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Group : 2, 5

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Development Bureau
Technical Circular (Works) No. 6/2021

Security of Payment Provisions in Public Works Contracts

Scope

This Circular sets out the policy on the implementation of the Security of Payment Provisions in public works contracts with a view to facilitating timely processing of contract payments and providing an interim mechanism for speedy resolution of payment disputes before the enactment of the Security of Payment Legislation (SOPL).

Effective Date

2. This Circular shall take immediate effect.

Effect on Existing Circulars and Circular Memoranda

3. This Circular has the following effects on existing circulars and circular memoranda:

Existing Circular / Circular Memorandum	Superseded by
Dispute resolution clause in Annexes A – D to SDEV's memo ref. DEVB(W) 510/10/01 dated 4 December 2014	Annex E to this Circular

Existing Circular / Circular Memorandum	Superseded by
“Guidelines on Scope and Contents of Subcontractor Management Plan” in Annex A to SDEV’s memo ref. DEVB(W) 510/94/02 dated 4 December 2020	Annex F to this Circular
“Guidelines on Documentary Proof to Demonstrate the Compliance of the Provisions in the SMP” in Annex A to SDEV’s memo ref. DEVB(W) 109/11/01 Pt. 9 dated 19 December 2008	Annex F to this Circular

Background

4. SOPL promotes fair payment and helps main contractors, subcontractors, consultants, sub-consultants and suppliers receive payment on time for work done and services provided. Legislations similar to the SOPL have been enacted in the United Kingdom, Australia, New Zealand, Singapore, Malaysia, Ireland and Canada.

5. There have been voices in the Hong Kong construction industry advocating the introduction of the SOPL to improve payment practices and provide rapid resolution of payment disputes. The Development Bureau (DEVB) and the Construction Industry Council (CIC) jointly conducted an industry-wide survey in 2011, which revealed significant payment problems being experienced by main contractors, subcontractors, consultants, sub-consultants and suppliers. DEVB then commenced a consultancy study and established Working Group on SOPL for the Construction Industry to work out the framework of the SOPL. After taking into account the comments received from the public consultation conducted in 2015 and the Task Force for Preparation of Legislative Proposals to the Construction Industry Security of Payment Ordinance¹, we have formulated a Security of Payment (SOP) Framework and its scope of application (set out in **Annex A**) for drafting of the SOP Bill.

6. In parallel, DEVB has formed a dedicated Working Group since April 2020 to revise the conditions of public works contracts to align with the SOP Framework. This Circular promulgates the implementation of the spirit of the SOPL in all new public works contracts with a view to facilitating smooth introduction of the legislation through the experience gained in public works contracts.

¹ The Task Force for Preparation of Legislative Proposals to the Construction Industry Security of Payment Ordinance, which comprised representatives from developers and public bodies, professional institutions, consulting and contracting trade associations, was set up in December 2015 to resolve issues for finalisation of the legislative framework for the proposed SOPL.

Policy

7. All public works contracts, including design and build contracts and term contracts, the tender invitations of which are to be issued on or after the effective dates set out in the table below, shall implement the spirit of SOPL through incorporation of the Additional Conditions of Contract (“ACC”) / Special Conditions of Contract (“SCC”) and their appendices at **Annexes B to H** into the tender documents:

Types of works contracts	Effective dates
Tenders to be invited from Group B or Group C contractors on the “List of Approved Contractors for Public Works”	31 December 2021
Tenders to be invited from other contractors on the “List of Approved Contractors for Public Works” or the “List of Approved Suppliers of Materials and Specialist Contractors for Public Works”	1 April 2022

SOP Framework

8. The spirit of the SOPL is to facilitate timely processing of contract payments and to provide an interim mechanism for speedy resolution of payment disputes under construction contracts through adjudication. As formulated in the SOP Framework, the parties’ autonomy to agree on their terms of contract in respect of contract payments and dispute resolution mechanism is respected except for the following:-

Four Mandatory Requirements under the SOP Framework

- (a) **payment response** by the paying party shall be served on the claiming party within **30 days** and the paying party shall make **payment of admitted amount** within **60 days** to the claiming party from the date of payment claim served by the claiming party;
- (b) **conditional payment provisions** (such as ‘pay when paid’ clause, etc.) shall be rendered ineffective and unenforceable;
- (c) claimant may refer a payment dispute² to **adjudication** through which the adjudicator shall decide on the payment dispute within 55 working days from the date of his appointment, and the adjudicated amount shall be paid as decided by the adjudicator; and

² Payment dispute is defined as: (i) the payment claim is wholly disputed; (ii) the amount admitted as due is less than the claimed amount; (iii) set-off or withholding of all or any part of the claimed amount is raised; (iv) the paying party fails to pay the admitted amount within the stipulated time; or (v) the paying party fails to serve a payment response and pay the claimed amount in full within the stipulated time.

- (d) claiming party / claimant may exercise his **right to suspend or reduce rate of progress** if admitted amount / adjudicated amount is not received.

9. Further, as a result of the consultation as mentioned in paragraph 5 above regarding whether the scope of adjudication should cover payment disputes which involve extension of time for completion of works (EOT), the majority of the industry stakeholders supported a refined proposal as follows:

- An adjudicator shall have the power and jurisdiction to decide the time-related costs forming part of the payment dispute;
- The adjudicator, in deciding the amount of time-related costs, shall have the power and jurisdiction to decide a party's entitlement to EOT;
- The adjudication decision on the time-related costs forming part of the payment disputes is binding and enforceable on an interim basis, but the EOT so decided by the adjudicator is not binding³;
- However, a party shall not be liable for liquidated damages if the works have been completed within the EOT so decided by the adjudicator.

10. Under the SOP Framework, contractual claim handling procedures as specified in contract should be gone through before any claims for additional payment can be submitted for determination by adjudicators. As such, the contract administrator's assessment on such claims, including any EOT claim associated with the payment dispute, should have been conducted and notified to the contracting parties before it would be referred to adjudication.

Implementing the Spirit of SOPL in Public Works Contracts

11. As the adjudicator's determination of the EOT claim may be different from the contract administrator's assessment, for practical implementation of the refined proposal in public works contracts, the EOT as determined by the adjudicator should prevail, hence the date for completion of the contract is taken as revised accordingly, in order to be consistent with the payment of the associated adjudicated amount as decided by the adjudicator. However, the parties' right for mediation or arbitration in respect of the payment dispute (and in connection with which any dispute on EOT) at the end of the contract remains unaffected.

³ However, the practical implementation as stated in paragraphs 11 shall be followed in public works contracts.

12. Amongst the whole SOP Framework as set out in **Annex A**, there are some parts that cannot be implemented through administrative means. These inapplicable parts⁴ are tabulated below:-

Inapplicable parts	Remarks
Apply to the Court for enforcement of an adjudication decision (Para. 20 in Annex A)	In order to prevent vain attempt of adjudication, this area is to be reconciled by Employer's direct payment for settlement of unpaid adjudicated amount (vide paragraphs 17 to 20 below).
Apply to the Court for setting aside an adjudication decision (Para. 21 in Annex A)	Parties' right to mediation or arbitration for final resolution of payment dispute is unaffected.
Statutory Register of Adjudicator Nominating Bodies (ANBs) (Para. 23 in Annex A)	Selecting an ANB from DEVB's Register and specifying it in contract would allow quickest nomination and appointment of adjudicator so as to smoothen the commencement of adjudication proceedings (vide paragraph 25 below).

SOP Provisions for the Main Contracts

13. The SOP Provisions are to be incorporated into the main contract as an appendix to the new ACC / SCC clause (in **Annex B**). The SOP Provisions (in **Annex C**) consist of two parts, namely the applicable parts of the SOP Framework and some specific provisions outside the SOP Framework as described in the ensuing paragraphs.

Specific Provisions Outside the SOP Framework

Incorporation of SOP Provisions by way of Mandatory Subcontract Conditions

14. Under the SOPL, the SOP Framework is proposed to apply to all subcontracts

⁴ "Inapplicable parts" refers to the parts of the SOP Framework that are not implemented by way of contract provisions.

under main contracts for construction work ⁵ and related goods and services ⁶. Accordingly, the SOP Framework covers not only the main contracts, but also all construction subcontracts, supply contracts and services contracts (including consultancy services) at all tiers thereunder. For quick implementation of the spirit of SOPL in public works contracts, this Circular only covers construction subcontracts ⁷ (hereinafter referred to as “**Relevant Subcontracts**”) at all tiers as well as the main contracts specified in paragraph 7.

15. Mandatory Subcontract Conditions and the SOP Provisions for Relevant Subcontracts (in **Annex D**) are to be provided under a main contract for mandatory incorporation. The Contractor is required to ensure the incorporation in all Relevant Subcontracts at all tiers. Mounting on the existing contract requirements on subcontractor management, the Contractor shall report all Relevant Subcontracts engaged under the main contract and shall provide documentary proof to the contract administrator for the main contract that all Relevant Subcontracts have been incorporated with the SOP Provisions. Upon request by the contract administrator, the Contractor shall submit substantiation, such as contract documents, that a subcontract is a Relevant Subcontract.

16. Technical audit to be carried out by the responsible Works Department in accordance with Paragraph 21.2 in Chapter 7 of the Project Administrative Handbook for Civil Engineering Works shall include spot-check on whether the contract administrator for the main contract has ensured the submission of the above-mentioned documentary proof of compliance.

Direct Payment for Settlement of Unpaid Adjudicated Amount

17. Under the SOP Framework, the claimant to an adjudication may seek the Court’s assistance to enforce the adjudication decision to ensure that he can receive his entitled amount timely. Under the SOP Provisions, a subcontractor claimant may request the Employer to make direct payment for settlement of unpaid adjudicated amount under

⁵ **Construction work** generally refers to construction of new structure/work, reconstruction / renewal / restoration / repair / maintenance / addition / alteration / extension / dismantling / demolition of existing structure/work, painting and decoration of the external and internal surfaces of the structure/work and any operation (e.g. site clearance, site investigation, excavation, tunnelling or boring, scaffolding, site restoration, landscaping, provision of access road, etc.) which forms an integral part of or is preparatory to or is for rendering complete of the said kinds of structure/work.

⁶ **Related goods and services** generally refer to provision of plant, equipment and materials forming part of the structure/work or other plant, equipment and materials for use in connection with the carrying out of the construction work, and provision of labour, architectural service, design, project management, surveying, quantity surveying, various types of advisory services and engineering testing services relating to the construction work.

⁷ Construction subcontracts are the subcontracts for carrying out of construction work but not subcontracts solely for supply of materials, plants or services.

the Relevant Subcontract (which has been incorporated with the SOP Provisions)⁸. The subcontractor claimant shall submit the following documents together with the request:

- (a) certified⁹ true copy of the adjudication decision;
- (b) identifying the work done to which the adjudicated amount relates; and
- (c) a written declaration that the whole or any part of the adjudicated amount is outstanding.

18. Upon receipt of a request from a subcontractor claimant for direct payment of unpaid adjudicated amount under a Relevant Subcontract, the Employer shall use the standard letter to the Contractor at **Annex G** asking them to provide, within 28 days, documentary proof of whether the concerned subcontractor claimant has been satisfied with any payment of the adjudicated amount, or whether the concerned adjudication decision is no longer binding on the respondent by his settlement agreement with the claimant or arbitration award on the concerned payment dispute.

19. The Contractor shall also be required to check and confirm within the said 28-day period whether any subcontractor at any higher tiers of the concerned subcontractor claimant become bankrupt or has had a receiving order made against him or has presented his petition in bankruptcy or shall make an arrangement with or assignment in favour of his creditor or has agreed to carry out his subcontract under a committee of inspection of his creditors or (being a corporation) has gone into liquidation (other than voluntary liquidation for the purposes of amalgamation or reconstruction), administration or receivership or otherwise become insolvent. Upon provision of such documentary proof by the Contractor, the Employer shall not make the direct payment as requested. On the other hand, if the Contractor submits proof that a subcontractor at any higher tiers of the concerned subcontractor respondent will be unable to recover the amount of direct payment by deduction from their payments due (or which may become due) under their subcontract to their contracting parties at next lower tier, the Contractor shall advise the Employer of the appropriate amount of direct payment to ensure that the amount can be eventually recovered from the concerned subcontractor respondent.

20. After expiry of the said 28-day period and in the absence of documentary proofs of the above-mentioned settlement or financial problems, the Employer shall, taking into account any information provided by the Contractor and his subcontractors, determine the amount of direct payment to be made to the subcontractor claimant and shall deduct the same amount from any payment owed to the Contractor. In connection with such

⁸ The Employer shall not consider any request for direct payment of unpaid adjudicated amount if:-

- (i) the adjudication decision is not made by an adjudicator appointed through an ANB which is on the DEVB's Register of ANBs;
- (ii) the adjudicated amount is not in respect of any work done under a Relevant Subcontract; or
- (iii) the adjudication is conducted for a contract which is not a Relevant Subcontract.

⁹ Certified by either the relevant ANB or the adjudicator.

deduction made by the Employer, the Contractor and the subcontractors along the chain of subcontracting are entitled under the SOP Provisions to deduct only the same amount from their payment owed to their contracting parties at next lower tier until the concerned subcontractor respondent.

On-site Promotion

21. To ensure the implementation of the SOP Provisions in all Relevant Subcontracts, Project Office shall ensure that a Site Notice, using the pro forma at **Annex H**, is displayed at a prominent place of the construction site.

22. Whilst the Site Notice facilitates a subcontractor to notify the site owner¹⁰ of their intention to suspend or reduce rate of progress, which is their right under the SOP Framework, it enables a subcontractor to pursue direct payment of unpaid adjudicated amount as mentioned above.

Contract Administration

Report on Contractor's Performance

23. Project Office shall monitor the Contractor's performance on incorporation of the SOP Provisions in all Relevant Subcontracts. The Contractor should be warned if he fails to ensure incorporation of the SOP Provisions in all Relevant Subcontracts. If the Contractor fails to provide documentary proof of compliance or to rectify the non-compliance, the Project Office shall give "poor" or "very poor" rating in Item 6.12 in the Contractor's Performance Report.

24. When the Contractor is found to have failed to make payment of admitted amount or to settle adjudicated amount timely to his contracting parties of any Relevant Subcontract at the first tier, the Project Office should reflect in Item 6.11¹¹ in the Contractor's Performance Report and draw the attention of the Contractor to the following consequences of the failure. If, as a result of such failures of the Contractor, adverse impact on the progress of the works has been caused due to exercise of the rights to suspend or reduce rate of progress by his contracting parties, the Project Office should record such failures and consider giving "poor" rating in appropriate items in the Contractor's Performance Report.

¹⁰As applied in public works contracts and the construction subcontracts thereunder, 'site owner' means the Employer of the public works contracts.

¹¹The current Item 6.11 in the Contractor's Performance Report in respect of "payment of nominated subcontractors" and the relevant guidance notes at Appendix 4B to the Contractor Management Handbook are to be revised for reporting on the Contractor's performance in making payment to his first tier subcontractors timely.

DEVB's Register of Adjudicator Nominating Bodies (ANBs)

25. Adjudication provided under the SOP Framework is a speedy resolution of payment dispute. Appointment of adjudicator by an ANB as agreed by the contracting parties is intended to be done shortly after the service of the notice of adjudication. Whilst the SOP Framework allows for parties' post-contract agreement on ANB through claimant-proposed-respondent-selected procedure, this would however require making available several ANBs before the implementation and would have uncertainty on the readiness and willingness of potential organisations. Therefore, a simplified mechanism is introduced for the nomination and appointment of adjudicator through an agreed ANB from the DEVB's Register of ANBs as specified in the contracts, in order to ensure speedy commencement of the adjudication proceedings. This simplified mechanism is to be adopted prior to further expansion of the DEVB's Register of ANBs as well as mature development of the procedures of appointing adjudicator by the ANBs.

Enquiries

26. Enquiries on this Circular should be addressed to Chief Assistant Secretary (Works) 4.

(LAM Sai-hung)
Permanent Secretary for Development (Works)

Security of Payment Framework for the Construction Industry

Introduction

1. Security of Payment Legislation (SOPL) have been enacted in the United Kingdom, Australia (in 6 different states and 2 territories), New Zealand, Singapore, Malaysia, Ireland and Canada (in the province of Ontario) which can help the construction industry to promote fair payment and help main contractors, sub-contractors, consultants, sub-consultants and suppliers to receive payments on time for work done and services provided.
2. After studying the overseas practices and taking into account the comments received from the public consultation, the Development Bureau is preparing the Construction Industry Security of Payment (SOP) Bill for the construction industry in Hong Kong and the framework would cover the following main areas:
 - (a) scope of application;
 - (b) payment;
 - (c) prohibition of conditional payment provisions;
 - (d) suspension for non-payment; and
 - (e) adjudication and enforcement.
3. As the SOP arrangement is new to Hong Kong and its provisions for adjudication and enforcement are quite different from traditional contract dispute resolution arrangement, some industry stakeholders have expressed concerns. It is therefore decided that in parallel with drafting of the SOP Bill, the spirit of the SOPL will be implemented in all new public works contracts first with a view to demonstrating the application of SOP provisions in contracts and enabling refinement of the SOP Bill based on practical experience gained to facilitate smooth introduction of the SOPL.

Scope of Application

4. In the public sector, SOPL shall apply to all construction contracts entered into by the Government and specified statutory/public bodies and corporations for procurement of construction work or related goods and services.
5. In the private sector, SOPL shall apply to main construction contracts entered into by the employer/owner/occupier/developer for procurement of construction work or related goods and services for new specified structures/works or repair, maintenance, alteration and addition works resulting in significant modifications to certain existing specified structures/works with original contract value exceeding \$5 million (for contracts for carrying out construction work) and \$0.5 million (for contracts for supplying related goods and services).
6. When the main contract is covered by SOPL, sub-contracts at all tiers irrespective of contract value will be covered by SOPL.

7. SOPL shall cover oral, partly oral and written contracts.
8. SOPL shall cover contracts for professional services, supply of materials or plant.

SOP Framework

Payment

9. All parties that undertake construction work or supply related goods and services shall be entitled to claim progress payments.
10. Progress payment shall cover all payments due under the terms of the construction contract, which shall include:
 - (a) the amount due for construction work carried out and/or related goods and services supplied; and
 - (b) all other amount stipulated as payable according to the terms of the construction contract.
11. Parties to a construction contract shall be free to agree when progress payments can be claimed and the basis of valuation of construction work or related goods and services.
12. If parties do not make express provisions in their construction contracts, the following default provision shall apply:
 - (a) a statutory payment claim shall be made monthly by the claiming party, starting on the last day of the month after commencement of the contract;
 - (b) a payment response can be made by the paying party within 30 calendar days of receipt of the statutory payment claim; and
 - (c) payment shall be made by the paying party within 60 calendar days of receipt of the statutory payment claim concerned.
13. Paying parties shall be entitled to serve a payment response within 30 calendar days of receipt of the statutory payment claim. Paying parties who fail to serve a payment response within 30 calendar days of receipt of the payment claim is regarded as disputing in full the claimed amount of the payment claim but will not be able to raise any set off in the adjudication of a payment dispute in relation to the payment claim concerned.

Prohibition of Conditional Payment Provisions

14. Conditional payment provisions and ‘pay when paid’ type contractual clauses shall be rendered ineffective, without exception for insolvency of a paying party higher up the chain of subcontracting and nominated sub-contracts.

Suspension or Reduce Rate of Progress for Non-payment

15. Unpaid parties shall have the right to suspend or reduce rate of progress of work by giving written notice of their intention to exercise the right to the non-paying party and taking reasonable steps to notify the site owner or the employer of their such intention.
16. Unpaid parties shall be entitled to costs and additional time in respect of delay and disruption arising from the exercise of the right to suspend or reduce rate of progress of work.

Adjudication and Enforcement

17. Parties to a construction contract shall be entitled to refer payment disputes in relation to the value of construction work carried out or related goods and services supplied and claimed in a statutory payment claim, and other monetary claims made in accordance with any provision of the contract and claimed in a statutory payment claim to adjudication within 28 calendar days after the day on which the dispute arises.
18. Disputes on entitlement to extension of time for performance cannot be referred to adjudication on their own under SOPL, i.e. only payment disputes can be referred to adjudication. An adjudicator shall have the power and jurisdiction to decide the time-related costs forming part of the payment disputes. The adjudicator, in deciding the amount of time-related costs, shall have the power and jurisdiction to decide a party’s entitlement to extension of time. The adjudication decision on the time-related costs forming part of the payment disputes is binding and enforceable on an interim basis, but the extension of time so decided by the adjudicator is not binding. However, a party shall not be liable for liquidated damages if the works have been completed within the extended time for completion so decided by the adjudicator.¹
19. The adjudication process shall have the following key features:
 - (a) the claimant (i.e. the claiming party) shall initiate the adjudication process by serving on the respondent (i.e. the paying party) a notice of adjudication setting out brief details of the parties, the nature of the dispute and the redress sought.
 - (b) The adjudicator is appointed by agreement or by nomination from an agreed adjudicator nominating body within 5 working days after the day on which the notice of adjudication is served on the adjudicator nominating body.

¹ Paragraphs 9 to 11 of this TC(W) are relevant.

- (c) The claimant shall serve the adjudication submission on the adjudicator and the respondent within 1 working day from the date of appointment of the adjudicator.
 - (d) The respondent shall serve the response submission on the adjudicator and the claimant within 20 working days from receipt of the claimant's adjudication submission.
 - (e) The adjudicator shall decide the dispute and deliver the adjudication decision to the parties to the adjudication within 55 working days from the date of appointment of the adjudicator or any longer period agreed by the parties.
20. The claimant may make an application to the Court for leave to enforce the adjudication decision and, if leave of the Court is granted, the adjudication decision shall be enforced in the same way as court judgment.
21. The claimant or the respondent may apply to the Court to set aside the adjudication decision within 14 days from the date of delivery of the adjudication decision to the parties.
22. Both parties to the adjudication shall be jointly and severally liable to pay the adjudicator's fees and expenses in the proportions the adjudicator decides as part of the adjudication decision.
23. A register of adjudicator nominating bodies comprising organisations that are authorized to perform the duties and functions of an adjudicator nominating body shall be established and maintained by the DEVB.

SOP Provisions in Public Works Contracts

24. To implement the spirit of SOPL in the public works contracts, the applicable provisions of the SOP Framework are to be incorporated as SOP Provisions in the contracts via the Special Conditions of Contract ("SCC") / Additional Conditions of Contract ("ACC") for different types of contracts.
25. With the experience gained from the implementation of the spirit of SOPL in public works contracts, there is flexibility to refine the SOP Bill before introducing this new legislation.

**Additional Conditions of Contract
for Capital Work Contracts
using NEC3 ECC
(Options A to D)**

Additional Conditions of Contract for Capital Works Contracts
Using NEC3 ECC (Options A – D)

Marginal Notes Guidelines

Section P – Security of Payment

P1	(1)	This contract incorporates the Security of Payment Provisions in Appendix [] ¹ to these <i>additional conditions of contract</i> (“SOP Provisions”) that form part of these <i>additional conditions of contract</i> .	Security of Payment	This clause applies to works contract which is subject to DEVB TC(W) No. 6/2021.
	(2)	In this contract, “SOP Clause” means a clause in the SOP Provisions.		

¹ Annex C to DEVB TC(W) No. 6/2021.

**Amendment to NEC Clauses
for Capital Work Contracts
using NEC3 ECC
(Options A to D)**

Amendment to NEC Clauses
for use with NEC3 ECC (Options A to D)

NEC Clause	Amendments	
11.2	Add	<p>the following as a new sub-bullet point before the first sub-bullet point of the first main bullet point under sub-clause (23):</p> <ul style="list-style-type: none"> “• any direct payment for settlement of an Adjudicated Amount under Relevant Subcontract pursuant to clause 43(4)(e) of the Security of Payment Provisions for Relevant Subcontracts as incorporated in the Relevant Subcontract,” <p><i>Note to contract drafters: Options C and D only</i></p>
11.2	Add	<p>the word “or” at the end of the second sub-bullet point of the third main bullet point and the following as a new sub-bullet point of the third main bullet point under sub-clause (25):</p> <ul style="list-style-type: none"> “• pay his Subcontractor or supplier in accordance with the subcontract in a timely manner” <p><i>Note to contract drafters: Options C and D only</i></p>
11.2	Add	<p>the following as a new main fourth bullet point under sub-clause (25):</p> <ul style="list-style-type: none"> “• was incurred due to a Subcontractor suspending or reducing the rate of progress of his work pursuant to clause 37 of the Security of Payment Provisions for Relevant Subcontracts as incorporated in the Relevant Subcontract.” <p><i>Note to contract drafters: Options C and D only</i></p>
50.1	Add	<p>a new sentence to the beginning of the clause as follows:</p> <p>“The <i>Contractor</i> submits to the <i>Project Manager</i> [by not later than 14 days before each assessment date a draft statement with supporting documents showing his preliminary estimated amount due and] on or before each assessment date a statement, with supporting documents showing his estimated amount due, which is in the form of a payment claim compliant with SOP Clause 5.”</p> <p><i>Note to contract drafters: This amendment should replace the first amendment to NEC Clause 50.1 in DEVB’s NEC3 ECC standard library (March 2017). The Project Offices may consider to delete the requirement in square bracket if appropriate.</i></p>

NEC Clause	Amendments	
51.1	Replace	the first sentence in the clause by the following: “The <i>Project Manager</i> certifies a payment in the form of a payment response compliant with SOP Clause 6(2) within two weeks of each assessment date.” <i>Note to contract drafters: This amendment should replace the amendment to NEC Clause 51.1 in DEVB’s NEC3 ECC standard library (March 2017).</i>
60.1	Add	a new sub-clause (22) as follows: “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 this contract by the <i>Contractor</i> pursuant to SOP Clause 37.”

**Special Conditions of Contract
for Capital Work Contracts
using GCC 1999 Ed.**

Special Conditions of Contract for Capital Works Contracts
Using GCC 1999 Ed. (Civil / E&M / Building / D&B)

		<u>Marginal Notes</u>	<u>Guidelines</u>
SCC [P1]	(1)	The Contract incorporates the Security of Payment Provisions in Appendix [] ² to the Special Conditions of Contract (“SOP Provisions”) that form part of the Special Conditions of Contract.	Security of Payment This clause applies to works contract which is subject to DEVB TC(W) No. 6/2021.
	(2)	In the Contract, “SOP Clause” means a clause in the SOP Provisions.	
	(3)	<p><i><u>*/for GCC for Civil Engineering Works or GCC for E&M Engineering Works or GCC for Building Works, 1999 Ed.:</u></i></p> <p>(i) General Conditions of Contract Clause 78(2) is amended by inserting the following after the first sentence: <i>Note 1</i></p> <p>“The statement shall be compliant with the requirements for a payment claim under SOP Clause 5.”</p> <p>(ii) General Conditions of Contract Clause 79(1) is amended by inserting the following at the end of the Clause: <i>Note 2</i></p> <p>“The certificate issued under this Clause shall be compliant with the requirements for a payment response under SOP Clause 6”</p> <p>(iii) General Conditions of Contract Clause 79(2) is deleted. <i>Note 3</i> }</p>	<p>Amendment to General Conditions of Contract – Progress Payment</p> <p><i>* select as appropriate</i></p> <p><u>Note 1:</u> <i>For GCC for Design & Build Contracts, 1999 Ed., SCC 46³ (which revises GCC 78(2)) shall be revised accordingly.</i></p> <p><u>Note 2:</u> <i>For GCC for Design & Build Contracts, 1999 Ed., SCC 46³ (which deletes GCC 79(1) and provides revised GCC 78(4)) shall be revised accordingly.</i></p> <p><u>Note 3:</u> <i>For GCC for Design & Build Contracts, 1999 Ed., SCC 46³ (which deletes GCC 79(2) and provides revised GCC 78(5)) shall be revised accordingly.</i></p>

² Annex C to DEVB TC(W) No. 6/2021.

³ Annex G12 to Administrative Procedures 2015 for Use with the GCC for Design and Build Contracts 1999 Edition.

*{for GCC for Civil Engineering Works or GCC for E&M Engineering Works:

(iv) General Conditions of Contract Clause 79(6) is deleted and replaced by the following:-

“On the reference date specified in SOP Clause 2(2), the Contractor shall submit to the Engineer a statement of final account and supporting documentation showing in detail the value in accordance with the Contract of the work done in accordance with the Contract together with all further sums which the Contractor considers to be due to him under the Contract up to the date of the *maintenance certificate/defects liability certificate. Within 30 days of receipt of the final account and of all required supporting documentation, the Engineer shall issue a final payment certificate stating the sum which in his opinion is finally due under the Contract up to the date of the *maintenance certificate/defects liability certificate, and after giving credit to the Employer for all sums previously paid by the Employer and for all sums to which the Employer is entitled under the Contract the Engineer shall state the balance (if any) due from the Employer to the Contractor or from the Contractor to the Employer as the case may be. Such balance shall be paid to or by the Contractor as the case may require within 28 days of the date of the certificate. The Contractor’s statement of final account shall be compliant with the requirements for a payment claim under SOP Clause 5 and the Engineer’s final payment certificate shall be compliant with the requirements for a payment response under SOP Clause 6.” }

**{for GCC for Building Works^{Note 4} :*

- (iv) General Conditions of Contract Clause 59(8) is deleted and replaced by the following:-

“Within 90 days from the date of service of the priced Bills of Variations, the Contractor shall submit to the Surveyor any written representations he may wish to make in respect of the priced Bills of Variations and all information reasonably required for verification by the Surveyor of any such representations. On the reference date specified in SOP Clause 2(2), the Contractor shall submit to the Surveyor a statement of final account which shall be compliant with the requirements for a payment claim under SOP Clause 5. Within 30 days after receipt of the Contractor’s statement of final account, the Surveyor shall issue a final payment certificate in accordance with Clause 79.”

- (v) General Conditions of Contract Clause 79 is amended by inserting the following sub-clause (4A) between sub-clause (4) and sub-clause (5):

“(4A) Within the time period as described in Clause 59(8), the Surveyor shall issue a final payment certificate, which shall be compliant with the requirements for a payment response under SOP Clause 6 stating the sum which in his opinion is due under the Contract up to the date of such certificate, and after giving credit to the Employer for all sums previously paid by the Employer and for all sums to which the Employer is entitled under the Contract the Surveyor shall state the balance (if any) due from the Employer to the Contractor or from the Contractor to the Employer as the case may be. Such balance shall be paid to or by the Contractor as the case may require within 28 days of the date of the certificate.” }

Note 4:
ArchSD’s library of standard SCC which amends GCC 59(8) and GCC 79) shall be revised accordingly.

**{for GCC for Design & Build Contracts, 1999 Ed.:*

(iv) General Conditions of Contract Clause 79(6) is deleted and replaced by the following:-

“On the reference date specified in SOP Clause 2(2), the Contractor shall submit to the Supervising Officer a statement of final account and supporting documentation showing in detail the sums which the Contractor considers to be due to him under the Contract up to the date of the maintenance certificate. Within 30 days after receipt of the final account and of all required supporting documentation, the Supervising Officer shall issue a final payment certificate stating the sum which in his opinion is finally due under the Contract up to the date of the maintenance certificate, and after giving credit to the Employer for all sums previously paid by the Employer and for all sums to which the Employer is entitled under the Contract the Supervising Officer shall state the balance (if any) due from the Employer to the Contractor or from the Contractor to the Employer as the case may be. Such balance shall be paid to or by the Contractor as the case may require within 28 days of the date of the certificate. The Contractor’s statement of final account shall be compliant with the requirements for a payment claim under SOP Clause 5 and the Supervising Officer’s final payment certificate shall be compliant with the requirements for a payment response under SOP Clause 6.” }

- (4) *{for GCC for Civil Engineering Works or GCC for Building Works, 1999 Ed.:
- (i) General Conditions of Contract Clause 50(1)(b) is amended by adding “or” after the comma at the end of sub-clause (xi)^{Note 5} and the following sub-clause:
- “(xii) 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.”^{Note 5} }
- *{for GCC for E&M Engineering Works or GCC for Design & Build Contracts, 1999 Ed.:
- (i) General Conditions of Contract Clause 50(1)(b) is amended by adding “or” after the comma at the end of sub-clause (x)^{Note 5} and the following sub-clause:
- “(xi) 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.”^{Note 5} }
- *{for GCC for Civil Engineering Works, GCC for E&M Engineering Works or GCC for Building Works, 1999 Ed.:
- (ii) General Conditions of Contract Clause 63 is amended by adding “or” after the comma at the end of sub-clause (e) and the following sub-clause:
- “(f) 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.” }
- *{for GCC for Design & Build Contracts, 1999 Ed.:
- (ii) General Conditions of Contract Clause 63 is amended by adding “or” after the comma at the end of sub-clause (d) and adding the following sub-clause:
- “(e) 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.” }
- Amendment to General Conditions of Contract – Contractor’s Rights to Suspend or Reduce Rate of Progress**
- * select as appropriate
- Note 5:**
Revise the numbering of the sub-clauses to suit GCC Clause 50(1)(b) and any amendments to it by other SCC clauses.

- (5) (i) General Conditions of Contract Clause 67(1) is deleted and replaced by the following:
- “Prime Cost Sums shall be deducted from the Contract Sum and in lieu thereof shall be added the total sum paid to the Contractor in respect of work carried out or materials or services supplied by any Nominated Sub-contractors.”
- (ii) General Conditions of Contract Clause 69(2) is deleted and replaced by the following:
- “The sum payable in respect of the work carried out or materials or services supplied by Nominated Sub-contractors to be certified under Clause 79(1)(d) shall be the value of their work under the Contract valued in accordance with their sub-contracts, deducting any trade or other discount.”
- (iii) General Conditions of Contract Clause 69(3) is deleted.
- (iv) General Conditions of Contract Clause 79(1)(d) is deleted and replaced by the following:
- “(d) the portion of the estimated value of (a), (b) and/or (c) above which is attributable to the work carried out or materials or services supplied by Nominated Sub-contractors, and”
- Amendment to General Conditions of Contract – Certification of Payment in respect of work done by Nominated Sub-contractors**
- Applicable to GCC for Building Works (1999 Edition) and GCC for Civil Engineering Works (1999 Edition).

**Additional Conditions of Contract
for Term Contracts
using NEC3 TSC
(Option A)**

Additional Conditions of Contract for Term Contracts
Using NEC3 TSC (Option A)

Marginal Notes Guidelines

Section P – Security of Payment

P1	(1)	This contract incorporates the Security of Payment Provisions in Appendix [] ⁴ to these <i>additional conditions of contract</i> (“SOP Provisions”) that form part of these <i>additional conditions of contract</i> .	Security of Payment	This clause applies to term contract which is subject to DEVB TC(W) No. 6/2021.
	(2)	In this contract, “SOP Clause” means a clause in the SOP Provisions.		

⁴ Annex C to DEVB TC(W) No. 6/2021.

**Amendment to NEC Clauses
for Term Contracts
using NEC3 TSC
(Option A)**

Amendment to NEC Clauses
for use with NEC3 TSC (Option A)

NEC Clause	Amendments	
11.2	Add	<p>the following as a new paragraph at the end of sub-clause (5):</p> <p>“The amount of payments for work subcontracted by the <i>Contractor</i> is without taking account of any direct payment for settlement of an Adjudicated Amount under Relevant Subcontract pursuant to clause 43(4)(e) of the Security of Payment Provisions for Relevant Subcontracts as incorporated in the Relevant Subcontract.”</p>
11.2	Add	<p>the word “or” at the end of the second sub-bullet point of the third main bullet point and the following as a new sub-bullet point of the third main bullet point under sub-clause (6):</p> <ul style="list-style-type: none"> “• pay his Subcontractor or supplier in accordance with the subcontract in a timely manner”
11.2	Add	<p>the following as a new main fourth bullet point under sub-clause (6):</p> <ul style="list-style-type: none"> “• was incurred due to a Subcontractor suspending or reducing the rate of progress of his work pursuant to clause 37 of the Security of Payment Provisions for Relevant Subcontracts as incorporated in the Relevant Subcontract.”
50.1	Add	<p>a new sentence to the beginning of the clause as follows:</p> <p>“The <i>Contractor</i> submits to the <i>Service Manager</i> [by not later than 14 days before each assessment date a draft statement with supporting documents showing his preliminary estimated amount due and] on or before each assessment date a statement, with supporting documents showing his estimated amount due, which is in the form of a payment claim compliant with SOP Clause 5.”</p> <p><i>Note to contract drafters: This amendment should replace the amendment to NEC Clause 50.1 in DEVB’s NEC3 TSC standard library (July 2017). The Project Offices may consider to delete the requirement in square bracket if appropriate.</i></p>
51.1	Replace	<p>the first sentence in the clause by the following:</p> <p>“The <i>Service Manager</i> certifies a payment in the form of a payment response compliant with SOP Clause 6(2) within two weeks of each assessment date.”</p> <p><i>Note to contract drafters: This amendment should replace the amendment to NEC Clause 51.1 in DEVB’s NEC3 TSC standard library (July 2017).</i></p>

NEC Clause	Amendments	
60.1	Add	a new sub-clause (18) as follows: “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 this contract by the <i>Contractor</i> pursuant to SOP Clause 37.”

**Special Conditions of Contract
for Term Contracts
using GCC for Term Contracts**

Special Conditions of Contract for Term Contracts
Using GCC for Term Contracts (Civil / E&M / Building)

		<u>Marginal Notes</u>	<u>Guidelines</u>
SCC [P1]	(1)	The Contract incorporates the Security of Payment Provisions in Appendix [] ⁵ to the Special Conditions of Contract (“SOP Provisions”) that form part of the Special Conditions of Contract.	Security of Payment This clause applies to term contract which is subject to DEVB TC(W) No. 6/2021.
	(2)	In the Contract, “SOP Clause” means a clause in the SOP Provisions.	
	(3)	<u><i>*{for GCC for Term Contracts for Civil Engineering Works or GCC for Term Contracts for E&M Engineering Works:</i></u> (i) General Conditions of Contract Clause 79(2) is deleted and replaced by the following:- “(2) On receipt of the statement and any supporting documents the Engineer shall within 30 days check and, if necessary, correct the statement and shall certify the same for payment provided that: (a) each interim payment for work and materials as specified in paragraphs (a) and (b) of sub-clause (1) of this Clause shall not exceed the percentage stated in the Appendix to the Form of Tender of the estimated value of the same; (b) the statement shall be dated not less than 30 days from the date of issue of the Works Order or from the date of any previous successful request for an interim payment on such Works; and (c) there shall be no amount due for the interim payment if the Engineer assesses that the total sum in respect of paragraphs (a), (b) and (c) of sub-clause (1) of this Clause is less than the minimum amount for interim payment given in the Appendix to the Form of Tender.”}	Amendment to General Conditions of Contract – Progress Payment * select as appropriate

⁵ Annex C to DEVB TC(W) No. 6/2021.

**{for GCC for Term Contracts for Building Works:*

- (i) General Conditions of Contract Clause 81 is deleted and replaced by the following:-

“The Contractor shall submit to the Maintenance Surveyor a signed statement of any claim for interim payments under Clause 80A or 80B as applicable. Such statements shall be prepared on forms supplied by and at the cost of the Contractor and set out in a manner which shall be determined by the Maintenance Surveyor. On receipt of the statement the Maintenance Surveyor shall within 30 days check and, if necessary, correct the statement and shall certify for interim payments for such amounts as may be justified by the statements, and pass these certificates to the Employer for payment to the Contractor.”}

{for GCC for Term Contracts for Civil Engineering Works or GCC for Term Contracts for E&M Engineering Works, **without the SCC provisions for ‘batch measurement process’ for final payment:*

- (ii) General Conditions of Contract Clause 78(3) is deleted and replaced by the following:-

“On receipt of the statement and the supporting documents the Engineer shall within 30 days value in accordance with the Contract and certify for payment the sum which in his opinion is due to the Contractor.”}

**{for GCC for Term Contracts for Building Works, using Clause 79B; for other term contracts with relevant SCC which amends GCC Clause 78 for ‘batch measurement process’ for final payment, the relevant SCC shall be revised accordingly:*

- (ii) General Conditions of Contract Clauses 79B(8) – 79B(9) are deleted and replaced by the following:-

“(8) The Contractor's agreement with the corrected dimension books and the amounts shown on the summary of the batch shall be signified on the summary which shall then be returned to the Maintenance Surveyor who shall, within 30 days from the receipt of the Contractor's agreement, certify as correct the final value of the Works Orders in the batch and pass such certificate for payment less any interim payments previously made.

(9) Within 45 days after the date of issue of the summary of batch to the Contractor, the Contractor shall submit to the Maintenance Surveyor any written representations he may wish to make in respect of the summary of the batch and the corrected values of the Works Orders in the batch, and all information reasonably required for verification by the Maintenance Surveyor of any such representations. The Maintenance Surveyor shall, within 30 days from the receipt of the Contractor's written representations and of all information reasonably required for verification, certify the amount which in his opinion are the final values of the Works Orders in the batch and pass such certificate for payment. If the Contractor fails to sign and return the summary of batch and fails to submit the written representations and the information required for verifications as aforesaid within the said period of 45 days, the Maintenance Surveyor shall certify as correct the amounts shown on the summary of batch which in his opinion are the final values of the Works Orders in the batch and pass such certificate for payment, where upon the Contractor shall have no further claims in respect of the Works Orders in the batch.” }

- (4) **{for GCC for Term Contracts for Building Works:*
- (i) General Conditions of Contract Clause 53(1)(b) is amended by adding “or” after the comma at the end of sub-clause (xi)^{Note 6} the following sub-clause:
- “(xii) 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.”^{Note 6} }

**{for GCC for Term Contracts for Civil Engineering Works and GCC for Term Contracts for E&M Engineering Works:*

- (i) General Conditions of Contract Clause 52(1)(b) is amended by adding “or” after the comma at the end of sub-clause (x)^{Note 7} the following sub-clause:
- “(xi) 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.”^{Note 7} }

Amendment to General Conditions of Contract – Contractor’s Rights to Suspend or Reduce Rate of Progress

* select as appropriate

Note 6:
Revise the numbering of the sub-clauses to suit GCC Clause 53(1)(b) and any amendments to it by other SCC clauses.

Note 7:
Revise the numbering of the sub-clauses to suit GCC Clause 52(1)(b) and any amendments to it by other SCC clauses.

**{for GCC for Term Contracts for Building Works:*

- (ii) General Conditions of Contract Clause 66 is amended by adding “or” after the comma at the end of sub-clause (e) and adding the following sub-clause (f):

“(f) 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.”}

**{for GCC for Term Contracts for Civil Engineering Works or GCC for Term Contracts for E&M Engineering Works:*

- (ii) The following is added as new General Conditions of Contract Clause 65A:

“**65A.** If upon written application by the Contractor to the Engineer the Engineer is of the opinion that the Contractor has been or is likely to be involved in expenditure for which the Contractor would not be reimbursed by a payment made under any other provision in the Contract by reason of the progress of the Works or any part thereof having been materially affected by 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, then the Engineer shall ascertain the Cost incurred and certify for payment accordingly.”}

- (5) **{for GCC for Term Contracts for Civil Engineering Works or GCC for Term Contracts for E&M Engineering Works:*

- (i) General Conditions of Contract Clause 68(2) is deleted and replaced by the following:

“The amount which the Employer shall pay to the Contractor for work executed by a Designated Sub-contractor shall be the net cost of such work ascertained in accordance with the sub-contract after deducting any trade or other discount.”

- (ii) General Conditions of Contract Clauses 69(2) and 69(3) are deleted. }

Amendment to General Conditions of Contract – Certification of Payment in respect of work done under *Designated / Nominated Sub-contractors

* select as appropriate

**{for GCC for Term Contracts for Building Works:*

- (i) General Conditions of Contract Clause 70(2) is deleted and replaced by the following:

“The amount which the Employer shall pay to the Contractor for work executed or goods and materials supplied by Nominated Sub-contractors shall be the net cost of such work executed or goods and materials supplied by the Nominated Sub-contractors ascertained in accordance with their sub-contracts.”

- (ii) General Conditions of Contract Clause 70(4) is deleted and replaced by the following:

“The Contractor shall pay the Nominated Sub-contractor according to the terms of the sub-contract or, should no term be stated in the sub-contract, within 28 days of the completion of the work of the sub-contract.”

- (iii) General Conditions of Contract Clause 70(5) is deleted. }

Security of Payment (SOP) Provisions for Public Works Contracts

Appendix [] to ACC / SCC – Security of Payment (SOP) Provisions

[Note: The following SOP Provisions are to be incorporated in public works contracts. The optional entries with asterisk (*) are for selection by contract drafter to suit contracts using NEC3 Engineering and Construction Contract (ECC) (Options A to D) or NEC3 Term Service Contract (TSC) (Option A) or Government of the Hong Kong Special Administrative Region (HKSARG) General Conditions of Contract (GCC) 1999 Edition or HKSARG GCC for Term Contracts. Contract drafters are reminded to remove the inapplicable ones and the relevant guidelines in blue.]

Part 1 – Interpretation

1. In these SOP Provisions:

“**employee**” has the meaning given by section 2(1) of the Employment Ordinance (Cap. 57).

“**progress payment**” means any payment to be made under **this contract / the Contract* for construction work carried out or undertaken to be carried out or for related goods and services supplied or undertaken to be supplied under **this contract / the Contract* whether such payment is a single or one-off payment, interim or final payment or is based on an event or date.

“**reference date**” means a date determined by, or in accordance with, SOP Clause 2(2) as the date on which a claim for a progress payment may be made for construction work carried out or undertaken to be carried out, or related goods and services supplied or undertaken to be supplied, under **this contract / the Contract*.

“**working day**” means a day that is not—

- (a) a General Holiday; or
- (b) a Saturday.

Part 2 – Payment

2. **Rights to progress payments**

(1) The **Contractor / Contractor* is entitled to a progress payment if the **Contractor / Contractor*—

- (a) has carried out or undertaken to carry out construction work in accordance with **this contract / the Contract*; or
- (b) has supplied or undertaken to supply related goods and services in accordance with **this contract / the Contract*.

**{For capital works contracts using NEC3 ECC:*

(2) The reference dates for progress payments are—

- (a) each assessment date for the amount due under NEC Clause 5 (Payment); and
- *(b) the date, which is 14 days after the date of execution of the Articles of Agreement, for the advance payment under NEC Clause X14. (delete this paragraph (b) if the advance payment, under capital works contracts, promulgated in DEVB’s memos of 14.2.2020 and 5.3.2021 is not adopted.)}*

**{For term contracts using NEC3 TSC:*

- (2) The reference dates for progress payments are—
- (a) each assessment date for the amount due under NEC Clause 5 (Payment); and
 - *(b) the issuing date of the Original Task Order under NEC Clause X19.13. (delete this paragraph (b) if the advance payment, under term contracts, promulgated in DEVB's memos of 5.6.2020 and 5.3.2021 is not adopted.)}*

**{For capital works contracts using GCC for Civil Engineering Works, 1999 Ed.:*

- (2) The reference dates for progress payments are—
- (a) the end date of each monthly period for interim payment under GCC Clause 79(1);
 - (b) the day, which is 150 days after the date of issue of the maintenance certificate, for the final payment under GCC Clause 79(6); and
 - *(c) the date, which is 14 days after the date of execution of the Articles of Agreement, for the advance payment under Clause SCC [](the SCC is the one promulgated under DEVB's memo of 14.2.2020 for advance payment to the Contractor). (delete this paragraph (c) if the advance payment, under capital works contracts, promulgated in DEVB's memos of 14.2.2020 and 5.3.2021 is not adopted.)}*

**{For capital works contracts using GCC for E&M Engineering Works, 1999 Ed.:*

- (2) The reference dates for progress payments are—
- (a) the times specified in the Contract for interim payment under GCC Clause 79(1);
 - (b) the day, which is 150 days after the date of issue of the defects liability certificate, for the final payment under GCC Clause 79(6); and
 - *(c) the date, which is 14 days after the date of execution of the Articles of Agreement, for the advance payment under Clause SCC [](the SCC is the one promulgated under DEVB's memo of 14.2.2020 for advance payment to the Contractor). (delete this paragraph (c) if the advance payment, under capital works contracts, promulgated in DEVB's memos of 14.2.2020 and 5.3.2021 is not adopted.)}*

**{For capital works contracts using GCC for Building Works, 1999 Ed.:*

- (2) The reference dates for progress payments are—
- (a) the end date of each period of interim certificates stated in the Appendix to the Form of Tender for interim payment under GCC Clause 79(1);
 - (b) the day, which is 60 days after the date of submission of the Contractor's written representations and all information reasonably required for verification by the Surveyor pursuant to GCC Clause 59(8), or if no such written representation is submitted by the Contractor, the day which is 60 days after the expiry of the 90-day period for such submission pursuant to GCC Clause 59(8), for final payment under GCC Clause 79(4A); and
 - *(c) the date, which is 14 days after the date of execution of the Articles of Agreement, for the advance payment under Clause SCC [](the SCC is the one promulgated under DEVB's memo of 14.2.2020 for advance payment to the Contractor). (delete this paragraph (c) if the advance payment, under capital works contracts, promulgated in DEVB's memos of 14.2.2020 and 5.3.2021 is not adopted.)}*

**{For capital works contracts using GCC for D&B Contracts, 1999 Ed. adopting milestone payments:*

- (2) The reference dates for progress payments are—
- (a) the date of receipt of a Milestone Certificate issued by the Supervising Officer pursuant to GCC Clause 78(3)(v) as amended by SCC 46 for interim payment under GCC Clause 78(4) as amended by SCC 46;
 - (b) the day, which is 150 days after the date of issue of the maintenance certificate, for the final payment under GCC Clause 79(6); and

- * (c) the date, which is 14 days after the date of execution of the Articles of Agreement, for the advance payment under Clause SCC [] (*the SCC is the one promulgated under DEVB's memo of 14.2.2020 for advance payment to the Contractor*). (*delete this paragraph (c) if the advance payment, under capital works contracts, promulgated in DEVB's memos of 14.2.2020 and 5.3.2021 is not adopted.*)}

{For term contracts using GCC for Term Contracts for Civil Engineering Works, 2002 Ed. or GCC for Term Contracts for E&M Engineering Works, 2007 Ed.:

- (2) The reference dates for progress payments are—
 - (a) for interim payment for each Works Order under GCC Clause 79, the day, which is 30 days from the date of issue of the Works Order, and the days every 30 days thereafter;
 - * (b) the date of issue of certification of completion for final payment under GCC Clause 78; and (*use this paragraph (b) for term contracts without the SCC provisions for 'batch measurement process'*)
 - * (b) the day, on which the Engineer provides the summary of batch of Works Order(s) to the Contractor, for final payment under GCC Clause 78; and (*use this paragraph (b) for term contracts with the SCC provisions for 'batch measurement process'*)
 - * (c) the issuing date of the Original Works Order for the advance payment under Clause SCC [] (*the SCC is the one promulgated under DEVB's memo of 5.6.2020 for advance payment to the Contractor*). (*delete this paragraph (c) if the advance payment, under term contracts, promulgated in DEVB's memos of 5.6.2020 and 5.3.2021 is not adopted.*)}

{For term contracts using GCC for Term Contracts for Building Works, 2004 Ed. (using Clauses 79B and 80B:

- (2) The reference dates for progress payments are—
 - (a) the days as specified in the Appendix to the Form of Tender for interim payment under GCC Clause 80B;
 - (b) the day, on which the *Maintenance Surveyor / Surveyor provides the summary of batch of Works Order(s) to the Contractor, for final payment under GCC Clause 79B; and
 - * (c) the issuing date of the Original Works Order for the advance payment under Clause SCC [] (*the SCC is the one promulgated under DEVB's memo of 5.6.2020 for advance payment to the Contractor*). (*delete this paragraph (c) if the advance payment, under term contracts, promulgated in DEVB's memos of 5.6.2020 and 5.3.2021 is not adopted.*)}

3. Amount of progress payment

- (1) The amount of a progress payment to which the *Contractor / Contractor is entitled under *this contract / the Contract is the amount calculated in accordance with *this contract / the Contract.

4. Payable date for progress payment

- (1) A progress payment becomes due and payable on the earlier of the following dates ("payable date")—
 - (a) the date determined by, or in accordance with, *this contract / the Contract as the payable date;
 - (b) the date falling 60 days after the payment claim for the progress payment is served (or is taken to have been served) under SOP Clause 5.

- (2) However, if the payment claim for the progress payment is served under SOP Clause 5 on a date later than the reference date for the progress payment referred to in SOP Clause 2(2), for the purposes of sub-clause (1)(a) above—
 - (a) the reference date for the progress payment shall be the date on which the payment claim for the progress payment is served; and
 - (b) the payable date is determined accordingly.

5. Payment claims

- (1) The **Contractor / Contractor* may serve a payment claim for a progress payment on the **Employer / Employer* on or after the reference date for the payment.
- (2) However, if the **Contractor / Contractor* serves a payment claim for a progress payment on the **Employer / Employer* before the reference date for the progress payment referred to in SOP Clause 2(2), the payment claim is taken to have been served on the reference date.
- (3) A payment claim for a progress payment—
 - (a) must be in writing;
 - (b) must identify the construction work or related goods and services to which the payment relates; and
 - (c) must state the amount of the progress payment that the **Contractor / Contractor* claims to be payable (“claimed amount”).
- (4) The **Contractor / Contractor* shall not serve more than 1 payment claim for each reference date under **this contract / the Contract*.
- (5) The **Contractor / Contractor* may include in the claimed amount of a payment claim any amount that has been the subject of a previous payment claim only if the amount was disputed as due by the **Employer / Employer*.
- (6) The **Contractor / Contractor* is not to include in the claimed amount of a payment claim any amount that is the subject of an ongoing adjudication.
- (7) A claim or application for payment made under **this contract / the Contract* that meets the requirements of this SOP Clause is taken to be a payment claim served on the **Employer / Employer*.

6. Payment responses

- (1) The **Employer / Employer* served with a payment claim may respond to the payment claim by serving a payment response, either by himself or through the **Project Manager / Service Manager / Engineer / Surveyor / Supervising Officer / Maintenance Surveyor*, on the **Contractor / Contractor*.
- (2) A payment response—
 - (a) must be in writing;
 - (b) must identify the payment claim to which it relates;
 - (c) must state the amount (if any) admitted as due under **this contract / the Contract* before any set off or withholding, and the basis of the calculation of the amount;
 - (d) must state the amount (if any) not admitted as due under **this contract / the Contract* before any set off or withholding, the grounds for, and the basis of the calculation of the amount;

- (e) must state the amount, the grounds for, and the basis of the calculation of any amount to be set off or withheld; and
 - (f) must state the net amount to be paid (if any) and the calculation of the amount.
- (3) A certificate or assessment issued under **this contract / the Contract* by the **Project Manager / Service Manager / Engineer / Surveyor / Supervising Officer / Maintenance Surveyor* in response to a payment claim or application for payment made under **this contract / the Contract* that meets the requirements of this SOP Clause is taken to be a payment response served by the **Employer / Employer* save to the extent the **Employer / Employer* issues his own payment response on or before the date referred to in SOP Clause 7(2), in which event such payment response shall take precedence over the certificate or assessment and / or supplement the same as appropriate.
- (4) The **Employer / Employer* may, either by himself or through the **Project Manager / Service Manager / Engineer / Surveyor / Supervising Officer / Maintenance Surveyor*, amend or supplement any payment response (or part of the same) which the **Employer / Employer* has served on the **Contractor / Contractor* by serving on the **Contractor / Contractor* an amended response and / or a supplementary response on or before the date referred to in SOP Clause 7(2).

7. Time requirements for payment responses

- (1) This SOP Clause applies if the **Contractor / Contractor* serves on the **Employer / Employer* a payment claim for a progress payment under SOP Clause 5.
- (2) If the **Employer / Employer* intends to serve a payment response under SOP Clause 6 in reply to a payment claim under SOP Clause 5, such payment response must be served on the **Contractor / Contractor* no later than the earlier of the following dates—
- (a) the date determined by, or in accordance with, **this contract / the Contract* as the date by which a payment response is to be served; and
 - (b) the date falling 30 days after the payment claim is served (or is taken to have been served) under SOP Clause 5.
- (3) If the **Contractor / Contractor* serves the payment claim for the progress payment under SOP Clause 5 on the **Employer / Employer* on a date later than the reference date for the progress payment referred to in SOP Clause 2(2), for the purposes of sub-clause (2)(a)—
- (a) the reference date for the progress payment shall be the date on which the payment claim is served; and
 - (b) the date by which a payment response is to be served is determined accordingly.

8. Consequences of not serving payment responses

- (1) If the **Employer / Employer* does not serve a payment response on or before the date referred to in SOP Clause 7(2), the **Employer / Employer*—
- (a) is regarded as disputing in full the claimed amount; but
 - (b) will not be able to raise any set off in any adjudication in relation to the payment claim concerned.

Part 3 – Adjudication**9. Emergence of a payment dispute**

- (1) A payment dispute arises if the **Contractor / Contractor* has served a payment claim compliant with SOP Clause 5 on the **Employer / Employer* and—
 - (a) the **Employer / Employer* has served a payment response on the **Contractor / Contractor* under SOP Clause 6 in which—
 - (i) none of the payment claim is admitted as due;
 - (ii) the amount admitted as due is less than the claimed amount; or
 - (iii) set off or withholding of all or any part of the claimed amount is raised;
 - (b) the **Employer / Employer* has—
 - (i) served a payment response on the **Contractor / Contractor* under SOP Clause 6 in which a net amount is admitted as due and is to be paid (“net admitted amount”); but
 - (ii) failed to pay the net admitted amount in full on or before the date on which the net admitted amount becomes payable under SOP Clause 4; or
 - (c) the **Employer / Employer* does not serve a payment response under SOP Clause 6 in reply to the payment claim on or before the date referred to in SOP Clause 7(2) and fails to pay the claimed amount in full by the payable date.
- (2) For the purposes of SOP Clause 10, a payment dispute arises on the expiry of—
 - (a) for sub-clause (1)(a)—the date referred to in SOP Clause 7(2);
 - (b) for sub-clause (1)(b)—the date on which the net admitted amount becomes payable under SOP Clause 4; or
 - (c) for sub-clause (1)(c)—the date referred to in SOP Clause 7(2).
- (3) Notwithstanding sub-clause (1), a payment dispute, in respect of a claim of the **Contractor / Contractor* for additional payment pertaining to the happening of a compensable event as specified in **this contract / the Contract*, does not arise unless and until the **Project Manager / Service Manager / Engineer / Surveyor / Supervising Officer / Maintenance Surveyor* has notified the **Contractor / Contractor* of his rejection and / or assessment of such claim or has failed to notify the **Contractor / Contractor* of his acceptance, rejection and / or assessment of such claim within any timescales for the same specified in the claim handling procedure or, where no timescales are specified, within a reasonable time in accordance with the claim handling procedure.
- (4) The claim handling procedure is any procedure provided in **this contract / the Contract* in relation to a claim for additional payment pertaining to the happening of a compensable event as specified in **this contract / the Contract* for the purposes of—
 - (a) analysing and determining the liability for such payment; and
 - (b) assessing the amount of such payment or assessing adjustments to rates and prices which may result in additional payment.

**{For capital works contracts using NEC3 ECC:*

- (5) Without prejudice to the generality of sub-clauses (3) and (4) of this SOP Clause, the claim handling procedure includes all steps from the notification of a compensation event under NEC Clause 6 (Compensation events) until the *Project Manager* has (or should have) notified the *Contractor* of his decision under NEC Clause 61.4 or otherwise the

implementation of the compensation event under NEC Clause 65.1 (including changes to the Prices as a result of the compensation event).}

**{For term contracts using NEC3 TSC:*

- (5) Without prejudice to the generality of sub-clauses (3) and (4) of this SOP Clause, the claim handling procedure includes all steps from the notification of a compensation event under NEC Clause 6 (Compensation events) until the *Service Manager* has (or should have) notified the *Contractor* of his decision under NEC Clause 61.4 or otherwise the implementation of the compensation event under NEC Clause 65.1 (including changes to the total of the Prices for a Task as a result of the compensation event).}

**{For capital works contracts using GCC for Civil Engineering Works or GCC for E&M Engineering Works or GCC for Building Works, 1999 Ed.:*

- (5) Without prejudice to the generality of sub-clauses (3) and (4) of this SOP Clause, the claim handling procedure includes all steps from any notice of claim served by the Contractor and ascertaining the Cost or the valuation of the Works by the **Engineer / Surveyor / Supervising Officer* under the following clauses until the **Engineer / Surveyor / Supervising Officer* has notified the Contractor of his assessment under these clauses or, as the case may be, GCC Clause 64—

- (a) GCC Clause 5
- (b) GCC Clause 42
- (c) GCC Clause 45
- (d) GCC Clause 46
- (e) GCC Clause 48
- (f) GCC Clause 54
- (g) GCC Clause 56
- (h) GCC Clause 58
- (i) GCC Clause 59
- (j) GCC Clause 61
- (k) GCC Clause 62
- (l) GCC Clause 63 }

**{For capital works contracts using GCC for D&B, 1999 Ed.:*

- (5) Without prejudice to the generality of sub-clauses (3) and (4) of this SOP Clause, the claim handling procedure includes all steps from any notice of claim served by the Contractor and ascertaining the Cost or the valuation of the Works by the Supervising Officer under the following clauses until the Supervising Officer has notified the Contractor of his assessment under these clauses or, as the case may be, GCC Clause 64—

- (a) GCC Clause 6
- (b) GCC Clause 42
- (c) GCC Clause 45
- (d) GCC Clause 46
- (e) GCC Clause 48
- (f) GCC Clause 54
- (g) GCC Clause 56
- (h) GCC Clause 58
- (i) GCC Clause 61
- (j) GCC Clause 63 }

**{For term contracts using GCC for Term Contracts for Civil Engineering Works or GCC for Term Contracts for E&M Engineering Works:*

(5) Without prejudice to the generality of sub-clauses (3) and (4) of this SOP Clause, the claim handling procedure includes all steps from any notice of claim served by the Contractor and ascertaining the Cost or the valuation of the Works by the Engineer under the following clauses until the Engineer has notified the Contractor of his assessment under these clauses or, as the case may be, GCC Clause 66—

- (a) GCC Clause 5
- (b) GCC Clause 44
- (c) GCC Clause 47
- (d) GCC Clause 48
- (e) GCC Clause 56
- (f) GCC Clause 58
- (g) GCC Clause 60
- (h) GCC Clause 63
- (i) GCC Clause 64}

**{For term contracts using GCC for Term Contracts for Building Works:*

(5) Without prejudice to the generality of sub-clauses (3) and (4) of this SOP Clause, the claim handling procedure includes all steps from any notice of claim served by the Contractor and ascertaining the Cost or the valuation of the Works by the **Surveyor / Maintenance Surveyor* under the following clauses until the **Surveyor / Maintenance Surveyor* has notified the Contractor of his assessment under these clauses or, as the case may be, GCC Clause 67—

- (a) GCC Clause 5
- (b) GCC Clause 44
- (c) GCC Clause 47
- (d) GCC Clause 48
- (e) GCC Clause 57
- (f) GCC Clause 59
- (g) GCC Clause 61
- (h) GCC Clause 64
- (i) GCC Clause 65}

10. Right to refer payment dispute to adjudication

(1) The **Contractor / Contractor* may, within 28 days after the date on which a payment dispute arises, initiate an adjudication of the payment dispute under SOP Clause 11.

11. How to initiate adjudication

(1) The **Contractor / Contractor* (as the Claimant) may initiate an adjudication of a payment dispute against the **Employer / Employer* (as the Respondent) by serving a notice of adjudication on the Respondent. A copy of such notice shall be served to the **Project Manager / Service Manager / Engineer / Surveyor / Supervising Officer / Maintenance Surveyor* on the same day.

(2) A notice of adjudication must be in writing and identify / describe—

- (a) the Claimant and the Respondent;
- (b) the relevant payment claim and any payment response;
- (c) the nature and description of the payment dispute; and

- (d) the claimed amount and remedy sought.
- (3) Subject to sub-clauses (4) and (5), the **Contractor / Contractor* shall not serve more than 1 notice of adjudication in respect of a payment dispute.
- (4) If the **Contractor / Contractor* withdraws an adjudication in respect of a payment dispute under SOP Clause 24, the **Contractor / Contractor* may serve on the **Employer / Employer* another notice of adjudication in respect of the same payment dispute within the period specified in SOP Clause 10.
- (5) If an adjudication in respect of a payment dispute is terminated on the ground set out in SOP Clause 25(1)(d), 25(1)(e) or 25(1)(h), the **Contractor / Contractor* may serve on the **Employer / Employer* another notice of adjudication in respect of the same payment dispute within 28 days after the date on which such adjudication is terminated.

12. Commencement of adjudication

- (1) An adjudication commences on the first working day after the date on which a notice of adjudication is served on the Respondent under SOP Clause 11.

13. Appointment of adjudicator by adjudicator nominating body

- (1) The Claimant must serve a notice of adjudication on the adjudicator nominating body specified in sub-clause (2) below on the same day on which the notice is served on the Respondent under SOP Clause 11.
- (2) The adjudicator nominating body shall be [] (*Project Office shall specify the ANB chosen from the DEVB's Register of ANBs maintained by DEVB and published on the website: <https://www.devb.gov.hk>.*) and they must appoint a single adjudicator as the **Adjudicator / Adjudicator* in accordance with the adjudication rules of the adjudicator nominating body and inform the Claimant and the Respondent in writing of the appointment, within 5 working days beginning on the commencement date of the adjudication.
- (3) The adjudication rules published by the adjudicator nominating body as specified in sub-clause (2) above shall apply to an adjudication initiated under SOP Clause 11. Notwithstanding, Part 3 of these SOP Provisions shall prevail over the adjudication rules in case of inconsistencies or ambiguities.
- (4) The **Contractor / Contractor* (as the Claimant) and the **Employer / Employer* (as the Respondent) agree and undertake that the **Adjudicator / Adjudicator* shall be appointed on terms that give effect to SOP Clauses 14 to 36, 38 and 39.

14. Adjudicator to declare and disclose interests

- (1) The **Adjudicator / Adjudicator* must, at the time of accepting the appointment as an adjudicator, make a declaration in writing that—
 - (a) there is no conflict of interest in respect of the adjudicator's appointment;
 - (b) the **Adjudicator / Adjudicator* will act independently, impartially and in a timely manner and avoid incurring unnecessary expenses;
 - (c) the **Adjudicator / Adjudicator* will comply with the principles of natural justice and decide the payment dispute in accordance with the applicable law; and
 - (d) there are no circumstances likely to give rise to justifiable doubts as to the **Adjudicator's / Adjudicator's* impartiality and independence.

- (2) The **Adjudicator / Adjudicator* must, from the time of accepting the appointment and throughout the adjudication proceedings, disclose to the parties to the adjudication any circumstances likely to give rise to justifiable doubts as to the **Adjudicator's / Adjudicator's* impartiality and independence.

15. Claimant to serve adjudication submission

- (1) The Claimant must serve an adjudication submission on the **Adjudicator / Adjudicator* and the Respondent within 1 working day after the date on which the **Adjudicator / Adjudicator* is appointed.
- (2) An adjudication submission—
 - (a) must be in writing;
 - (b) must identify the notice of adjudication to which it relates; and
 - (c) must contain any supporting documents and evidence that the Claimant considers relevant to the adjudication.

16. Respondent to serve adjudication response

- (1) The Respondent may serve an adjudication response on the **Adjudicator / Adjudicator* and the Claimant within—
 - (a) 20 working days after the date on which the adjudication submission is served on the Respondent; or
 - (b) any longer period the **Adjudicator / Adjudicator* specifies.
- (2) An adjudication response—
 - (a) must be in writing;
 - (b) must set out the Respondent's reply to the adjudication submission; and
 - (c) must include any supporting documents and evidence that the Respondent considers relevant to the adjudication.

17. Jurisdiction of adjudicators

- (1) The **Adjudicator's / Adjudicator's* jurisdiction is limited to determining—
 - (a) the payment dispute that is referred to adjudication by the Claimant; and
 - (b) any other matters that are of a consequential or ancillary nature (including the time or extended time for completion of **the works / the Works / a Task*) necessary to exercise or complete the exercise of the jurisdiction conferred by paragraph (a).
- (2) The **Adjudicator / Adjudicator* has the power to rule on his or her own jurisdiction.

18. **Adjudicator / Adjudicator* to conduct adjudication

- (1) The **Adjudicator / Adjudicator* must conduct the adjudication in the manner the **Adjudicator / Adjudicator* considers appropriate within the powers provided under SOP Clause 19.
- (2) When conducting an adjudication, the **Adjudicator / Adjudicator* is not bound by the rules of evidence and may receive and take into account any relevant evidence or information, whether or not it would be otherwise admissible in a court of law.

19. Powers of the **Adjudicator / Adjudicator*

- (1) The **Adjudicator / Adjudicator* may—
 - (a) establish the procedures for conducting the adjudication proceedings;
 - (b) determine the language or languages to be used in the adjudication proceedings;
 - (c) extend the deadline for service of an adjudication response under SOP Clause 16;
 - (d) request or allow the Claimant or the Respondent (“party to the adjudication”) to submit further written submissions;
 - (e) request or allow a party to the adjudication to produce any document or provide any information that the **Adjudicator / Adjudicator* reasonably requires;
 - (f) set deadlines for the submission, production of documents and provision of information;
 - (g) appoint, with the consent of the parties to the adjudication, an independent expert to inquire or report on any specific matter;
 - (h) call a conference of the parties to the adjudication;
 - (i) carry out an inspection of the construction site, any construction work or any other thing to which the payment dispute relates including opening up of any construction work done and conducting tests or experiments;
 - (j) decide on the proportion of the fees and expenses of the **Adjudicator / Adjudicator* and any independent expert appointed under sub-clause (1)(g) to be paid by the parties to the adjudication; and
 - (k) issue any direction as may be necessary or expedient for the conduct of the adjudication.
- (2) The parties to the adjudication must comply with any request or direction of the **Adjudicator / Adjudicator* made or given in accordance with this SOP Clause. All communications between a party to the adjudication and the **Adjudicator / Adjudicator* must be simultaneously copied to the other party.
- (3) No decision, opinion, instruction, direction, certificate or valuation given by the **Project Manager or Supervisor / Service Manager / Engineer / Surveyor / Supervising Officer / Maintenance Surveyor* shall disqualify either from being called as a witness and giving evidence before an *Adjudicator / Adjudicator* on any matter whatsoever relevant to the payment dispute so referred to the *Adjudicator / Adjudicator* as aforesaid.

20. Parties may be represented in adjudication proceedings

- (1) A party to the adjudication may be represented by the representatives (whether legally qualified or not) that the party considers appropriate.

21. Circumstances where the **Adjudicator / Adjudicator* must disregard submission etc.

- (1) The **Adjudicator / Adjudicator* must not consider any submission or response made by a party to the adjudication unless it was given to the **Adjudicator / Adjudicator* within the time that the party may give it to the **Adjudicator / Adjudicator* pursuant to these SOP Provisions or, if no time limit can be determined under the SOP Provisions, in accordance with the adjudication rules of the adjudicator nominating body.
- (2) The **Adjudicator / Adjudicator* must disregard any submission, evidence or document submitted by a party to the adjudication or any part of it to the extent that it comprises submission or evidence that—
 - (a) the other party was unaware of on the date on which the notice of adjudication was served;

- (b) should reasonably have been served before the date on which the notice of adjudication was served; and
- (c) cannot be fairly considered and responded to by the other party.

22. When the **Adjudicator's / Adjudicator's* powers not affected

- (1) The **Adjudicator's / Adjudicator's* power to determine a payment dispute is not affected by the failure of—
 - (a) the Respondent to serve an adjudication response on the Claimant under SOP Clause 16; or
 - (b) any of the parties to the adjudication to—
 - (i) make a submission (other than an adjudication submission under SOP Clause 15) within the time allowed by the **Adjudicator / Adjudicator*;
 - (ii) comply with the **Adjudicator's / Adjudicator's* call for a conference of the parties; or
 - (iii) do any other thing that the **Adjudicator / Adjudicator* requests or directs.

23. Resignation of the **Adjudicator / Adjudicator*

- (1) The **Adjudicator / Adjudicator* may resign by giving notice in writing to the parties to the adjudication if the **Adjudicator / Adjudicator* considers that it is not possible to decide the dispute fairly within the period specified in SOP Clause 26.
- (2) A resignation takes effect on the later of—
 - (a) the date specified in the notice; and
 - (b) the date on which the notice is served on the parties to the adjudication.

24. Withdrawal of adjudication proceedings

- (1) The Claimant may at any time withdraw an adjudication by serving a notice of withdrawal in writing on the **Adjudicator / Adjudicator*, the Respondent and the adjudicator nominating body on which the notice of adjudication has been served.
- (2) The Claimant who withdraws an adjudication must bear the fees and expenses of the **Adjudicator / Adjudicator* and of any independent expert appointed under SOP Clause 19(1)(g) unless the **Adjudicator / Adjudicator* orders otherwise.

25. Termination of adjudication proceedings

- (1) An adjudication is terminated if—
 - (a) the Claimant fails to serve an adjudication submission on the **Adjudicator / Adjudicator* and the Respondent within the time specified in SOP Clause 15;
 - (b) the Claimant serves a notice of withdrawal under SOP Clause 24(1);
 - (c) the Respondent pays the claimed amount stated in the notice of adjudication in full to the Claimant;
 - (d) the **Adjudicator / Adjudicator* resigns under SOP Clause 23(1);
 - (e) the **Adjudicator / Adjudicator* becomes unable or unsuitable to act as the **Adjudicator / Adjudicator* under the adjudication rules of the adjudicator

nominating body, or the **Adjudicator / Adjudicator* becomes ineligible to act as the **Adjudicator / Adjudicator* pursuant to SOP Clause 33 or under the adjudication rules of the adjudicator nominating body;

- (f) the payment dispute is settled by agreement in writing between the parties to the adjudication;
- (g) the payment dispute is determined by arbitration or court proceedings;
- (h) the **Adjudicator / Adjudicator* fails to deliver an adjudication decision in accordance with SOP Clause 26(2); or
- (i) the **Adjudicator / Adjudicator* decides under SOP Clause 17 that he/she has no jurisdiction on the payment dispute.

26. Adjudication decisions

- (1) The **Adjudicator / Adjudicator* must determine—
 - (a) the payment dispute referred to the **Adjudicator / Adjudicator*;
 - (b) the adjudicated amount, which means the amount of the progress payment, if any, to be paid by the Respondent to the Claimant, or, as the case may be, any amount to be paid by the Claimant to the Respondent;
 - (c) the interest payable on the adjudicated amount;
 - (d) the date on which the adjudicated amount is payable; and
 - (e) the proportion of the fees and expenses of the Adjudicator and of any independent expert appointed under SOP Clause 19(1)(g) payable by each party to the adjudication in accordance with SOP Clauses 35 and 36.
- (2) The **Adjudicator / Adjudicator* must, through the adjudicator nominating body that appointed the **Adjudicator / Adjudicator*, deliver an adjudication decision to the parties to the adjudication within—
 - (a) 55 working days after the date on which the **Adjudicator / Adjudicator* is appointed; or
 - (b) any longer period agreed by the parties to the adjudication.
- (3) An adjudication decision—
 - (a) must be in writing; and
 - (b) must contain reasons for the decision unless otherwise agreed by the parties to the adjudication.
- (4) An adjudication decision must be delivered to the adjudicator nominating body and the parties to the adjudication under sub-clause (2) in a manner specified in the adjudication rules of the body.

27. Effect of adjudication decision

- (1) An adjudication decision made under these SOP Provisions is binding on the parties to the adjudication and enforceable as a matter of contractual obligation unless and until—
 - (a) the payment dispute to which the decision relates is settled by agreement in writing between the parties to the adjudication; or
 - (b) the payment dispute is determined by arbitration or court proceedings.

28. Adjudicators may correct typographical errors etc.

- (1) The **Adjudicator / Adjudicator* may, on his or her own initiative or at the request of a party to the adjudication, correct in the adjudication decision any computational or typographical errors or any errors of a similar nature.
- (2) Any correction must be done within 5 working days after the date on which the decision is delivered to the parties to the adjudication under SOP Clause 26(2).
- (3) To avoid doubt—
 - (a) any correction done to an adjudication decision under this SOP Clause does not affect the validity of the decision; and
 - (b) the time limit set out in SOP Clause 30 runs from the date on which the decision is delivered to the parties to the adjudication under SOP Clause 26(2).

29. Valuation of work etc. in later adjudication

- (1) Sub-clause (2) applies if, in an adjudication, an **Adjudicator / Adjudicator* has, under SOP Clause 26(1), determined—
 - (a) the value of any construction work carried out under **this contract / the Contract*;
or
 - (b) the value of any related goods and services supplied under **this contract / the Contract*; or
 - (c) the value of any other entitlements specified in **this contract / the Contract*.
- (2) The **Adjudicator / Adjudicator* or another adjudicator must, in any later adjudication that involves the working out of the value of that work or of those goods and services or any entitlements specified in **this contract / the Contract*, give the work, or the goods and services or such entitlements, the same value as that previously decided.
- (3) However, sub-clause (2) does not apply to the extent the Claimant or Respondent in the later adjudication satisfies the **Adjudicator / Adjudicator* that due to circumstances affecting the carrying out of the construction works and / or supply of related goods and services arising after the decision in the earlier adjudication the value of the work, or the goods or services, or any entitlements specified in **this contract / the Contract* in relation to the same has changed.

30. Settlement of adjudicated amount

- (1) If the **Adjudicator / Adjudicator* determines in an adjudication decision that a party to the adjudication is required to pay an adjudicated amount to the other party, the party must pay the amount to that other party on or before the following date—
 - (a) the date specified by the **Adjudicator / Adjudicator* in the adjudication decision; or
 - (b) if no date is specified by the **Adjudicator / Adjudicator* in the adjudication decision—a date that is within 30 days after the date on which the adjudication decision is delivered to the parties to the adjudication under SOP Clause 26(2).

30A. Interest on late payment of adjudicated amount

- (1) If the **Employer / Employer* fails to pay the adjudicated amount in accordance with SOP Clause 30, he pays interest on the unpaid portion of the adjudicated amount to the **Contractor / Contractor*. Interest is calculated on a simple interest basis at the judgment debt rate prescribed from time to time by the Rules of the High Court (Chapter 4 of the Laws of Hong Kong) from the day after the payment due date under SOP Clause 30.

31. Effect of adjudication on other proceedings

- (1) Part 3 of these SOP Provisions does not affect any right that **the Employer or Contractor / the Employer or Contractor* may have to submit a payment dispute relating to or arising from **this contract / the Contract* to mediation or arbitration.
- (2) The submission of a payment dispute being adjudicated to a mediation or arbitration does not terminate or otherwise affect the adjudication.

32. Confidentiality of adjudication

- (1) The parties to the adjudication, the **Project Manager, the Supervisor / Service Manager / Engineer / Surveyor / Supervising Officer / Maintenance Surveyor* and the **Adjudicator / Adjudicator* must not disclose or give to another person any information relating to—
 - (a) an adjudication; or
 - (b) an adjudication decision made in the adjudication.
- (2) Despite sub-clause (1), the parties to the adjudication may disclose or give to another person information referred to in sub-clause (1) if—
 - (a) the information is in the public domain;
 - (b) the disclosure is made with the consent of—
 - (i) each of the parties to the adjudication; and
 - (ii) the adjudicator for the adjudication;
 - (c) the disclosure is made to an adjudicator nominating body because of the operation of Part 3 of these SOP Provisions;
 - (d) the disclosure is necessary for the purpose of settlement of the adjudicated amount;
 - (e) the disclosure is made in another adjudication, a court proceeding, arbitration or any other dispute resolution proceeding in connection with **this contract / the Contract* in respect of which the payment dispute under the adjudication arises;
 - (f) the disclosure is made in accordance with **this contract / the Contract* or a requirement imposed by law; or
 - (g) the disclosure is made to—
 - (i) a professional or any other adviser of the party for the purpose of seeking legal or other professional advice;
 - (ii) insurers or bankers for reasonable commercial purposes;
 - (iii) enable proper applications for or assessments of payments; or
 - (iv) the **Project Manager, the Supervisor / Service Manager / Engineer / Surveyor / Supervising Officer / Maintenance Surveyor*.

33. Eligibility of adjudicators

- (1) An individual is eligible to be appointed and act as the **Adjudicator / Adjudicator* if the individual is on the panel of adjudicators of the adjudicator nominating body specified in SOP Clause 13(2).

- (2) An individual is not eligible to be appointed and act as the **Adjudicator / Adjudicator* for an adjudication of a payment dispute if—
 - (a) the individual is a **Party / party* (or employee or agent of a **Party / party*) to **this contract / the Contract* under which the payment dispute arose; or
 - (b) circumstances exist that give rise to justifiable doubts as to the individual's impartiality or independence.

34. Costs and expenses of adjudication incurred by parties

- (1) A party to an adjudication is not liable to pay any costs or expenses incurred by the other party to the adjudication as a result of or in relation to the adjudication.
- (2) Sub-clause (1) applies even if a party has caused the costs or expenses to be incurred by the other party unnecessarily or for any other reason.

35. Adjudicator's fees

- (1) The **Adjudicator / Adjudicator* is entitled to be paid for adjudicating a payment dispute—
 - (a) the amount, by way of fees and expenses, agreed between the **Adjudicator / Adjudicator* and the parties to the adjudication; or
 - (b) if no amount is agreed, the amount, for fees and expenses, that is reasonable having regard to the work done and the expenses incurred by the **Adjudicator / Adjudicator*.
- (2) The Claimant and Respondent are jointly and severally liable to pay the **Adjudicator's / Adjudicator's* fees and expenses.
- (3) The Claimant and Respondent are each liable to contribute to the payment of the **Adjudicator's / Adjudicator's* fees and expenses—
 - (a) in the proportions the **Adjudicator / Adjudicator* decides; or
 - (b) if the **Adjudicator / Adjudicator* has not so decided—in equal proportions.
- (4) The **Adjudicator / Adjudicator* is not entitled to be paid any fees or expenses for the adjudication if—
 - (a) the **Adjudicator / Adjudicator* fails to deliver an adjudication decision either within the time required under SOP Clause 26(2) or at all;
 - (b) the **Adjudicator / Adjudicator* resigns during the course of the adjudication; or
 - (c) the **Adjudicator / Adjudicator* becomes ineligible to act as the **Adjudicator / Adjudicator* pursuant to SOP Clause 33 or under the adjudication rules of the adjudicator nominating body.
- (5) However, sub-clause (4) does not apply if the adjudication is terminated pursuant to SOP Clause 25(1)(b) or (i).
- (6) For the purposes of sub-clause (4), the **Adjudicator / Adjudicator* will not be regarded to have failed to deliver an adjudication decision if:
 - (a) the **Adjudicator / Adjudicator* refuses to deliver the adjudication decision to the parties to the adjudication pursuant to SOP Clause 26(2) until his or her fees and expenses are paid; or
 - (b) the **Adjudicator / Adjudicator* has delivered the adjudication decision to the

adjudicator nominating body within the time required under SOP Clause 26(2), but the adjudicator nominating body fails to deliver the adjudication decision to the parties to the adjudication within the time required under SOP Clause 26(2) or at all.

- (7) For the avoidance of doubt, the *Adjudicator / Adjudicator* has the power to decide their fees and expenses after termination of an adjudication under SOP Clause 25 save and except where the adjudication is terminated on any of the grounds set out in SOP Clause 35(4).

36. Matters to be considered in deciding fees

- (1) This SOP Clause applies if the **Adjudicator / Adjudicator* is making a decision about the proportion of the **Adjudicator's / Adjudicator's* fees and expenses to be paid by the Claimant and Respondent under SOP Clause 19(1)(j).
- (2) In making the decision, the **Adjudicator / Adjudicator* may consider the following matters—
 - (a) the relative success of the Claimant or Respondent in the adjudication;
 - (b) whether the Claimant or Respondent commenced or participated in the adjudication for an improper purpose;
 - (c) whether the Claimant or Respondent commenced or participated in the adjudication without reasonable prospects of success;
 - (d) whether the Claimant or Respondent has acted unreasonably leading up to the adjudication;
 - (e) whether the Claimant or Respondent has acted unreasonably in the conduct of the adjudication;
 - (f) the reasons given by the Respondent for not making the progress payment the subject of the adjudication application;
 - (g) whether the Respondent included additional reasons for not making the progress payment in the adjudication response that were not included in the payment response served on the Claimant;
 - (h) whether an adjudication application is withdrawn;
 - (i) the services provided by the **Adjudicator / Adjudicator* in adjudicating the payment dispute, including the amount of time taken to consider discrete aspects of the amount claimed; and
 - (j) any other matter the **Adjudicator / Adjudicator* considers relevant in making the decision.

Part 4 – Right to Suspend Work or Supply or Reduce Rate of Progress of Work or Supply

37. **Contractor / Contractor's* right to suspend work or supply or reduce rate of progress of work or supply

- (1) The **Contractor / Contractor* may suspend, or reduce the rate of progress of, **the works / the Works / a Task* under **this contract / the Contract* if all the conditions set out in either sub-clause (2) or (3) are satisfied.
- (2) The conditions are—
 - (a) the **Contractor / Contractor* has served on the **Employer / Employer* a payment claim under SOP Clause 5;

- (b) the **Employer / Employer* has—
 - (i) served a payment response on the **Contractor / Contractor* under SOP Clause 6 in which a net admitted amount is stated to be paid; but
 - (ii) failed to pay the net admitted amount in full on or before the date on which the net admitted amount became payable under SOP Clause 4;
 - (c) after the date as referred to in paragraph (b)(ii) and at least 5 working days before the date (“intended starting date”), on which he intends to start suspending, or reducing the rate of progress of **the works / the Works / a Task* under **this contract / the Contract*, the **Contractor / Contractor* has served on the **Employer / Employer* a notice of intention that meets the requirements set out in sub-clause (4); and
 - (d) the net admitted amount is not paid in full before the intended starting date.
- (3) The conditions are—
- (a) the **Employer / Employer* has not paid to the **Contractor / Contractor* the adjudicated amount in full on or before the date specified under SOP Clause 30 (“payment deadline”);
 - (b) after the payment deadline and at least 5 working days before the date (“intended starting date”), on which he intends to start suspending, or reducing the rate of progress of **the works / the Works / a Task* under **this contract / the Contract*, the **Contractor / Contractor* has served on the **Employer / Employer* a notice of intention that meets the requirements set out in sub-clause (4); and
 - (c) the adjudicated amount is not paid in full before the intended starting date.
- (4) The notice of intention—
- (a) must be in writing;
 - (b) must state that it is given under these SOP Provisions;
 - (c) must indicate the **Contractor’s / Contractor’s* intention to suspend, or reduce the rate of progress of, **the works / the Works / a Task* under **this contract / the Contract*; and
 - (d) may specify the intended starting date.
- (5) If no intended starting date is specified in the notice of intention, for the purposes of sub-clause (2) or (3), the date falling 5 working days after the date on which the notice of intention is served on the **Employer / Employer* is taken to be the intended starting date.
- (6) The **Contractor / Contractor* exercising the right under sub-clause (1)—
- (a) is not in breach of **this contract / the Contract*;
 - (b) is not liable for any loss or damage suffered by the **Employer / Employer*, or by any person claiming through the **Employer / Employer*, as a result of suspending, or reducing the rate of progress of, **the works / the Works / a Task*; and
 - (c) must resume the progress of **the works / the Works / a Task* within 7 working days after receiving the net admitted amount or the adjudicated amount in full.

Part 5 – Miscellaneous Matters

38. Exclusion of civil liability of adjudicators and adjudicator nominating bodies

- (1) The **Employer / Employer* and the **Contractor / Contractor* agree that, save to the extent prohibited by law or in relation to liability for fraud, an **Adjudicator / Adjudicator* and an adjudicator nominating body shall not be liable to the **Employer / Employer* and the **Contractor / Contractor* in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the **Employer / Employer* or the **Contractor / Contractor* of an indirect or consequential nature including without limitation any economic loss or other loss of turnover, profits, business or goodwill for an act done or omitted to be done by the **Adjudicator / Adjudicator* or the adjudicator nominating body in good faith pursuant to these SOP Provisions.

39. Adjudicators not required to act as witnesses

- (1) The **Employer / Employer* and the **Contractor / Contractor* agree that they shall not require the **Adjudicator / Adjudicator* to give evidence or provide or produce any document or other material in an arbitration or other proceedings in connection with the payment dispute.

40. Service: adjudication documents

- (1) This SOP Clause applies to a document that is authorized or required to be served under Part 3 (Adjudication) of these SOP Provisions.
- (2) Such documents must be served—
 - (a) in a manner specified in these SOP Provisions; or
 - (b) if no manner is so specified—in a manner specified by the **Adjudicator / Adjudicator* or in the adjudication rules published by the adjudicator nominating body as specified in SOP Clause 13.

41. Service: other documents

- (1) This SOP Clause applies to a document that is authorized or required to be served under—
 - (a) Part 2 (Payments) of these SOP Provisions; or
 - (b) Part 4 (Right to Suspend Work or Supply or Reduce Rate of Progress of Work or Supply) of these SOP Provisions.
- (2) The document may be served by a party on another party (“receiving party”) in the manner in accordance with **NEC Clause 13 / GCC Clause 87 / 90 / 93 {Note: The GCC Clause refers to the clause on “service of notices”}*.

{for GCC contracts:

- (3) The document is taken, in the absence of evidence to the contrary, to have been served on the receiving party—
 - (a) if it is delivered by hand—on the day on which it is so delivered;
 - (b) if it is left at the receiving party’s last known residence or place of business—on the day on which it is so left;

- (c) if it is sent by post—on the day on which it is received at the last known residence or place of business; or
- (d) if it is sent by fax transmission or electronic mail transmission—on the day on which it is so transmitted.}

42. Security of Payment for Relevant Subcontract

{for NEC3 ECC contracts:

- (1) Without prejudice to the generality of Clause C2 of the *additional conditions of contract* and NEC Clause 26, this Clause applies in relation to any subcontract of any tier for constructing or installing part of the *works* (“Relevant Subcontract”) (whether or not supplying a service, Equipment, Plant and Materials in order to Provide the Works is included as part of the Relevant Subcontract), but does not apply to—
 - (a) a Relevant Subcontract to the extent that it contains provisions under which a party undertakes
 - (i) to lend money or to repay money lent;
 - (ii) to guarantee repayment of money owing or repayment of money lent; or
 - (iii) to act as an insurer with respect to any part of the *works* carried out, or the service, Equipment, Plant and Materials supplied, under the Relevant Subcontract;
 - (b) a Relevant Subcontract under which it is agreed that the consideration payable is to be calculated otherwise than by reference to the value of any part of the *works* carried out, or the service, Equipment, Plant and Materials supplied; or
 - (c) a Relevant Subcontract to the extent that it contains provisions under which a party undertakes to carry out any part of the *works* or to supply the service, Equipment, Plant and Materials as an employee of the other party.}

{for NEC3 TSC contracts:

- (1) Without prejudice to the generality of Clause C2 of the *additional conditions of contract* and NEC Clause 26, this Clause applies in relation to any subcontract of any tier for providing part of the *service* (“Relevant Subcontract”) (whether or not supplying Equipment, Plant and Materials in order to Provide the Service is included as part of the Relevant Subcontract), but does not apply to—
 - (a) a Relevant Subcontract to the extent that it contains provisions under which a party undertakes
 - (i) to lend money or to repay money lent;
 - (ii) to guarantee repayment of money owing or repayment of money lent; or
 - (iii) to act as an insurer with respect to any part of the *service* carried out, or the service, Equipment, Plant and Materials supplied, under the Relevant Subcontract;
 - (b) a Relevant Subcontract under which it is agreed that the consideration payable is to be calculated otherwise than by reference to the value of any part of the *service*

carried out, or the service, Equipment, Plant and Materials supplied; or

- (c) a Relevant Subcontract to the extent that it contains provisions under which a party undertakes to carry out any part of the *service* or to supply the service, Equipment, Plant and Materials as an employee of the other party. }

{for GCC for Civil Engineering Works, GCC for Building Works, GCC for Term Contracts for Civil Engineering Works or GCC for Term Contracts for Building Works:

- (1) Without prejudice to the generality of Clause 4 of the General Conditions of Contract, this Clause applies in relation to any subcontract of any tier for executing any part of the Works (“Relevant Subcontract”) (whether or not supplying a service, equipment, Constructional Plant, plant and materials for the Works is included as part of the Relevant Subcontract), but does not apply to—

- (a) a Relevant Subcontract to the extent that it contains provisions under which a party undertakes

- (i) to lend money or to repay money lent;

- (ii) to guarantee repayment of money owing or repayment of money lent; or

- (iii) to act as an insurer with respect to any part of the Works carried out, or the service, equipment, Constructional Plant, plant and materials supplied, under the Relevant Subcontract;

- (b) a Relevant Subcontract under which it is agreed that the consideration payable is to be calculated otherwise than by reference to the value of any part of the Works carried out, or the service, equipment, Constructional Plant, plant and materials supplied; or

- (c) a Relevant Subcontract to the extent that it contains provisions under which a party undertakes to carry out any part of the Works or to supply the service, equipment, Constructional Plant, plant and materials as an employee of the other party. }

{for GCC for E&M Engineering Works, GCC for D&B Contracts or GCC for Term Contracts for E&M Engineering Works:

- (1) Without prejudice to the generality of Clause 4 of the General Conditions of Contract, this Clause applies in relation to any subcontract of any tier for executing any part of the Works (“Relevant Subcontract”) (whether or not supplying a service, equipment, Constructional Plant, Plant and materials for the Works is included as part of the Relevant Subcontract), but does not apply to—

- (a) a Relevant Subcontract to the extent that it contains provisions under which a party undertakes

- (i) to lend money or to repay money lent;

- (ii) to guarantee repayment of money owing or repayment of money lent; or

- (iii) to act as an insurer with respect to any part of the Works carried out, or the service, equipment, Constructional Plant, Plant and materials supplied, under the Relevant Subcontract;

- (b) a Relevant Subcontract under which it is agreed that the consideration payable is to be calculated otherwise than by reference to the value of any part of the Works

carried out, or the service, equipment, Constructional Plant, Plant and materials supplied; or

(c) a Relevant Subcontract to the extent that it contains provisions under which a party undertakes to carry out any part of the Works or to supply the service, equipment, Constructional Plant, Plant and materials as an employee of the other party.}

- (2) The **Contractor / Contractor* shall ensure that the Mandatory Subcontract Conditions and the SOP Provisions for Relevant Subcontracts in the form appearing in Appendix []¹ to the **additional conditions of contract / Special Conditions of Contract* are included in all Relevant Subcontracts entered into with the **Contractor / Contractor*. The **Contractor / Contractor* shall, if necessary, within a reasonable time enter into a supplemental agreement with his **Subcontractor / sub-contractor* to ensure that the Relevant Subcontract complies with the requirements in this sub-clause.
- (3) For Relevant Subcontracts at any lower tiers of subcontracting, the **Contractor / Contractor* shall take all reasonable steps to ensure that the Mandatory Subcontract Conditions and the SOP Provisions for Relevant Subcontracts in the form appearing in Appendix []¹ to the **additional conditions of contract / Special Conditions of Contract* are included *mutatis mutandis* and are effective in all such Relevant Subcontracts. The **Contractor / Contractor* shall take all reasonable steps to ensure that **subcontractors / sub-contractors* at any lower tiers of subcontracting shall, if necessary, within a reasonable time enter into supplemental agreements to comply with the requirements in this sub-clause.
- (4) The **Contractor / Contractor* shall submit copies of the contract documents of all Relevant Subcontracts to the **Project Manager / Engineer / Surveyor / Supervising Officer / Service Manager / Maintenance Surveyor* for the purpose of checking if the Mandatory Subcontract Conditions and the SOP Provisions for Relevant Subcontracts referred to in sub-clauses (2) and (3) of this Clause are included in the Relevant Subcontracts. Upon request by the **Project Manager / Engineer / Surveyor / Supervising Officer / Service Manager / Maintenance Surveyor*, the **Contractor / Contractor* shall provide the original documents of the Relevant Subcontract for inspection by the **Project Manager / Engineer / Surveyor / Supervising Officer / Service Manager / Maintenance Surveyor*.
- (5) The **Contractor / Contractor* shall display a Site Notice using the pro forma at Appendix []² to the **additional conditions of contract / Special Conditions of Contract*. The Site Notice shall be updated from time to time or as per request by the **Project Manager / Engineer / Surveyor / Supervising Officer / Service Manager / Maintenance Surveyor*.

43. Direct payment for settlement of unpaid Adjudicated Amount under Relevant Subcontract

- (1) “Adjudicated Amount under Relevant Subcontract” means an amount as shown in the original or certified true copy of the adjudication decision issued under an adjudication conducted in accordance with the SOP Provisions for Relevant Subcontracts that a party to a Relevant Subcontract is required to pay to another party to the same Relevant Subcontract.

¹ Annex D to DEVB TC(W) No. 6/2021.

² Annex H to DEVB TC(W) No. 6/2021.

- (2) The **Contractor / Contractor* shall report at monthly intervals to the **Project Manager / Service Manager / Engineer / Surveyor / Supervising Officer / Maintenance Surveyor* all notices of adjudication served under any Relevant Subcontract and the status of payment or settlement of any Adjudicated Amount under Relevant Subcontract.
- (3) Where a party to a Relevant Subcontract at any of the tiers of subcontracting (as the claimant) applies to the **Employer / Employer* stating that the other party to that Relevant Subcontract (as the respondent) has failed to pay the whole or any part of an Adjudicated Amount under Relevant Subcontract in accordance with the SOP Provisions for Relevant Subcontracts, and the application is supported by submission of: (i) a certified true copy of the adjudication decision; (ii) identification of the work done to which the Adjudicated Amount under Relevant Subcontract relates; and (iii) a written declaration that the whole or any part of the Adjudicated Amount under Relevant Subcontract is outstanding, the **Employer / Employer* may make direct payment of the outstanding amount, or any part thereof, to the claimant in accordance with the following:
- (a) the **Employer / Employer* serves a letter, which incorporates the contents set out in Annex []³ to these **additional conditions of contract / Special Conditions of Contract*, on the **Contractor / Contractor*, with a copy to the claimant;
- (b) the **Contractor / Contractor* certifies and submits documentary proof to the **Employer / Employer* within 28 days after receipt of the letter referred to in paragraph (a) if :
- (i) he or any subcontractors of any tier has paid the Adjudicated Amount under Relevant Subcontract to the claimant or the claimant has been satisfied with any payment as full settlement of the Adjudicated Amount under Relevant Subcontract;
- (ii) the adjudication decision is no longer binding on the respondent by reason of clause 27(1)(a) or 27(1)(b) under the SOP Provisions for Relevant Subcontracts or otherwise;
- (iii) a subcontractor at any higher tier to the claimant: -
- (I) has become bankrupt; or
- (II) has had a receiving order made against him; or
- (III) has presented a petition in bankruptcy; or
- (IV) has made an arrangement with or assignment in favour of his creditors;
or
- (V) has agreed to carry out his Relevant Subcontract under a committee of inspection of his creditors; or
- (VI) being a corporation, has gone into liquidation (other than voluntary liquidation for the purposes of amalgamation or reconstruction), administration or receivership or otherwise become insolvent; or
- (iv) any subcontractor at higher tiers to the respondent will be unable to recover the

³ Annex G to DEVB TC(W) No. 6/2021.

amount of direct payment (to be made by the **Employer / Employer*) by way of deduction from its payments due or which may become due to its subcontracting parties at next lower tier under the Relevant Subcontracts;

- (c) if the **Contractor / Contractor* fails to certify or submit documentary proof to the **Employer / Employer* in accordance with paragraph (b), the **Employer / Employer* may directly pay the outstanding amount of the Adjudicated Amount under Relevant Subcontract, or any part thereof as advised by the **Contractor / Contractor* in his reply to the **Employer's / Employer's* letter under paragraph (a) above, or such amount as appears reasonable to the Employer, to the claimant but the amount of such direct payment shall not exceed the total payments due or which may become due to the **Contractor / Contractor* under **this contract / the Contract*; however, if the **Contractor / Contractor* submits proof that a subcontractor at any higher tier to the claimant has become bankrupt or has had a receiving order made against him or has presented a petition in bankruptcy or has made an arrangement with or assignment in favour of his creditors or has agreed to carry out his Relevant Subcontract under a committee of inspection of his creditors or (being a corporation) has gone into liquidation (other than voluntary liquidation for the purposes or amalgamation or reconstruction), administration or receivership or otherwise became insolvent, the **Employer / Employer* shall not make the direct payment as requested. For the avoidance of doubt, the **Employer / Employer* shall not be under any obligation to make direct payment of the Adjudicated Amount under Relevant Subcontract;
- (d) the **Employer / Employer* is entitled to deduct the amount of any direct payment made in accordance with paragraph (c) from any payments due or which may become due to the **Contractor / Contractor* under **this contract / the Contract* or to otherwise recover the amount of direct payment made from the **Contractor / Contractor*.

The entitlement of the **Employer / Employer*, under sub-clause (3), to make direct payment to the subcontractor claimant and to deduct the same amount from payments due to the **Contractor / Contractor* is not affected by any subsequent arbitration, court or other proceedings or settlement resulting in the amount due being different from the Adjudicated Amount under Relevant Subcontract or if the adjudication decision is no longer binding on the parties to the adjudication.

- (4) The right of the **Employer / Employer* to make direct payments pursuant to sub-clause (3) above does not relieve the **Contractor / Contractor* of any of his obligations under **this contract / the Contract*.

Mandatory Subcontract Conditions for Security of Payment

Appendix [] to ACC/SCC – Mandatory Subcontract Conditions for Security of Payment

[Note: The optional entries with asterisk (*) are for selection by contract drafter to suit contracts using NEC3 Engineering and Construction Contract (ECC) (Options A to D) or NEC3 Term Service Contract (TSC) (Option A) or Government of the Hong Kong Special Administrative Region (HKSARG) General Conditions of Contract (GCC) 1999 Edition or HKSARG GCC for Term Contracts. Contract drafters are reminded to remove the inapplicable ones and the relevant guidelines in blue.]

[Notes for the *Contractor / Contractor and the sub-contractors:

- (i) The Mandatory Subcontract Conditions for Security of Payment set out below (i.e. Clauses SP-1 and SP-2) and the Security of Payment (SOP) Provisions for Relevant Subcontracts set out in the Annex to these Mandatory Subcontract Conditions are for incorporation in all Relevant Subcontracts entered into by the *Contractor / Contractor (i.e. the first-tier subcontract).
- (ii) The Mandatory Subcontract Conditions for Security of Payment and the SOP Provisions for Relevant Subcontracts shall be incorporated *mutatis mutandis* in all Relevant Subcontracts at lower tiers of subcontracting. The parts that should be revised for lower tier subcontracts are shaded in grey (the guidelines given within the parentheses { } should then be removed).]

Clause SP-1

(1) In this Sub-contract the following words and expressions shall have the meanings hereby assigned to them except when the context otherwise requires:-

“Employer” means the Government of the Hong Kong Special Administrative Region;

“*Engineer / Surveyor / Supervising Officer / Maintenance Surveyor / Project Manager / Service Manager” means the *Engineer / Surveyor / Supervising Officer / Maintenance Surveyor / Project Manager / Service Manager” for the main Contract;

“main Contract” means the main contract [insert the Contract No.] made between the Employer and the main Contractor;

“main Contract Works” means the *works / Works / service to be executed by the main Contractor under the main Contract.

“main Contractor” means the contractor who has entered into the main Contract with the Employer and entered into the Sub-contract with the Sub-contractor {Replace the words “the Sub-contract with the Sub-contractor” with “a sub-contract with a sub-contractor at the first tier of the same chain of subcontracting in connection with this Sub-contract” for the second or lower tier subcontracts};

“Sub-contract” means this agreement;

“Sub-contractor” means the party who entered into this Sub-contract with the main Contractor {Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tier subcontracts};

“Higher-tier-sub-contractor” means the party who entered into a sub-contract at higher tier than this Sub-contract with another party and entered into this Sub-contract with the Sub-contractor; {Adopt this definition for the second or lower tiers subcontracts only}

Clause SP-2

- (1) This Sub-contract incorporates the Security of Payment Provisions for Relevant Subcontracts as set out in Annex *{insert the annex number}* to this Sub-contract (“SOP Provisions for Relevant Subcontracts”).
- (2) In this Sub-contract, “SOP Clause” means a clause in the SOP Provisions for Relevant Subcontracts.
- (3) The SOP Provisions for Relevant Subcontracts have effect despite any other provision in this Sub-contract.
- (4) A provision of this Sub-contract is void to the extent that—
 - (a) it is inconsistent with the SOP Provisions for Relevant Subcontracts;
 - (b) it has the effect of excluding, modifying or restricting the operation of the SOP Provisions for Relevant Subcontracts;
 - (c) it may be construed as an attempt to deter a person from taking action under the SOP Provisions for Relevant Subcontracts.

Security of Payment (SOP) Provisions for Relevant Subcontracts

**Annex [] to Mandatory Subcontract Conditions for Security of Payment
– Security of Payment (SOP) Provisions for Relevant Subcontracts**

Part 1 – Interpretation

1. In these SOP Provisions:

“**employee**” has the meaning given by section 2(1) of the Employment Ordinance (Cap. 57).

“**Mandatory Subcontract Conditions for SOP**” means Clauses SP-1 to SP-2 of the Sub-contract.

“**progress payment**” means any payment to be made under the Sub-contract for construction work carried out or undertaken to be carried out or for related goods and services supplied or undertaken to be supplied under the Sub-contract whether such payment is a single or one-off payment, interim or final payment or is based on an event or date.

“**reference date**” means—

- (a) a date determined by, or in accordance with, the Sub-contract as the date on which a claim for a progress payment may be made for construction work carried out or undertaken to be carried out, or related goods and services supplied or undertaken to be supplied, under the Sub-contract; or
- (b) if the Sub-contract does not expressly provide for such a date, the last day of each month in which construction work is carried out or related goods and services are supplied under the Sub-contract.

“**working day**” means a day that is not—

- (a) a General Holiday; or
- (b) a Saturday.

Part 2 – Payment

2. **Rights to progress payments**

(1) The Sub-contractor is entitled to a progress payment if the Sub-contractor—

- (a) has carried out or undertaken to carry out construction work under the Sub-contract; or
- (b) has supplied or undertaken to supply related goods and services under the Sub-contract.

(2) The reference dates for progress payments are—

{Parties to the Sub-contract should set out the reference dates for all progress payments to suit and match the Sub-contract, see sample below for reference:

- (a) For monthly payment—on the __ day of the month;*
- (b) For final payment—__ days after the date of completion of the Works.}*

2A. Conditional payment provisions ineffective

- (1) The parties to the Sub-contract agree that notwithstanding any other provision in this Sub-contract any Conditional Payment Provision in the Sub-contract is unenforceable and has no effect in relation to any payment for construction work carried out or for related goods and services supplied under the Sub-contract.
- (2) Conditional Payment Provision means a provision in this Sub-contract by whatever name called—
 - (a) that makes the liability of the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* to pay money owing to the Sub-contractor contingent or conditional on payment to the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* by a further party (Party C) of the whole or any part of the money;
 - (b) that makes the due date for payment of money owing by the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* to the Sub-contractor contingent or conditional on the date on which payment of the whole or any part of that money is made to the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* by Party C; or
 - (c) that otherwise makes the liability to pay money owing, or the due date for payment of money owing, contingent or conditional on the operation of any other contract or agreement.

3. Amount of progress payment

- (1) The amount of a progress payment to which the Sub-contractor is entitled under the Sub-contract is—
 - (a) the amount calculated in accordance with the Sub-contract; or
 - (b) if the Sub-contract does not provide for the calculation of the amount of the progress payment—the amount calculated on the basis of the value of—
 - (i) construction work carried out by the Sub-contractor under the Sub-contract; or
 - (ii) related goods and services supplied by the Sub-contractor under the Sub-contract.
- (2) For the purposes of sub-clause (1)(b), construction work carried out or related goods and services supplied under the Sub-contract are to be valued having regard to—
 - (a) the contract price or rate for the construction work or related goods and services;
 - (b) any other price or rate specified in the Sub-contract;
 - (c) any variation agreed to by the parties to the Sub-contract by which the contract price or rate, or any other price or rate specified in the Sub-contract, is to be adjusted by a specific amount; and
 - (d) if any part of the construction work or related goods and services are defective—(i) the estimated cost of rectifying any defect or correcting any non-conformance, or (ii) the diminution in the value of the construction work or related goods and services, whichever is more reasonable.

- (3) In the absence of the matters referred to in sub-clauses (2)(a), (b), (c) and (d), construction work carried out or related goods and services supplied under the Sub-contract are to be valued based on fair and reasonable prices or rates at the time the construction work was carried out or related goods and services were supplied.

4. Payable date for progress payment

- (1) If the other provisions of this Sub-contract provide for the date on which a progress payment becomes due and payable, the progress payment becomes due and payable on the earlier of the following dates (“payable date”)—
 - (a) the date determined by, or in accordance with, the Sub-contract as the payable date;
 - (b) the date falling 60 days after the payment claim for the progress payment is served (or is taken to have been served) under SOP Clause 5.
- (2) However, if the payment claim for the progress payment is served under SOP Clause 5 on a date later than the reference date for the progress payment referred to in SOP Clause 2(2), for the purposes of sub-clause (1)(a) above—
 - (a) the reference date for the progress payment shall be the date on which the payment claim for the progress payment is served; and
 - (b) the payable date is determined accordingly.
- (3) If the Sub-contract does not provide for the payable date, the payment becomes payable on the date falling 60 days after the payment claim for the payment is served (or is taken to have been served) under SOP Clause 5.

5. Payment claims

- (1) The Sub-contractor may serve a payment claim for a progress payment on the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* on or after the reference date for the payment.
- (2) However, if the Sub-contractor serves a payment claim for a progress payment on the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* before the reference date for the progress payment referred to in SOP Clause 2(2), the payment claim is taken to have been served on the reference date.
- (3) A payment claim for a progress payment—
 - (a) must be in writing;
 - (b) must identify the construction work or related goods and services to which the payment relates; and
 - (c) must state the amount of the progress payment that the Sub-contractor claims to be payable (“claimed amount”).
- (4) The Sub-contractor shall not serve more than 1 payment claim for each reference date under the Sub-contract.
- (5) The Sub-contractor may include in the claimed amount of a payment claim any amount that has been the subject of a previous payment claim only if the amount was disputed as due by the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}*.

- (6) The Sub-contractor is not to include in the claimed amount of a payment claim any amount that is the subject of an ongoing adjudication.
- (7) A claim or application for payment made under the Sub-contract that meets the requirements of this SOP Clause is taken to be a payment claim served on the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}*.

6. Payment responses

- (1) The main Contractor *{Replace the words “The main Contractor” with “The Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* served with a payment claim may respond to the payment claim by serving a payment response on the Sub-contractor.
- (2) A payment response—
 - (a) must be in writing;
 - (b) must identify the payment claim to which it relates;
 - (c) must state the amount (if any) admitted as due under the Sub-contract before any set off or withholding, and the basis of the calculation of the amount;
 - (d) must state the amount (if any) not admitted as due under the Sub-contract before any set off or withholding, the grounds for, and the basis of the calculation of the amount;
 - (e) must state the amount, the grounds for, and the basis of the calculation of any amount to be set off or withheld; and
 - (f) must state the net amount to be paid (if any) and the calculation of the amount.
- (3) A certificate or assessment issued under the Sub-contract in response to a payment claim or application for payment made under the Sub-contract that meets the requirements of this SOP Clause is taken to be a payment response served by the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}*.
- (4) The main Contractor *{Replace the words “The main Contractor” with “The Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* may amend or supplement a payment response (or part of the same) which the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* has served on the Sub-contractor by serving on the Sub-contractor an amended response and / or a supplementary response on or before the date referred to in SOP Clause 7.

7. Time requirements for payment responses

- (1) This SOP Clause applies if the Sub-contractor serves on the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* a payment claim for a progress payment under SOP Clause 5.

- (2) If the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* intends to serve a payment response under SOP Clause 6 in reply to a payment claim under SOP Clause 5, and the Sub-contract provides for the date by which the payment response must be served, such payment response must be served on the Sub-contractor no later than the earlier of the following dates—
 - (a) the date determined by, or in accordance with, the Sub-contract as the date by which a payment response is to be served; and
 - (b) the date falling 30 days after the payment claim is served (or is taken to have been served) under SOP Clause 5.
- (3) If the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* intends to serve a payment response under SOP Clause 6 in reply to a payment claim under SOP Clause 5, but the Sub-contract does not provide for the payable date and does not provide for the date by which the payment response must be served, such payment response must be served on the Sub-contractor no later than the date falling 30 days after the payment claim is served (or is taken to have been served) under SOP Clause 5.
- (4) Sub-clauses (5) and (6) apply if the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* intends to serve a payment response under SOP Clause 6 in reply to a payment claim under SOP Clause 5 and the Sub-contract—
 - (a) provides for the payable date; but
 - (b) does not provide for the date by which the payment response must be served.
- (5) If the payable date is not more than 7 days after the reference date for the progress payment referred to in SOP Clause 2(2), the payment response must be served no later than the payable date.
- (6) If the payable date is more than 7 days after the reference date for the progress payment referred to in SOP Clause 2(2), the payment response must be served no later than the earlier of the following dates—
 - (a) the date falling 7 days before the payable date;
 - (b) the date falling 30 days after the payment claim is served (or is taken to have been served) under SOP Clause 5.
- (7) If the Sub-contractor serves the payment claim for the progress payment under SOP Clause 5 on the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* on a date later than the reference date for the progress payment referred to in SOP Clause 2(2), for the purposes of sub-clauses (2)(a), (5) and (6)(a)—
 - (a) the reference date for the progress payment shall be the date on which the payment claim is served; and
 - (b) the date by which a payment response is to be served is determined accordingly.

8. Consequences of not serving payment responses

- (1) If the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* does not serve a payment response on or before the date referred to in SOP Clause 7, the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}*—
- (a) is regarded as disputing in full the claimed amount; but
 - (b) will not be able to raise any set off in any adjudication in relation to the payment claim concerned.

Part 3 – Adjudication**9. Emergence of a payment dispute**

- (1) A payment dispute arises if the Sub-contractor has served a payment claim compliant with SOP Clause 5 on the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* and—
- (a) the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* has served a payment response on the Sub-contractor under SOP Clause 6 in which—
 - (i) none of the payment claim is admitted as due;
 - (ii) the amount admitted as due is less than the claimed amount; or
 - (iii) set off or withholding of all or any part of the claimed amount is raised;
 - (b) the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* has—
 - (i) served a payment response on the Sub-contractor under SOP Clause 6 in which a net amount is admitted as due and is to be paid (“net admitted amount”); but
 - (ii) failed to pay the net admitted amount in full on or before the date on which the net admitted amount becomes payable under SOP Clause 4; or
 - (c) the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* does not serve a payment response under SOP Clause 6 in reply to the payment claim on or before the date referred to in SOP Clause 7 and fails to pay the claimed amount in full by the payable date.
- (2) For the purposes of SOP Clause 10, a payment dispute arises on the expiry of—
- (a) for sub-clause (1)(a)—the date referred to in SOP Clause 7;
 - (b) for sub-clause (1)(b)—the date on which the net admitted amount becomes payable under SOP Clause 4; or
 - (c) for sub-clause (1)(c)—the date referred to in SOP Clause 7.

- (3) Notwithstanding sub-clause (1), a payment dispute, in respect of a claim of the Sub-contractor for additional payment pertaining to the happening of a compensable event as specified in the Sub-contract, does not arise unless and until the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* has notified the Sub-contractor of his rejection and/or assessment of such claim or has failed to notify the Sub-contractor of his acceptance, rejection and/or assessment of such claim within any timescales for the same specified in the claim handling procedure or, where no timescales are specified, within a reasonable time in accordance with the claim handling procedure.
- (4) The claim handling procedure is any procedure provided in the Sub-contract in relation to a claim for additional payment pertaining to the happening of a compensable event as specified in the Sub-contract for the purposes of—
 - (a) analysing and determining the liability for such payment; and
 - (b) assessing the amount of such payment or assessing adjustments to rates and prices which may result in additional payment.

10. Right to refer payment dispute to adjudication

- (1) The Sub-contractor may, within 28 days after the date on which a payment dispute arises, initiate an adjudication of the payment dispute under SOP Clause 11.

11. How to initiate adjudication

- (1) The Sub-contractor (as the Claimant) may initiate an adjudication of a payment dispute against the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* (as the Respondent) by serving a notice of adjudication on the Respondent.
- (2) A notice of adjudication must be in writing and identify / describe—
 - (a) the Claimant and the Respondent;
 - (b) the relevant payment claim and any payment response;
 - (c) the nature and description of the payment dispute; and
 - (d) the claimed amount and remedy sought.
- (3) Subject to sub-clauses (4) and (5), the Sub-contractor shall not serve more than 1 notice of adjudication in respect of a payment dispute.
- (4) If the Sub-contractor withdraws an adjudication in respect of a payment dispute under SOP Clause 24, the Sub-contractor may serve on the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* another notice of adjudication in respect of the same payment dispute within the period specified in SOP Clause 10.
- (5) If an adjudication in respect of a payment dispute is terminated on the ground set out in SOP Clause 25(1)(d), 25(1)(e) or 25(1)(h), the Sub-contractor may serve on the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* another notice of adjudication in respect of the same payment dispute within 28 days after the date on which such adjudication is terminated.

12. Commencement of adjudication

- (1) An adjudication commences on the first working day after the date on which a notice of adjudication is served on the Respondent under SOP Clause 11.

13. Appointment of adjudicator by adjudicator nominating body

- (1) The Claimant must serve a notice of adjudication on the adjudicator nominating body specified in sub-clause (2) below on the same day on which the notice is served on the Respondent under SOP Clause 11.
- (2) The adjudicator nominating body shall be [] *{Parties to the Sub-contract shall specify the ANB chosen from the DEVB's Register of ANBs maintained by DEVB and published on the website: <https://www.devb.gov.hk>.}* and they must appoint a single adjudicator as the Adjudicator in accordance with the adjudication rules of the adjudicator nominating body and inform the Claimant and the Respondent in writing of the appointment, within 5 working days beginning on the commencement date of the adjudication.
- (3) The adjudication rules published by the adjudicator nominating body as specified in sub-clause (2) above shall apply to an adjudication initiated under SOP Clause 11. Notwithstanding, Part 3 of these SOP Provisions shall prevail over the adjudication rules in case of inconsistencies or ambiguities.
- (4) The Sub-contractor (as the Claimant) and the main Contractor *{Replace the words "the main Contractor" with "the Higher-tier-sub-contractor" for the second or lower tiers subcontracts}* (as the Respondent) agree and undertake that the Adjudicator shall be appointed on terms that give effect to SOP Clauses 14 to 36, 38 and 39.

13A. Selection of adjudicator nominating body

- (1) This SOP Clause applies if—
 - (a) no adjudicator nominating body is specified in the Sub-contract as the adjudicator nominating body for the payment dispute; and
 - (b) the Claimant and the Respondent fail to agree on an adjudicator nominating body before the notice of adjudication is served under SOP Clause 11.
- (2) The Claimant must nominate 2 adjudicator nominating bodies from the DEVB's Register of Adjudicator Nominating Bodies (published on the website: <https://www.devb.gov.hk>) in the notice of adjudication.
- (3) The Respondent must, within 5 working days beginning on the commencement date of the adjudication—
 - (a) select one of the adjudicator nominating bodies from the Claimant's nomination; and
 - (b) inform the Claimant in writing of the adjudicator nominating body selected by the Respondent.

The Claimant must serve a notice of adjudication on the adjudicator nominating body selected by the Respondent not later than 6 working days beginning on the commencement date of the adjudication.

- (4) If the Respondent fails to inform the Claimant under sub-clause (3), the Claimant must, not later than 6 working days beginning on the commencement date of the adjudication—
 - (a) select one of the adjudicator nominating bodies from the Claimant’s nomination;
 - (b) inform the Respondent of the adjudicator nominating body selected by the Claimant; and
 - (c) serve the notice of adjudication on the adjudicator nomination body.
- (5) The adjudicator nominating body selected under sub-clause (3) or (4) must appoint a single adjudicator as the Adjudicator in accordance with the adjudication rules of the adjudicator nominating body and inform the Claimant and the Respondent in writing of the appointment, within 5 working days after the date on which the notice of adjudication is served on the body.
- (6) The adjudication rules published by the adjudicator nominating body as selected under sub-clause (3) or (4) above shall apply. Notwithstanding, Part 3 of these SOP Provisions shall prevail over the adjudication rules in case of inconsistencies or ambiguities.
- (7) The Sub-contractor (as the Claimant) and the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* (as the Respondent) agree and undertake that the Adjudicator shall be appointed on terms that give effect to SOP Clauses 14 to 36, 38 and 39.

14. Adjudicators to declare and disclose interests

- (1) The Adjudicator must, at the time of accepting the appointment as an adjudicator, make a declaration in writing that—
 - (a) there is no conflict of interest in respect of the adjudicator’s appointment;
 - (b) the Adjudicator will act independently, impartially and in a timely manner and avoid incurring unnecessary expenses;
 - (c) the Adjudicator will comply with the principles of natural justice and decide the payment dispute in accordance with the applicable law; and
 - (d) there are no circumstances likely to give rise to justifiable doubts as to the Adjudicator’s impartiality and independence.
- (2) The Adjudicator must, from the time of accepting the appointment and throughout the adjudication proceedings, disclose to the parties to the adjudication any circumstances likely to give rise to justifiable doubts as to the Adjudicator’s impartiality and independence.

15. Claimant to serve adjudication submission

- (1) The Claimant must serve an adjudication submission on the Adjudicator and the Respondent within 1 working day after the date on which the Adjudicator is appointed.
- (2) An adjudication submission—
 - (a) must be in writing;
 - (b) must identify the notice of adjudication to which it relates; and
 - (c) must contain any supporting documents and evidence that the Claimant considers relevant to the adjudication.

16. Respondent to serve adjudication response

- (1) The Respondent may serve an adjudication response on the Adjudicator and the Claimant

within—

- (a) 20 working days after the date on which the adjudication submission is served on the Respondent; or
 - (b) any longer period the Adjudicator specifies.
- (2) An adjudication response—
- (a) must be in writing;
 - (b) must set out the Respondent’s reply to the adjudication submission; and
 - (c) must include any supporting documents and evidence that the Respondent considers relevant to the adjudication.

17. Jurisdiction of adjudicators

- (1) The Adjudicator’s jurisdiction is limited to determining—
- (a) the payment dispute that is referred to adjudication by the Claimant; and
 - (b) any other matters that are of a consequential or ancillary nature (including the time or extended time for completion of the Sub-contract) necessary to exercise or complete the exercise of the jurisdiction conferred by paragraph (a).
- (2) The Adjudicator has the power to rule on his or her own jurisdiction.

18. Adjudicator to conduct adjudication

- (1) The Adjudicator must conduct the adjudication in the manner the Adjudicator considers appropriate within the powers provided under SOP Clause 19.
- (2) When conducting an adjudication, the Adjudicator is not bound by the rules of evidence and may receive and take into account any relevant evidence or information, whether or not it would be otherwise admissible in a court of law.

19. Powers of the Adjudicator

- (1) The Adjudicator may—
- (a) establish the procedures for conducting the adjudication proceedings;
 - (b) determine the language or languages to be used in the adjudication proceedings;
 - (c) extend the deadline for service of an adjudication response under SOP Clause 16;
 - (d) request or allow the Claimant or the Respondent (“party to the adjudication”) to submit further written submission;
 - (e) request or allow a party to the adjudication to produce any document or provide any information that the Adjudicator reasonably requires;
 - (f) set deadlines for the submission, production of documents and provision of information;
 - (g) appoint, with the consent of the parties to the adjudication, an independent expert to inquire or report on any specific matter;
 - (h) call a conference of the parties to the adjudication;
 - (i) carry out an inspection of the construction site, any construction work or any other thing to which the payment dispute relates including opening up of any construction work done and conducting tests or experiments;
 - (j) decide on the proportion of the fees and expenses of the Adjudicator and any independent expert appointed under sub-clause (1)(g) to be paid by the parties to the adjudication; and

(k) issue any direction as may be necessary or expedient for the conduct of the adjudication.

(2) The parties to the adjudication must comply with any request or direction of the Adjudicator made or given in accordance with this SOP Clause. All communications between a party to the adjudication and the Adjudicator must be simultaneously copied to the other party.

20. Parties may be represented in adjudication proceedings

(1) A party to the adjudication may be represented by the representatives (whether legally qualified or not) that the party considers appropriate.

21. Circumstances where the Adjudicator must disregard submission etc.

(1) The Adjudicator must not consider any submission or response made by a party to the adjudication unless it was given to the Adjudicator within the time that the party may give it to the Adjudicator pursuant to these SOP Provisions or, if no time limit can be determined under the SOP Provisions, in accordance with the adjudication rules of the adjudicator nominating body.

(2) The Adjudicator must disregard any submission, evidence or document submitted by a party to the adjudication or any part of it to the extent that it comprises submission or evidence that—

- (a) the other party was unaware of on the date on which the notice of adjudication was served;
- (b) should reasonably have been served before the date on which the notice of adjudication was served; and
- (c) cannot be fairly considered and responded to by the other party.

22. When the Adjudicator's powers not affected

(1) The Adjudicator's power to determine a payment dispute is not affected by the failure of—

- (a) the Respondent to serve an adjudication response on the Claimant under SOP Clause 16; or
- (b) any of the parties to the adjudication to—
 - (i) make a submission (other than an adjudication submission under SOP Clause 15) within the time allowed by the Adjudicator;
 - (ii) comply with the Adjudicator's call for a conference of the parties; or
 - (iii) do any other thing that the Adjudicator requests or directs.

23. Resignation of the Adjudicator

(1) The Adjudicator may resign by giving notice in writing to the parties to the adjudication if the Adjudicator considers that it is not possible to decide the dispute fairly within the period specified in SOP Clause 26.

(2) A resignation takes effect on the later of—

- (a) the date specified in the notice; and
- (b) the date on which the notice is served on the parties to the adjudication.

24. Withdrawal of adjudication proceedings

- (1) The Claimant may at any time withdraw an adjudication by serving a notice of withdrawal in writing on the Adjudicator and the Respondent and the adjudicator nominating body on which the notice of adjudication has been served.
- (2) The Claimant who withdraws an adjudication must bear the fees and expenses of the Adjudicator and of any independent expert appointed under SOP Clause 19(1)(g) unless the Adjudicator orders otherwise.

25. Termination of adjudication proceedings

- (1) An adjudication is terminated if—
 - (a) the Claimant fails to serve an adjudication submission on the Adjudicator and the Respondent within the time specified in SOP Clause 15;
 - (b) the Claimant serves a notice of withdrawal under SOP Clause 24(1);
 - (c) the Respondent pays the claimed amount stated in the notice of adjudication in full to the Claimant;
 - (d) the Adjudicator resigns under SOP Clause 23(1);
 - (e) the Adjudicator becomes unable or unsuitable to act as the Adjudicator under the adjudication rules of the adjudicator nominating body, or the Adjudicator becomes ineligible to act as the Adjudicator pursuant to SOP Clause 33 or under the adjudication rules of the adjudicator nominating body;
 - (f) the payment dispute is settled by agreement in writing between the parties to the adjudication;
 - (g) the payment dispute is determined by a court or by arbitration or by any other dispute resolution proceeding;
 - (h) the Adjudicator fails to deliver an adjudication decision in accordance with SOP Clause 26(2); or
 - (i) the Adjudicator decides under SOP Clause 17 that he/she has no jurisdiction on the payment dispute.

26. Adjudication decisions

- (1) The Adjudicator must determine—
 - (a) the payment dispute referred to the Adjudicator;
 - (b) the adjudicated amount, which means the amount of the progress payment, if any, to be paid by the Respondent to the Claimant, or, as the case may be, any amount to be paid by the Claimant to the Respondent;
 - (c) the interest payable on the adjudicated amount;
 - (d) the date on which the adjudicated amount is payable; and
 - (e) the proportion of the fees and expenses of the Adjudicator and of any independent expert appointed under SOP Clause 19(1)(g) payable by each party to the adjudication in accordance with SOP Clauses 35 and 36.
- (2) The Adjudicator must, through the adjudicator nominating body that appointed the Adjudicator, deliver an adjudication decision to the parties to the adjudication within—
 - (a) 55 working days after the date on which the Adjudicator is appointed; or
 - (b) any longer period agreed by the parties to the adjudication.
- (3) An adjudication decision—
 - (a) must be in writing; and
 - (b) must contain reasons for the decision unless otherwise agreed by the parties to the adjudication.
- (4) An adjudication decision must be delivered to the adjudicator nominating body and the parties to the adjudication under sub-clause (2) in a manner specified in the adjudication rules of the body.

27. Effect of adjudication decision

- (1) An adjudication decision made under these SOP Provisions is binding on the parties to the adjudication and enforceable as a matter of contractual obligation unless and until—
 - (a) the payment dispute to which the decision relates is settled by agreement in writing between the parties to the adjudication; or
 - (b) the payment dispute is determined by a court or by arbitration or by any other dispute resolution proceeding.

28. Adjudicators may correct typographical errors etc.

- (1) The Adjudicator may, on his or her own initiative or at the request of a party to the adjudication, correct in the adjudication decision any computational or typographical errors or any errors of a similar nature.
- (2) Any correction must be done within 5 working days after the date on which the decision is delivered to the parties to the adjudication under SOP Clause 26(2).
- (3) To avoid doubt—
 - (a) any correction done to an adjudication decision under this SOP Clause does not affect the validity of the decision; and
 - (b) the time limit set out in SOP Clause 30 runs from the date on which the decision is delivered to the parties to the adjudication under SOP Clause 26(2).

29. Valuation of work etc. in later adjudication

- (1) Sub-clause (2) applies if, in an adjudication, an Adjudicator has, under SOP Clause 26(1), determined—
 - (a) the value of any construction work carried out under the Sub-contract; or
 - (b) the value of any related goods and services supplied under the Sub-contract; or
 - (c) the value of any other entitlements specified in the Sub-contract.
- (2) The Adjudicator or another adjudicator must, in any later adjudication that involves the working out of the value of that work or of those goods and services or any entitlements specified in the Sub-contract, give the work, or the goods and services or such entitlements, the same value as that previously decided.
- (3) However, sub-clause (2) does not apply to the extent the Claimant or Respondent in the later adjudication satisfies the Adjudicator that due to circumstances affecting the carrying out of the construction works and / or supply of related goods and services arising after the decision in the earlier adjudication the value of the work, or the goods or services, or any entitlements specified in the Sub-contract, in relation to the same has changed.

30. Settlement of adjudicated amount

- (1) If the Adjudicator determines in an adjudication decision that a party to the adjudication is required to pay an adjudicated amount to the other party, the party must pay the amount to that other party on or before the following date—
 - (a) the date specified by the Adjudicator in the adjudication decision; or
 - (b) if no date is specified by the Adjudicator in the adjudication decision—a date that is within 30 days after the date on which the adjudication decision is delivered to the parties to the adjudication under SOP Clause 26(2).

31. Effect of adjudication on other proceedings

- (1) Part 3 of these SOP Provisions does not affect any right that the parties to the Sub-contract may have to submit a payment dispute relating to or arising from the Sub-contract to a court, to arbitration, or to any other dispute resolution proceeding.
- (2) The submission of a payment dispute being adjudicated to a court, to arbitration, or to any other dispute resolution proceeding, does not terminate or otherwise affect the adjudication.

32. Confidentiality of adjudication

- (1) The parties to the adjudication and the Adjudicator must not disclose or give to another person any information relating to—
 - (a) an adjudication; or
 - (b) an adjudication decision made in the adjudication.
- (2) Despite sub-clause (1), the parties to the adjudication may disclose or give to another person information referred to in sub-clause (1) if—
 - (a) the information is in the public domain;
 - (b) the disclosure is made with the consent of—
 - (i) each of the parties to the adjudication; and
 - (ii) the adjudicator for the adjudication;

- (c) the disclosure is made to an adjudicator nominating body because of the operation of Part 3 of these SOP Provisions;
- (d) the disclosure is necessary for the purpose of settlement of the adjudicated amount;
- (e) the disclosure is made in another adjudication, a court proceeding, arbitration or any other dispute resolution proceeding in connection with the Sub-contract in respect of which the payment dispute under the adjudication arises;
- (f) the disclosure is made in accordance with the Sub-contract or a requirement imposed by law; or
- (g) the disclosure is made to—
 - (i) a professional or any other adviser of the party for the purpose of seeking legal or other professional advice;
 - (ii) insurers or bankers for reasonable commercial purposes;
 - (iii) enable proper applications for or assessments of payments; or
 - (iv) any other person who is responsible for administering the Sub-contract in respect of which the payment dispute under the adjudication arises; or
 - (v) **the Project Manager, the Supervisor / Service Manager / Engineer / Surveyor / Supervising Officer / Maintenance Surveyor* of the main Contract.

33. Eligibility of adjudicators

- (1) An individual is eligible to be appointed and act as the Adjudicator if the individual is on the panel of adjudicators of the adjudicator nominating body specified in SOP Clause 13(2) or, where SOP Clause 13A applies, selected under SOP Clause 13A.
- (2) An individual is not eligible to be appointed and act as the Adjudicator for an adjudication of a payment dispute if—
 - (a) the individual is a party (or employee or agent of a party) to the Sub-contract under which the payment dispute arose; or
 - (b) circumstances exist that give rise to justifiable doubts as to the individual's impartiality or independence.

34. Costs and expenses of adjudication incurred by parties

- (1) A party to an adjudication is not liable to pay any costs or expenses incurred by the other party to the adjudication as a result of or in relation to the adjudication.
- (2) Sub-clause (1) applies even if a party has caused the costs or expenses to be incurred by the other party unnecessarily or for any other reason.

35. Adjudicator's fees

- (1) The Adjudicator is entitled to be paid for adjudicating a payment dispute—
 - (a) the amount, by way of fees and expenses, agreed between the Adjudicator and the parties to the adjudication; or
 - (b) if no amount is agreed, the amount, for fees and expenses, that is reasonable having regard to the work done and the expenses incurred by the Adjudicator.
- (2) The Claimant and Respondent are jointly and severally liable to pay the Adjudicator's fees and expenses.

- (3) The Claimant and Respondent are each liable to contribute to the payment of the Adjudicator's fees and expenses—
 - (a) in the proportions the Adjudicator decides; or
 - (b) if the Adjudicator has not so decided—in equal proportions.
- (4) The Adjudicator is not entitled to be paid any fees or expenses for the adjudication if—
 - (a) the Adjudicator fails to deliver an adjudication decision either within the time required under SOP Clause 26(2) or at all;
 - (b) the Adjudicator resigns during the course of the adjudication; or
 - (c) the Adjudicator becomes ineligible to act as the Adjudicator pursuant to SOP Clause 33 or under the adjudication rules of the adjudicator nominating body.
- (5) However, sub-clause (4) does not apply if the adjudication is terminated pursuant to SOP Clauses 25(1)(b) or (i).
- (6) For the purposes of sub-clause (4), the Adjudicator does not fail to deliver an adjudication decision on the ground that:
 - (a) the Adjudicator refuses to deliver the adjudication decision to the parties to the adjudication pursuant to SOP Clause 26(2) until his or her fees and expenses are paid; or
 - (b) the Adjudicator has delivered the adjudication decision to the adjudicator nominating body within the time required under SOP Clause 26(2), but the adjudicator nominating body fails to deliver the adjudication decision to the parties to the adjudication within the time required under SOP Clause 26(2) or at all.
- (7) For the avoidance of doubt, the Adjudicator has the power to decide their fees and expenses after termination of an adjudication under SOP Clause 25 save and except where the adjudication is terminated on any of the grounds set out in SOP Clause 35(4).

36. Matters to be considered in deciding fees

- (1) This SOP Clause applies if the Adjudicator is making a decision about the proportion of the Adjudicator's fees and expenses to be paid by the Claimant and Respondent under SOP Clause 19(1)(j).

- (2) In making the decision, the Adjudicator may consider the following matters—
- (a) the relative success of the Claimant or Respondent in the adjudication;
 - (b) whether the Claimant or Respondent commenced or participated in the adjudication for an improper purpose;
 - (c) whether the Claimant or Respondent commenced or participated in the adjudication without reasonable prospects of success;
 - (d) whether the Claimant or Respondent has acted unreasonably leading up to the adjudication;
 - (e) whether the Claimant or Respondent has acted unreasonably in the conduct of the adjudication;
 - (f) the reasons given by the Respondent for not making the progress payment the subject of the adjudication application;
 - (g) whether the Respondent included additional reasons for not making the progress payment in the adjudication response that were not included in the payment response served on the Claimant;
 - (h) whether an adjudication application is withdrawn;
 - (i) the services provided by the Adjudicator in adjudicating the payment dispute, including the amount of time taken to consider discrete aspects of the amount claimed; and
 - (j) any other matter the Adjudicator considers relevant in making the decision.

Part 4 – Right to Suspend Work or Supply or Reduce Rate of Progress of Work or Supply

37. Sub-contractor’s right to suspend work or supply or reduce rate of progress of work or supply

- (1) The Sub-contractor may suspend, or reduce the rate of progress of, the works under the Sub-contract if all the conditions set out in either sub-clause (2) or (3) are satisfied.
- (2) The conditions are—
- (a) the Sub-contractor has served on the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* a payment claim under SOP Clause 5;
 - (b) the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* has—
 - (i) served a payment response on the Sub-contractor under SOP Clause 6 in which a net admitted amount is stated to be paid; but
 - (ii) failed to pay the net admitted amount in full on or before the date on which the net admitted amount became payable under SOP Clause 4;
 - (c) after the date as referred to in paragraph (b)(ii) and at least 5 working days before the date (“intended starting date”), on which he intends to start suspending, or reducing the rate of progress of the works under the Sub-contract, the Sub-contractor has served on the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* a notice of intention that meets the requirements set out in sub-clause (4);
 - (d) the Sub-contractor has taken reasonable steps at least 5 working days before the intended starting date to make the Employer and the main Contractor aware of the Sub-contractor’s notice of intention referred to in paragraph (c); and
 - (e) the net admitted amount is not paid in full before the intended starting date.

- (3) The conditions are—
- (a) the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* has not paid to the Sub-contractor the adjudicated amount in full on or before the date specified under SOP Clause 30 (“payment deadline”);
 - (b) after the payment deadline and at least 5 working days before the date (“intended starting date”), on which he intends to start suspending, or reducing the rate of progress of the works under the Sub-contract, the Sub-contractor has served on the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* a notice of intention that meets the requirements set out in sub-clause (4);
 - (c) the Sub-contractor has taken reasonable steps at least 5 working days before the intended starting date to make the Employer and the main Contractor aware of the Sub-contractor’s notice of intention referred to in paragraph (b); and
 - (d) the adjudicated amount is not paid in full before the intended starting date.
- (4) The notice of intention—
- (a) must be in writing;
 - (b) must state that it is given under these SOP Provisions;
 - (c) must indicate the Sub-contractor’s intention to suspend, or reduce the rate of progress of, the works under the Sub-contract; and
 - (d) may specify the intended starting date.
- (5) If no intended starting date is specified in the notice of intention, for the purposes of sub-clause (2) or (3), the date falling 5 working days after the date on which the notice of intention is served on the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* is taken to be the intended starting date.
- (6) The Sub-contractor exercising the right under sub-clause (1)—
- (a) is not in breach of the Sub-contract;
 - (b) is not liable for any loss and damage suffered by the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}*, or by any person claiming through the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}*, as a result of suspending, or reducing the rate of progress of, the works under the Sub-contract;
 - (c) is entitled to a fair and reasonable extension of time to complete the Sub-contract;
 - (d) is entitled to recover from the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* any costs and expenses incurred as a result of suspending, or reducing the rate of progress of, the works under the Sub-contract; and
 - (e) must resume the progress of the works within 7 working days after receiving the net admitted amount or the adjudicated amount in full.

Part 5 – Miscellaneous Matters

38. Exclusion of civil liability of adjudicators and adjudicator nominating bodies

- (1) The main Contractor *{Replace the words “The main Contractor” with “The Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* and the Sub-contractor agree that, save to the extent prohibited by law or in relation to liability for fraud, an Adjudicator and an adjudicator nominating body shall not be liable to the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* and the Sub-contractor in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* and the Sub-contractor of an indirect or consequential nature including without limitation any economic loss or other loss of turnover, profits, business or goodwill for an act done or omitted to be done by the Adjudicator or the adjudicator nominating body in good faith pursuant to these SOP Provisions.

39. Adjudicators not required to act as witnesses

- (1) The main Contractor *{Replace the words “The main Contractor” with “The Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* and the Sub-contractor agree that they shall not require the Adjudicator to give evidence or provide or produce any document or other material in an arbitration or other proceedings in connection with the payment dispute.

40. Service: adjudication documents

- (1) This SOP Clause applies to a document that is authorized or required to be served under Part 3 (Adjudication) of these SOP Provisions other than a notice of adjudication (if SOP Clause 13A applies) served by the Claimant on the Respondent under SOP Clause 11.
- (2) Such documents must be served—
 - (a) in a manner specified in these SOP Provisions; or
 - (b) if no manner is so specified—in a manner specified by the Adjudicator or in the adjudication rules published by the adjudicator nominating body as specified in SOP Clause 13 or, as the case may be, as selected under SOP Clause 13A.

41. Service: other documents

- (1) This SOP Clause applies to—
 - (a) a document that is authorized or required to be served under—
 - (i) Part 2 (Payments) of these SOP Provisions; or
 - (ii) Part 4 (Right to Suspend Work or Supply or Reduce Rate of Progress of Work or Supply) of these SOP Provisions; or
 - (b) if SOP Clause 13A applies, a notice of adjudication served by the Claimant on the Respondent under SOP Clause 11.
- (2) The document may be served by a party to the Sub-contract (“serving party”) on another party to the Sub-contract (“receiving party”) in the manner agreed between the parties.

- (3) If no manner is so agreed, the document may be served by a serving party on a receiving party—
- (a) if the receiving party is an individual—by delivering it to the receiving party by hand;
 - (b) by leaving it at, or sending it by post to, the receiving party’s last known residence or place of business;
 - (c) by sending it by fax transmission to the last known fax number of the receiving party; or
 - (d) by sending it by electronic mail transmission to the last known electronic mail address of the receiving party.
- (4) Sub-clause (5) applies if—
- (a) a document is served under sub-clause (2) but there is no agreement between the parties on how to determine the date of service of the document; or
 - (b) a document is served under sub-clause (3).
- (5) The document is taken, in the absence of evidence to the contrary, to have been served on the receiving party—
- (a) if it is delivered by hand—on the day on which it is so delivered;
 - (b) if it is left at the receiving party’s last known residence or place of business—on the day on which it is so left;
 - (c) if it is sent by post—on the day after the day on which it is so sent; or
 - (d) if it is sent by fax transmission or electronic mail transmission—on the day on which it is so transmitted.

42. Security of Payment for Relevant Subcontract

- (1) This Clause applies in relation to any subcontract of any tier for executing any part of the main Contract Works (“Relevant Subcontract”) (whether or not supplying a service, equipment, constructional plant, plant and materials for the main Contract Works is included as part of the Relevant Subcontract), but does not apply to—
- (a) a Relevant Subcontract to the extent that it contains provisions under which a party undertakes
 - (i) to lend money or to repay money lent;
 - (ii) to guarantee repayment of money owing or repayment of money lent; or
 - (iii) to act as an insurer with respect to the work carried out, or the service, equipment, constructional plant, plant and materials supplied, under the Relevant Subcontract;
 - (b) a Relevant Subcontract under which it is agreed that the consideration payable is to be calculated otherwise than by reference to the value of the work carried out, or the service, labour, equipment, plant or material supplied; or
 - (c) a Relevant Subcontract to the extent that it contains provisions under which a party undertakes to carry out the work or to supply the service, labour, equipment, plant or material as an employee of the other party.

- (2) For Relevant Subcontracts at a lower tier of subcontracting, the Sub-contractor shall ensure that the Mandatory Subcontract Conditions and the SOP Provisions for Relevant Subcontracts are included *mutatis mutandis* and in effective manner in all such Relevant Subcontracts entered into by the Sub-contractor. The Sub-contractor shall, if necessary, within a reasonable time enter into supplemental agreements with his sub-contractors to ensure that the Relevant Subcontracts comply with the requirements in this sub-clause.
- (3) For Relevant Subcontracts at any further lower tiers of subcontracting, the Sub-contractor shall take all reasonable steps to ensure that the Mandatory Subcontract Conditions and the SOP Provisions for Relevant Subcontracts are included *mutatis mutandis* and in effective manner in all such Relevant Subcontracts. The Sub-contractor shall take all reasonable steps to ensure that sub-contractors at any lower tier of subcontracting shall, if necessary, within a reasonable time enter into supplemental agreements to comply with the requirements in this sub-clause.
- (4) The Sub-contractor shall provide copies of the contract documents of all Relevant Subcontracts to the main Contractor and the **Project Manager / Service Manager / Engineer / Surveyor / Supervising Officer / Maintenance Surveyor* for the purpose of checking if the Mandatory Subcontract Conditions and the SOP Provisions for Relevant Subcontracts are included *mutatis mutandis*, and effectively incorporated to achieve their intent, in all Relevant Subcontracts as required under sub-clauses (2) and (3) of this Clause. Upon request by the main Contractor or the **Project Manager / Service Manager / Engineer / Surveyor / Supervising Officer / Maintenance Surveyor*, the Sub-contractor shall provide the original documents of the Relevant Subcontract for inspection.

43. Direct payment for settlement of unpaid Adjudicated Amount under Relevant Subcontract

- (1) “Adjudicated Amount under Relevant Subcontract” means an amount as shown in the original or certified true copy of an adjudication decision issued under an adjudication conducted in accordance with the SOP Provisions for Relevant Subcontracts that a party to a Relevant Subcontract is required to pay to another party to the same Relevant Subcontract.
- (2) The Sub-contractor shall report at monthly intervals to the main Contractor all notices of adjudication served under any Relevant Subcontract at lower tiers of subcontracting and the status of payment or settlement of any Adjudicated Amount under Relevant Subcontract. The Sub-contractor is deemed to give consent to the main Contractor to disclose the information provided under this sub-clause to the Employer and the **Project Manager / Service Manager / Engineer / Surveyor / Supervising Officer / Maintenance Surveyor*.

(3) Where the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}* (as the Respondent) has failed to pay the whole or any part of an Adjudicated Amount under Relevant Subcontract in accordance with the SOP Provisions for Relevant Subcontracts, the Sub-contractor (as the Claimant) may apply to the Employer, supported by submission of: (i) a certified true copy of the adjudication decision; (ii) identification of the work done, in respect of the works under the main Contract, to which the Adjudicated Amount under Relevant Subcontract relates; and (iii) a written declaration that the whole or any part of the Adjudicated Amount under Relevant Subcontract is outstanding, to request a direct payment of the outstanding amount, or any part thereof, in which case sub-clauses (4)(a) to (4)(d) shall apply. For the purposes of the Sub-contractor’s right to suspend or to reduce the rate of progress as provided in SOP Clause 37, a direct payment by the Employer in response to Sub-contractor’s application in accordance with this sub-clause is deemed to be a payment made by the main Contractor *{Replace the words “the main Contractor” with “the Higher-tier-sub-contractor” for the second or lower tiers subcontracts}*.

(4) Where—

- (i) a party to a Relevant Subcontract at the next lower tier of subcontracting (as the claimant) applies to the Employer for a direct payment because the Sub-contractor (as the respondent) has failed to pay the whole or any part of an Adjudicated Amount under Relevant Subcontract in accordance with the SOP Provisions for Relevant Subcontracts, or
- (ii) a party to a Relevant Subcontract at any further lower tiers of subcontracting (as the claimant) applies to the Employer for a direct payment because the other party to that Relevant Subcontract (as the respondent) has failed to pay the whole or any part of an Adjudicated Amount under Relevant Subcontract in accordance with the SOP Provisions for Relevant Subcontracts,

supported by submission of: (i) a certified true copy of the adjudication decision; (ii) identification of the work done, in respect of the works under the main Contract, to which the Adjudicated Amount under Relevant Subcontract relates; and (iii) a written declaration that the whole or any part of the Adjudicated Amount under Relevant Subcontract is outstanding, the Employer may make direct payment of the outstanding amount, or any part thereof, to the claimant in accordance with the following—

- (a) the Employer serves a letter, which incorporates the contents set out in Annex G to DEVB Technical Circular No. 6/2021, on the main Contractor with a copy to the claimant;

- (b) the main Contractor certifies and submits documentary proof to the Employer within 28 days after receipt of the letter referred to in paragraph (a) if:
- (i) he or any subcontractors of any tier has paid the Adjudicated Amount under Relevant Subcontract to the claimant or the claimant has been satisfied with any payment as full settlement of the Adjudicated Amount under Relevant Subcontract;
 - (ii) the adjudication decision is no longer binding on the respondent by reason of clause 27(1)(a) or 27(1)(b) under the SOP Provisions for Relevant Subcontracts or otherwise;
 - (iii) a subcontractor at any higher tier to the claimant:-
 - (I) has become bankrupt; or
 - (II) has had a receiving order made against him; or
 - (III) has presented a petition in bankruptcy; or
 - (IV) has made an arrangement with or assignment in favour of his creditors; or
 - (V) has agreed to carry out his Relevant Subcontract under a committee of inspection of his creditors; or
 - (VI) being a corporation, has gone into liquidation (other than voluntary liquidation for the purposes or amalgamation or reconstruction), administration or receivership or otherwise became insolvent; or
 - (iv) any subcontractor at higher tiers to the respondent will be unable to recover the amount of direct payment (to be made by the Employer) by way of deduction from its payments due or which may become due to its subcontracting parties at next lower tier under the Relevant Subcontracts;
- (c) if the main Contractor fails to certify or submit documentary proof to the Employer in accordance with paragraph (b), the Employer may directly pay the outstanding amount of the Adjudicated Amount under Relevant Subcontract, or any part thereof as advised by the main Contractor in his reply to the Employer's letter under paragraph (a) above, or such amount as appears reasonable to the Employer, to the claimant but the amount of such direct payment shall not exceed the total payments due or which may become due to the Contractor under the main Contract; however, if the main Contractor submits proof that a subcontractor at any higher tier to the claimant has become bankrupt or has had a receiving order made against him or has presented a petition in bankruptcy or has made an arrangement with or assignment in favour of his creditors or has agreed to carry out his Relevant Subcontract under a committee of inspection of his creditors or (being a corporation) has gone into liquidation (other than voluntary liquidation for the purposes or amalgamation or reconstruction), administration or receivership or otherwise became insolvent, the Employer shall not make the direct payment as requested. For the avoidance of doubt, the Employer shall not be under any obligation to make direct payment of the Adjudicated Amount under Relevant Subcontract;

- (d) under the main Contract, the Employer is entitled to deduct the amount of any direct payment made in accordance with paragraph (c) from any payments due or which may become due to the main Contractor under the main Contract or to otherwise recover the amount of direct payment made from the main Contractor;
- (e) the Sub-contractor agrees that, in connection with any deduction made by the Employer as described in paragraph (d), the main Contractor is entitled to deduct only the same amount of direct payment made in accordance with paragraph (c) from any payment that the main Contractor owes to the Sub-contractor under the Sub-contract or to otherwise recover the amount of direct payment made from the Sub-contractor; for the avoidance of doubt, any provisions in the Sub-contract stating that the main Contractor may deduct any amount in excess of the amount of direct payment made in accordance with paragraph (c) shall have no effect and unenforceable;
- (f) the entitlement of the main Contractor under paragraph (e) shall not be affected by any subsequent arbitration, court or other proceedings or settlement resulting in the amount due being different from the Adjudicated Amount under Relevant Subcontract or the adjudication decision is no longer binding on the parties to the adjudication.

{Replace paragraphs (e) to (f) above with the following for the second or lower tiers subcontracts}

- (e) the Sub-contractor agrees that, in connection with any deduction made by the Employer as described in paragraph (d), the Higher-tier-sub-contractor is entitled to deduct only the same amount of direct payment made in accordance with paragraph (c) from any payment that the Higher-tier-sub-contractor owes to the Sub-contractor under the Sub-contract or to otherwise recover the amount of direct payment from the Sub-contractor; for the avoidance of doubt, any provisions in the Sub-contract stating that the Higher-tier-sub-contractor may deduct any amount in excess of the amount of direct payment made in accordance with paragraph (c) shall have no effect and unenforceable;
- (f) the entitlement of the Higher-tier-sub-contractor under paragraph (e) shall not be affected by any subsequent arbitration, court or other proceedings or settlement resulting in the amount due being different from the Adjudicated Amount under Relevant Subcontract or the adjudication decision is no longer binding on the parties to the adjudication.

Dispute Resolution Clause for Capital Work Contracts

Dispute Resolution Clause for Capital Works Contracts
using NEC3 ECC (Options A to D)

To replace existing ACC Clause G1B¹

G1B	(1) Without prejudice to the right of the <i>Contractor</i> to refer any payment dispute, as defined in SOP Clause 9, to adjudication under SOP Clause 10 and subject to sub-clause (1A), if any dispute or difference of any kind whatsoever shall arise between the <i>Employer</i> and the <i>Contractor</i> in connection with or arising out of this contract or the carrying out of the <i>works</i> including any dispute as to any decision, instruction, order, direction, certificate or valuation by the <i>Project Manager</i> whether during the progress of the <i>works</i> or after Completion and whether before or after the termination, abandonment or breach of this contract, it shall be referred to and settled by the <i>Project Manager</i> who shall state his decision in writing and give notice of the same to the <i>Employer</i> and the <i>Contractor</i> . Unless this contract shall have been already terminated or abandoned or a right to suspend or reduce the rate of progress is being exercised by the <i>Contractor</i> (excluding his suppliers or subcontractors at any tiers) under SOP Clause 37, the <i>Contractor</i> shall in every case continue to proceed with the <i>works</i> with all due diligence and he shall give effect forthwith to every such decision of the <i>Project Manager</i> made under this sub-clause. Such decision shall be final and binding upon the <i>Contractor</i> and the <i>Employer</i> unless, until and to the extent revised or superseded by any agreement in writing between the Parties, decision of an adjudicator arising from an adjudication under the SOP Provisions, or arbitration award. If the <i>Project Manager</i> shall fail to give such decision for a period of 28 days after being requested to do so or if either the <i>Employer</i> or the <i>Contractor</i> be dissatisfied with any such decision of the <i>Project Manager</i> , then either the <i>Employer</i> or the <i>Contractor</i> may within 28 days after receiving notice of such decision, or within 28 days after the expiry of the said decision period of 28 days, as the case may be, request that the matter be referred to mediation in accordance with and subject to The Government of the Hong Kong Special Administrative Region Construction Mediation Rules or any modification thereof being in force at the date of such request.	Settlement of Disputes	Adopt Clause G1B for works contract which is subject to DEVB TC(W) No. 6/2021. Clause G1A shall not be used.
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¹ DEVB's Library of Additional Conditions of Contract (March 2017) for NEC3 ECC.

- (1A) (a) Payment disputes, as defined in SOP Clause 9, which have been determined by a decision of the *Adjudicator* shall not be referred to and settled by the *Project Manager* under sub-clause (1) of this Clause (whether included in a wider dispute or otherwise).
- (b) If a payment dispute, as defined in SOP Clause 9, is determined by a decision of the *Adjudicator* after reference of the payment dispute (or a dispute which includes the payment dispute) to the *Project Manager* under sub-clause (1) of this Clause but before the *Project Manager* has given his decision on the same, the *Project Manager* shall not give any decision on the same under sub-clause (1) of this Clause. For the avoidance of doubt, the *Project Manager* not giving decision on the payment dispute pursuant to this sub-clause (1A) is not a failure to give a decision under sub-clause (1) of this Clause and the payment dispute cannot be referred to mediation or arbitration, and sub-clauses (3)(e) and (3)(f) of this Clause are not applicable.
- (1B) The *Employer* or the *Contractor* may, within 28 days after the day on which an adjudication decision under the SOP Provisions is delivered by the *Adjudicator*, request that the matter be referred to mediation in accordance with and subject to The Government of the Hong Kong Special Administrative Region Construction Mediation Rules or any modification thereof being in force at the date of such request.
- (1C) For the avoidance of doubt, a decision by the *Adjudicator* that he has no jurisdiction to adjudicate all or any part of a payment dispute is not a determination made by the *Adjudicator* of that payment dispute for the purposes of this Clause and an arbitrator appointed pursuant to this Clause is not bound by any decisions made by the *Adjudicator* as to the *Adjudicator's* jurisdiction in relation to a payment dispute.
- (2) If the matter cannot be resolved by mediation, or if either the *Employer* or the *Contractor* do not wish the matter to be referred to mediation then either the *Employer* or the *Contractor* may within the time specified herein require that the matter shall be referred to arbitration in accordance with and subject to the provisions of the Arbitration Ordinance and any such reference shall be deemed to be a submission to arbitration within the meaning of such Ordinance.

- (3) Any reference to arbitration shall be made within 90 days of:
- (a) the receipt of a request for mediation and subsequently the recipient of such request having failed to respond, or
 - (b) the refusal to mediate, or
 - (c) the failure of the mediation proceedings to produce a settlement acceptable to the *Employer* and the *Contractor*, or
 - (d) the abandonment of the mediation, or
 - (e) where the *Project Manager* has failed to give a decision within the 28 days allowed under sub-clause (1) of this Clause after being requested to do so, the expiry of the subsequent period of 28 days for the *Employer* or the *Contractor* to request that the matter be referred to mediation, and neither the *Employer* nor the *Contractor* having requested mediation within that subsequent period of 28 days, or
 - (f) where the *Project Manager* has given a decision within the 28 days allowed under sub-clause (1) of this Clause, the expiry of the period of 28 days after receipt of the notice of the *Project Manager's* decision for the *Employer* or the *Contractor* to request that the matter be referred to mediation, and neither the *Employer* nor the *Contractor* having requested mediation within that period of 28 days, or
 - (g) where a payment dispute, as defined in SOP Clause 9, has been determined by the *Adjudicator* in accordance with the SOP Provisions, the expiry of the period of 28 days allowed under sub-clause (1B) for the *Employer* or the *Contractor* to request that the matter be referred to mediation, and neither the *Employer* nor the *Contractor* having requested mediation within that period of 28 days.

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

Provided that:

- (a) the giving of a certificate of Completion shall not be a condition precedent to the taking of any step in such reference;
- (b) no decision given by the *Project Manager* or the *Supervisor* shall disqualify him from being called as a witness and giving evidence before the arbitrator on any matter whatsoever relevant to the dispute or difference so referred to the arbitrator as aforesaid.
- (5) In the case of any disputes or difference as to the exercise of the *Project Manager's* powers of determination of the *Contractor's* employment the reference to the arbitrator may proceed notwithstanding that the *works* shall not then be or be alleged to be complete.
- (6) In the case where this contract has been terminated or abandoned, the reference to the arbitrator may proceed notwithstanding that the *works* shall not then be or be alleged to be complete.
- (7) (a) Subject to paragraph (b) and (c) of this sub-clause, the Domestic Arbitration Rules (2014) of the Hong Kong International Arbitration Centre (the Arbitration Rules) shall apply to any arbitration instituted in accordance with this Clause.
- (b) Notwithstanding any provision of the Arbitration Rules, the place of meetings and hearings in the arbitration shall be Hong Kong unless the Parties otherwise agree.

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

- (8) All the provisions in Schedule 2 of the Arbitration Ordinance shall apply to any arbitration instituted in accordance with this Clause.
- (9) For the purposes of this Clause, "Arbitration Ordinance" means "the Arbitration Ordinance (Cap. 609) or any statutory modification thereof for the time being in force".

**Dispute Resolution Clause for Capital Works Contracts
using GCC 1999 Ed. (except GCC for D&B Contracts)**

To replace existing SCC [XA]²

Revised SCC [XA] – Settlement of Disputes

General Conditions of Contract Clause 86 is deleted and replaced by the following:

- “86. (1) Without prejudice to the right of the Contractor to refer any payment dispute, as defined in SOP Clause 9, to adjudication under SOP Clause 10 and subject to sub-clause (1A), if any dispute or difference of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract or the carrying out of the Works including any dispute as to any decision, instruction, order, direction, **certificate or valuation by the Engineer / certificate of the Supervising Officer or certificate or valuation by the Surveyor* whether during the progress of the Works or after completion and whether before or after the termination, abandonment or breach of the Contract, it shall be referred to and settled by the **Engineer / Supervising Officer* who shall state his decision in writing and give notice of the same to the Employer and the Contractor. Unless the Contract shall have been already terminated or abandoned or a right to suspend or reduce the rate of progress is being exercised by the Contractor (excluding his suppliers or subcontractors at any tiers) under SOP Clause 37, the Contractor shall in every case continue to proceed with the Works with all due diligence and he shall give effect forthwith to every such decision of the **Engineer / Supervising Officer* made under this sub-clause. Such decision shall be final and binding upon the Contractor and the Employer unless, until and to the extent revised or superseded by any agreement in writing between the Employer and the Contractor, decision of an adjudicator arising from an adjudication under the SOP Provisions, or arbitration award. If the **Engineer / Supervising Officer* shall fail to give such decision for a period of 28 days after being requested to do so or if either the Employer or the Contractor be dissatisfied with any such decision of the **Engineer / Supervising Officer* then either the Employer or the Contractor may within 28 days after receiving notice of such decision, or within 28 days after the expiry of the said decision period of 28 days, as the case may be, request that the matter be referred to mediation in accordance with and subject to The Government of the Hong Kong Special Administrative Region Construction Mediation Rules or any modification thereof being in force at the date of such request.
- (1A) (a) Payment disputes, as defined in SOP Clause 9, which have been determined by a decision of the Adjudicator shall not be referred to and settled by the **Engineer / Supervising Officer* under sub-clause (1) of this Clause (whether included in a wider dispute or

² Promulgated in Annex B to SDEV's memo ref. DEVB(W) 505/10/01 dated 4 December 2014.

otherwise).

- (b) If a payment dispute, as defined in SOP Clause 9, is determined by a decision of the Adjudicator after reference of the payment dispute (or a dispute which includes the payment dispute) to the *Engineer / Supervising Officer under sub-clause (1) of this Clause but before the *Engineer / Supervising Officer has given his decision on the same, the *Engineer / Supervising Officer shall not give any decision on the same under sub-clause (1) of this Clause. For the avoidance of doubt, the *Engineer / Supervising Officer not giving decision on the payment dispute pursuant to this sub-clause (1A) is not a failure to give a decision under sub-clause (1) of this Clause and the payment dispute cannot be referred to mediation or arbitration, and sub-clauses (3)(e) and (3)(f) of this Clause are not applicable.

(1B) The Employer or the Contractor may, within 28 days after the day on which an adjudication decision under the SOP Provisions is delivered by the Adjudicator, request that the matter be referred to mediation in accordance with and subject to The Government of the Hong Kong Special Administrative Region Construction Mediation Rules or any modification thereof being in force at the date of such request.

(1C) For the avoidance of doubt, a decision by the Adjudicator that he has no jurisdiction to adjudicate all or any part of a payment dispute is not a determination made by the Adjudicator of that payment dispute for the purposes of this Clause and an arbitrator appointed pursuant to this Clause is not bound by any decisions made by the Adjudicator as to the Adjudicator's jurisdiction in relation to a payment dispute.

(2) If the matter cannot be resolved by mediation, or if either the Employer or the Contractor do not wish the matter to be referred to mediation then either the Employer or the Contractor may within the time specified herein require that the matter shall be referred to arbitration in accordance with and subject to the provisions of the Arbitration Ordinance and any such reference shall be deemed to be a submission to arbitration within the meaning of such Ordinance.

(3) Any reference to arbitration shall be made within 90 days of:

- (a) the receipt of a request for mediation and subsequently the recipient of such request having failed to respond, or
- (b) the refusal to mediate, or
- (c) the failure of the mediation proceedings to produce a settlement

acceptable to the Employer and the Contractor, or

- (d) the abandonment of the mediation, or
- (e) where the **Engineer / Supervising Officer* has failed to give a decision within the 28 days allowed under sub-clause (1) of this Clause after being requested to do so, the expiry of the subsequent period of 28 days for the Employer or the Contractor to request that the matter be referred to mediation, and neither the Employer nor the Contractor having requested mediation within that subsequent period of 28 days, or
- (f) where the **Engineer / Supervising Officer* has given a decision within the 28 days allowed under sub-clause (1) of this Clause, the expiry of the period of 28 days after receipt of the notice of the **Engineer's / Supervising Officer's* decision for the Employer or the Contractor to request that the matter be referred to mediation, and neither the Employer nor the Contractor having requested mediation within that period of 28 days, or
- (g) where a payment dispute, as defined in SOP Clause 9, has been determined by the Adjudicator in accordance with the SOP Provisions, the expiry of the period of 28 days allowed under sub-clause (1B) for the Employer or the Contractor to request that the matter be referred to mediation, and neither the Employer nor the Contractor having requested mediation within that period of 28 days.

(4) The arbitrator appointed shall have full power to open up, review and revise any decision (other than a decision under Clause 46(3) not to vary the Works), instruction, order, direction, **certificate or valuation by the Engineer / certificate of the Supervising Officer or certificate or valuation by the Surveyor* and neither party shall be limited in the proceedings before such arbitrator to the evidence or arguments put before the **Engineer / Supervising Officer* for the purpose of obtaining his decision above referred to or limited to the evidence and arguments put before any Adjudicator. Save as provided for in sub-clauses (5) and (6) of this Clause no steps shall be taken in the reference to the arbitrator until after the completion or alleged completion of the Works unless with the written consent of the Employer and the Contractor.

Provided that:

- (a) the giving of a certificate of completion in accordance with Clause 53 shall not be a condition precedent to the taking of any step in such reference;
- (b) no decision given by the **Engineer / Supervising Officer* in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator on

any matter whatsoever relevant to the dispute or difference so referred to the arbitrator as aforesaid.

(5) In the case of any disputes or difference as to the exercise of the ***Engineer's / Supervising Officer's** powers under Clause 81(1) the reference to the arbitrator may proceed notwithstanding that the Works shall not then be or be alleged to be complete.

(6) In the case where the Contract has been terminated or abandoned, the reference to the arbitrator may proceed notwithstanding that the Works shall not then be or be alleged to be complete.

(7)(a) Subject to paragraphs (b) and (c) of this sub-clause, the Domestic Arbitration Rules (2014) of the Hong Kong International Arbitration Centre (the Arbitration Rules) shall apply to any arbitration instituted in accordance with this Clause.

(b) Notwithstanding any provision of the Arbitration Rules, the place of meetings and hearings in the arbitration shall be Hong Kong unless the parties otherwise agree.

(c) Article 20.1 of the Arbitration Rules shall be deleted and 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) and subject to the following provisions, the party comprising the Government of the Hong Kong Special Administrative Region (the Government party) may disclose the outline of any dispute with the other party and the outcome of the arbitration to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said Committee, the Government party shall inform the other party.

Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the outcome of the arbitration without the written consent of the other party but such consent shall not be unreasonably withheld. The other party shall be deemed to have given his consent to disclosures on the expiry of the first 6 months from the date of the outcome of the arbitration. The other party may, if he considers necessary to protect the sensitive nature of certain information relating to him, request the Government party to disclose such specified information to the said Committee strictly on a confidential basis. If the Government party considers that there are legitimate grounds to accede to the other party's request, the Government party shall convey the request to the said Committee for its consideration."

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

(9) For the purposes of this Clause, "Arbitration Ordinance" means the Arbitration Ordinance (Cap. 609) or any statutory modification thereof for the time being in force."

* select as appropriate.

[Note:

1. For GCC for Civil Engineering Works / for E&M Engineering Works, 1999 Edition, the optional entries with reference to "the Engineer" should be selected.
2. For GCC for Building Works, 1999 Edition, the optional entries with reference to "the Supervising Officer" and "the Surveyor" should be selected.]

Dispute Resolution Clause for Capital Works Contracts
using GCC for D&B Contracts 1999 Ed.

To replace existing SCC [ZA]³

Revised SCC [ZA] – Settlement of Disputes

General Conditions of Contract Clause 86 is deleted and replaced by the following:

- “86.** (1) Any and all disputes shall be settled in accordance with the provisions of this Clause 86 and Part 3 of the SOP Provisions.
- (2) For the purpose of this Clause, dispute means any dispute or difference of any kind whatsoever between the Employer and the Contractor arising under, out of or in connection with the Contract or the carrying out of the Works including any dispute as to any decision, instruction, opinion, order, direction, certificate or valuation by the Supervising Officer whether during the progress of the Works or after completion and whether before or after the termination, abandonment or breach of the Contract.
- (3) For the purpose of this Clause 86 and notwithstanding sub-clause (2) of this Clause, without prejudice to the right of the Contractor to refer any payment dispute, as defined in SOP Clause 9, to adjudication under SOP Clause 10 subject to sub-clause (6A), a dispute shall be deemed to arise when either the Contractor or the Employer serves on the Supervising Officer and the other party a notice in writing stating the nature of the dispute.
- (4) The Supervising Officer shall within 28 days of receipt of the notice referred to in sub-clause (3) of this Clause decide the dispute and notify the Employer and the Contractor in writing of his decision. Such decision shall be final and binding upon the Employer and the Contractor unless, until and to the extent revised or superseded by any agreement in writing between the Employer and the Contractor, decision of an adjudicator arising from an adjudication under the SOP Provisions, or arbitration award.
- (5) Unless the Contract shall have been already terminated or abandoned or a right to suspend or reduce the rate of progress is being exercised by the Contractor (excluding his suppliers or subcontractors at any tiers) under SOP Clause 37, the Contractor shall in every case continue to proceed with the Works with all due diligence and he shall give effect forthwith to every such decision of the Supervising Officer given in accordance with sub-clause (4) of this Clause.

³ Promulgated in Annex D to SDEV’s memo ref. DEVB(W) 505/10/01 dated 4 December 2014.

(6) If the Supervising Officer shall fail to give such decision in accordance with sub-clause (4) of this Clause or if either the Employer or the Contractor is dissatisfied with such decision then either the Employer or the Contractor may within 28 days after receiving notice of such decision, or within 28 days after the expiration of the said decision period of 28 days, as the case may be, request that the dispute be referred to mediation in accordance with and subject to The Government of the Hong Kong Special Administrative Region Construction Mediation Rules or any modification thereof being in force at the date of such request.

(6A) (a) Payment disputes, as defined in SOP Clause 9, which have been determined by a decision of the Adjudicator shall not be referred to and settled by the Supervising Officer under sub-clause (1) of this Clause (whether included in a wider dispute or otherwise).

(b) If a payment dispute, as defined in SOP Clause 9, is determined by a decision of the Adjudicator after reference of the payment dispute (or a dispute which includes the payment dispute) to the Supervising Officer under sub-clause (3) of this Clause but before the Supervising Officer has made his decision on the same, the Supervising Officer makes no decision on the same under sub-clause (4) of this Clause. For the avoidance of doubt, the Supervising Officer not giving decision on the payment dispute pursuant to this sub-clause (6A) is not a failure to give a decision under sub-clause (4) of this Clause and the payment dispute cannot be referred to mediation or arbitration, and sub-clauses (7)(e) and (7)(f) of this Clause are not applicable.

(6B) The Employer and the Contractor may, within 28 days after the day on which an adjudication decision under the SOP Provisions is delivered by the Adjudicator, request that the matter be referred to mediation in accordance with and subject to The Government of the Hong Kong Special Administrative Region Construction Mediation Rules or any modification thereof being in force at the date of such request.

(6C) For the avoidance of doubt, a decision by the Adjudicator that he has no jurisdiction to adjudicate all or any part of a payment dispute is not a determination made by the Adjudicator of that payment dispute for the purposes of this Clause and an arbitrator appointed pursuant to this Clause is not bound by any decisions made by the Adjudicator as to the Adjudicator's jurisdiction in relation to a payment dispute.

(7) If the dispute cannot be resolved by mediation, or if either the Employer or the Contractor do not wish the dispute to be referred to mediation then either the Employer or the Contractor may within the time specified herein require that the dispute shall be referred to arbitration in accordance with and subject

to the provisions of the Arbitration Ordinance and any such reference shall be deemed to be a submission to arbitration within the meaning of such Ordinance. Any reference to arbitration shall be made within 90 days of:

- (a) the receipt of a request for mediation and subsequently the recipient of such request having failed to respond, or
- (b) the refusal to mediate, or
- (c) the failure of the mediation proceedings to produce a settlement acceptable to the Employer and the Contractor, or
- (d) the abandonment of the mediation, or
- (e) where the Supervising Officer has failed to give a decision within the 28 days allowed under sub-clause (4) of this Clause after being requested to do so, the expiry of the subsequent period of 28 days for the Employer or the Contractor to request that the matter be referred to mediation, and neither the Employer nor the Contractor having requested mediation within that subsequent period of 28 days, or
- (f) where the Supervising Officer has given a decision within the 28 days allowed under sub-clause (4) of this Clause, the expiry of the period of 28 days after receipt of the notice of the Supervising Officer's decision for the Employer or the Contractor to request that the matter be referred to mediation, and neither the Employer nor the Contractor having requested mediation within that period of 28 days, or
- (g) where a payment dispute, as defined in SOP Clause 9, has been determined by the Adjudicator in accordance with the SOP Provisions, the expiry of the period of 28 days allowed under sub-clause (6B) for the Employer or the Contractor to request that the matter be referred to mediation, and neither the Employer nor the Contractor having requested mediation within that period of 28 days.

(8) The arbitrator appointed shall have full power to open up, review and revise any decision (other than a decision under Clause 46(3) not to order a Variation), instruction, opinion, order, direction, certificate or valuation by the Supervising Officer and neither party shall be limited in the proceedings before such arbitrator to the evidence or arguments put before the Supervising Officer for the purpose of obtaining his decision referred to above or limited to the evidence and arguments put before any Adjudicator. Save as provided for in sub-clauses (9) and (9A) of this Clause no steps shall be taken in the reference to the arbitrator until after the completion or alleged completion of the Works unless with the written consent of the Employer and the Contractor.

Provided that:

- (a) the giving of a certificate of completion in accordance with Clause 53 shall not be a condition precedent to the taking of any step in such reference;
- (b) no decision given by the Supervising Officer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator on any matter whatsoever relevant to the dispute so referred to the arbitrator as aforesaid.

(9) In the case of any dispute as to the exercise of the Supervising Officer's powers under Clause 81(1) the reference to the arbitrator may proceed notwithstanding that the Works shall not then be or be alleged to be complete.

(9A) In the case where the Contract has been terminated or abandoned, the reference to the arbitrator may proceed notwithstanding that the Works shall not then be or be alleged to be complete.

(10)(a) Subject to paragraphs (b) and (c) of this sub-clause, the Domestic Arbitration Rules (2014) of the Hong Kong International Arbitration Centre (the Arbitration Rules) shall apply to any arbitration instituted in accordance with this Clause.

(b) Notwithstanding any provision of the Arbitration Rules, the place of meetings and hearings in the arbitration shall be Hong Kong unless the parties otherwise agree.

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

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

(12) 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."

Dispute Resolution Clause for Term Contracts

Dispute Resolution Clause for Term Contracts
using NEC3 TSC (Option A)
To replace existing ACC Clause G1⁴

G1	(1)	<p>Without prejudice to the right of the <i>Contractor</i> to refer any payment dispute, as defined in SOP Clause 9, to adjudication under SOP Clause 10 and subject to sub-clause (1A), if any dispute or difference of any kind whatsoever shall arise between the <i>Employer</i> and the <i>Contractor</i> in connection with or arising out of this contract or the carrying out of the <i>service</i> including any dispute as to any decision, instruction, order, direction, certificate or valuation by the <i>Service Manager</i> whether during the progress of the <i>service</i> or after the completion of the <i>service</i> and whether before or after the termination, abandonment or breach of this contract, it shall be referred to and settled by the <i>Service Manager</i> who shall state his decision in writing and give notice of the same to the <i>Employer</i> and the <i>Contractor</i>. Unless this contract shall have been already terminated or abandoned or a right to suspend or reduce the rate of progress is being exercised by the <i>Contractor</i> (excluding his suppliers or subcontractors at any tiers) under SOP Clause 37, the <i>Contractor</i> shall in every case continue to proceed with the <i>service</i> with all due diligence and he shall give effect forthwith to every such decision of the <i>Service Manager</i> made under this sub-clause. Such decision shall be final and binding upon the <i>Contractor</i> and the <i>Employer</i> unless, until and to the extent revised or superseded by any agreement in writing between the Parties, decision of an adjudicator arising from an adjudication under the SOP Provisions, or arbitration award. If the <i>Service Manager</i> shall fail to give such decision for a period of 28 days after being requested to do so or if either the <i>Employer</i> or the <i>Contractor</i> be dissatisfied with any such decision of the <i>Service Manager</i>, then either the <i>Employer</i> or the <i>Contractor</i> may within 28 days after receiving notice of such decision, or within 28 days after the expiry of the said decision period of 28 days, as the case may be, request that the matter be referred to mediation in accordance with and subject to The Government of the Hong Kong Special Administrative Region Construction Mediation Rules or any modification thereof being in force at the date of such request.</p>	Settlement of Disputes	<p>Adopt Clause G1 for term contract which is subject to DEVB TC(W) No. 6/2021.</p>
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⁴ DEVB's Library of Additional Conditions of Contract (July 2017) for NEC3 TSC.

- (1A) (a) Payment disputes, as defined in SOP Clause 9, which have been determined by a decision of the *Adjudicator* shall not be referred to and settled by the *Service Manager* under sub-clause (1) of this Clause (whether included in a wider dispute or otherwise).
- (b) If a payment dispute, as defined in SOP Clause 9, is determined by a decision of the *Adjudicator* after reference of the payment dispute (or a dispute which includes the payment dispute) to the *Service Manager* under sub-clause (1) of this Clause but before the *Service Manager* has given his decision on the same, the *Service Manager* shall not give any decision on the same under sub-clause (1) of this Clause. For the avoidance of doubt, the *Service Manager* not giving decision on the payment dispute pursuant to this sub-clause (1A) is not a failure to give a decision under sub-clause (1) of this Clause and the payment dispute cannot be referred to mediation or arbitration, and sub-clauses (3)(e) and (3)(f) of this Clause are not applicable.
- (1B) The *Employer* or the *Contractor* may, within 28 days after the day on which an adjudication decision under the SOP Provisions is delivered by the *Adjudicator*, request that the matter be referred to mediation in accordance with and subject to The Government of the Hong Kong Special Administrative Region Construction Mediation Rules or any modification thereof being in force at the date of such request.
- (1C) For the avoidance of doubt, a decision by the *Adjudicator* that he has no jurisdiction to adjudicate all or any part of a payment dispute is not a determination made by the *Adjudicator* of that payment dispute for the purposes of this Clause and an arbitrator appointed pursuant to this Clause is not bound by any decisions made by the *Adjudicator* as to the *Adjudicator's* jurisdiction in relation to a payment dispute.
- (2) If the matter cannot be resolved by mediation, or if either the *Employer* or the *Contractor* do not wish the matter to be referred to mediation then either the *Employer* or the *Contractor* may within the time specified herein require that the matter shall be referred to arbitration in accordance with and subject to the provisions of the Arbitration Ordinance and any such reference shall be deemed to be a submission to arbitration within the meaning of such Ordinance.

- (3) Any reference to arbitration shall be made within 90 days of:
- (a) the receipt of a request for mediation and subsequently the recipient of such request having failed to respond, or
 - (b) the refusal to mediate, or
 - (c) the failure of the mediation proceedings to produce a settlement acceptable to the *Employer* and the *Contractor*, or
 - (d) the abandonment of the mediation, or
 - (e) where the *Service Manager* has failed to give a decision within the 28 days allowed under sub-clause (1) of this Clause after being requested to do so, the expiry of the subsequent period of 28 days for the *Employer* or the *Contractor* to request that the matter be referred to mediation, and neither the *Employer* nor the *Contractor* having requested mediation within that subsequent period of 28 days, or
 - (f) where the *Service Manager* has given a decision within the 28 days allowed under sub-clause (1) of this Clause, the expiry of the period of 28 days after receipt of the notice of the *Service Manager's* decision for the *Employer* or the *Contractor* to request that the matter be referred to mediation, and neither the *Employer* nor the *Contractor* having requested mediation within that period of 28 days, or
 - (g) where a payment dispute, as defined in SOP Clause 9, has been determined by the *Adjudicator* in accordance with the SOP Provisions, the expiry of the period of 28 days allowed under sub-clause (1B) for the *Employer* or the *Contractor* to request that the matter be referred to mediation, and neither the *Employer* nor the *Contractor* having requested mediation within that period of 28 days.

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

Provided that:

- (a) the expiry of the *service period* shall not be a condition precedent to the taking of any step in such reference;
- (b) no decision given by the *Service Manager* shall disqualify him from being called as a witness and giving evidence before the arbitrator on any matter whatsoever relevant to the dispute or difference so referred to the arbitrator as aforesaid.
- (5) In the case of any disputes or difference as to the exercise of the *Service Manager's* powers of determination of the *Contractor's* employment the reference to the arbitrator may proceed notwithstanding that the *service* shall not then be or be alleged to be complete.
- (6) In the case where this contract has been terminated or abandoned, the reference to the arbitrator may proceed notwithstanding that the *service* shall not then be or be alleged to be complete.
- (7) (a) Subject to paragraph (b) and (c) of this sub-clause, the Domestic Arbitration Rules (2014) of the Hong Kong International Arbitration Centre (the Arbitration Rules) shall apply to any arbitration instituted in accordance with this Clause.
- (b) Notwithstanding any provision of the Arbitration Rules, the place of meetings and hearings in the arbitration shall be Hong Kong unless the Parties otherwise agree.
- (c) Article 20.1 of the Arbitration Rules shall be deleted and 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) and subject to the following provisions, the party comprising the Government of the Hong Kong Special Administrative Region (the Government party) may disclose the outline of any dispute with the other party and the outcome of the arbitration to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said Committee, the Government party shall inform the other party. Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the outcome of the arbitration without the written consent of the other party but such consent shall not be unreasonably withheld. The other party shall be deemed to have given his consent to disclosures on the expiry of the first 6 months from the date of the outcome of the arbitration. The other party may, if he considers necessary to protect the sensitive nature of certain information relating to him, request the Government party to disclose such specified information to the said Committee strictly on a confidential basis. If the Government party considers that there are legitimate grounds to accede to the other party's request, the Government party shall convey the request to the said Committee for its consideration."

- (8) All the provisions in Schedule 2 of the Arbitration Ordinance shall apply to any arbitration instituted in accordance with this Clause.
- (9) For the purposes of this Clause, “Arbitration Ordinance” means “the Arbitration Ordinance (Cap. 609) or any statutory modification thereof for the time being in force”.

Dispute Resolution Clause for Term Contracts
using GCC for Term Contracts (Civil / E&M / Building)

To replace existing SCC [YA]⁵

Revised SCC [YA] – Settlement of Disputes

General Conditions of Contract Clause *89/92 is deleted and replaced by the following:

“*89./92. (1) Without prejudice to the right of the Contractor to refer any payment dispute, as defined in SOP Clause 9, to adjudication under SOP Clause 10 and subject to sub-clause (1A), if any dispute or difference of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract or the carrying out of the Works including any dispute as to any decision, instruction, order, direction, certificate or valuation by the *Engineer / Maintenance Surveyor whether during the progress of the Whole of the Works or after their completion and whether before or after the termination, abandonment or breach of the Contract, it shall be referred to and settled by the *Engineer / Maintenance Surveyor who shall state his decision in writing and give notice of the same to the Employer and the Contractor. Unless the Contract shall have been already terminated or abandoned or a right to suspend or reduce the rate of progress is being exercised by the Contractor (excluding his suppliers or subcontractors at any tiers) under SOP Clause 37, the Contractor shall in every case continue to proceed with the Whole of the Works with all due diligence and he shall give effect forthwith to every such decision of the *Engineer / Maintenance Surveyor made under this sub-clause. Such decision shall be final and binding upon the Contractor and the Employer unless, until and to the extent revised or superseded by any agreement in writing between the Employer and the Contractor, decision of an adjudicator arising from an adjudication under the SOP Provisions, or arbitration award. If the *Engineer / Maintenance Surveyor shall fail to give such decision for a period of 28 days after being requested to do so or if either the Employer or the Contractor be dissatisfied with any such decision of the *Engineer / Maintenance Surveyor then either the Employer or the Contractor may within 28 days after receiving notice of such decision, or within 28 days after the expiry of the said decision period of 28 days, as the case may be, request that the matter be referred to mediation in accordance with and subject to The Government of the Hong Kong Special Administrative Region Construction Mediation Rules or any modification thereof being in force at the date of such request.

⁵ Promulgated in Annex C to SDEV’s memo ref. DEVB(W) 505/10/01 dated 4 December 2014.

- (1A) (a) Payment disputes, as defined in SOP Clause 9, which have been determined by a decision of the Adjudicator are not referred to and settled by the *Engineer / Maintenance Surveyor under sub-clause (1) of this Clause (whether included in a wider dispute or otherwise).
- (b) If a payment dispute, as defined in SOP Clause 9, is determined by a decision of the Adjudicator after reference of the payment dispute (or a dispute which includes the payment dispute) to the *Engineer / Maintenance Surveyor under sub-clause (1) of this Clause but before the *Engineer / Maintenance Surveyor has given his decision on the same, the *Engineer / Maintenance Surveyor shall not give any decision on the same under sub-clause (1) of this Clause. For the avoidance of doubt, the *Engineer / Maintenance Surveyor not giving decision on the payment dispute pursuant to this sub-clause (1A) is not a failure to give a decision under sub-clause (1) of this Clause and the payment dispute cannot be referred to mediation or arbitration, and sub-clauses (3)(e) and (3)(f) of this Clause are not applicable.

(1B) The Employer or the Contractor may, within 28 days after the day on which an adjudication decision under the SOP Provisions is delivered by the Adjudicator, request that the matter be referred to mediation in accordance with and subject to The Government of the Hong Kong Special Administrative Region Construction Mediation Rules or any modification thereof being in force at the date of such request.

(1C) For the avoidance of doubt, a decision by the Adjudicator that he has no jurisdiction to adjudicate all or any part of a payment dispute is not a determination made by the Adjudicator of that payment dispute for the purposes of this Clause and an arbitrator appointed pursuant to this Clause is not bound by any decisions made by the Adjudicator as to the Adjudicator's jurisdiction in relation to a payment dispute.

(2) If the matter cannot be resolved by mediation, or if either the Employer or the Contractor do not wish the matter to be referred to mediation then either the Employer or the Contractor may within the time specified herein require that the matter shall be referred to arbitration in accordance with and subject to the provisions of the Arbitration Ordinance and any such reference shall be deemed to be a submission to arbitration within the meaning of such Ordinance.

(3) Any reference to arbitration shall be made within 90 days of:

- (a) the receipt of a request for mediation and subsequently the

recipient of such request having failed to respond, or

- (b) the refusal to mediate, or
- (c) the failure of the mediation proceedings to produce a settlement acceptable to the Employer and the Contractor, or
- (d) the abandonment of the mediation, or
- (e) where the ***Engineer / Maintenance Surveyor** has failed to give a decision within the 28 days allowed under sub-clause (1) of this Clause after being requested to do so, the expiry of the subsequent period of 28 days for the Employer or the Contractor to request that the matter be referred to mediation, and neither the Employer nor the Contractor having requested mediation within that subsequent period of 28 days, or
- (f) where the ***Engineer / Maintenance Surveyor** has given a decision within the 28 days allowed under sub-clause (1) of this Clause, the expiry of the period of 28 days after receipt of the notice of the ***Engineer's / Maintenance Surveyor's** decision for the Employer or the Contractor to request that the matter be referred to mediation, and neither the Employer nor the Contractor having requested mediation within that period of 28 days, or
- (g) where a payment dispute, as defined in SOP Clause 9, has been determined by the Adjudicator in accordance with the SOP Provisions, the expiry of the period of 28 days allowed under sub-clause (1B) for the Employer or the Contractor to request that the matter be referred to mediation, and neither the Employer nor the Contractor having requested mediation within that period of 28 days.

(4) The arbitrator appointed shall have full power to open up, review and revise any decision (other than a decision under Clause 48(3) not to vary the Works), instruction, order, direction, certificate or valuation by the ***Engineer / Maintenance Surveyor** and neither party shall be limited in the proceedings before such arbitrator to the evidence or arguments put before the ***Engineer / Maintenance Surveyor** for the purpose of obtaining his decision above referred to or limited to the evidence and arguments put before any Adjudicator. Save as provided for in sub-clauses (5) and (6) of this Clause no steps shall be taken in the reference to the arbitrator until after the completion or alleged completion of the Whole of the Works unless with the written consent of the Employer and the Contractor.

Provided that:

- (a) the giving of a certificate of completion in accordance with Clause *55 / 56 shall not be a condition precedent to the taking of any step in such reference;
- (b) no decision given by the *Engineer / Maintenance Surveyor in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator on any matter whatsoever relevant to the dispute or difference so referred to the arbitrator as aforesaid.

(5) In the case of any disputes or difference as to the exercise of the *Engineer's / Maintenance Surveyor's powers under Clause *84(1) / 87(1) the reference to the arbitrator may proceed notwithstanding that the Whole of the Works shall not then be or be alleged to be complete.

(6) In the case where the Contract has been terminated or abandoned, the reference to the arbitrator may proceed notwithstanding that the Whole of the Works shall not then be or be alleged to be complete.

(7)(a) Subject to paragraphs (b) and (c) of this sub-clause, the Domestic Arbitration Rules (2014) of the Hong Kong International Arbitration Centre (the Arbitration Rules) shall apply to any arbitration instituted in accordance with this Clause.

(b) Notwithstanding any provision of the Arbitration Rules, the place of meetings and hearings in the arbitration shall be Hong Kong unless the parties otherwise agree.

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

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

(9) For the purposes of this Clause, "Arbitration Ordinance" means the Arbitration Ordinance (Cap. 609) or any statutory modification thereof for the time being in force."

* select as appropriate.

[Note:

1. For GCC for Term Contracts for Civil Engineering Works, 2002 Edition / GCC for Term Contracts for E&M Engineering Works, 2007 Edition, the optional entries with reference to "the Engineer" and GCC Clauses 89, 55 and 84(1) should be selected.
2. For GCC for Term Contracts for Building Works, 2004 Edition, the optional entries with reference to "the Maintenance Surveyor" and GCC Clauses 92, 56 and 87(1) should be selected.]

**Guidelines on Scope and Contents of
Subcontractor Management Plan**

and

**Guidelines on Documentary Proof to Demonstrate the
Compliance of the Provisions in the SMP**

for Capital Works Contracts using NEC3 ECC

To replace existing Appendix [x] to ACC [C5]¹

Appendix [x][#] to ACC [C5][#]

Guidelines on Scope and Contents of Subcontractor Management Plan

The Subcontractor Management Plan shall include (but not limited to) the following:

- i) Scope of works to be subcontracted including the form and extent of subcontracting arrangement such as labour only, labour and plant, labour and material, plant only, lump sum or any other combination of types. Proof of ownership of construction plant and material shall be addressed. The scope of works to be subcontracted shall comply with the relevant contractual provisions (i.e. the ACC for **Limiting the Tiers of Subcontracting**).
- ii) Particulars of subcontracts (irrespective of tiers) as required under the Template under Table 1.
- iii) The *Contractor's* approach to demand/ensure his subcontractor(s) to a) abstain from subcontracting the whole of the works subcontracted to him/them, and b) report upwards his/their subcontracting arrangement and any subsequent changes with written declarations of no "hidden" subcontracts for any part of the *works* subcontracted to any of them.
- iv) The *Contractor's* proposed measures for supervision of the works and monitoring of the performance of subcontractors, particularly the aspects of the works programming, quality and safety of the works and environmental protection.
- v) Criteria for selection of subcontractor(s) involving trade(s) not available in the Registered Specialist Trade Contractors Scheme (RSTCS).
- vi) The *Contractor's* approach to ensure all his subcontractor(s) (irrespective of tiers) to adopt written contracts in his/their subcontracting and that all the subcontract(s) comply with the requirements as stipulated in the Contract (i.e. ACC for **Subcontract conditions**) and incorporate the **Mandatory Subcontract Conditions for Security of Payment**.
- vii) Details of the *Contractor's* Management Team, as required in the Contract (i.e. the ACC for **Contractor's Management Team**), employed on direct supervision and management of subcontractor(s). An organization chart showing the responsibilities of the *Contractor's* direct staff in supervision and management of his subcontractor(s) shall be submitted.
- viii) Declaration through the standard declaration form that members of staff on the *Contractor's* Management Team are prohibited to be given a subcontract to any part of the *works* or to have a vested interest in any of the subcontractors irrespective of tiers.
- ix) The *Contractor's* proposed measures to ensure the compliance with the implementation of the system of payment of wages to the Site Workers as stipulated in the Contract (i.e. ACC for **Payment of Wages of Site Workers**). The *Contractor's* proposed measures for ensuring timely payments to subcontractor(s) and payments by subcontractor(s) to subcontractor(s) of lower tiers.

[NB. The above items are not exhaustive. The Contractor can add any other items, which he considers pertinent to the proper management of his subcontractor(s).]

Internal Note:

[#] Insert appropriate reference

¹ Promulgated in Annex A to SDEV's memo ref. DEVB(W) 510/94/02 dated 4 December 2020.

[For contracts without contract measures to prevent non-payment of wages and/or limiting number of tiers of subcontracting]

Guidelines on Scope and Contents of Subcontractor Management Plan

The Subcontractor Management Plan shall include (but not limited to) the following:

- i) Scope of works to be subcontracted including the form and extent of subcontracting arrangement such as labour only, labour and plant, labour and material, plant only, lump sum or any other combination of types. Proof of ownership of construction plant and material shall be addressed.
- ii) Particulars of subcontracts (irrespective of tiers) as required under the Template under Table 1.
- iii) Criteria for selection of subcontractor(s) involving trade(s) not available in the Registered Specialist Trade Contractors Scheme (RSTCS).
- iv) Details of the *Contractor's* own staff employed for direct supervision and management of his subcontractor(s). An organization chart showing the responsibilities of the contractor's direct staff in supervision and management of his subcontractor(s) shall be submitted.
- v) The *Contractor's* approach to demand/ensure his subcontractor(s) to a) abstain from subcontracting the whole of the works subcontracted to him/them, and b) submit written declarations of no "hidden" subcontracting of works.
- vi) The *Contractor's* approach to encourage his subcontractor(s) to adopt written contract(s) in his/their subcontracting and that all the subcontract(s) comply with the requirements as stipulated in this contract to incorporate the **Mandatory Subcontract Conditions for Security of Payment**.
- vii) The *Contractor's* proposed measures to demand his subcontractor(s) to report upward his/their subcontracting arrangement(s) and any subsequent changes.
- viii) The *Contractor's* proposed measures for monitoring and assessing the works programme, quality, safety and environmental performance of his subcontractors.
- ix) The *Contractor's* proposed measures for ensuring timely payment to downstream subcontractor(s) after his payment to his direct subcontractor(s).
- x) The *Contractor's* approach for monitoring disputes.
- xi) The *Contractor's* approach for handling complaints from workers on site regarding wages arrears disputes and co-ordinating with Labour Department for prompt action. *Contractors* are required to keep the *Project Manager's* site representatives updated of the situation.
- xii) The *Contractor's* proposed measures for maintaining updated daily attendance records of all workers on site.
- xiii) The *Contractor's* proposed measures for site security and workers' daily access control if applicable.

[NB. The above items are not exhaustive. The Contractor can add any other issues, which he considers pertinent to the proper management of his subcontractor(s).]

Internal Note:

[#] Insert appropriate reference

To replace existing Appendix [y] to ACC [C5]²

Appendix [y][#] to ACC [C5][#]

Guidelines on Documentary Proof to Demonstrate the Compliance of the Provisions in the SMP

- i) *Project Manager* should base on their professional judgment in selecting samples of sub-contract document/report for documentary proof.
- ii) Documentary proof should be limited to relevant information for the demonstration of the compliance of the provisions in the submitted SMP i.e. information as stipulated in the Guidelines on Scope and Contents of the Subcontractor Management Plan at Appendix [x][#] to these *additional conditions of contract*.
- iii) Documentary proof should exclude sensitive commercial information such as price, payment conditions (except for purpose of proving compliance with the requirements as stipulated in this contract (i.e. ACC for Subcontract conditions) and to demonstrate incorporation of the Mandatory Subcontract Conditions for Security of Payment at subcontract at all tiers), bills of quantity etc.

Internal Note:

[#] Insert appropriate reference

² Existing appendix in *mutatis mutandis* terms of Annex A to SDEV's memo ref. DEVB(W) 109/11/01 Pt.9 dated 19 December 2008.

**Guidelines on Scope and Contents of
Subcontractor Management Plan**

and

**Guidelines on Documentary Proof to Demonstrate the
Compliance of the Provisions in the SMP**

**for Capital Works Contracts using GCC 1999 Ed.
/ Term Contracts using GCC for Term Contracts**

To replace existing Appendix [x] to SCC [x]³

Appendix [x][#] to SCC [x][#]

Guidelines on Scope and Contents of Sub-contractor Management Plan

The Sub-contractor Management Plan shall include (but not limited to) the following:

- i) Scope of works to be sub-contracted including the form and extent of sub-contracting arrangement such as labour only, labour and plant, labour and material, plant only, lump sum or any other combination of types. Proof of ownership of construction plant and material shall be addressed. The scope of works to be sub-contracted shall comply with the relevant contractual provisions (i.e. the SCC for **Limiting the Tiers of Sub-contracting**).
- ii) Particulars of sub-contracts (irrespective of tiers) as required under the Template under Table 1.
- iii) The Contractor's approach to demand/ensure his sub-contractor(s) to a) abstain from sub-contracting the whole of the works sub-contracted to him/them, and b) report upwards his/their sub-contracting arrangement and any subsequent changes with written declarations of no "hidden" sub-contracts for any part of the Works sub-contracted to any of them.
- iv) The Contractor's proposed measures for supervision of the works and monitoring of the performance of sub-contractors, particularly the aspects of the works programming, quality and safety of the works and environmental protection.
- v) Criteria for selection of sub-contractor(s) involving trade(s) not available in the Registered Specialist Trade Contractors Scheme (RSTCS).
- vi) The Contractor's approach to ensure all his sub-contractor(s) (irrespective of tiers) to adopt written contracts in his/their sub-contracting and that all the sub-contract(s) comply with the requirements as stipulated in the Contract (i.e. SCC for **Sub-contract conditions**) and incorporate the **Mandatory Subcontract Conditions for Security of Payment**.
- vii) Details of the Contractor's Management Team, as required in the Contract (i.e. the SCC for **Contractor's Management Team**), employed on direct supervision and management of sub-contractor(s). An organization chart showing the responsibilities of the Contractor's direct staff in supervision and management of his sub-contractor(s) shall be submitted.
- viii) Declaration through the standard declaration form that members of staff on the Contractor's Management Team are prohibited to be given a sub-contract to any part of the Works or to have a vested interest in any of the sub-contractors irrespective of tiers.
- ix) The Contractor's proposed measures to ensure the compliance with the implementation of the system of payment of wages to the Site Workers as stipulated in the Contract (i.e. SCC for **Payment of Wages of Site Workers**). The Contractor's proposed measures for ensuring timely payments to sub-contractor(s) and payments by sub-contractor(s) to sub-contractor(s) of lower tiers.

[NB. The above items are not exhaustive. The Contractor can add any other items, which he considers pertinent to the proper management of his sub-contractor(s).]

Internal Note:

[#] Insert appropriate reference

³ Promulgated in Annex A to SDEV's memo ref. DEVB(W) 510/94/02 dated 4 December 2020.

[For contracts without contract measures to prevent non-payment of wages and/or limiting number of tiers of sub-contracting]

Guidelines on Scope and Contents of Sub-contractor Management Plan

The Sub-contractor Management Plan shall include (but not limited to) the following:

- i) Scope of works to be sub-contracted including the form and extent of sub-contracting arrangement such as labour only, labour and plant, labour and material, plant only, lump sum or any other combination of types. Proof of ownership of construction plant and material shall be addressed.
- ii) Particulars of sub-contracts (irrespective of tiers) as required under the Template under Table 1.
- iii) Criteria for selection of sub-contractor(s) involving trade(s) not available in the Registered Specialist Trade Contractors Scheme (RSTCS).
- iv) Details of the Contractor's own staff employed for direct supervision and management of his sub-contractor(s). An organization chart showing the responsibilities of the contractor's direct staff in supervision and management of his sub-contractor(s) shall be submitted.
- v) The Contractor's approach to demand/ensure his sub-contractor(s) to a) abstain from sub-contracting the whole of the works sub-contracted to him/them, and b) submit written declarations of no "hidden" sub-contracting of works.
- vi) The Contractor's approach to encourage his sub-contractor(s) to adopt written contract(s) in his/their sub-contracting and that all the sub-contract(s) comply with the requirements as stipulated in the Contract to incorporate the **Mandatory Subcontract Conditions for Security of Payment**.
- vii) The Contractor's proposed measures to demand his sub-contractor(s) to report upward his/their sub-contracting arrangement(s) and any subsequent changes.
- viii) The Contractor's proposed measures for monitoring and assessing the works programme, quality, safety and environmental performance of his sub-contractors.
- ix) The Contractor's proposed measures for ensuring timely payment to downstream sub-contractor(s) after his payment to his direct sub-contractor(s).
- x) The Contractor's approach for monitoring disputes.
- xi) The Contractor's approach for handling complaints from workers on site regarding wages arrears disputes and co-ordinating with Labour Department for prompt action. Contractors are required to keep the Architect/Engineer/Supervising Officer's site representatives updated of the situation.
- xii) The Contractor's proposed measures for maintaining updated daily attendance records of all workers on site.
- xiii) The Contractor's proposed measures for site security and workers' daily access control if applicable.

[NB. The above items are not exhaustive. The Contractor can add any other issues, which he considers pertinent to the proper management of his sub-contractor(s).]

Internal Note:

[#] Insert appropriate reference

To replace existing Appendix [y] to SCC [x]⁴

Appendix [y][#] to SCC [x][#]

Guidelines on Documentary Proof to Demonstrate the Compliance of the Provisions in the SMP

- i) Engineer / Supervising Officer should base on their professional judgment in selecting samples of sub-contract document/report for documentary proof.
- ii) Documentary proof should be limited to relevant information for the demonstration of the compliance of the provisions in the submitted SMP i.e. information as stipulated in the Guidelines on Scope and Contents of the Sub-contractor Management Plan at Appendix [x][#] to these Special Conditions of Contract.
- iii) Documentary proof should exclude sensitive commercial information such as price, payment conditions (except for purpose of proving compliance with the requirements as stipulated in the Contract (i.e. SCC for Subcontract conditions) and to demonstrate incorporation of the Mandatory Subcontract Conditions for Security of Payment at subcontract at all tiers), bills of quantity etc.

Internal Note:

[#] Insert appropriate reference

⁴ Promulgated in Annex A to SDEV's memo ref. DEVB(W) 109/11/01 Pt.9 dated 19 December 2008.

**Guidelines on Scope and Contents of
Subcontractor Management Plan**

and

**Guidelines on Documentary Proof to Demonstrate the
Compliance of the Provisions in the SMP**

for Term Contracts using NEC3 TSC

To replace existing Appendix [x] to ACC [C5]⁵

Appendix [x][#] to ACC [C5][#]

Guidelines on Scope and Contents of Subcontractor Management Plan

The Subcontractor Management Plan shall include (but not limited to) the following:

- i) Scope of works to be subcontracted including the form and extent of subcontracting arrangement such as labour only, labour and plant, labour and material, plant only, lump sum or any other combination of types. Proof of ownership of construction plant and material shall be addressed. The scope of works to be subcontracted shall comply with the relevant contractual provisions (i.e. the ACC for **Limiting the Tiers of Subcontracting**).
- ii) Particulars of subcontracts (irrespective of tiers) as required under the Template under Table 1.
- iii) The *Contractor's* approach to demand/ensure his subcontractor(s) to a) abstain from subcontracting the whole of the works subcontracted to him/them, and b) report upwards his/their subcontracting arrangement and any subsequent changes with written declarations of no "hidden" subcontracts for any part of the *service* subcontracted to any of them.
- iv) The *Contractor's* proposed measures for supervision of the works and monitoring of the performance of subcontractors, particularly the aspects of the works programming, quality and safety of the works and environmental protection.
- v) Criteria for selection of subcontractor(s) involving trade(s) not available in the Registered Specialist Trade Contractors Scheme (RSTCS).
- vi) The *Contractor's* approach to ensure all his subcontractor(s) (irrespective of tiers) to adopt written contracts in his/their subcontracting and that all the subcontract(s) comply with the requirements as stipulated in the Contract (i.e. ACC for **Subcontract conditions**) and incorporate the **Mandatory Subcontract Conditions for Security of Payment**.
- vii) Details of the *Contractor's* Management Team, as required in the Contract (i.e. the ACC for **Contractor's Management Team**), employed on direct supervision and management of subcontractor(s). An organization chart showing the responsibilities of the *Contractor's* direct staff in supervision and management of his subcontractor(s) shall be submitted.
- viii) Declaration through the standard declaration form that members of staff on the *Contractor's* Management Team are prohibited to be given a subcontract to any part of the *service* or to have a vested interest in any of the subcontractors irrespective of tiers.
- ix) The *Contractor's* proposed measures to ensure the compliance with the implementation of the system of payment of wages to the Site Workers as stipulated in the Contract (i.e. ACC for **Payment of Wages of Site Workers**). The *Contractor's* proposed measures for ensuring timely payments to subcontractor(s) and payments by subcontractor(s) to subcontractor(s) of lower tiers.

[NB. The above items are not exhaustive. The Contractor can add any other items, which he considers pertinent to the proper management of his subcontractor(s).]

Internal Note:

[#] Insert appropriate reference

⁵ Promulgated in Annex A to SDEV's memo ref. DEVB(W) 510/94/02 dated 4 December 2020.

[For contracts without contract measures to prevent non-payment of wages and/or limiting number of tiers of subcontracting]

Guidelines on Scope and Contents of Subcontractor Management Plan

The Subcontractor Management Plan shall include (but not limited to) the following:

- i) Scope of works to be subcontracted including the form and extent of subcontracting arrangement such as labour only, labour and plant, labour and material, plant only, lump sum or any other combination of types. Proof of ownership of construction plant and material shall be addressed.
- ii) Particulars of subcontracts (irrespective of tiers) as required under the Template under Table 1.
- iii) Criteria for selection of subcontractor(s) involving trade(s) not available in the Registered Specialist Trade Contractors Scheme (RSTCS).
- iv) Details of the *Contractor's* own staff employed for direct supervision and management of his subcontractor(s). An organization chart showing the responsibilities of the contractor's direct staff in supervision and management of his subcontractor(s) shall be submitted.
- v) The *Contractor's* approach to demand/ensure his subcontractor(s) to a) abstain from subcontracting the whole of the works subcontracted to him/them, and b) submit written declarations of no "hidden" subcontracting of works.
- vi) The *Contractor's* approach to encourage his subcontractor(s) to adopt written contract(s) in his/their subcontracting and that all the subcontract(s) comply with the requirements as stipulated in this contract to incorporate the **Mandatory Subcontract Conditions for Security of Payment**.
- vii) The *Contractor's* proposed measures to demand his subcontractor(s) to report upward his/their subcontracting arrangement(s) and any subsequent changes.
- viii) The *Contractor's* proposed measures for monitoring and assessing the works programme, quality, safety and environmental performance of his subcontractors.
- ix) The *Contractor's* proposed measures for ensuring timely payment to downstream subcontractor(s) after his payment to his direct subcontractor(s).
- x) The *Contractor's* approach for monitoring disputes.
- xi) The *Contractor's* approach for handling complaints from workers on site regarding wages arrears disputes and co-ordinating with Labour Department for prompt action. *Contractors* are required to keep the *Service Manager's* site representatives updated of the situation.
- xii) The *Contractor's* proposed measures for maintaining updated daily attendance records of all workers on site.
- xiii) The *Contractor's* proposed measures for site security and workers' daily access control if applicable.

[NB. The above items are not exhaustive. The Contractor can add any other issues, which he considers pertinent to the proper management of his subcontractor(s).]

Internal Note:

[#] Insert appropriate reference

To replace existing Appendix [y] to ACC [x]⁶

Appendix [y][#] to ACC [x][#]

Guidelines on Documentary Proof to Demonstrate the Compliance of the Provisions in the SMP

- i) *Service Manager* should base on their professional judgment in selecting samples of sub-contract document/report for documentary proof.
- ii) Documentary proof should be limited to relevant information for the demonstration of the compliance of the provisions in the submitted SMP i.e. information as stipulated in the Guidelines on Scope and Contents of the Subcontractor Management Plan at Appendix [x][#] to these *additional conditions of contract*.
- iii) Documentary proof should exclude sensitive commercial information such as price, payment conditions (except for purpose of proving compliance with the requirements as stipulated in this contract (i.e. ACC for Subcontract conditions) and to demonstrate incorporation of the Mandatory Subcontract Conditions for Security of Payment at subcontract at all tiers), bills of quantity etc.

Internal Note:

[#] Insert appropriate reference

⁶ Existing appendix in *mutatis mutandis* terms of Annex A to SDEV's memo ref. DEVB(W) 109/11/01 Pt.9 dated 19 December 2008.

**Sample Letter to the Main Contractor regarding Subcontractor's Request
for Direct Payment of Outstanding Adjudicated Amount
under a Relevant Subcontract**

Dear Sir,

Contract No. : [contract no. of the main contract]

Contract Title : [contract title of the main contract]

I refer to the letter dated _____ from (name of the subcontract claimant) (hereinafter referred to as "**Subcontract Claimant**") in respect of (contract no. / title of the Relevant Subcontract) (hereinafter referred to as "**Relevant Subcontract**") requesting the **Employer/Employer* to make direct payment of the adjudicated amount of (adjudicated amount), for which, as alleged by him, (name of the subcontract respondent or the Contractor as the case may be) (hereinafter referred to as "**Subcontract Respondent**") failed to pay in accordance with the adjudication decision dated (date of the adjudication decision).

Pursuant to SOP Clause 43(3) of Appendix []¹ to the **additional conditions of contract / Special Conditions of Contract*, you are required to certify and submit documentary proof to the **Employer/Employer* on or before (insert the date, which is 28 days from the date of this letter) for the following matters:-

- (i) whether and to what extent payment has been made to the Subcontract Claimant by the Subcontract Respondent, or by any subcontractor at higher tiers to the Subcontract Respondent, and whether the Subcontract Claimant has been satisfied with such payment as full settlement of the adjudicated amount;
- (ii) whether the adjudication decision is not binding on the Subcontract Claimant and Subcontract Respondent and if so why;
- (iii) whether any subcontractor at higher tiers to the Subcontract Claimant has become bankrupt or has had a receiving order made against him or has presented a petition in bankruptcy or has made an arrangement with or assignment in favour of his creditors or has agreed to carry out his Relevant Subcontract under a committee of inspection of his creditors or (being a corporation) has gone into liquidation (other than voluntary liquidation for the purposes of amalgamation or reconstruction), administration or receivership or otherwise become insolvent;
- (iv) whether any subcontractor at higher tiers to the Subcontract Respondent

¹ Annex C to DEVB TC(W) No. 6/2021.

will be unable to recover the amount of direct payment (to be made by the **Employer/Employer*) by way of deduction from their payments due (or which may become due) to their subcontracting parties at next lower tier under their subcontract; and

- (v) if it is affirmative on item (iv) above, the appropriate amount of direct payment that the **Employer/Employer* could make.

Yours faithfully,

(Designation of Chief Engineer)
(Name of Project Office/Department)

Encl. (letter from the Subcontract Claimant, including the submitted supporting documents)

c.c. (**Project Manager / Service Manager / Engineer / Surveyor / Supervising Officer / Maintenance Surveyor for *this contract / the Contract*)
(Subcontract Claimant)
(Subcontract Respondent)

* select as appropriate

**Site Notice of Implementation of SOP Provisions in Relevant Subcontracts
under the Main Contract**

Main Contract No. : [contract no. of the main contract]

Main Contract Title : [contract title of the main contract]

List of Relevant Subcontracts

The following Relevant Subcontracts have been reported to the Employer and the Main Contractor as having incorporated the Security of Payment (SOP) Provisions:

Contract Title / Number	Name of Paying Party	Name of Subcontractor (undertaking works)
	<i>e.g. Main Contractor</i>	<i>e.g. ABC Subcontractor</i>
	<i>e.g. Main Contractor</i>	<i>e.g. DEF Subcontractor</i>
	<i>e.g. DEF Sub-contractor</i>	<i>e.g. XYZ Subcontractor</i>

SOP Clause 37 of SOP Provisions in Relevant Subcontracts:

Subcontractor's Rights to Suspend / Reduce Rate of Progress*

Each of the above-mentioned Subcontractors may suspend or reduce the rate of progress of the carrying out of the construction works or the supply of related goods or services under the Relevant Subcontracts if an amount admitted in a payment response as due or an adjudicated amount has not been paid on the due date specified in the relevant SOP Provisions and:

- (1) the Subcontractor has served on his Paying Party a notice of intention that meets the requirements set out in the relevant SOP Provisions (“Notice”);
- (2) the Subcontractor has taken reasonable steps, at least 5 working days before the date on which he intends to start suspending, or reducing the rate of progress of, the construction works or the supply of related goods or services, to make the Employer and the Main Contractor (as applicable) aware of the Notice (see *the contact points below*); and
- (3) the amount due admitted by his Paying Party or the adjudicated amount is not paid in full within 5 working days after the said Notice.

***Note:** This notice is not a contract document and all rights and entitlements referenced herein are subject to the detailed terms and conditions of the Relevant Subcontracts.

SOP Clause 43 of SOP Provisions in Relevant Sub-contracts:

Direct Payment for Settlement of Unpaid Adjudicated Amount*

Each of the above-mentioned Subcontractors may apply to the Employer for direct payment of any unpaid portion of an adjudicated amount pursuant to SOP Clause 43(3) in their subcontract (see *the contact points below*).

***Note:** This notice is not a contract document and all rights and entitlements referenced herein are subject to the detailed terms and conditions of the Relevant Subcontracts.

Contact Point(s) of the Employer and the Main Contractor

Employer (and his agent)	<i>[D1 officer of the relevant project office]</i>	<i>[address / email / phone]</i>
	<i>[Project Manager / Engineer / Surveyor / Supervising Officer for the main contract]</i>	<i>[address / email / phone]</i>
Main Contractor	<i>[Project Director / Site Agent]</i>	<i>[address / email / phone]</i>

Issued by [name of the Main Contractor] on [date of issue].

有關在工務工程合約下的工程分包合約實行付款保障措施的告示

工務工程合約編號： [合約編號]

工務工程合約名稱： [合約名稱]

工程分包合約名單

有關合約方已向上述工務工程合約的業主和總承建商匯報，以下的相關工程分包合約已引入「付款保障條款」：

分包合約的名稱 / 編號	分包合約的付款方	分包合約的承包商
	例如: 總承建商	分包商 甲
	例如: 總承建商	分包商 乙
	例如: 分包商 乙	分包商 丙

相關工程分包合約的「付款保障條款」第37款：

承包商因不獲付款而暫停 / 減慢履行工程分包合約責任的權利*

上述分包合約的各承包商，如在「付款保障條款」所訂定的付款限期前仍不獲支付已在「付款回應」獲確認為到期應付的款額 或 經審裁員裁定為應付的款額(“裁定款額”)，並合乎以下條件，可暫停或減慢施工 (或提供相關物料或服務) 的進度:

- (一) 承包商向不付款一方發出有意暫停或減慢施工進度的書面通知，這項通知須合乎「付款保障條款」所訂定的要求;
- (二) 承包商須採取合理行動，於行使暫停或減慢施工進度的權利前最少5個工作天，讓業主和總承建商知悉上述的書面通知 (參閱下述的聯絡資料); 及
- (三) 在上述的5個工作天通知期內，仍不獲支付已在「付款回應」獲確認為到期應付的款額 或 裁定款額。

***註:** 本告示並非相關工程分包合約的一部份，承包商行使上述的權利時須留意相關工程分包合約的條款細則。

相關工程分包合約的「付款保障條款」第43款：

直接支付被拖欠的裁定款額*

上述分包合約的各承包商，可依據其工程分包合約中的「付款保障條款」第43(3)款，向業主申請直接支付被拖欠的裁定款額（參閱下述的聯絡資料）。

***註：** 本告示並非相關工程分包合約的一部份，承包商行使上述的權利時須留意相關工程分包合約的條款細則。

業主和總承建商的聯絡資料

業主 (及其代理人)	[相關工程項目辦事處的 總工程師/總建築師]	[地址/電郵/電話]
	[相關工務工程合約的 合約管理人]	[地址/電郵/電話]
總承建商	[工程項目經理/地盤主管]	[地址/電郵/電話]

此告示由 [總承建商的名稱] 於 [發出日期] 發出。