

**For information**

**Legislative Council  
Panel on Development and Panel on Home Affairs  
Joint Subcommittee to Monitor the Implementation of the  
West Kowloon Cultural District Project**

**Follow-up to special meeting on 11 September 2018**

Following the special meeting of the Joint Subcommittee to Monitor the Implementation of the West Kowloon Cultural District Project (Joint Subcommittee) on 11 September 2018, the Government and the West Kowloon Cultural District Authority (WKCD) provide supplementary information as requested below –

- (a) the considerations of the Development Bureau for not removing Hsin Chong Construction Company Limited ("HCC") from the "List of Approved Contractors for Public Works" after HCC's employment under the M+ main works contract had been terminated by WKCD;**

The Development Bureau has been closely monitoring the financial situation of HCC and has demanded it to submit financial information from time to time in accordance with the relevant procedures of the "Contractor Management Handbook" ("CMH"). If a contractor is found not compliant with the requirements, the Administration will take appropriate regulating action(s) against it. Possible regulating action(s) include suspension from tendering, downgrading to probationary status, demotion to a lower group, or removal from the List of Approved Contractors for Public Works and/or the List of Approved Suppliers of Materials and Specialist Contractors for Public Works where appropriate ("Approved Lists").

Meanwhile, as a result of the construction issues related to the To Kwa Wan Station of the Shatin Central Link Project, HCC, being one of the participants of the joint venture, is suspended from tendering for all works categories that are listed on the Approved Lists for a period of four months effective from 8 October 2018.

- (b) a copy of the general conditions of contract for building and civil engineering works of WKCDA;**

A copy of the 24 March 2015 version of the General Conditions of Contract that was standard at the time the M+ main works contract was inked is enclosed at Annex as requested.

- (c) the details, once available, of the impact of the termination of HCC's employment under the M+ main works contract on the works of M+, in particular the associated cost implications, together with an account of the claims from HCC and some subcontractors, and delay in the construction schedule taking into account the time required for the novation process, etc.**

There will be additional costs arising from the need to close down the site and to arrange a new management contractor. WKCDA will report on the total cost of the development of M+ upon completion of the project.

WKCDA appointed Gammon Construction Limited as the management contractor to oversee the completion of the M+ project on 7 September 2018. WKCDA have issued 63 novation agreements and deeds of transfer to date to subcontractors who are needed for the completion of the project, 28 of those have been signed by related parties with the remaining having confirmed in writing their intention to sign.

Works at the M+ site recommenced on 21 September and it is expected that the M+ building will top out in end 2018. The ultimate goal of delivering the M+ building by end of next year, leading to opening of the museum in 2020, remains unchanged.

**Home Affairs Bureau  
West Kowloon Cultural District Authority  
November 2018**

**VERSION:** 24 March 2015

**WEST KOWLOON CULTURAL DISTRICT AUTHORITY**

**GENERAL CONDITIONS OF CONTRACT**

**FOR BUILDING AND CIVIL ENGINEERING WORKS**

Tender Addendum No.1

**GENERAL CONDITIONS OF CONTRACT**  
**FOR BUILDING AND CIVIL ENGINEERING WORKS**

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**GENERAL CONDITIONS OF CONTRACT**  
**FOR BUILDING AND CIVIL ENGINEERING WORKS**

**DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In the Contract, the following words and expressions shall have the meaning hereby assigned to them:

**"Arbitration Rules"** means the rules for reference of Disputes to arbitration in accordance with Clause 78, as contained in **Schedule 15**;

**"Articles of Agreement"** means the articles of agreement prepared by the Authority and executed by the parties in accordance with Clause 13;

**"Authorised Person"** has the same meaning as under Section 2 of the Buildings Ordinance;

**"Authority"** means West Kowloon Cultural District Authority established under the West Kowloon Cultural District Authority Ordinance contained in Chapter 601 of the laws of Hong Kong, and its successors and assignees;

**"Buildings Ordinance"** means the Buildings Ordinance contained in Chapter 123 of the laws of Hong Kong and all amendments thereto or statutory re-enactments thereof from time to time;

**"Clause"** means a clause of these General Conditions, unless the context otherwise requires;

**"Contract"** means the Articles of Agreement, the Tender, the Letter of Acceptance, the Drawings, the Specification, the General Conditions and the Special Conditions;

**"Contract Administrator"** means the person identified as such in the Letter of Acceptance or any replacement appointed from time to time by the Authority and notified to the Contractor to act as the Contract Administrator for the purposes of the Contract;

**"Contract Administrator's Representative"** means a person appointed from time to time by the Contract Administrator, pursuant to Clause 3.1;

**"Contractor"** means the person or parties referred to in the Letter of Acceptance as having submitted the Tender, including his or their permitted assignees;

**"Contract Rate of Interest"** means the rate equivalent to 1% above the rate per annum from time to time published by The Hong Kong and Shanghai Banking Corporation Limited to be its prime lending rate for Hong Kong Dollars or, if such rate ceases to be published as the prime lending rate, the nearest equivalent rate for the lending of Hong Kong Dollars by the Bank of China Limited;

**"Contractor's Drawings"** means all drawings, design calculations, software, specifications, samples, patterns, models, written procedures and all other documents and things which are:

- (a) prepared by or on behalf of the Contractor;
- (b) required by the Contract to be submitted by the Contractor to the Contract Administrator for review; and
- (c) reviewed without objection,

provided that this definition shall exclude the Works Programme and insurance policies, to be submitted for review by the Contractor pursuant to Clauses 16 and 33, respectively;

**"Contractor's Equipment"** means all equipment of every kind (including, without limitation, vehicles, plant, marine vessels, tools and other things) and the constituent parts forming or intended to form part thereof, required for the execution of the Works, but excluding the Permanent Works and the Temporary Works;

**"Cost"** means expenditure wholly and necessarily incurred by the Contractor in connection with the Works, including, without limitation, overheads, whether on or off the Site, finance charges (which shall be limited to simple interest calculated at the Contract Rate of Interest) and depreciation in value of any Contractor's Equipment owned by the Contractor, but excluding profit;

**"Cost Centre"** means a group of activities identified as such in the Pricing Document;

**"Cost Centre Value"** means the value allocated to each Cost Centre as set out in the Pricing Document, as the same may be revised from time to time by the Contract Administrator pursuant to Clause 66;

**"Date for Commencement of the Works"** means the date stated in the Particular Specification included in the Specification for the commencement of the Works;

**"Defects Liability Certificate"** means the certificate issued pursuant to Clause 71;

**"Defects Liability Period"** means:

- (a) in respect of any Section or any other part of the Works for which a Practical Completion Certificate is issued pursuant to Clause 49, the period calculated from the date of practical completion thereof identified in the relevant Practical Completion Certificate until 12 (twelve) months after the date of practical completion of the Works, as identified in the Practical Completion Certificate for the Works;
- (b) in respect of the Works, the period of 12 (twelve) months calculated from the date of practical completion of the Works identified in the Practical Completion Certificate for the Works; and

- (c) in respect of work executed pursuant to Clauses 52.1 and 53.1(a), the expression means 12 (twelve) months from the date of completion of such work;

**"Dispute"** means a dispute or difference of any kind whatsoever between the Authority and the Contractor arising under, out of or in connection with the Contract or the execution of the Works, including, without limitation, a dispute concerning any decision, opinion, instruction, notice, order, direction, withholding of permission or consent, determination, certificate, statement of objection, assessment or valuation of the Contract Administrator, whether pursuant to Clause 78 or otherwise, and whether during the execution of the Works, or thereafter, and whether before or after any termination, abandonment or breach of the Contract or the termination of the Contractor's employment under the Contract;

**"Drawings"** means:

- (a) the drawings or other documents included in the Contract and identified as "Drawings" (but excluding any drawing or other document identified as "for information") and listed in the Specification;
- (b) any drawing or other document identified as a "Drawing" issued by the Contract Administrator to the Contractor from time to time during the execution of the Works; and
- (c) any amendment made to the drawings or other documents in (a) and/or (b) above from time to time and issued by the Contract Administrator to the Contractor;

**"Enactment"** means any Ordinance or statutory provision, proclamation, rule, regulation, order, resolution, notice, rules of court, by-law, or other instrument having the force of law from time to time in Hong Kong;

**"Final Certificate"** means the certificate issued by the Contract Administrator pursuant to Clause 69 stating the Final Contract Sum;

**"Final Contract Sum"** means the sum to be ascertained by the Contract Administrator and stated in the Final Certificate, to be paid by the Authority to the Contractor pursuant to Clause 69 in consideration of the execution of the Works in accordance with the Contract;

**"Form of Tender"** means the document identified as such, duly completed and signed by the Contractor and included in the Tender;

**"General Conditions"** means the Clauses of these general conditions of contract, together with all Schedules;

**"General Holiday"** means every Sunday and every other day which is prescribed as a general holiday by the Holidays Ordinance (Cap. 149);

**"Government"** means the Government of Hong Kong;

**"Handing Over Certificate"** means a certificate issued by the Contract Administrator pursuant to Clause 50.2;

**"Hong Kong"** means the Hong Kong Special Administrative Region of the People's Republic of China;

**"Independent Checking Engineer"** means the person, firm or company identified as such in the Letter of Acceptance or any replacement thereof from time to time appointed by the Contractor in accordance with Clause 6;

**"Interim Payment Schedule"** means the schedule as completed by the Contractor and included in the Pricing Document to be used for the calculation of interim payments to be made in respect of each Cost Centre, subject to the other provisions of the Contract, as such schedule may be revised from time to time pursuant to Clause 66;

**"Key Date"** means a date identified as such in the Specification as the same may be extended by the Contract Administrator pursuant to Clause 45 or adjusted by agreement, pursuant to Clause 47;

**"Key Domestic Sub-Contractor"** means a sub-contractor identified as such in the Letter of Acceptance, which the Contractor shall be obliged to engage and retain for the purposes of executing the respective part of the Works referred to in the Letter of Acceptance, in accordance with Clause 5.2. References in the Contract to "sub-contractor" shall include Key Domestic Sub-Contractors;

**"Letter of Acceptance"** means the letter from the Authority to the Contractor accepting the Tender, subject to the terms contained therein or in any attachment thereto;

**"Master Programme"** means the programme issued to the Contractor prior to the date of the Letter of Acceptance showing the intended sequence and timing of the activities to be undertaken by the Contractor and Project Contractors, as the same may be revised from time to time and issued to the Contractor pursuant to Clause 16;

**"Mediation Rules"** means the rules for reference of Disputes to mediation in accordance with Clause 78, as contained in **Schedule 13**;

**"Milestone"** means an event or a degree of completion of a part of the Works as described, and for which a date for achievement is specified, in the Schedule of Milestones;

**"Monthly Progress Report"** means the report to be prepared and submitted by the Contractor monthly in accordance with the Specification;

**"Nominated Sub-Contractor"** means any sub-contractor executing a part of the Works appointed by the Contractor in accordance with Clause 65B and references in the Contract to "sub-contractor" shall include Nominated Sub-Contractors;

**"Permanent Works"** means all permanent works of every kind to be executed by the Contractor in accordance with the Contract and which are to become a permanent part of the Project, including, without limitation, all goods, materials and other constituent parts forming or intended to form part thereof;

**"Option"** means any item of work described as such in the Specification or Pricing Document the scope of which is quantified and defined but which is not included in the Works at the time of acceptance of the Tender but which may be so included by the unilateral instruction of the Option by the Contract Administrator, within the period specified in the Contract or such extended period as may be agreed between the Authority and the Contractor, pursuant to Clause 65A;

**"Practical Completion Certificate"** means a certificate issued pursuant to Clause 49 when the Works or any Section or any other part of the Works is practically complete, and the date of practical completion of any Section or any part of the Works shall be the date identified in the relevant Practical Completion Certificate;

**"Practical Completion Certificate for the Works"** means the Practical Completion Certificate issued pursuant to Clause 49 when the Works are practically completed and, if the Works are divided into Sections which together comprise the whole of the Works, means the Practical Completion Certificate issued in respect of the last Section to be practically completed and the date of practical completion of the Works shall be the date identified in either of the said certificates, as appropriate;

**"Pricing Document"** means the document, including the preamble thereto, identified as such, completed by the Contractor and contained in **Appendix 2** to the Form of Tender;

**"Pricing Schedule"** means the schedule included in the Pricing Document containing Cost Centre descriptions and Cost Centre Values, as such schedule may be revised from time to time by the Contract Administrator pursuant to Clause 66;

**"Prime Cost Sum"** means a sum so designated in the Pricing Document for work to be executed by a Nominated Sub-Contractor;

**"Project"** means Phase I and Phase II of the West Kowloon Cultural District as described in the Specification;

**"Project Contractors"** means any of the following whose activities or the works they are engaged to carry out in any way or at any time affect or are affected by the Works:

- (a) contractors and design or specialist consultants engaged on the Project from time to time by the Authority or the Government;
- (b) utility providers;
- (c) developers or franchisees appointed on the Project from time to time by the Authority;
- (d) sub-contractors of any tier of the contractors within category (a) above, and contractors and sub-contractors of any tier of utility providers, developers and franchisees within categories (b) and (c) above;

provided that the definition shall exclude the Contractor and his sub-contractors of any tier both as Contractor or sub-contractor of any tier in relation to the Works and in any other

capacity which would otherwise fall within categories (a) to (d) above in relation to other works;

**"Project Site"** means the lands and places at, on, under, over, in or through which the Project is to be constructed and identified as such in the Specification and/or the Drawings;

**"Provisional Item"** means any item of work described as such in the Specification or the Pricing Document the scope of which is quantified and defined but which is not included in the Works at the time of acceptance of the Tender but which may be so included by the issue of a unilateral instruction by the Contract Administrator pursuant to Clause 65.1;;

**"Provisional Sum"** means a sum so designated in the Pricing Document for the execution of works or expenditure which is not quantified and/or defined at the date of the Letter of Acceptance, which sum may be expended by the Contract Administrator pursuant to Clause 65;

**"Registered Structural Engineer"** has the same meaning as under Section 2 of the Buildings Ordinance;

**"Relevant Authority"** means any Government Department or public body (other than the Authority) having jurisdiction in relation to the Works;

**"Retention Moneys"** means the sums withheld by the Authority by way of retention pursuant to Clause 68;

**"Schedule"** means a schedule to these General Conditions;

**"Schedule of Milestones"** means the schedule included in the Pricing Document describing the Milestones and stipulating the dates by which Milestones are to be achieved in order to maintain interim payments by the Authority to the Contractor in accordance with the Interim Payment Schedule, as such schedule may be revised from time to time by the Contract Administrator pursuant to Clause 66;

**"Section"** means any part of the Works identified as such in the Specification to which a Key Date is allocated and in respect of which a Practical Completion Certificate is to be issued;

**"Site"** means the lands and other places within the Project Site under, over, on, in or through which the Works are to be executed, as identified in the Specification, and/or the Drawings together with such other lands and places as may be designated by the Contract Administrator from time to time as forming part of the Site;

**"Special Conditions"** means the special conditions of contract, if any, identified as such and either issued by the Authority prior to the submission of the Tender by the Contractor and/or agreed by the Authority and the Contractor after submission of the Tender and referred to in the Letter of Acceptance;

**"Specification"** means the documents identified as such and issued by or on behalf of the Authority, subject to any amendment thereof or addition thereto or omission therefrom as may from time to time be issued by the Contract Administrator;

**"Stage"** means a degree of achievement in the execution of the Works by the Contractor identified as such in the Specification to which a Key Date is allocated and in respect of which a Stage Certificate is to be issued;

**"Stage Certificate"** means a certificate issued pursuant to Clauses 49.4 or 49.6 in respect of the achievement of any Stage or any part of a Stage and the date of achievement of any Stage or any part of a Stage shall be the date identified in the relevant Stage Certificate;

**"Temporary Works"** means all works of a temporary nature of every kind required for the execution of the Works, including, without limitation, false work, temporary structures and buildings and temporary earth works (including the goods, materials and other constituent parts forming or intended to form part thereof);

**"Tender"** means the Form of Tender and the appendices thereto prepared and/or completed by the Contractor in the form accepted by the Authority and subject to the terms of the Letter of Acceptance;

**"Tender Total"** means the total of the Cost Centre Values as referred to in the Letter of Acceptance;

**"Works"** means the Permanent Works and the Temporary Works and all operations and activities expressly or impliedly required by the Contract in relation to and including the provision and completion of the Permanent Works; and

**"Works Programme"** means the programme showing the sequence, method and timing of the execution of the Works including all accompanying narratives and ancillary information, in the form and detail prescribed by the Specification, submitted by the Contractor and reviewed without objection and subject to any amendment thereof from time to time reviewed without objection.

## 1.2 **Interpretation**

### **Singular and Plural etc.**

1.2.1 In the Contract, where the context so requires:

- (a) words importing the singular only shall include the plural, and vice versa;
- (b) words importing persons or entities shall include corporations, partnerships and other entities, corporate or unincorporated having legal capacity;
- (c) words importing the masculine shall be construed as including the feminine, and vice versa; words importing the neuter shall include the masculine or feminine and vice versa;
- (d) "manufacture" shall include preparation, assembly and fabrication;



- (e) "sub-contractor" shall include supplier; and
- (f) "test" (and grammatical variations thereof) shall include, without limitation, commissioning and any commissioning test.

### **Headings, Marginal Notes etc.**

- 1.2.2 Unless otherwise expressly provided elsewhere in the Contract, the indices, headings and marginal notes contained in any document included in the Contract shall not be taken into consideration in the interpretation and construction of the Contract.

### **Joint and Several Liability**

- 1.2.3 All references to the Contractor in the Contract shall have effect, if the Contractor comprises more than one legal entity, so that all entities comprising the Contractor shall be jointly and severally liable for any breach of the Contractor's obligations. In the event that the same was not submitted with his Tender, the Contractor shall, within 14 (fourteen) days of the date of the Letter of Acceptance, provide to the Contract Administrator, a copy of all joint venture or consortium (or any other association) agreements in the forms agreed or executed by the entities comprising the Contractor, relating to the execution of the Works. The provisions of any such agreements shall not be amended, varied or waived by any of the entities comprising the Contractor, including, without limitation, in respect of any change in the parties comprising the joint venture, consortium or other association, without the prior consent of the Authority.

### **Time**

- 1.2.4 Subject to any express provision to the contrary contained elsewhere in the Contract, any period of time fixed or decided in accordance with the Contract for doing any act or thing shall be calculated subject to and in accordance with the following:
- (a) "day" shall mean a calendar day according to the Gregorian calendar;
  - (b) General Holidays shall be included in any such period of time;
  - (c) "month" shall mean calendar month;
  - (d) where the act or thing is required to be done within or not less than a specified period before a specified date, the period shall end immediately before that date;
  - (e) where the act or thing is required to be done within a specified period after or from a specified date, the period shall begin immediately after that date; and
  - (f) where the act or thing is required to be done within a specified period, the period shall end at the conclusion of the last day of the period.

### **Liability, Obligations and Duties of the Contractor**

- 1.2.5 In the Contract, the following words (and grammatical variations thereof) shall, unless the context in which they appear otherwise require, be construed in the following manner:

"liability" shall include responsibility under or in connection with the Contract, at law (in contract and tort (including negligence)) or otherwise, for damages, costs, charges, proceedings, losses and expenses;

"obligations" shall mean obligations under or in connection with the Contract and at law; and

"duty" shall mean obligations under the Contract and not obligations in tort.

### **Costs and Expense of Performance**

- 1.2.6 Unless otherwise expressly stated in the Contract, the Contractor shall bear the costs and expense of performing all obligations and discharging all liabilities and duties.

### **Execute**

- 1.2.7 Where the word "execute" (and grammatical variations thereof) is used in the Contract, it shall (unless the context in which it appears otherwise requires) mean carry out and complete.

### **Practical Completion**

- 1.2.8 Where the words "practical completion" (and grammatical variations thereof) are used in relation to the Works, any Section, or any other part of the Works, they shall mean practical completion excluding any work required to be executed by the Contractor in the Defects Liability Period, including, without limitation, any outstanding work, work of defect rectification, testing after completion of the Works, training of the Authority's personnel or maintenance of any part of the Permanent Works.

### **Submission for Review**

All references in the Contract to the term "submission for review" or "review by the Contract Administrator" (and any grammatical variations thereof) shall mean submission for review to the Contract Administrator subject to and in accordance with Clause 10 and any Contractor's Drawings or other thing to which a notice of no objection is given under Clause 10 shall be referred to in the Contract as having been "reviewed without objection". Any reference in any correspondence or other document emanating from the Contract Administrator to the "approval", "agreement" or "acceptance" (or grammatical variations thereof) by the Contract Administrator of any submission by the Contractor of any document or thing shall

be interpreted and construed for all purposes of the Contract as reviewed without objection by the Contract Administrator.

### **Documents in Writing**

- 1.3 Unless the context in which it appears otherwise requires, where provision is made for the giving or issue of any notice, consent, permission, certificate, instruction, determination, direction, request, proposal, authorisation, endorsement, opinion or decision by any person, or the agreement of any person, unless otherwise specified, the same (and any grammatical variations of such terms) shall be construed as:
- (a) being required to be given in writing; and
  - (b) to be given or issued by the Contract Administrator.

### **Communications in Writing and in English**

- 1.4 Any communications and documents under the Contract required to be in writing shall be handwritten, typed or printed in the English language including, without limitation, all notices, consents, permissions, certificates, instructions, determinations, directions, requests, proposals, authorisations, endorsements, opinions, decisions, design information, drawings, test reports and documents of any kind.

### **Governing Law**

- 1.5 The Contract shall be interpreted according to and all Disputes shall be governed by, the laws for the time being in force in Hong Kong.

## **THE CONTRACT ADMINISTRATOR**

### **2. Duties and Powers of the Contract Administrator**

- 2.1 The Contract Administrator shall carry out those duties and may exercise those powers specified in or necessarily to be implied from the Contract. The Contract Administrator may be an employee of the Authority or a consultant or contractor.
- 2.2 The Contract Administrator is obliged to act at the direction of the Authority in respect of the matters referred to in **Appendix 1 to the Form of Tender** by reference to this Clause. Save as aforesaid, the Contract Administrator shall act fairly and reasonably within the provisions of the Contract.
- 2.3 The Contractor's rights under the Contract shall not be prejudiced in any way by any failure on the part of the Contract Administrator to comply with the requirements of his appointment by the Authority including, without limitation, to act at the direction of the Authority in respect of those matters referred to in Clause 2.2. The Contractor shall not be obliged to make any enquiry of the Contract Administrator as to whether the Contract Administrator has sought and/or received any direction of the Authority in respect of any of the matters referred to in Clause 2.2

2.4 Except as expressly provided in the Contract, the Contract Administrator shall not have any power to amend any provision of the Contract.

2.5 The Contract Administrator:

- (a) shall issue instructions which in his opinion are necessary for the execution of the Works; and
- (b) may issue any other instruction which in his opinion is desirable in connection with the Works and/or the Project,

provided that (except as required by any other provision of the Contract) the Contract Administrator shall not be obliged to issue any instruction relating to any matter which, in his opinion, is the responsibility of the Contractor under the Contract in the absence of the instruction.

2.6 The instructions referred to in Clause 2.5 may be issued pursuant to that Clause or pursuant to any other provision of the Contract as, in the Contract Administrator's opinion, shall be appropriate.

2.7 Subject to the provisions of Clause 3, the Contractor shall take instructions only from the Contract Administrator.

2.8 The Contractor shall give reasonable notice to the Contract Administrator of any instruction which the Contractor considers is necessary for the execution of the Works to enable the Contract Administrator to issue the instruction without delaying the progress of the Works. Without prejudice to the generality of Clause 2.5, the Contract Administrator shall not be bound to issue any instruction which, in his opinion, is unnecessary.

2.9 If, as a result of an instruction pursuant to Clause 2.5, or as a result of any failure or inability of the Contract Administrator to issue, or delay in issue of, an instruction pursuant to Clause 2.5(a) which was the subject of a notice in accordance with Clause 2.8, the Contractor is prevented from achieving any Stage or practically completing the Works or any Section by the relevant Key Date, or incurs Cost which the Contractor did not and had no reason to anticipate, then if the Contractor claims additional time and/or payment therefor, the Contract Administrator shall give a decision pursuant to Clause 45 and/or, in respect of an instruction pursuant to Clause 2.5, Clause 56 and/or 57 and, in respect of failure, inability or delay as aforesaid, Clause 57, provided that the Contractor has complied with his obligations pursuant to Clause 45 and/or Clause 58, as appropriate.

### 3. **The Contract Administrator's Representatives and his Assistants**

3.1 The Contract Administrator shall notify the Contractor of the appointment of any Contract Administrator's Representative and of any replacement thereof from time to time. The duties and powers of the Contract Administrator's Representative shall be:

- (a) without prejudice to the Contractor's obligations, to watch and inspect the Works;

- (b) where deemed necessary by the Contract Administrator, to test and examine any material to be used and workmanship employed by the Contractor in connection with the Works; and
  - (c) to carry out such other duties and exercise such other powers vested in the Contract Administrator which are delegated to him by the Contract Administrator pursuant to Clause 3.2.
- 3.2 The Contract Administrator may, from time to time, delegate to any Contract Administrator's Representative, any of the duties and powers vested in him. Any such delegation shall be in writing, signed by the Contract Administrator and shall specify the duties and powers delegated. No such delegation shall take effect until a signed copy thereof has been delivered to the Contractor. Any instruction or decision given by any Contract Administrator's Representative to the Contractor within the terms of such delegation (but not otherwise) shall be deemed to have been given by the Contract Administrator, provided that if the Contractor is dissatisfied with any instruction or decision of any Contract Administrator's Representative, the Contractor may, within 14 (fourteen) days of receipt of notification of such instruction or decision, refer the matter to the Contract Administrator who shall confirm, reverse or vary the instruction or decision.
- 3.3 The Contract Administrator or any Contract Administrator's Representative may appoint and replace any person to act as assistant to any Contract Administrator's Representative in carrying out his duties and exercising his powers. Upon any such appointment or replacement, the Contract Administrator, or the Contract Administrator's Representative, as the case may be, shall notify the Contractor of the names of each such person and their duties and powers.
- 3.4 In respect of any assistants appointed pursuant to Clause 3.3:
  - (a) such assistants shall have no authority to issue any instruction or decision to the Contractor save insofar as such instruction or decision may be necessary to enable them to carry out their duties and exercise their powers. Any such instruction or decision given by any assistant shall be deemed to have been given by the Contract Administrator's Representative for whom he acts; and
  - (b) if the Contractor is dissatisfied with any instruction or decision of any assistant, he may, within 14 (fourteen) days of receipt of notification of such instruction or decision, refer the matter to the Contract Administrator's Representative for whom the assistant acts, who shall confirm, reverse or vary the instruction or decision.
- 3.5 Until the Contract Administrator, or as the case may be, any Contract Administrator's Representative, confirms, reverses or varies any instruction or decision pursuant to the proviso to Clause 3.2, or pursuant to Clause 3.4 (b), the Contractor shall remain bound by the instruction or decision and if, as a result of any reversal or variation, the Contractor is prevented from achieving any Stage or practically completing the Works or any Section by the relevant Key Date, or incurs Cost which the Contractor did not and had no reason to anticipate, then if the Contractor claims additional time and/or payment therefor, the Contract Administrator shall give a decision pursuant to Clause 45 and/or 57, provided that the Contractor has complied with his obligations pursuant to Clause 45 and/or Clause 58, as appropriate.

- 3.6 If for any reason the Contract Administrator or any Contract Administrator's Representative or any assistant to any Contract Administrator's Representative considers it necessary to give any instruction or decision orally, he may do so, and the Contractor shall comply with such instruction or decision. The oral instruction or decision shall be confirmed in writing by the Contract Administrator, the Contract Administrator's Representative or assistant to any Contract Administrator's Representative, as the case may be, as soon as practicable after the instruction or decision was given provided that if the Contractor, within 7 (seven) days of the date of receipt of the oral instruction or decision, confirms in writing to the Contract Administrator the oral instruction or decision and if the confirmation is not contradicted in writing within 7 (seven) days of receipt of the confirmation, it shall be deemed to be an instruction or decision of the Contract Administrator.
- 3.7 The Contract Administrator's Representatives and his assistants may be employees of the Authority or consultants or contractors.
- 3.8 Notwithstanding any other provision of the Contract:
- (a) no act or omission by the Contract Administrator or any Contract Administrator's Representative or the assistants to any Contract Administrator's Representative, including, without limitation, the issuance of any notice of no objection or certificate, or the giving of any permission or consent shall:
    - (i) relieve the Contractor in whole or in part from any obligation or liability or give rise to any waiver or estoppel in relation to any of his obligations or liabilities; or
    - (ii) constitute a warranty by the Authority in relation to the Contractor's performance of the Contract or any part thereof; or
    - (iii) otherwise create any obligation or liability on the part of the Authority unless the act or omission occurs in the performance of duties or the exercise of powers pursuant to the Contract;
  - (b) no failure by the Contract Administrator, any Contract Administrator's Representative or any assistant to any Contract Administrator's Representative to reject any work, drawing or document which is not in accordance with the Contract shall prejudice the power of any such persons subsequently to reject the work, drawing or document, nor shall the Authority incur any obligation or liability to the Contractor arising out of such failure; and
  - (c) neither the Contract Administrator, any Contract Administrator's Representative nor any assistant to any Contract Administrator's Representative shall have any personal liability to the Contractor for their acts and omissions in the performance of their duties or exercise of their powers pursuant to the Contract.

#### **ASSIGNMENT AND SUB-CONTRACTING**

#### **4. Assignment**

- 4.1 The Contractor shall not, subject to Clause 4.2, assign or otherwise transfer the benefit of the Contract or any part thereof or any interest or right therein or thereunder without the prior consent of the Authority and any assignment shall be upon terms and in a form approved by the Authority.
- 4.2 The Contractor may, with the prior consent of the Authority, such consent not to be unreasonably withheld:
- (a) grant a charge on any moneys due or to become due to the Contractor under the Contract in favour of his bankers or a third party providing finance to the Contractor for the Works; and
  - (b) assign to his bankers or the third party the right to receive any moneys due or to become due under the Contract to the Contractor.
- 4.3 The Authority shall be fully entitled at any time, without the consent of the Contractor, to assign or otherwise transfer:
- (a) the benefit of the Contract (or any part thereof) and any interest therein or right thereunder to any third party; and
  - (b) the burden of the Contract including accrued liabilities (or any part thereof) and any interest therein to the Government or to a corporation wholly owned by the Government, or to any bank or financial institution providing finance to the Authority in respect of the Project,

provided that the Authority shall notify the Contractor following any assignment or transfer by the Authority in accordance with this Clause 4.3.

## 5. **Sub-Contracting**

- 5.1 The Contractor shall not sub-contract the whole of the Works.
- 5.2 The Contractor shall sub-contract the performance of his design checking obligations subject to and in accordance with Clause 6 and shall enter into sub-contracts with all Key Domestic Sub-Contractors. The Contractor shall not terminate the appointment of any Key Domestic Sub-Contractor or any sub-contract under which a Key Domestic Sub-Contractor is engaged without the prior consent of the Contract Administrator. The Contract Administrator may make consent to the replacement of any Key Domestic Sub-Contractor conditional upon reasonable conditions with which the Contractor shall comply.
- 5.3 Save as provided by Clause 5.2, the Contractor shall not sub-contract any part of the Works without prior consent.
- 5.4 If the Contractor wishes to sub-contract part of the Works (other than pursuant to Clause 5.2) he shall submit to the Contract Administrator:
- (a) the identity of the sub-contractor proposed to be employed;

- (b) particulars of the part of the Works to be sub-contracted;
- (c) the proposed terms upon which the sub-contractor is to be employed;
- (d) address, telephone and facsimile numbers of the proposed sub-contractor;
- (e) description of the proposed sub-contractor's management structure;
- (f) details of previous and current projects of a similar nature undertaken by the proposed sub-contractor, giving the names of the Authority, architect/engineer, description of work performed and contract value;
- (g) number of personnel on the proposed sub-contractor's payroll and descriptions of their respective occupation/trade;
- (h) any work the proposed sub-contractor intends to further sub-contract to others;
- (i) details of design capability, if the proposed sub-contractor is required to carry out design for the Works;
- (j) details of design, fabrication and manufacturing facilities of the proposed sub-contractor;
- (k) details of the site management arrangements of the proposed sub-contractor;
- (l) details of safety personnel currently employed by the proposed sub-contractor and past accident records; and
- (m) details of quality management personnel currently employed by the proposed sub-contractor and quality management system in use,

unless the Contract Administrator notifies the Contractor that any information listed in Clause 5.4(a) to (m) is not required in respect of the sub-contracting of any part of the Works. Such information shall be supplied by the Contractor in sufficient time to enable the Contract Administrator to evaluate the capacity and ability of the proposed sub-contractor to execute the part of the Works to be sub-contracted and to enable the Contractor to select an alternative party in the event that the Contract Administrator withholds his consent to the proposed sub-contracting.

- 5.5 The Contractor shall ensure that the terms of any sub-contract (including, without limitation, those made pursuant to Clause 6) impose on the sub-contractor such of the terms of the Contract as are applicable and appropriate to the part of the Works to be sub-contracted so as to enable the Contractor to comply with his obligations in respect of such part.
- 5.6 The Contractor shall use all reasonable endeavours to incorporate in any of the sub-contracts referred to in Clauses 5.2 and 5.4, such terms and conditions as the Contract Administrator may request the Contractor to so incorporate.



- 5.7 The Contractor shall ensure that the proposed terms and conditions of sub-contract referred to in Clause 5.5 shall include a provision by which the sub-contractor is obliged to provide a warranty executed as a deed in favour of the Authority, in the form appearing in **Schedule 1**, unless the Authority notifies the Contractor that no such warranty is required in respect of any sub-contract. The Contractor shall submit a warranty, duly executed, in the said form to the Authority within 28 (twenty eight) days of the Contractor's appointment of each relevant sub-contractor in accordance with this Clause 5.
- 5.8 The Contractor shall, after receiving consent to any sub-contracting, supply to the Contract Administrator such copies of the terms and conditions (including, without limitation, rates and prices) of the sub-contract as the Contract Administrator may instruct, and the Contractor shall not after entering into the sub-contract, amend, vary or waive the terms and conditions thereof in any respect material to compliance by the Contractor with his obligations, without prior consent.
- 5.9 The Contract Administrator shall be entitled to communicate directly with the Contractor's sub-contractors of any tier, keeping the Contractor informed of any significant communication, provided that the Contract Administrator shall not be entitled to issue directly to any sub-contractor, any instruction or decision affecting the Contractor's obligations or liabilities to a sub-contractor of any tier.
- 5.10 No sub-contracting shall relieve the Contractor from any obligation or liability nor create any obligation or liability on the part of the Authority. The Contractor shall be liable for the acts and omissions of his sub-contractors of any tier as if they were the acts and omissions of the Contractor. Without prejudice to the foregoing, the Contractor shall provide all necessary superintendence to ensure that the part of the Works to be executed by his sub-contractors shall comply with the requirements of the Contract.
- 5.11 The Contract Administrator may, notwithstanding previous consent pursuant to Clause 5.3, instruct the Contractor to discontinue the participation in the Works of any of the Contractor's sub-contractors of any tier if, in the opinion of the Contract Administrator, the sub-contractor causes or contributes to a material breach by the Contractor of any term of the Contract. Following the issue of any such instruction, the Contractor shall ensure that the relevant sub-contractor does not participate in the Works again without prior consent.
- 5.12 If a sub-contractor of any tier provides to the Contractor a warranty in connection with the Works, and if the Authority so instructs, the Contractor shall assign the benefit of the warranty to the Authority, provided that in the event of any such assignment, the Authority shall use reasonable endeavours to enforce the said warranty against the relevant sub-contractor before enforcing the Contract against the Contractor in respect of any matter for which a cause of action exists against the sub-contractor under the said warranty.
- 5.13 If the Contractor is in breach of any of the provisions of this Clause 5 in respect of any sub-contractor appointed by the Contractor, the Authority may, without prejudice to any other rights or remedies it may have, withhold all interim payments in relation to the Cost Centre under which the Contractor is to receive payment in respect of that part of the Works sub-contracted, until the breach is remedied.

6. **Appointment of Independent Checking Engineer**

- 6.1 Within 30 (thirty) days of the date of the Letter of Acceptance, the Contractor shall appoint the Independent Checking Engineer from the Authority's list of approved independent checking engineers contained in the Specification to perform the Contractor's design checking obligations.
- 6.2 The terms of appointment of the Independent Checking Engineer shall provide that the Independent Checking Engineer is required:
- (a) to provide persons of the qualifications and experience appropriate to and consistent with the nature and scope of the services to be undertaken;
  - (b) to perform the duties ascribed to him with reasonable skill, care and diligence;
  - (c) to perform his duties in a manner compatible and consistent with the Contractor's obligations;
  - (d) to be represented in Hong Kong at all times throughout the execution of the Works by staff of suitable seniority and experience;
  - (e) not to sub-contract any part of his obligations, save with the written consent of the Contractor and the Contract Administrator; and
  - (f) to provide in favour of the Authority a warranty duly executed as a deed in the form appearing in **Schedule 2**.

The Independent Checking Engineer shall be (and shall be required by his terms of appointment with the Contractor to be) independent of the Contractor and not be associated in any way with any person undertaking the design of any part of the Permanent Works or the Temporary Works.

- 6.3 The Contractor shall supply to the Authority the warranty referred to in Clause 6.2(f) above, duly executed, within 14 (fourteen) days of the appointment of the Independent Checking Engineer by the Contractor.
- 6.4 The Contractor shall supply to the Contract Administrator one copy of the terms and conditions of appointment of the Independent Checking Engineer within 7 (seven) days of being instructed so to do by the Contract Administrator. The Contractor shall not, after entering into an agreement with the Independent Checking Engineer, amend, vary or waive the terms and conditions thereof in any respect material to compliance by the Independent Checking Engineer, with the Independent Checking Engineer's obligations, without prior consent.
- 6.5 The Contract Administrator may instruct the termination of the appointment of the Independent Checking Engineer if, in the Contract Administrator's opinion, the Independent Checking Engineer fails to properly discharge his duties in accordance with the terms and conditions of his appointment. If the Independent Checking Engineer's appointment is so terminated, he shall not again participate in the Works without prior consent.

- 6.6 In the event of the termination of the appointment of the Independent Checking Engineer for any reason by the Contractor, the Contractor shall give notice thereof to the Contract Administrator and shall submit for review details of the identity, qualifications, experience and terms and conditions of appointment of the proposed replacement. On receiving a notice of no objection thereto, the Contractor shall appoint the replacement as soon as practicable.

## **CONTRACT DOCUMENTS**

### **7. Precedence of Documents**

- 7.1 The documents forming the Contract are to be taken as mutually explanatory. In the event of any inconsistency between the documents comprising the Contract, the documents shall be interpreted by reference to the following order of precedence unless a contrary intention is expressed by any other provision of the Contract:

- (a) the Letter of Acceptance shall prevail over any other document forming the Contract;
- (b) subject to Clause 7.1(a), the provisions of any Special Conditions shall prevail over those of any other document forming the Contract; and
- (c) subject to Clauses 7.1(a) and (b), the provisions of these General Conditions shall prevail over those of any other document forming the Contract.

- 7.2 In the event that the Contractor shall find any ambiguity or discrepancy in or between the documents comprising the Contract, the Contractor shall forthwith notify the Contract Administrator who shall, as soon as practicable, issue such instructions to the Contractor which are necessary, in the Contract Administrator's opinion, to resolve the ambiguity or discrepancy. If in compliance with an instruction issued pursuant to Clause 7.2, the Contractor is prevented from achieving any Stage or practically completing the Works or any Section by the relevant Key Date, or incurs Cost which the Contractor did not and had no reason to anticipate then, if the Contractor claims additional time and/or payment therefor, the Contract Administrator shall give a decision pursuant to Clause 45 and/or Clause 56 and/or 57, provided that the Contractor has complied with his obligations pursuant to Clause 45 and/or Clause 58, as appropriate.

### **8. Entire Agreement and Rights of Third Parties**

- 8.1 Notwithstanding anything to the contrary expressed in or to be implied from the Contract, the documents referred to in the definition of "Contract" in Clause 1.1 as comprising the Contract contain the entire agreement between the parties which supersede any previous agreement and understanding between the parties in relation to the Works or any part thereof. The Contractor acknowledges that by entering into the Contract, he has not relied on any statement, representation, warranty, undertaking or qualification to, or clarification of, his Tender, which is not expressly set out in the documents comprising the Contract and that the Authority shall have no liability to the Contractor in respect of the same in the absence of fraud.

- 8.2 Except in respect of any rights arising by means of an assignment pursuant to Clause 4.3, any person who is not a party to the Contract shall not have any right or entitlement under any Enactment to enforce or enjoy the benefit of any term or condition of the Contract and any such right or entitlement is hereby expressly excluded.

9. **Provision of Drawings and Specification**

- 9.1 Within 7 (seven) days of the date of the Letter of Acceptance, the Contract Administrator shall issue to the Contractor, free of charge, 4 (four) copies of the Specification, together with 2 (two) copies and 1 (one) CD-ROM of the Drawings.
- 9.2 The Contract Administrator shall issue to the Contractor from time to time during the progress of the Works 1 (one) negative and 2 (two) positive sets of such further or amended Drawings and 2 (two) copies of such further or amended Specification (excluding drawings and documents which the Contractor is expressly or impliedly obliged to produce under the Contract) as shall in the Contract Administrator's opinion be necessary for the execution of the Works and the Contractor shall be bound by the same. The Contract Administrator shall not be bound to issue any Drawing or Specification relating to any matter which, in his opinion, is the responsibility of the Contractor under the Contract in the absence of the Drawing or Specification.
- 9.3 The Contractor shall give reasonable notice to the Contract Administrator of any further or amended Drawings or Specification which the Contractor considers is necessary for the execution of the Works to enable the Contract Administrator to issue the Drawings or Specification without delaying the progress of the Works, but the Contract Administrator shall not in any event be obliged to issue the Drawings or Specification in advance of dates for their issue identified in the Works Programme.
- 9.4 If, as a result of any failure or inability of the Contract Administrator to issue pursuant to Clause 9.2 at a time reasonable in all the circumstances, further or amended Drawings or Specification which were the subject of a notice by the Contractor in accordance with Clause 9.3, the Contractor is prevented from achieving any Stage or practically completing the Works or any Section by the relevant Key Date, or incurs Cost which the Contractor did not and had no reason to anticipate, then, if the Contractor claims additional time and/or payment therefor, the Contract Administrator shall give a decision pursuant to Clause 45 and/or Clause 57, provided that the Contractor has complied with his obligations pursuant to Clause 45 and/or Clause 58, as appropriate.

10. **Submission and Review Procedure**

- 10.1 The Contractor shall submit to the Contract Administrator for review all proposed Contractor's Drawings and all other documents and things required by the Contract to be submitted for review. Each submission shall be made in accordance with the procedure for submission set out in the Specification and in any event:
- (a) in time to enable the Contract Administrator to examine the proposed Contractor's Drawings or other document or thing submitted by the Contractor without delaying the progress of the Works; and
  - (b) not later than any relevant date identified in the Works Programme.

- 10.2 The Contract Administrator shall notify the Contractor of the outcome of his review pursuant to the procedure for submission set out in the Specification within such period as may be expressly stipulated in the Contract, or in the absence of any stipulation, within a reasonable time. The Contractor shall, subject to any other provision of the Contract to the contrary, execute the Works in accordance with the Contractor's Drawings.
- 10.3 If the Contract Administrator notifies the Contractor, or if the Contractor discovers at any time that any of the Contractor's Drawings is not in accordance with the Contract, or any part of the Contractor's Drawings is inconsistent or incompatible with another part, the Contractor shall make such amendments as are necessary to remedy the non-compliance and shall submit all amended Contractor's Drawings to the Contract Administrator for review.
- 10.4 The Contractor shall not be entitled to receive any extension of time for achievement of a Stage or practical completion of the Works or any Section, or to receive any valuation or Cost pursuant to Clauses 56 and 57 respectively, or any further or additional payment of whatsoever nature by reason of any amendment reviewed without objection pursuant to Clause 10.3, and the Contractor shall be liable for any loss and expense incurred by the Authority arising out of any amendment reviewed without objection pursuant to Clause 10.3.
- 10.5 The Contractor shall have an on-going obligation to monitor and review the Contractor's Drawings in addition to the Drawings and the Contractor shall propose amendments to the Drawings and/or Contractor's Drawings and submit them for review by the Contract Administrator if the Contractor becomes aware that any of the designs contained in the Drawings or Contractor's Drawings is inconsistent with the Specification or is not in accordance with the Contract, or is inconsistent with any other obligation of the Contractor or if the Contract Administrator notifies the Contractor of such inconsistency or incompatibility. If such an inconsistency or incompatibility is discovered, the Contractor will not be obliged to execute the works in accordance with the inconsistent design.
- 10.6 If the Contractor wishes to modify any part of the design contained in the Drawings or Contractor's Drawings which has been reviewed without objection by the Contract Administrator, the Contractor shall submit the Contractor's Drawings containing the modified design for review by the Contract Administrator with details of:

- (a) the proposed amendment; and
- (b) the reasons for the proposed amendment,

together with any other information and supporting documentation that the Contract Administrator requires. Such modification will not amount to a variation for the purposes of Clause 54, but if the modification is consequent upon or caused by a variation issued by the Contract Administrator, then the cost of performing the modification to the Drawings or the Contractor Drawings may be the subject of a claim for additional time or payment therefor by the Contractor under Clause 54.

## **GENERAL OBLIGATIONS**

## 11. **Contractor's General Responsibilities**

11.1 Save insofar as it is legally or physically impossible, the Contractor shall, without prejudice to his other obligations:

- (a) execute the Works in accordance with the Contract and, subject thereto, to the satisfaction of the Contract Administrator;
- (b) comply with the Contract Administrator's instructions;
- (c) provide all staff, labour, goods, materials, Contractor's Equipment, work, transport to and from and about the Site and the Project Site, accommodation, storage and disposal facilities, consumables and everything, whether of a temporary or permanent nature, required in and for the execution of the Works, so far as the necessity for providing the same is identified in the Contract or could reasonably be inferred therefrom by a competent contractor experienced in the execution of works of a similar nature and scope to the Works; and
- (d) discharge his obligations with the skill and care to be expected of a competent contractor experienced in the execution of works of a similar nature and scope to the Works.

## 12. **Responsibility for Design**

12.1 The Contractor shall, subject to and in accordance with the Contract, design:

- (a) the Temporary Works, save to the extent expressly provided to the contrary in the Contract; and
- (b) any part of the Permanent Works expressly required by the Contract to be designed by the Contractor,

and the design shall include the selection and specification of the kinds and standards of goods, materials and workmanship to be used in the Permanent Works and the Temporary Works, or in relation thereto, so far as is not described or stated in the Specification.

12.2 The Contractor shall be entirely responsible for the Contractor's design of the Temporary Works and any part of the Permanent Works required by the Contract to be designed by the Contractor, including, without limitation, the Contractor's Drawings, and shall be, and shall remain, liable for any mistake, inaccuracy or discrepancy contained therein or any omission therefrom. Nothing contained in the Contractor's design shall relieve the Contractor from his obligations or liabilities pursuant to Clause 12.3.

12.3 To the extent of his design obligations pursuant to Clauses 12.1 and 12.2, the Contractor warrants to the Authority that:

- (a) he has exercised and shall continue to exercise in his design of the Temporary Works and the relevant part of the Permanent Works, all the skill and care to be

expected of a professionally qualified and competent designer experienced in undertaking the design of works of a similar nature and scope to the Works;

- (b) the Temporary Works and the relevant part of the Permanent Works shall comply in all respects with the Contract and the Contractor's Drawings;
- (c) the Temporary Works and the relevant part of the Permanent Works have been and will be designed and constructed by the Contractor using proven up to date good practice and standards available at the date hereof which are consistent with the scope of the Works and to standards which are consistent with the Contract;
- (d) the relevant part of the Permanent Works shall, when completed, comply with the Enactments;
- (e) no goods or materials generally known to be deleterious or otherwise not in accordance with good architectural practice have been or will be specified or selected by the Contractor or any one acting on his behalf;
- (f) no goods or materials which, after their specification or selection by or on behalf of the Contractor but before being incorporated into the Permanent Works, become generally known to be deleterious or otherwise not in accordance with sound architectural practice, will be incorporated into the Permanent Works; and
- (g) the Contractor's design of the relevant part of the Permanent Works has taken and/or will take full account of the construction methods, Temporary Works, and Contractor's Equipment intended to be used by the Contractor and all sub-contractors of any tier.

## 12A. **Alternative Design**

12A.1 If at any time during the execution of the Works, the Contractor wishes to propose to the Contract Administrator an alternative design of any part of the Permanent Works the design of which is contained in the Specification and/or the Drawings, he shall submit to the Contract Administrator for review a proposal for such alternative design which shall contain, without limitation:

- (a) details of the technical and aesthetic aspects of the proposal;
- (b) the anticipated impact of the proposal on the Works Programme and any time savings offered by the Contractor;
- (c) details of any cost savings to be derived from the proposal (including the cost of maintenance of the Permanent Works);
- (d) particulars of any alternative products included in the proposal, with catalogues and technical data;
- (e) evidence of compliance with equivalent standards referred to in the Specification;

- (f) particulars of local examples of the design included in the proposal; and
- (g) evidence, where relevant, of the unavailability of materials specified in the Drawings and/or the Specification in respect of that part of the Permanent Works to which the Contractor's proposal relates.

12A.2 Following receipt of any proposal from the Contractor in accordance with Clause 12A.1, and following consultation with the Authority, the Contract Administrator shall review the Contractor's proposal subject to and in accordance with the procedures set out in the Specification and shall notify the Contractor of any costs and/or expenses which will be charged to the Contractor including, without limitation:

- (a) the charges of the Contract Administrator in reviewing the Contractor's proposal and undertaking any additional design; and
- (b) additional costs of supervising the Contractor's alternative design.

12A.3 Within 7 (seven) days of receipt of any notice of no objection from the Contract Administrator pursuant to clause 12A.2, the Contractor shall inform the Contract Administrator whether or not he intends to proceed with his proposal for the alternative design of a part of the Permanent Works.

12A.4 In the event that the Contractor wishes to proceed with any alternative design proposal which has been reviewed without objection by the Contract Administrator, the Contractor shall, for all purposes of the Contract, be responsible for the design of that part of the Permanent Works referred to in the Contract Administrator's notice of no objection and all the provisions of the Contract in respect of the Contractor's design of the Works shall apply to such part of the Permanent Works to be designed by the Contractor. Without prejudice to the foregoing, for the purpose of Clause 12.1(b), that part of the Permanent Works referred to in the Contract Administrator's notice of no objection issued pursuant to Clause 12A.2 shall be deemed to be expressly required by the Contract to be designed by the Contractor.

12A.5 Any proposal submitted by the Contractor in accordance with Clause 12A.1 shall be made at such time as to enable the Contract Administrator to consider the proposal without delaying the progress of the Works or incurring any abortive design costs. The Contractor shall, notwithstanding the submission of any proposal to the Contract Administrator pursuant to Clause 12A.1, continue with the execution of the Works subject to and in accordance with the Contract.

12A.6 In relation to the alternative design of any part of the Permanent Works reviewed without objection by the Contract Administrator, the Authority will appoint the Authorised Person and Registered Structural Engineer (if required) to fulfil the statutory requirements under the Buildings Ordinance in respect of the Contractor's alternative design. The said appointment of an Authorised Person and a Registered Structural Engineer in respect of the Contractor's alternative design of any part of the Permanent Works shall not relieve the Contractor in whole or in part of any obligation or liability, nor shall the Contractor claim any waiver or estoppel in relation to any obligation or liability by reason of any act or omission of the Authorised Person or any person acting as Registered Structural Engineer under the Buildings Ordinance,



notwithstanding that such persons may be appointed by the Authority pursuant to Section 4(1) of the Buildings Ordinance in respect of the Contractor's design of any part of the Permanent Works.

- 12A.7 In relation to the Contractor's alternative design of any part of the Permanent Works, the Contractor shall appoint the Independent Checking Engineer to check the Contractor's alternative design in accordance with the Contract. The Contractor's alternative design shall be certified by a person who is registered as an Authorised Person and, if required, by a person who is registered as a Registered Structural Engineer, prior to submission to the Contract Administrator for review, notwithstanding that the Authority will appoint the Authorised Person and Registered Structural Engineer (if required) in respect of the Contractor's alternative design, pursuant to Clause 12A.6.
- 12A.8 Notwithstanding any other provision of the Contract, the Contractor shall not be entitled to receive any extension of time for completion of the Works or any Section or for the achievement of any Stage by reason of any failure by the Contract Administrator to issue a notice of no objection in respect of any proposal submitted by the Contractor for the alternative design of any part of the Permanent Works. Unless otherwise expressly agreed by the Contract Administrator, the issue of any notice of no objection by the Contract Administrator to any proposal for an alternative design of any part of the Permanent Works shall not entitle the Contractor to receive any further or additional payment by reason thereof, or by reason of any disruptive effect on the remainder of the Works, whether pursuant to Clauses 56 and/or 57 or by way of damages howsoever arising.

13. **Articles of Agreement**

- 13.1 The Contractor shall, when requested by the Authority, execute the Articles of Agreement, in the form appearing in **Schedule 3**, as a deed, which shall be prepared at the expense of the Authority.
- 13.2 If the Contractor, or any of the entities comprising the Contractor, is incorporated outside of Hong Kong, the Contractor shall, if requested by the Authority, obtain prior to the execution of the Articles of Agreement, an opinion in writing by an established and qualified lawyer (who is not an employee of the Contractor or any such entity) in the country where the Contractor or such entity is incorporated, in substantially the same form as the draft contained in **Schedule 4** and acceptable to the Authority, confirming that the proposed manner of execution of the Articles of Agreement by the Contractor or such entity will result in a legal, valid and binding instrument in and under the laws of the country in which the Contractor or any such entity is incorporated.

14. **Bonds and Parent Company Guarantees**

**Bonds and Guarantees**

- 14.1 The Contractor shall, within 14 (fourteen) days of the date of the Letter of Acceptance, obtain and provide to the Authority:

- (a) a bond for the amount stated in **Appendix 1 to the Form of Tender**, in the form appearing in **Schedule 5**, duly executed as a deed by the bank or other financial institution which is identified in the Letter of Acceptance. Such bond shall remain in full force and effect until the issuance of the Defects Liability Certificate (save to the extent that payment thereunder is received by the Authority in full prior thereto), and save that the amount of the bond shall be reduced by 50% on the issuance of the Practical Completion Certificate for the Works. The Authority shall return the bond to the Contractor within 28 (twenty-eight) days of its expiry. Within 7 (seven) days of the submission of the bond in the form required, the Authority shall release any tender bond submitted by the Contractor with the Tender; and
- (b) a parent company guarantee in the form appearing in **Schedule 6**, duly executed as a deed by such of the parent companies' shareholders or holding companies of the Contractor as is identified in the Letter of Acceptance. If the Contractor comprises more than one legal entity, this provision shall apply to each such entity. If any Parent Company sells, transfers, assigns or otherwise disposes of or deals with the ownership of the whole or any part of the shareholding or other interest in the Contractor or any company comprised in the Contractor, which affects the beneficial ownership and control in the Contractor or any company comprising the Contractor, the Contractor shall obtain and provide to the Authority within 14 (fourteen) days of the date of such sale, transfer, assignment, disposal or dealing a replacement Parent Company Guarantee in the form appearing in **Schedule 6**, duly executed as a deed, from the new Parent Company of the Contractor or the company comprised in the Contractor.
- (c) The Contractor shall obtain and provide to the Authority a parent company guarantee in the form appearing in **Schedule 7**, duly executed as a deed, by the parent companies, shareholders or holding companies of any sub-contractor identified as being required to provide a guarantee to the Authority in the Letter of Acceptance, within 14 (fourteen) days of the appointment of any such sub-contractor by the Contractor.

#### **Off-shore Manufacturing Bonds**

- 14.2 The Contractor shall submit to the Authority, at the times required by the preamble to the Pricing Document, bonds required by the said preamble as security for and as a condition precedent to payment for any part of the Permanent Works manufactured offshore, in the form appearing in **Schedule 8**, duly executed as a deed by the bank or financial institution identified in the Letter of Acceptance or such other bank or financial institution as may be reviewed without objection.

#### **Legal Opinions**

- 14.3 The provisions of Clause 13.2 in respect of the provision of a legal opinion for the execution of the Articles of Agreement by the Contractor shall apply mutatis mutandis to the execution of a bond by any bank or financial institution and the execution of a parent company guarantee by any company pursuant to Clauses 14.1(a), 14.1(b), 14.1(c) and 14.2, as appropriate, where they are incorporated outside of Hong Kong, save that the legal opinion shall be in practically the same form as the relevant draft contained in

## **Schedule 9.**

### **Withholding Interim Payments**

- 14.4 The Contractor's compliance with Clause 14.1 shall be a condition precedent to receipt of any payment by the Contractor under the Contract. Without prejudice to any other right or remedy of the Authority, until the Contractor has complied with Clause 14.1, the Authority shall be entitled to withhold all payments otherwise due to the Contractor under the Contract.

15. **Inspection of the Project Site, the Site and Information, Sufficiency of Tender and Physical Conditions and Artificial Obstructions**

- 15.1 The Contractor shall be deemed prior to the date of the Letter of Acceptance to have:
- (a) inspected the Project Site and the Site and its surroundings and examined all information in connection with the Works made available to the Contractor by or on behalf of the Authority prior to the said date, including, without limitation, the information on the nature of the ground, sub soil and sub strata of the Site obtained by or on behalf of the Authority and listed in the Specification, which the Contractor shall be responsible for interpreting;
  - (b) obtained for himself all other necessary information in connection with the execution of the Works and his other obligations; and
  - (c) satisfied himself as to:
    - (i) the form, nature and general condition of the Site including, without limitation, the form and nature of the ground, sub soil and sub strata of the Site, and all geological, geo-environmental, geotechnical and hydrological conditions affecting the Site;
    - (ii) the form and nature of materials, whether natural or otherwise, to be excavated from the Site;
    - (iii) the means of communication with and access to and through the Project Site and the Site;
    - (iv) the climatic and environmental conditions affecting the Project Site and the Site;
    - (v) the risk of damage to property adjacent to the Site and injury to occupiers of such property;
    - (vi) the possibility of interference by persons other than the Authority who will also have access to or use of the Project Site and the Site from time to time;
    - (vii) the interfaces with Project Contractors and other works relating to the Project;

- (viii) the nature and extent of the Works and the materials necessary for the execution of the Works;
- (ix) the description of the Cost Centres and item descriptions and quantities, if any, contained in the Pricing Schedule and that the same are consistent with the scope of the Works ascertainable in accordance with the Contract, apart from those descriptions and quantities; and
- (x) all other matters whatsoever affecting his obligations.

15.2 The Contractor shall be deemed prior to the date of the Letter of Acceptance on the basis indicated in Clause 15.1 and generally, to have allowed a correct and sufficient Tender Total and rates and prices included in the Pricing Document to cover all his obligations and to have allowed the necessary resources and allocated the necessary time to enable him to practically complete the Works and any Section and to achieve any Stage by the relevant Key Dates. Except insofar as otherwise provided in the Contract, the Tender Total and the said rates and prices shall cover all the Contractor's obligations and, except as aforesaid, the periods ending on the Key Dates shall be deemed sufficient for the Contractor to practically complete the Works and any Section and to achieve any Stage.

15.3 The Authority shall have no obligation to make any additional payment to the Contractor, and the Contract Administrator shall have no obligation to grant any extension of time on the ground of:

- (a) any misunderstanding or misapprehension in respect of the matters referred to in Clause 15.1; or
- (b) except as otherwise provided in the Contract (including, without limitation, pursuant to Clauses 15.4, 15.5 and 15.6), incorrect or insufficient information being given to the Contractor by any person whether or not in the employ of the Authority; or
- (c) the Contractor failing to obtain correct and sufficient information,

nor shall the Contractor be relieved from any of his obligations or liabilities on any such ground or, subject to Clauses 76 and 77, on the ground that he did not or could not foresee any matter which may in fact affect or have affected his obligations, provided that the foregoing shall not affect the Contractor's rights or obligations pursuant to Clauses 15.4 to 15.7, or Clause 24.1.

15.4 If, during the execution of the Works, the Contractor shall encounter physical conditions at the Site (other than weather conditions or conditions due to weather conditions) or artificial obstructions at the Site which could not, in his opinion, reasonably have been foreseen by an experienced contractor at the date of the Letter of Acceptance, the Contractor shall, as soon as practicable thereafter, and in any event within 28 days of encountering such conditions, give notice thereof to the Contract Administrator. Without prejudice to Clauses 45, 56, 57 and 58, such notice shall specify the physical condition or artificial obstruction at the Site, the effects thereof, the measures the Contractor has taken or is proposing to take to overcome the physical

condition or artificial obstruction at the Site, their estimated cost, and the extent of the anticipated delay in, or interference with, the execution of the Works.

15.5 Following receipt of any notice served by the Contractor in accordance with Clause 15.4, and without prejudice to any other power which the Contract Administrator may have under the Contract, the Contract Administrator may:

- (a) instruct the Contractor to investigate and report upon the practicability and cost and timing effects of the Contractor taking measures which may be available to overcome the physical condition or artificial obstruction at the Site;
- (b) consent to the measures notified by the Contractor in accordance with Clause 15.4, with or without modification;
- (c) give an instruction as to how the physical condition or artificial obstruction at the Site is to be dealt with; and/or
- (d) order a suspension under Clause 51 or a variation under Clause 54.

15.6 If by reason of:

- (a) the presence of the physical condition or artificial obstruction at the Site notified by the Contractor in accordance with Clause 15.4 which in the Contract Administrator's opinion could not have been reasonably foreseen by an experienced contractor at the date of the Letter of Acceptance; and
- (b) the measures taken by the Contractor to overcome the physical condition or artificial obstruction at the Site notified by the Contractor in accordance with Clause 15.4 and made the subject of the Contract Administrator's consent pursuant to Clause 15.5(b); or
- (c) instructions issued by the Contract Administrator pursuant to Clauses 15.5(a) or (c),

the Contractor is prevented from achieving any Stage or practically completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate then, if the Contractor claims additional time and/or payment therefor, the Contract Administrator shall give a decision pursuant to Clauses 45 and/or 56 and/or 57, provided that the Contractor has complied with his obligations pursuant to Clause 45 and/or Clause 58, as appropriate.

15.7 If the Contract Administrator shall decide that the physical condition or artificial obstruction the subject of a claim for additional time and/or payment, could in whole or in part have been reasonably foreseen by an experienced contractor at the date of the Letter of Acceptance, he shall so notify the Contractor in writing as soon as he shall have reached that decision. Notwithstanding such notification, any claim by the Contractor for additional time and/or payment in respect of any suspension or variation previously instructed by the Contract Administrator shall be decided in accordance with Clauses 45 and/or 56 and/or 57.

## 16. **Programmes and Progress Reports**

- 16.1 The Contractor shall submit to the Contract Administrator in accordance with the Specification:
- (a) the Works Programme;
  - (b) the Monthly Progress Reports; and
  - (c) such other programmes, schedules and reports as may be identified in the Specification or instructed.
- 16.2 The review without objection of any of the documents referred to in Clause 16.1 (or any amendment thereof from time to time) shall not:
- (a) if the document indicates that a Key Date has not or will not be met, constitute any form of acknowledgement that the Contractor is or may be entitled to an extension of time in relation to the Key Date; and
  - (b) without prejudice to the generality of any other provision of the Contract, imply that any programme is feasible, suitable or appropriate.
- 16.3 The Contract Administrator shall issue the Master Programme to the Contractor and may from time to time issue the Contractor with revised versions of the Master Programme if, in the Contract Administrator's opinion, the effect of the revisions are relevant to the programming and/or execution of the Works. The Master Programme shall not be binding on the Authority or otherwise:
- (a) release the Contractor of any of his obligations or liabilities or give rise to any waiver or estoppel in relation to any of his obligations or liabilities; or
  - (b) constitute a warranty by the Authority in relation to the Contractor's execution of the Works; or
  - (c) create any obligation or liability on the part of the Authority.
- 16.4 The Contract Administrator shall issue the Contractor with the Co-ordinated Installation Programme and such other programmes to be issued by the Contract Administrator as referred to in, and in accordance with, the Specification.
- 16.5 No provision or reference in any of the documents referred to in Clause 16.1 shall constitute a notice for the purpose of any of the provisions of the Contract.
- 16.6 Any failure by the Contractor to work in accordance with the Works Programme shall be deemed to be a breach of Clause 42.1 unless the Contractor can prove to the contrary.

## 17. **Method Statement**

- 17.1 The Contractor shall submit to the Contract Administrator for review, all drawings and other documents as may be identified in the Specification, or as instructed, relating to the

methods by which the Contractor shall execute the Works, including, without limitation, the use of Contractor's Equipment and Temporary Works and the places where the Contractor shall execute the Works.

- 17.2 The Contractor warrants to the Authority that the methods of delivery, assembly and construction (including the use of Contractor's Equipment and Temporary Works) and the Contractor's Equipment and Temporary Works themselves shall be consistent with the requirements of the Contract and that the Contractor shall not change any proposed method of construction previously reviewed without objection by the Contract Administrator, without making a further submission for review.

**18. Contractor's Superintendence and Staff**

- 18.1 The Contractor shall provide all necessary superintendence during the execution of the Works.
- 18.2 The Contractor shall employ or cause to be employed in connection with the Works on the Site or off-Site at any place of manufacture or source of material and in the superintendence thereof only such technical personnel as are skilled and experienced in their respective trades and callings and such sub-agents, foremen, leading hands and labour as are competent to carry out their respective duties in connection with the Works.
- 18.3 The Contract Administrator may instruct the Contractor to remove or cause to be removed from the Works, the Site and the Project Site any person employed thereon without stating any reason if, in the Contract Administrator's opinion, the person misconducts himself, is incompetent, is negligent in the performance of his duties, fails to conform with any provision in the Contract with regard to safety or persists in any conduct which is prejudicial to safety or health. Such person shall not again be employed in connection with the Works or on the Site or the Project Site without prior consent.
- 18.4 Any person removed from the Works or the Site pursuant to Clause 18.3 shall be replaced by the Contractor as soon as practicable by a competent substitute.
- 18.5 The Contractor shall indemnify the Authority in respect of liability under the Immigration Ordinance (Cap 115) to the extent that such liability arises from the presence on or off the Site of any employee, agent or representative of the Contractor or of his sub-contractors of any tier.

**19. Setting-out and Dimensions**

- 19.1 The Contractor shall be responsible for the setting out of the Works relative to the data contained in the Drawings and the Specification or notified by the Contract Administrator and for the correctness of the position, level, dimensions and alignment of all parts of the Works and for the provision of all necessary instruments, appliances and labour in connection therewith.
- 19.2 If at any time during the execution of the Works any error shall appear or arise in the position, level, dimension or alignment of the Works or any part thereof, the Contractor shall forthwith give notice of the same to the Contract Administrator and shall, on being instructed so to do, rectify the error to the satisfaction of the Contract Administrator.

Provided that if, in the Contract Administrator's opinion, the error is the result of incorrect data contained in the Drawings and/or the Specification or notified by the Contract Administrator and if, in compliance with an instruction pursuant to this Clause 19.2, the Contractor is prevented from achieving any Stage or practically completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate then, if the Contractor claims additional time and/or payment therefor, the Contract Administrator shall give a decision pursuant to Clause 45 and/or Clause 56 and/or 57, provided that the Contractor has complied with his obligations pursuant to Clause 45 and/or Clause 58, as appropriate.

- 19.3 The Contractor shall carefully protect and preserve all bench-marks, sight-rails, pegs and other things used in setting out the Works.

20. **Safety**

- 20.1 The Contractor shall throughout the execution of the Works take full responsibility for:

- (a) the adequacy, stability and safety of the Works;
- (b) the safety of the Contractor's Equipment;
- (c) the safety of all persons on or in the vicinity of the Site; and
- (d) providing and maintaining all necessary lights, guards, fences, warning signs and storage areas.

- 20.2 The Contractor shall:

- (a) submit to the Contract Administrator for his review, in accordance with the Specification, a safety plan which shall set out details of the safety measures to be implemented by the Contractor to comply with his obligations under or in connection with the Contract. Any supplemental submission to the Contract Administrator for his review of amendments, variations or additions to the safety plan shall be made not less than 28 (twenty-eight) days before commencement of any work which is the subject of the submission;
- (b) appoint a competent English speaking agent or representative who has been reviewed without objection and who is not otherwise involved in the Works to act as the manager and supervisor of the safety plan;
- (c) adhere to the principles and procedures contained in the safety plan and in any amendment, variation or addition thereto which have been reviewed without objection; and
- (d) ensure that sufficient personnel are dedicated to the implementation of the safety plan and all safety procedures contained therein.

- 20.3 If at any time:



- (a) the safety plan is, in the Contract Administrator's opinion, insufficient or requires revision or modification to ensure the security of the Works and the safety of all workmen upon and visitors to the Site; or
- (b) the level of accidents on any part of the Site exceeds any level laid down in Government proposals for safety,

the Contract Administrator may instruct the Contractor to revise the safety plan and the Contractor shall, within 14 (fourteen) days, submit the revised plan to the Contract Administrator for review.

- 20.4 Without prejudice to the generality of this Clause 20, the Contractor shall provide all facilities, access and assistance to the Contract Administrator to enable him to monitor and verify that the safety plan is being properly and fully implemented.

21. **Care of the Works etc.**

- 21.1 The Contractor shall, subject to Clauses 21.3, 21.5 and 50.3, be fully responsible for the care of:

- (a) the Works, or any part thereof, (whether on the Site or elsewhere); and
- (b) all Contractor's Equipment and consumables on the Project Site or being delivered to the Project Site in connection with the Works,

from the Date for Commencement of the Works until 28 (twenty-eight) days after the date of issue of the Practical Completion Certificate for the Works whereupon the responsibility for the care of the Works shall pass to the Authority.

- 21.2 The Contractor shall be fully responsible for the care of any work which he undertakes to finish or which he otherwise carries out during any Defects Liability Period until the work has been completed, whereupon the responsibility for the care of the work shall pass to the Authority.

- 21.3 If a Practical Completion Certificate is issued for any Section or any other part of the Works, the Contractor shall:

- (a) execute the remainder of the Works in such a manner as not to prejudice the care, maintenance and condition of the Section or other part; and
- (b) cease to be responsible, under Clause 21.1, for the care of the Section or other part 28 (twenty-eight) days after the date of issue of such Practical Completion Certificate, whereupon the responsibility for the care of the Section or other part shall pass to the Authority.

- 21.4 Except to the extent caused by any of the Excepted Risks defined in Clause 21.5, if any loss or damage occurs to:

- (a) the Works; or

(b) Contractor's Equipment or consumables

while the Contractor is responsible for the care thereof, the Contractor shall, with all possible speed, rectify the loss or damage so that the Works are executed in accordance with the Contract. The Contractor shall also be liable for any loss or damage to the Works occasioned by him in the course of any operation carried out by him for the purpose of complying with his obligations under Clause 53.

21.5 "Excepted Risks" for the purposes of this Clause are:

- (a) outbreak of war (whether war be declared or not) in which Hong Kong shall be actively engaged;
- (b) invasion of Hong Kong;
- (c) act of terrorists in Hong Kong;
- (d) civil war, rebellion, revolution, insurrection or military or usurped power in Hong Kong;
- (e) riot, commotion or disorder in Hong Kong otherwise than amongst the employees of the Contractor, or any of his sub-contractors of any tier currently or formerly engaged on the Works;
- (f) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, unless the source or cause of the radiation, radioactivity or other hazard is brought to or near the Project Site by the Contractor or any of his sub-contractors of any tier;
- (g) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (h) a cause due to use or occupation of the Permanent Works or any part thereof by the Authority (which shall not include or be deemed to include the execution of works by Relevant Authorities or Project Contractors or the provision of access thereto over the Project Site, the Site or the Permanent Works or any parts thereof); and
- (i) the neglect or default by or on behalf of the Authority, including, without limitation, in the preparation of any design of the Permanent Works or Temporary Works included in the Drawings and/or the Specification, insofar as damage, loss or injury is the direct consequence thereof, or any default of Relevant Authorities or Project Contractors.

21.6 If and to the extent that there is any loss or damage to the Works, Contractor's Equipment or consumables caused by any of the Excepted Risks, the Contractor shall, if and to the extent instructed, rectify the loss or damage. If, in compliance with an instruction issued pursuant to this Clause 21.6, the Contractor is prevented from achieving any Stage or

practically completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate then, if the Contractor claims additional time and/or payment therefor, the Contract Administrator shall give a decision pursuant to Clause 45 and/or Clause 56 and/or 57, provided that the Contractor has complied with his obligations pursuant to Clause 45 and/or Clause 58, as appropriate.

22. **Damage to Property and Injury to Persons - Indemnities**

22.1 The Contractor shall be liable for and indemnify the Authority against all losses and claims of whatsoever nature in respect of:

- (a) the death or illness of or injury to any person; and
- (b) the loss of or damage to any property other than the Works,

arising out of or in connection with the Works or the execution thereof by the Contractor.

22.2 The scope of the Contractor's liability and indemnity pursuant to Clause 22.1 shall be reduced proportionately to the extent that any neglect or default of the Authority or Project Contractors caused or contributed to the death, illness, injury, loss or damage.

22.3 The Authority shall be liable for and indemnify the Contractor against liability in connection with death, illness, injury, loss and damage referred to in Clause 22.1 arising out of or connected with:

- (a) the use or occupation of land provided by the Authority by the Permanent Works or for the purposes of the execution of the Works or interference, whether temporary or permanent, with any right of way, navigation, light, air or water or other easement or quasi easement;
- (b) the right of the Authority to execute the Works on, over, under, in or through any land, sea or foreshore;
- (c) damage that is the inevitable consequence of the execution of the Works; and
- (d) neglect or default of the Authority or Project Contractors.

22.4 The scope of the Authority's liability and indemnity pursuant to Clause 22.3 shall be reduced proportionately to the extent that the act or neglect of the Contractor or his sub-contractors of any tier caused or contributed to the death, illness, injury, loss or damage.

23. **Giving of Notices and Payment of Fees etc**

23.1 The Contractor shall give all notices and pay all fees required to be given or paid by any Enactment in connection with the execution of the Works and by the rules and regulations of any Relevant Authority whose property or rights are or may be affected in any way by the Works or their execution. If any new fee is imposed or if any existing fee is increased, after the date of the Letter of Acceptance, the new fee or increase shall be paid by the Contractor. Such fees shall include, but not be limited to, any customs or import duties

required to be paid for the importation of any part of the Works into Hong Kong.

- 23.2 Except where otherwise stated in the Contract, the Contractor shall pay any royalty, rent and other payment or compensation in relation to any Contractor's Equipment or Temporary Works required in connection with the Works.

24. **Compliance with Enactments and Obtaining Permits and Consents**

- 24.1 The Contractor shall, in connection with the execution of the Works, comply in all respects with:

- (a) the provisions of all Enactments;
- (b) any condition attached to any permit or exemption issued pursuant to any Enactment; and
- (c) the rules and regulations of Relevant Authorities,

and any addition or amendment made thereto after the date of the Letter of Acceptance and the Contractor shall indemnify the Authority against any liability and/or penalty to the extent arising from breach by the Contractor of any Enactment, condition, rule or regulation. In the event that, after the date of the Letter of Acceptance, any addition or amendment is made to any Enactment, any condition attached to any permit or exemption issued pursuant to any Enactment or to the rules and regulations of Relevant Authorities which renders it necessary for the Contractor to alter the design of any part of the Permanent Works expressly required by the Contract to be designed by the Contractor, if, in the opinion of the Contract Administrator, such addition or amendment could not reasonably have been foreseen by an experienced contractor at the date of the Letter of Acceptance, then, without prejudice to Clause 15.3, any amendment to any Contractor's Drawings rendered necessary by such addition or amendment shall, for all purposes of the Contract, be deemed to be a variation instruction issued by the Contract Administrator pursuant to Clause 54.1.

- 24.2 (a) The Contractor shall:
- (i) obtain all statutory registrations, approvals and consents required for the execution of the Works including, where relevant, but without limitation, obtaining registration as a registered contractor, and all approvals and consents under the Buildings Ordinance which are necessary for the execution of the Works; and
  - (ii) co-operate with all relevant parties, complete such certificates and forms, make such applications, and, to the extent that the same are within the control of the Contractor, do all such other things as may be necessary to enable occupation permits to be issued under the Buildings Ordinance and any other Enactment so that the Authority may occupy and use the Permanent Works.
- (b) Notwithstanding any other provision of the Contract, neither the Works nor any Section shall be (nor shall be deemed to be) practically complete until all

necessary statutory approvals, consents and occupation permits have been obtained to enable the Authority to occupy and use the Permanent Works or the relevant part thereof.

- 24.3 If there is a delay in obtaining any of the occupation permits referred to in Clause 24.2 (a) (ii) which is caused by any person other than the Contractor and for which the Contractor is not responsible, and such delay is the sole reason preventing the Contractor from practically completing the Works, or any Section, as the case may be, by the relevant Key Date therefor, then if the Contractor claims additional time and/or payment therefor, the Contract Administrator shall give a decision pursuant to Clause 45 and/or Clause 57, provided that the Contractor has complied with his obligations pursuant to Clause 45 and/or Clause 58, as appropriate.

25. **Language of Notices etc**

- 25.1 Any notice which the Contractor is required to exhibit either for the benefit of the public or his employees and all written and printed matter, affixed to the Works or otherwise required for operation and maintenance shall be in English and in Chinese characters and such other language as may be required by any Enactment and/or the Specification.

26. **Interference and Nuisance**

- 26.1 The Works shall, so far as compliance with the requirements of the Contract permit, be executed so as to avoid unnecessary or improper nuisance or disturbance to or interference with the public or the access to or use or occupation of public roads, footpaths, waterways, anchorages, navigation channels or properties whether in the possession of the Authority or of any other person.
- 26.2 The Contractor shall be liable for and indemnify the Authority against liability in connection with any breach of Clause 26.1 provided that such liability and indemnity shall be reduced proportionately to the extent that the act or neglect of the Authority or Project Contractors caused or contributed to the breach.

27. **Intellectual Property Rights**

- 27.1 In this Clause, intellectual property rights shall include, but not be limited to, patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks, trade names, service marks and domain names, goodwill rights to sue for passing off, design rights, database rights and know-how and confidential information and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future anywhere in the world.
- 27.2 The Contractor shall indemnify and keep indemnified the Authority against liability in Hong Kong or in any country in connection with the infringement of any intellectual property right existing anywhere in the world in respect of anything used in or required for the Works or the operation, and maintenance in service of the Permanent Works (except to the extent that infringement was unavoidable as a result of the Drawings, the Specification or any instruction, save insofar as such instruction incorporated any Contractor's Drawings).

- 27.3 The Contractor shall, at the Authority's request and in accordance with the Authority's directions, defend any claim or proceeding against the Authority in connection with any alleged infringement referred to in Clause 27.2.
- 27.4 In so far as the intellectual property rights existing anywhere in the world in respect of anything used in or required for the Works or the operation, repair, maintenance, replacement or extension of the Permanent Works shall be vested in the Contractor, the Contractor grants to the Authority, his successors and assigns a royalty-free, perpetual, unrestricted, exclusive, freely assignable and irrevocable worldwide licence (carrying the right to grant sub-licences) to use, reproduce, modify, adapt and translate any of the works, designs or inventions incorporated or referred to in anything used or required as aforesaid for all purposes relating to the Project. To the extent that beneficial ownership of any such intellectual property right is vested in anyone other than the Contractor, the Contractor shall use his best endeavours (save in respect of and to the extent of the things excepted from Clause 27.2, as to which the Contractor shall use reasonable endeavours) to procure that the beneficial owner thereof shall as soon as possible grant a like licence to the Authority. Any licence pursuant to this Clause 27.4 shall not be determined if the Contractor shall for any reason cease to be employed in connection with the Works and the Contractor shall execute such documents and do all other things as may be necessary to give effect to and protect the licence including, without limitation, notifying purchasers of any right of the existence of the licence.
- 27.5 If the Contractor uses proprietary software for the purpose of storing or utilising records, the Contractor shall procure the grant of a licence or sub-licence to use, reproduce, modify, adapt and translate the software in favour of the Authority and shall pay such licence fee or other payment as the grantor of the licence may require provided that the licence may be restricted to use, reproduction, modification, adaptation and translation relating to the Project.

28. **Co-ordination**

- 28.1 The Contractor acknowledges that the Project involves a number of separate design and/or construction contracts and that it is necessary for the design and construction of the Permanent Works and the Temporary Works to be co-ordinated with the design and construction of that part of the Project being undertaken by Relevant Authorities and Project Contractors.

**Design**

- 28.2 The Contractor shall, in performing his design obligations pursuant to Clause 12, consult, liaise and co-operate with Relevant Authorities and Project Contractors and use his best endeavours to ensure, utilising the expertise to be expected of a contractor experienced in undertaking the design of works similar in scope and complexity to the Temporary Works and the relevant part of the Permanent Works to be designed by the Contractor in accordance with the Contract, that the Contractor's design of the Temporary Works and the relevant part of the Permanent Works to be designed by the Contractor is consistent, compatible, integrated and co-ordinated with the design of that part of the Project designed by Relevant Authorities and Project Contractors. Without prejudice to the foregoing, the Contractor shall, in discharging such obligations:

- (a) request Relevant Authorities and Project Contractors to supply all drawings and design information in their possession which the Contractor reasonably requires;
- (b) supply Relevant Authorities and Project Contractors promptly with all drawings and design information in his possession which they may reasonably require to co-ordinate the design of their works with the Contractor's design of the Temporary Works and the relevant part of the Permanent Works;
- (c) request the Contract Administrator to supply all drawings and design information in his possession, or in the possession of the Authority, which the Contractor reasonably requires, and the Contract Administrator shall provide such drawings and design information to the Contractor as soon as is practicable; and
- (d) comply with the procedures set out in the Specification in respect of the co-ordination of the Contractor's design of the Temporary Works and the relevant part of the Permanent Works,

and the Contractor shall attend all meetings necessary for the Contractor to devise, or assist in devising, design solutions to achieve the co-ordination of the Contractor's design of the Temporary Works and the relevant part of the Permanent Works with the design of that part of the Project designed by Relevant Authorities and Project Contractors.

- 28.3 The Contractor shall notify the Contract Administrator forthwith in the event that, notwithstanding the discharge of his obligations in accordance with Clause 28.2, the Contractor considers that a conflict has arisen between the Contractor's design of the Temporary Works and/or the relevant part of the Permanent Works and the design of any part of the Project designed by Relevant Authorities and/or Project Contractors which it has not been possible for the Contractor to resolve. Each such notice shall be accompanied by details of the alleged conflict, an explanation of why it has not been possible for the Contractor to resolve such conflict and the Contractor's proposals as to the manner in which he believes that such conflict can and should be resolved.
- 28.4 Without prejudice to Clause 28.3, the Contractor shall keep the Contract Administrator fully informed of all communications with Relevant Authorities and Project Contractors relating to the co-ordination of the Contractor's design of the Temporary Works and the relevant part of the Permanent Works with the design of that part of the Project designed by Relevant Authorities and Project Contractors and shall supply the Contract Administrator promptly with all information requested by him in respect thereof including, without limitation, any information concerning any conflict notified by the Contractor in accordance with Clause 28.3.

### **Construction**

- 28.5 The Contractor shall, in executing the construction of the Works, consult, liaise and co-operate with Relevant Authorities and Project Contractors and use his best endeavours to ensure, utilising the expertise to be expected of a contractor experienced in undertaking the construction of works similar in scope and complexity to the Works, that the most efficient means are used to co-ordinate the Contractor's construction activities with the construction activities carried out (contemporaneously or otherwise) by Relevant Authorities and Project Contractors in respect of works not included in the Contract but

forming part of the Project ("**Project Works**"), and shall devise programming and construction related solutions to achieve such objective. Without prejudice to the foregoing, the Contractor shall, in discharging such obligations:

- (a) supply promptly to the Contract Administrator all information in the Contractor's possession relating to the co-ordination of the construction activities of the Contractor in the execution of the Works with the construction activities of Relevant Authorities and Project Contractors in respect of Project Works;
- (b) attend meetings necessary to devise solutions to achieve the co-ordination of the construction activities of the Contractor in respect of the Works with the construction activities of Relevant Authorities and Project Contractors in respect of Project Works, including, without limitation, attending meetings convened by the Contract Administrator in relation thereto;
- (c) provide access to Relevant Authorities and Project Contractors to the Site and the Permanent Works and the Temporary Works to execute Project Works;
- (d) provide facilities and services to Relevant Authorities and Project Contractors to execute Project Works, to the extent stated in the Specification; and
- (e) comply with the procedures set out in the Specification in relation to the co-ordination of the construction activities of the Contractor in respect of the Works and the construction activities of Relevant Authorities and Project Contractors in respect of Project Works.

28.6 The Contractor shall notify the Contract Administrator forthwith upon identifying any actual or potential conflict that may arise or which has arisen between the Contractor's construction activities in respect of the Works, and the construction activities of Relevant Authorities and/or Project Contractors in respect of Project Works. Each such notice shall be accompanied by details of the alleged conflict, an explanation of why it has not been possible for the Contractor to resolve the conflict and the Contractor's proposals as to the manner in which he believes that such conflict can and should be resolved. Without prejudice to the foregoing, the Contractor shall supply the Contract Administrator promptly with all information requested by him in respect of any alleged conflict notified by the Contractor.

### **General**

28.7 Without prejudice to any other provision of the Contract, the Contractor shall employ, and shall ensure that his sub-contractors of any tier employ in respect of the Works, a sufficient number of staff suitably skilled and experienced in the co-ordination of works of a similar scope and complexity to the Works to enable his obligations under this Clause 28 to be performed effectively and efficiently.

28.8 The Contractor shall (independent of any liability pursuant to Clause 48 in respect of delay in the practical completion of the Works or any Section or the achievement of any Stage) be liable for any loss and expense incurred by the Authority arising from any breach by the Contractor of his obligations under this Clause 28.



28.9 If:

- (a) in compliance with his obligations pursuant to this Clause 28; or
- (b) otherwise as a result of the design or construction activities of Relevant Authorities or Project Contractors in respect of Project Works,

the Contractor is prevented from achieving any Stage or practically completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate then, if the Contractor claims additional time and/or payment therefor, the Contract Administrator shall give a decision pursuant to Clause 45 and/or 57, provided that the Contractor has complied with his obligations pursuant to Clause 45 and/or Clause 58, as appropriate.

29. **Publicity and Disclosure**

29.1 The Contractor shall not publish or otherwise circulate, alone or in conjunction with any other person, any article, photograph or other material relating to the Works, the Contract, any Dispute, the Site or the Project or any part thereof, nor impart to the press or any radio or television station any information relating thereto, nor allow any representative of the media access to the Site except with consent. The Contractor shall ensure that each of his sub-contractors of any tier and each parent company or shareholder of each entity comprising the Contractor is bound by a like obligation and the Contractor shall enforce the same.

29.2 The Contractor may disclose relevant information to bankers or third parties taking a charge or assignment, or having the bona fide intention thereof, pursuant to Clause 4.2, and to discharge any statutory or judicial obligation provided that:

- (a) he first obtains the Contract Administrator's consent; and
- (b) he shall use his reasonable endeavours to procure that the bankers and third parties shall keep the information confidential.

29.3 In any event, the Contractor shall disclose all confidential information that the Contract Administrator reasonably instructs in respect of the Project, the Works or the Contract.

29.4 The Authority and any third party referred to in Clause 4.3 may use any information provided by the Contractor in accordance with the Contract, and the Authority shall use reasonable endeavours to procure that any third party referred to in Clause 4.3 shall not, divulge that information except for any purpose connected with the Project or in order to comply with the directions or requirements of a Government body, judicial authority or Relevant Authority.

30. **Offering Gratuities**

30.1 If the Contractor shall be found to have offered or given any advantage, excessive hospitality, gratuity, bonus, discount, bribe or loan of any sort to any agent or employee of the Government, to the Authority or to any member of the Authority's staff or to any other person acting on behalf of the Government or the Authority in respect of or in connection

with the Project, the Contractor shall be liable for any loss or expense incurred by the Authority and the provisions of Clause 74 shall apply. The Contractor shall ensure that each of his sub-contractors of any tier is bound by a like obligation and the Contractor shall enforce the same.

**31. Disclosure of Costs by the Authority**

- 31.1 Without prejudice to the generality of Clause 29.3, the Contractor agrees that the Authority may, whenever it considers appropriate, without further reference to the Contractor, disclose to any person in such form and manner as the Authority deems fit, details and particulars of:
- (a) the costs, expenses and fees payable by the Authority to the Contractor under the Contract; and
  - (b) the Tender including the Tender Total and all rates and prices contained in the Pricing Document.
- 31.2 The Contractor shall have no right or entitlement to claim or receive any loss, damages, costs or charges by reason of any disclosure by the Authority of the details or particulars referred to in Clause 31.1.

**INSURANCE**

**32. Authority's Insurance**

- 32.1 Without limiting the Authority's other obligations or the Contractor's obligations, the Authority shall take out and maintain insurance for the benefit of and in the joint names of the Authority, the Contractor and his sub-contractors of any tier in respect of:
- (a) the Works, including, without limitation, all unfixed goods, materials and other constituent parts forming or intended to form part thereof and consumables delivered to the Site; and
  - (b) liability for the death of or injury to any person (other than in the employment of the Contractor or any of his sub-contractors) or loss of or damage to property (other than the Works and/or consumables) arising out of the execution of the Works,

in the terms contained in the policy contained in **Schedule 10**, subject to any amendment required by the insurers.

- 32.2 The Contractor shall comply with the terms of the policy referred to in Clause 32.1 and shall:
- (a) notify insurers and the Authority forthwith if an event giving rise to an insurance claim under such policy occurs;
  - (b) prepare and submit to insurers particulars of all claims and do all things necessary to obtain proper settlement of all insurance claims under such policy (including,

without limitation, those of its sub-contractors of any tier) provided that if in the opinion of the Authority, the Contractor fails to pursue a claim with due diligence, the Authority shall have the right, exercisable on 14 (fourteen) day's notice, to assume control over the preparation, submission and settlement of any claim, subject always to having due regard to the interests of the Contractor; and

- (c) comply with any procedures issued by the Authority to the Contractor in respect of the preparation and/or submission of any insurance claim in respect of such policy.
- 32.3 All moneys payable under Section 1 of the policy referred to in Clause 32.1 (Contractor's All Risks Insurance) exceeding HK[\$20,000,000 (Hong Kong Dollars twenty million)] shall be, and the Contractor shall procure that they shall be, paid to the Authority who shall release any part thereof relating to claims of the Contractor to the Contractor within a reasonable time having regard to the progress of rectification of the loss or damage to which the claim relates.
- 32.4 If and to the extent that the Authority receives money from the insurers in respect of any claim made by or on behalf of the Contractor or its sub-contractors of any tier, the Authority shall make payment to the Contractor or the relevant sub-contractor, without unreasonable delay, of such moneys or the appropriate proportion thereof having regard to the extent to which the relevant loss or damage to which such insurance moneys relate has been rectified in accordance with Clause 21.4 or 21.6.
- 32.5 Any amounts not insured or not recovered under the policy referred to in Clause 32.1 including, without limitation, the amount of any deductibles, shall be borne by the Contractor or the Authority in accordance with their respective responsibilities in accordance with Clause 21.
- 32.6 All moneys payable under the policy referred to in Clause 32.1 shall be paid in Hong Kong Dollars.

33. **Contractor's Insurance**

- 33.1 Without limiting his other obligations or the obligations of the Authority, the Contractor shall:
- (a) in the joint names of the Authority, the Contractor and his sub-contractors of any tier, during the manufacture thereof, insure and keep insured the Permanent Works, Temporary Works and Contractor's Equipment being manufactured for use in the execution of the Works for their full replacement value against all perils usually and reasonably insurable provided that the Authority may accept a policy of insurance notwithstanding it is not in the joint names of the Authority and the Contractor, if the Authority's interest is notified to and accepted in writing by the insurer;
  - (b) in the joint names of the Authority, the Contractor and his sub-contractors of any tier, within 30 days from the Date for Commencement of the Works, which obligation shall not be subcontracted by the Contractor pursuant to Clause 5, insure and keep insured, the Permanent Works, the Temporary Works and Contractor's Equipment during transit by land, sea or air from commencement of

loading at the place of manufacture in the country of origin to the delivery to and unloading at the Project Site and the Site or any off-Site place of storage, fabrication or assembly within Hong Kong and including whilst at any intermediate place of storage, fabrication or assembly outside Hong Kong during the period of such transit, for a sum not less than their full replacement value plus 10 (ten) per cent of such value and the costs of transit against all perils which are usually and reasonably insurable, provided that the Authority may accept such a policy of insurance placed by the Contractor (but not by any sub-contractor) notwithstanding that the Authority is not named as a joint assured, if the Authority's interest is notified to and accepted in writing by the Contractor's insurer;

- (c) in the joint names of the Authority, the Contractor and his sub-contractors of any tier, insure and keep insured the Contractor's Equipment (to the extent not insured by the Authority under Section 1 of the policy referred to in Clause 32.1 (Contractor's All Risks Insurance)) for its full replacement value, while on or off the Site or in transit, against all perils usually and reasonably insurable provided that the Authority may accept a policy of insurance notwithstanding it is not in the joint names of the Authority and the Contractor, if the Authority's interest is notified to and accepted in writing by the insurer;
- (d) take out and maintain in respect of his design obligations under Clause 12, professional indemnity insurance for a limit of cover of not less than the levels stated in **Appendix 1 to the Form of Tender** for each occurrence or series of occurrences arising out of one event for a period commencing on the date of the Letter of Acceptance and expiring not before 6 (six) years from the date of the issue of the Practical Completion Certificate for the Works provided that if the Contractor considers that such cover is not available at reasonable rates, the Contractor shall forthwith inform the Contract Administrator and the level of cover or terms for the purposes of this Clause 33.1(d) shall be the maximum level or best terms which are obtainable in the international insurance market at rates which are, in the Contract Administrator's opinion, reasonable; and
- (e) take out and maintain on his own behalf and on behalf of his sub-contractors of any tier, insurance in respect of claims for the death of or bodily injury to any person under a contract of service or apprenticeship with the Contractor or any of his sub-contractors of any tier and arising out of and in the course of the person's employment in respect of the Works in the terms and with the insurers referred to in **Schedule 11**.

33.2 Insurance in accordance with Clause 33.1 (a) to (e) shall be effected with insurers and on terms approved by the Authority and shall cover all risks usually covered by such insurance and shall, to the extent of the cover, indemnify the Authority in respect of loss, expense and liability in connection with the Works.

33.3 The Contractor shall procure that all insurance in respect of vehicles and marine vessels used in connection with the Works as required by any Enactment shall be endorsed to note the interests of the Authority.

33.4 The Contractor shall, in respect of the insurance referred to in Clause 33.1(b), procure loading and unloading surveys in relation to each shipment made of any part of the Permanent Works or Temporary Works, and shall procure stowage and towage surveys in the event of the lighterage of the same.

34. **General Insurance Obligations**

34.1 If the Authority fails to comply with the terms of the policies of insurance effected by him pursuant to Clause 32.1 or if the Contractor fails to comply with the terms of any of the insurance policies effected in connection with the Works, the party that is in default shall indemnify the other party against all loss, expense and liability arising from the failure.

34.2 If the Authority or the Contractor fails to effect and keep in force any of the insurance policies referred to in Clauses 32 and 33 respectively, the party that is not in default may effect and keep in force that insurance and may recover from the party in default a sum equivalent to the premium or premiums paid.

34.3 The Contractor shall be deemed to have satisfied himself and to have caused his sub-contractors of any tier to have satisfied themselves with regard to the extent of the cover provided by the policy referred to in Clause 32.1 and the terms referred to in Clause 33.1(e).

34.4 The Contractor shall promptly supply to insurers all documentation and information which they may reasonably require to effect and maintain the policies effected in connection with the Works. In the case of policies effected by the Authority pursuant to Clause 32.1, the Contractor shall supply all documentation and information requested by the Contract Administrator for onward transmission to insurers by the Authority.

34.5 The Authority shall, whenever reasonably required, produce to the Contractor confirmation from his insurers, or their duly authorised agents, that the policies effected by him pursuant to Clause 32.1 remain current together with evidence of payment of the last premium due.

34.6 The Contractor shall, whenever instructed to do so by the Authority, produce any relevant policy of insurance effected by him in connection with the Works, together with a certificate from the insurers, or their duly authorised agents, certifying that the insurance has been effected and the last premium due has been paid.

34.7 The Contractor shall not do anything or cause or permit any of his sub-contractors of any tier to do anything, whether on or off-Site, which would or might render voidable any policy of insurance required by the Contract.

**LABOUR**

35. **Labour**

35.1 Without prejudice to the generality of any other provision of the Contract, the Contractor shall be responsible for providing such skilled and unskilled labour as may be required for the execution of the Works.

- 35.2 As far as practicable, all skilled and unskilled labour shall be engaged in Hong Kong and subject to and in accordance with general local usage.
- 35.3 The Contractor shall, in respect of labour located in Hong Kong and engaged in the execution of the Works, pay rates of wages and observe hours and conditions for labour which are not less favourable than the level of wages, hours and conditions observed by other employers in Hong Kong engaged in the architecturing/construction industry and which are in compliance with the Enactments.

### **QUALITY OF PERMANENT WORKS AND WORKMANSHIP, DEFECTS AND TESTS**

#### **36. Quality System**

- 36.1 The Contractor shall:
- (a) establish, maintain and implement a quality system in accordance with the Specification; and
  - (b) comply with the requirements of the quality system including, without limitation, the submission for review by the Contract Administrator of fully detailed quality plans and other documents referred to in the quality system.

#### **37. Permanent Works and Workmanship**

- 37.1 All goods, materials and all consumables forming part of the Permanent Works and the results of any workmanship shall:
- (a) be of the respective character, standard or kind required by the Contract;
  - (b) subject as aforesaid, be of a standard consistent with the requirements of the Contract; and
  - (c) where specified or selected by the Contractor, be fit for the purpose expressed in or to be implied from the Contract; and

unless expressly provided to the contrary in the Contract, all goods, materials and the constituent parts of the Permanent Works (save in respect of any fill or naturally occurring material to be used in the Permanent Works) and all consumables shall be new. Subject to the foregoing requirements concerning the specification of goods, materials and consumables, nothing within this clause or contained elsewhere in the Contract shall deem any design obligation to be subject to a fitness for purpose obligation.

#### **38. Access and Inspection**

- 38.1 The Contractor shall provide, and where relevant shall procure, access to and reasonable facilities at all places (on or off the Site) where the Works, or any part thereof, are being executed to enable the Contract Administrator and others authorised by him to watch and inspect the Works and to exercise and perform the powers and duties of the Contract Administrator.

39. **Covering and Uncovering Parts of the Works**

- 39.1 The Contractor shall give notice to the Contract Administrator, in sufficient time, which shall in no case be less than 24 hours, to enable the Contract Administrator to carry out an inspection without delaying the progress of the Works, before covering up any part of the Works or putting it out of view.
- 39.2 The Contractor shall uncover or make openings in any part of the Works as may be instructed at any time during the progress of the Works and shall reinstate the part in accordance with the Contract.
- 39.3 If, as a result of any instruction pursuant to Clause 39.2, the Contractor is prevented from achieving any Stage or practically completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate, then, if the Contractor claims additional time and/or payment therefor, the Contract Administrator shall give a decision pursuant to Clause 45 and/or 57, provided that the Contractor has complied with his obligations pursuant to Clause 45 and/or Clause 58, as appropriate, and provided further that this Clause 39.3 shall not apply if part of the Works to which the instruction related was found not to comply with the Contract or if the instruction resulted from breach of Clause 39.1.

40. **Removal of Unsatisfactory Parts of the Works**

- 40.1 The Contract Administrator may at any time give instructions to the Contractor to:
- (a) remove from the Site and the Project Site, within such time or times specified in the instruction, any part of the Works which, in the opinion of the Contract Administrator, does not comply with the Contract;
  - (b) replace such part of the Works with a part which does so comply and to re-execute any part of the Works; and
  - (c) remove and replace (notwithstanding any previous test) any work in respect of:
    - (i) materials or workmanship; or
    - (ii) design by the Contractor,which does not, in the opinion of the Contract Administrator, comply with the Contract.

41. **Testing**

- 41.1 (a) The Works shall be subjected from time to time during the execution of the Works to such tests (including the provision of samples and procuring and permitting third party inspections) as are:
- (i) specified in the Contract; or

- (ii) instructed or reviewed without objection

at such places on or off the Site as are specified or instructed or reviewed without objection.

- (b) The Contractor shall propose to the Contract Administrator any test which is not specified in the Contract but which a competent contractor experienced in operations of a similar nature and scope to the Works would regard as appropriate or desirable to demonstrate that the Works comply with the Contract including, without limitation, after any instruction varying the Works has been issued by the Contract Administrator pursuant to Clause 54.1. Any proposal shall be made at a reasonable time in advance of the proposed test, shall specify by whom the test is to be carried out which should, wherever reasonably possible, be the Contractor and if the proposal receives consent the proposed test shall be carried out in accordance with the provisions of this Clause 41.

41.2 The Contractor shall carry out such tests, and provide such assistance, facilities, labour, equipment and other things for all tests, as are required of the Contractor in accordance with the Contract.

41.3 The Contractor shall comply with the testing procedures set out in the Specification and shall submit to the Contract Administrator for review all documents required by those procedures or otherwise necessary in advance of testing.

41.4 The Contractor shall submit to the Contract Administrator for his information test data as follows:

- (a) at the beginning of each week, or at such other interval as the Contract Administrator may instruct, a written report summarising the outcome of all tests undertaken during the preceding week or interval, identifying the results, certificates and other data relating to the tests which have been archived in accordance with Clause 59 and identifying, in the case of failed tests, the remedial measures being taken and the provisions for re-testing; and
- (b) without delay following the request, any other information relating to tests requested by the Contract Administrator.

41.5 If, in the Contract Administrator's opinion, any of the tests is being unduly delayed or is or has been improperly performed, he may by instruction fix a date by which the Contractor shall make or facilitate the tests or properly perform them. If the Contractor fails to make or facilitate the tests or properly perform them by the date instructed, the Contract Administrator may make the tests or cause them to be made by others at the risk of the Contractor. The Contractor shall be liable to the Authority for all loss and expense incurred in relation thereto.

41.6 If, in the Contract Administrator's opinion, the Works, or any part thereof, fails any test, the Contractor shall submit such proposals and carry out or facilitate such investigations and further or repeat tests as may be instructed and the Contractor shall be liable to the Authority for all loss and expense incurred in relation thereto including the costs of re-testing the works of Project Contractors. The Contractor shall also execute all



necessary repairs, replacement and making good.

41.7 If, as a result of any test instructed pursuant to Clause 41.1(a)(ii), the Contractor is prevented from achieving any Stage or practically completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate, then, if the Contractor claims additional time and/or payment therefor, the Contract Administrator shall give a decision pursuant to Clause 45 and/or Clause 56 and/or 57, provided that the Contractor has complied with his obligations pursuant to Clause 45 and/or Clause 58, as appropriate and provided further that this Clause 41.7 shall not apply:

- (a) if the test indicates that any part of the Works was not in accordance with the Contract; or
- (b) to any repeat test carried out in accordance with the Contract.

## **COMMENCEMENT, COMPLETION AND DELAY**

### **42. Commencement**

42.1 The Contractor shall commence the Works on the Date for Commencement of the Works. The Contractor shall from the Date for Commencement of the Works proceed with the execution of the Works with due diligence and expedition. The Contractor shall not commence the execution of the Works before the Date for Commencement of the Works.

### **43. Rights of Access to the Site**

43.1 The Authority shall give to the Contractor, from time to time, access to as much of the Site as may be required to enable the Contractor to execute the Works in accordance with the Works Programme provided that the Authority shall not be required to give access contrary to any limitation identified in the Contract.

43.2 Unless the Contract expressly provides otherwise, the Contractor shall not be entitled to uninterrupted access to or an exclusive right to occupation of any part of the Project Site or the Site or any part thereof.

43.3 The Contractor shall give notice to the Contract Administrator of the access which the Contractor requires to execute the Works. The Contractor shall give such notice in sufficient time for the Authority to arrange for access to be given without delaying the progress of the Works. The Authority shall not in any event be obliged to give access in advance of dates for access identified in the Works Programme.

43.4 If, as a result of any failure or inability to provide or delay in providing access pursuant to Clause 43.1 following a notice in accordance with Clause 43.3, the Contractor is prevented from achieving any Stage or practically completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate then, if the Contractor claims additional time and/or payment therefor, the Contract Administrator shall give a decision pursuant to Clause 45 and/or 57, provided that the Contractor has complied with his obligations pursuant to Clause 45 and/or Clause 58, as appropriate.

44. **Time for Completion**

- 44.1 The Contractor shall practically complete the Works and any Section and achieve any Stage by the respective Key Dates therefor.

45. **Extension of Time**

- 45.1 The Contractor shall give notice to the Contract Administrator as soon as the Contractor can reasonably foresee any event occurring which is liable to cause any delay to practical completion of the Works or any Section or to the achievement of any Stage. The notice shall in any event be given within 28 (twenty-eight) days after commencement of the event, and shall state the likelihood and probable extent of the delay and specify whether the Contractor considers he is or may become entitled to an extension of time in respect of the effects of the event. If so, the Contractor shall cite the provision of Clause 45.3 which the Contractor considers to be applicable identifying, in the case of Clause 45.3(a), the relevant Clauses.
- 45.2 The Contractor shall use and continue to use all reasonable endeavours to avoid or reduce the effects of the event on practical completion of the Works or any Section or the achievement of any Stage and shall as soon as practicable but in any event within 28 (twenty-eight) days of notification pursuant to Clause 45.1 submit by further notice to the Contract Administrator:
- (a) full and detailed particulars of the cause, effect and actual extent of the delay to practical completion of the Works or any Section or to the achievement of any Stage; or
  - (b) where an event has a continuing effect or where the Contractor is unable to determine whether the effect of any event will actually cause delay to practical completion of the Works or any Section or the achievement of any Stage, such that it is not practicable for the Contractor to submit full and detailed particulars pursuant to Clause 45.2(a), a statement to that effect with reasons together with interim written particulars (including details of the likely consequences of the event on progress of the Works and an estimate of the likelihood or likely extent of the delay); the Contractor shall thereafter submit to the Contract Administrator at intervals of not more than 28 (twenty-eight) days, further interim written particulars until the actual delay caused (if any) is ascertainable, whereupon the Contractor shall as soon as practicable but in any event within 28 (twenty-eight) days submit to the Contract Administrator full and detailed particulars of the cause, effect and actual extent of the delay; and, in any event:
  - (c) details of the documents that will be maintained to support the claim in accordance with Clause 59; and
  - (d) details of the measures which the Contractor has adopted and/or proposes to adopt to avoid or reduce the effects of the event upon practical completion of the Works or any Section or achievement of any Stage.

45.3 If the event notified by the Contractor pursuant to Clause 45.1 is the subject of a claim for extension of time by reason of:

- (a) (i) the issue of an instruction, or the failure or inability to issue or delay in issue of an instruction, pursuant to Clause 2.9;
- (ii) the reversal or variation of an instruction or decision by the Contract Administrator, or the Contract Administrator's Representative, pursuant to Clause 3.5;
- (iii) ambiguities or discrepancies in or between the documents comprising the Contract, pursuant to Clause 7.2;
- (iv) the failure or inability to issue or delay in issue of further or amended Drawings or Specification by the Contract Administrator which was the subject of a notice in accordance with Clause 9.3, pursuant to Clause 9.4;
- (v) the presence of unforeseeable physical conditions or artificial obstructions at the Site and measures taken to overcome them and/or instructions issued by the Contract Administrator in respect thereof, pursuant to Clause 15.6;
- (vi) errors in setting out due to incorrect data, pursuant to Clause 19.2;
- (vii) an instruction for the rectification of loss or damage due to Excepted Risks, pursuant to Clause 21.6;
- (viii) delay in obtaining any occupation permit under the Buildings Ordinance or any other Enactment, which is caused by any person other than the Contractor and which is the sole reason preventing the practical completion of the Works, pursuant to Clause 24.3;
- (ix) the activities of Relevant Authorities or Project Contractors, pursuant to Clause 28.9;
- (x) the uncovering of acceptable work, pursuant to Clause 39.3;
- (xi) ad hoc successful tests, pursuant to Clause 41.7;
- (xii) access constraints, pursuant to Clause 43.4;
- (xiii) an instruction issued by the Contract Administrator for the handing over of the Works or any part thereof, pursuant to Clause 50.4;
- (xiv) suspension of the Works, pursuant to Clause 51.2;
- (xv) the issue of a variation instruction, pursuant to Clause 54.8;
- (xvi) the instruction of work included as a Provisional Sum or a Provisional Item, pursuant to Clause 65.6;

- (xvii) the instruction to engage a Nominated Sub-Contractor notwithstanding a notice of objection issued under Clause 65B.2, pursuant to Clause 65B.7;
- (xviii) making good the destruction or damage to the Permanent Works and/or the Temporary Works by reason of a special risk, pursuant to Clause 77.4(b); or
- (b) any other cause of disturbance to the progress of the Works for which the Authority or the Contract Administrator is responsible whether pursuant to or in breach of any provision of the Contract or otherwise including, but not limited to, any act of prevention or delay by the Authority or the Contract Administrator,

then the Contract Administrator shall assess and decide whether the Contractor may fairly be entitled to an extension of any of the Key Dates.

45.4 Notwithstanding the powers of the Contract Administrator pursuant to this Clause 45 to assess and decide whether the Contractor is fairly entitled to an extension of time, the Contractor shall not in any circumstance be entitled to an extension of time if and to the extent that, in the Contract Administrator's opinion, the relevant delay is caused directly or indirectly by breach of the Contract or other default of the Contractor, by the Contractor's failure to make the proper time allowance which he is deemed to have made pursuant to Clause 15.2, or by an event which is not expressly described in Clause 45.3. Without prejudice to the generality of the foregoing, the Contractor shall not be entitled to an extension of time if the cause of the delay is:

- (a) non-availability or shortage of Contractor's Equipment, Temporary Works, labour (whether or not imported), utility services or any part of the Permanent Works;
- (b) an increase in the quantity of any item of work except to the extent that the increase is the consequence of a variation instructed pursuant to Clauses 2 or 54;
- (c) any instruction in relation to matters which are the responsibility of the Contractor under the Contract in the absence of the instruction;
- (d) inclement weather conditions adversely affecting the progress of the Works (including without limitation the hoisting of any storm warning or strong wind signal);
- (e) delay in issuing or failure to issue to the Contractor any approval or consent in respect of the Works by any Relevant Authority;
- (f) delay in obtaining any occupation permit under the Buildings Ordinance or any other Enactment referred to in Clause 24.2 (a) (ii), which is caused by the Contractor; or
- (g) defective design prepared by or on behalf of the Contractor, whether contained in the Contractor's Drawings or otherwise.

- 45.5 If, pursuant to Clause 45.3, the Contract Administrator considers that the Contractor may fairly be entitled to an extension of any of the Key Dates, the Contract Administrator shall within 28 (twenty-eight) days, or such further time as may be reasonable in the circumstances of:
- (a) receipt of full and detailed particulars of the cause and actual effect of any delaying factor; or
  - (b) where an event has a continuing effect or where the Contract Administrator anticipates a significant delay before the actual effect of an event becomes ascertainable and the Contract Administrator considers an interim extension of time should be granted, receipt of such particulars as in the Contract Administrator's opinion are sufficient for him to decide the interim extension of time,
- assess, decide, grant and notify the Contractor of the extension. The Contract Administrator in assessing and deciding any extension shall take into account all the circumstances known to him at that time, including the effect of any omission of work or substantial decrease in the quantity of work.
- 45.6 The Contract Administrator may at any time following notification of an event pursuant to Clause 45.1 assess, decide and notify the Contractor whether or not the event constitutes a potential ground upon which an extension of time may be granted pursuant to this Clause 45.
- 45.7 Notwithstanding that the Contractor is not otherwise entitled to an extension of time (whether as a consequence of a failure to comply with the provisions of Clauses 45.1 and 45.2 or otherwise), the Contract Administrator may assess and decide the delay that he considers has been suffered by the Contractor as a result of any of the events described in the Clauses to which Clause 45.3(a) refers or any of the events described in Clause 45.3(b), in which case he shall grant and notify the Contractor of the extensions to any Key Date which he decides upon.
- 45.8 If the Contract Administrator decides that the Contractor is not entitled to an extension of time, the Contract Administrator shall, as soon as reasonably practicable, notify the Contractor accordingly.
- 45.9
- (a) Without prejudice to the Contract Administrator's powers pursuant to Clause 45.5(b), the Contractor shall not be entitled to an extension of time by reason of any delay unless the delay actually affects practical completion of the Works or any Section or the achievement of any Stage by the relevant Key Date;
  - (b) whether or not the Contractor fails to achieve any Milestone by reason of any delay shall not of itself be material to the issue of the Contractor's entitlement to an extension of time; and
  - (c) any extension to one Key Date shall not of itself entitle the Contractor to an extension to any other Key Date.

- 45.10 The Contract Administrator shall within 56 (fifty-six) days of the issue of the Practical Completion Certificate for the Works review and finally decide and certify the overall extensions of time (if any) to which he considers the Contractor is entitled in respect of the Works, any Section or any Stage. The final review shall not result in a decrease in any extension of time already granted by the Contract Administrator pursuant to Clause 45.5 or in any period of suspension of liquidated damages for delay assessed and decided pursuant to Clause 48.8(c).
- 45.11 Any extension of time granted by the Contract Administrator to the Contractor shall, except as provided elsewhere in the Contract, be deemed to be in full compensation and satisfaction for any loss or injury sustained or sustainable by the Contractor in respect of any matter or thing in connection with which the extension shall have been granted and every extension shall exonerate the Contractor from any claim or demand on the part of the Authority for the delay during the period of the extension but not for any delay prior to or continued beyond such period.
- 45.12 It shall be a condition precedent to the Contractor being granted extensions of time under this Clause 45 that he complies strictly with the terms of Clauses 45.1 and 45.2.

46. **Rate of Progress**

- 46.1 If, in the opinion of the Contract Administrator, the progress of the Works is too slow to ensure the achievement of any Stage or the practical completion of the Works or any Section by the relevant Key Date and the Contractor is not entitled to an extension of time pursuant to Clause 45, the Contract Administrator may notify the Contractor and the Contractor shall forthwith suggest and, subject to consent, take such steps as are necessary to expedite progress.
- 46.2 If the Contract Administrator considers that the Contractor's suggestions submitted in accordance with Clause 46.1 will not ensure the achievement of any Stage or the practical completion of the Works or any Section by the relevant Key Date then the Contractor shall take such other steps as the Contract Administrator may instruct. If any step taken by the Contractor involves the Authority in additional costs, the costs shall be assessed and decided by the Contract Administrator and shall be recoverable by the Authority from the Contractor.

47. **Recovery of Delay and Acceleration of the Works**

- 47.1 In this Clause 47, the term "Recover Delay" shall mean extinguishing or reducing a delay to the Works, or any part thereof, for which the Contractor would otherwise be entitled to receive an extension of time pursuant to Clause 45 and "Accelerate the Works" shall mean achieving any Stage or practically completing the Works or any Section, or any parts thereof, earlier than the Key Date specified for such Stage, the Works or the Section.
- 47.2 If, in the opinion of the Contract Administrator, it might be possible for the Contractor, by taking certain measures, to Recover Delay or Accelerate the Works, the Contract Administrator may notify the Contractor of the nature of such measures and request the Contractor to submit proposals in respect thereof.

- 47.3 Within 14 (fourteen) days of receipt by the Contractor of a notice and request pursuant to Clause 47.2, the Contractor shall supply to the Contract Administrator his proposals for adopting measures to Recover Delay or Accelerate the Works which shall include, but not necessarily be limited to:
- (a) a description of the measures which the Contractor proposes to adopt;
  - (b) an estimate of any saving of time which could be made by the adoption of the measures;
  - (c) the proposed price for the measures; and
  - (d) any other terms proposed by the Contractor.
- 47.4 Within 14 (fourteen) days of receipt of any proposals supplied by the Contractor pursuant to Clause 47.3, the Contract Administrator may instruct the Contractor:
- (a) to provide such further information in connection with the proposals as the Contract Administrator may request; and
  - (b) if in his opinion, it is necessary, to submit revised proposals.
- 47.5 The Contract Administrator may, but shall not be obliged so to do, instruct the Contractor to take any measures agreed between the Contract Administrator and the Contractor to Recover Delay or Accelerate the Works.
- 47.6 The Contract Administrator may, whether or not the procedure set out in Clauses 47.2 to 47.4 has been followed, instruct the Contractor to take such measures which, in the opinion of the Contract Administrator, it is feasible for the Contractor to take to Recover Delay or Accelerate the Works and the Contractor shall carry out the measures so instructed with due diligence.
- 47.7 Subject to the terms of any agreement between the Contract Administrator and the Contractor pursuant to this Clause 47, if by adopting measures instructed to Recover Delay or Accelerate the Works, the Contractor does not extinguish delays, despite exercising due diligence, for which he would have been entitled to an extension of time in the absence of the measures, the Contractor shall nevertheless be granted an extension of time of the duration of the unextinguished delay.
- 47.8 The price to be paid for the measures instructed by the Contract Administrator to Recover Delay or Accelerate the Works, if the price is not agreed between the Contract Administrator and the Contractor, shall be assessed and decided by the Contract Administrator.
48. **Liquidated Damages for Delay**
- 48.1 The obligations to achieve any Stage and to practically complete the Works and any Section by the relevant Key Dates are separate obligations of the Contractor.
- 48.2 **Appendix 1 to the Form of Tender** attributes to each Key Date a sum which represents

or is less than the Authority's genuine pre-estimate (at a daily rate) of the damages likely to be suffered by the Authority if the Works are not, or any Section is not, practically complete, or any Stage is not achieved by the relevant Key Date. The sum shall constitute liquidated damages and not a penalty.

48.3 The Contractor acknowledges that the liquidated damages have been estimated by the Authority on the basis of damages likely to be suffered as a result of failure to meet any relevant Key Date irrespective of and independently from any damages which are likely to be suffered as a result of failure to meet any other Key Date. Liquidated damages attributed to separate Key Dates may, therefore, run concurrently.

48.4 If the Contractor does not achieve any Stage or practically complete the Works or any Section by the relevant Key Date the Contractor shall pay or allow to the Authority liquidated damages calculated using the rates referred to in Clause 48.2 (as reduced by any certificate issued pursuant to Clause 48.5) until the date when the Works are or the Section is practically completed or the Stage is achieved.

48.5 In the event that:

- (a) a Practical Completion Certificate is issued in respect of any part of the Works (such part not being a Section) before the practical completion of the Works; or
- (b) a Practical Completion Certificate is issued in respect of any part of a Section before the practical completion of the whole of the Section; or
- (c) a Stage Certificate is issued in respect of any part of a Stage before the achievement of the whole of the Stage,

the rate of liquidated damages specified in **Appendix 1 to the Form of Tender** in respect of the Works, the Section or Stage, as the case may be (or any rate previously calculated in accordance with this Clause 48.5) shall be reduced by the proportion which the value of the part completed or achieved bears to the value of the Works, the Section or the Stage (or the remainder thereof) as appropriate, as the same is assessed by the Contract Administrator. The Contract Administrator shall issue a certificate to the Contractor identifying the reduced rate of liquidated damages which shall be payable by the Contractor in the event that the remainder of the Works or the Section is not practically completed or the remainder of the Stage is not achieved, by the relevant Key Date.

48.6 The total amount of liquidated damages for delay in respect of the Works, any Section and any Stage shall be limited in aggregate to the sum identified as such limit in **Appendix 1 to the Form of Tender**.

48.7 The Authority may:

- (a) deduct and retain the amount of any liquidated damages becoming due pursuant to this Clause 48 from any sum due or which becomes due to the Contractor; or
- (b) require the Contractor to pay such amount to the Authority forthwith,

provided that if upon any subsequent review the Contract Administrator:



- (c) grants a relevant extension or further extension of time or issues a suspension notice pursuant to Clause 48.8(c), the Authority shall no longer be entitled to liquidated damages in respect of the period of such extension or suspension; or
- (d) issues a certificate pursuant to Clause 48.5 reducing the rate of the liquidated damages, the Authority shall no longer be entitled to liquidated damages at the previous rate for any period after the date on which the reduced rate became applicable,

any sum in respect of any of the said periods in excess of the Authority's entitlement which may already have been recovered pursuant to this Clause 48 shall be reimbursed forthwith to the Contractor together with interest at the Contract Rate of Interest from the date on which the sum was recovered from the Contractor.

48.8 Without prejudice to Clause 45, if an event as described in Clause 45.3 occurs after liquidated damages have become payable in respect of the Works, any Section or any Stage:

- (a) the Contractor shall as soon as reasonably practicable so notify the Contract Administrator and shall provide such particulars and details of the type described in Clause 45.2 as may be requested by the Contract Administrator;
- (b) the Contractor shall use and continue to use his reasonable endeavours to avoid or reduce delay to the Works, any Section or any Stage;
- (c) if, in the Contract Administrator's opinion, the event has resulted in further delay to the Works, any Section or any Stage, the Contract Administrator shall so notify the Contractor and the Authority's entitlement to liquidated damages in respect of the Works, the Section or the Stage shall be suspended for the period from commencement of the further delay (the date of which shall be assessed by the Contract Administrator and stated in the said notice) until the further delay has either come to an end or, as the case may be, should have come to an end had the Contractor used his reasonable endeavours (the date of which shall be assessed by the Contract Administrator and stated in a notice to be issued to the Contractor as soon as reasonably practicable thereafter);
- (d) any such suspension shall not invalidate any entitlement to liquidated damages before the period of further delay started to run or after it ceases; and
- (e) the Contract Administrator may take the steps described in Clause 48.8(c) notwithstanding the absence of any or any timely notification from the Contractor pursuant to Clause 48.8(a).

48.9 The payment of any liquidated damages pursuant to this Clause 48 shall not relieve the Contractor of any obligation or liability (including, without limitation, to complete the Works) save in relation to the payment of damages for delay in practically completing the Works or any Section or achieving any Stage.

#### **PRACTICAL COMPLETION, STAGE AND HANDING OVER CERTIFICATES**

49. **Practical Completion and Stage Certificates**

49.1 When the Contractor considers that the Works have been practically completed, including, without limitation:

- (a) the passing of the tests prescribed by the Contract (if any); and
- (b) the provision to the Contract Administrator of the documents required by the Contract to be provided prior to practical completion,

he may give notice to that effect to the Contract Administrator together with:

- (i) a list of the items of work that, in the Contractor's opinion, are outstanding; and
- (ii) an undertaking to finish those items referred to in sub-paragraph (i) above and all other outstanding works, during the relevant Defects Liability Period,

in a form acceptable to the Contract Administrator.

49.2 The Contract Administrator shall within 21 (twenty one) days of the date of delivery of the notice, list and undertaking in accordance with Clause 49.1, either:

- (a) issue to the Contractor the Practical Completion Certificate stating the date on which in his opinion the Works were practically completed in accordance with the Contract; or
- (b) issue instructions to the Contractor specifying the items of work which in the Contract Administrator's opinion need to be executed before the Practical Completion Certificate may be issued, in which event the Contractor shall be entitled to receive the Practical Completion Certificate within 21 (twenty-one) days of completion to the satisfaction of the Contract Administrator of the items of work specified by the instructions, provided that if at any time after the instructions but before the issue of the Practical Completion Certificate, the Contract Administrator discovers other items of work which in his opinion need to be executed before the issue of the Practical Completion Certificate, he may issue further instructions pursuant to this Clause 49.2(b).

49.3 Following the same procedure as that described in Clause 49.1 for the Works, the Contractor may request, and the Contract Administrator may issue, a Practical Completion Certificate for any Section, provided that the references to tests and to documents in Clause 49.1 shall be deemed to be references to any test prescribed by the Contract to be completed and any document required by the Contract to be supplied, prior to practical completion of the Section.

49.4 Following the same procedure as that described in Clause 49.1 for the Works, the Contractor may request, and the Contract Administrator may issue, a Stage Certificate, when any Stage has been achieved, provided that for any Stage, the references to tests and

to documents in Clause 49.1 shall be deemed to be references to any test prescribed by the Contract to be completed and any document required by the Contract to be supplied prior to achievement of the Stage, and the undertaking to finish outstanding items of work shall be to do so as soon as is practicable, but within no more than 42 (forty-two) days from the date of issue of the Stage Certificate.

- 49.5 If, in the Contract Administrator's opinion, the Works have been or any Section or any other part of the Works has been practically completed he may issue a Practical Completion Certificate in respect of the Works, the Section or the other part of the Works and upon the issue of the certificate, the Contractor shall be deemed to have undertaken to complete all outstanding items of work during the relevant Defects Liability Period by dates to be instructed.
- 49.6 If, in the Contract Administrator's opinion, any Stage or any part of any Stage has been achieved or achieved subject to certain outstanding items (including, without limitation, tests) he may issue a Stage Certificate in respect of the Stage or the part of the Stage and upon the issue of the certificate, the Contractor shall be deemed to have undertaken to complete all outstanding items of work by dates to be instructed.
- 49.7 Achievement of any Stage shall not of itself constitute completion or practical completion of any Section or any other part of the Works for the purposes of Clauses 49.3 and 49.5.

50. **Handing Over Certificates**

- 50.1 In the event that the Authority wishes to use the Works, or any part thereof or any Section, prior to the issue of the Practical Completion Certificate for the Works or the issue of a Practical Completion Certificate for any part or any Section, the Contract Administrator may instruct the Contractor to allow the Authority to make use of the Works or the part or Section referred to in the instruction and to take such steps as may be necessary to allow such use and the Contractor shall take such steps and allow the Authority to have the use of the Works or such part or Section provided always that the execution of works by Relevant Authorities or Project Contractors, or the provision of access thereto over the Site or the Works, or any part thereof, shall not amount to use of the Works or any part thereof by the Authority for the purposes of this provision.
- 50.2 At the time that the Authority's use commences pursuant to Clause 50.1, the Contract Administrator shall issue a Handing Over Certificate to the Contractor and the Authority which shall contain details of the part of the Works to be used by the Authority and the works which, in the opinion of the Contract Administrator, are required to be executed by the Contractor before the Contract Administrator will be able to issue the Practical Completion Certificate in respect of the Works, or the Section, or if appropriate, the part of the Works. The Authority and the Contractor shall notify the Contract Administrator within 7 (seven) days of receipt of any Handing Over Certificate if they disagree with any details contained therein.
- 50.3 Without prejudice to any other provision of the Contract including, without limitation, the Contractor's obligations pursuant to Clauses 21.2, 44.1 and 52, the Authority shall assume responsibility for the care of the Works or any part or Section in respect of which a Handing Over Certificate is issued by the Contract Administrator in accordance with Clause 50.2, 28 (twenty eight) days after the date of issue of any such certificate.

- 50.4 If, in compliance with any instruction issued pursuant to Clause 50.1, the Contractor is prevented from achieving any Stage, or practically completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate then, if the Contractor claims additional time and/or payment therefor, the Contract Administrator shall give a decision pursuant to Clause 45 and/or 57, provided that the Contractor has complied with his obligations pursuant to Clause 45 and/or Clause 58, as appropriate.

## **SUSPENSION**

### **51. Suspension**

- 51.1 The Contractor shall, on the Contract Administrator's instruction, suspend the execution of the Works, any Section or any other part of the Works for such time or times and in such manner as the Contract Administrator may consider necessary. During the suspension, the Contractor shall properly protect and secure the Works or the Section or other part of the Works which is subject to that instruction.
- 51.2 If, as a result of compliance with an instruction pursuant to Clause 51.1, the Contractor is prevented from achieving any Stage or practically completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate then, if the Contractor claims additional time and/or payment therefor, the Contract Administrator shall, except to the extent that the suspension is:
- (a) instructed pursuant to Clause 51.3;
  - (b) necessary by reason of weather conditions affecting the safety or quality of the Works; or
  - (c) necessary for the proper execution or for the safety of the Works,
- give a decision pursuant to Clause 45 and/or 57, provided that the Contractor has complied with his obligations pursuant to Clause 45 and/or Clause 58, as appropriate.
- 51.3 The Contract Administrator may issue instructions to suspend the Works, any Section or any other part of the Works if, in the Contract Administrator's opinion, the Contractor is in breach of any of his obligations.
- 51.4 If, when an instruction has been given pursuant to Clause 51.1, there has not been an instruction to resume work within a period of 3 (three) months from the date of the instruction to suspend work, then the Contractor may, unless the suspension is otherwise provided for in the Contract or continues to be necessary by reason of some breach of the Contract or other default on the part of the Contractor, serve a notice on the Contract Administrator requesting him, within 28 (twenty-eight) days from the receipt of the notice, to issue an instruction to resume work. If within the said 28 (twenty-eight) days the Contract Administrator does not issue the instruction or give notice that, in his opinion, the suspension continues to be necessary by reason of some breach or default as aforesaid, the Contractor, by a further notice, may elect to treat the suspension, where it affects part only of the Works, as an omission of the part pursuant to Clause 54 or, where it affects the

Works, as a termination of the Contract by the Authority which shall be deemed to have occurred pursuant to the proviso to Clause 77.1 and in such event, Clauses 77.2 to 77.4 shall apply.

## **OUTSTANDING WORK AND DEFECTS**

### **52. Outstanding Work**

- 52.1 The Contractor shall execute any outstanding work relating to the Works, any Section or any other part of the Works, as the case may be, and shall deliver up to the Authority the Works, any Section or any other part of the Works to which the work outstanding relates, in the condition required by the Contract (fair wear and tear excepted) as soon as practicable after the issuance of the relevant Practical Completion Certificate in respect thereof and in any event prior to the expiry of the relevant Defects Liability Period.
- 52.2 If the outstanding work is of such a character as may affect the validity of the results of any of the tests required by the Contract, the Contract Administrator may within 1 (one) month of the completion of outstanding work instruct the Contractor to repeat such tests in which case the tests shall be carried out as provided in Clause 41.
- 52.3 Where the execution of any outstanding work by the Contractor could interfere with work by Project Contractors, with the use of the Project or the Works or any part thereof, or any Section by the Authority, the Contractor shall execute the outstanding work in the manner and at or by the times instructed by the Contract Administrator so as to avoid or, if it cannot be avoided, minimise interference.

### **53. Work of Repair and Additional Work during the Defects Liability Period and Investigating Defects**

- 53.1 The Contractor shall as soon as practicable after the expiry of the relevant Defects Liability Period, deliver up the Works, any Section or any part of the Works to the Authority in the condition required by the Contract (fair wear and tear excepted). The Contractor shall, in accordance with any instruction issued during any Defects Liability Period or within 14 (fourteen) days after its expiration:
- (a) execute maintenance work including any work of redesign, replacement, repair, rectification and making good any defect, imperfection settlement or other fault (whether intermittent or otherwise) identified during the Defects Liability Period. The work shall be executed within such period as instructed, or in the absence of such instruction, as soon as is practicable; and
  - (b) execute any other work in connection with the Permanent Works, not referred to in the Drawings and/or the Specification, including the supply of goods and materials which, in the Contract Administrator's opinion, it is reasonable for the Contractor to so supply.
- 53.2 At any time prior to the issuance of the Defects Liability Certificate, the Contractor shall, if instructed by the Contract Administrator, investigate the cause of any defect, imperfection or fault under the directions of the Contract Administrator.

- 53.3 If, in the Contract Administrator's opinion, the defect, imperfection or fault investigated pursuant to Clause 53.2 or the work executed pursuant to Clause 53.1(a) is not the result of any breach of the Contract or other default on the part of the Contractor then, if the Contractor claims additional payment therefor, the Contract Administrator shall give a decision pursuant to Clause 57.
- 53.4 In relation to any work executed pursuant to Clause 53.1(b), the Contract Administrator shall give a decision pursuant to Clause 57, which, notwithstanding the definition of Cost contained in Clause 1.1, shall include a reasonable allowance for profit by the Contractor.
- 53.5 Where any work is carried out pursuant to Clause 53.1(a) and is not work to which Clause 53.3 applies, then the terms of this Clause 53 shall apply to the work for the extended Defects Liability Period and similarly to outstanding work executed pursuant to Clause 52.1.
- 53.6 If the work carried out by the Contractor in accordance with Clause 53.1(a) is such that it may affect the validity of any of the tests required by the Contract, the Contract Administrator may instruct, within 28 (twenty-eight) days after completion of the work, that the tests be repeated to the extent necessary. The tests shall be carried out in accordance with Clause 41 and the maintenance work shall not be considered as completed until satisfactory completion of the repeat tests.
- 53.7 Within 14 (fourteen) days of completion of the maintenance work in accordance with Clause 53.1(a), the Contractor shall, where applicable, submit to the Contract Administrator for review appropriate revisions to the documents referred to in Clause 49.1.

## **VARIATIONS**

### **54. Variations**

- 54.1 The Contract Administrator may instruct any variation to the Works that is in his opinion desirable in connection with the Works or the Project. The variation may include, but shall not be limited to:
- (a) additions, omissions, substitutions, alterations, changes in quality, form, character, kind, position, dimension, level or line;
  - (b) changes to any sequence, method or timing of construction specified in the Contract other than changes in programming requirements necessary for the Contractor to comply with his obligations apart from this Clause 54.1(b); and
  - (c) changes to access to the Site.
- 54.2 The Contractor may propose any variation to the Contract Administrator which he considers may have financial, timing, quality or interface/co-ordination benefits for the Authority. The proposal shall, in detail, describe the proposed variation and identify the benefits to be obtained and all other financial, timing, quality or interface/co-ordination effects of the proposed variation upon the Works. If the Contract Administrator accepts the proposal (which he shall be under no obligation to do) he shall instruct the variation

pursuant to this Clause 54.2 within 14 (fourteen) days of receipt of the proposal.

- 54.3 The Contract Administrator may give details to the Contractor of any proposed variation which he is considering and request the Contractor to submit an estimate providing details of the financial, timing, quality and interface/co-ordination effects of the proposed variation upon the Works. The Contractor shall submit the estimate, which shall be based on the rates and prices contained in the Pricing Document, within 14 (fourteen) days of receipt of the request and if the Contract Administrator accepts the estimate (which he shall be under no obligation to do) he shall so notify the Contractor and instruct the variation pursuant to this Clause 54.3 within 14 (fourteen) days of receipt of the estimate. If the Contract Administrator does not accept the estimate he may nevertheless instruct the variation at any time thereafter pursuant to Clause 54.1.
- 54.4 The Contractor shall, in respect of any variation ordered pursuant to Clause 54.1, amend any Contractor's Drawings affected by such variation and shall submit such amendments to the Contract Administrator for review.
- 54.5 No variation shall be made by the Contractor without an instruction by the Contract Administrator.
- 54.6 No variation instructed pursuant to this Clause 54 shall in any way vitiate or invalidate the Contract, which shall continue to apply to the Works as varied, but the value (if any) of all variations shall be taken into account by the Contract Administrator in assessing and deciding revisions to the Cost Centre Values in accordance with Clause 56 or in valuing the variation as dayworks pursuant to Clause 55.
- 54.7 The Authority may procure that work omitted as a variation to the Works by instruction pursuant to Clause 54.1, be executed by another contractor provided always that:
- (a) upon such omitted work being let to another contractor, the Contract Administrator shall assess and decide a fair amount in respect of the profit reasonably anticipated by the Contractor in respect of such omitted work as at the time of issue of the relevant instruction and shall make such revision to the relevant Cost Centre Value, as may be appropriate, pursuant to Clause 56 and/or to the then current total of the Cost Centre Values and other amounts previously decided to be due; and
  - (b) if the effect of the omission of such work would be to reduce an extension of time to which the Contractor would otherwise have been entitled had no such variation been instructed, the Contract Administrator shall take the effect of the omission into account and, subject to the provisions of Clause 45, grant such extension of time (if any) so as to put the Contractor in no better and no worse position than if the said variation had not been instructed.
- 54.8 If, in compliance with an instruction pursuant to Clause 54.1, the Contractor is prevented from achieving any Stage or practically completing the Works or any Section by the relevant Key Date or becomes entitled to an extension of time pursuant to Clause 54.7(b) or incurs Cost which the Contractor did not and had no reason to anticipate and is not recoverable pursuant to Clauses 55 or 56 then, if the Contractor claims additional time and/or payment therefor, the Contract Administrator shall give a decision pursuant to

Clause 45 and/or 57, provided that the Contractor has complied with his obligations pursuant to Clause 45 and/or Clause 58, as appropriate.

**55. Daywork**

- 55.1 The Contract Administrator may instruct that any work to be executed as a result of an instruction given pursuant to Clauses 54.1 or 65.1(b) shall be executed on a daywork basis under the conditions and valued at the rates set out in the Pricing Document. Unless the work instructed is required to commence immediately, the Contractor shall give the Contract Administrator notice before starting the work.
- 55.2 The Contractor shall furnish to the Contract Administrator such receipts or other vouchers as may be necessary to prove the amounts paid by the Contractor in executing the work and before ordering work shall submit to the Contract Administrator quotations for the same for review.
- 55.3 In respect of all work executed on a daywork basis the Contractor shall, during the continuance of such work, deliver each day to the Contract Administrator a list of the names and occupations of and time worked by all workmen employed on such work and a statement showing the descriptions and quantities of all work executed the previous day. One copy of each list and statement shall, if correct or when agreed, be signed by or on behalf of the Contract Administrator and returned to the Contractor.
- 55.4 At the end of each month, the Contractor shall deliver to the Contract Administrator a detailed priced statement of the work executed (separately identifying labour and things supplied) and the Contractor shall not be entitled to any payment unless the lists and statements required in accordance with this Clause 55 have been fully and punctually rendered. Provided always that if the Contract Administrator shall consider that for any reason the sending of such list or statement by the Contractor in accordance with the foregoing provisions was impracticable, he shall nevertheless be entitled to authorise payment for such work either under the conditions set out in the Pricing Document (on being satisfied as to the details of the work executed) or at such value therefor as he shall consider fair and reasonable.

**VALUATION**

**56. Valuation**

- 56.1 Subject to Clause 58, the Contract Administrator shall assess and decide the sum which, in his opinion, is due to the Contractor as a result of:
- (a) an instruction pursuant to Clauses 54.1 or 65.1(a); or
  - (b) matters claimed by reason of the following, insofar as, in the Contract Administrator's opinion, some or all of the claim relates to work equivalent to a variation as described in Clause 54.1:
    - (i) the issue of an instruction, or the failure or inability to issue or delay in issue of an instruction, pursuant to Clause 2.9;



- (ii) ambiguities or discrepancies in or between the documents comprising the Contract, pursuant to Clause 7.2;
- (iii) the presence of unforeseeable physical conditions or artificial obstructions at the Site and measures taken to overcome them and/or instructions issued by the Contract Administrator in respect thereof, pursuant to Clause 15.6;
- (iv) errors in setting out due to incorrect data, pursuant to Clause 19.2;
- (v) an instruction for rectification of loss or damage due to Excepted Risks, pursuant to Clause 21.6;
- (vi) ad hoc successful tests, pursuant to Clause 41.7; or
- (vii) making good the destruction or damage to the Permanent Works and/or the Temporary Works by reason of special risks, pursuant to Clause 77.4(b).

56.2 The Contract Administrator's assessment and decision pursuant to Clause 56.1 shall be made as follows:

- (a) where work added or omitted is, in the Contract Administrator's opinion, of similar character and executed under similar conditions to work for which there is a rate or price in the Pricing Document, it shall be valued at that rate or price; or
- (b) where work added or omitted is, in the Contract Administrator's opinion, not of a similar character or is not executed under similar conditions, it shall be valued at a rate or price based on any of the rates or prices contained in the Pricing Document so far as may be reasonable, failing which a fair valuation shall be made; and
- (c) if the nature or extent of the work added or omitted relative to the nature or extent of the Works or any part thereof shall be such that, in the Contract Administrator's opinion, any rate or price contained in the Pricing Document for any other work is by reason of such variation rendered unreasonable or inapplicable, then a new rate or price shall be agreed between the Contract Administrator and Contractor for that work, using the rates and prices contained in the Pricing Document as the basis for decision; or
- (d) if the Contract Administrator and the Contractor fail to reach agreement on any rate or price pursuant to Clause 56.2(c), the Contract Administrator shall assess and decide a rate or price and shall notify the Contractor accordingly,

and following such a decision the Contract Administrator shall make, pursuant to Clause 66, revisions (if any and if appropriate) to the Pricing Schedule and/or the Schedule of Milestones and/or the Interim Payment Schedule and shall notify the Contractor accordingly.

56.3 Insofar as, in the Contract Administrator's opinion, any balance of the Contractor's claim pursuant to the provisions referred to in Clause 56.1(a) or (b) relates to disturbance to the

progress of the Works or any part thereof, he shall assess and decide the balance pursuant to Clause 57.

56.4 In respect of any instruction pursuant to Clauses 54.2, 54.3 or 65.2, the amount due to the Contractor shall be the amount accepted by the Contract Administrator pursuant to those clauses and the Contract Administrator shall make, pursuant to Clause 66, revisions (if any and if appropriate) to the Pricing Schedule and/or the Schedule of Milestones and/or the Interim Payment Schedule and shall notify the Contractor accordingly.

56.5 The Contractor shall not be entitled to any payment pursuant to this Clause 56 to the extent, in the Contract Administrator's opinion, connected with:

- (a) any breach of the Contract or other default on the part of the Contractor;
- (b) any instruction in relation to matters which, in the Contract Administrator's opinion, are the responsibility of the Contractor in the absence of the instruction; or
- (c) failure by the Contractor to make the proper allowance in the Tender Total and the rates and prices in the Pricing Document which he is deemed to have made pursuant to Clause 15.2.

56.6 The Contractor shall supply all information and documents requested by the Contract Administrator to facilitate the performance of the Contract Administrator's duties under this Clause 56 including, without limitation, details or further details of:

- (a) the rates and prices in the Pricing Document; and/or
- (b) amounts claimed by relevant sub-contractors

and the details or further details shall include a make-up of the relevant rate, price or amount to identify allowance for labour, Permanent Works, Contractor's Equipment, Temporary Works and other types of expenditure and any mark-up for inflation, overheads and profit (if any).

## **57. Cost and Disturbance to the Progress of the Works**

57.1 If, in the Contract Administrator's opinion, the Contractor has incurred or is likely to incur Cost for which the Contractor would not be reimbursed by a payment made pursuant to any other provision in the Contract and a claim is made by reason of:

- (i) the issue of instruction, or the failure or inability to issue or delay in issue of an instruction, pursuant to Clause 2.9;
- (ii) the reversal or variation of an instruction or decision by the Contract Administrator, or the Contract Administrator's Representative, pursuant to Clause 3.5;
- (iii) ambiguities or discrepancies in or between the documents comprising the Contract, pursuant to Clause 7.2;

- (iv) the failure or inability to issue or delay in issue of further or amended Drawings or Specification by the Contract Administrator which was the subject of a notice in accordance with Clause 9.3, pursuant to Clause 9.4;
- (v) the presence of unforeseeable physical conditions or artificial obstructions at the Site and measures taken to overcome them and/or instructions issued by the Contract Administrator in respect thereof, pursuant to Clause 15.6;
- (vi) errors in setting out due to incorrect data, pursuant to Clause 19.2;
- (vii) an instruction for the rectification of loss or damage due to Excepted Risks, pursuant to Clause 21.6;
- (viii) delay in obtaining any occupation permit under the Buildings Ordinance or any other Enactment, which is caused by any person other than the Contractor and which is the sole reason preventing the practical completion of the Works, pursuant to Clause 24.3;
- (ix) the activities of Relevant Authorities or Project Contractors, pursuant to Clause 28.9;
- (x) the uncovering of acceptable work, pursuant to Clause 39.3;
- (xi) ad hoc successful tests, pursuant to Clause 41.7;
- (xii) access constraints, pursuant to Clause 43.4;
- (xiii) an instruction issued by the Contract Administrator for the handing over of the Works, or any part thereof, pursuant to Clause 50.4;
- (xiv) suspension of the Works, pursuant to Clause 51.2;
- (xv) the investigation of any defect, imperfection or fault or the execution of maintenance work not the result of any breach or default by the Contractor in accordance with Clause 53.1(a), pursuant to Clause 53.3;
- (xvi) the execution of work not included in the Drawings and/or the Specification in accordance with Clause 53.1(b), pursuant to Clause 53.4;
- (xvii) the issue of a variation instruction, pursuant to Clause 54.8;
- (xviii) the instruction of work included as a Provisional Sum or Provisional Item, pursuant to Clause 65.6;
- (xix) the instruction to engage a Nominated Sub-Contractor, notwithstanding a notice of objection issued under Clause 65B.2, pursuant to Clause 65B.7;
- (xx) the insolvency, receivership or liquidation of any Nominated Sub-Contractor or of any guarantor of the Nominated Sub-Contractor, pursuant to Clause 65B.8; or

- (xxi) making good the destruction or damage to the Permanent Works and/or the Temporary Works by reason of special risks, pursuant to Clause 77.4(b),

then, subject to Clause 58, the Contract Administrator shall as soon as reasonably practicable assess the sum in respect of the Cost incurred and give a decision of the sum to the Contractor.

57.2 The Contractor shall not be entitled to any payment pursuant to this Clause 57 due, in the Contract Administrator's opinion, to:

- (a) any breach of the Contract or other default on the part of the Contractor;
- (b) any instruction in relation to matters which, in the Contract Administrator's opinion, are the responsibility of the Contractor in the absence of such instruction; or
- (c) failure by the Contractor to make the proper allowance in the Tender Total and the rates and prices in the Pricing Document which he is deemed to have made pursuant to Clause 15.2.

58. **Notice of Claims for Additional Payment**

58.1 (a) Notwithstanding any other provision of the Contract, but subject to Clause 58.1(b), if the Contractor at any time intends to claim payment additional to the then current total of the Cost Centre Values and other amounts previously decided to be due, or damages under or for breach of or otherwise in connection with the Contract he shall give notice to the Contract Administrator of his intention within 21 (twenty-one) days after the event giving rise to the claim became, or ought reasonably to have become, apparent to the Contractor.

- (b) The Contractor shall be entitled to payment following the issuance of instructions pursuant to Clauses 47.6, 54.1 and 65.1 in which it is expressly stated that they will be subject to valuation in accordance with the Contract Administrator's decisions as to the value thereof pursuant to Clauses 47.8, 56.1 or 65.1, as the case may be, without being required to give notice in accordance with Clause 58.1(a), but if the Contractor seeks payment in excess of the value so decided or any other payment in respect of the said instructions or in respect of instructions in which it is not expressly stated that they will be subject to valuation, notice in accordance with Clause 58.1(a) shall be required. In addition, no notice shall be required in respect of any price to be assessed by the Contract Administrator pursuant to Clause 47.8 or any amount accepted by the Contract Administrator pursuant to Clauses 54.2, 54.3 or 65.2.

58.2 Within 28 (twenty-eight) days, or such other reasonable time as may be permitted by the Contract Administrator, after the date of a Contractor's notice pursuant to Clause 58.1, the Contractor shall send to the Contract Administrator detailed particulars of the amount claimed and the grounds and/or contractual provisions upon which the claim is based, together with the documents which support the claim. Where the event giving rise to the claim has a continuing effect, the account shall be considered an interim account and the

Contractor shall, at such intervals as the Contract Administrator may reasonably instruct, send further interim accounts giving the current amount of the claim and specifying any further ground or evidence in support of the claim. The Contract Administrator may, if in his opinion he has sufficient information for the purpose, give an interim decision. The Contractor shall, within 28 (twenty-eight) days of the continuing effect coming to an end, submit final particulars.

- 58.3 Unless otherwise expressly provided in the Contract, the Contractor shall not be entitled to any decision or to any revision of Cost Centre Values or to any payment, damages or other relief in respect of the event giving rise to his claim unless he shall have first complied with the terms of this Clause 58 and in default of compliance, the Contractor shall not be entitled to receive any such payment, damages or other relief, to which he might have become entitled either under the Contract or as a result of any breach of the Contract by the Authority, and the Contractor shall be deemed to have waived all his rights and entitlements in respect thereof .

59. **Maintenance of Records**

- 59.1 The Contractor shall establish at the Site, and may establish at other places which have been reviewed without objection, records offices containing an archive of all documents in connection with and arising out of the Contract and a complete record of all transactions (with copies of all relevant documents) entered into by the Contractor in connection with the Contract. Such offices and the archive shall, in accordance with the Specification, be established and maintained by the Contractor subject to any take-over of the archive by the Authority in accordance with the Contract.
- 59.2 If the Contractor serves a notice pursuant to Clauses 45.1 or 58.1 or if an event occurs in respect of which the Contractor may subsequently make a financial claim, the Contractor shall keep such contemporary records as may reasonably be necessary to support any claim he may subsequently wish to make.
- 59.3 Without admitting the Authority's liability, the Contract Administrator may instruct the Contractor to keep such further contemporary records as he reasonably considers desirable or material to any claim of which notice pursuant to Clauses 45.1 or 58.1 has been given.
- 59.4 To the extent that the records of the Contractor are to be created and/or maintained on a computer or other electronic storage device, the Contractor shall submit to the Contract Administrator for review a procedure for back-up and storage at other locations of copies of the records and shall adhere, and shall cause his sub-contractors of any tier to adhere, to the agreed procedures and to demonstrate compliance with the agreed procedure as and when requested by the Contract Administrator.
- 59.5 The Contractor shall, at all reasonable times, either before or after the issue of the Final Certificate, allow the Contract Administrator and any representative of the Authority, access to the records offices and the archive established by the Contractor pursuant to Clause 59.1 and procure such access to the records offices of any sub-contractor (including, without limitation, any consultant engaged by the Contractor), to inspect and take copies of, at the cost of the Authority, any document relating to the Works or the

Project including, without limitation, any documents relating to the breakdown, calculation or analysis of the Tender.

- 59.6 Without prejudice to any other provision of the Contract, including, without limitation, Clause 5, the Contractor shall ensure that any sub-contract entered into by the Contractor shall contain such provisions which enable the Contractor to comply with the provisions of this Clause 59.

## **PROPERTY IN THE PERMANENT WORKS, TEMPORARY WORKS AND CONTRACTOR'S EQUIPMENT**

### **60. Vesting of Contractor's Equipment and Temporary Works**

- 60.1 Contractor's Equipment (excluding, for the purposes of this Clause 60.1 only, marine vessels), Temporary Works and consumables which are owned by the Contractor shall, on delivery to the Site become the property of the Authority.
- 60.2 Contractor's Equipment, Temporary Works and consumables shall not be removed from the Site or taken out of use for the Works without prior consent.
- 60.3 Upon the practical completion of the Works or the taking out of use or removal as aforesaid or pursuant to Clause 77.2, the Contractor's Equipment, Temporary Works and surplus consumables which have vested in the Authority shall re-vest in the Contractor.

### **61. Vesting of Permanent Works**

#### **61.1 Any part of the Permanent Works:**

- (a) which is delivered to the Project Site shall:
  - (i) become the property of the Authority (unless property in the part has already passed to the Authority pursuant to Clause 61.1(b)); and
  - (ii) not be removed from the Site or the Project Site without prior consent;
- (b) which is manufactured or obtained off-Site shall become the property of the Authority upon property in the part vesting in the Contractor or otherwise passing unconditionally to the Contractor or his agent or nominee and the Contractor shall, and shall procure that any of his sub-contractors supplying any part of the Permanent Works to the Contractor shall:
  - (i) upon property in the part vesting in the Contractor, provide to the Contract Administrator such documentary or other evidence thereof as may be appropriate or as the Contract Administrator may request;
  - (ii) upon the part being practically ready for delivery to the Project Site, suitably mark or otherwise plainly identify it so as to show that its destination is the Project Site, that it is the property of the Authority and (where it is not stored at the premises of the Contractor) to whose order it

is held, and set aside and store the part so marked or identified to the satisfaction of the Contract Administrator;

- (iii) send to the Contract Administrator a schedule listing and giving the value of every part so marked, identified, set aside and stored and inviting him to inspect them; and
- (iv) if so instructed by the Contract Administrator, provide to the Contract Administrator an opinion in writing by an established and qualified lawyer in the country where the part is situated that the actions taken by the Contractor are sufficient to show an intention to vest the property in it in the Authority and to protect it against seizure by a third party (including any liquidator, receiver or similar officer of the Contractor),

provided that the operation of this Clause 61 shall not be deemed to imply any acceptance of any part of the Permanent Works or prevent its rejection by the Contract Administrator at any time.

61.2 The parts of the Permanent Works referred to in Clause 61.1(b) shall be in the possession of the Contractor or his sub-contractors for the sole purpose of delivering them to the Authority for the execution of the Works and shall not be within the ownership, control or disposition of the Contractor or his sub-contractors and save only as stated in Clause 21, the Contractor shall be responsible for any loss or damage to such parts and for the expense involved in storing, handling and transporting the same.

61.3 The Contractor shall ensure that there shall be no lien whether in equity, common law or otherwise on any part of the Permanent Works which has vested in the Authority pursuant to Clause 61.1 for any sum due to the Contractor, his sub-contractors or any other person and the Contractor shall ensure that the title of the Authority and the exclusion of any lien are brought to the notice of his sub-contractors and other persons dealing with or transporting any part.

61.4 If the Contract or the Contractor's employment thereunder is terminated before the practical completion of the Works, the Contractor shall deliver to the Authority any part of the Permanent Works owned by the Authority by virtue of Clause 61.1, and if the Contractor shall fail to do so the Authority may enter any premises of the Contractor, and the Contractor shall procure that the Authority may enter any premises of any of his sub-contractors, to remove the part and the Authority may recover the cost of so doing from the Contractor.

## 62. **Use of Contractor's Equipment**

62.1 The Contractor shall not, without prior consent, bring onto the Site or the Project Site or use in connection with the Works at any place whatsoever, any item of Contractor's Equipment which is not solely owned by the Contractor. Consent may be withheld unless:

- (a) the owner of the item enters into a written collateral agreement with the Authority under which the owner undertakes to the Authority that:

- (i) the owner shall, and shall procure that the beneficiary of any relevant charge, other security interest or reservation of title (of whatever nature) shall, without payment, execute any deed or document in favour of the Authority to assign to the Authority the benefits under any lease, charter-party, hiring, hire-purchase, supply, operation or other agreement made with the Contractor in respect of the item in the event of the termination of the Contract or of the employment of the Contractor thereunder;
    - (ii) the agreement shall permit the Authority, or any third party employed by the Authority, to use the item until completion of the Works upon the same terms as those enjoyed by the Contractor prior to the assignment; and
    - (iii) the owner shall not, without first giving the Authority not less than 21 (twenty-one) day's prior notice, exercise any right the owner may have to terminate the lease, charter-party, hiring, hire-purchase, supply, operation or other agreement, or treat the same as having been repudiated by the Contractor or terminated, howsoever otherwise, or withhold performance of the owner's obligations thereunder or remove the item from Hong Kong; and
  - (b) the Contractor provides, or procures the provision of, any information that the Contract Administrator by instruction requests in relation to any charge, other security interest or reservation of title (of whatever nature) that may subsist in the item.
- 62.2 All sums paid by the Authority under the provisions of any agreement, deed or document referred to in this Clause 62 and all cost or expense incurred by him in entering into the agreement, deed or document shall be recoverable by the Authority from the Contractor.
- 62.3 The Contract Administrator may instruct the Contractor to produce all documents evidencing title to, or the contractual basis of the Contractor's right to use, any item of Contractor's Equipment.
- 62.4 Without prejudice to any other provision of the Contract, including without limitation, Clause 5, the Contractor shall ensure that any sub-contract entered into by the Contractor shall contain such provisions which enable the Contractor to comply with the provisions of this Clause 62.
- 62.5 If the Contractor fails to comply with his obligations pursuant to this Clause 62, without prejudice to any other right or remedy available to the Authority, the Authority may withhold from interim payments due to the Contractor an amount equivalent to the value of the Contractor's Equipment concerned until such time as the failure is rectified or remedied to the satisfaction of the Contract Administrator.
63. **Removal of Contractor's Equipment and Temporary Works**
- 63.1 Within a reasonable time after the issue of any Practical Completion Certificate, the Contractor shall clear away and remove from the relevant part of the Site and the Project Site any item of Contractor's Equipment, Temporary Works and surplus consumables



(except those required to discharge the Contractor's other obligations under or in connection with the Contract) for which consent has been given pursuant to Clause 60.2 and all other items of equipment, whether or not belonging to the Contractor, and the Contractor shall leave the Works, or the Section or other part of the Works to which the Practical Completion Certificate relates, and the Site, or the relevant part thereof as appropriate, in a clean and tidy condition.

63.2 If at any time throughout the period in which the Works are executed, it appears to the Contract Administrator that the Contractor has abandoned any item of Contractor's Equipment, Temporary Works or surplus consumables on any part of the Site and that the Contractor does not intend to use the same again in the execution of the Works, the Contract Administrator may issue a notice to that effect to the Contractor requiring him to confirm within 7 (seven) days of receipt of the notice whether the item has been abandoned or whether he intends to use it in the execution of the Works. In the event either that the Contractor confirms the abandonment or fails to respond to the Contract Administrator's notice within the said 7 (seven) day period, the Contract Administrator may, without prejudice to the generality of the Contract Administrator's powers under Clause 2, issue an instruction requiring the Contractor to remove the relevant item from the Site and the Project Site within a period of 7 (seven) days of receipt of the Contract Administrator's instruction.

63.3 If the Contractor fails to comply with Clauses 63.1 or 63.2, the Authority may, without prejudice to any other rights or remedies it may have under the Contract, and without prejudice to Clause 72.1:

- (a) remove the relevant item from the Site and the Project Site and dispose of the same in any manner as he sees fit, and if the Authority sells the said item, after deducting from any proceeds of sale the charges and expense incurred by the Authority in connection with such sale, the Authority shall pay the balance, if any, to the Contractor but, to the extent that the proceeds of sale are insufficient to meet all such charges and expenses incurred by the Authority, the excess shall be recoverable by the Authority from the Contractor; or
- (b) return the item (if hired or the subject of a hire-purchase, supply or operation agreement, charter-party or lease) to the owner from whom it was so hired, chartered or leased, and recover the charges and expenses of and in connection with such return from the Contractor.

64. **Liability for Loss or Damage to Permanent Works, Contractor's Equipment, etc**

64.1 The Authority shall not at any time be responsible for the care of, nor be liable for the loss of or damage to the Permanent Works, Contractor's Equipment, Temporary Works or consumables which have become the property of the Authority pursuant to Clauses 60 and 61 except as provided in Clause 21.

**PROVISIONAL SUMS, PROVISIONAL ITEMS, OPTIONS AND NOMINATED SUB-CONTRACTORS**

65. **Provisional Sums, Provisional Items and Prime Cost Sums**

- 65.1 Any work in relation to which a Provisional Sum or Provisional Item is stated in the Pricing Document shall only be executed in whole or in part upon the issue of an instruction by the Contract Administrator pursuant to this Clause 65.1 or Clause 65.2. If the Contract Administrator issues no such instruction in respect of a Provisional Sum or a Provisional Item, the said work shall not form part of the Works and the Contractor shall not be entitled to any payment for or in connection with such work. The Contract Administrator may instruct any work contained in a Provisional Sum or a Provisional Item pursuant to this Clause 65.1:
- (a) to be executed by the Contractor, but not as daywork, in which case its value shall be assessed and decided pursuant to Clause 56; save to the extent that a price is stated in the Pricing Document in respect of a Provisional Item which price shall be applicable;
  - (b) to be executed by the Contractor as daywork, in which case its value shall be assessed and decided pursuant to Clause 55; or
  - (c) to be executed by a Nominated Sub-Contractor, in which case the provisions of Clause 65B shall apply.
- 65.2 The Contract Administrator may, when considering whether or not to instruct any Provisional Sum, request the Contractor to submit an estimate detailing the financial, timing and quality effects upon the Works of executing the work in relation to which the Provisional Sum is stated in the Pricing Document. The Contractor shall submit the estimate within 14 (fourteen) days of receipt of the request and if the Contract Administrator accepts the estimate (which he shall be under no obligation to do) he shall so notify the Contractor and instruct the work pursuant to this Clause 65.2 within 14 (fourteen) days of receipt of the estimate. If the Contract Administrator does not accept the estimate he may nevertheless instruct the work at any time pursuant to Clause 65.1.

### **Prime Cost Sums**

- 65.3 Any work in relation to which a Prime Cost Sum is stated in the Pricing Document shall be carried out by a Nominated Sub-Contractor upon the Contract Administrator's instruction pursuant to this Clause 65.3.
- 65.4 Without prejudice to Clause 15.2, the Contractor shall be deemed to have allowed the necessary time and resources (including without limitation establishment and supervisory charges and all other costs) to enable the work in relation to which Prime Cost Sums, Provisional Sums and Provisional Items are stated in the Pricing Document to be executed by the relevant Key Dates and within the Tender Total insofar as, without prejudice to Clause 15.3, the scope and nature of the work was reasonably foreseeable on the basis of the deeming provisions of Clause 15.1.
- 65.5 The Contractor shall, when instructed by the Contract Administrator, obtain and submit any quotation which the Contract Administrator may reasonably request and produce all invoices, vouchers and accounts or receipts in connection with expenditure in respect of Provisional Sums and Prime Cost Sums.

65.6 If in compliance with any instruction pursuant to Clause 65.1 (a) or (b), the Contractor is prevented from achieving any Stage or practically completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate and which is not recoverable pursuant to Clauses 55 or 56 then, if the Contractor claims additional time and/or payment therefor, the Contract Administrator shall give a decision pursuant to Clauses 45 and/or Clause 57 provided that the Contractor has complied with his obligations pursuant to Clause 45 and/or Clause 58, as appropriate.

#### **65A Options**

65A.1 The Contract Administrator may, at any time within the relevant period from the Date for Commencement of the Works referred to in the Specification or the Pricing Document (or any extended period agreed by the Authority and the Contractor), instruct any Option by instructing the Contractor to execute the work comprised therein, as such work is described in the Specification or the Pricing Document.

65A.2 If the Contract Administrator instructs any Option in accordance with Clause 65A.1, the Contractor shall carry out the work comprised therein subject to and in accordance with the Contract as if it had at all times formed part of the Works and any provision of the Contract which is stated as being conditional upon the instruction of the Option shall apply.

65A.3 The Contractor shall not be entitled to receive any extension of time for completion of the Works or any Section or for the achievement of any Stage pursuant to Clause 45 of the General Conditions by reason of the instruction of any Option by the Contract Administrator, in accordance with Clause 65A.1 or to receive any further or additional payment, whether pursuant to Clauses 56 or 57 of the General Conditions, beyond the sum referred to in the Pricing Document in respect of such Option, which shall be payable to the Contractor by the Authority.

65A.4 If the Contract Administrator does not exercise any Option pursuant to Clause 65A.1, such Option shall not form part of the Works and the Contractor shall not be entitled to any payment for or in connection with such Option.

#### **65B. Nominated Sub-Contractors**

65B.1 Upon receipt of an instruction to enter into a sub-contract with a Nominated Sub-Contractor pursuant to Clause 65.1(c) or Clause 65.3, the Contractor shall, subject to Clause 65A.2, forthwith enter into a sub-contract with the Nominated Sub-Contractor identified in the instruction in the form of the sub-contract identified in the instruction, which shall be based upon the form contained in **Schedule 12**, with such amendments as may be identified in the instruction, and the Contractor shall not thereafter amend or waive any of the terms of the sub-contract without prior consent nor shall the Contractor accept any repudiation or otherwise terminate the sub-contract or terminate or suspend the Nominated Sub-Contractor's employment thereunder without prior consent. The Contractor shall procure that the Nominated Sub-Contractor shall provide to the Authority and to the Contractor all bonds, warranties and guarantees required by the sub-contract and, without prejudice to any other right or remedy of the Authority, the Authority shall be entitled to withhold from interim payments due to the Contractor an amount equivalent to

the value of the sub-contract until all bonds, warranties and guarantees have been provided.

65B.2 Subject to Clause 65B.3, the Contractor shall be entitled to object to an instruction to sub-contract with a Nominated Sub-Contractor pursuant to Clause 65 on the ground:-

- (a) that the sub-contract completion dates are inconsistent with the progress of the Works; or
- (b) that any amendment to the form of sub-contract contained in **Schedule 12** is inconsistent with the Contractor's obligation under the Contract,

and the objection shall be made in writing forthwith upon receipt of the instruction and shall explain the inconsistency in reasonable detail and, until the Contractor shall receive further instruction, he shall not enter into a sub-contract with the Nominated Sub-Contractor.

65B.3 Upon receipt of any objection in accordance with Clause 65B.2, the Contract Administrator shall either:-

- (a) re-issue the original instruction pursuant to Clause 65.1(c) or Clause 65.4, as appropriate, in which case the Contractor shall have no rights of objection under Clause 65B.2 and shall forthwith enter into the sub-contract with the Nominated Sub-Contractor; or
- (b) issue a revised instruction pursuant to Clause 65.1(c) or Clause 65.3, as appropriate, or
- (c) issue any other instruction, including an instruction pursuant to Clause 54 to omit part of the Works.

65B.4 In accordance with Clause 67.2, the Contract Administrator shall assess and decide the amount to be added to the relevant Cost Centre Value in relation to any Nominated Sub-Contractor which shall be:-

- (a) the total amount paid or payable by the Contractor to the Nominated Sub-Contractor under the sub-contract between the Contractor and the Nominated Sub-Contractor, less:-
  - (i) all discounts;
  - (ii) amounts excluded pursuant to Clauses 65B.5 and 65B.6;
  - (iii) amounts paid or payable by the Contractor under the relevant sub-contract as a result of breach of the sub-contract or other default on the part of the Contractor or any of his other sub-contractors of any tier;
  - (iv) amounts paid or payable by the Contractor under the relevant sub-contract which are recoverable by the Contractor pursuant to any other provision of the Contract; and

- (b) in respect of attendance on the Nominated Sub-Contractor and all other charges and profit related thereto:-
  - (i) any sum included in that regard in the Pricing Document together with the product of the percentage quoted by the Contractor in the Pricing Document and the actual sum added to the relevant Cost Centre Value pursuant to Clause 65B.4(a); or
  - (ii) if no sum or percentage is included as aforesaid, a reasonable amount assessed and decided by the Contract Administrator.

65B.5 No revision shall be made to any relevant Cost Centre Value and the Contractor shall not otherwise be entitled to any payment in respect of any increase in excess of the total sum payable to a Key Sub-Contractor or Nominated Sub-Contractor at the time the relevant sub-contract was entered into unless before taking the action which led to the increase the Contractor gave notice of the action to the Contract Administrator and obtained consent to it.

65B.6 If any sub-contractor or the Nominated Sub-Contractor's employment thereunder shall be terminated for any reason, the Contract Administrator shall as soon as reasonably practicable either:

- (a) issue a further instruction pursuant to Clause 65.1(c) or Clause 65.3, as appropriate; or
- (b) issue any other instruction, including an instruction pursuant to clause 54 to omit part of the Works,

provided that where a further instruction is issued as referred to in Clause 65B.6(a), the relevant Cost Centre Value shall not be adjusted except only by the addition of any amount which would have been paid or payable upon the proper completion of the sub-contract between the Contractor and the Nominated Sub-Contractor first employed and the Contractor shall not be entitled to any further or other adjustment to the relevant Cost Centre Value or to make any other claim for payment or extension of time, subject however to Clause 65B.8.

65B.7 If in compliance with any instruction pursuant to Clause 65.1(c) or Clause 65.4 (other than a further instruction as referred to in Clause 65B.6(a) to engage a Nominated Sub-Contractor reissued pursuant to Clause 65B.6(a)), the Contractor is prevented from achieving any Stage or practically completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate and which is not recoverable pursuant to Clause 65B.4, or from the Nominated Sub-Contractor and the prevention or Cost results from the grounds of objection made pursuant to Clause 65B.2 in relation to the Nominated Sub-Contractor then, if the Contractor claims additional time and/or payment therefor, the Contract Administrator shall give a decision pursuant to Clause 45 and/or 57, provided that the Contractor has complied with his obligations pursuant to Clause 45 and/or Clause 58, as appropriate.

- 65B.8 If as a result of the insolvency, receivership or liquidation of any Nominated Sub-Contractor and of any guarantor of the Nominated Sub-Contractor, the Contractor incurs Cost (including any liquidated or other damages payable to the Authority) which the Contractor did not and had no reason to anticipate and because of the insolvency, receivership or liquidation, the Contractor cannot recover the Cost from the Nominated Sub-Contractor nor from any guarantor of the Nominated Sub-Contractor, if the Contractor claims additional payment (to the extent of the irrecoverable Cost) therefor, the Contract Administrator shall give a decision pursuant to Clause 57, provided that the Contractor has complied with his obligations pursuant to Clause 58.
- 65B.9 Sub-Clause 5.4 shall apply to Nominated Sub-Contractors, subject only to the express provisions of this Clause 65B to the contrary.

### **CERTIFICATES AND PAYMENT**

#### **66. Interim Payment Schedule, Cost Centre Values and Milestones**

- 66.1 The Interim Payment Schedule sets out the maximum accumulative percentage of each Cost Centre Value in relation to each month for which the Contractor may apply for payment, subject to the achievement of Milestones and to application for payment in accordance with Clause 67.
- 66.2 The Cost Centres and / or Cost Centre Values shall be revised by the Contract Administrator:
- (a) upon issue of the Letter of Acceptance to the Contractor, by the deduction of all Provisional Sums, Provisional Items and Options, and
  - (b) upon:
    - (i) an agreement or instruction pursuant to Clauses 47.5 or 47.6, respectively (Recovery of Delay and Acceleration of the Works), by adding to the Cost Centres or a Cost Centre Value the amount as agreed or decided by the Contract Administrator pursuant to Clause 47.8;
    - (ii) a decision pursuant to Clause 56 (valuation), by adding to or deducting from the Cost Centres or a relevant Cost Centre Value the value as decided;
    - (iii) a decision to instruct any Provisional Item or Option by adding to or deducting from the Cost Centres or a Cost Centre Value, the amount specified in the Pricing Schedule in respect thereof; or
    - (iv) any other decision of the Contract Administrator of an amount or allowance due to the Contractor under the Contract (including, without limitation, in respect of any remeasurement of any quantity of work executed by the Contractor if permitted by the Pricing Document) which has not been or will not otherwise be the subject of an interim payment pursuant to Clause 67.2(b), by adding to, or, in respect of any remeasurement of any quantity of work executed by the Contractor if

permitted by the Pricing Document, by deducting from, the Cost Centres or a Cost Centre Value, as appropriate, the amount or allowance as decided.

- 66.3 (a) The Contract Administrator may decide which Cost Centre is to be the relevant Cost Centre for the purpose of Clause 66.2 if and in so far as the same is not identified in the Pricing Schedule, and shall notify the Contractor upon making any such decision.
- (b) Notwithstanding Clause 66.2, the Contract Administrator may decide not to include a sum payable to the Contractor pursuant to the Contract in a Cost Centre Value or to create a new Cost Centre and amend the Pricing Schedule accordingly, in which case the Contract Administrator shall notify the Contractor of the decision and the Contractor may apply for payment of the sum in accordance with Clause 67.1(b).
- 66.4 If a Milestone is not achieved by the end of the month in which it is scheduled to be achieved, the Contract Administrator shall follow the procedure set out below when certifying payments:
- (a) all payments relating to the Cost Centre in which the Milestone in question has not been achieved shall be suspended at the amount determined by reference to the percentage appearing for that Cost Centre in the Interim Payment Schedule applicable to the month prior to the month in which the Milestone was due to have been achieved;
- (b) payments suspended pursuant to Clause 66.4(a) shall be resumed by being included in the next application for interim payment made after the Milestone is achieved or where the Contract Administrator determines, in his absolute discretion, that payment to the Contractor should be resumed notwithstanding the non-achievement of the Milestone, and the Contract Administrator has notified the Contractor of such determination, at the percentage of the Cost Centre Value for the relevant Cost Centre appearing in the Interim Payment Schedule applicable to the month in which the Milestone was due to have been achieved; and
- (c) in relation to the relevant Cost Centre, the Interim Payment Schedule shall be revised by the Contract Administrator within 21 (twenty-one) days of receipt of an application for resumption of payments pursuant to Clause 66.4(b) to take account of:
- (i) the date by which, in the Contract Administrator's opinion, the Milestone next following the non-achieved Milestone is likely to be achieved;
- (ii) any subsequent Milestone which, in the Contract Administrator's opinion, is not likely to be achieved by its stipulated date; and
- (iii) the earliest subsequent Milestone which, in the Contract Administrator's opinion, is likely to be achieved by its stipulated date,

and the Contract Administrator shall notify the Contractor accordingly.

66.5 In addition to the procedure for revision of the Interim Payment Schedule pursuant to Clause 66.4, if:

- (a) the Contract Administrator reviews without objection a revised Works Programme containing a change to the sequence and timing of the execution of the Works;
- (b) the Contract Administrator grants an extension of time pursuant to Clause 45;
- (c) the Contractor adopts recovery of delay or acceleration measures pursuant to Clause 47;
- (d) the Contract Administrator instructs a suspension of the Works or any part thereof pursuant to Clause 51;
- (e) the Contract Administrator instructs a variation pursuant to Clause 54;
- (f) the Contract Administrator instructs the expenditure of a Provisional Sum, Provisional Item, Option or Prime Cost Sum, pursuant to Clauses 65, 65A or 65B, respectively;
- (g) following the suspension of payment pursuant to Clause 66.4(a) the relevant Milestone shall not have been achieved within 3 (three) months of the date stipulated in the Schedule of Milestones;
- (h) there shall be a significant change in a Cost Centre Value by reason of a decision of the Contract Administrator in accordance with the Contract; or
- (i) the Contract Administrator is of the opinion that the Contractor's negative cashflow is adversely affecting the execution of the Works,

the Contract Administrator may carry out a detailed examination and review of the Interim Payment Schedule, the Milestones and the dates stipulated for their achievement in the Schedule of Milestones and an assessment of the extent to which the Works have been carried out up to the date of the review.

66.6 The Contractor shall co-operate with and, to the best of the Contractor's ability, assist the Contract Administrator in making any detailed examination pursuant to Clause 66.5 and shall provide all such information as the Contract Administrator may reasonably request in connection therewith. If as a result of this detailed examination, the Contract Administrator is of the opinion that, in relation to any Cost Centre, the relationship between:

- (a) interim payments; and
- (b) the progress of the Works,

established by the Interim Payment Schedule as at the date of the Letter of Acceptance has not been or will not be maintained, then the Contract Administrator may give 14 (fourteen)



days' notice to the Contractor of his intention to prepare a revised Interim Payment Schedule and/or a revised Schedule of Milestones which will in his opinion restore, so far as reasonably practicable, the said relationship. On the expiration of the said notice and after considering any representation the Contractor may have made in the meantime, the Contract Administrator shall if he is still of the opinion that a revision ought to be made, revise the Interim Payment Schedule and the Schedule of Milestones in any manner which he sees fit based on the rate of progress of the Works which he anticipates and with the objective of restoring, so far as reasonably practicable, the said relationship.

- 66.7 When making any revision to the Interim Payment Schedule in accordance with the Contract, the Contract Administrator may reduce or extend the period over which interim payments may be made.

67. **Payment Statements**

- 67.1 At the beginning of each month the Contractor may apply to the Contract Administrator for an interim payment in relation to the preceding month. Each application shall state:

- (a) the amount claimed to be payable pursuant to Clause 67.2(a) setting out the percentage of each Cost Centre Value claimed according to the Interim Payment Schedule; and
- (b) any other amount claimed to be payable pursuant to a decision of the Contract Administrator identifying the relevant decision.

As a condition precedent to consideration by the Contract Administrator of any such application for payment submitted by the Contractor, each application shall be accompanied by the Monthly Progress Report for the month to which the application relates.

- 67.2 Within 30 (thirty) days following receipt of an application in accordance with Clause 67.1, the Contract Administrator shall issue to the Authority, with a copy to the Contractor, an interim payment certificate showing the amount payable by the Authority to the Contractor by way of interim payment. The interim payment shall be the sum of:

- (a) the amounts shown to be due for the month in respect of which the application is made by reference to the Interim Payment Schedule in accordance with Clause 66; and
- (b) the amounts assessed and decided by the Contract Administrator to be due in respect of:
  - (i) Cost incurred, pursuant to Clause 57;
  - (ii) work executed on a daywork basis, pursuant to Clause 55; and
  - (iii) any other amount or allowance to which the Contractor is entitled under the Contract save insofar as account has been or will be taken of the amount or allowance by way of a revision of a Cost Centre Value pursuant to Clause 66.2;

less:

- (c) the Retention Moneys as provided for in Clause 68; and
- (d) any amount certified for payment on interim payment certificates previously issued.

67.3 Subject to any deduction, withholding or condition precedent pursuant to the Contract, amounts from time to time certified by the Contract Administrator (including, without limitation, pursuant to Clause 68) shall be paid in Hong Kong by the Authority to the Contractor within 30 (thirty) days after the date of issue of the relevant certificate in accordance with the Contract. Unless otherwise expressly provided, all payments (including, without limitation, in respect of decisions of the Contract Administrator pursuant to Clauses 56 and 57 or otherwise) shall be made in Hong Kong Dollars. No adjustment shall be made to any payment or to the Final Contract Sum on account of any variation in the exchange rate between the Hong Kong Dollar and any other currency.

67.4 If either the Authority or the Contractor fails to make payment of amounts due in accordance with the Contract within 30 (thirty) days after the date of issue of the relevant certificate, the Authority shall pay to the Contractor, or the Contractor shall pay to the Authority as the case may be, simple interest upon any payment overdue at the Contract Rate of Interest.

67.5 The Contract Administrator shall have power to omit from any certificate the value of any work with which he may for the time being be dissatisfied and for that purpose, or if he considers that the Contractor has been overpaid under any interim payment certificate, he may by any certificate delete, correct or modify any sum previously certified by him.

67.6 Without prejudice to Clause 3.8, no payment certificate issued by the Contract Administrator shall be conclusive evidence that the quality of materials or the standard of workmanship used by the Contractor in the execution of the Works are in accordance with the Contract.

68. **Retention Moneys**

68.1 (a) up to 10 per cent. of any amount due to the Contractor from time to time and identified as payable to any Nominated Sub-Contractor shall be retained by the Authority until there shall be a reserve equal to 5 per cent. of the total for the time being of the amounts added to the Cost Centre Values pursuant to Clause 65B.4 in respect of Nominated Sub-Contractors; and

(b) up to 10 per cent. of any other amount due to the Contractor from time to time shall be retained by the Authority until there shall be a reserve equal to 5 per cent. of the total for the time being of the Cost Centre Values to which Clause 68.1(a) applies in respect of Nominated Sub Contractors.

- 68.2 The Retention Moneys retained pursuant to Clause 68.1 shall be held by the Authority without obligation to invest it or account for interest thereon or to place it in a designated account.
- 68.3 (a) Within 7 (seven) days of the date of issue of any Practical Completion Certificate for any Section or part of the Works, the Contract Administrator shall issue to the Authority with a copy to the Contractor, a retention release certificate, entitling the Contractor to be paid by the Authority one half of that part of the Retention Moneys which bears the same proportion to the whole of the Retention Moneys as the value of the Section or part at the date of the Letter of Acceptance bears to the Tender Total and identifying any part thereof payable to any Nominated Sub-Contractor. Provided that the aggregate of all sums certified pursuant to this Clause 68.3(a) shall not exceed one half of the whole of the Retention Moneys.
- (b) On the date of issue of the Practical Completion Certificate for the Works, the Contract Administrator shall issue to the Authority, with a copy to the Contractor, a retention release certificate entitling the Contractor to be paid by the Authority one half of the whole of the Retention Moneys (less any sums already certified for release pursuant to Clause 68.3(a)) and identifying any part thereof payable to any Nominated Sub-Contractor.
- (c) Within 28 (twenty-eight) days of the expiry of 12 (twelve) months from the date of issue of the Practical Completion Certificate for the Works, the Contract Administrator shall:
- (i) make a bona fide estimate of the total value of:
- (a) the works required to be repaired or replaced by the Contractor; and/or
- (b) the works which are still subject to a Defects Liability Period; and/or
- (c) all outstanding works,
- (together, the "Value of Residual Works") and
- (ii) issue to the Authority, with a copy to the Contractor, a retention release certificate entitling the Contractor to be paid by the Authority the balance of the Retention Moneys, less a sum which is equivalent to 5 (five) percent of the Value of Residual Works ("Residual Retention Moneys"), identifying any part thereof payable to any Nominated Sub-Contractor.
- 68.4 On the date of issue of the Defects Liability Certificate, the Contract Administrator shall issue to the Authority, with a copy to the Contractor, a retention release certificate entitling the Contractor to be paid by the Authority one half of the Residual Retention Moneys and the remainder of the Residual Retention Moneys shall be included with the Final Certificate, in each case identifying any part thereof payable to any Nominated Sub-Contractor.

69. **Final Certificate**

- 69.1 Not later than 3 (three) months after the date of issue of the Defects Liability Certificate, the Contractor shall submit to the Contract Administrator a statement of final account and supporting documentation showing in detail the total amount payable in respect of the Works 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 Defects Liability Certificate and identifying any part of the final account payable to any Nominated Sub-Contractor. Within 3 (three) months after receipt of this statement of final account and of all information reasonably required for its verification, but in no circumstances earlier than the date of issue of the Defects Liability Certificate, the Contract Administrator shall issue the Final Certificate. The Final Certificate shall state the Final Contract Sum, which shall be the sum of the Cost Centre Values following their final adjustment and of the amounts finally decided by the Contract Administrator to be due in respect of the matters identified in Clause 67.2(b) and the Final Certificate shall identify any part of the Final Contract Sum due to any Nominated Sub-Contractor. From such sum there shall be deducted all amounts previously certified by the Contract Administrator and all amounts which, in the Contract Administrator's opinion, are due to the Authority pursuant to, or a result of breach of, the Contract and the Final Certificate shall state the balance, if any, due from the Authority to the Contractor or from the Contractor to the Authority as the case may be. The balance of any payment shall be paid to the Contractor and the balance of any over-payment shall be paid by the Contractor
- 69.2 Without prejudice to Clause 3.8, the Final Certificate shall not amount to, or be deemed to be, conclusive evidence that the quality of materials or the standard of workmanship used by the Contractor in the execution of the Works are in accordance with the Contract.

70. **Default of Authority to Pay**

- 70.1 If the Authority fails to pay the Contractor any amount due to be paid to the Contractor by the Authority within 30 (thirty) days of the last date upon which the same ought to have been paid in accordance with the Contract then provided that after the expiry of the said 30 (thirty) days period the Contractor shall have given the Authority notice requesting the payment to be made and the Authority shall have remained in default for a further 14 (fourteen) days, the Contractor shall be entitled, without prejudice to any other right or remedy, to suspend the execution of the Works or to terminate the Contract by giving further notice to the Authority. The bona fide exercise or purported exercise by the Authority of either a right of set-off or counter-claim or a right under or in connection with the Contract to deduct amounts from moneys otherwise due shall not be treated as a failure by the Authority to make a payment for the purposes of this Clause 70.1.
- 70.2 Upon the Contractor giving such further notice of suspension or termination in accordance with Clause 70.1, the property in all Contractor's Equipment and Temporary Works brought upon the Site by the Contractor shall thereupon re-vest in the Contractor and the Contractor shall with all reasonable despatch remove the same from the Site.
- 70.3 In the event of such termination, the Authority shall be under the same obligations to the Contractor in regard to payment as if the Contract had been terminated pursuant to the provisions of Clause 77.1 (and the same provision shall survive) but in addition to the

payments specified in Clause 77.3, the Authority shall pay to the Contractor the amount of any loss or damage to the Contractor arising out of or in connection with or by consequence of such termination.

## **DEFECTS LIABILITY CERTIFICATE**

### **71. Defects Liability**

- 71.1 Upon the expiry of the Defects Liability Period, or where there is more than one Defects Liability Period, upon the expiry of all of the Defects Liability Periods and when all outstanding work referred to in Clause 52 and all maintenance work referred to in Clause 53 shall have been completed and any warranty required to be assigned pursuant to Clause 5.12 shall have been so assigned and provided always that the Contractor shall have supplied to the Contract Administrator all documents in compliance with the requirements of the Contract, the Contract Administrator shall issue the Defects Liability Certificate stating the date on which the Contractor shall have completed his obligations in respect of the correction of defects the subject of instructions pursuant to Clause 53.
- 71.2 Without prejudice to Clause 3.8, the Defects Liability Certificate shall not amount to, or be deemed to be, conclusive evidence that the quality of materials or the standard of workmanship used by the Contractor in the execution of the Works are in accordance with the Contract.

## **REMEDIES AND POWERS**

### **72. Work by Others**

- 72.1 If the Contractor shall fail to execute any work required under or in connection with the Contract or refuse to comply with any instruction in accordance with the Contract within a reasonable time, without prejudice to any other right or remedy of the Authority, the Contract Administrator may give the Contractor 14 (fourteen) days' notice to execute the work or comply with the instruction. If the Contractor fails to comply with the notice, the Authority shall be entitled to execute the work or implement the instruction by the Authority's own workmen or by third parties. Without prejudice to any other right or remedy, all additional expenditure properly incurred by the Authority in having such work executed or such instruction implemented shall be recoverable by the Authority from the Contractor.
- 72.2 If by reason of any accident, failure, emergency or other event occurring to, in or in connection with the Project, the Works or any part thereof either during the execution of the Works or during any Defects Liability Period, any remedial or other work or repair shall in the Contract Administrator's opinion be urgently necessary, and the Contractor is unable or unwilling at once to do the work or repair, the Authority may by his own or other work people do the work or repair.
- 72.3 If the work or repair so done by the Authority is work which, in the Contract Administrator's opinion, the Contractor was liable to do at his own expense under or in connection with the Contract, all costs properly incurred by the Authority in so doing shall on demand be paid by the Contractor to the Authority or may be deducted by the Authority from any moneys due or which may become due to the Contractor.

73. **Insolvency or Change in Control**

73.1 If the Contractor (which, without prejudice to Clause 1.2.3, means for the purposes of this Clause 73.1, any of the entities comprising the Contractor) shall be in default in that the Contractor:

- (a) becomes insolvent or has a receiving order made against the Contractor or makes an arrangement or assignment or composition with or in favour of the Contractor's creditors or agrees to carry out the Contract under a committee of inspection of the Contractor's creditors, or goes into liquidation or commences to be wound up, not being a members' voluntary winding up for the purpose of amalgamation or reconstruction to which the Authority has given his prior consent, such consent not to be unreasonably withheld, or has a receiver, liquidator, trustee or similar officer appointed over all or any part of the Contractor's undertaking or assets or if distress, execution or attachment is levied on, or if an encumbrancer takes possession of any of the Contractor's assets, or any proceeding or step is taken which has an effect comparable to the foregoing in any relevant jurisdiction;
- (b) without the prior consent of the Authority, becomes a subsidiary, within the meaning of the Companies Ordinance (Cap 32) or the equivalent in any relevant jurisdiction of a company of which the Contractor was not a subsidiary on the date of the Letter of Acceptance or if by virtue of any agreement, offer or scheme the Contractor comes under the control of two or more firms or companies acting in concert so that if they were one company the Contractor would be the company's subsidiary; or
- (c) is in breach of Clause 4,

then the Authority may give notice to the Contractor pursuant to Clause 74.1.

74. **Forfeiture**

74.1 If the circumstances of default referred to in Clause 73 occur or if the Contract Administrator shall have certified to the Authority that, in the Contract Administrator's opinion, the Contractor:

- (a) has abandoned the Contract;
- (b) without reasonable excuse has failed to commence the Works pursuant to Clause 42 or has suspended the execution of the Works, any Section or any other part of the Works for 14 (fourteen) days after receiving from the Contract Administrator notice to proceed;
- (c) has failed to remove work from the Site or to pull down and replace work for 14 (fourteen) days after receiving from the Contract Administrator notice that the said work has been rejected by the Contract Administrator;

- (d) despite a written warning by the Contract Administrator, is failing, in the Contract Administrator's opinion, to proceed with the Works with due diligence or is persistently or significantly in breach of his obligations;
- (e) has sub-let the Works or has sub-let any Section or any other part of the Works without consent; or
- (f) is in breach of Clauses 14 or 30,

then the Authority may:

- (g) in the circumstance of default referred to in Clause 73, forthwith by the service of a notice to the Contractor; or
- (h) in the circumstance of default referred to in this Clause 74.1(a) to (f), after giving not less than 7 (seven) day's notice to the Contractor, by the service of a written further notice,

terminate the Contractor's employment under the Contract and, if the Contractor is on the Site, enter upon the Site and expel the Contractor from the Project Site and the Site, or any part thereof, without thereby avoiding the Contract or releasing the Contractor from any of his obligations or liabilities or affecting the rights and powers conferred on the Authority or the Contract Administrator by the Contract. Thereafter, the Authority may execute the Works or any part thereof or may employ any third party to execute the same and the Authority or such third party may use, to execute the Works, any of the Contractor's Equipment, Temporary Works and Permanent Works which have become the property of the Authority pursuant to Clauses 60 and 61 and the Authority may at any time sell any of the said Contractor's Equipment, Temporary Works and Permanent Works and apply the proceeds of sale in or towards the satisfaction of any sum due or which may become due to the Authority from the Contractor under or in connection with the Contract.

74.2 If the Authority terminates the Contractor's employment pursuant to this Clause 74, the Contractor shall forthwith assign to the Authority, as instructed by the Authority, the benefit of any agreement for the execution of any work for the purposes of the Contract which the Contractor may have entered into and, if so instructed by the Authority, shall enter into novation agreements, in such form as the Authority may reasonably require, in respect of the said agreements.

74.3 If the Authority terminates the Contractor's employment pursuant to this Clause 74 the Authority shall not be liable to pay to the Contractor any money on account of the Contract until the expiration of the Defects Liability Period or the last Defects Liability Period and thereafter until the cost of completion of the Works pursuant to Clause 74.1, maintenance, damages for delay in completion (if any) and all other expenses incurred by the Authority have been ascertained and the amount thereof certified by the Contract Administrator. The Contractor shall then be entitled to receive only such sum or sums (if any) as the Contract Administrator may certify which would have been due to the Contractor upon completion of the Works by him after deducting the said amount. If such amount exceeds the sum which would have been payable to the Contractor on completion of the Works by him then the Contractor shall upon demand pay to the Authority the

amount of the excess and it shall be deemed to be a debt due by the Contractor to the Authority and shall be recoverable accordingly.

74.4 As soon as may be practicable after any such termination by the Authority, the Contract Administrator shall assess and decide:

- (a) the amount (if any) which had been earned by or would accrue to the Contractor in respect of work actually done by him under or in connection with the Contract; and
- (b) the value of any unused or partially used parts of the Permanent Works and any Contractor's Equipment and Temporary Works which had become the property of the Authority pursuant to Clauses 60 and 61,

and shall give notice of his decision to the Authority and the Contractor.

75. **Recovery of Money due to the Authority**

75.1 All damages, costs, charges, expenses, debts or sums for which the Contractor is liable to the Authority in accordance with any provision of the Contract, as a result of a breach of any such provision may be deducted by the Authority from moneys (including, without limitation, Retention Moneys) due to the Contractor in accordance with the Contract. The Authority shall have the power to recover any balance by deducting it from moneys due to the Contractor in accordance with any other contract between the Authority and the Contractor.

75.2 All damages, costs, charges, expenses, debts or sums for which the Contractor is liable to the Authority pursuant to any term of any other contract between the Contractor and the Authority, as a result of a breach of any such provision may be deducted by the Authority from moneys due to the Contractor in accordance with the Contract.

75.3 If, in the Contract Administrator's opinion, the Authority may claim any deduction pursuant to this Clause 75, the Contract Administrator shall issue a certificate stating his bona fide estimate of amounts deductible and the estimate certified shall bind the Contractor until otherwise agreed between the Authority and the Contractor or resolved pursuant to Clause 78, provided that such estimate shall not prejudice such resolution. The Contract Administrator shall, upon request from the Contractor, give to the Contractor in writing the grounds upon which the Contract Administrator's opinion was based and reasonable details of the quantification of the estimate certified.

**FRUSTRATION, TERMINATION AND SPECIAL RISKS**

76. **Frustration**

76.1 In the event that either party considers that the Contract has been frustrated by any event recognised by law as amounting to frustration, such party shall give notice to that effect to the other party ("the notice of frustration"). The party receiving a notice of frustration shall, within 14 (fourteen) days of receipt, issue a notice to the other party either accepting the notice of frustration (in which case the Contract shall be deemed to have been frustrated on the date of the notice of frustration) or challenging the same. If the party



receiving the notice of frustration challenges the same, or fails to respond thereto within 14 (fourteen) days of receipt, a Dispute shall be deemed to have arisen.

- 76.2 In the event of the Contract being frustrated, the sum payable by the Authority to the Contractor in respect of that part of the Works executed up to the date of frustration shall be the same as that which would have been payable pursuant to Clause 77 if the Contract had been terminated thereunder.

77. **Special Risks**

- 77.1 If, before the Defects Liability Certificate shall have been issued pursuant to Clause 71, there shall be:

- (a) an outbreak of war (whether war be declared or not) in any part of the world which, whether financially or otherwise, materially affects the execution of the Works;
- (b) an invasion of Hong Kong;
- (c) acts of terrorists in Hong Kong;
- (d) civil war, rebellion, revolution, insurrection or military or usurped power in Hong Kong;
- (e) riot, commotion or disorder in Hong Kong otherwise than amongst the employees of the Contractor or any of his sub-contractors of any tier currently or formerly engaged on the Works;
- (f) ionising radiation, or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, unless the sources or cause of the radiation, radioactivity or other hazard is brought to or near the Site by the Contractor or any of his sub-contractors of any tier; or
- (g) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,

(referred to in this Clause 77 as the "special risks"), the Contractor shall, unless and until the Contract is terminated pursuant to this Clause 77, use his best endeavours to:

- (i) continue with the execution of the Works in accordance with the Contract;
- (ii) submit for review, proposals setting out the manner in which the Contractor proposes to complete the execution of the Works; and
- (iii) if the proposals are reviewed without objection, complete the execution of the Works in accordance therewith,

provided that the Authority shall be entitled, at any time after occurrence of any of the special risks, to terminate the Contract (with the exception of the provisions of Clauses 27, 29, this Clause 77 and Clause 78 and any other provision which is expressly stated to survive termination of the Contract or is necessary for interpretation of the aforesaid Clauses or in relation to work executed prior to termination) by giving notice to the Contractor. Upon the notice being given, the Contract shall terminate but without prejudice to the claims of either party in respect of any antecedent breach thereof.

77.2 If there is a termination pursuant to the proviso to Clause 77.1, the Contractor shall make safe the Site and with all reasonable despatch remove all Contractor's Equipment and Temporary Works.

77.3 If there is a termination in accordance with the proviso to Clause 77.1, the Contractor shall be paid by the Authority, in so far as such items have not already been covered by interim payments made to the Contractor:

- (a) the total of the value of all work executed prior to the date of termination;
- (b) the Cost of any part of the Permanent Works or services properly ordered for the Works for which the Contractor shall have paid or for which the Contractor is legally bound to pay and on such payment by the Authority the part of the Permanent Works or product of the services so paid for shall become the property of and shall be delivered to the Authority; and
- (c) a sum to be certified by the Contract Administrator in respect of the Cost incurred by the Contractor in the expectation of completing the Works in so far as the Cost shall not have been paid in accordance with any other provision of this Clause 77.

77.4 Whether the Contract shall be terminated pursuant to this Clause 77 or not, the following provisions shall apply, or be deemed to have applied, as from occurrence of any of the special risks, notwithstanding anything expressed in or implied by the other provisions of the Contract:

- (a) the Contractor shall have no liability whatsoever, by way of indemnity or otherwise, for or in respect of damage to parts of the Permanent Works on the Project Site or to property (other than parts of the Permanent Works off the Project Site, property of the Contractor including property temporarily vested in the Authority pursuant to Clause 60 or property hired by the Contractor for the purposes of executing the Works) whether of the Authority or of third parties or for or in respect of injury or loss of life to persons which damage, injury or loss is the consequence whether direct or indirect of the occurrence of any of the special risks and the Authority shall indemnify the Contractor against all liability whatsoever in relation thereof or in relation thereto;
- (b) if the Permanent Works or Temporary Works are destroyed or damaged by reason of any of the special risks, the Contractor shall nevertheless make good the destruction or damage so far as may be instructed by the Contract Administrator or as may be necessary for the execution of the Works or for safety. If, in compliance with his obligations pursuant to this Clause 77, the Contractor is prevented from achieving any Stage or practically completing the Works or any

Section by the relevant Key Date or incurs Cost in making good under this Clause 77.4(b) which the Contractor did not and had no reason to anticipate then, if the Contractor claims additional time and/or payment therefor, the Contract Administrator shall give a decision pursuant to Clause 45 and/or (in relation to the said making good only) Clause 56 and/or 57, provided that the Contractor has complied with his obligations pursuant to Clause 45 and/or Clause 58, as appropriate; and

- (c) destruction, damage, injury or loss of life caused by the explosion or impact, whenever and wherever occurring, of any mine, bomb, shell, grenade or other projectile, missile or munition of war shall be deemed to be a consequence of the special risks.

## **DISPUTE RESOLUTION**

### **78. Dispute Resolution**

#### **Notice of Dispute**

- 78.1 Any and all Disputes shall be dealt with in accordance with this Clause 78.
- 78.2 Upon any Dispute arising, the aggrieved party shall serve on the other party (with a copy to the Contract Administrator) a notice stating the nature of the Dispute and on the service of any such notice, a Dispute shall be deemed to have arisen. A Dispute shall be deemed not to have arisen in the absence of the service of such a notice.

#### **Decision of the Contract Administrator**

- 78.3 Within 28 (twenty eight) days of a Dispute being notified under Clause 78.2, either:
  - (a) the Contract Administrator shall decide the Dispute and give notice of his decision to the Authority and the Contractor; or
  - (b) in the case of a Dispute arising from a decision of the Contract Administrator in accordance with a direction of the Authority pursuant to the provisions referred to in Clause 2.2, the Contract Administrator shall notify the Contractor and the Authority that his decision was the subject of such a direction.
- 78.4 Unless the Contract has been terminated or abandoned or the Authority has exercised its rights pursuant to Clause 74, the Contractor shall, notwithstanding the reference of a Dispute to the Authority and the Contract Administrator in accordance with Clause 78.2, continue with the execution of the Works in accordance with the Contract regardless of the nature of the Dispute and the Authority and the Contractor shall give effect forthwith to every decision of the Contract Administrator in accordance with Clauses 78.3(a) and (b), which shall be final and binding on the Contractor and the Authority except and to the extent that it is revised by:
  - (a) a settlement agreement (whether or not arising out of mediation); or
  - (b) an arbitral award.

### **Reference to Mediation**

78.5 If:

- (a) the Contract Administrator fails to give a decision or notice in accordance with Clause 78.3; or
- (b) either the Contractor or the Authority is dissatisfied with a decision of the Contract Administrator pursuant to Clause 78.3,

then within 28 (twenty-eight) days of:

- (i) the expiry of the period referred to in Clause 78.3; or
- (ii) receipt of the decision or notice of the Contract Administrator,

but not otherwise, either the Contractor or the Authority, as appropriate, may give notice to the other requiring the Dispute to be referred to mediation ("**Request for Mediation**") in accordance with the Mediation Rules.

78.6 Upon service of a Request for Mediation, the Dispute shall be considered in accordance with and subject to the Mediation Rules and the Contractor and the Authority shall attempt bona fide to resolve the Dispute by mediation in accordance with the Mediation Rules with which the Authority and the Contractor shall both comply. The Contractor shall continue with the execution of the Works in accordance with the Contract notwithstanding the reference of a Dispute to mediation in accordance with this provision, regardless of the nature of the Dispute.

78.7 **Not Used**

78.8 **Arbitration**

If a Dispute is not settled by an agreement resulting from a mediation conducted in accordance with Clause 78.6, the Authority or the Contractor, as the case may be, may within 90 (ninety) days of the date of termination of the mediation pursuant to the Mediation Rules, but not otherwise, give notice to the other requiring the Dispute to be referred to arbitration subject to the following provisions of this Clause 78.

78.9 No step shall be taken in any reference of a Dispute to arbitration until after the practical completion or alleged practical completion of the Works unless with the written consent of the Authority and the Contractor provided that:

- (a) the giving of a Practical Completion Certificate shall not be a condition precedent for the taking of any step in such reference; and
- (b) no decision given by the Contract Administrator in accordance with the foregoing provisions of this Clause 78 shall disqualify him from being called as a witness and giving evidence before an arbitrator on any matter whatsoever relevant to a Dispute referred to arbitration in accordance with this Clause 78.

- 78.10 In the case of any Dispute as to the exercise of the Contract Administrator's powers under Clause 74.1, the reference to arbitration may proceed notwithstanding that the Works shall not then be or be alleged to be practically complete.
- 78.11 Save as otherwise provided by this Clause 78, it shall be a condition precedent that the commencement of any reference of a Dispute to arbitration that the issues arising under the Dispute shall have been the subject of a reference to mediation pursuant to the provisions of this Clause 78.
- 78.12 The reference of a Dispute to arbitration shall be conducted in accordance with the Arbitration Rules and in accordance with the Arbitration Ordinance (Cap 609) or any statutory modification or re-enactment thereof and the matters listed in Schedule 2 (except Paragraphs 1 and 2 of Schedule 2) of the Arbitration Ordinance (Cap 609) shall apply to the arbitration.
- 78.13 Save as otherwise provided, an arbitrator appointed pursuant to this Clause 78 shall have full power to direct such valuation as may, in his opinion, be desirable in order to determine the rights of the parties and to ascertain and award any sum which ought to have been the subject of or included in any certificate and to open up, review and revise any notice, opinion, determination, decision, request, withholding of permission or consent, certificate or instruction of the Contract Administrator relating to the Dispute. An arbitrator appointed pursuant to this Clause 78 shall also have full power to order the rectification of the Contract, subject to any rule of law which would restrict this power.

#### **Consolidation**

- 78.14 The Authority may by notice to the Contractor require that:
- (a) any Dispute referred to arbitration pursuant to this Clause 78 shall be referred to the arbitrator appointed or to be appointed in the arbitration of any dispute or difference in connection with the Project (whether or not relating to issues similar to those in the Dispute) between the Authority and any party other than the Contractor; or
  - (b) any dispute or difference in connection with the Project (whether or not relating to issues similar to those in the Dispute) between the Authority and any party other than the Contractor shall be referred to the arbitrator appointed or to be appointed in the arbitration of any Dispute referred pursuant to this Clause 78,

and any Dispute, dispute or difference as aforesaid shall be so referred and the Contractor shall accept the reference. Any such arbitrator shall have full power to give such orders and directions as he shall think fit in relation to the conduct of any Dispute, dispute or difference including, but not limited to, the power to order consolidation and hearing together, sequentially or separately.

#### **Jurisdiction of the Courts of Hong Kong**

- 78.15 Subject to the foregoing provisions of this Clause 78, the Contractor and the Authority agree to submit to the non-exclusive jurisdiction of the Courts of Hong Kong. Without

prejudice to the generality of their powers, the Courts of Hong Kong shall have power to direct such valuations as may, in their opinion, be desirable in order to determine the rights of the parties and to ascertain and award any sum which ought to have been the subject of or included in any certificate and to open up, review and revise any notice, opinion, determination, decision, request, withholding of permission or consent, certificate or instruction of the Contract Administrator relating to the Dispute and to determine all matters in dispute in the same manner as if no such notice, opinion, determination, decision, request, withholding of permission or consent, certificate or instruction had been given, issued or made.

## **NOTICES**

### **79. Service of Notices**

- 79.1 Any document arising under, out of or in connection with the Contract shall be served on the Authority or the Contractor at the address stated in the Articles of Agreement, or such other address in Hong Kong as may be notified to the other party expressly for the purpose of service of documents. Service of documents may be by hand or by post or, subject to Clause 79.2, by facsimile.
- 79.2 Documents may be served by facsimile only if the recipient has previously notified the other party that he is prepared to accept service of documents or a document in that fashion. It shall be a condition of valid service by facsimile that a hard copy be served on the recipient pursuant to Clause 79.1 within 7 (seven) days.