

Section A – Definitions and Contract Documents

A1	Unless otherwise specified in the contract:	Definitions	
	<p data-bbox="331 342 1043 416">“ACC Clause” means a clause of the <i>additional conditions of contract</i>.</p> <p data-bbox="331 456 1043 640">“Black Rainstorm Warning” means a warning issued by the Director of the Hong Kong Observatory of a heavy rainstorm in, or in the vicinity of, Hong Kong by the use of the heavy rainstorm signal commonly referred to as black.</p> <p data-bbox="331 680 1043 754">“DEVB” means the Development Bureau of the Government.</p> <p data-bbox="331 795 1043 1283">“Dispute” means any dispute or difference of any kind whatsoever between the Parties arising out of or in connection with the contract and/or the <i>service</i> including, without limitation, any dispute as to any decision, notification, certificate, assessment, instruction, order or direction or alleged failure to provide the same by the <i>Client</i> or <i>Service Manager</i>, as the case may be, whether during the progress of the <i>service</i> or after Completion and whether before or after the termination of the contract or the <i>Consultant’s</i> obligation to Provide the Service, or the abandonment or breach of the contract by either the <i>Client</i> or the <i>Consultant</i>, and includes a Payment Dispute.</p> <p data-bbox="331 1323 1043 1435">“Payment Dispute” means a Dispute which is a payment dispute defined in the <i>security of payment provisions</i>.</p> <p data-bbox="331 1476 1043 1588">“ETWB” means the previous Environment, Transport and Works Bureau of the Government, which is now DEVB.</p> <p data-bbox="331 1628 1043 1892">“Gale Warning” means a warning of the occurrence of a tropical cyclone in, or in the vicinity of, the Hong Kong Special Administrative Region, by the use of any of the tropical cyclone warning signals referred to in Section 5(1)(a)(i) of the Judicial Proceedings (Adjournment during gale warnings) Ordinance (Cap. 62).</p>		<p data-bbox="1289 456 1540 600">Section 71 of the Interpretation and General Clauses Ordinance (Cap. 1)</p> <p data-bbox="1289 1628 1540 2051">Section 71 of the Interpretation and General Clauses Ordinance (Cap. 1) and Section 2 of the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance (Cap. 62)</p>

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

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

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

GCE 1

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

“NEC Clause” means a clause in the *conditions of contract* other than the *additional conditions of contract*.

For efficacy of the contract

“Resident Site Staff” means those persons employed by the *Consultant* pursuant to ACC Clauses C1 and C2.

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

A2	The contents list, index, marginal notes or headings in any documents forming part of the contract shall not in any way vary, limit or extend the interpretation of the contract.	Marginal headings	Modified from GCE 3
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Where the contract requires a party to provide, give, submit or similar a notice, quotation, acceptance or other document on or by a date or within a period which expires on a date which is a General Holiday or on which a Black Rainstorm Warning or Gale Warning is issued then the party shall have until the next day which is not a General Holiday and on which no Black Rainstorm Warning or Gale Warning is issued to comply with the requirement. Where a period for undertaking such an act or doing such a thing is 6 days or less, no General Holiday, Black Rainstorm Warning or Gale Warning shall be taken into account in calculating the time taken to perform the act or do the thing required. For the avoidance of doubt, a period of days from the happening of any event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done. The provisions of this clause shall not apply to the extent that the contract requires the performance of any part of the *service* and the issue of any related documentation on General Holidays.

**Computation
of time**

A4 The *Consultant* when called upon to do so shall enter into and execute the Memorandum of Agreement which shall be prepared at the cost of the *Client* in the form provided with the tender documents with such modifications as may be necessary. **Memorandum of Agreement** Modified from GCE 6

A5

**Submitted
Proposals**

- (A) Pursuant and further to the requirements for instructions at NEC Clause 16.1 and 16.2, The “Submitted Proposals” are, subject to sub-clause (B) below, the submissions made by the *Consultant* in its tender and forming part of the contract.

- (B) If any provision in the Submitted Proposals purports to
 - (i) impose any obligation on the *Client* or the *Service Manager* which is not an obligation of the *Client* or the *Service Manager*, as the case may be, under the contract,

 - (ii) confer any right or option on the *Consultant* which is not a right or option of the *Consultant* under the contract, or

 - (iii) conflict or contradict other documents forming part of the contract, unless it imposes additional obligations on the *Consultant* within the meaning of this sub-clause,

then such provision has no contractual effect and is omitted from the Submitted Proposals and the Scope. A provision imposes additional obligations on the *Consultant* if it imposes higher standards for the *service* or otherwise imposes more onerous requirements on the *Consultant* than other documents forming part of the contract.

- (C) In the event that
 - (i) an ambiguity or inconsistency arises from the Submitted Proposals,

 - (ii) an illegal or impossible requirement is found in the Submitted Proposals, or

 - (iii) the *Consultant* decides not to provide the *service* in accordance with the Submitted Proposals for any other reasons,

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the *Consultant* proposes changes to the Submitted Proposals to the *Service Manager*. The proposed changes conform with the Scope provided by the *Client*. Upon receipt of the proposed changes, the *Service Manager* may give any of the following instructions:

- (i) request the *Consultant* to provide further information, including the time and financial implications of the proposed changes,
- (ii) approve the proposed changes,
- (iii) refuse the proposed changes for any reason, and
- (iv) give any other instructions on the proposed changes and any matters relating to provision of the *service* in accordance with the proposed changes.

If the *Service Manager* approves the proposed changes and there is savings of cost to the *Consultant* as a result of such event, the *Service Manager* assesses the savings and deducts it from the Prices.

- (D) An instruction given by the *Project Manager* under this clause is not a compensation event.

Section B – General Obligations

- B1** (A) The *Consultant* shall answer all reasonable enquiries received from the *Service Manager*. The *Consultant* shall render reports at such intervals as required by the *Service Manager* when asked to do so and shall assist the *Service Manager* to form an opinion as to the manner in which he is proceeding with the contract.
- Information to be supplied by the Consultant** Modified from GCE 11
- (B) The *Consultant* gives consent to the *Client* to obtain from:
- (i) any party who has been named in the tender submission and/or documents submitted by the *Consultant* during the course of the contract;
- (ii) any issuing body of any reports, certificates or documentary evidence mentioned or referred to in the tender submission and/or documents submitted by the *Consultant* during the course of the contract;
- (iii) any other parties such as banks, insurers, employers, clients, the engineer, architect, professional bodies/institution and universities or the like that have been referred to in the tender submission and/or documents submitted by the *Consultant* during the course of the contract,
- all information which the *Client* considers relevant for the enforcement and administration of the contract, including but not limited to information to verify the legitimacy, completeness, authenticity and accuracy of any information included in the tender submission and/or documents submitted by the *Consultant* during the course of the contact.
- (C) The consent in sub-clause (B) of this clause shall be valid throughout the contract. If any consent from any other person is required for the *Client* to obtain any of the aforesaid information or document, the *Consultant* undertakes that it can obtain such consent when required by the *Client*. Further, upon request by the *Client*, the *Consultant* shall provide a written authorization to the *Client* if such written authorization is needed for the *Client* to obtain information and/or document(s) from the person or issuing body referred to in sub-clause (B) of this clause.
- DEVB's memo ref. WP4S-022-005-011 dated 31.12.2025

- (D) The *Consultant* submits the name, relevant qualifications, experience and other required information of a proposed key personnel including Project Director, Project Manager, Team Leader(s) and other *key persons* (if any) to the *Service Manager* for acceptance in accordance with the contract. The *Consultant* also submits its proposed key personnel's consent using the form in **Appendix 6** to the *Client* for collection, use, and input of such information of the proposed key personnel into the database of the Government for the purposes of procurement and management of the contract and other consultancy agreements of the Government.

B2	In addition to the <i>Consultant's</i> obligation to attend early warning meetings in accordance with NEC Clause 15.2, the <i>Consultant</i> shall, if reasonably possible, attend or be represented at all other meetings convened by the <i>Service Manager</i> or identified in the Scope as meetings to be attended by the <i>Consultant</i> , and shall advise and assist the <i>Client</i> or the <i>Service Manager</i> on all matters relating to the <i>service</i> .	Attendance at meetings	Modified from GCE 13
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B3	The <i>Consultant</i> shall at all times give to the <i>Service Manager</i> and any persons duly authorised by the <i>Service Manager</i> , reasonable facilities to inspect or view any works and the site of any works and all plans, drawings, specifications, records, scope, works information, service information, site information and the like and all correspondence relevant to any works by contractors in relation to the <i>service</i> .	Facilities for inspection	Modified from GCE 14
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B4	<p>(A) Pursuant and further to the <i>Consultant's</i> obligations at NEC Clause 13.9, for the <i>period for retention</i>, the <i>Consultant</i> shall store the Documents in accordance with the accepted storage and retrieval proposal referred to in sub-clause (B) of this clause.</p> <p>(B) The <i>Consultant</i> shall before the Completion Date or within 28 days of any earlier request from the <i>Service Manager</i> submit a storage and retrieval proposal to the <i>Service Manager</i> for acceptance. The proposal may be accepted by the <i>Service Manager</i> with or without conditions. On acceptance the <i>Consultant</i> shall, subject to this clause, deal with the Documents in strict accordance with the accepted storage and retrieval proposal.</p> <p>(C) The <i>Consultant</i> shall give assistance to public officers authorized by the <i>Client</i> to locate, retrieve, inspect or copy such Documents and shall answer queries or supply information reasonably requested by such officers on the concerned Documents.</p> <p>(D) Upon and notwithstanding the expiry of the <i>period for retention</i>, the <i>Consultant</i> shall first obtain the written consent of the <i>Service Manager</i> before destroying any of the Documents. If so instructed by the <i>Service Manager</i>, the <i>Consultant</i> shall deliver any or all of such Documents to the <i>Service Manager's</i> designated store.</p> <p>(E) The <i>Consultant</i> shall notify the <i>Service Manager</i> immediately in case of any accidents or incidents leading to the loss or damage of any of the Documents. The <i>Consultant</i> shall also inspect the Documents at regular intervals not exceeding three years to ensure that they are in good condition and shall report to the <i>Service Manager</i> promptly in case of any sign of deterioration.</p> <p>(F) The <i>Service Manager</i> may before the expiry of the <i>period for retention</i> request that any of the Documents be transferred from the <i>Consultant</i> to the <i>Service Manager's</i> designated store.</p> <p>(G) Notwithstanding sub-clauses (A) to (F) of this clause, the <i>Consultant</i> may propose from time to time the destruction of certain Documents or classes of Documents and the <i>Service Manager</i> may at his discretion consent to such destruction, such consent to be in writing.</p>	<p>Retention of Documents and inspection</p> <p>Modified from SCE “Retention of documents and inspection”</p> <p>(ETWB TC(W) No. 30/2004)</p>
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- (H) The *Service Manager* shall have power to instruct the amendment of or change to the accepted storage and retrieval proposal. Should the *Service Manager* instruct such amendment or change such instruction by the *Service Manager* is deemed to be an instruction changing the Scope under NEC Clause 60.1(1).
 - (I) For the avoidance of doubt, the Prices cover all of the obligations in relation to Documents under the contract, except instructions issued under sub-clause (H) of this clause.
 - (J) In this clause, “Documents” means drawings, specifications, reports, records, files, measurement books and accounts and other documents however generated and whether generated by or received by the *Consultant* in relation to the contract or in respect of any works contract.

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| B5 | <p>(A) The <i>Consultant</i> shall, as may be necessary for the successful completion of its obligations under the contract, consult Others including but not limited to, all authorities (such as public utility companies, statutory bodies, Government departments and organisations, etc.) having rights or powers in connection with, and bodies or persons affected by the contract, the <i>service</i> or works to which the contract relates.</p> <p>(B) The <i>Consultant</i> shall consult all persons and bodies listed in the Scope or who may be appointed by the <i>Client</i> or nominated by the <i>Service Manager</i> with regard to any particular aspect of the contract, the <i>service</i> or works to which the contract relates and in consequence thereof make such changes in the delivery of or the production of any material to be provided by the <i>Consultant</i> as may be necessary unless otherwise instructed by the <i>Service Manager</i>.</p> | Consultation Modified from
GCE 19 |
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B6	The <i>Consultant</i> shall obtain the written acceptance of the <i>Service Manager</i> prior to entering into any commitment to <i>expenses</i> .	Written acceptance	Modified from GCE 18
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B7	The <i>Service Manager</i> shall give to the <i>Consultant</i> general instructions as to the <i>Client's</i> procedures relevant to the contract and the <i>service</i> . The <i>Consultant</i> shall follow the <i>Client's</i> procedures so far as possible and shall obtain the prior acceptance in writing of the <i>Service Manager</i> to major departures from such procedures. Nothing in this clause shall be deemed to affect the responsibility of the <i>Consultant</i> to Provide the Service.	Instructions procedure	Modified from GCE 23
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B8	<p>The <i>Consultant</i> when acting as the Project Manager, Service Manager and/or his delegate or similar for any works contract shall obtain prior approval or acceptance in writing from the <i>Service Manager</i> for the order of any variation or other basis for additional time or payment, the issue of any instruction giving rise to a compensation event, the issue of any Task Order or for the commitment otherwise of the <i>Client</i> to expenditure under the works contract, if the value of such order, instruction, Task Order, or commitment is estimated to exceed the sum specified in the Scope, or if not specified in the Scope, as advised in writing by the <i>Service Manager</i>. With the exception that in emergencies such prior approval or acceptance shall not be required, provided that the order, instruction, Task Order, or commitment is essential and that it is impractical to seek the prior approval or acceptance of the <i>Service Manager</i>.</p>	<p>Approval or acceptance of variations, claims, compensation events, tasks and/or other expenditure</p>	<p>Modified from GCE 24</p> <p>For consultancy agreements involving works contract only</p>
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B9	<p>(A) Notwithstanding the requirements of ACC Clause B8, the <i>Consultant</i> when acting as the Project Manager, Service Manager and/or his delegate or similar for any works contract shall:</p> <p>(i) refer the details of every variation, compensation event, Task Order or any commitment otherwise of the <i>Client</i> to expenditure under the works contract, including the reasons for it and its estimated value, to the <i>Client</i> for information as soon as the <i>Consultant</i> becomes aware of this information;</p> <p>(ii) as soon as the value or assessment of any variation, compensation event, Task Order or commitment otherwise of the <i>Client</i> to expenditure under the works contract, has been determined, refer the details of the valuation or assessment to the <i>Client</i> for information;</p> <p>(iii) report to the <i>Client</i> all claims for additional payment made or notifications of and quotations for compensation events given by the contractor and refer to the principles underlying his assessment or valuation of each claim or notified compensation event to enable the <i>Client</i> to provide his view of the matter prior to the assessment or valuation being notified to the contractor; and</p> <p>(iv) report to the <i>Client</i> all delays to the progress of the contract works (including individual tasks) and refer the assessed extension of time for completion or change to the Completion Date, if any, to enable the <i>Client</i> to provide his view of the matter prior to the award or grant of an extension of time for completion or assessment of the compensation event being notified to the contractor.</p> <p>(B) The foregoing referrals and reporting to the <i>Client</i> shall be in writing.</p>	<p>Referral of variations, claims, compensation events, tasks and/or other expenditure</p>	<p>Modified from SCE “Referral of variations and claims”</p> <p>For consultancy agreements involving works contract only</p>
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B10 **Not Used**

- B11** (A) The *Consultant* hereby irrecoverably authorizes consents and agrees that the *Client* or the *Service Manager*, as the case may be, may, whenever the *Client* or the *Service Manager*, as the case may be, considers appropriate, or upon request by any person (written or otherwise) and without further reference to the *Consultant*, disclose to any person in such form and manner as the *Client* or the *Service Manager*, as the case may be, deems fit:
- (i) the Price for Service Provided to Date, *expenses* and other amounts payable by the *Client* for engaging the *Consultant*;
 - (ii) the tendered total of the Prices submitted by the *Consultant*; and
 - (iii) the *Service Manager*'s forecasts of the anticipated total amount payable to the *Consultant* for completing its obligations under the contract whether based on any forecasts provided by the *Consultant* or otherwise.
- (B) The *Consultant* hereby waives and foregoes its right, if any, to make any claims against the *Client* or the *Service Manager*, as the case may be, for the losses, damages, costs, charges, liabilities, demands, proceedings and actions that may arise out of or in consequence of such disclosure by the *Client* or the *Service Manager*, as the case may be.
- Disclosure of amount payable to the Consultant** Modified from SCE "Disclosure of fee payable to the Consultant"

B12	<p>(A) Without limiting its obligations and responsibilities or its liability to indemnify the <i>Client</i> under the contract, the <i>Consultant</i> shall effect and maintain with well established insurers of repute, professional indemnity insurance of the minimum amount and on the terms stated in the Contract Data Part one in respect of its obligations in relation to the <i>service</i> or any part thereof. The professional indemnity insurance shall be effected with an insurer or insurers acceptable to the <i>Client</i>. The <i>Consultant</i> shall immediately inform the <i>Client</i> in writing if such insurance ceases to be available at reasonable commercial rates or otherwise is not maintained in accordance with this clause or for any reason becomes void or unenforceable.</p> <p>(B) If the insurance policy is project specific, the maximum deductible/excess allowed under the policy shall not exceed 20% of the minimum amount required as stated in the Contract Data Part one.</p> <p>(C) (a) If (i) the insurance policy contains a limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy, and (ii) the period of insurance under the insurance policy is twelve months or less, then either:</p> <p style="padding-left: 40px;">(1) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall be reinstated in full upon exhaustion of the limit of indemnity by reason of indemnity payments made on account of any claim, loss, damage, liability, cost or expense paid or payable under the insurance policy until the total amount of indemnity payable by the insurer under the insurance policy reaches 2 times the minimum amount required under sub-clause (A) of this clause; or</p> <p style="padding-left: 40px;">(2) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall not be less than 2 times the minimum amount required under sub-clause (A) of this clause; or</p> <p style="padding-left: 40px;">(3) the limit of indemnity for any one occurrence or series of occurrences arising out of any one event, or each and every claim under the insurance policy shall not be less than 2 times the minimum amount required under sub-clause (A) of this clause.</p>	<p>Professional indemnity insurance</p>	<p>Modified from SCE “Professional indemnity insurance”</p> <p>(DEVB TC(W) No. 9/2007)</p>
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- (b) If (i) the insurance policy contains a limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy, and (ii) the period of insurance under the insurance policy exceeds twelve months, then either:
- (1) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall be reinstated in full upon exhaustion of the limit of indemnity by reason of indemnity payments made on account of any claim, loss, damage, liability, cost or expense paid or payable under the insurance policy until the total amount of indemnity payable by the insurer under the insurance policy reaches 3 times the minimum amount required under sub-clause (A) of this clause; or
 - (2) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall not be less than 3 times the minimum amount required under sub-clause (A) of this clause; or
 - (3) the limit of indemnity for any one occurrence or series of occurrences arising out of any one event, or each and every claim under the insurance policy shall not be less than 3 times the minimum amount required under sub-clause (A) of this clause.
- (D) The *Consultant* shall provide to the *Client* within 60 days from the Contract Date and thereafter, in the case where the insurance policy does not cover the entire requisite period as specified in the Contract Data Part one, within 7 days of professional indemnity insurance being effected upon the expiry of the earlier insurance policy:
- (a) an undertaking that the current insurance policy complies with the terms in this clause in a form in **Appendix 1** to these *additional conditions of contract*; and

B12
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- (b) a certified copy of the full insurance policy for the acceptance of the *Client* unless the *Consultant* can demonstrate to the satisfaction of the *Client* that it is not reasonably practicable to provide a certified copy of the full insurance policy in which event the *Consultant* shall provide a certificate in a form in **Appendix 2** to these *additional conditions of contract* issued by the insurer or insurance broker of the insurance policy and any information relating to the insurance policy that the *Client* may reasonably require.

- (E) If the *Consultant* shall fail upon request to produce to the *Client* satisfactory evidence that there is in force professional indemnity insurance required under the contract, the *Client* may effect and keep in force any such insurance and pay such premium as may be necessary for that purpose. The *Client* shall be entitled to deduct such premium, together with expenses incurred, in accordance with ACC Clause B16 and/or to recover such amount as a debt due from the *Consultant*.

- (F) In determining the period of insurance under an insurance policy for the purpose of the contract, any extension or renewal of the insurance policy shall be treated as a separate insurance policy and shall not have the effect of extending the period of insurance.

B13	<p>(A) Pursuant and further to NEC Clause 40.1, within three months of the Contract Date, the <i>Consultant</i> shall book with a certification body acceptable to the <i>Client</i>, the date of audit for the ISO 9001:2015 certification or its currently available version; with detailed documented quality system procedures ready at the time of booking. If the <i>Consultant</i> is a joint venture, the certification audit referred to in this sub-clause shall mean that of the participant or shareholder whose quality system shall be implemented by the joint venture as specified in the declaration submitted with the *expression of interest / *consultancy proposals.</p> <p style="margin-left: 20px;">* Delete as appropriate.</p> <p>(B) Notwithstanding any other provisions of the contract, compliance with sub-clause (A) of this clause shall be a condition precedent to the <i>Consultant's</i> entitlement to any payment or any further payment as the case may be under the contract.</p> <p>(C) Sub-clauses (A) and (B) of this clause are not applicable if the <i>Consultant</i> or, where the <i>Consultant</i> is a joint venture, its specified participant or shareholder has already obtained ISO 9001:2015 certification or its currently available version on or before the Contract Date.</p>	<p>Non-certified consultants for ISO 9000 certification requirement</p>	<p>Modified from SCE “Requirement for ISO 9000 certification”</p> <p>Update to ISO:9001:2015 standard promulgated under DEVB’s memo ref. DEVB(W)520/83/01 dated 4.4.2018</p> <p>DEVB’s memo ref. DEVB(PS)106/43 dated 10.3.2022 for payment upon signing of consultancy agreements</p>
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B14	<p>(A) Pursuant and further to NEC Clause 40.1, within three months of the Contract Date, the <i>Consultant</i> shall apply to the relevant certification body for revision of its current scope of ISO 9001:2015 certification or its currently available version to cover site activities service; with detailed documented quality system procedures ready at the time of applying for revision. If the <i>Consultant</i> is a joint venture, the ISO 9001:2015 certification or its currently available version referred to in this sub-clause shall mean the certification of the participant or shareholder whose quality system shall be implemented by the joint venture as specified in the declaration submitted with the *expression of interest / *consultancy proposals.</p> <p>* Delete as appropriate.</p> <p>(B) Notwithstanding any other provision of the contract, compliance with sub-clause (A) of this clause shall be a condition precedent to the <i>Consultant's</i> entitlement to any payment or any further payment as the case may be under the contract.</p> <p>(C) Sub-clauses (A) and (B) of this clause are not applicable if:</p> <p style="margin-left: 40px;">(i) site activities service is not required to be provided by the <i>Consultant</i> under the contract; or</p> <p style="margin-left: 40px;">(ii) the scope of ISO 9001:2015 certification or its currently available version of the <i>Consultant</i> or, where the <i>Consultant</i> is a joint venture, its specified participant or shareholder has already been revised by the relevant certification body to cover site activities service on or before the Contract Date.</p>	<p>Scope of certification for ISO 9000 certification requirement</p>	<p>Modified from SCE “Requirement for ISO 9000 certification”</p> <p>(WBTC No. 13/2001)</p> <p>Update to ISO:9001:2015 standard promulgated under DEVB’s memo ref. DEVB(W)520/83/01 dated 4.4.2018</p> <p>DEVB’s memo ref. DEVB(PS)106/43 dated 10.3.2022 for payment upon signing of consultancy agreements</p>
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B15	<p>(A) The <i>Client</i> shall become the absolute and exclusive owner of all material provided by the <i>Consultant</i> and all Intellectual Property Rights subsisting therein free from all encumbrances save those Intellectual Property Rights belonging to a third party in respect of which sub-clause (C) of this clause shall apply.</p> <p>(B) The <i>Consultant</i> hereby undertakes and warrants to the <i>Client</i> that it is, except where the beneficial ownership of any Intellectual Property Rights subsisting in any material provided by the <i>Consultant</i> is vested in anyone other than the <i>Consultant</i> as referred to in sub-clause (C) of this clause, the sole legal and beneficial owner of all Intellectual Property Rights in all material provided by the <i>Consultant</i>.</p> <p>(C) The <i>Consultant</i> hereby further undertakes and warrants to the <i>Client</i> that to the extent that beneficial ownership of any Intellectual Property Rights subsisting in any material provided by the <i>Consultant</i> are vested in anyone other than the <i>Consultant</i>, the <i>Consultant</i> shall procure that the beneficial owner shall grant to the <i>Client</i> and any person as the <i>Client</i> may instruct:</p> <p style="padding-left: 40px;">(i) a transferable, non-exclusive, royalty-free and irrevocable licence (carrying the right to grant sub-licences) to utilise the Intellectual Property Rights in such material provided by the <i>Consultant</i> for all purposes contemplated under or in connection with the contract or expressly agreed to in writing by the relevant beneficial owner thereof; and</p> <p style="padding-left: 40px;">(ii) an indemnity upon the same terms mutatis mutandis as that set out in sub-clause (E) of this clause.</p> <p>For the avoidance of doubt, any such licence and indemnity granted shall not be determined if the <i>Consultant</i> is instructed to stop or not to start any work pursuant to NEC Clause 34.1, or if the contract is terminated pursuant to NEC Clause 90 or otherwise.</p> <p>(D) The <i>Consultant</i> shall, at the request of the <i>Client</i>, do such acts and execute all such deeds and documents (or procure that same be done or executed) as the <i>Client</i> may require to vest any or all of the rights referred to in this clause in the <i>Client</i> or any other person as the <i>Client</i> may instruct.</p>	<p>Exclusive ownership</p>	<p>Modified from SCE “Exclusive ownership”</p>
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- B15 (Cont'd)** (E) The *Consultant* hereby indemnifies the *Client* against all claims, proceedings, actions, damages and losses incurred or sustained by the *Client* arising from the use of material provided by the *Consultant* and the Intellectual Property Rights subsisting therein (whether owned by the *Consultant* or third parties) provided that in respect of those Intellectual Property Rights referred to in sub-clause (C) of this clause, the liability of the *Consultant* under this sub-clause shall be limited to liability arising from uses for the purposes contemplated under or in connection with the contract, or expressly agreed to in writing by the relevant beneficial owner thereof. The indemnity herein shall survive the termination of the contract (however occasioned) and shall continue in full force and effect notwithstanding such termination.
- (F) Solely for the purposes of this clause, “material provided by the *Consultant*” means all reports, drawings, specifications, documents, software, certificates and other items (whether or not such reports, drawings, documents, software, certificates or other items are in completed forms or otherwise) which are to be produced by the *Consultant* under or in connection with the contract. In the event of termination or suspension of the contract, the *Consultant* shall immediately upon request deliver to the *Client* all such material which has not yet been delivered to the *Client* including all works in progress and incomplete material.

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| B16 | <p>(A) All damages, losses, costs, expenses, debts or sums for which the <i>Consultant</i> is liable to the <i>Client</i> under any provision of the contract may be deducted by the <i>Client</i> from any amounts due to the <i>Consultant</i> under the contract and the <i>Client</i> shall have the power to recover any balance not so deducted from any amounts due or monies due to the <i>Consultant</i> under any other Government consultancy agreement or other contract between the Parties.</p> <p>(B) All damages, losses, costs, expenses, debts or sums for which the <i>Consultant</i> is liable to the <i>Client</i> under (or for breach of) any provision of any other consultancy agreement or other contract between the Parties may be set off or deducted by the <i>Client</i> from the amount due to the <i>Consultant</i> under the contract.</p> | <p>Setting off money due to the Government from defaulting Consultant</p> | <p>Modified from SCE “Setting off money due to the Government from defaulting consultants”</p> |
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- B17** (A) Except as necessary for the performance of the *service* the *Consultant* shall not (except with the prior written consent or as instructed by the *Service Manager*) disclose the terms and conditions of the contract or any report, document, specification, drawing, plan, software, data or other particulars furnished by or on behalf of the *Client* in connection therewith, or any such or similar information generated or produced by the *Consultant* pursuant to the contract, to any person other than a person employed or engaged by the *Consultant* in carrying out the contract, an agent of the *Consultant*, any accepted Subcontractor or the *Consultant's* accountants, insurers and legal advisers.
- (B) Any disclosure to any person, agent, Subcontractor, accountant, insurer, legal adviser permitted under sub-clause (A) of this clause shall be in strict confidence and shall be on a "need to know" basis and extend only so far as may be necessary for the purposes of the contract.
- (C) The *Consultant* shall take all necessary measures (including by way of contractual provisions where appropriate) to ensure that its directors, employees, agents, Subcontractors, accountants, insurers and legal advisers as mentioned in sub-clause (A) of this clause are aware of and shall comply with the confidentiality and non-disclosure provisions contained in the contract. If required by the *Client*, the *Consultant* undertakes to procure for and on behalf of the *Client* a confidentiality agreement in a form to be prescribed by the *Client* from any director, employee, agent, Subcontractor, accountant, insurer and legal adviser to whom any confidential information is to be disclosed.
- (D) The *Consultant* shall not without the prior written consent of the *Service Manager* publish, either alone or in conjunction with any other person, in any newspaper, magazine, periodical or through any electronic medium, any article, photograph or illustration relating to the contract.
- Confidentiality** Modified from
SCE
"Confidentiality"

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

B17 (E)
(Cont'd)

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

B18	Pursuant and further to NEC Clause 17, the <i>Consultant</i> shall caution any person employed by or contracted to it or a Subcontractor against any Corrupt Act. The <i>Consultant</i> shall ensure that any person employed by or contracted to it or a Subcontractor are aware of the requirements on corruption prevention in the contract.	Corruption Prevention	Modified from SCE “Prevention of bribery” (ETWB TC(W) No. 3/2004A)
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B19

The *Consultant* shall submit a signed declaration in a form prescribed as **Appendix 3** to these *additional conditions of contract* or agreed by the *Client* to confirm compliance with the provisions on confidentiality and corruption prevention as stated in NEC Clause 17 and ACC Clauses B17 and B18 when demand is made for payment under the contract at a frequency, which shall not be more frequent than once per month, as specified by the *Client*. If the *Consultant* fails to submit the declaration as required, the *Client* shall be entitled to withhold payment until such declaration is submitted and the *Consultant* shall not be entitled to interest in that period.

Declaration of ethical commitment

Modified from SCE “Declaration of ethical commitment”

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

B20

The *Consultant* acknowledges that it has been reminded that dishonesty, theft and corruption on its part or any person employed by or contracted to it or a Subcontractor who are involved in the contract may lead to prosecution under, without limitation, section 9 of the Prevention of Bribery Ordinance, Cap 201; section 17, section 18D or section 19 of the Theft Ordinance, Cap 210 and section 161 of the Crimes Ordinance, Cap 200. These offences commonly carry upon conviction terms of imprisonment.

Acknowledgement of being notified of the ethical requirements

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

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

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

Conflict of interest and debarring

Modified from SCE “Conflict of interest and debarring”

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

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

* Amend as appropriate.

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

* Amend as appropriate.

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

B21
(Cont'd)

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

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

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

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

B21
(Cont'd)

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

B21 (Cont'd) (G) The *Consultant* shall take all necessary measures (including by way of contractual provisions where appropriate) to ensure that any person employed by or contracted to it or a Subcontractor who are involved in the contract are aware of the provisions under sub-clauses (B) to (F) of this clause. Where the *Consultant* has appointed Subcontractors named in the Contract Data, or where the *Consultant* has obtained the written acceptance of the *Service Manager* to appoint Subcontractors to undertake any part of the *service*, under NEC Clause 23, the *Consultant* shall take all necessary steps to procure and ensure that such Subcontractors enter into similar covenants *mutatis mutandis*, as those set out in this clause, and the *Consultant* shall take all necessary steps to enforce such covenants.

B21
(Cont'd)

(H) In this clause,

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

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

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

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

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

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

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

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

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

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

B21 (I)
(Cont'd)

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

B22

- (A) Where the *Consultant* is a non-resident corporation or, where the *Consultant* is an unincorporated joint venture or partnership or sole proprietorship, any one of the participants or partners or the sole proprietor is a non-resident (whether as declared in the *Consultant's* proposals or as subsequently notified to or discovered by the Government), the *Client* shall withhold a percentage equivalent to the prevailing Hong Kong profits tax rate applicable to an unincorporated and incorporated business at the time the *service* are rendered (for the details of the prevailing profits tax rates, please refer to the website of the Inland Revenue Department www.ird.gov.hk) of any amount payable to the *Consultant*, whether by way of lump sum, instalments or discounted payments, but exclusive of any reimbursement of *expenses*, if any, in respect of the *service* performed/provided in Hong Kong for the settlement of Hong Kong profits tax chargeable on the amount. Any balance representing the excess of amounts so withheld in the basis period of the year of assessment over the *Consultant's* tax liability for that year will be returned to the *Consultant* without interest within a reasonable time upon final determination and settlement of its tax liabilities.
- (B) The *Consultant* acknowledges and consents that in the event that the *Consultant is* a non-resident corporation or, where the *Consultant* is an unincorporated joint venture or partnership or sole proprietorship, any one of the participants or partners or the sole proprietor is a non-resident, such data (including but not limited to their names, nature of engagement, contract period, Prices, correspondence address (both local and overseas) and the amount of tax withheld) will be notified/provided to the Inland Revenue Department for tax assessment and collection purposes.
- (C) The *Consultant* shall notify the *Client* immediately whenever there is any change during the currency of the contract in its resident status or the sole proprietor's resident status or, where the *Consultant* is an unincorporated joint venture or partnership, in any one of the participants' or partners' resident status, from that declared in the *Consultant's* proposals.
- (D) "Non-resident" means in the case of an individual, one who maintains a place of abode outside Hong Kong; and in the case of a corporation, one which is not incorporated in Hong Kong.

**Tax
withholding**

Modified from
SCE "Tax
withholding"

(ETWB TC(W)
No. 34/2004)

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

- B25** (A) “Phase Subject to Incorporation” means a phase designated in the Scope (the details of which are known, but the implementation of which has not been decided upon by the *Service Manager* at the time the documents inviting submissions for consultancy services are issued) which shall only be implemented upon a written instruction from the *Service Manager* issued pursuant to sub-clause (B) of this clause.
- (B) The *Service Manager* may, within the relevant time stated below, instruct the *Consultant* in writing to proceed with the *service* comprised within a Phase Subject to Incorporation.
- | <u>Phase Subject to Incorporation</u> | <u>Time for ordering Phase Subject to Incorporation</u>
(Within stated number of months after the Contract Date) |
|---------------------------------------|---|
| XXX | XX months |
| XXX | XX months |
- (C) In the event that the *Service Manager* issues an instruction in accordance with sub-clause (B) of this clause:
- (i) the *Consultant* shall provide the *service* comprised within the relevant Phase Subject to Incorporation upon receipt of the instruction and shall complete that phase by the relevant Key Date;
 - (ii) the contract shall thereafter be construed in every way as if the relevant Phase Subject to Incorporation had at all times formed part of the *service*; and
 - (iii) the amount due for the *service* associated with the relevant Phase Subject to Incorporation shall be assessed and the payments shall be made in accordance with NEC Clauses 50 and 51.
- (D) In the event that the *Service Manager* does not issue an instruction in accordance with sub-clause (B) of this clause:
- (i) the *Consultant* shall not thereafter be obliged to execute and complete the *service* comprised within the relevant Phase Subject to

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

For consultancy agreements involving phases subject to incorporation only

Incorporation;

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

B26

Not Used

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

Section C – Resident Site Staff

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

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

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

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

- C2**
- (A) The reimbursement and remuneration to the *Consultant* for such part of the *service* in relation to recruitment, employment and management of RSS shall be in accordance with this clause and form part of “other amount to be paid to the *Consultant*” under NEC Clause 50.3. For the avoidance of doubt, except as provided in this clause, no payment shall be made to the *Consultant* in respect of any part of the *service* in relation to recruitment, employment and management of RSS.
- (B) For the avoidance of doubt, the RSS on-cost and other reimbursable expenditures in relation to such part of the *service* in relation to recruitment, employment and management of RSS shall be excluded from the Prices and the Price for Service Provided to Date. Notwithstanding that the notional value for RSS on-cost, calculated on the basis of the *RSS on-cost rates* tendered by the *Consultant* in the Contract Data Part two (Section 2), was taken into account by the *Client* in assessing the *Consultant’s* Technical and Fee Proposals for the contract, the *Client* has no obligation whatsoever to instruct any part of the *service* in relation to recruitment, employment and management of RSS. Notwithstanding that the actual RSS establishment size and composition determined in accordance with the Scope may deviate from the notional RSS establishment size and composition as stated in the Guidelines on Preparation of Fee Proposal, any deviation between the actual RSS establishment size and composition determined in accordance with the Scope and the notional RSS establishment size and composition as stated in the Guidelines on Preparation of Fee Proposal shall not constitute a compensation event and the *Consultant* shall not be entitled to any payment or other compensation or relief of or attributable to the *Client’s* decision.
- Reimbursement and Remuneration for the Consultant’s Recruitment, Employment and Management of Resident Site Staff**

C2 (Cont'd)

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

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

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

Term in the RSS Management Handbook	Meaning in the contract
the “Consultant”	the “ <i>Consultant</i> ”
the “managing department”	the “ <i>Service Manager</i> ”
“the consultancy agreement”	“the contract”

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

**C2
(Cont'd)**

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

**C2
(Cont'd)**

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

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

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

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

C2
(Cont'd)

(G) The *Consultant* shall keep and submit the following records to the *Service Manager* in each payment application for the estimated expenditure on reimbursement and RSS on-cost in the following calendar month pursuant to sub-clause (F) of this clause:

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

Section D – Dispute Resolution

D1	<p>(A) Without prejudice to the right of the <i>Consultant</i> to refer any Payment Dispute to adjudication pursuant to the <i>security of payment provisions</i> and subject to sub-clause (A1) of this clause, if any Dispute shall arise between the Parties in connection with or arising out of the contract, either Party shall be entitled to refer the Dispute to the <i>Client</i> and a partner or director of the <i>Consultant</i>, who shall meet within three weeks of such matter being referred to them.</p> <p>(A1) If a Payment Dispute has been determined by the <i>Adjudicator</i>, the Parties are not required to follow the procedures under sub-clause (A) of this clause before either Party may refer the Payment Dispute to mediation in accordance with sub-clause (B1) of this clause or arbitration in accordance with sub-clause (C) of this clause.</p> <p>(B) Except for a Payment Dispute stated in sub-clause (B1) of this clause, if a Dispute cannot be resolved within 2 months of a meeting under sub-clause (A) of this clause or upon the Parties’ written agreement that the Dispute cannot be resolved, whichever is earlier, either Party may at any time thereafter request that the matter be referred to mediation in accordance with and subject to The Government of the Hong Kong Special Administrative Region Construction Mediation Rules (“Mediation Rules”) or any modification thereof being in force at the date of such request.</p> <p>(B1) If the <i>Consultant</i> has initiated an adjudication of a Payment Dispute in accordance with the <i>security of payment provisions</i> and the <i>Client</i> or the <i>Consultant</i> is dissatisfied with the <i>Adjudicator</i>’s determination on the Payment Dispute, the <i>Client</i> or the <i>Consultant</i> may, within four weeks after the date of delivery of the <i>Adjudicator</i>’s determination under the security of payment provisions, request that the matter be referred to mediation in accordance with and subject to the Mediation Rules or any modification thereof being in force at the date of such request.</p> <p>(B2) For the avoidance of doubt, a decision by the <i>Adjudicator</i> that it has no jurisdiction to adjudicate all or any part of a Payment Dispute is not a determination made by the <i>Adjudicator</i> of that Payment Dispute for the purposes of this clause and an arbitrator appointed pursuant to this clause is not bound by any decisions made by the <i>Adjudicator</i> as to the <i>Adjudicator</i>’s jurisdiction in relation to a Payment Dispute.</p>	<p>Settlement of Disputes</p> <p>Modified from SCE “Settlement of disputes”</p>
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- (C) If the matter cannot be resolved by mediation, or if either Party does not wish the matter to be referred to mediation, or if neither Party has requested that a Payment Dispute stated in sub-clause (B1) of this clause be referred to mediation within the period provided therein, then either Party may within the time specified herein require that the matter shall be referred to arbitration in accordance with and subject to the provisions of the Arbitration Ordinance and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Ordinance. Any such reference to arbitration shall be made within thirteen weeks of the date of failure of mediation, or the date of refusal to mediate, or the date on which the period provided in sub-clause (B1) of this clause for referring a Payment Dispute stated in sub-clause (B1) of this clause to mediation expires.
- (D) (i) Subject to paragraphs (ii) and (iii) of this sub-clause, the Domestic Arbitration Rules (2014) of the Hong Kong International Arbitration Centre (“Arbitration Rules”) shall apply to any arbitration instituted in accordance with this clause.
- (ii) Notwithstanding any provision of the Arbitration Rules, the place of meetings and hearings in the arbitration shall be Hong Kong unless the Parties otherwise agree.

**D1
(Cont'd)**

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

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

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

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

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

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

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

Appendix 1 – Sample Letter of Undertaking

To the Government of the Hong Kong Special Administrative Region

Dear Sirs,

Insert name of Consultant

Insert Contract number and details

Insert policy no. and name of insurer

LETTER OF UNDERTAKING

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

Yours faithfully,

Appendix 2 – Sample Certificate of Insurance

To the Government of the Hong Kong Special Administrative Region

Dear Sirs,

Insert NAME OF INSURED

Insert CONTRACT NUMBER

TITLE

DATE

PARTIES: The Government of the Hong Kong Special Administrative Region (“the *Client*”) and
[(“the *Consultant*”)

Professional Indemnity Insurance

We *[are the Insurer / act as Insurance Broker] to *[“the *Consultant*”] above and confirm that the Insurance Policy with main terms detailed below has been effected for the period _____ to _____ and that all invoiced premium has been paid *[and has been/will be settled with the Insurers].

Main terms of the Insurance Policy are as follows:

Insurers/Security: Insert Insurer Name(s)

Policy No.: Insert Policy Number

Insured Business/ Project: Insert details

Retroactive Date (if any):

Professional Business/
Firm’s Business:

Insert Business Description/Professional Activities as shown on the policy schedule.

Subcontractors: Confirm that the policy extends to cover liability attaching to the *Consultant* arising out of the services to be provided by any Subcontractors appointed by the *Consultant*.

Territorial Limits: Confirm that clauses on Territorial Limits include the coverage of Hong Kong and any other places where the work or design work may be carried out.

Jurisdiction: Confirm that the policy covers claims brought against the *Consultant* under the Law of HKSAR whether pursued in the Courts of the HKSAR.

Indemnity Limit: HK\$ _____ any one claim and/or
HK\$ _____ in the aggregate and/or
Reinstatement(s) up to total HK\$ _____.

Excess: [For Project Specific policy only]
Confirm that the Excess / Deductible level does not exceed 20% of the minimum amount required as stated in the Contract Data Part one.

Exclusions: Confirm that the policy contains no exclusions other than the following list:
<List the headings of all exclusions contained in the policy>

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

* Delete as appropriate

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

To: the *Client*

Agreement No.:

Title:

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

(1) We confirm that we have complied with the following provisions on confidentiality and corruption prevention and have ensured that any person employed by or contracted to us or a Subcontractor are aware of these provisions:

- (a) Any Corrupt Act (i.e. the offering, soliciting or accepting of any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) when conducting business in connection with the contract) are strictly prohibited;
- (b) Notify the *Client* and the Independent Commission Against Corruption as soon as one becomes aware of a Corrupt Act;
- (c) Take action to prevent and stop a Corrupt Act; and
- (d) Taking all measures as necessary to protect any confidential/privileged information or data entrusted to us by or on behalf of the *Client*, or any such or similar information generated or produced by us pursuant to the contract, from being divulged to a third party other than those allowed in the contract.

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

(Name of the *Consultant*)

(Name of the Signatory)

(Position of the Signatory)

(Date)

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

To: the *Client*

Agreement No.:

Title:

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

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

* Amend as appropriate.

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

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

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

we have a commercial interest. Each and every one of our directors, employees, agents and Subcontractors who are involved in the contract have given a binding undertaking to observe the aforesaid;

- (d) our directors, employees, agents and Subcontractors who are involved in the contract are required to declare in writing to us and keep us informed regularly any actual, apparent, or potential or perceived conflict between their personal/financial interests and their duties in connection with the contract, including all or any facts which may reasonably be considered to give rise to a situation which the financial interests of such persons, conflict or compete, or may conflict or compete, with our duties to the *Client* under the contract. In the event that such conflict is disclosed in a declaration, we are under an obligation to forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict so disclosed; and
- (e) our directors and employees who are involved in the contract are prohibited from engaging in any work or employment other than in the performance of the contract with or without remuneration, which could create or potentially give rise to any actual, apparent, potential or perceived conflict between their personal/financial interests and their duties in connection with the contract. Our agents and Subcontractors are required to impose similar restriction on their directors and employees by way of a contractual provision.

(Name of the *Consultant*)

(Name of the Signatory)

(Position of the Signatory)

(Date)

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

To: the *Service Manager*

Agreement No.:

Title:

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

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

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

(Name of the *Consultant*)

(Name of the Signatory)

(Position of the Signatory)

(Date)

Appendix 6 – Form to be signed by each proposed key personnel and attached to his/her curriculum vitae

[Agreement No.]

[Agreement Title]

I declare that the information provided in the curriculum vitae (“CV”) attached to this form as to my qualifications and experience is true, accurate, and complete.

I hereby give consent to the Government of the Hong Kong Special Administrative Region (“Government”) to obtain from the relevant parties (including but not limited to my employers, the client / project manager / architect of the projects / contracts listed in the CV, professional bodies / institution and universities or other issuing bodies as to my professional and academic qualifications) all necessary information for verifying the authenticity of the information provided in the CV with those relevant parties. I also give consent to the Government for collection, use and input of the information provided in the CV into the database of the Government for the purposes of contract procurement and management of the contract and other consultancy agreements of the Government.

Name : _____
(Note: full name matched with HKID / passport)

Signed : _____

Date : _____