents. The Contractor shall, subject to sub-clauses [insert appropriate reference] of this Clause, Provide the Works in accordance with the said submissions.

(2) The Contractor shall provide the team structure and staff including key people as submitted by the Contractor in his tender submissions on technical resources or necessarily inferred therefrom.

(3)* The Contractor shall provide all Equipment including but not limited to those as submitted by the Contractor in his tender submissions on technical resources or necessarily inferred therefrom which are necessary or desirable for the satisfactory execution and timely Completion of the works.

(3A) If any Equipment classified as essential Equipment in accordance with [insert appropriate reference] of the Particular Specification is not identified in the Contractor’s technical submission on technical resources, or if any Equipment classified as essential Equipment in accordance with [insert appropriate reference] of the Particular Specification proposed by the Contractor in his technical submission on technical resources does not meet the minimum requirements specified in [insert appropriate reference] of the Particular Specification, he shall propose to the Project Manager 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 [insert appropriate reference] of the Particular Specification. 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.

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

Modified from SCC54

To be used when tenders are evaluated using a marking scheme

*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 his tender submissions on technical resources does not meet the minimum qualification/experience requirements specified in the Works Information, 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 Works Information 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.

(4) In the event the Contractor is unlikely to provide or maintain any of the team structure, staff including key people submitted by the Contractor in his tender submissions on technical resources or necessarily inferred therefrom, he 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 his tender submissions on technical resources or necessarily inferred therefrom, he 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  (Cont’d)  

(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 Works Information.

(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 Works Information.

(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 this 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 his professional knowledge and judgment. The savings of cost to the Contractor as determined by the Project Manager shall be deducted from the Prices.
A2  
(Cont’d)  

(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 Works Information under NEC Clause 60.1(1) of this 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.

(11) Not Used.

(12) Any provision in the tender submissions on technical resources and technical proposals purporting to impose any obligation on the Employer, the Project Manager or the Supervisor which is not an obligation of the Employer, the Project Manager or the Supervisor, as the case may be, under the other documents forming part of this contract shall have no effect and shall not be binding on the Employer, 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 this 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 this 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 this 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 this contract and in all other cases the other document forming part of this 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.
(1) The Contractor shall not use or divulge and shall procure that subcontractors of all tiers shall not use or divulge, except for the purpose of this contract, any information provided by the Employer, or the Project Manager, the Supervisor or any delegate, in this contract or in any subsequent correspondence or documentation. Any disclosure to any person or agent or subcontractor of any tier for the purpose of this contract shall be in strict confidence and shall be on a “need to know” basis and extend only so far as may be necessary for the purpose of this contract. The Contractor shall take all necessary measures (including by way of contractual provisions contained in subcontracts of any tier or other relevant contracts where appropriate) to ensure that information is not divulged for purposes other than that of this contract by such person, agent or subcontractor of any tier. The Contractor shall indemnify and keep indemnified the Employer against all loss, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever the Employer may suffer, sustain or incur, whether direct or consequential, arising out of or in connection with any breach of the aforesaid non-disclosure provision by the Contractor or his employees, agents or subcontractors.

(2) The Employer, the Project Manager, and the Supervisor may use any information provided by the Contractor in accordance with this contract but shall not divulge such information except for the purpose of this contract or for the purpose of carrying out any repair, amendment, extension or other work connected with the works.
Notwithstanding sub-clause (2) of Clause [A3] \(^1\) of these *additional conditions of contact*, but subject to the following provisions, the *Employer* may disclose the outline of any dispute and the terms of settlement for which a settlement agreement has been reached with the *Contractor* 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 *Employer* shall inform the *Contractor*. 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 *Contractor* but such consent shall not be unreasonably withheld. The *Contractor* shall be deemed to have given his consent to disclosures on the expiry of the first 6 months from the date of the settlement agreement, arbitration award or, as the case may be, outcome of other means of resolution of dispute. The *Contractor* may, if he considers necessary to protect the sensitive nature of certain information relating to him, request the *Employer* to disclose such specified information to the said Committee strictly on a confidential basis. If the *Employer* considers that there are legitimate grounds to accede to the *Contractor’s* request, the *Employer* shall convey the request to the said Committee for its consideration.

\(^1\) Insert appropriate reference which refers to Clause A3 of this document regarding “Information not to be Divulged”.
Subject to sub-clause (3) below, any contract rates or related information provided by the Contractor in connection with this contract may be used by the Employer for the sole purpose of cost estimation or cost analysis for his other works which may or may not be connected with this contract.

Subject to sub-clause (3) below, the Employer may also furnish such information to any third party engaged by the Employer for the sole purpose of cost estimation or cost analysis provided that he shall obtain from such third party an undertaking to maintain the confidentiality of the same and not to use it for any other purpose.

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 Employer shall ensure that the contract number, title and the Contractor’s name are not used or furnished.
A6   (1) Nothing in this contract confers or purports to confer on any third party any benefit or any right pursuant to the Contracts (Rights of Third Parties) Ordinance (Cap. 623) to enforce any term of this contract.

Marginal Notes

Guidelines

Contracts

(Rights of Third Parties) Ordinance

SDEV’s memo ref. DEVB(W) 505/10/01 dated 28.8.2015
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 this contract.

(2) The contingency sums and provisional sums are allowed as contingencies for the purpose of internal administration of the Employer 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 him 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.
Section B – Powers and Duties of Employer, Project Manager and Supervisor

B1 (1) Before carrying out any of his duties or exercising any of his powers under this contract, the Project Manager may be required under the terms of his appointment by the Employer/under the internal rules of the Employer to obtain confirmation that the Employer has no objection to the Project Manager’s proposed course of action and, in the event of an objection, to act in accordance with the Employer’s direction.

(2) The Project Manager is required under the terms of his appointment by the Employer/under the internal rules of the Employer to obtain confirmation of no objection from the Employer and, in the event of an objection, to act in accordance with the Employer’s direction before permitting the Contractor to introduce an extra tier of subcontracting in accordance with Clause [C7] 1 of these additional conditions of contract and NEC Clause 26.

(3) The Project Manager is required under the terms of his appointment by the Employer/under the internal rules of the Employer to obtain confirmation of no objection from the Employer and, in the event of an objection, to act in accordance with the Employer’s direction before giving any instruction changing the Works Information or taking any other action which may commit the Employer to an increase or a decrease in the Prices under this contract by a sum estimated to exceed HK$300,000. This requirement shall not be applicable where the instruction changing the Works Information or other action is considered by the Project Manager to be essential on grounds of safety or other emergency in circumstances when it is impracticable to refer the matter to the Employer beforehand.

(4) The Project Manager may, subject to any prior contrary instructions given by the Employer to the Project Manager, give any instruction changing the Works Information or taking any other action which may commit the Employer to an increase or a decrease in the Prices under this contract without the need to obtain confirmation of no objection from the Employer if the value of such instruction or commitment is estimated not to exceed HK$300,000.
B1 (Cont’d) 

(4A) The Project Manager is required under the terms of his appointment by the Employer under the internal rules of the Employer to obtain confirmation of no objection from the Employer and, in the event of an objection, to act in accordance with the Employer’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 his appointment by the Employer under the internal rules of the Employer to obtain confirmation of no objection from the Employer and, in the event of an objection, to act in accordance with the Employer’s direction before issuing instruction on implementation of the Section Subject to Excision in accordance with Clause [B5] of these additional conditions of contact.

(5) The Contractor’s rights under this 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 his appointment by the Employer.

(6) Except as expressly stated in this contract, the Project Manager shall have no power to amend the terms and conditions of this contract nor to relieve the Contractor of any of his obligations under this 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 Employer under any provision of this contract may be deducted by the Employer from monies due to the Contractor under this contract including amounts retained and the Employer shall have the power to recover any balance not so deducted from monies due to the Contractor under any other contract between the Employer and the Contractor.

All damages (including delay damages), costs, charges, expenses, debts or sums for which the Contractor is liable to the Employer under any provision of any other contract between the Contractor and the Employer may be deducted by the Employer from monies due to the Contractor under this contract, including amounts retained.
The Project Manager may give an instruction after Completion to the Contractor which changes the Works Information 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 Project Manager desirable for or to achieve the satisfactory Completion and functioning of the works.

S for W’s memo ref. WB(W) 209/32/110 dated 15.5.2001 & 17.5.2001
Modified from SCC36(2)
(1) Except as provided in sub-clause (2) of this Clause, the
Employer shall not terminate under NEC Clause 90.2
for convenience in order to Provide the Works himself
or to arrange for another contractor to Provide the
Works.

(2) The Employer is entitled to terminate under NEC
Clause 90.2 for convenience and thereafter to Provide
the Works himself or to arrange for another contractor
to Provide the Works if the Project Manager shall
certify in writing to the Employer that in his 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 this
contract.

(3) The Contractor shall, in any subcontract or other
contract made by him in connection with or for the
purposes of this contract, reserve the power to
determine such subcontract or other contract in the
event of the termination by the Employer for
convenience upon terms similar to the terms of section
9 “Termination” of NEC Clauses. The Contractor shall
not be entitled to compensation of any expenditure
resulting from non-compliance with this requirement.

(4) Payment to the Contractor under NEC Clause 90.4
shall be in full and final settlement of all claims, costs
and charges incurred by the Contractor as a result of
this contract.
“Section Subject to Excision” means a section of the works which is identified as such with details in the Works Information, but the implementation of which has not been decided upon by the Employer at the time the tender documents are issued and which shall only be implemented upon a subsequent decision of the Employer, followed by a written instruction from the Project Manager.

The Contractor shall allow for the work within the Section Subject to Excision in his programme submitted in accordance with NEC Clause 31.

The Project Manager may, within the time stated in the Contract Data for ordering the Section Subject to Excision (commencing from and including the starting date), instruct the Contractor to proceed with the work within that section.

The Contractor shall not execute the work within the Section Subject to Excision without the Project Manager’s instruction in writing in accordance with sub-clause (3) of this Clause, but upon receipt of the instruction:

(a) the Contractor shall execute and complete that work within the Section Subject to Excision on or before the completion date for that section as stated in the Contract Data or such Completion Date as changed in accordance with this contract; and

(b) this 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 works.

In the event that the Project Manager does not issue an instruction in accordance with sub-clause (3) of this Clause:

(a) the Contractor shall not thereafter be obliged to execute and complete the work within the Section Subject to Excision;

(b) this shall not constitute a compensation event and for avoidance of doubt, the Contractor shall not be entitled to any payment or other compensation or relief of or attributable to the work within the Section Subject to Excision;
(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) this 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 this 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 this contract and, where appropriate, submit an amended or varied version of the same to the Project Manager.
Section C – Assignment and Subcontracting

C1 The Contractor shall not assign this contract or any interest in this contract without the written consent of the Employer and any assignment shall be in a form accepted by the Employer.
(1) The Contractor shall not subcontract the whole of the works. The Contractor shall be permitted, unless expressly prohibited by this 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 this 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 his opinion he 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.
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 Employer 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 Employer for:

[Please list the Category(ies), Group(s) and status as appropriate]

then he 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.

¹ Insert appropriate reference which refers to Clauses C4, C5, C6 and C9 of this document regarding “ISO 9000 Certification for Subcontractor”, “Subcontractor Management Plan” and “Subcontractor Registration 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 contact for [specify the relevant categories and/or groups of works] shall either:

(a) have obtained an ISO 9001:2008 certificate acceptable to the Employer with the scope of certification acceptable to the Project Manager; or

(b) (i) have obtained a confirmation from a certification body acceptable to the Employer, 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 9001:2008; and

(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 9001:2008 certification, with detailed documented quality system procedures ready at the time of booking.

(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 Employer the date of audit for the ISO 9001:2008 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 this 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.

ISO 9000 Certification for Subcontractor

WBTC No. 13/2001,

SDEV’s memo ref. DEVB(W) 520/83/01 dated 26.1.2010.

Modified from SCC29

Optional to be used with Clause C3
C4 (Cont’d)  

(c) Sub-clauses (2)(a) and (2)(b) of this Clause are not applicable if the Contractor has already obtained ISO 9001:2008 certification on or before the acceptance of the tender or, as the case may be, the listed contractor has already obtained the ISO 9001:2008 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 his 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 this 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 his Subcontractors shall not subcontract the whole of the works subcontracted to them.

C5 (Cont’d) (6) The Contractor shall employ his own staff to manage and supervise his Subcontractors.
(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 he thinks fit. The provisions of this sub-clause shall be without prejudice to sub-clause (4) of Clause [C2] of these additional conditions of contract.

1 Insert appropriate reference which refers to Clause C2 of this document regarding “Subcontracting”.
C6 (1) Where the Contractor is to subcontract part of the works, performance of which involves trades available under the Primary Register of the Subcontractor Registration Scheme, the Contractor shall engage, for the purposes of execution of such part of the works, Subcontractors as stated in the Contractor’s latest updated submission of the Subcontractor Management Plan and who have completed their registration under the relevant trades available in such Primary Register before the commencement of the work under the relevant subcontracts. Provided that the Contractor shall not engage a Subcontractor who is suspended or in the process of an appeal against his suspension from registration under such Primary Register 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] of these additional conditions of contract.

(2) The Contractor shall ensure that where any part of the part of the works subcontracted to a Subcontractor engaged under sub-clause (1) performance of which involves trades available under the Primary Register of the Subcontractor Registration Scheme is further subcontracted (irrespective of any tier), subcontractors (irrespective of any tier) as stated in the Contractor’s latest updated submission of the Subcontractor Management Plan and who have completed their registration under the relevant trades available in such Primary Register before the commencement of the work under the relevant further subcontracts are engaged for the purposes of execution of such part of the part of the works. 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 under such Primary Register 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) For the purposes of this sub-clause, “Subcontractor Registration Scheme” and “Primary Register of the Subcontractor Registration Scheme” respectively means the Subcontractor Registration Scheme managed by the Construction Industry Council and the Primary Register of the Subcontractor Registration Scheme as referred to in the Rules and Procedures applicable to the aforementioned Subcontractor Registration Scheme.”
1 Insert appropriate reference which refers to Clause C3 of this document regarding “Specialist Subcontractors”.
Limiting Tiers of Subcontracting

(1) For the purpose of this Clause, the first tier of subcontracting means the contracts between the Contractor and his 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 C6] and NEC Clause 26 on subcontracting a part of the works and subject to sub-clauses (3) to (5) of this Clause and compliance with other provisions of this contract, the subcontracting of a part of the works by the Contractor shall be limited to two tiers of subcontracting.

(3) Where any part of the works has been subcontracted out under sub-clause (2) of this Clause, the subcontractor of the first or the second tier of subcontracting (as the case may be) may, subject to sub-clause (4) of this Clause and compliance with other provisions of this contract, engage in two additional tiers of subcontracting with respect to a Relevant Portion of such part of the works, except (i) where the Relevant Portion involves work or services to be carried out in any confined space, or (ii) where the Relevant Portion involves demolition or scaffolding work. For situations as stated in (i) or (ii), subcontracting of the Relevant Portion by the subcontractor of the first or the second tier (as the case may be) shall be limited to one additional tier of subcontracting.

(4) Notwithstanding sub-clauses (2) and (3) of this Clause, subcontracting of any part of the works requiring entry of human beings into confined space that form part of a sewerage or drainage system shall be limited to the first tier of subcontracting and further subcontracting by the first tier subcontractor shall not be permitted.

(5) (a) Notwithstanding sub-clauses (3) and (4) of this Clause, the Project Manager may upon request by the Contractor permit the Contractor to introduce an extra tier of subcontracting for a part of the works or a Relevant Portion which has been subcontracted out in accordance with the provisions of this contract (including without limitation on the foregoing provisions).
(b) The Project Manager shall not be obliged to consider a request for an extra tier of subcontracting unless the request is made 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 request is accompanied by an explanation with supporting evidence on the need for the extra tier of subcontracting.

(c) A request which has been made in strict compliance with paragraph (b) above is taken to have been permitted by the Project Manager if it is not expressly rejected by the Project Manager in writing within 14 days from the date of receipt by the Project Manager of the request from the Contractor.

(6) The Contractor shall comply with and shall ensure that all subcontractors shall comply with the provisions of this Clause, Clause [C2] of these additional conditions of contract, NEC Clause 26 and other relevant provisions of this contract (“Subcontractor Provisions”). If the Contractor or any of the subcontractors fails to comply with the Subcontractor Provisions, the Project Manager shall, without prejudice to any other rights and remedies, have full power to order the removal of any subcontractor which has been engaged in contravention of any of the Subcontractor Provisions from the Site and/or the works.

(7) 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);

"Relevant Portion" means a portion of any part of the works which has been subcontracted out to a subcontractor of the first or the second tier of subcontracting under sub-clause (2) of this Clause, and such portion comprises only work or services falling within the description of one or more of the “Construction Trades” which are listed under the trade classification of the Subcontractor Registration Scheme;

"Subcontractor Registration Scheme" means the Subcontractor Registration Scheme managed by the Construction Industry Council.
1 Insert appropriate references which refer to Clause C2 to C6 of this document regarding “Subcontracting”, “Specialist Subcontractors”, “ISO 9000 Certification for Subcontractor”, “Subcontractor Management Plan” and “Subcontractor Registration Scheme”.

2 Insert appropriate reference which refers to Clause C2 of this document regarding “Subcontracting”.
C8 (1) Without prejudice to the generality of Clause [C2]1 of these additional conditions of contract and NEC Clause 26, if any part of the works is subcontracted by the Contractor, the Contractor shall ensure that a clause on payment of wages of Site Workers in the form appearing in Appendix [insert appropriate reference (see Annex to SDEV’s memo ref. (02VKU-01-3) in DEVB(W)510/17/01 dated 16.12.2016)] to these additional conditions of contract hereto is included in all subcontracts entered into with the Contractor. For subcontractors at any lower tier of subcontracting, the Contractor shall take all reasonable steps to ensure that such clause in the form appearing in Appendix [insert appropriate reference (see Annex to SDEV’s memo ref. (02VKU-01-3) in DEVB(W)510/17/01 dated 16.12.2016)] to these additional conditions of contract hereto is included in all subcontracts at lower tiers of subcontracting.

(2) The Contractor shall ensure that all subcontractors engaged by the Contractor who are involved in this contract shall include, observe and comply with the provisions which are in the terms of Clause [A] in Appendix [insert appropriate reference (see Annex to SDEV’s memo ref. (02VKU-01-3) in DEVB(W)510/17/01 dated 16.12.2016)] to these additional conditions of contract in the relevant subcontracts. For subcontractors at any lower tier of subcontracting, the Contractor shall take all reasonable steps to ensure that subcontractors who are involved in the relevant subcontracts of this contract shall include, observe and comply with the provisions in the relevant subcontracts which are mutatis mutandis in the terms of Clause [A].

(3) The Contractor shall submit copies of the relevant subcontracts of this contract to the Project Manager 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 Project Manager, the Contractor shall provide the original documents of the relevant subcontracts for inspection by the Project Manager.

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)
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 his 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.

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 (1) If the Contractor subcontracts work, he shall comply with the following:

(a) when the Contractor’s estimate for a subcontract does not exceed $50,000.00, the Contractor may select a subcontractor without inviting tenders;

(b) when the Contractor's estimate for a subcontract exceeds $50,000.00 but does not exceed $200,000.00, the Contractor shall invite more than one tenderer to submit tenders for the subcontract and shall select the conforming tender with the lowest tender price. The Contractor shall provide details of the tenderers for the subcontract to the Project Manager for acceptance before inviting tenders;

(c) when the Contractor’s estimate for a subcontract exceeds $200,000.00 but does not exceed $300,000.00, the Contractor shall invite not less than five tenderers to submit tenders for the subcontract and shall select the conforming tender with the lowest tender price. The Contractor shall provide details of the tenderers for the subcontract to the Project Manager for acceptance before inviting tenders;
(d) when the Contractor's estimate for a subcontract exceeds $300,000.00 but does not exceed $7,000,000.00, the Contractor shall submit his estimate and the list of the proposed tenderers to be invited for part of the works proposed to be subcontracted for acceptance by the Project Manager at least two weeks before he invites tenders for the subcontract. A reason for not accepting the Contractor's estimate and the list of the proposed tenderers is that the estimate is not justified, or 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. The Contractor shall invite not less than five tenderers to submit tenders for the subcontract after the Project Manager accepts his estimate and shall select the conforming tender with the lowest tender price. The tenderers could be invited from those under sub-clause (e)(i) and (ii) of this Clause if appropriate;

(e) when the Contractor's estimate for a subcontract exceeds $7,000,000.00, the Contractor shall submit his estimate for part of the works proposed to be subcontracted for acceptance by the Project Manager at least two weeks before he invites tenders for the subcontract. A reason for not accepting the Contractor's estimate is that the estimate is not justified. The Contractor shall invite not less than five tenderers to submit tenders for the subcontract and shall select the conforming tender with the lowest tender price. The tenderers could be invited from:
C9 (Cont’d)

(i) 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 those are 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

(ii) 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.

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, probation, suspended, etc.), if appropriate; and

(iii) documentary evidence including job references of tenderers’ past projects, scope of works of each projects, amount of works undertaken by the tenderers in each project, if appropriate, and / or other information demonstrating tenderers’ experience and technical capability,

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.
When the Contractor subcontracts 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 site staff or another location as directed by the Project Manager. Late tender or tenders submitted to other places other than the designated tender box shall not be considered.

All tenders for subcontracts shall be in sealed envelopes. The tenders shall be opened at the presence of both the Project Manager’s staff and the Contractor’s staff.

Before inviting any tenders for subcontracts by the Contractor, the following details shall be agreed with the Project Manager:

(a) size of 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 envelope for easy identification;

(d) number of copies of submitted tenders required to be kept by Project Manager.

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 notify the Contractor whether to select the conforming tender which does not offer the lowest tender price.
C9 (Cont’d) The Contractor before inviting any tenders for any subcontract shall submit to the Project Manager for comments and acceptance his 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 his procedures unless otherwise accepted by the Project Manager.

(7) The Contractor should 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 work items or tender prices of 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, and allow the ICAC the right of access to all documents and records maintained by the Contractor in relation to the tendering of subcontracts, and provides such access to all documents and records as may be required by the ICAC staff for the purpose of preventing corruption practices.
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 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 any linkage with the tenderers for the subcontract(s). If the Contractor proposes their associated companies to be allowed to participate in the tender exercise(s) for the subcontract(s), he should submit full justifications for acceptance by the Project Manager and two stage selection process should not be adopted in the tender exercise(s). “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 as 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.

The Contractor shall state in the tender documents for the subcontracts that any qualification 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 his tender, reminding him of possible disqualification of his tender and seeking an unequivocal withdrawal of any qualifications by a reasonable deadline.

The latest edition of the Standard Form of Domestic Sub-contract published by the Hong Kong Construction Association shall be used in the subcontracts unless otherwise accepted by the Project Manager.

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 (12) is only applicable to Options A and B and not used in Options C and D.
(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:

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(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 Employer 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 he 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 his tender.

(ii) Sub-clause (i)(a) of this Clause shall have no application to the tenderer’s communications in strict confidence with:

(a) his own insurers or brokers to obtain an insurance quotation for computation of tender price;

(b) his consultants or subcontractors to solicit their assistance in preparation of tender submission; and

(c) his bankers in relation to financial resources for the above subcontract.

(iii) The tenderer shall submit with his tender a duly signed and witnessed letter in the form set out in Appendix [insert appropriate reference] to these additional conditions of contract.
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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 Employer 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
(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.”
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.
C11  (1) Without prejudice to the Contractor’s obligations under the provisions of other additional conditions of contract on subcontracting, the Contractor shall adopt a competitive process in selecting suppliers of Plant and Materials, Equipment, and insurance covered by item 7A of the *Schedule of Cost Components*/*Shorter Schedule of Cost Components. Within 21 days of the Contract Date, the Contractor shall submit a proposal on the competitive process for selection of suppliers of Plant and Materials, Equipment and insurance to the Project Manager for acceptance. The Contractor shall comply with the accepted process throughout the contract. If, for any item of Plant and Materials, Equipment and insurance for which the Contractor encounters genuine difficulties to comply with the accepted process, the Contractor shall notify the Project Manager in writing, and seek the Project Manager's acceptance to waive the accepted process, which acceptance shall not be unreasonably withheld. Any deviation from the process as accepted by the Project Manager shall not constitute a compensation event.

To impose supplier procurement procedures to Options C and D and for compensation events under Options A and B

* Delete as appropriate
The Contractor shall ensure that the tender prices and rates of the supply contracts are competitively tendered or open market prices or rates, without activities or items which are substantially over or under-priced, or erratically priced. Upon request by the Project Manager, the Contractor shall submit the relevant information of the supply contract(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 any linkage with the tenderers for the supply contracts. If the Contractor proposes their associated companies to be allowed to participate in the tender exercise(s) for the supply contract, he should submit full justifications for acceptance by the Project Manager and two stage selection process should not be adopted in the tender exercise(s). “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 as 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 supply contracts should be assessed on an equal basis unless otherwise accepted by the Project Manager.

The Contractor shall state in the tender documents for the supply contracts that any qualification 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 his tender, reminding him of possible disqualification of his tender and seeking an unequivocal withdrawal of any qualifications by a reasonable deadline.

This Clause is only applicable to the supply contracts 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.

Sub-clause (4) 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 this 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. The Team shall comprise sufficient number of suitably qualified and experienced staff in the following disciplines:

(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 this contract [including Specialist Subcontractors].

(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 people 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 is indeed under the 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 time\(^3\) 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 this 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.

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\(^1\) 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.
Except when otherwise specified in this contract the Contractor 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.
D3  (1) The Contractor 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 Contractor 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 Contractor to Provide the Works, including any new fee and any change in existing fees

- 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.
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

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 Employer 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 Employer 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.

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1 Insert appropriate reference which refers to Clause D3 of this document regarding “Giving of Notices and Payment of Fees”.
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 Contractor may have to exhibit either for the benefit of the public or for the benefit of his employees shall be written in English and Chinese.
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<tbody>
<tr>
<td><strong>D6</strong></td>
<td><strong>(1)</strong> “Safety Plan” means a document, including any revised or updated version, setting out details of the safety management system that the Contractor will implement on the Site, together with any other measures and information required by this contract to ensure safety and health to Provide the Works.</td>
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<td><strong>Safety Plan Appendix II(a), Chapter 3, Construction Site Safety Manual for capital works contracts with Safety Plan requirement</strong></td>
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<td><strong>(2)</strong> The Contractor shall submit within 14 days of the Contract Date three copies of a draft Safety Plan to the Supervisor.</td>
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<td><strong>Modified from SCC23(1) to (9)</strong></td>
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<td><strong>(3)</strong> Within 7 days from the submission of the draft Safety Plan, the Contractor shall arrange and hold an ad hoc meeting (or meetings if necessary) with the Supervisor to discuss the draft Safety Plan. Where the Supervisor is of the opinion that the draft Safety Plan does not meet the requirements of this contract he shall request that the Contractor remedy the deficiency prior to submitting the Safety Plan to the Supervisor.</td>
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<td><strong>Sub-clause(10) is applicable only to Options A and B with Pay for Site Safety Scheme</strong></td>
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<td><strong>(4)</strong> The Contractor shall submit within 35 days of the Contract Date six copies of the Safety Plan to the Supervisor.</td>
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<td><strong>(5)</strong> The Contractor shall review the Safety Plan at monthly intervals and shall revise and update the Safety Plan if necessary.</td>
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<td><strong>(6)</strong> The Contractor shall comply with the Safety Plan and ensure his employees and subcontractors comply with the Safety Plan. The Contractor 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 Contractor shall report any person who fails to comply with the Safety Plan to the Supervisor.</td>
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<td><strong>(7)</strong> If the Supervisor is of the opinion that the Safety Plan does not meet the requirements of this contract, the Supervisor may by notice in writing require the Contractor to revise or update the Safety Plan and the Contractor shall comply with that requirement within 7 days of the date of the notice.</td>
</tr>
</tbody>
</table>
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 this contract.

(9) This Clause shall not relieve the Contractor from any of his obligations or responsibilities under this 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.
(1) “Establishment Works” means the regular inspections, cultivations and other operations specified to be performed during the period stated in the Works Information for such inspections, cultivations and other operations.

“Landscape Hardworks” means paving, tree grilles, tree guards and tree rings and any other items identified as such in the Works Information.

“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.

“Landscape Works” means Landscape Softworks, Landscape Hardworks and Establishment Works.

(2)* The Establishment Works form part of the works but do not comprise work which the Contractor is required to complete for Completion.

(3) As soon as in the opinion of the Project Manager the Landscape Softworks shall have been completed, the Project Manager shall notify the Contractor in writing of the date for commencement of the Establishment Works which shall be undertaken during the period stated in the Works Information. Such date for commencement shall be the day immediately following the date of completion of the Landscape Softworks.

**Marginal Notes**

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<thead>
<tr>
<th>Establishment Works</th>
<th>Modified from SCC16</th>
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<tbody>
<tr>
<td>For contracts with Landscape Works</td>
<td>Sub-clause (2) is used when the Establishment Works is not required to complete for Completion</td>
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</table>
(1) Within three months of the Contract Date, the Contractor shall book with a certification body acceptable to the Employer the date of audit for the ISO 9001:2008 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 9001:2008 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].

(2) Notwithstanding any other provisions in this 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 this contract.

(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 9001:2008 certification on or before the Contract Date.
(1) For the purpose of this Clause –

(a) “Contract Computer Facilities” means the Contract Computer Facilities defined in Clause [insert appropriate reference] of the Particular Specification;

(b) “Commencement Date” means the date on which the Contract Computer Facilities are delivered to the joint site office of the Project Manager/Supervisor and the Contractor’s site staff;

(c) “End Date” means the defects date.

(2) The Contractor shall warrant that the Contract Computer Facilities are Year 2000 compliant as specified in Clause [insert appropriate reference] of the Particular Specification. The period of the warranty (the “warranty period”) shall commence on the Commencement Date and shall subsist until the End Date.

(3) The Contractor shall during the warranty period and upon a notice regarding Year 2000 non-compliance given by the Project Manager promptly carry out necessary work to the Contract Computer Facilities so as to render the Contract Computer Facilities Year 2000 compliant. If the Contractor shall fail to carry out rectification work to render the Contract Computer Facilities Year 2000 compliant promptly, the Employer shall be entitled to engage his employees or agents or other contractors to carry out such work. Without prejudice to any other remedy, all additional expenditure properly incurred by the Employer in having such work carried out shall be recoverable by the Employer from the Contractor.

(4) The liability of the Contractor under this Clause shall not in any way be affected by an independent inquiry or investigation into the Year 2000 compliance of the Contract Computer Facilities or any matter related thereto whether carried out by or on behalf of the Employer or any liability or right of action which may arise out of such inquiry or investigation.

(5) For the avoidance of doubt, the Contractor shall indemnify and keep indemnified the Employer against all losses, claims, costs, demands and expenses that may arise out of or in consequence of any breach of this Clause.
“Public Cleaning Areas” means those public areas of the Site where no work is carried out other than cleaning by the Contractor and which have to be maintained open to the general public throughout the progress of the work, the extent of which is specified in [insert appropriate clause no. of the Works Information]. For the avoidance of doubt, Site includes Public Cleaning Areas.

“Daily Cleaning” means daily cleaning and tidying up of the Site in accordance with [insert appropriate clause no. of the Works Information]. Any 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.

“Weekly Tidying” means weekly overall cleaning and tidying up of the Site in accordance with [insert appropriate clause no. of the Works Information].

“Cleaning Day” means a day on which “Daily Cleaning” is to be carried out.

“Cleaning Week Day” means a day on which “Weekly Tidying” is to be carried out.

From the starting date to the Completion Date, the Contractor shall, unless otherwise instructed by the Supervisor (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 Supervisor within seven days after the date for the starting date. 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.

The Supervisor has absolute discretion to instruct the Contractor to cease or suspend all or part of the Daily Cleaning and/ or Weekly Tidying of the Site at any time during this contract. Such instruction shall not constitute a compensation event.

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 work 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.
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.
<table>
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<tr>
<th>Marginal Notes</th>
<th>Guidelines</th>
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<td><strong>D11A</strong></td>
<td>All structural concrete for incorporation into the works 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.</td>
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</table>

**OR**

| **D11B**      | The Contractor shall submit to the Project Manager for acceptance within 30 days of the Contract Date a quality system for production and supply of structural concrete for incorporation into the works. The quality system shall contain detailed information as required by the Quality System for Production and Supply of Structural Concrete at Appendix [insert appropriate reference and see Annex 1 to Appendix A of ETWB TCW No. 57/2002] to these additional conditions of contract. All structural concrete shall be produced and supplied in accordance with the quality system accepted by the Project Manager. |

**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 outlaying islands or where the volume of structural contract involved is less than 50m³)

**Quality Assurance for Structural Concrete**

Modified from SCC5B

For all other contracts including structural concrete
D12  (1) Where the *Contractor* is a partnership or an unincorporated joint venture, the liability of each partner of the partnership or participant of the unincorporated joint venture under this contract shall be joint and several.

(2) In relation to such *Contractor* only, the Articles of Agreement for use in this contract shall be in the form as attached at Appendix [insert appropriate reference] to these additional conditions of contract, 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.”
The Supervisor will record daily in the Project Manager’s site diary information with regard to labour, equipment, 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.

The authorized agent or representative of the Contractor shall sign the site diary daily indicating his 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 he may draw reference to the points of disagreement in writing in the site diary.

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 him properly to keep and maintain his 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.
D14 (1) If the Contractor or any of his 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 Employer or to the Project Manager or to any member of the Project Manager’s staff or to the Supervisor or to any member of the Supervisor’s staff, the Employer may terminate forthwith the Contractor’s obligation to Provide the Works as if for any of the reasons R1-R15 under NEC Clause 91, and hold the Contractor liable for any loss or damage which the Employer may thereby sustain.
The Contractor shall prohibit his employees, agents, and subcontractors who are involved in this contract from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance, Cap 201 when conducting business in connection with this contract.

The Contractor shall require his employees, agents and subcontractors who are involved in this contract to declare in writing to the Contractor any conflict or potential conflict between their personal/financial interests and their duties in connection with this contract. In the event that such conflict or potential conflict is disclosed in a declaration, the Contractor shall forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed.

The Contractor shall prohibit his employees who are involved in this contract from engaging in any work or employment other than in the performance of this contract, with or without remuneration, which could create or potentially give rise to a conflict between their personal/financial interests and their duties in connection with this contract. The Contractor shall also require his subcontractors and agents to impose similar restriction on their employees by way of a contractual provision.

The Contractor shall take all necessary measures (including by way of contractual provisions and/or providing training workshops where appropriate) to ensure that his employees, agents and subcontractors are aware of the prohibitions in this Clause.

The Contractor 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 Contractor under this Clause.
The Contractor shall submit and procure his subcontractors to submit a signed declaration in a form prescribed or accepted by the Employer to confirm compliance with the provisions on ethical commitment and confidentiality in Clauses [A3 and D15] at a frequency of once every month. If the Contractor fails to submit or fails to procure the subcontractors to submit the declaration as required, the Employer shall be entitled to withhold payment until such declaration is submitted and the Contractor shall not be entitled to interest in that period.

1 Insert appropriate references which refer to Clauses A3 and D15 of this document regarding “Information not to be divulged” and “Ethical Commitment” respectively.
The *Contractor* acknowledges that he has been reminded that dishonesty, theft and corruption on his part or those of his employees, agents or subcontractors who are involved in this 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.
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 Employer to apply for the Excavation Permit from the Authority. The Employer shall be the Permittee and the Contractor shall be nominated by the Employer as the Nominated Permittee of the Excavation Permit. The Contractor shall not withhold his 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 his 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 his best endeavours to assist the Employer and his agents, employees or workers to comply with the same.

Marginal Notes

Guidelines

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
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.

If the Contractor has defaulted in one of the following ways, the Contractor shall be considered as having substantially failed to comply with his obligations for the purposes of NEC Clause 91.2, R11 (without prejudice to the generality of R11):

- has unreasonably withheld or withdrawn his consent to be the Nominated Permittee of and his 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 his 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) Notwithstanding sub-clause (3) of this Clause, if the Contractor shall have unreasonably withheld or withdrawn his consent to be the Nominated Permittee of and his 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 his 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 Employer 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 Employer in having such works carried out shall be recoverable by the Employer 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 this contract, the Employer shall pay all prescribed fees under the Ordinance except that the Employer 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 this 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 this contract; and
(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 this 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 his 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 Employer to apply for such extension for the satisfactory Completion of the works;

(e) the Contractor shall render all necessary assistance to the Employer 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 Employer 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 his obligations under sub-clause 2(a) and sub-clause (4)(a), (b), (c), (d) and (e) of this Clause and shall have allowed the Employer sufficient time to prepare the application; and
(g) the Employer shall be entitled to recover from the Contractor any fees including Economic Cost paid by the Employer 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] of these additional conditions of contract.

Provided that the Employer 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 Employer to assist him 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 Works Information; or

(ii) a disturbance for which the Employer, the Project Manager, the Supervisor or Others engaged by the Employer 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 Employer 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 this 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 this contract showed that the work, materials or workmanship were in accordance with this contract.
(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.

(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 this 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 this contract and shall indemnify and keep indemnified the Employer, his 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, his agents, employees or workers, his Subcontractors at all tiers, or the agents, employees or workers of his subcontractors at all tiers.

(6) The Contractor shall continue to be responsible for liaising with utility undertakings and other relevant parties identified in the Works Information in connection with the carrying out of the works to Provide the Works, including without limitation coordinating 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 his work to cater for restrictions imposed by the Authority.

(8) The Contractor shall allow for in his plan and programme his 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.
(9) Notwithstanding sub-clause (2)(a) of this Clause, the Employer 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 Employer in respect of application for the Excavation Permit) if the Employer chooses to apply for an Excavation Permit of his 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 Employer”.
(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 works or vehicles engaged in transporting any personnel, Constructional Plant, materials or other things to or from the Site.

(2) In respect of any item or items of Constructional Plant brought onto the Site, 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 during the continuance of the work) produce to the Project Manager proof of ownership of such item or items of Constructional Plant to the satisfaction of the Project Manager or, where any item of Constructional Plant is not solely owned by the Contractor, a written undertaking, in a form accepted by the Employer, from the owner of the relevant item of Constructional Plant to the Employer that:

(a) the owner of the Constructional Plant will consent to the assignment by the Contractor to the Employer of the benefit of any hiring or hire-purchase or other agreement made with the Contractor in respect of the relevant Constructional Plant in the event of either the determination of the Contractor’s employment or termination of the Contractor's obligation to Provide the Works or this contract by the Employer in accordance with the provisions of this contract or the abandonment of this contract by the Contractor before Completion of the works; and

(b) subject to any assignment under paragraph (a) of this sub-clause, the owner of the Constructional Plant will permit the Employer, or any other contractor employed by the Employer, to use the relevant Constructional Plant for the purpose of Completion of the works.

The Project Manager may make as many separate written requests as he thinks fit during the continuance of the works.
In the event that the Project Manager shall certify in writing to the Employer 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 Employer, the Employer 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 this 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 this contract, whichever is the earlier and upon such time the total sum withheld by the Employer shall be returned to the Contractor without interest in the next interim payment. Provided that the total sum withheld by the Employer 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 Employer and the Contractor.

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 of the Contractor’s obligation to Provide the Works under section 9 “Termination” of NEC Clauses.
D20 (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 Contractor in accordance with the Works Information.

(2) The Contractor shall prepare a draft EMP in accordance with the Works Information [and the Outline EMP] and submit [ ] copies of the draft EMP to the Supervisor for comments within 21 days of the Contract Date.

(3) If the Supervisor is of the opinion that the draft EMP does not meet the requirements of this contract, he shall request the Contractor to revise the draft EMP by notice in writing and the Contractor shall revise the draft EMP and re-submit within 7 days of the date of the notice.

(4) The Contractor shall finalize the EMP within 45 days of the Contract Date and submit [ ] hard copies of the EMP and a soft copy in Microsoft Word format to the Supervisor.

(5) The Contractor shall review and update the EMP monthly and submit [ ] hard copies of the updated part of the EMP and a soft copy in Microsoft Word format to the Supervisor.

(6) The Contractor shall provide all facilities, access and assistance to the Supervisor to periodically verify the EMP implementation. If the Supervisor is of the opinion that the EMP is not properly implemented, the Supervisor shall notify the Contractor in writing of such failure and the Contractor shall take all necessary steps promptly to rectify the failure.

(7) The submission of EMP shall not relieve the Contractor from any of his obligations or responsibilities under this contract.

(8) The Contractor shall comply with the EMP and ensure compliance with the provision of the necessary environmental measures as specified in this contract in Providing the Works, including compliance by his 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.
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 minimize 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.
Subject to Clause [insert appropriate clause reference] of the Particular Specification for B5 diesel, all Equipment powered by diesel fuel, whether they belong to the Contractor or his 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 Contractor shall maintain a summary record of all delivery notes of ULSD delivered to the Site, including those ordered by his 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 Supervisor or his site supervisory staff upon request.

The Supervisor 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 Contractor 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 Contractor and agreed by the Supervisor.
Where the Contractor is an incorporated joint venture it shall within fourteen (14) days of the Contract Date provide to the Employer a joint venture guarantee in the form set out in Appendix [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] to these additional conditions of contract executed by all the shareholders of the Contractor. 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.

Notwithstanding any other provisions of this contract, failure by the Contractor to provide a joint venture guarantee in strict accordance with sub-clause (1) of this Clause shall constitute a breach of this contract entitling the Employer to damages and shall entitle the Employer to terminate this contract forthwith by notice in writing to that effect and the Contractor shall not be entitled to any compensation whatsoever as a consequence of such termination.

The Contractor shall not make any changes to the following during the continuance of this contract unless prior written consent from the Employer is obtained in accordance with sub-clause (4) of this Clause:

(a) The percentage participation of each participant or shareholder in a joint venture; and

(b) The portion of the works for which each participant or shareholder in a joint venture is responsible.

In the event that the Contractor considers a change to the details referred to in sub-clause (3)(a) or (b) of this Clause is necessary because
D22 (Cont’d) (a) any participant or shareholder in a joint venture shall become bankrupt or have a receiving order made against him or shall present his petition in bankruptcy or shall make an arrangement with or assignment in favour of his creditors or shall agree to carry out this contract under a committee of inspection of his creditors or (being a corporation) shall go into liquidation (other than a voluntary liquidation for the purposes or amalgamation or reconstruction); and

(b) satisfactory Completion of the works,

the Contractor shall write to the Employer with detailed substantiation requesting the Employer’s consent before any changes are made. The Employer may in his 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.
The Contractor warrants to the Employer 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 himself and for the Employer, his authorized users, assigns and successors-in-title; or

(ii) the Contractor has or shall have obtained the grant of all necessary clearances for himself and for the Employer, his authorized users assigns and successors-in-title prior to the supply or use of such materials or articles.

The Contractor shall indemnify the Employer, his authorized users, assigns and successors-in-title and keep the Employer, his 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.
(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 the Completion or termination of this contract or determination of the employment of the Contractor (howsoever occasioned) and shall continue in full force and effect notwithstanding such Completion, termination or determination.
(1) The Contractor shall not dispose of construction and demolition materials generated by the Sites at any place other than the disposal grounds designated in this contract or directed by the Project Manager or such alternative disposal grounds as proposed by the Contractor and accepted by the Project Manager in accordance with [insert appropriate reference] of the Particular Specification.

(2) Notwithstanding any other provisions in this contract, the Project Manager’s acceptance or non-acceptance of any alternative disposal ground proposed by the Contractor shall not in any way relieve the Contractor of any duty or responsibility under this contract nor entitle the Contractor to any adjustment of the Prices or Completion Dates.
D26  (1) This Clause shall apply to works in the vicinity of the MTR Corporation Limited (Hong Kong) section, Tsim Sha Tsui Extension, Ma On Shan Rail and Lok Ma Chau Spur Line as shown on the Drawings and shall be read in conjunction with this contract.

(2) Further to Clause [A1] of these additional conditions of contract, the following words and expressions shall have the meaning hereby assigned to them except when the context otherwise requires:

“Corporation” means the MTR Corporation Limited (MTRCL).

“Railway” means the Kowloon-Canton Railway (Hong Kong) section, Tsim Sha Tsui Extension, Ma On Shan Rail and Lok Ma Chau Spur Line.

“Railway Protection & Land Survey Manager” means the Railway Protection & Land Survey Manager of the MTR Corporation Limited, or his authorized representative.

“Restriction” means speed restriction, which is a limitation of the normal permitted speed of rail traffic over a specified length of the railway track.

“Possession” means possession of the track, which is the closing of a specified length of the railway track to commercial rail traffic.

“Isolation” means isolation of the electrical equipment, which is the disconnection of a section of such equipment from all sources of electricity supply.
(3) (a) The Contractor shall have regard to the Particular Specification for works within the vicinity of the Railway and shall comply strictly with the requirements as set out therein. The Contractor shall comply with any instructions given by the Railway Protection & Land Survey Manager through the Project Manager with regard to planning, method of working, safety requirements and on any other matters which may affect the operating of the Railway. Provided that if a situation occurs which in the opinion of either the Contractor or Railway Protection & Land Survey Manager may give rise to or actually constitute an emergency and either the Contractor or the Railway Protection & Land Survey Manager considers that it is not practicable to communicate through the Project Manager, then the Contractor and the Railway Protection & Land Survey Manager may communicate direct and the Railway Protection & Land Survey Manager may give a direct instruction to the Contractor to carry out any remedial or other work or repair and such instruction shall be regarded for the purposes of this 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 the Railway Protection & Land Survey Manager under the provisions of this Clause, the Contractor shall not prevent and shall permit the Railway Protection & Land Survey Manager or a person authorized by the Railway Protection & Land Survey Manager to carry out the remedial work or other work or repair required by the direct instruction.

(c) If the remedial or other work or repair referred to in sub-clause 3(b) of this Clause is work which in the opinion of the Project Manager the Contractor was obligated to do under this contract, all costs and charges which are in the opinion of the Project Manager properly incurred by the Corporation in carrying out the same shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor whether under this or any other contract with the Employer, including amounts retained.
D26 (Cont’d)  
(d) The Contractor shall notify the Project Manager as soon as possible of any direct instruction received from the Railway Protection & Land Survey Manager under the provisions of this Clause.

(4) (a) Where any part of the works has to be carried out during the period of a Restriction, Possession or Isolation and the period of such Restriction, Possession or Isolation is laid down in this 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 such period is laid down, the Contractor shall before commencing any work hold discussions through the Project Manager with the Railway Protection & Land Survey Manager who will decide if any part of the works is to be carried out during a period of a Restriction, Possession or Isolation. The decision of the Railway Protection & Land Survey Manager in the event shall be binding on the Contractor. No claim by the Contractor for a compensation event shall be allowed as a result of a decision made under this sub-clause by the Railway Protection & Land Survey Manager.

(c) After the method of carrying out the work has been agreed with the Railway Protection & Land Survey Manager (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 his programme of work, which shall include details of any Restriction, Possession or Isolation previously notified as being necessary by the Railway Protection & Land Survey Manager, to the Corporation at least ten weeks in advance of the proposed commencement of work within the Railway boundary.

D26 (Cont’d)  
(d) Where an entry into the vicinity of Railway, Restriction, Possession or Isolation is necessary, the Contractor shall be responsible for initiating the necessary action to obtain the requisite approval from the Railway Protection & Land Survey Manager. 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.
(e) The Contractor shall organize the execution of the work during any period of Restriction and/or Possession and/or Isolation so that the Railway Protection & Land Survey Manager will be able to remove such Restriction, Possession or Isolation at the time laid down in this contract or the time previously agreed by the Railway Protection & Land Survey Manager. Should the Contractor in the opinion of the Project Manager or the Railway Protection & Land Survey Manager not make sufficient or adequate arrangements (including the provision of standby equipment) for completing the whole or any stage of the work within the time laid down in this contract or agreed with the Railway Protection & Land Survey Manager, the Railway Protection & Land Survey Manager may at his discretion cancel the Restriction and/or Occupation and/or Isolation, or the Railway Protection & Land Survey Manager may employ labour, plant and materials to assist the Contractor to finish the work or carry out such work as is necessary to enable the Restriction, 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 work during any such period, he shall be required to re-apply to the Railway Protection & Land Survey Manager for a further period of Restriction and/or Isolation.

(g) All expenses which in the opinion of the Project Manager are properly incurred by the Corporation as a result of the Railway Protection & Land Survey Manager making necessary arrangements to assist the Contractor or carrying out any necessary work in accordance with sub-clause (4) (e) of this Clause shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor whether under this or any other contract with the Employer, including amounts retained.
(5) Further to the expenses incurred under sub-clauses (3) (c) and (4) (g) of this Clause, any loss of revenue and/or additional expenditure which in the opinion of the Project Manager has been incurred by the Corporation by reason of the rescheduling of services by the Corporation due to the Contractor obstructing the tracks or interfering with the signalling system or overhead electrical equipment other than for a period when Restriction and/or Possession and/or Isolation has been given shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor whether under this or any other contract with the Employer including amounts retained. A guide to the method of determining the loss of revenue to the Corporation under this Clause is attached as Appendix [insert appropriate reference] to these additional conditions of contract.

(6) (a) The Railway Protection & Land Survey Manager shall have the right to cancel or alter the date and the timing of any Restriction, Possession or Isolation whether such is set out in this contract or has been previously agreed, if in his opinion, it is necessary do so for the safe and uninterrupted running of rail traffic. In such an event the Railway Protection & Land Survey Manager shall make alternative arrangements as soon as practicable.

(b) Not used.

1 Insert appropriate reference which refers to Clause A1 of this document regarding “Definitions”.
D27  (1) Any claim received by the *Employer* or the *Project Manager* in respect of matters for which the *Contractor* is required under this contract to indemnify the Employer will be passed to the *Contractor* who shall likewise inform the *Employer* and the *Project Manager* of any such claim which is submitted directly to him by a claimant. The *Contractor* shall keep the *Employer* and the *Project Manager* informed as to the progress made towards settlement.

(2) When a claim involves alleged damage to crops or property on agricultural lands the District Lands Officer shall be informed by the *Project Manager*, 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 *Contractor* shall do everything necessary including notifying his insurers, if any, of the claim received, to ensure that the claim is settled without delay. If in the opinion of the *Employer* the *Contractor* or his insurers, if any, are delaying settlement, the *Employer* may make direct payment to the claimant in settlement of all outstanding amounts which in the opinion of the *Employer* are due to him 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.

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

**Third Party Claims in Respect of Damage on and to Agricultural Lands**

WBTC No. 28/92

Modified from SCC 13

for contracts where the possibly of damage to agricultural crops and/or property on agricultural lands might arise
(1) For the purposes of this Clause:

“last Section” means the section with the latest time for Completion;

“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.

“time for completion” means the Completion Date in accordance with NEC Clause 11.2(3).

(2) The PFSPMS is included in this 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 his next application for payment statement submitted in accordance with NEC Clause 50.1.
(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 X1.5. 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 X1.5.

(7) Further to NEC Clause 50.5, 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 he 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 this 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 Employer to the Contractor or from the Contractor to the Employer as the case may be under the last payment certificate issued.
Where the Contractor opts to engage a prefabrication yard to supply steel reinforcing bar ("rebar") products for any part or parts of the works, the Contractor shall ensure that such prefabrication yard is included in the “List of Approved Steel Reinforcing Bar Prefabrication Yards for Public Works” maintained by the Government (such List is hereinafter referred to in this Clause as “the List” and a prefabrication yard included in the List is hereinafter referred to in this Clause as “approved prefabrication yard”). Should the Contractor opt to engage such prefabrication yard, he shall 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 such rebar products to the Site from the approved prefabrication yard:

(a) the name of the approved prefabrication yard to be engaged;

(b) the part or parts of the works where the rebar products supplied from the 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 approved prefabrication yard are involved;

(d) whether carrying out of the fabrication of reinforcement cages or threading / coupling of rebars using reinforcement connectors at the 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

Use of Steel Reinforcing Bar Products Supplied by Approved Steel Reinforcing Bar Prefabrication Yard
Marginal Notes

**D29 (Cont’d)**

- (e) the storage and traceability system of rebar products within the Site for identification purpose if the Contractor opts to engage an approved prefabrication yard to supply rebar products for the works concerned and at the same time purchase 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) for other parts of the works. Such storage and traceability system shall be submitted by the Contractor and to the satisfaction of the Project Manager.

(2) Further to sub-clause (1) above, upon delivery of the rebar products to the Site, the Contractor shall submit to the Project Manager the documents showing that such products are produced by the approved prefabrication yard and are in compliance with the quality assurance scheme of the approved prefabrication yard, and the products are in compliance with the Construction Standard CS2:2012 including amendments thereto and replacement thereof and other relevant prevailing technical memorandums, practice notes, codes of practice and specifications related to testing of reinforcement or threading / coupling rebars using reinforcement connectors issued by the Government.

(3) If the supply of rebar products under the Contractor’s proposal involves cutting and bending of rebars at the approved prefabrication yard, the requirements pertaining to submission of particulars of reinforcement and testing of reinforcement under this contract shall not apply in respect of the works concerned. Those requirements not to be applied include but are not limited to the following:

(a) Submissions
   General Specification for Civil Engineering Works 2006 Edition Clauses 15.12 and 15.17(a), (e) and (f); and

(b) Testing
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 approved prefabrication yard, the Contractor shall ensure that 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 shall include such records as required under sub-clause (1)(d) above when submitting the Contractor’s proposal to the Project Manager under sub-clause (1) above.

If the supply of rebar products under the Contractor’s proposal involves the carrying out of the fabrication of reinforcement cages at the approved prefabrication yard, the requirements pertaining to submission of particulars of reinforcement and testing of reinforcement under this contract, including but not limited to those listed in sub-clause (3) above, shall not apply in respect of the works concerned.

If the supply of rebar products under the Contractor’s proposal involves the carrying out of threading / coupling of rebars using reinforcement connectors at the approved prefabrication yard, the requirements pertaining to submission of particulars of reinforcement connectors and testing of reinforcement connectors under this contract shall not apply in respect of the works concerned. Those requirements not to be applied include but are not limited to the following:

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

(b) Testing

Save as expressly provided in sub-clauses (2) to (6) above, the engagement by the Contractor of an approved prefabrication yard to supply rebar products shall not relieve the Contractor from any liability or obligation under this contract and shall not in any way limit or exclude any right or remedy which the Employer may have against the Contractor under this contract.
D29  (Cont’d) In the event that the approved prefabrication yard engaged by the Contractor 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. The Contractor shall not be entitled to any changes to the Prices arising out of or in connection with the removal of the prefabrication yard concerned from the List.
(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) *at least 50% of the total quantity of /*at least 80% of the total quantity of /*all of excavators on the Site, and

(d) at least 50% of the total quantity of /*at least 80% of the total quantity of /*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 he 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.
Section E - Labour

(1) The Contractor shall make his 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.

(2) As far as practicable all labour both skilled and unskilled shall be engaged in Hong Kong.
"Intermediate Tradesman/Qualified Semi-skilled Tradesmen and Intermediate Tradesmen" means:

(i) a worker who has obtained the relevant intermediate trade test certificate issued either by the Construction Industry Council or Vocational Training Council; or

(ii) a registered semi-skilled worker or registered semi-skilled worker (provisional) as respectively defined in section 2(1) of the Construction Workers Registration Ordinance (Cap 583).

"Qualified Tradesman/Qualified Skilled Workers" means:

(i) a worker who has obtained the relevant trade test certificate issued either jointly or separately by the Construction Industry Council and the Vocational Training Council; or

(ii) a worker who has obtained the relevant certificate of completion of apprenticeship issued under the Apprenticeship Ordinance (Cap. 47); or

(iii) a worker who has obtained the relevant certificate of completion of apprenticeship issued by the Government of the Hong Kong Special Administrative Region; or

(iv) an electrician or electrical fitter who is a registered electrical worker registered under Section 30 of the Electricity Ordinance (Cap. 406); or

(v) a registered skilled worker or registered skilled worker (provisional) as respectively defined in section 2(1) of the Construction Workers Registration Ordinance (Cap. 583).

The Contractor shall employ at least the minimum number of Qualified Tradesmen and Intermediate Tradesmen of each of the specified trades as specified in the Particular Specification.
E3  (1) The Contractor 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 Contractor is engaged are similar.

(2) The Contractor shall in respect of all persons employed by him, whether in carrying out this contract or otherwise, in every workshop or other place occupied or used by him for Providing the Works comply with the general conditions required by this Clause.

(3) The Contractor shall be responsible for the observance of this Clause by subcontractors employed in the carrying out of the works.

(4) In the event of default being made in the payment of any money in respect of wages of any person employed by the Contractor in and for carrying out this 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 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 Employer may, failing payment of the said money by the Contractor, make payment of such claim on behalf of the Contractor to that person and any sums so paid shall be recoverable by the Employer from the Contractor.
The Supervisor may arrange the issue of passes to the Contractor for the admission of workers to the Site or to any part thereof and in such event any person who fails to show his pass on demand to any duly authorized person may be refused admission.

If required by the Supervisor the Contractor shall submit a list of the names of all his workers requiring passes together with two photographs of each person and shall satisfy the Supervisor of their bona fides and identity.

Any pass so issued shall be returned at any time on the demand of the Supervisor and in any case on Completion of the works or on the cessation of the bearer’s employment on the works.
E5 (1) The Contractor 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 Works Information.

(2) Where the Contractor employs the technical apprentice(s) pursuant to sub-clause (1) of this Clause, the Contractor 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.

(3) Where the Contractor employs the building or civil engineering graduate(s) pursuant to sub-clause (1) of this Clause, the Contractor 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 access date and the Completion Date, whichever is longer, and follow established training guidelines for the relevant disciplines as far as possible.
E6 (1) Subject to those Casual Workers referred to in Particular Specification Section [insert appropriate reference] on “Casual Workers”, all Site Workers shall be engaged in accordance with [insert appropriate reference] 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 Contractor or any of his 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 [insert appropriate reference] to these additional conditions of contract 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 this contract.

(2) The Contractor 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 Contractor’s employee compensation insurance policy or his third party liability and all risks insurance policy. Alternatively the Contractor 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 [insert appropriate reference] to these additional conditions of contract and shall maintain such policy for the duration of the self-employed workers being engaged in this contract. The Contractor shall inform the Project Manager immediately when the insurance policy of a self-employed worker has expired together with evidence showing its renewal as appropriate.

(3) Truck drivers engaged for any part of the works (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.

(4) Not Used.
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].

The Contractor shall provide suitably qualified staff to act as Labour Relations Officer referred to in Section [insert appropriate reference no.] of the Particular Specification to monitor payment of wages

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.
(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 this 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 Labour Relations Officer 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 Employer 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 Employer 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 Labour Relations Officer under sub-clause (7)(a) of this Clause.
(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 Labour Relations Officer 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.
For the purposes of this Clause, the following words and expressions shall, except when the context otherwise requires, have the meaning hereby assigned to them:

*“B&C first-tier Subcontractor” means a first-tier Subcontractor executing any part of the B&C works or supplying any materials or services for the B&C works.

*“B&C Trade” means a CCTS Trade which is a building and civil work trade.

*“B&C works” means the building and civil works under this contract.

“CCTS” means the Contractor Cooperative Training Scheme administered by the CIC.

“CCTS Graduate” has the meaning assigned to it under sub-clause (6)(b) of this Clause.

“CCTS Trade” means a trade selected from the list of trades prescribed by the relevant authority under the CCTS or proposed by the Contractor or an E&M first-tier Subcontractor, as the case may be, for the approval of the relevant authority under the CCTS.

“CCTS Trainee” means a trainee employed to undergo training under the CCTS.

“Change to the CCTS Terms and Conditions” means any addition or amendment to the CCTS terms and conditions made on or after the date which was 10 days prior to the tender closing date.

“CIC” means the Construction Industry Council established by section 4 of the Construction Industry Council Ordinance (Cap. 587).

**“E&M first-tier Subcontractor” has the meaning assigned to it under sub-clause (2)(b)(i) of this Clause.

^“E&M second-tier subcontractor” means a second-tier subcontractor who has entered into a subcontract with an E&M first-tier Subcontractor to execute any part of the E&M works or supplying any materials or services for the E&M works.
E8 (Cont’d)

**“E&M Trade” means a CCTS Trade which is an electrical and mechanical work trade.**

**“E&M works” means the electrical and mechanical works under this contract.**

^“relevant E&M first-tier Subcontractor”, in relation to an E&M second-tier subcontractor, means the E&M first-tier Subcontractor with whom such E&M second-tier subcontractor has entered into a subcontract to execute any part of the E&M works or supplying any materials or services for the E&M works.

(2) (a) (i) The Contractor shall join the CCTS. The Contractor shall employ –

a total of at least [XX]# CCTS Trainees in B&C Trades to undergo CCTS training under this contract.

(ii) The Contractor shall provide and complete on-the-job training for the CCTS Trainees in B&C Trades in accordance with the approved CCTS training proposals referred to in sub-clause (4) of this Clause.

(iii) Subject to the other provisions of this Clause, a CCTS Trainee in a B&C Trade employed by a B&C first-tier Subcontractor to undergo CCTS training provided under this contract shall be counted towards the minimum total number of CCTS Trainees in B&C Trades as specified in sub-clause (2)(a)(i) above.

Sub-clause (2)(a) not used if B&C Trade not involved

# Insert appropriate number
The Contractor shall ensure that one or more of his first-tier Subcontractors executing any part of the E&M works or supplying any materials or services for the E&M works join the CCTS (such Subcontractor who joins the CCTS is hereinafter referred to in this Clause as “E&M first-tier Subcontractor”). The Contractor shall employ –

a total of at least [YY] CCTS Trainees in E&M Trades to undergo CCTS training under this contract.

(ii) The Contractor shall ensure that, in respect of each E&M Trade, an E&M first-tier Subcontractor shall provide and completes on-the-job training for the CCTS Trainees in that E&M Trade in accordance with the approved CCTS training proposal referred to in sub-clause (4) of this Clause.

(iii) Subject to the other provisions of this Clause, a CCTS Trainee in an E&M Trade employed by an E&M first-tier Subcontractor to undergo CCTS training under this contract shall be counted towards the minimum total number of CCTS Trainees in E&M Trades as specified in sub-clause (2)(b)(i) above.

(3) (a) The training of the CCTS Trainees in B&C Trades shall be commenced within 3 months from and including the starting date as notified by the Project Manager in accordance with item 3 of the Contract Data Part one.
(b) The training of the CCTS Trainees in E&M Trades shall be commenced within 3 months from and including the starting date as notified by the Project Manager in accordance with item 3 of the Contract Data Part one or such longer period as accepted by the Project Manager.

(c) The training of the CCTS Trainees in a CCTS Trade shall only commence after the relevant CCTS training proposal referred to in sub-clause (4) of this Clause has been approved by the relevant authority under the CCTS and such training shall be in accordance with the approved CCTS training proposal. If the training of the CCTS Trainees in a CCTS Trade cannot be commenced within 3 months from and including the starting date as notified by the Project Manager in accordance with item 3 of the Contract Data Part one **[or, as the case may be, the longer period approved under sub-clause (3)(b) above] for a reason beyond the reasonable control of the Contractor, the Contractor shall seek the acceptance of the Project Manager to defer the commencement of the training of the CCTS Trainees in such CCTS Trade.

(4) (a) The Contractor shall submit to the CIC for approval by the relevant authority under the CCTS a CCTS training proposal for each B&C Trade, and copy the submission to the Project Manager.

(b) The Contractor shall ^[ensure that, in respect of each E&M Trade, an E&M first-tier Subcontractor shall] submit to the CIC for approval by the relevant authority under the CCTS a CCTS training proposal for the E&M Trade , and copy the submission to the Project Manager.

** Applicable only where E&M Trade involved

Sub-clause (4)(a) not used if B&C Trade not involved

Sub-clause (4)(b) not used if E&M Trade not involved

^ Applicable only for E&M supply and installation works carried out by sub-contractors rather than main contractor
The submission of the CCTS training proposal shall be in accordance with the CCTS terms and conditions and, subject to the CCTS terms and conditions and any requirements as may be specified by the relevant authority under the CCTS, shall include, but not limited to, information on the number of proposed CCTS Trainees, details of any proposed secondment arrangement referred to in sub-clause (9) of this Clause, training period, course contents and syllabus, end-of-training assessment, cost of training, training subsidy being applied for, training instructors, equipment and plant and training venue, re-training of trainees failing the assessment, and replenishment of drop-out trainees as appropriate.

(5) (a) The Contractor shall supervise and monitor the training provided to the CCTS Trainees in each B&C Trade, whether the CCTS Trainees in the B&C Trade are employed by the Contractor or a B&C first-tier Subcontractor, and ensure that the training provided is in accordance with the relevant approved CCTS training proposal referred to in sub-clause (4) of this Clause. The Contractor shall comply with the terms and conditions of the CCTS and any additions or amendments thereto which are applicable to the relevant approved CCTS training proposal and shall ensure that his B&C first-tier Subcontractor complies with the same as appropriate.

(b) (i) The Contractor shall supervise and monitors the training provided to the CCTS Trainees in the E&M Trade, whether the CCTS Trainees are employed by the E&M first-tier Subcontractor or his E&M second-tier subcontractor, and ensure that the training provided is in accordance with the relevant approved CCTS training proposal referred to in sub-clause (4) of this Clause.
(ii) The Contractor shall ^[ensure that the E&M first-tier Subcontractor shall] comply with the terms and conditions of the CCTS and any additions or amendments thereto which are applicable to the relevant approved CCTS training proposal, and ^[that the E&M first-tier Subcontractor shall ensure that his E&M second-tier subcontractor complies with the same as appropriate.] / ^^[shall ensure that his E&M first-tier Subcontractor complies with the same as appropriate.]

(6) (a) For the purposes of this Clause, the training of a CCTS Trainee in a CCTS Trade is completed when the CCTS Trainee has passed the end-of-training assessment applicable to the CCTS Trade conducted or approved by the CIC.

(b) Upon completion of the training of a CCTS Trainee in a CCTS Trade (a CCTS Trainee whose training in a CCTS Trade is completed is hereinafter referred to in this Clause as “CCTS Graduate”), the Contractor shall, subject to sub-clause (6)(e) below and the agreement of the CCTS Graduate to be employed in accordance with this sub-clause (6)(b), immediately employ the CCTS Graduate for a period of at least 12 months to work in the CCTS Trade in which he was trained. During such 12-month period, or if the period is longer than 12 months, during the first 12 months of such period, the CCTS Graduate shall be paid –

(i) if he is a CCTS Graduate in a B&C Trade, a wage of no less than the higher of the following:

- HK$10,000 per month for the first 6 months and then a wage of no less than HK$15,000 per month thereafter; or

- the minimum wage as provided in the Minimum Wage Ordinance (Cap. 608).

Sub-clause (6)(b)(i) not used if B&C Trade not involved
(ii) if he is a CCTS Graduate in an E&M Trade, a wage of no less than the higher of the following:

- HK$10,000 per month; or

- the minimum wage as provided in the Minimum Wage Ordinance (Cap. 608)

(c) The Contractor shall employ in accordance with sub-clause 6(b) above the total number of CCTS Graduates irrespective of whether they were employed as CCTS Trainees by the Contractor or, as the case may be, *[B&C first-tier Subcontractors], **[E&M first-tier Subcontractors] or ^[E&M second-tier subcontractors].

(d) (i) If a CCTS Graduate who was employed as a CCTS Trainee by a *[B&C first-tier Subcontractor], **[E&M first-tier Subcontractor] or ^[E&M second-tier subcontractor], as the case may be, is immediately employed upon completion of his training by the same subcontractor to work in the CCTS Trade in which he was trained, he shall be counted towards the total number of CCTS Graduates that the Contractor is required to employ under sub-clause 6(c) above provided that -

(I) the CCTS Graduate is paid a wage in accordance with sub-clause (6)(b)(i) or (6)(b)(ii) above, as the case may be; and

(II) the CCTS Graduate is employed for a period of at least 12 months or, if any of the circumstances set out in sub-clause (6)(d)(ii) below applies, for a shorter period.

(ii) The circumstances referred to in sub-clause (6)(d)(i)(II) above are:
E8 (Cont’d)  

(I) in the case where the CCTS Graduate was employed as a CCTS Trainee by a *[B&C first-tier Subcontractor]**[or an E&M first-tier Subcontractor], there is insufficient work, in the CCTS Trade in which the CCTS Graduate was trained, under all contracts between the Contractor and such *[B&C first-tier Subcontractor]**[or E&M first-tier Subcontractor], as the case may be, after completion of the training of the CCTS Graduate; or

(II) in the case where CCTS Graduate was employed as a CCTS Trainee by an E&M second-tier subcontractor, there is insufficient work, in the CCTS Trade in which the CCTS Graduate was trained, under all contracts between the relevant E&M first-tier Subcontractor and such E&M second-tier subcontractor after completion of the training of the CCTS Graduate; or

(III) the CCTS Graduate resigns on his own accord; or

(IV) the CCTS Graduate is incapacitated by physical or mental illness or is otherwise unable or unfit to discharge the duties of a CCTS Graduate; or

(V) the CCTS Graduate has committed any act for which the subcontractor is entitled to terminate the employment contract without notice or payment in lieu under the law.

(e) If the Contractor is unable to employ the CCTS Graduate for a period of at least 12 months as required under sub-clause (6)(b) above for any of the reasons listed below in this sub-clause (6)(e), the Contractor may decide not to employ the CCTS Graduate, or may shorten the employment period of the CCTS Graduate –

E8 (Cont’d)

(i) there is no work or insufficient work, in the CCTS Trade in which the CCTS Graduate was trained, under this contract and all other contracts of the Contractor after completion of the training of the CCTS Graduate; or
(ii) the CCTS Graduate resigns on his own accord; or

(iii) the CCTS Graduate is incapacitated by physical or mental illness or is otherwise unable or unfit to discharge the duties of a CCTS Graduate; or

(iv) the CCTS Graduate has committed any act for which the Contractor is entitled to terminate the employment contract without notice or payment in lieu under the law.

(7) (a) The Contractor shall register **[or, as the case may be, ensure that his E&M first-tier Subcontractor shall register] with the CIC the names of the CCTS Trainees, contract number and title of the contract under which the CCTS Trainees work. The Contractor shall submit and ensure that his E&M first-tier Subcontractor submits a certified true copy of the written employment contract of each CCTS Trainee to the CIC and the Project Manager for inspection if so requested by them. No CCTS Trainee shall be registered more than once at any one time. The Contractor shall also submit a certified true copy of the written employment contract of each CCTS Graduate employed in accordance with sub-clause (6) of this Clause to the Project Manager for inspection if so requested by the Project Manager.

(b) Notwithstanding Clause E6 of the additional conditions of contract, the “Notes about Personal Data” in the Specimen Employment Contract in Appendix [###] to the additional conditions of contract shall be replaced by the “Notes about Personal Data” in Appendix [###] to the additional conditions of contract as far as the terms of the employment contract of the CCTS Trainees and employed CCTS Graduates are concerned.

** Applicable only where E&M Trade involved
E8 (8) (a) (i) If the employment of a CCTS Trainee in a B&C Trade is terminated prior to the completion of the training, the Contractor shall, within one month after such termination, replace the CCTS Trainee with a new CCTS Trainee in a B&C Trade in accordance with this Clause unless the total number of CCTS Graduates in B&C Trades graduated under this contract and the remaining number of CCTS Trainees in B&C Trades who are undergoing training is not less than the minimum total number of CCTS Trainees in B&C Trades as specified in sub-clause (2)(a)(i) of this Clause. The Contractor is deemed to comply with the same if the B&C first-tier Subcontractor who employed the CCTS Trainee has replaced him with a new CCTS Trainee in a B&C Trade, within one month after such termination.

(ii) If the employment of a CCTS Trainee in an E&M Trade is terminated prior to the completion of the training, the Contractor shall, within one month after such termination, replace the CCTS Trainee with a new CCTS Trainee in an E&M Trade in accordance with this Clause unless the total number of CCTS Graduates in E&M Trades graduated under this contract and the remaining number of CCTS Trainees in E&M Trades who are undergoing training is not less than the minimum total number of CCTS Trainees in E&M Trades required to be employed to undergo CCTS training under this contract as specified in sub-clause (2)(b)(i) of this Clause. The Contractor is deemed to comply with the same if the E&M first-tier Subcontractor ^[or E&M second-tier subcontractor], as the case may be, who employed the CCTS Trainee has replaced him with a new CCTS Trainee in an E&M Trade within one month after such termination.

Sub-clause (8)(a)(i) not used if B&C Trade not involved

Sub-clause (8)(a)(ii) not used if E&M Trade not involved

^ Applicable only for E&M supply and installation works carried out by sub-contractors rather than main contractor
(iii) If the Contractor is unable to replace the CCTS Trainee with a new CCTS Trainee in accordance with sub-clause (8)(a)(i) or, as the case may be, in accordance with sub-clause (8)(a)(ii) above, the Contractor shall use and continue to use reasonable endeavours to replace the CCTS Trainee until the CCTS Trainee has been replaced. The Contractor shall upon request from time to time by the Project Manager demonstrate to the satisfaction of the Project Manager that reasonable endeavours have been used to replace the CCTS Trainee.

(b) For the purpose of complying with *[sub-clause (2)(a)(i)] **[or as the case may be, sub-clause (2)(b)(i)] of this Clause, a CCTS Trainee whose employment is terminated prior to the completion of the training shall not be counted towards the minimum total number of *[CCTS Trainees in B&C Trades] **[or CCTS Trainees in E&M Trades], as the case may be, as specified in sub-clause *[(2)(a)(i)] **[or (2)(b)(i)].

(c) Sub-clauses (8)(a) and (8)(b) above shall not apply if, in the opinion of the Project Manager, the termination of employment of a CCTS Trainee is effected on or after the date which is 7 months prior to the planned Completion, or where the works are divided into sections, the planned Completion of the section last completed as determined by the Project Manager. For the purposes of this sub-clause (8)(c), “section last completed” excludes *the section for Establishment Works and *the section for Aftercare to Old Valuable Trees / *the section for Establishment Works and Aftercare to Old and Valuable Trees.
(9) Subject to sub-clause (9)(b) below, the Contractor, *[B&C first-tier Subcontractor], **[E&M first-tier Subcontractor] *[or E&M second-tier subcontractor], as the case may be, may second any CCTS Trainee or CCTS Graduate in his employment to work under another contract in Hong Kong, whether it is a public works contract or not (hereinafter referred to in this sub-clause (9) as “Seconded Contract”). The work of the CCTS Trainee or CCTS Graduate in the Seconded Contract shall be in the same CCTS Trade in which the seconded CCTS Trainee is or the employed CCTS Graduate was trained under the CCTS (such CCTS Trade is hereinafter referred to in this sub-clause (9) as “the CCTS Trade concerned”).

Provided that:

(i) (I) the main contractor of the Seconded Contract shall be the Contractor; or

(II) if the main contractor of the Seconded Contract is a joint venture, one of the participants or shareholders of the main contractor of the Seconded Contract shall be the Contractor; or

(III) if the Contractor is a joint venture, one of the participants or shareholders of the Contractor shall be the main contractor of the Seconded Contract; or

(IV) if the Contractor is a joint venture and the main contractor of the Seconded Contract is another joint venture, one of the participants or shareholders of the Contractor is a participant or shareholder of the main contractor of the Seconded Contract; and

(ii) in the case where the CCTS Trainee or CCTS Graduate is employed by *[a B&C first-tier Subcontractor] **[an E&M first-tier Subcontractor], such first-tier Subcontractor shall, unless otherwise agreed by the Project Manager, also be a first-tier subcontractor of the main contractor of the Seconded Contract under a subcontract to execute works of the CCTS Trade concerned under the Seconded Contract during the period of secondment; and

* Applicable only where B&C Trade involved

** Applicable only where E&M Trade involved

^ Applicable only for E&M supply and installation works carried out by subcontractors rather than main contractor
(iii) in the case where the CCTS Trainee or CCTS Graduate is employed by an E&M second-tier subcontractor, unless otherwise agreed by the Project Manager:

(I) the relevant E&M first-tier Subcontractor of such E&M second-tier subcontractor shall also be a first-tier subcontractor of the main contractor of the Seconded Contract; and

(II) the E&M second-tier subcontractor shall also be a second-tier subcontractor of his relevant E&M first-tier subcontractor under a subcontract to execute works of the CCTS Trade concerned under the Seconded Contract during the period of secondment

(b) The secondment of a CCTS Trainee shall be subject to the approval of the CIC or the relevant authority under the CCTS in accordance with the CCTS terms and conditions. The Contractor shall notify the CIC through the CCTS training proposal for the CCTS trade or in writing within the time specified by the CIC prior to the secondment the details as required by CIC in accordance with the CCTS terms and conditions of the secondment and shall, subject to any requirement which may be specified by the CIC or the relevant authority under the CCTS, include, but not limited to, the contract number, the title of the Seconded Contract, the location at which the seconded CCTS Trainee will work, the nature of his work and the anticipated period of secondment. The Contractor shall at the same time send a copy of his aforesaid notification to the Project Manager and provide any other details of the secondment as may be required by the Project Manager.
(c) A CCTS Trainee seconded pursuant to this sub-clause (9) shall only be counted towards *[the minimum total number of CCTS Trainees in B&C Trades as specified in sub-clause (2)(a)(i) of this Clause] **[or, as the case may be, the minimum total number of CCTS Trainees in E&M Trades as specified in sub-clause (2)(b)(i) of this Clause] but not under the Seconded Contract. For the avoidance of doubt, a trainee employed to undergo CCTS training under another contract and seconded to work under this contract shall not be counted towards *[the minimum total number of CCTS Trainees in B&C Trades as specified in sub-clause (2)(a)(i) of this Clause] **[or the minimum total number of CCTS Trainees E&M Trades as specified in sub-clause (2)(b)(i) of this Clause].

(10) For the avoidance of doubt, sub-clauses (1) and (7) of Clause [E6] of these additional conditions of contract and [insert appropriate reference] of the Particular Specification on “Payment of Wages of Site Workers” shall apply to the CCTS Trainees and employed CCTS Graduates who have been seconded to work under Seconded Contracts pursuant to sub-clause (9) of this Clause.

E8 (Cont’d)  (11) The Contractor shall notify the Project Manager in writing of any change in the employment terms of a CCTS Trainee or CCTS Graduate, or of the intention of the CCTS Trainee, the CCTS Graduate, the Contractor or, as the case may be, *[the B&C first-tier Subcontractor], **[the E&M first-tier Subcontractor] or ^[the E&M second-tier subcontractor] (hereinafter referred to in this sub-clause (11) as “the subcontractor concerned”) to terminate the employment contract of the CCTS Trainee or CCTS Graduate, within 3 working days of the Contractor or the subcontractor concerned knowing the change or intention, whichever is earlier, and provide with the written notification under this sub-clause (11) the reason for the change of employment terms or termination of the employment contract. In the case of any change in the employment terms of a CCTS Trainee or there being any intention of the CCTS Trainee, the Contractor or the subcontractor concerned to terminate the employment contract of the CCTS Trainee, the Contractor shall also notify the CIC in accordance with the CCTS terms and conditions.
(12) (a) Subject to sub-clause (12)(b), the total of the Prices shall be adjusted to take account of any change to the Prices in complying with this Clause resulting from any change to the CCTS terms and conditions.

(b) If the Project Manager is of the opinion that the Contractor has been or is likely to be involved in decrease in the Prices in complying with this Clause resulting from any Change to the CCTS Terms and Conditions or upon written application by the Contractor to the Project Manager, the Project Manager is of the opinion that the Contractor has been or is likely to be involved in increase in the Prices in complying with this Clause for which the Contractor would not be reimbursed by a payment made under any other provision of this contract resulting from any Change to the CCTS Terms and Conditions, the Project Manager shall assess the decrease or, as the case may be, the increase in the Prices in accordance with NEC Clause 50.2.

E8

(Cont’d) For the purpose of [insert appropriate reference] of Particular Specification, the CCTS Trainees for this contract or seconded from other contracts to work under this contract shall not form part of the total local workforce on the Site when calculating the minimum number of Qualified Tradesmen and Intermediate Tradesmen to be employed by the Contractor under this contract.

(14) Nothing in this Clause shall derogate from or in any way affect the respective obligations of the Contractor, *[B&C first-tier Subcontractors], **[E&M first-tier Subcontractors] and ^[E&M second-tier subcontractors] to comply with the applicable law in Hong Kong, including relevant employment, labour and anti-discrimination legislation.

* Applicable only where B&C Trade involved

** Applicable only where E&M Trade involved

^ Applicable only for E&M supply and installation works carried out by sub-contractors rather than main contractor
(15) Notwithstanding any other provisions in this contract but without prejudice to sub-clause (12) of this Clause, there shall not be any measurement or separate payment for any of the work, services or obligations under this Clause. All the cost and expenses for complying with this Clause shall be deemed to be included in the Contractor’s overheads.

1 Insert appropriate reference which refers to Clause E6 “Payment of Wages of Site Workers” of this document.
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 \(\text{insert the number where appropriate}\) 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:

(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.

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.

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 his subcontractor, as the case may be, shall pay the ECMTS Graduate a wage of no less than the higher of the following:
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(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 his 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 he 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 his 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 his 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 this contract in the trade in which the ECMTS Graduate graduated; or

(ii) the ECMTS Graduate resigns on his 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 his subcontractor, as the case may be, is entitled to terminate the employment contract without notice or payment in lieu under the law.
If any ECMTS Graduate is employed for a period shorter than the minimum 12-month employment period, the Contractor or his 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 this 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.

If the Contractor or his 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 he 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.

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 his subcontractor to terminate the employment contract of the ECMTS Graduate to work on the Site, within 3 working days of the Contractor or his 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 his 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

F1 (1) "Independent Checking Engineer" means the person, firm or company employed by the Contractor and responsible for the independent checking of the Contractor’s Design whose qualifications, skill and experience are deemed satisfactory by the Employer and who shall be independent of the Designer and the Contractor.

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

"Contractor's Design" means that part or those parts of the design of the permanent works for which the Contractor has elected or is required in accordance with the Works Information to prepare design calculations and drawings and which has been accepted by the Employer, including, where appropriate any further design which the Contractor has to carry out as a result of any amendment to the design required under sub-clause (6) or (7) of Clause [F2] of these additional conditions of contract and/or any change to the works for the Contractor’s Design instructed by the Project Manager.

"Check Certificate" means a certificate, in the form specified in Appendix [insert appropriate reference] to these additional conditions of contract, issued by the Independent Checking Engineer certifying that the Contractor's Design has been independently checked and complies in all respects with the terms and conditions of this contract.

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

1 Insert appropriate reference which refers to Clause F2 of this document regarding “Contractor’s Design”.
(a) The Contractor shall have in respect of any defect or insufficiency in the Contractor's Design the like liability to the Employer, whether under statute or otherwise, as would an appropriate professional designer holding himself out as competent to take on the Contractor's Design, provided always that:

(i) where the Employer has relied upon the Contractor to select equipment, plant, materials and goods required by the Contractor's Design to be incorporated in 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 (l)(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 (l)(a) in no circumstances shall the Contractor be obliged to ensure that the Contractor's Design is fit for the purpose for which it is intended.

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

(b) The liability and warranty of the Contractor referred to in sub-clause (l)(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 Contractor's Design or any submission to the Project Manager for checking and/or approval.

(c) The Designer shall prepare all calculations and drawings relating to the Contractor's Design which shall be subject to a Check Certificate.
(d) If at any time the Project Manager has substantial cause for dissatisfaction with the conduct or performance of the Independent Checking Engineer, he shall notify the Employer accordingly. The Contractor shall, upon receiving written notice from the Employer, cease to employ such person, firm or company and shall immediately replace him by another whose qualifications, skill and experience are satisfactory to the Employer.

(2) The Contractor's Design shall be compatible with the provisions of the Works Information, provided that the Contractor may propose modifications to the Works Information in respect of particular methods of construction or materials not included in the Works Information. In such cases, the Contractor shall immediately advise the Employer of such proposals through the Project Manager. The Employer'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 Employer of such proposals shall vitiate this contract. Acceptance or rejection by the Employer 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 this contract. The Contractor shall not commence the construction of such works until receipt of confirmative notification in writing from the Project Manager.
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 this 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 this contract and shall be detailed in S.I. units.

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

If at any time it becomes apparent to the Contractor that an amendment to the Contractor's Design is required for the proper completion of that part of the works involved in such design, then he shall:

(a) immediately advise the 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 Employer the cost of any work or design done by the Employer which has been rendered abortive by any such amendments.
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 this contract, the soft copy of the drawings prepared in accordance with the CAD standard so specified.

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 this 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 this 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.

For the avoidance of doubt, any change in the Works Information resulting from the acceptance by the Employer of the Contractor's Design shall not be a compensation event notwithstanding any other provisions in this contract.

The Contractor’s Design shall be deemed part of the Works Information provided by the Contractor. For the avoidance of doubt, amendments under sub-clause (6) of this Clause shall not be considered as compensation events.
Except in respect of those Intellectual Property Rights referred to in sub-clause (12)(c) of this Clause, the Contractor hereby undertakes and warrants to the Employer that the Contractor is the sole legal and beneficial owner of all Intellectual Property Rights subsisting in the Contractor's Design.

Upon the issue of the certificate of Completion of the works or after termination, abandonment or breach of contract, the Contractor shall be deemed to have granted to the Employer, his 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 Works Information) and for other purpose as stated in the Works Information and this 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.

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 Employer, his 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.

For the avoidance of doubt, any licence and
indemnity granted pursuant to this Clause shall not be determined if the Contractor shall for any reason cease to be employed in connection with the works.

(e) The Contractor shall at the request of the Employer, do such acts and execute all such deeds and documents (or procure that the same be done or executed) as the Employer or the subsequent owners or occupiers of the works may require for granting to the Employer, his 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 his own costs and expenses in relation thereto.

(f) The Contractor hereby indemnifies the Employer against all claims, proceedings, actions, damages, costs and losses incurred or sustained by the Employer 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 Employer for purposes referred to in sub-clause (12)(b) of this Clause. For avoidance of doubt, the indemnity herein applies where the proceedings concerned are subsequently withdrawn or settled or in the event that the allegations of infringement are subsequently found to be unsubstantiated. The Contractor shall at its own cost grant a like indemnity to the Employer’s authorized users, the subsequent owners or occupiers of the works upon request of the Employer.

(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, his subcontractors or the manufacturers of any proprietary product or system required or selected by him to Provide the Works and/or in the performance of this contract and the use, operation or possession and/or the alteration, extension or maintenance by the Employer, his 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, his subcontractors or the manufacturers of any proprietary product or system required or selected by him 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, his subcontractors or the manufacturers of any proprietary product or system required or selected by him to provide the Works and/or in the performance of this contract, the Intellectual Property Rights of which are vested in a third party, the Contractor, his 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 this contract and the Employer, his 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, his subcontractors or the manufacturers of any proprietary product or system required or selected by him.

(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 Employer, his authorized users and the subsequent owners and occupiers of the works and shall take effect upon the grant of licence to the Employer, his 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 of this contract or determination of the employment of the Contractor (howsoever occasioned) and shall continue in full force and effect notwithstanding such Completion, termination or determination.

(13) Sub-clause (12) of this Clause shall be without prejudice to Clause [F8] 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”.

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

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

"Cost Savings Design" means the design proposal to any part of the works submitted by the Contractor under Clause [F4] of these additional conditions of contract and any amplification or amendment thereto and accepted by the Employer with or without amendments, including, where applicable, any further design which the Contractor has to carry out as a result of any amendment to the design required under sub-clause (6) or (7) of Clause [F4] and / or any change to the works for the Cost Savings Design instructed by the Project Manager.

"Check Certificate of Cost Savings Design" means a certificate, in the form specified in Appendix [insert appropriate reference] to these additional conditions of contract, issued by the Independent Checking Engineer of Cost Savings Design certifying that the Cost Savings Design has been independently checked and complies in all respects with the terms and conditions of this contract.

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

1 Insert appropriate reference which refers to Clause F4 of this document regarding “Cost Savings Design”.

Liberal Note Guidelines

F3 (1)  "Independent Checking Engineer of Cost Savings Design" means the person, firm or company employed by the Contractor and responsible for the independent checking of the Cost Savings Design whose qualifications, skill and experience are deemed satisfactory by the Employer and who shall be independent of the Designer of Cost Savings Design and the Contractor.

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

"Cost Savings Design" means the design proposal to any part of the works submitted by the Contractor under Clause [F4] of these additional conditions of contract and any amplification or amendment thereto and accepted by the Employer with or without amendments, including, where applicable, any further design which the Contractor has to carry out as a result of any amendment to the design required under sub-clause (6) or (7) of Clause [F4] and / or any change to the works for the Cost Savings Design instructed by the Project Manager.

"Check Certificate of Cost Savings Design" means a certificate, in the form specified in Appendix [insert appropriate reference] to these additional conditions of contract, issued by the Independent Checking Engineer of Cost Savings Design certifying that the Cost Savings Design has been independently checked and complies in all respects with the terms and conditions of this contract.

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

1 Insert appropriate reference which refers to Clause F4 of this document regarding “Cost Savings Design”.

Cost Savings Design - Definitions

Devb TC(W) No. 3/2014

[Optional if the Contractor’s cost savings designs are allowed]
(a) The Contractor may at any time during the continuance of the works submit to the Project Manager in writing a Cost Savings Design proposal in respect of a part of the works with sufficient details and justifications to show:

(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 works or any section 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 Employer of the works 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.

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

(b) Any proposal shall clearly state that it is submitted for consideration under this sub-clause and shall include (i) an estimate for consideration by the Employer of the amount 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 Employer will take into account the additional cost incurred for considering the Contractor’s proposal including the Project Manager’s cost and addition in future operation and maintenance cost. The Cost Savings Design shall be subject to the Project Manager’s confirmation that it is compatible with the provisions of the Works Information. The Contractor may propose modifications to the Works Information in respect of particular methods of construction or materials not included in the Works Information.

(c) Subject to acceptance of the Cost Savings
Design, (i) the overall cost savings as assessed by the Employer and (ii) any revision (on the basis of the change in value as assessed by the Employer and change in 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 Employer that the proposal is acceptable to the Employer and confirmation from both the Contractor and the Employer that (i) the overall cost savings and (ii) any revision as aforesaid to the daily rate of delay damages and/or minimum delay damages arising from the proposal are agreed by both parties.

(d) The Employer’s decision to accept or reject the Cost Savings Design shall be conveyed to the Contractor in writing by the 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 this 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 Employer 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 Employer 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 his submission to the Project Manager of the proposal and the Employer shall bear his own
cost for considering the proposal submitted by the Contractor under this sub-clause except that the Contractor shall reimburse the Employer for the Project Manager’s cost in doing the same. The Employer shall be entitled to deduct such cost from any sums due to the Contractor under this contract and/or to recover such cost as a debt from the Contractor.

(f) If the Cost Savings Design is accepted, the Prices Sub-clause (f) 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 Employer and the Contractor, the Project Manager’s cost and addition in future operation and maintenance cost shall be borne by the Contractor, the Completion Date shall be adjusted as agreed between the Employer 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 assessed in accordance with this Clause rather than NEC Clause 53 and 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 his submission to the Project Manager of the proposal and the Employer shall bear his own cost for considering the proposal submitted by the Contractor under this sub-clause except that the Contractor shall reimburse the Employer for the Project Manager’s cost in doing the same. The Employer shall be entitled to deduct such cost from any sums due to the Contractor under this contract and/or to recover such cost as a debt from the Contractor.
The Contractor shall have in respect of any defect or insufficiency in the Cost Savings Design the like liability to the Employer, whether under statute or otherwise as would an appropriate professional designer holding himself out as competent to take on the and Cost Savings Design, provided always that:

(i) where the Employer 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 this contract and, without prejudice to the generality of Clause [D4] of the additional conditions of contract, the provisions of Clause [D4] 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.
(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, he shall notify the Employer accordingly. The Contractor shall, upon receiving written notice from the Employer, cease to employ such person, firm or company and shall immediately replace him by another whose qualifications, skill and experience are satisfactory to the Employer.

(3) Within a reasonable period prior to the commencement of that part of the works to be constructed in accordance with the Cost Savings Design, and from time to time as required by the 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] 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 this 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 this 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 this contract and shall be detailed in S.I. units.
(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 this 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 Employer the cost of any work or design done by the Employer 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 he 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 Employer the cost of any work or design done by the Employer which has been rendered abortive by any such amendments.

(8) On completion of the work constructed in accordance with the Cost Savings Design, the Contractor shall prepare and submit to the 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 this contract, the soft copy of the drawings prepared in accordance with the CAD standard so specified.
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 this 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 Works Information resulting from the acceptance by the Employer of the Cost Savings Design shall not be a compensation event notwithstanding any other provisions in this contract.

(11) The Cost Savings Design shall be deemed part of the Works Information 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 Employer that the Contractor is the sole legal and beneficial owner of all Intellectual Property Rights subsisting in Cost Savings Design.
(12) Upon the issue of the certificate of Completion of the works or after termination of the Contractor's obligation to Provide the Works, or after termination, abandonment or breach of contract, the Contractor shall be deemed to have granted to the Employer, his 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 Works Information) and for other purpose as stated in the Works Information and this 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 Employer, his 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 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 Employer, do such acts and execute all such deeds and documents (or procure that the same be done or executed) as the Employer or the subsequent owners or occupiers of the works may require for granting to the Employer, his 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 his own costs and expenses in relation thereto.

(f) The Contractor hereby indemnifies the Employer against all claims, proceedings, actions, damages, costs and losses incurred or sustained by the Employer 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 Employer for purposes referred to in sub-clause (12)(b) of this Clause. For avoidance of doubt, the indemnity herein applies where the proceedings concerned are subsequently withdrawn or settled or in the event that the allegations of infringement are subsequently found to be unsubstantiated. The Contractor shall at its own cost grant a like indemnity to the Employer’s authorized users, the subsequent owners or occupiers of the works upon request of the Employer.

(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, his subcontractors or the manufacturers of any proprietary product or system required or selected by him to Provide the Works and/or in the performance of this contract and the use, operation or possession and/or the alteration, extension or maintenance by
the Employer, his authorized users and subsequent owners or 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, his subcontractors or the manufacturers of any proprietary product or system required or selected by him 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, his subcontractors or the manufacturers of any proprietary product or system required or selected by him to Provide the Works and/or in the performance of this contract, the Intellectual Property Rights of which are vested in a third party, the Contractor, his 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 this contract and the Employer, his 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, his subcontractors or the manufacturers of any proprietary product or system required or selected by him.

(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 Employer, his authorized users and the subsequent owners and occupiers of the works and shall take effect
(Cont’d) upon the grant of licence to the Employer, his 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 of this contract or determination of the employment of the Contractor (howsoever occasioned) and shall continue in full force and effect notwithstanding such Completion, termination or determination.

(13) Sub-clause (12) of this Clause shall be without prejudice to Clause [F8] 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”.

(1) Without limiting its obligations under this contract, the Contractor shall effect and maintain, with well established insurers of repute, professional indemnity insurance for a minimum amount of [insert the amount] in respect of his obligations in relation to the design of any part or all of the works to be carried out by or on behalf of the Contractor pursuant to this contract, except the Cost Savings Design, for any one occurrence or series of occurrences arising out of any one event, or each and every claim, for a period from the Contract Date until [insert the time] years after the date of Completion of the whole of the works.

(2) The Contractor shall procure that the Designer and Independent Checking Engineer appointed or engaged by the Contractor in connection with the design or checking of the design of any part or all of the works, except the Cost Savings Design, shall effect and maintain, with well established insurers of repute, professional indemnity insurance for a minimum amount of [insert the amount] in respect of his obligations in relation to the design or, as the case may be, checking of the design of any part or all of the works, except the Cost Savings Design, for any one occurrence or series of occurrences arising out of any one event, or each and every claim for a period from the respective date of commencement of appointment or engagement of the Designer and Independent Checking Engineer until [insert the time] years after the date of Completion of the whole of the works.

(3) The professional indemnity insurance referred to in sub-clause (1) or (2) of this Clause shall respectively be effected with an insurer or insurers acceptable to the Employer. The Contractor shall immediately inform the Employer in writing if such insurance ceases to be available or otherwise is not maintained in accordance with this Clause or for any reason becomes void or unenforceable.

(4) If the insurance policy effected pursuant to sub-clause (1) or (2) of this Clause is project specific, the maximum deductible/excess allowed under the insurance policy shall be limited to a maximum of 20% of the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be.
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.

If (i) the insurance policy effected pursuant to sub-clause (1) or (2) of this Clause contains a limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy, and (ii) the period of insurance under the insurance policy exceeds twelve months, then either:
(A) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall be reinstated in full upon exhaustion of the limit of indemnity by reason of indemnity payments made on account of any claim, loss, damage, liability, cost or expense paid or payable under the insurance policy until the total amount of indemnity payable by the insurer under the insurance policy reaches 3 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or

(B) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall not be less than 3 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or

(C) the limit of indemnity for any one occurrence or series of occurrences arising out of any one event, or each and every claim under the insurance policy shall not be less than 3 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be.

(6) (a) The Contractor shall provide to the Employer within 60 days from the 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
(B) a certified copy of the full insurance policy
effectuated pursuant to sub-clause (1) of this
Clause for the acceptance of the Employer
unless the Contractor can demonstrate to
the satisfaction of the Employer that it is
not reasonably practicable to provide a
certified copy of the full insurance policy
in which event the Contractor shall
provide a certificate in 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 Employer may
reasonably require.

(b) The Contractor shall provide to the Employer,
within [insert the time] days from the respective
dates of appointment or engagement of his
Designer and Independent Checking Engineer,
and thereafter, in the case where the insurance
policy effectuated 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 effectuated upon the expiry of the earlier
insurance policy:

(A) an undertaking that the current insurance
policy effectuated 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 Employer unless the Contractor can demonstrate to the satisfaction of the Employer that it is not reasonably practicable to provide a certified copy of the full insurance policy in which event the Contractor shall provide a certificate in 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 Employer may reasonably require.

F5 (Cont’d)  
(7) If the Contractor shall fail upon request to produce to the Employer satisfactory evidence that there is in force professional indemnity insurance required under this Clause, the Employer may effect and keep in force any such insurance and pay such premium as may be necessary for that purpose. The Employer shall be entitled to deduct such premium, together with expenses incurred, in accordance with the provisions of 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 Employer”.
(1) Without limiting its obligations under this contract, the Contractor shall effect and maintain, with well established insurers of repute, professional indemnity insurance for a minimum amount as notified by the Employer to the Contractor in respect of his obligations in relation to the Cost Savings Design to be carried out by or on behalf of the Contractor pursuant to this 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 [insert the time] years after the date of Completion of the whole of the works.

(2) The Contractor shall procure that the Designer of Cost Savings Design and Independent Checking Engineer of Cost Savings Design appointed or engaged by the Contractor in connection with the design or checking of the Cost Savings Design shall effect and maintain, with well established insurers of repute, professional indemnity insurance for a minimum amount as notified by the Employer to the Contractor in respect of his obligations in relation to the design or, as the case may be, checking of the Cost Savings Design, for any one occurrence or series of occurrences arising out of any one event, or each and every claim for a period from the respective date of commencement of appointment or engagement of the Designer of Cost Savings Design and Independent Checking Engineer of Cost Savings Design until [insert the time] years after the date of Completion of the whole of the works.

(3) The professional indemnity insurance referred to in sub-clause (1) or (2) of this Clause shall respectively be effected with an insurer or insurers acceptable to the Employer. The Contractor shall immediately inform the Employer in writing if such insurance ceases to be available or otherwise is not maintained in accordance with this Clause or for any reason becomes void or unenforceable.

(4) If the insurance policy effected pursuant to sub-clause (1) or (2) of this Clause is project specific, the maximum deductible/excess allowed under the insurance policy shall be limited to a maximum of 20% of the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be.
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.

If (i) the insurance policy effected pursuant to sub-clause (1) or (2) of this Clause contains a limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy, and (ii) the period of insurance under the insurance policy exceeds twelve months, then either:
(A) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall be reinstated in full upon exhaustion of the limit of indemnity by reason of indemnity payments made on account of any claim, loss, damage, liability, cost or expense paid or payable under the insurance policy until the total amount of indemnity payable by the insurer under the insurance policy reaches 3 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or

(B) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall not be less than 3 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or

(C) the limit of indemnity for any one occurrence or series of occurrences arising out of any one event, or each and every claim under the insurance policy shall not be less than 3 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be.

(6) (a) The Contractor shall provide to the Employer within 60 days from the date of notification of acceptance of the Cost Savings Design and thereafter, in the case where the insurance policy effected pursuant to sub-clause (1) of this Clause does not cover the entire period of insurance required under that sub-clause, within 7 days of professional indemnity insurance being effected upon the expiry of the 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
(B) a certified copy of the full insurance policy
effected pursuant to sub-clause (1) of this
Clause for the acceptance of the Employer
unless the Contractor can demonstrate to
the satisfaction of the Employer that it is
not reasonably practicable to provide a
certified copy of the full insurance policy
in which event the Contractor shall
provide a certificate in 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 Employer may
reasonably require.

(b) The Contractor shall provide to the Employer,
within [insert the time] days from the respective
dates of appointment or engagement of his
Designer of Cost Savings Design and
Independent Checking Engineer of Cost Savings
Design, and thereafter, in the case where the
insurance policy effected pursuant to sub-clause
(2) of this Clause does not cover the entire
period of insurance required under that sub-
clause, within 7 days of professional indemnity
insurance being effected upon the expiry of the
earlier insurance policy:

(A) an undertaking that the current insurance
policy effected pursuant to sub-clause (2)
of this Clause complies with the terms of
this Clause in 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 Employer unless the Contractor can demonstrate to the satisfaction of the Employer that it is not reasonably practicable to provide a certified copy of the full insurance policy in which event the Contractor shall provide a certificate in 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 Employer may reasonably require.

F6 (Cont’d)

(7) If the Contractor shall fail upon request to produce to the Employer satisfactory evidence that there is in force professional indemnity insurance required under this Clause, the Employer may effect and keep in force any such insurance and pay such premium as may be necessary for that purpose. The Employer shall be entitled to deduct such premium, together with expenses incurred, in accordance with the provisions of 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 Employer”.
“Temporary Works” means all temporary work of every kind required for the construction, completion and maintenance of the works.

When considered necessary by the Contractor or specified in this 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.

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.

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 he shall be able to certify that the Temporary Works are properly and safely designed using all reasonable skill and care.

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

Modified from GCC1(1) and SCC26
F7
(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 himself that it contains no obvious deficiency and that the independent checking engineer has carried out his duties set out in sub-clause (4). Upon being so satisfied the Project Manager shall issue his 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 his 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 his liability under this contract for the design, erection, use or removal of the Temporary Works.
(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 him again in connection with the **works** and shall replace the independent checking engineer with a replacement selected in accordance with sub-clause (2).
(1) The Contractor shall be fully responsible for his design under this contract (including the Contractor’s Design and Cost Savings Design) as well as the general performance of this 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 himself, his subcontractors or the manufacturers of any proprietary product or system selected by him to Provide the Works and/or in the performance of this contract.

(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, his subcontractors or the manufacturers of any proprietary product or system required or selected by him to Provide the Works and/or in the performance of this contract and the use, operation or possession and/or the alteration, extension or maintenance by the Employer, his 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, his subcontractors or the manufacturers of any proprietary product or system required or selected by him 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, his subcontractors or the manufacturers of any proprietary product or system required or selected by him to provide the Works and/or in the performance of this contract, the Intellectual Property Rights of which are vested in a third party, the Contractor, his 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 this contract and the Employer, his 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, his subcontractors or the manufacturers of any proprietary product or system required or selected by him.
The Contractor shall indemnify the Employer, his authorized users and the subsequent owners and occupiers of the works and keep the Employer, his 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, his subcontractors or the manufacturers of any proprietary product or system required or selected by him to Provide the Works and/or in the performance of this contract, or the use, operation or possession and/or the alteration, extension or maintenance by the Employer, his 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, his subcontractors or the manufacturers of any proprietary product or system required or selected by him infringes any Intellectual Property Rights or any other right of any person.

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 Employer, his authorized users and the subsequent owners and occupiers of the works and shall take effect upon the grant of licence to the Employer, his authorized users and the subsequent owners and occupiers of the works.
(5) The provisions of this Clause shall survive the Completion or termination of this contract or determination of the employment of the Contractor (howsoever occasioned) and shall continue in full force and effect notwithstanding such Completion, termination or determination.
Section G – Settlement of Disputes

GIA (1) “Dispute” means any dispute or difference of any kind whatsoever between the Employer and the Contractor arising out of or in connection with this contract or the carrying out of the works including without limitation any dispute as to any decision, instruction, order, direction, certificate or valuation by the Project Manager or the Supervisor whether during the progress of the works or after Completion and whether before or after the termination, abandonment or breach of this contract by either the Employer or the Contractor.

(2) If any Dispute shall arise, it shall be referred to and settled by the Project Manager who shall state his decision in writing and give notice of the same to the Employer and the Contractor. Unless this contract shall have been already terminated or abandoned the Contractor shall in every case continue to proceed with the work with all due diligence and he shall give effect forthwith to every such decision of the Project Manager. Such decision of the Project Manager shall be final and binding upon the Contractor and the Employer unless either of them shall require that the matter be referred to mediation, adjudication or arbitration as hereinafter provided and unless and until the decision shall be revised in the said mediation, adjudication or arbitration. If the Project Manager shall fail to give such decision for a period of 28 days after being requested to do so or if either the Employer or the Contractor be dissatisfied with any such decision of the Project Manager then either the Employer or the Contractor 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 Dispute be referred to mediation or adjudication in accordance with and subject to The Government of the Hong Kong Special Administrative Region Construction Mediation Rules (the Mediation Rules) or any modification thereof being in force at the date of such request or The Government of the Hong Kong Special Administrative Region Construction Adjudication Rules (the Adjudication Rules) appended at Appendix [insert appropriate reference] to these additional conditions of contract as appropriate unless the Employer and the Contractor agree otherwise.
(3) A decision of an adjudicator shall be final and binding upon the parties and enforceable as such unless and until either the Dispute –

(i) has been settled; or

(ii) has been referred to arbitration as provided in this Clause and an arbitral award has been made or a settlement reached.

(4) Despite the initiation of the mediation process under the Mediation Rules, if a party refuses to participate in the mediation or if the parties agree to participate in the mediation but they cannot reach a settlement agreement acceptable to both in respect of the Dispute, either party may within 14 days after the refusal to mediate or the termination of the mediation process request that the Dispute be referred to adjudication in accordance with and subject to the Adjudication Rules. The provisions in this sub-clause (4) shall not be applicable to mediation initiated under sub-clause (5) of this Clause below.

(5) Despite the initiation of the adjudication process under the Adjudication Rules, if a party refuses to participate in the adjudication or at any time after the commencement of the adjudication but before the date of the adjudicator's decision on the Dispute, the parties may by agreement refer the Dispute to mediation in accordance with and subject to the Mediation Rules. Upon the agreement of the parties to refer the Dispute to mediation under this sub-clause, the adjudication process shall be deemed terminated for purpose of Rule 11 of the Adjudication Rules on the same day. The provisions in this sub-clause (5) shall not be applicable to adjudication initiated under sub-clause (4) of this Clause above.

(6) If the Dispute cannot be resolved -

(i) by mediation and/or adjudication; or

(ii) as a result of a failure of a recipient of a request for mediation or adjudication to respond; or

(iii) because of a refusal to mediate or adjudicate by either the Employer or the Contractor
as provided in the foregoing sub-clauses of this Clause, or if neither party wishes the Dispute to be referred to mediation or adjudication, and either the Employer or the Contractor wishes to pursue the Dispute further, then the Dispute shall be referred to and finally settled by arbitration in accordance with and subject to the provisions of the Arbitration Ordinance and any such reference shall be deemed to be a submission to arbitration within the meaning of such Ordinance. Any reference to arbitration shall be made by the Employer or the Contractor within 90 days of:

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

(b) the refusal to mediate or adjudicate, or

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

(d) the abandonment of the mediation or adjudication, or

(e) where the Project Manager has failed to give a decision within the 28 days allowed under sub-clause (2) of this Clause after being requested to do so, the expiry of the subsequent period of 28 days for the Employer or the Contractor to request that the Dispute be referred to mediation or adjudication, and neither the Employer nor the Contractor having requested mediation or adjudication 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 (2) of this Clause, the expiry of the period of 28 days after receipt of the notice of the Project Manager 's decision for the Employer or the Contractor to request that the Dispute be referred to mediation or adjudication, and neither the Employer nor the Contractor having requested mediation or adjudication within that period of 28 days, or

(g) the date of the adjudication decision of the Dispute.
Provided that where the provisions under sub-clauses (4) or (5) of this Clause above have been invoked by the parties, the 90-day period for making a reference to arbitration shall be counted from the relevant event(s) as specified in paragraphs (a) to (g) above, where applicable, in the subsequent adjudication process or, as the case may be, mediation process.

(7) The adjudicator or arbitrator appointed shall have full power to open up, 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 adjudicator or arbitrator as the case may be to the evidence or arguments put before the Project Manager or the Supervisor for the purpose for obtaining the Project Manager's or Supervisor's decision above referred to. No decision, opinion, instruction, direction, certificate or valuation given by the Project Manager or the Supervisor shall disqualify either from being called as a witness and giving evidence before an adjudicator or arbitrator on any matter whatsoever relevant to the Dispute so referred to the adjudicator or arbitrator as aforesaid.

(8) Save as provided for in sub-clauses (9) and (10) of this Clause no further steps shall be taken in the reference to arbitration until after Completion or alleged Completion unless with the written consent of the Employer and the Contractor.

Provided that the giving of a certificate of Completion shall not be a condition precedent to the taking of any step in such reference.

(9) In the case of any Dispute as to the exercise of the Project Manager's powers under NEC Clause 91.2 or NEC Clause 91.3 the reference to arbitration may proceed notwithstanding that Completion shall not be or be alleged to be reached.

(10) In the case where this contract has been terminated or abandoned or the Contractor's obligation to Provide the Works has been terminated, the reference to the arbitrator may proceed notwithstanding Completion shall not be or be alleged to be reached.

(11) 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.
(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 replace by:

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

(a) are necessary for implementation or enforcement;

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

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

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

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

(13) 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”.

If any dispute or difference of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of this contract or the carrying out of the works including any dispute as to any decision, instruction, order, direction, certificate or valuation by the Project Manager whether during the progress of the works or after their Completion and whether before or after the termination, abandonment or breach of this contract, it shall be referred to and settled by the Project Manager who shall state his decision in writing and give notice of the same to the Employer and the Contractor. Unless this contract shall have been already terminated or abandoned the Contractor shall in every case continue to proceed with the works with all due diligence and he shall give effect forthwith to every such decision of the Project Manager unless and until the same shall be revised in mediation or arbitration as hereinafter provided. Such decision shall be final and binding upon the Contractor and the Employer unless either of them shall require that the matter be referred to mediation or arbitration as hereinafter provided. If the Project Manager shall fail to give such decision for a period of 28 days after being requested to do so or if either the Employer or the Contractor be dissatisfied with any such decision of the Project Manager then either the Employer or the Contractor 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.

If the matter cannot be resolved by mediation, or if either the Employer or the Contractor do not wish the matter to be referred to mediation then either the Employer 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.
(3) Any reference to arbitration shall be made within 90 days of:

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

(b) the refusal to mediate, or

(c) the failure of the mediation proceedings to produce a settlement acceptable to the Employer 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 Employer or the Contractor to request that the matter be referred to mediation, and neither the Employer 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 Employer or the Contractor to request that the matter be referred to mediation, and neither the Employer nor the Contractor having requested mediation within that period of 28 days.

(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. 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 Employer 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 him 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 this 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.

(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 replace 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
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(a) are necessary for implementation or enforcement;

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

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

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

20.1(b) Notwithstanding Article 20.1(a) and subject to the following provisions, the party comprising the Government of the Hong Kong Special Administrative Region (the Government party) may disclose the outline of any dispute with the other party and the outcome of the arbitration to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said Committee, the Government party shall inform the other party. Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the outcome of the arbitration without the written consent of the other party but such consent shall not be unreasonably withheld. The other party shall be deemed to have given his consent to disclosures on the expiry of the first 6 months from the date of the outcome of the arbitration. The other party may, if he considers necessary to protect the sensitive nature of certain information relating to him, request the Government party to disclose such specified information to the said Committee strictly on a confidential basis. If the Government party considers that there are legitimate grounds to accede to the other party's request, the Government party shall convey the request to the said Committee for its consideration.”
(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”.
In order to foster co-operation between the Contractor and the Employer and their consultants and subcontractors, to minimize the number of claims, to avoid conflicts in the first instance and settle disagreements or disputes as they emerge and before they become disputes which shall be dealt with in accordance with Clause [G1A] of these additional conditions of contract, the Dispute Resolution Advisor (DRA) system as set forth in this Clause shall be implemented.

The services to be performed by the DRA under this contract shall comprise the duties and powers set out or necessarily implied from this contract and the DRA Agreement (“Services”).

Without limitation the DRA Services include:

(a) To study and understand the documents forming this contract.

(b) To spend a sufficient amount of time on the Site to become familiar with the relevant personnel, including the Project Manager, the Supervisor, the liaison with the end-user’s administration (where appropriate), and the representatives of the Contractor and some or all of the subcontractors.

(c) To attend an initial briefing meeting between the Contractor and the Employer/or his representatives (all Specialist Subcontractors shall attend this meeting).

(d) To attend selectively at progress meetings, co-ordination meetings and any other ad hoc meetings.

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

(f) To conduct Site walks.

(g) To study and review the programme including short term and rolling programmes.
(h) To prepare reports to the Contractor and the Employer.

(i) To study and review selective correspondence generated by the Contractor and the Employer.

(j) To use all practicable and proactive measures to prevent dispute from occurring.

(k) To hold meetings as and when the DRA considers necessary for the purpose of avoiding conflicts or settling disagreements. The Contractor, the Employer, the Project Manager, the Supervisor or their representatives shall attend the meeting if so invited by the DRA. Such invitation shall be in writing.

(l) To provide independent views to the Employer’s Report Review Committee on the Contractor’s performance under this contract in respect of “Progress” and “Claims Attitude”, upon receipt of Contractor’s appeal on the Project Manager’s assessment.

(m) Other Services more particularly set out in Schedule 1 of the DRA Agreement.

(n) Other Services to be reasonably inferred from this contract and the DRA Agreement.

(4) (a) A DRA shall be appointed within 30 days of the execution of the Articles of Agreement of this contract or within such additional time as may be agreed by the Contractor and the Employer. The DRA shall have experience in the construction industry and possess dispute resolution skills. He shall be neutral and independent of both parties. He cannot be an employee of either the Employer or Contractor or of any subcontractor who will be engaged to execute any part of the works and shall not have any actual or perceived conflict of interest.
(b) The Employer shall on the same day as issuing the letter of acceptance of the Tender provide the Contractor with a list of ten possible DRA candidates. The Contractor shall within seven days select five candidates from the Employer’s list and advise the Employer in writing using the prescribed form set out in Appendix [insert appropriate reference] to these additional conditions of contract together with a confirmation letter from the selected candidates indicating their agreement to submit a proposal for the position of DRA on being invited by the Employer and has subject to consideration of the invitation to be provided by the Employer no conflict of interest.

(c) The Employer shall invite each of the DRA candidates nominated by the Contractor to submit a proposal for the position of DRA.

(d) Technical and fee proposals from each DRA candidate should include an appreciation of potential areas of dispute that might arise under this contract as well as their level of remuneration. Two copies of the technical and fee proposals shall be submitted simultaneously, one for each party to this contract.

(e) The Employer and the Contractor shall jointly select a DRA by agreement through a ranking system as described herein. The Employer and the Contractor shall each rank the candidates who have made proposals in order of preference with the most preferred candidate receiving the lowest number.

(f) The Employer and the Contractor shall be at liberty to adopt different marking schemes for the assessment of the DRA. Where the Employer has rejected a DRA candidate on the basis of his technical proposal, the Contractor agrees that such DRA candidate will not be selected and appointed and the Contractor shall also disregard that candidate when ranking the DRA candidates.
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(g) The Contractor shall meet with the Employer within seven days after the closing date for receipt of proposals from DRA candidates. At the meeting the Employer and the Contractor shall reveal their respective rankings of the DRA candidates. The DRA candidate with the lowest combined number shall be appointed. The successful candidate shall be advised by the Employer on the appointment.

(h) If there is more than one DRA candidate with the lowest combined number, the Employer and the Contractor shall attempt to agree who shall be appointed. Failing agreement either the Employer or the Contractor may write to the Secretary General of the Hong Kong International Arbitration Centre (HKIAC) who shall select the DRA from those candidates with the lowest combined number. The HKIAC may charge a fee, which can be reviewed from time to time, for making such selection. Any fee so charged shall be paid jointly by the Employer and the Contractor.

(i) Where the successful DRA candidate for any reason cannot or will not take up the DRA position, the DRA candidate with the next lowest combined number in order of preference shall be invited to take up the DRA position. Should that person for any reason be unable to accept the appointment, the candidate with the next lowest combined number in order of preference shall be approached and so on until a DRA is appointed.

(5) The Employer and the Contractor shall enter into a Dispute Resolution Advisor Agreement (“the DRA Agreement”) in the form set out in Appendix [insert appropriate reference] to these additional conditions of contract modified as may be agreed between the Employer, Contractor on the one hand and the DRA candidate on the other. Should agreement cannot be reached on the modifications, the final DRA Agreement shall be determined by the Employer.
(6) The *Employer* and the *Contractor* shall each pay 50% of the DRA costs, fees and expenses in respect of the Services provided to them as described in the DRA Agreement. If either the *Employer* or the *Contractor* fails to pay any amount due to the DRA within 7 days after the due date, then whichever of them is not in default shall pay the amount owing to the DRA. This amount shall then be a debt due from whichever has not paid the debt to the other. Should the *Employer* make such a payment as a result of the *Contractor’s* default, he shall, in addition to any other rights he may have, be entitled to deduct the amount paid from any monies due from the *Employer* to the *Contractor* under this contract or otherwise.

(7) (a) The tenure of the DRA shall, unless the *Employer* and the *Contractor* otherwise agree in writing, cease upon the date of issue of the Defects Certificate, or the Defects Certificate where there is more than one such certificate, pursuant to NEC Clause 43.3. Irrespective of the above, the DRA may be discharged at any time by a joint written notice from the *Employer* and the *Contractor*. The *Employer* or the *Contractor* may discharge the DRA unilaterally at any time after the first six months of his tenure as DRA. As a precondition to such discharge, however, the party wishing to discharge the DRA shall first meet with the other party to this contract to advise of the intention to discharge and the reasons for the proposed discharge. After the meeting, should the party still wish to discharge the DRA the party may do so by giving the DRA notice in writing specifying the effective date of the discharge, such notice to be copied to the other party to this contract.

(b) 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 certificate issued by the *Project Manager*. 
(c) If the DRA is discharged pursuant to sub-clause 7(a), or resigns from the position, or is otherwise unable to fulfill his obligations, the Employer and the Contractor shall choose another DRA pursuant to sub-clause (4), or they may so agree to appoint the DRA candidate who has made submission in the earlier DRA selection exercise in order of preference as defined in sub-clause 4(e). The replacement DRA shall be appointed within 30 days of the date of discharge or resignation or incapacity of the incumbent DRA.

(8) (a) The contracting parties shall endeavour to settle any differences or disputes between them through mutual understanding and the promotion of good working relationship. This could be done with or without the assistance of the DRA throughout this contract. However in the event that, despite of the proactive effort of the DRA, any Dispute has arisen, it shall be referred to the Project Manager in accordance with the provisions set out in Clause [G1A]1 of these additional conditions of contract.

(b) If the Project Manager shall fail to give such decision for a period of 28 days after being requested to do so or if either the Employer or the Contractor be dissatisfied with any such decision of the Project Manager then the contracting parties may choose the most suitable form of dispute resolution measures which may include mediation, adjudication or arbitration all in accordance with the procedures set out in Clause [G1A]1 of these additional conditions of contract.

(9) (a) Where the Contractor subcontracts any part of the works in accordance with NEC Clause 26 the Contractor shall include the following clause (with only such modifications as may be agreed by the Employer) in any and all such subcontracts and shall use his best endeavours to ensure that the terms and conditions of the clause are observed:
“(I) The Subcontractor acknowledges that a Dispute Resolution Advisor (DRA) has been appointed in this contract between the Employer and the Contractor. The role of the DRA is to foster co-operation between the Contractor and the Employer and their consultants and subcontractors in order to prevent or at least minimise disputes that may arise in the course of this contract.

(II) The Subcontractor shall where requested by the Contractor or the DRA:

(i) attend and participate in meetings with the DRA alone or with the DRA, the Contractor, the Employer and such other parties as the DRA directs,

(ii) provide documents or copies of documents to the DRA on the DRA’s request, and

(iii) negotiate in and deal in good faith using its best endeavours with respect to any issue or dispute which arises between the Contractor and it where such issue or dispute affects or may affect any issue or dispute between the Contractor and the Employer.

(III) The Subcontractor acknowledges that the DRA will not and shall not assist in the resolution of issues or disputes between the Contractor and the Subcontractor which do not and will not affect any issue or dispute between the Contractor and the Employer.

(IV) The Subcontractor undertakes to the Contractor that he will maintain in strict confidence any information provided to him by the DRA or by the Contractor or Employer in the course of meetings held with the DRA.”.

(10) It shall be part of the Project Manager’s (and of the Supervisor) duties and powers to co-operate with the DRA.
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1 insert appropriate clause reference which refers to Clause G1A of this document regarding “Settlement of Disputes” for capital works contracts adopting voluntary adjudication.