

THE GOVERNMENT OF
THE HONG KONG SPECIAL ADMINISTRATIVE REGION

[*INSERT PROCURING DEPARTMENT*]

CONTRACT NO. [*INSERT CONTRACT NO.*]

[*INSERT CONTRACT TITLE*]

CONTRACT DATA PART ONE

CONTRACT DATA

Part one - Data provided by the *Client*

1 General

- The *conditions of contract* are the core clauses and the clauses for main Option [*insert selected main Option*], secondary Options [*insert selected secondary Options (commonly used secondary Options include X1, X2, X5, X7, X11, X14, X16, X20, X30)*], W4 and Z of the Hong Kong Edition of NEC Engineering and Construction Contract (July 2023) published by Thomas Telford Limited (NEC ECC HK Edition), and include the *additional conditions of contract*.
- The *works* are [*insert brief description of the works*] as more particularly described in Section 2 of the Scope provided by the *Client*.
- The *Client* is **the Government of the Hong Kong Special Administrative Region**.
- The *Project Manager* is

[*insert post of public officer and government department, or post of consultant's staff, project consultant's name on behalf of "state project consultant's name" and state associated consultancy agreement number and title as appropriate*]

Address for communications: [*insert address*]

Address for electronic communications: [*insert address*]
- The *Supervisor* is

[*insert post(s) of public officer(s) and government department, or post(s) of consultant's staff, project consultant's name on behalf of "state project consultant's name" and state associated consultancy agreement number and title, for different parts of the works as appropriate*]

Address for communications: [*insert address*]

Address for electronic communications: [*insert address*]
- The Scope is in the following documents:
 - **The Scope provided by the *Client*; and**
 - **[The Tender Submissions as defined in ACC Clause [II:2].]** [*The phrase in square brackets is only applicable when tenders are evaluated using a marking scheme, i.e. ACC II:2 is adopted.*]
- The *boundaries of the site* are shown on drawing nos. [*insert drawing no.*].
- The Site Information is in the following documents:

[*insert reference*]
- The *working areas* are [*insert the Site and any additional area(s) by the project office*].
- The *language of the contract* is **English**.

- The *law of the contract* is **the law of the Hong Kong Special Administrative Region**.
- The *period for reply* is **six weeks** for events requiring to obtain confirmation of no objection from the *Client* in accordance with ACC Clause [III:1], or **three weeks** for other events.
- The following matters will be included in the Early Warning Register:
 1. [insert the matters]
 - 2.
 - 3.
 - 4.
 - 5.
- After the first early warning meeting, the intervals for holding later early warning meetings should be no longer than 1 month.

2 The Contractor's main responsibilities

If the *Client* has identified work which is set to meet a stated *condition* by a *key date*.

- The *key dates* and *conditions* to be met are:

<i>condition</i> to be met	<i>key date</i>

Applicable to Options C and D

- The *Contractor* prepares forecasts of the total Defined Cost for the whole of the *works* at intervals no longer than **one month**.

3 Time

Update this date if tender period is extended.

- The *tender closing date* is [insert date].
- The *starting date* is the date which is within [two weeks] [subject to review by project office] from the Contract Date and as notified by the *Project Manager* after acceptance of tender.

- The *access dates* are:

part of the Site	<i>access date</i>

If the period within which Completion is certified is not one week

- The period within which Completion is certified is [*insert period*].
- The *Contractor* is to submit a first programme for acceptance within [**two weeks**] [*subject to review by project office*] of the Contract Date.
- The *Contractor* submits revised programmes for acceptance at intervals no longer than [**one month**] [*subject to review by project office*].
- The *completion date* for the whole of the *works* is the date of [*insert number of days*] after the *starting date*.

If the *Client* does not take over the works within three weeks after Completion

- The period within which the *Client* takes over the works is [*insert period*].

Optional clause

- The period for the Establishment Works is [**365 days**] [*subject to review by project office*].

Optional clause

- The period for the Aftercare to Old and Valuable Trees is [**365 days**] [*subject to review by project office*].

4 Quality management

- The period after the Contract Date within which the *Contractor* is to submit a quality policy statement and quality plan is [**one month**] [*subject to review by project office*].
- The period between Completion of the whole of the *works* and the *defects date* is [**12 months**] [*subject to review by project office*].
- The *defect correction period* is [**12 weeks**] [*subject to review by project office*] except that

Optional clause

- The *defect correction period* for [*insert description*] is [*insert number of weeks*].

5 Payment

- The *currency of the contract* is **Hong Kong Dollar**.
- The *assessment interval* is **one month**.
- The *interest rate* is **a rate equal to the average of the best lending rates for Hong Kong dollars quoted from time to time by the note-issuing banks plus 1% p.a. For the purposes of this provision, “note-issuing bank” has the same meaning as in the Legal Tender Notes Issue Ordinance (Chapter 65 of the Laws of Hong Kong).**

Applicable to
Options C and D

- The *exchange rates* are those published by **the Hong Kong Association of Banks based on the selling rate of the relevant currency on the date when the relevant payment is made by the Contractor, or the last available selling rate of the relevant currency if the selling rate on the date of relevant payment is unavailable.**

Applicable to
Options C and D

- The *Contractor’s share percentages* and the *share ranges* are

<u>share range</u>	<u>Contractor’s share percentage</u>
less than or equal to 110%	50%
Greater than 110%	100%

[*Project office may refer to the ‘Standardization of calculation on the payment deduction of the Contractor’s “pain share” under NEC target contracts” promulgated by DEVB on 8 December 2020, which is available at the Works Group Intranet Portal under Procurement & Costing > NEC Knowledge Management Platform > Updates and Reminders.*]

- The first *share assessment date* occurs on the assessment date upon which the Price for Work Done to Date assessed by the *Project Manager* has reached 50% of the *Project Manager’s* forecast of the final Price for Work Done to Date. The subsequent *share assessment dates* fall on the same dates as the assessment dates.

- The *share deduction*

$$= A \times (B - D) / (C - D)$$

where

A: the *Project Manager’s* interim assessment of the *Contractor’s* share of the excess of the *Project Manager’s* forecast of the final Price for Work Done to Date over the *Project Manager’s* forecast of the final total of the Prices on the *share assessment date*.

B: the Price for Work Done to Date before share deduction so certified by the *Project Manager* on the *share assessment date*.

C: the *Project Manager’s* forecast of the final Price for Work Done to Date on the *share assessment date*.

D: the Price for Work Done to Date so certified by the *Project Manager* on the assessment date which occurs immediately before the first *share assessment date*.

6 Compensation events

- The *additional weather condition* is **inclement weather**.

- Applicable to Options A and B
 - The *value engineering percentage* is **50%**.
- Applicable to Options B and D
 - The *method of measurement* is the Standard Method of Measurement for Civil Engineering Works, 1992 Edition (The Government of the Hong Kong Special Administrative Region) including its Corrigenda Nos. 1/93, 1/94, 1/97, 1/99, 2/99, 1/2000, 2/2001, 3/2001, 1/2007 and 1/2011 and amendments as set out in the General and Particular Preambles of the *bills of quantities*. [*For building and E&M contracts, please amend to suit.*]
- Applicable to Options B and D
 - The *compensation amount* is **\$1,000,000**.
 - These are additional compensation events:
 1. MTRCL change the starting date or duration of a Restriction, Possession or Isolation stated in the Scope or previously agreed with MTRCL. [*Note to project office: include this additional compensation event only if the relevant provisions regarding Works within the Railway Protection Area are adopted.*]
 2. A suspension or reduction in the rate of progress of the carrying out of construction work or the supply of related goods and services under the contract by the *Contractor* pursuant to ~~SOP Clause 37~~ the security of payment provisions.

8 Liabilities and insurance

- The *insurance table* is

Insurance Against	Minimum amount of cover
Loss of or damage of the <i>works</i> , Plant and Materials	The replacement cost
Loss of or damage to Equipment	The replacement cost
Loss of or damage to property (except the <i>works</i> , Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i> or Tier Subcontractor) arising from or in connection with the <i>Contractor</i> Providing the Works	[HK\$_____] [<i>subject to review by project office</i>] for any one occurrence unlimited for the period of insurance
Death of or bodily injury to employees of the <i>Contractor</i> or Tier Subcontractor arising out of and in the course of their employment in connection with the contract	The amount required by the applicable law

[*subject to review by project office, delete any row(s) of the table as appropriate.*]

- The *Contractor* provides the following additional insurance [*Note to project office: include all insurance required to be provided by the Contractor*]:

Insurance for self-employed person	- A personal accident insurance with a minimum coverage HK\$1,000,000 for each self-employed persons engaged to work in the Working Areas, which is either (i) a separate insurance policy in the form specified in Appendix <i>[insert reference]</i> to the Scope; or (ii) an extension of the employee compensation insurance policy or third party liability and all risks insurance policy of the <i>Contractor</i> .
Professional indemnity insurance	- Professional indemnity insurance in respect of the <i>Contractor's</i> Design, the Cost Savings Design and Temporary Works effected and maintained by <ul style="list-style-type: none"> (a) The <i>Contractor</i>; and (b) each of the <i>Contractor's</i> Designer, the Independent Checking Engineer and the designer and independent checking engineer of the Temporary Works <p>for the minimum amount as stated in ACC Clause [VII:5(1)] and in compliance with ACC Clause [VII:5].</p>

Resolving and avoiding disputes

- The *mediation rules* are **the Government of The Hong Kong Special Administrative Region Construction Mediation Rules (1999 Edition) and any modification thereof being in force at the time a Dispute is referred to Mediation.**
- The *security of payment provisions* are **the provisions contained in the Construction Industry Security of Payment Ordinance (Cap. 652)**~~Security of Payment Provisions in Appendix *[insert reference]* to the additional conditions of contract.~~
- The *adjudicator* is **the adjudicator in respect of a Payment Dispute appointed in accordance with the security of payment provisions.**
- The adjudicator nominating body is *[Note to project office: insert the name(s) of one or two ANB(s) chosen from the DEVB's Register of ANBs under the Ordinance published on the website: <http://devb.gov.hk>].*
- The *arbitration rules* are **the Domestic Arbitration Rules (2014) of the Hong Kong International Arbitration Centre** with the following amendments:

Article 20.1 is 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

- (i) are necessary for implementation or enforcement;
- (ii) are required by the parties' auditors or for some other legitimate business reason;
- (iii) are required by any order of the courts of Hong Kong or other judicial tribunal;
- (iv) 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 its consent to disclosures on the expiry of the first 6 months from the date of the outcome of the arbitration. The other party may, if it considers necessary to protect the sensitive nature of certain information relating to it, request the Government party to disclose such specified information to the said Committee strictly on a confidential basis. If the Government party considers that there are legitimate grounds to accede to the other party's request, the Government party shall convey the request to the said Committee for its consideration."

- The *arbitrator* is **the arbitrator appointed in accordance with the arbitration rules.**
- The place where arbitration is to be heard is **Hong Kong.**

X2 Change in Law

[reference: *ETWB*
TC(W)No. 23/2004]

- The *list of enactments* is

Cap.	Ordinance Title
28	Lands (Miscellaneous Provisions) Ordinance
47	Apprenticeship Ordinance
51	Gas Safety Ordinance
53	Antiquities and Monuments Ordinance
56	Boilers and Pressure Vessels Ordinance
59	Factories and Industrial Undertakings Ordinance
95	Fire Services Ordinance
102	Waterworks Ordinance
115	Immigration Ordinance
121	Buildings Ordinance (Application to the New Territories) Ordinance
123	Buildings Ordinance
127	Foreshore and Sea-bed (Reclamations) Ordinance
147	Sand Ordinance
295	Dangerous Goods Ordinance
311	Air Pollution Control Ordinance
313	Shipping and Port Control Ordinance
317	Industrial Training (Construction Industry) Ordinance
354	Waste Disposal Ordinance
358	Water Pollution Control Ordinance
360	Pneumoconiosis (Compensation) Ordinance
370	Roads (Works, Use and Compensation) Ordinance
400	Noise Control Ordinance
403	Ozone Layer Protection Ordinance
406	Electricity Ordinance
411	Employees' Compensation Insurance Levies Ordinance
446	Land Drainage Ordinance
466	Dumping at Sea Ordinance
470	Builders' Lifts and Tower Working Platforms (Safety) Ordinance

499	Environmental Impact Assessment Ordinance
509	Occupational Safety and Health Ordinance
583	Construction Workers Registration Ordinance
587	Construction Industry Council Ordinance
618	Lifts and Escalators Ordinance

X5 Sectional Completion

Applicable if there is sectional completion of the works.

- The *completion date* for each *section* of the works is

<i>section</i>	<i>description</i>	<i>completion date</i>

- The Scope contains detailed description of each *section* of the works.

X7 Delay damages

Applicable if Option X7 is used without Option X5

- The rate of delay damages for Completion of the whole of the works is HK\$_____ per day.
- The minimum rate of delay damages is HK\$_____ per day.

Applicable if Option X7 is used with Option X5

- The rate of delay damages for each *section* of the works is

<i>section</i>	<i>amount per day in HK\$</i>

- The minimum rate of delay damages for each *section* of the works is

<i>section</i>	<i>amount per day in HK\$</i>

Applicable if the optional standard amendments to core clauses 25.3 & 30.3 and secondary Option X7 are adopted

- The rate of delay damages for failing to meet the *condition* stated for a *key date* is

<i>condition to be met</i>	<i>amount per day in HK\$</i>

- The minimum rate of delay damages for failing to meet the *condition* stated for a *key date* is

<i>condition</i> to be met	amount per day in HK\$

In computing the above delay damages, the *Client* has not taken into account the *Client's* liability for fees including economic cost under the Land (Miscellaneous Provisions) Ordinance, Cap. 28 ("the Ordinance") for any extension in respect of a permit referred to in sections 10A(3) and 10D(4) of the Ordinance. *[subject to review by project office]*

X14 Advanced payment to the *Contractor*

- The amount of the advanced payment is **[the lesser of (i) an amount equal to two percent (2%) of the tendered total of the Prices set out in Contract Data Part two at the date of acceptance of the tender or (ii) HK\$30,000,000.]**
- The *Contractor* repays the instalments in **[assessments starting at the 7th month after the Contract Date. The instalments are [1/6] of the advanced payment (either an amount or a percentage of the payment otherwise due).]**

[Subject to review by project office who should determine the number of instalments, not be less than 6 to suit the nature, size and characteristics of individual contract]

X16 Retention

- The *retention free amount* is **HK\$0.00**. *[subject to review by project office]*
- The *retention percentage* is ____%. *[subject to review by project office]*
- The *limit of amount retained* is **HK\$_____**. *[subject to review by project office]*
[Optional Clause]

X20 Key Performance Indicators

- Optional clause
- The *incentive schedule* for Key Performance Indicators is in **Appendix** *[insert reference]* to this Contract Data Part one.
 - A report of performance against each Key Performance Indicator is provided at intervals of **1 month**. *[subject to review by project office]*

Z Additional Conditions of Contract

- The *additional conditions of contract* are set out in the document entitled "Additional Conditions of Contract" which forms part of the contract.

ACC III:2 Section Subject to Excision

- The time within which the *Project Manager* gives an instruction as stated in ACC Clause [III:2(3)] is _____ **days** [*subject to review by project office*] commencing from and including the *starting date*.
- The completion date for the Section Subject to Excision is _____ [*subject to review by project office*].