



THE GOVERNMENT OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION  
ENVIRONMENTAL PROTECTION DEPARTMENT

**Contract No. EP/SP/174/20**

**Food Waste Pre-treatment Facilities at Sha Tin Sewage Treatment Works**

## **CONDITIONS OF CONTRACT**

**AECOM**

**October 2021**

This page is intentionally left blank

## **CONTENTS**

<b>A. GENERAL PROVISIONS .....</b>	<b>1</b>
1. DEFINITIONS AND INTERPRETATION.....	1
2. ENTIRE AGREEMENT .....	13
3. EMPLOYER AND SUPERVISING OFFICER .....	14
4. CONTRACT COMMUNICATIONS AND USE OF LANGUAGE .....	15
5. DESIGN CHECKER .....	15
6. ASSIGNMENT AND SUB-CONTRACTING .....	17
6A. LIMITING THE TIERS OF SUB-CONTRACTING .....	22
6B. SUB-CONTRACT CONDITIONS.....	23
7. CONTRACT DOCUMENTS .....	24
8. INFORMATION NOT TO BE DIVULGED .....	25
9. CONTRACTOR'S GENERAL OBLIGATIONS .....	26
9A. CONTRACTOR'S JOINT VENTURE.....	29
9B. JOINT AND SEVERAL LIABILITY OF PARTNERS AND UNINCORPORATED JOINT VENTURE PARTICIPANTS .....	30
9C. NOT USED .....	30
10. GUARANTEES, UNDERTAKINGS AND SECURITIES .....	30
10A. NOT USED .....	32
11. INSPECTION OF THE SITE AND DATA.....	32
12. SUFFICIENCY OF TENDER.....	32
12A. EXISTING FACILITIES .....	33
13. MARKING SCHEME IN TENDER EVALUATION.....	33
14. PROGRAMME TO BE FURNISHED .....	34
15. CONTRACTOR'S SUPERINTENDENCE .....	35
15A. CONTRACTOR'S TEAM .....	37
16. CONTRACTOR'S EMPLOYEES .....	39
17. SAFETY AND SECURITY OF THE WORKS AND THE OPERATION .....	39
17A. NOT USED .....	41
17B. NOT USED .....	41
18. ENVIRONMENTAL MANAGEMENT PLAN.....	41
19. USE OF ULTRA LOW SULPHUR DIESEL .....	42
20. SUSPENSION OF WORKS FOR NON-COMPLIANCE OF CONSTRUCTIONAL PLANT .....	42
21. CARE OF THE WORKS AND THE FACILITY .....	43
22. DAMAGE TO PERSONS, PROPERTY AND THE ENVIRONMENT.....	44
23. INTERFERENCE WITH TRAFFIC AND ADJOINING PROPERTIES .....	46
24. INSURANCE .....	46
24A. NOT USED .....	52
25. ACCIDENT OR INJURY TO WORKERS .....	52
26. INTELLECTUAL PROPERTY RIGHTS AND ROYALTIES .....	52
27. COMPLIANCE WITH ENACTMENTS AND REGULATIONS .....	55
27A. NOT USED .....	57
27B. NO WARRANTY OR ASSURANCE BY THE EMPLOYER.....	57
27C. NON-FETTER OF STATUTORY DISCRETION.....	58
28. SITE DIARY AND LABOUR RETURNS .....	58

29.	FACILITIES FOR AND CO-ORDINATION WITH OTHERS .....	59
30.	PUBLICATION OF PROJECT INFORMATION .....	60
31.	PREVENTION OF BRIBERY .....	60
32.	ACCESS FOR EMPLOYER AND OTHERS.....	61
33.	CUSTOMS DUTIES AND TAXES .....	62
34.	ENGAGEMENT OF LABOUR .....	62
35.	FAIR WAGES .....	62
35A.	NOT USED .....	63
35B.	PAYMENT OF WAGES OF SITE PERSONNEL.....	63
36.	SITE CLEANLINESS.....	64
37.	PASSES.....	65
38.	SUSPENSION OF THE WORKS OR THE OPERATION .....	65
38A.	NOT USED .....	66
39.	POSSESSION OF THE SITE .....	66
40.	CLEARANCE OF THE SITE ON COMPLETION AND ON HANDOVER .....	67
41.	CHANGES .....	67
42.	EMPLOYER'S CHANGES.....	68
43.	VALUING EMPLOYER'S CHANGES .....	70
44.	CONTRACTOR'S CHANGES.....	71
45.	INVESTIGATING DEFECTS .....	73
46.	RECTIFICATION OF DEFECTS .....	74
47.	HANDOVER OF FACILITY.....	74
48.	NOT USED .....	77
49.	NOTICE OF CLAIMS .....	77
50.	ENVIRONMENTAL MONITORING AND COMPLIANCE WITH ENVIRONMENTAL AND SAFETY PERFORMANCE REQUIREMENTS .....	78
51.	CONSTRUCTIONAL PLANT, TEMPORARY BUILDINGS, PLANT AND MOBILE PLANT .....	79
51A.	SPECIFIED PROCESS SYSTEMS.....	81
52.	PROVISION OF RECORD DRAWINGS AND MANUALS .....	82
53.	WORK BY PERSON OTHER THAN THE CONTRACTOR .....	83
54.	TEMPORARY REINSTATEMENT .....	83
55.	RECOVERY OF MONEY DUE TO THE EMPLOYER .....	84
56.	NOTICES .....	84
57.	INSPECTION OF ACCOUNTS AND PERIODIC FINANCIAL CAPABILITY ASSESSMENT .....	85
57A.	NOT USED .....	85
57B.	PERMIT FOR EXCAVATION WORKS UNDER LAND (MISCELLANEOUS PROVISIONS) ORDINANCE CAP. 28.....	85
57C.	DISPOSAL GROUNDS.....	89
57D.	NOT USED .....	89
57E.	INTELLECTUAL PROPERTY RIGHTS RELATING TO SITE UNIFORM .....	89
57F.	CONTRACTS (RIGHT OF THIRD PARTIES) ORDINANCE .....	90
57G.	COMPUTER AIDED DRAFTING STANDARD FOR WORKS PROJECTS .....	90
57H.	NOT USED .....	90
57I.	NOT USED .....	90
57J.	USE OF STEEL REINFORCING BAR PRODUCTS SUPPLIED BY APPROVED	

STEEL REINFORCING BAR PREFABRICATION YARD .....	90
57K. USE OF NON-ROAD MOBILE MACHINERY APPROVED UNDER THE AIR POLLUTION CONTROL (NON-ROAD MOBILE MACHINERY)(EMISSION) REGULATION.....	92
57L. NOT USED .....	93
<b>B. OPERATION OF THE FACILITY .....</b>	<b>94</b>
58. LICENCE FOR OPERATION.....	94
59. OPERATION PLAN.....	94
60. TEMPORARY WORKS DURING OPERATION.....	95
61. COMMENCEMENT OF OPERATION .....	95
61A. PROVING STAGE AND POST-COMMISSIONING STAGE.....	95
62. COMPLIANCE WITH OPERATIONAL PERFORMANCE REQUIREMENTS .....	96
63. OWNERSHIP OF MOBILE PLANT AND SPARES .....	96
64. NON-PERMITTED WASTE .....	97
65. SHUTDOWNS AND EMERGENCIES .....	97
66. REPLACEMENT OF PLANT AND MOBILE PLANT .....	98
67. PERFORMANCE TESTS.....	99
68. CONDITION SURVEYS AND RESIDUAL LIFE ASSESSMENTS .....	100
69. GUARANTEE OF PERFORMANCE.....	100
70. TRAINING OF OPERATORS.....	100
71. OPERATION FEES.....	100
72. DEDUCTIONS FROM OPERATION FEES.....	103
72A. COMMISSIONING TESTS .....	103
72B. CERTIFICATION OF COMPLETION .....	104
<b>C. DESIGN AND EXECUTION OF THE WORKS .....</b>	<b>105</b>
73. DESIGN OF THE WORKS .....	105
74. CONSTRUCTION IN ACCORDANCE WITH REGISTERED DESIGN .....	107
75. METHODS OF CONSTRUCTION .....	108
76. SETTING OUT .....	109
77. FOSSILS .....	109
78. QUALITY OF PLANT, MOBILE PLANT, MATERIALS AND WORKMANSHIP .....	109
79. ACCESS TO SITE AND PLACES OF CONSTRUCTION OR MANUFACTURE.	111
80. EXAMINATION OF WORKS BEFORE COVERING UP .....	111
81. UNCOVERING OF WORKS AND MAKING OPENINGS.....	112
82. REMOVAL OF UNSATISFACTORY PLANT, MOBILE PLANT, MATERIAL AND WORK.....	112
83. COMMENCEMENT OF THE DESIGN AND THE WORKS .....	113
84. NOT USED .....	114
85. TIME FOR COMPLETION .....	114
86. EXTENSION OF TIME FOR COMPLETION OF THE WORKS.....	114
87. RATE OF PROGRESS .....	117
88. LIQUIDATED DAMAGES FOR DELAY.....	118
89. SUBSTANTIAL COMPLETION OF THE WORKS.....	119
89A. NOT USED .....	119
90. NOT USED .....	119
91. DISTURBANCE TO THE PROGRESS OF THE WORKS.....	119

---

92.	COMPLIANCE WITH ENVIRONMENTAL AND SAFETY PERFORMANCE REQUIREMENTS DURING CONSTRUCTION OF THE WORKS.....	120
<b>D.</b>	<b>PAYMENT, TERMINATION AND DISPUTE RESOLUTION .....</b>	<b>122</b>
93.	PAYMENT OF CAPITAL VALUE.....	122
94.	CONTRACTOR'S STATEMENT FOR THE FINAL CAPITAL VALUE.....	123
95.	NOT USED .....	124
96.	INSTRUCTIONS ON PROVISIONAL AND CONTINGENCY SUMS AND ACCOUNTING OF PROVISIONAL AND CONTINGENCY SUMS.....	124
97.	PAYMENT OF OPERATION FEES .....	124
98.	INTEREST .....	126
99.	ADJUSTMENT OF THE CAPITAL VALUE AND OPERATION FEES .....	126
100.	FLUCTUATIONS TO CAPITAL VALUE AND OPERATION FEES.....	126
100A.	NOT USED .....	128
101.	REMEDIES AND POWERS .....	128
102.	SPECIAL RISKS.....	137
103.	FRUSTRATION .....	139
104.	DEFAULT OF THE EMPLOYER .....	140
105.	RIGHT OF GOVERNMENT TO TERMINATE FOR CONVENIENCE .....	140
106.	CONTINUING LIABILITY .....	144
107.	SETTLEMENT OF DISPUTES .....	144
108.	NOT USED .....	146

## APPENDICES

Appendix A	Form of Articles of Agreement
Appendix B	Form of Joint and Several Guarantee
Appendix C	Form of Guarantee
Appendix D	Form of Undertaking
Appendix D1	Form of Undertaking for Related Companies
Appendix E	Form of Articles of Agreement for Unincorporated Joint Ventures
Appendix F	Sub-contractor Management Plan
Appendix G	Employees' Compensation Endorsement
Appendix H	Ethical Commitment Requirements
Appendix I	<i>Not Used</i>
Appendix J	Form of Contractor's Warranty
Appendix K	Form of Design Checker's Warranty
Appendix L	List of Enactments
Appendix M	Form of Bond
Appendix M1	Form of Bond (Alternative)
Appendix N	Notice of Consent to be Nominated Permittee and Agreement to comply with Conditions in the Permit
Appendix O	Form of Undertaking for Professional Indemnity Insurance
Appendix P	Certificate of Insurance

- 
- |             |   |
|-------------|---|
| Appendix Q  | Specimen Employment Contract  |
| Appendix R  | Standard Insurance Policy for the Self-employed   |
| Appendix S  | Reimbursement of Sub-contractor's Contribution to Mandatory Contribution for the Site Personnel and on Payment of Wages of Site Personnel |
| Appendix T  | Specimen Contractor's All Risk Insurance Policy   |
| Appendix U  | Form of Designer's Warranty   |
| Appendix V  | <i>Not Used</i>   |
| Appendix W  | <i>Not Used</i>   |
| Appendix X  | <i>Not Used</i>   |
| Appendix Y1 | <i>Not Used</i>   |
| Appendix Z  | Clause 4(3)(e)(ii) and Appendix B of the Conditions of Tender   |
| Appendix Z1 | <i>Not Used</i>   |
| Appendix Z2 | Financial Information for Periodic Financial Vetting  |
| Appendix Z3 | Clause 54 of the Conditions of Tender   |
| Appendix Z4 | <i>Not Used</i>   |
| Appendix Z5 | <i>Not Used</i>   |
| Appendix Z6 | <i>Not Used</i>   |

---

This page is intentionally left blank

## A. GENERAL PROVISIONS

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 The Conditions of Contract are divided into the following four non-exclusive parts:
- A) **General Provisions** - provisions that apply to the Design, the construction of the Works and the Operation.
  - B) **Operation of the Facility** - provisions that primarily apply to the Operation.
  - C) **Design and Execution of the Works** - provisions that primarily apply to the Design and execution of the Works.
  - D) **Payment, Termination and Dispute Resolution** - provisions as to payment, termination and dispute resolution.
- 1.2 In the Contract the following words and expressions shall have the meanings hereby assigned to them except when the context otherwise requires:
- “Adjustment Period” means the period of possible extension of the Operation as stated in the Form of Tender.
- “Capital Value” means the Contractor's total lump sum price (or any part or component thereof) for execution and completion of the Design and the Works, including the supply of Plant and Mobile Plant and defects correction of the Works, at the date of the Letter of Acceptance as set out in the Summary of Prices and which, unless otherwise expressly provided in the Contract, shall include or be deemed to include all Costs, expenditure incurred and profit made by the Contractor in carrying out his obligations under the Contract (other than those Costs, expenditure and profit included in the Operation Fees) and which shall be subject to increase or decrease in strict accordance with the provisions of the Contract.
- “Certificate of Completion for the Works” means a certificate issued by the Employer pursuant to Clause 72B.
- “Certificate of Substantial Completion for the Works” means a certificate issued by the Employer to the Contractor certifying substantial completion of the Works pursuant to Clause 89.

“Change in Law”	means any addition or amendment to the enactments (including subsidiary legislations) listed in <b>Appendix L</b> :
	(a) made on or after the date 10 days prior to the tender closing date, or
	(b) made before the date 10 days prior to the tender closing date and the commencement date of which is only ascertainable on or after the date 10 days prior to the tender closing date and the Contract does not expressly provide for the parties’ respective rights and obligations in relation to compliance with such addition or amendment on its commencement.
“Cleaning Day”	means a day on which Daily Cleaning is to be carried out.
“Cleaning Week Day”	means a day on which Weekly Tidying is to be carried out.
“Commissioning Tests”	means the plant commissioning test as defined in the Employer’s Requirements to be carried out on any item of Plant and includes other works and tests necessary to complete Proving Stage.
“completion” and “substantial completion”	when used in relation to completion or substantial completion of the Works or any part thereof, include satisfactory passing of any final test prescribed by the Contract in respect of the Works or, as the case may be, the relevant part and any grammatical variations and cognate expressions of such term shall be construed accordingly.
“Condition Surveys”	means the condition surveys as defined in the Employer’s Requirements.
“Conditions of Contract”	means these Conditions of Contract and appendices hereto.
“confined space”	has the same meaning as that adopted in the Factories and Industrial Undertakings (Confined Space) Regulation (Cap. 59AE).
“Constructional Plant”	means all vehicles, appliances or things of whatsoever nature required for the execution and maintenance of the Works including marine vessels, dredgers, floating plant, marine platforms, ships, barges and boats but does not include the Plant, Mobile Plant, materials or other things intended to form part of the Works or vehicles or marine vessels engaged in transporting any personnel, Constructional Plant, Plant, Mobile Plant or other things to or from the Site during the construction of the Works.
“Construction Checking Procedures”	means the procedures set out in the Employer’s Requirements for the certification of the execution of the Works and any revisions thereto agreed in writing between the Employer and the Contractor.

“Contingency Sum”	means the sum provided for work or expenditure which cannot be foreseen at the time the tender documents are issued.
“Contract”	means the Articles of Agreement, the Tender, the Form of Tender (including the appendices thereto), the Letter of Acceptance (and such further agreed documents as may be expressly referred to in or by the same), the Employer’s Drawings, the Conditions of Contract, the Employer’s Requirements, the General Specification for Electrical and Mechanical Sewerage Facility Installations and the Contractor’s Plans.
“Contractor”	means the company or joint venture whose Tender has been accepted by the Employer and includes the Contractor's successors and permitted assigns.
“Contractor’s Employee” or “Contractor Employee”	means all and any employees and agents of the Contractor engaged to perform the Design, the Works and/or the Operation under the Contract.
“Contractor Personnel”	means all Contractor’s Employee, sub-contractors, and all employees and agents of the sub-contractors.
“Contractor’s Plans”	means the <ul style="list-style-type: none"><li>i. Project Management and Technical Resources Plan</li><li>ii. Design and Works Plan</li><li>iii. Operation Plan</li></ul> submitted in outline format with the Tender, and updated by the Contractor in accordance with the requirements in the Contract, together with all drawings, appendices, schedules and other documents in support of the same.
“Cost”	means expenditure reasonably incurred including overheads whether on or off the Site and depreciation in value of Constructional Plant owned by the Contractor but excluding profit.
“Daily Cleaning”	means daily cleaning and tidying up of the Site as set out in the Employer’s Requirements.
“day”	means a calendar day according to the Gregorian calendar and includes General Holidays.
“Deodorisation System”	means the system in the Facility for deodorisation.

“Design”	means the design of the Works and the Operation or any parts or components of such design and includes drawings and documents in support of that design, the drafts and uncompleted versions thereof, and the selection of any kinds of materials and goods and workmanship to be used in the execution of the Works and the Operation, and includes the Registered Design.
“Design Checker”	means any persons, firms or companies of consultants appointed by the Contractor in accordance with the Employer’s Requirements to perform the duties set forth in Clause 5.
“Design Checking Procedures”	means the procedures set out in the Employer’s Requirements for the checking of the Contractor’s design for the Works and the Operation.
“Design Manager”	means the design manager appointed by the Contractor and named in the Contractor’s Plans and approved by the Employer, or any replacement design manager in accordance with Clause 15A.6.
“Design and Works Plan”	means the detailed plan prepared by the Contractor for the execution and management of the Design and the Works under the Employer’s Requirements and consented to by the Employer.
“Designated Landfill”	means West New Territories Landfill or its extension or such other facilities in Hong Kong as may from time to time be designated by the Employer.
“Designated Food Waste Treatment Facility”	means O · PARK1 or such other facilities in Hong Kong as may from time to time be designated by the Employer.
“Employer”	means the Government of the Hong Kong Special Administrative Region.
“Employer’s Drawings”	means the drawings furnished by the Employer and annexed to the Employer’s Requirements and any modification of such drawings and such other drawings as may from time to time be furnished by the Employer.
“Employer’s Requirements”	means the performance requirements, specifications and required standards referred to in the Contract and schedules and appendices respectively thereto and any modification thereof or addition thereto or deletion therefrom that may from time to time be ordered by the Employer in accordance with Clause 42 or, as the case may be, proposed by the Contractor in accordance with Clause 44.

“enactment”	means regardless of the jurisdiction, any constitutional provisions, treaties, conventions, ordinances, subsidiary legislations, orders, rules, regulations, resolution, notice, bye-law or other instrument made under or by virtue of any ordinance or regulation and having the force of law, and rules of common law and equity.
“Environmental and Safety Performance Requirements”	means the environmental and safety requirements set out in the Employer’s Requirements that the Contractor shall comply with when carrying out the Operation.
“Environmental Management Plan” or “EMP”	means the environmental management plan referred to in Clause 18, including any revised or updated version thereof, prepared by the Contractor in accordance with the Employer’s Requirements.
“Existing Facilities”	means Sha Tin Sewage Treatment Works or the facilities constructed or installed by others on or within the boundary of Sha Tin Sewage Treatment Works, regardless of whether or not such facilities are described in the Contract, and shall include any replacement and modification thereof and addition thereto by others on or after the date the Contractor is given possession of the Site.
“Expense”	means Cost and reasonable profit.
“Facility”	means the Works carried out and completed by the Contractor and any changes thereto following the completion of the Works, to be operated in accordance with the Contract, including the supplied or completed Plant and Mobile Plant and the parts of the Existing Facilities modified and altered by the Contractor for the Operation.
“Food Waste”	means the food waste, contained in plastic bags or not, and slurry form of food waste which is delivered to the Facility by side-loading tankers or tail-lift trucks or tank trucks or tankers or other vehicles.
“Food Waste Conveyance System”	means the system in the Facility to convey Food Waste from one place to another within the Facility.
“Form of Tender”	means the document described as such, signed by the Contractor and forming part of his Tender together with the appendices thereto (including the Summary of Prices and Schedule of Prices).
“General Holiday”	means every Sunday and other day that is a general holiday by virtue of the General Holidays Ordinance (Cap. 149).
“Government”	means the Government of the Hong Kong Special Administrative Region.
“Guaranteed Performance”	means the Contractor’s unconditional guarantee given in the Tender to the Employer in respect of the minimum level of performance the Facility shall attain inclusive of the Post-commissioning Stage.

“Handback Plan”	means the detailed plan prepared by the Contractor for the handover of the Facility back to the Employer at the expiry of the Operation Period under the Employer’s Requirements and consented to by the Employer.
“Handover Certificate”	means the certificate issued by the Employer under Clause 47 certifying the handover of the Facility to the Employer at the expiry of the Operation Period.
“Hong Kong”	means the Hong Kong Special Administrative Region.
“Independent Surveyor”	means the firm or company of surveying consultants appointed by the Contractor pursuant to Clause 68.
“Intellectual Property Rights”	means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes, and other intellectual property rights whether now known or to be created in future (of whatever nature and wherever arising), and whether registered or unregistered, and including applications for grant of such rights.
“Intermediate Tradesman/Qualified Semi-skilled Worker”	means: (a) a worker who has obtained the relevant intermediate trade test certificate issued either by the Construction Industry Council or the Vocational Training Council; or (b) a registered semi-skilled worker or registered semi-skilled worker (provisional) as respectively defined in section 2(1) of the Construction Workers Registration Ordinance (Cap. 583).
“Labour Relations Officer”	means any person, or persons appointed from time to time by the Contractor and notified in writing to the Employer, or as the case may be, any person, or persons appointed from time to time by the Employer and notified in writing to the Contractor to perform the relevant duties specified in the Contract.
“Letter of Acceptance”	means the formal acceptance by the Employer of the Tender incorporating any adjustments or variations to the Tender agreed between the Employer and the Contractor.
“Milestone”	means an occurrence of an event or the completion of a part of the Design or the Works as described in the Schedule of Milestones.
“Milestone Certificate”	means the certificate issued by the Employer pursuant to Clause 93 of the Conditions of Contract in relation to the achievement of Milestones.
“Mobile Plant”	means all vehicles, vessels or apparatus described in the Employer’s Requirements for use in connection with the Operation.

“month”	means calendar month according to the Gregorian calendar.
“Nominated Sub-contractor”	means and includes all specialists, merchants, tradesmen and the like executing any part of the Works or supplying any materials or services for the Works who shall have been or shall be nominated by the Employer and employed by the Contractor.
“Non-Permitted Waste”	means the type of waste which:- (a) has the same meaning of the following under the Waste Disposal Ordinance (Cap. 354): (i) chemical waste; (ii) clinical waste; (iii) construction waste; and (iv) e-waste; (b) has the same meaning of radioactive waste under the Radiation (Control of Radioactive Substances) Regulations (Cap. 303A); (c) has the same meaning of asbestos under the Air Pollution Control Ordinance (Cap. 311); (d) has the same meaning of dangerous goods under the Dangerous Goods Ordinance (Cap. 295); (e) is sewage sludge from sewage treatment works; or (f) is proposed and identified by the Contractor in the Operation Plan and agreed by the Employer or his representative or agent that it is not suitable to be treated by the Facility.
“Operation”	means all and any part of the following in accordance with all requirements of the Contract: (a) plant commissioning of the Facility; (b) operation of the Facility for all purposes for which they are intended including those as stated in the Contract; (c) receipt of Food Waste at the Facility; (d) carrying out of Pre-treatment; (e) identification and separation of Non-Permitted Waste and Residues from the Food Waste; (f) export of Pre-treated Food Waste to the designated part of the Existing Facilities; (g) disposal of Non-Permitted Waste and Residues; (h) coordination and liaison with the Drainage Services Department of the Government and the contractors who deliver Food Waste to the Facility and other interfacing parties; (i) maintenance and support of the Facility; (j) conduct Performance Tests, Condition Surveys, and Residual Life Assessments of the Facility; (k) overhaul, repair, renewal, replacement and removal of Plant and Mobile Plant; and (l) all other duties and operations as detailed in the Contract including the Employer’s Requirements.

“Operation Fees”	means the sums as ascertained in accordance with Clause 71 for carrying out the Operation.
“Operation Superintendent”	means the operation superintendent(s) appointed by the Contractor and named in the Contractor’s Plans and approved by the Employer, or any replacement operation superintendent(s) in accordance with Clause 15.10.
“Operation Period”	means the period of the Operation, commencing on the date ascertained in accordance with Clause 61 and expiring on the expiry of the period stated in the Form of Tender or such other period as may be ascertained in accordance with Clause 47, whichever date is earlier.
“Operation Plan”	means the detailed plan prepared by the Contractor for the management and execution of the Operation and consented to by the Employer under Clause 59.
“Operational Performance Requirements”	means the requirements set out in the Contract including the Employer’s Requirements that the Contractor shall comply with when executing the Operation or any part thereof.
“Performance Tests”	means the performance tests as defined in the Employer’s Requirements.
“person”	includes any public body and any body of persons, corporate or unincorporate.
“Plant”	means machinery, apparatus and articles of all kinds other than Mobile Plant (and, for the avoidance of doubt, other than Constructional Plant), to be designed, manufactured, supplied and/or installed as part of the Works and for use in connection with the Operation.
“Portion”	means a part of the Site separately identified in the Contract.
“Post-commissioning Stage”	means a stage during the Operation Period which commences on the day following the date of the Certificate of Completion for the Works and expires on the day the Operation Period expires.
“Pre-treated Food Waste”	means the food waste after Pre-treatment.
“Pre-treated Food Waste Conveyance System”	means the system in the Facility to convey Pre-treated Food Waste from the Facility to the Existing Facilities.
“Pre-treatment”	means the process in the Facility to remove contamination from the Food Waste in preparation for anaerobic co-digestion with sewage sludge.
“Pre-treatment System”	means the system in the Facility to carry out Pre-treatment.

<b>“Project Management and Technical Resources Plan”</b>	means the detailed plan prepared by the Contractor for the project management of and management of human resources required for the Design, the Works and the Operation under the Employer’s Requirements and consented to by the Employer.
<b>“Project Manager”</b>	means the project manager appointed by the Contractor and named in the Contractor’s Plans and approved by the Employer, or any replacement project manager in accordance with Clause 15.3.
<b>“Proving Stage”</b>	means a stage during the Operation Period which commences on the day the Operation commences and expires on the day the Certificate of Completion for the Works is issued.
<b>“Provisional Sum”</b>	means a sum identified as such in the Schedules of Prices to be used on the written instruction of the Employer.
<b>“Public Cleaning Areas”</b>	means those public areas of the Site where no work is to be carried out other than cleaning by the Contractor and which have to be maintained open to the general public throughout the progress of the Works, the extent of which is set out in the Employer’s Requirements. For the avoidance of doubt, the Site includes Public Cleaning Areas.
<b>“Public Office”</b>	means an office of emolument under the Government, whether such office be permanent or temporary.
<b>“Qualified Tradesman/Qualified Skilled Worker”</b>	means:  (a) a worker who has obtained the relevant trade test certificate issued either jointly or separately by the Construction Industry Council and the Vocational Training Council;  (b) a worker who has obtained the relevant certificate of completion of apprenticeship issued under the Apprenticeship Ordinance (Cap. 47);  (c) a worker who has obtained the relevant certificate of completion of apprenticeship issued by the Government;  (d) an electrician or electrical fitter who is a registered electrical worker registered under section 30 of the Electricity Ordinance (Cap. 406); or  (e) a registered skilled worker or registered skilled worker (provisional) as respectively defined in section 2(1) of the Construction Workers Registration Ordinance (Cap. 583).

“Reception System”	means the system in the Facility to receive Food Waste.
“Registered Design”	means the drawings and documents comprising the Design after certification by the Design Checker and obtaining consent to the same from the Supervising Officer under Clause 73.
“Residual Life Assessments”	means the residual life assessments as defined in the Employer’s Requirements.
“Residues”	means the residues other than Pre-treated Food Waste left after Pre-treatment or are not Non-Permitted Waste.
“Retention Money”	means the sum retained by the Employer as retention money in accordance with the Contract.
“Safety and Health Plan”	means the health and safety plan referred to in Clause 17, including any revised or updated version, setting out details of the safety management system that the Contractor shall implement on the Site and, as the case may be, on the Facility, together with any other measures and information required by the Contract to ensure safety and health in the execution of the Design, the Works and the Operation, and consented to by the Employer.
“Safety Manager”	means the safety manager appointed by the Contractor and named in the Contractor’s Plans and approved by the Employer, or any replacement safety manager in accordance with Clause 15A.6.
“Safety Officer”	means the safety officer as defined in the Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations (Cap. 59Z).
“Safety Supervisor”	means the safety supervisor as defined in the Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations (Cap. 59Z).
“Schedule of Milestones”	means the schedule describing the Milestones to be achieved in respect of the Design and the Works and the corresponding payments to which the Contractor is entitled.
“Schedule of Prices”	means the completed schedule of prices for Capital Value or the completed schedule of prices for Operation Fees submitted by the Contractor with the Tender that sets out his rates for carrying out the work or services specified therein.

<b>“Site”</b>	means the lands and other places including the sea under, over, on, in or through which the Works are to be constructed for the Operation and any other lands or places provided by the Employer for the purpose of the execution of the Works and the Operation including such other places as may be subsequently agreed in writing by the Employer as forming part of the Site.
<b>“Site Agent”</b>	means the site agent appointed by the Contractor and named in the Contractor’s Plans and approved by the Employer, or any replacement construction manager in accordance with Clause 15.6 of the Conditions of Contract.
<b>“Site Personnel”</b>	means all workers and staff employed by the Contractor or his sub-contractor of all tiers including Specialist Sub-contractors and Nominated Sub-contractors except self-employed workers, engaged for the execution of the Works and the Operation on the Site and includes those drivers and lorry drivers who are not self-employed persons engaged for the Works.
<b>“Specialist Testing Laboratory”</b>	means an independent Hong Kong Laboratory Accreditation Scheme accredited laboratory or any other laboratory approved by the Employer.
<b>“Specialist Sub-contractor”</b>	means any sub-contractor employed by the Employer to execute Specialist Works.
<b>“Specialist Works”</b>	means any work separately identified in the Contract and connected with or ancillary to the Works which may from time to time be carried out on the Site by a Specialist Sub-contractor.
<b>“Standards and Publications”</b>	means the local and international standards and publications (including general specifications, manuals, codes of practice, guidelines, guidance, technical memoranda, practice notes, technical circulars, or the likes) in connection with the Design, the Works or the Operation which are more particularly listed in Section 1 of the Employer’s Requirements (editions in force as at the date 10 days prior to the tender closing date).
<b>“sub-contractor”</b>	means any person or persons other than the Contractor, to whom any part of the Design, the Works, the Operation or the supply of any Plant, Mobile Plant or services in relation thereto or to the Contract has been sub-contracted, at whatever tier and includes his or their representatives, successors and assigns.
<b>“Sub-contractor Management Plan”</b>	means the sub-contractor management plan submitted by the Contractor under Clause 6.

<b>“Summary of Prices”</b>	means the completed summary of prices for Capital Value or the completed schedule of prices for Operation Fees submitted by the Contractor with the Tender that sets out the Capital Value, the Operation Fees and any revision thereto made in accordance with the Contract.
<b>“Supervising Officer”</b>	means the person, firm or company appointed from time to time by the Employer and so notified in writing to the Contractor in accordance with Clause 3 to perform the duties set forth in such notification. The person appointed may be described by name or as the holder for the time being of a public office.
<b>“Temporary Works”</b>	means all temporary work of every kind required for the construction, completion and maintenance of the Works or the Facility.
<b>“Tender”</b>	means the Contractor’s tender for the Contract, including but not limited to the Contractor’s Plans, the Schedule of Particulars and Form of Key Staff Members to be Engaged for Executing the Contract submitted in accordance with Clause 4(3)(e) of the Conditions of Tender.
<b>“Testing”</b>	means the site acceptance tests and system acceptance tests as defined in the Employer’s Requirements to be carried out on any item of Plant and includes other works and tests necessary to commence Operation.
<b>“Time for Completion”</b>	means the period stated in the Form of Tender for the substantial completion of the Works, or such extended period as may be determined in accordance with Clause 86.
<b>“tonne”</b>	means a metric tonne.
<b>“Utility Undertaking”</b>	means any person, undertaking, company, organisation or Government department and includes any office, division, sub-division, section, sub-section, unit or group within a Government department that engages in or is so engaged in supplying or providing utilities (including electricity, lighting, traffic control, telecommunications, cable television, gas, water, drainage, sewerage and tramway) and any associated work and the supply or provision of which does not form part of the Works under the Contract, including the contractors and sub-contractors of any tier of such person, undertaking, company, organisation or Government department.
<b>“Waste Reception Area”</b>	means the area or areas in the Facility where Food Waste is put to the Reception System.
<b>“Weekly Tidying”</b>	means weekly overall cleaning and tidying up of the Site as set out in the Employer’s Requirements.

“Works”	means the work or services (or any part or component thereof) to be designed, constructed, installed, completed, commissioned and/or supplied in accordance with the Contract including the Plant, Mobile Plant and the Temporary Works, but does not include the Operation.
“year”	means a year according to the Gregorian calendar.
1.3	Words importing the singular only also include the plural and vice versa where the context requires.
1.4	The index and marginal notes or headings in the Conditions of Contract, the Employer’s Requirements and the Contractor’s Plans shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction thereof.
1.5	Unless otherwise provided, all payments shall be made in Hong Kong dollars.
1.6	No adjustment shall be made to any payments due to the Contractor under the Contract on account of any variation in the exchange rate between the Hong Kong dollar and any other currency.
1.7	The Contract shall be governed by and construed in all aspects according to the laws for the time being in force in Hong Kong.
1.8	Words importing one gender (whether masculine, feminine or neuter) shall be taken to include any other gender where the context requires.
1.9	Save where the contrary is indicated, any reference in these Conditions of Contract to a “Clause”, “Part” or “Appendix” is a reference to a Clause hereof, a Part hereof or an Appendix hereto.
1.10	The words “include” and “including” shall be construed without limitation to the words following.
<b>2.</b>	<b>ENTIRE AGREEMENT</b>
2.1	Each party acknowledges that it has had or, as the case may be, is deemed to have had, full opportunity to include in the Contract any representation or warranty (if any) made to it by the other party leading up to the Contract. It is hereby agreed that the Contract embodies the entire understanding between the parties and there are no representations, promises, terms, conditions, warranties or obligations relied on by either party, whether oral or written, other than those contained herein.
2.2	(a) The Contractor acknowledges and agrees that he has carried out his own enquiries and investigations to verify the information referred to Clause 3 of the Conditions of Tender (“Information”) and he has entered into the Contract on the basis of such enquires and investigations and not in reliance on any representations, warranties or statements (whether express or implied) of any kind made by or on behalf of the Employer with respect to the accuracy, appropriateness, completeness, sufficiency or otherwise of the Information.

- (b) Neither the Employer nor his agents or representatives have or accept any liability, obligation or responsibility whatsoever for any loss or damage (including consequential loss or damage) however arising from or in respect of any use or misuse of or reliance on the Information.

### **3. EMPLOYER AND SUPERVISING OFFICER**

- 3.1 The Supervising Officer shall carry out such duties and may exercise such powers as are assigned to him under the Contract and as may be delegated to him by the Employer pursuant to Clause 3.2.
- 3.1A Before carrying out any such duty or exercising any such power, the Supervising Officer may be required under the terms of his appointment by the Employer to obtain confirmation that the Employer has no objection to the Supervising Officer's proposed course of action and in the event of an objection, to act in accordance with the Employer's direction. If the Supervising Officer is subject to any such requirement, particulars thereof shall be set out in Appendix A to the Form of Tender.
- 3.1B The Contractor's rights under the Contract shall not be prejudiced in any way by any failure on the part of the Supervising Officer to comply with the requirements particularised in Appendix A to the Form of Tender or any other requirements of his appointment by the Employer.
- 3.1C Except as expressly stated in the Contract, the Supervising Officer shall have no power to amend the terms and conditions of the Contract nor to relieve the Contractor of any of his obligations under the Contract.
- 3.1D The duties of the Supervising Officer are to review and decide whether to give consent to the Design and the Works which have been certified by the Design Checker, to audit any Constructional Plant, Plant, Mobile Plant, labour or materials to be used and workmanship or services employed by the Contractor in connection with the Works, and to carry out such duties and exercise such powers under the Contract as may be delegated to him by the Employer in accordance with Clause 3.2. The duties and powers of the Supervising Officer shall be vested in the Employer upon commencement of the Operation.
- 3.2 The Employer may from time to time delegate any of his duties and powers under the Contract to the Supervising Officer. Any such delegation or cancellation of such delegation shall be in writing signed by the Employer and shall specify the duties and powers thereby delegated by references to the provisions of the Conditions of Contract. No such delegation shall have effect until a copy thereof has been delivered to the Contractor. Any written instruction, decision or approval given by the Supervising Officer to the Contractor within the terms of such delegation, but not otherwise, shall bind the Contractor and the Employer as though it had been given by the Employer.

It is also agreed that:

- (i) failure of the Supervising Officer to disapprove any work, Constructional Plant, Plant, Mobile Plant, labour, materials or Temporary Works, as the case may be, shall not prejudice the power of the Employer thereafter to disapprove such work, Constructional Plant, Plant, Mobile Plant, labour, materials or Temporary Works; and

- (ii) if the Contractor shall be dissatisfied by reason of any decision of the Supervising Officer, he may refer the matter to the Employer who shall confirm, reverse or vary such decision.
- 3.3 No act or omission by the Employer or the Supervising Officer (including any consent, approval or certificate given under the Contract or failure or refusal to give, or withholding of, any consent, approval or certificate under the Contract) in the performance of any of his duties or the exercise of any of his power under the Contract shall in any way operate to relieve the Contractor of any of the duties, responsibilities, obligations or liabilities imposed upon him by any of the provisions of the Contract (including those under Clause 9).
- 3.4 Not Used.
- 3.5 Not Used.
- 3.6 The Contractor agrees and warrants that he shall not obstruct or hinder the Supervising Officer from carrying out any of his functions, duties and obligations.
- 3.7 The Employer shall notify the Contractor in writing of the Supervising Officer and any subsequent replacement of the Supervising Officer within 14 days of his appointment. In the case of the first Supervising Officer the notification shall be made within 28 days of the date of the Letter of Acceptance.

#### **4. CONTRACT COMMUNICATIONS AND USE OF LANGUAGE**

- 4.1 Whenever the Contract requires the Contractor to provide any drawings, documents or notices of whatever nature to the Design Checker, he shall at the same time provide a copy of the same to the Employer and the Supervising Officer.
- 4.2 Whenever the Contract requires the Design Checker to give any decision, certificate, notification or other written communication to the Contractor, the Contractor shall upon receipt provide a copy of the to the Employer and the Supervising Officer as soon as practicable.
- 4.3 The Contract, all correspondence in connection with the Contract and drawings or other documents provided by the Contractor under the Contract shall be in English.
- 4.4 Any notice required for compliance with any enactment and which the Contractor may have to exhibit either for the benefit of the public or for the benefit of his employees shall be written in English and traditional Chinese characters.
- 4.5 Copies of monthly and annual reports, operation and maintenance manuals and updates of the Contractor's plans shall be provided by the Contractor in the format and number of copies specified by the Employer in the Employer's Requirements.

#### **5. DESIGN CHECKER**

- 5.1 Where the Employer's Requirements so requires, the Contractor shall appoint a Design Checker who is independent of the Contractor and of the Contractor's designer(s) to check the Contractor's Plan, the methods of construction, the quality of the construction and installation, and the design of the permanent work and Temporary Works prepared by the Contractor's designer(s) to ensure that the design and construction and installation complies in all respects with the Contract. The checking of the Contractor's Plan, the methods of construction, the quality of the construction and installation, and the design of the permanent

work and Temporary Works prepared by the Contractor's designer(s) shall be in a manner prescribed in the Employer's Requirements.

- 5.2 The appointment of the Design Checker under Clause 5.1 shall be approved by the Employer. The Employer reserves the right to revoke its approval if at any time it has substantial cause for dissatisfaction with the conduct or performance of the Design Checker. In such event, the Contractor shall make a new appointment which shall also be subject to the Employer's approval.
- 5.3 There shall be included in the agreement between the Contractor and the Design Checker the following provisions which the Contractor shall use his best endeavours to ensure are observed:
- (a) that the Design Checker in the exercise of his functions, duties and obligations under the terms of the said agreement shall act fairly and impartially,
  - (b) that the Design Checker shall not use or divulge, except for the purpose of carrying out his functions, duties and obligations under the Contract, any information provided by the Employer or the Contractor in connection with the Contract,
  - (c) that the Design Checker shall execute under seal and provide to the Employer a warranty in the form set out in **Appendix K**, and
  - (d) that the Design Checker shall provide such assistance to the Supervising Officer as is reasonably required by the Supervising Officer.
- 5.4 The Contractor shall deliver a copy of the executed agreement between the Contractor and the Design Checker to the Supervising Officer within 14 days of the Design Checker's appointment.
- 5.5 The Contractor shall be responsible for the Design Checker's fees and the costs and expenses incurred by the Design Checker in connection with the checking of the Contractor's Plan, the methods of construction, the quality of the construction and installation, and the design of the permanent work and/or Temporary Works prepared by the Contractor's designer(s) until the Certificate of Completion for the Works is issued.
- 5.6 A certificate issued or any other act done by the Design Checker under the Contract shall not relieve the Contractor from any of his duties, responsibilities, obligations and liabilities under the Contract.
- 5.7 The Contractor shall be responsible for submitting to the Employer within 14 days of the appointment of the Design Checker a warranty duly executed by the Design Checker in favour of the Employer in the form set out in **Appendix K** with only such amendments as may previously have been approved by the Supervising Officer in writing.
- 5.8 Further to Clause 72B, it shall be a condition precedent to the issue of the Certificate of Completion for the Works that the Contractor shall have submitted to the Employer the duly executed warranty in strict accordance with Clause 5.7.
- 5.9 The Contractor agrees and warrants that he shall not obstruct or hinder the Design Checker from carrying out any of his functions, duties and obligations, which shall be carried out fairly, independently and impartially as between the Employer and the Contractor. The Contractor further warrants that he shall not withhold (or claim a set off in respect of) any

payment due to the Design Checker under his agreement with the Design Checker without the prior written consent of the Employer.

## **6. ASSIGNMENT AND SUB-CONTRACTING**

- 6.1 The Contractor shall not assign any benefits, obligations or liabilities under the Contract or any interest therein without the prior written consent of the Employer and any assignment shall be in a form approved in writing by the Employer. The Employer may assign the benefits, obligations (other than payment obligations) and liabilities under the Contract or any part thereof and any interest therein or thereunder to a third party without the consent of the Contractor, provided that such assignment shall not take effect prior to the final payment under the Contract to the Contractor
- 6.2 The Contractor shall not sub-contract the whole of the Design, the Works or the Operation. The Contractor shall not sub-contract any part of the Design, the Works, or the Operation without the prior written consent of the Employer.
- 6.3 Notwithstanding that the Employer may have consented to sub-contracting under Clause 6.2, the Employer, if in his opinion he considers it necessary, shall have full power to order the removal of any sub-contractor from the Site or any part thereof or parts of the Works and/or the Facility, which power shall not be exercised unreasonably.
- 6.4 The sub-contracting of any part of the Design, the Works or the Operation shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any sub-contractor or the agents, employees or workers of any sub-contractor as fully as if they were the acts, defaults or neglects of the Contractor, his agents, employees or workers.
- 6.5 Further to Clause 6.2, any contracts entered into by the Contractor for the supply of Plant and materials for the Works shall be subject to the prior approval of the Employer. Each such contract shall contain a provision that allows for the assignment of the rights and benefits of the contract to the Employer in the event of termination of the Contract by the Employer, at terms no less favourable to the Employer than those applying to the Contractor. All debts and liabilities incurred under such contract before assignment to the Employer shall continue to be responsible by the Contractor.
- 6.6 The Contractor shall procure that any manufacturer's or supplier's warranties given to the Contractor in respect of Plant or Mobile Plant or any materials incorporated in the Works shall be assignable or otherwise transferable to the Employer with full title guarantee without the prior consent of the relevant manufacturer or supplier and shall, when called on to do so by the Employer, assign or otherwise transfer the same to the Employer (including the procurement of any required consent) in a form acceptable to the Employer provided that by virtue of such assignment the Contractor shall not be precluded from himself enforcing his rights against such manufacturer or supplier.
- 6.7 It shall be the duty of the Contractor, if so required by the Employer, to furnish the Employer with full particulars of any sub-contractor employed or to be employed on the Site or the Facility or the Design or the Works or the Operation.
- 6.8 Notwithstanding Clauses 6.1 to 6.7, the Contractor shall within 30 days of the date of the Letter of Acceptance submit a Sub-contractor Management Plan (SMP) to the Employer for information and comments, if any.

- 6.9 The Contractor shall then submit quarterly the updated SMP till the issuance of the Handover Certificate to the Employer for information and comments, if any. Should there be any major changes in the Contractor's sub-contracting arrangement during the period before submission of the next quarterly SMP, the Contractor shall notify immediately such changes to the Employer in writing. The quarterly SMP shall be submitted within 1 month from the end of each quarterly period. For the avoidance of doubt, the first quarterly period shall commence from the date of submission of the SMP by the Contractor under Clause 6.8. Any interim notification of changes by the Contractor shall not affect his obligation to submit the quarterly updated SMP. Where no changes are to be made to the next quarterly SMP, the Contractor shall declare such status in writing instead of submitting the same SMP again.
- 6.10 A SMP submitted under Clause 6.8 or 6.9 shall contain detailed information as required by the Guidelines on Scope and Contents of Sub-contractor Management Plan at *Appendix F*.
- 6.11 The Employer may on receipt of a SMP comment on the SMP and notify the Contractor of such comments in writing. If the Employer is of the opinion that the SMP does not meet the requirements of the Contract, the Employer may, by a written notice, request the Contractor to revise or update the SMP and the Contractor shall comply with that request within 14 days of the date of the notice. No approval of SMP is required from the Employer.
- 6.12 Subject to other clauses of the Conditions of Contract stating to the contrary, the Contractor shall ensure that his sub-contractors shall not sub-contract the whole of the works or services sub-contracted to them.
- 6.13 The Contractor shall employ his own staff to manage and supervise his sub-contractors.
- 6.14 For the purpose of Clauses 6.1 to 6.24 and the Guidelines on Scope and Contents of Sub-contractor Management Plan at *Appendix F*, the term 'sub-contractor' means all types of sub-contractor.
- 6.15 The Contractor shall, upon written request by the Employer (which may be issued by the Employer from time to time or at any time), produce to the Employer documentary proof to demonstrate to the satisfaction of the Employer that the Contractor has complied with all the provisions in the latest SMP. Such documentary proof includes documents of sub-contracts, reports from sub-contractors on their further sub-contracting arrangement and daily attendance records of site workers. For the purpose of determining the extent of documentary proof, the Employer shall make reference to the Guidelines on documentary proof to demonstrate the compliance of the provisions in the Sub-contractor Management Plan at *Appendix F*. The Employer may make as many separate written requests as he thinks fit. This Clause 6.15 shall be without prejudice to Clauses 6.8 to 6.14.
- 6.16 The Contractor shall be entitled to the sums set out in the section on Sub-contractor Management Plan in the Schedule of Prices provided that the Contractor has complied with the requirements specified in the Contract.
- 6.17 If the Contractor is not included in the "List of Approved Suppliers of Materials and Specialist Contractors for Public Works" maintained by the Employer for:-
- (i) Air-conditioning Installation (Group I or II)
  - (ii) Burglar Alarm and Security Installation
  - (iii) Design, Manufacture and Installation of Glass (or Fibre) Reinforced Plastic Units
  - (iv) Diesel Generator Installation
  - (v) Electrical and Mechanical Installation for Sewage Treatment and Screening Plant

- (vi) Electrical Installation (Group I, II or III)
- (vii) Fabrication of Steel Pipe Specials
- (viii) Fire Service Installation (Group I or II)
- (ix) Ground Investigation Field Works (Group I or II)
- (x) Industrial Type Electrical Installation
- (xi) Land Piling (Group I or II)
- (xii) Low Voltage Cubicle Switchboard Installation
- (xiii) Mechanical Handling and Lifting Installation
- (xiv) Mechanical Plant and Equipment Installation (Group II)
- (xv) Plumbing Installation (Group I or II)
- (xvi) Repair of Motors, Transformers and Switchgears
- (xvii) Soil and Rock Testing
- (xviii) Space Frame Systems
- (xix) Steam and Compressed Air Installation
- (xx) Structural Steelworks
- (xxi) Supply and Installation of Pumpsets and Associated Pipework
- (xxii) Supply of Bituminous Pavement Materials and Construction of Special Bituminous Surfacing
- (xxiii) Survey of Lifting Appliances and Lifting Gear
- (xxiv) Uninterruptible Power Supply Installation

or the "List of Approved Contractors for Public Works" maintained by the Employer for:-

- (i) Buildings (Group A, B or C)
- (ii) Roads and Drainage (Group A, B or C)
- (iii) Site Formation (Group A, B or C)
- (iv) Waterworks (Group A, B or C)

then he shall enter into written sub-contract(s) with an approved listed contractor(s) in the relevant group(s), category(ies) and class(es) in the first tier of sub-contracting as defined in Clause 6A.1 for the execution of the respective part(s) of the Works, provided that the Contractor shall not without the prior written consent of the Employer enter into a sub-contract with an approved listed contractor who is then suspended from tendering (whether by way of mandatory suspension, voluntary suspension or automatic suspension) in respect of the works in the relevant group, category or class.

- 6.17A If the Contractor does not meet the requirements for installation of Pre-treatment System set out in Clause 1.10.15 of the Employer's Requirements, then he shall enter into a written sub-contract with a contractor who satisfies those requirements in the first tier of sub-contracting as defined in Clause 6A.1 for the installation of the Pre-treatment System. Any reference to "approved listed contractor" in Clauses 6.17 to 6.20 shall be deemed to include a sub-contractor engaged under this Clause 6.17A.
- 6.18 The Contractor shall notify the Supervising Officer in writing the engagement of an approved listed contractor within 7 days of the entering into the relevant sub-contract.
- 6.19 The approved listed contractor to be engaged in accordance with Clause 6.17 or 6.17A for
- (i) Air-conditioning Installation (Group I or II)
  - (ii) Electrical Installation (Group I, II or III)
  - (iii) Fire Services Installation (Group I or II)
  - (iv) Ground Investigation Field Works (Group I or II)
  - (v) Land Piling (Group I or II)
  - (vi) Buildings (Group A, B or C)
  - (vii) Roads and Drainage (Group A, B or C)
  - (viii) Site Formation (Group A, B or C)
  - (ix) Waterworks (Group A, B or C)

shall either:

- (a) have obtained an ISO 9001:2015 certificate acceptable to the Employer with the scope of certification acceptable to the Supervising Officer; or
  - (b)
    - (i) have obtained a confirmation from a certification body acceptable to the Employer, stating that a full review of the Quality of its Hong Kong office has been carried out in Hong Kong and such Quality Manual has been found to be in conformity with ISO 9000 the requirements of the ISO 9001:2008; and
    - (ii) submit an undertaking to the Supervising Officer that, within 3 months of the entering into of the sub-contract, it would book with the certification body the date of audit ISO 9001:2015 certification; with detailed documented quality system procedures ready at the time of booking.
- 6.20 (a) If the works specified in Clause 6.19 are to be carried out by the Contractor himself, the Contractor must be listed in the relevant group, category and/or class, and shall, within 3 months of the date of the Letter of Acceptance, book with a certification body acceptable to the Employer the date of audit for the ISO 9001:2015 certification, with detailed documented quality system procedures ready at the time of booking. If the respective works are to be carried out through a sub-contract by an approved listed contractor, then the Contractor shall procure that the approved listed contractor shall carry out such booking within 3 months of execution of the sub-contract.
- (b) Notwithstanding any other provisions in the Contract, compliance with Clause 6.19 and Clause 6.20(a) shall be a condition precedent to the Contractor's entitlement to any payment, or any further payment, as the case may be, for the works specified in Clause 6.19.
- (c) Clauses 6.19 and 6.20(a) are not applicable if the Contractor has already obtained ISO 9001:2015 certification on or before the date of the Letter of Acceptance or, as the case may be, the approved listed contractor has already obtained the ISO 9001:2015 certification on or before the date of entering into the sub-contract.
- 6.21 (a) Where the Contractor is to sub-contract part of the Works execution of which involves trades available under the Primary Register of the Subcontractor Registration Scheme, the Contractor shall engage, for the purposes of execution of such part of the Works, sub-contractors as stated in the Contractor's latest updated SMP and who have completed their registration under the relevant trades available in such register before commencement of the works under the relevant sub-contracts. The Contractor shall also ensure that a sub-contractor who is suspended or in the process of an appeal against his suspension from registration under such register shall not be engaged for the aforesaid sub-contracting unless the suspension is lifted before commencement of the works under the relevant sub-contracts. The foregoing shall also apply to the Contractor's engagement of sub-contractors for specialist works referred to in Clause 6.17.
- (b) The Contractor shall ensure that where any part of the Works sub-contracted to:-
  - (i) a sub-contractor engaged under Clause 6.21(a); or
  - (ii) a sub-contractor for specialist works referred to in Clause 6.17;

execution of which involves trades available under the Primary Register of the Subcontractor Registration Scheme is further sub-contracted (irrespective of any tier), sub-contractors (irrespective any tier) as stated in the Contractor's latest updated SMP and who have completed their registration under the relevant trades available in such register before commencement of the works under the relevant further sub-contracts are engaged for the purposes of execution of such part of the part of the Works. The Contractor shall also ensure that a sub-contractor (irrespective any tier) who is suspended or in the process of an appeal against his suspension from registration under such register shall not be engaged for the aforesaid further sub-contracting (irrespective any tier) unless the suspension is lifted before commencement of the works under the relevant further sub-contracts.

- (c) For the purpose of this Clause 6.21, "Subcontractor Registration Scheme" and "Primary Register of the Subcontractor Registration Scheme" respectively means the Subcontractor Registration Scheme managed by the Construction Industry Council and the Primary Register of the Subcontractor Registration Scheme as referred to in the rules and procedures applicable to the Subcontractor Registration Scheme.
- 6.22 The Contractor shall within 14 days from the date of the Letter of Acceptance appoint the persons named in the Contractor's Plans to execute the Design or parts thereof, as the case may be, failing which the Employer shall be entitled at its sole discretion:
- (a) to require the Contractor to continue his attempt to appoint such persons as may be approved by the Employer within a specified period of time; or
  - (b) to terminate the Contract forthwith, in which event, the Contractor shall (without prejudice to the Employer's other rights or remedies) forthwith refund to the Employer all sums previously paid to the Contractor (if any) and the Employer shall not be under any obligation to make any or any further payments to the Contractor which would otherwise be payable under the Contract.
- 6.23 Any substitution or replacement of any person referred to by his name in the Contractor's Plans for the purpose of executing the Design or parts thereof as the case may be shall be affected with the agreement of the Employer and shall be affected without delay and the substitute or replacement shall be no less well qualified in terms of experience and training than the person for whom he is substituting or whom he is replacing.
- 6.24 (a) Where the Contractor appoints a designer who is an independent consultant not employed by the Contractor under a contract of service, then the Contractor shall include in the terms of appointment between the Contractor and the independent consultant, the following provisions which the Contractor shall use his best endeavours to ensure are observed:
- (i) that the independent consultant shall not use or divulge, except for the purpose of carrying out his functions, duties and obligations under the Contract, any information provided by the Employer or the Contractor in connection with the Contract,
  - (ii) that the independent consultant shall execute under seal and provide to the Employer a warranty in the form set out in *Appendix U*, and
  - (iii) that the independent consultant shall provide such assistance to the Supervising Officer as is reasonably required by the Supervising Officer.

- (b) The Contractor shall be responsible for submitting to the Employer within 14 days of the appointment of the independent consultant a warranty duly executed by the independent consultant in favour of the Employer in the form set out in **Appendix U** with only such amendments as may previously have been approved by the Supervising Officer in writing.
- (c) For the avoidance of doubt it is declared that nothing in the warranty shall be interpreted as altering the rights and duties of the Employer and the Contractor under the Contract.
- (d) Further to Clause 89, it shall be a condition precedent to the issue of the Certificate of Completion of the Design and Works that the Contractor shall have submitted to the Employer the duly executed warranty in strict accordance with sub-clause (b).

## **6A. LIMITING THE TIERS OF SUB-CONTRACTING**

- 6A.1 For the purpose of Clauses 6A.1 to 6A.7: (i) the first tier of sub-contracting means the contracts between the Contractor and his sub-contractors; (ii) the second tier means the sub-contracts between any of the sub-contractors of the first tier and his sub-contractors; and (iii) the foregoing shall apply with necessary modifications to subsequent tiers of sub-contracting.
- 6A.2 Notwithstanding Clauses 6.1 to 6.24 on sub-contracting a part of the Design, the Works or the Operation and subject to Clauses 6A.3 to 6A.5 and compliance with other provisions of the Contract, the sub-contracting of a part of the Design, the Works or the Operation by the Contractor shall be limited to two tiers of sub-contracting.
- 6A.3 Where any part of the Design, the Works or the Operation has been sub-contracted, the sub-contractor of the first or the second tier of sub-contracting (as the case may be) may, subject to Clause 6A.4 and compliance with other provisions of the Contract, engage in two additional tiers of sub-contracting with respect to a Relevant Portion of such part of the Design, the Works or the Operation, except (i) where the Relevant Portion involves work or services to be carried out in any confined space, or (ii) where the Relevant Portion involves demolition or scaffolding work. For situations as stated in (i) or (ii), sub-contracting of the Relevant Portion by the sub-contractor of the first or the second tier (as the case may be) shall be limited to one additional tier of sub-contracting.
- 6A.4 Notwithstanding Clauses 6A.2 and 6A.3, sub-contracting of any part of the Design, the Works or the Operation requiring entry of human beings into confined space that forms part of a sewerage or drainage system shall be limited to the first tier of sub-contracting and further sub-contracting by the first tier sub-contractor shall not be permitted.
- 6A.4A Notwithstanding Clauses 6A.2 and 6A.3, sub-contracting of any part of the Design, the Works or the Operation involving site formation, piling, mechanical plant and equipment installation and electrical installation shall be limited to the first tier of sub-contracting to the respective approved listed contractors in the relevant group(s), category(ies) and class(es) referred to in Clause 6.17, and further sub-contracting by the first tier sub-contractor shall not be permitted. Sub-contracting of any part of the Design, the Works or the Operation involving supply of plant for Pre-treatment shall also be limited to the first tier of sub-contracting to a contractor who satisfies the requirements set out in Clause 1.10.15 of the Employer's Requirements, and further sub-contracting by the first tier sub-contractor shall not be permitted.
- 6A.5 (a) Notwithstanding Clauses 6A.3 and 6A.4, the Supervising Officer may upon request by the Contractor permit the Contractor to introduce an extra tier of sub-contracting for a part of the Design, the Works or the Operation or a Relevant Portion which has been

sub-contracted in accordance with the provisions of the Contract (including on the foregoing provisions).

- (b) The Supervising Officer shall not be obliged to consider a request for an extra tier of sub-contracting unless the request is made in writing to the Supervising Officer at least 14 days before the sub-contractor of the relevant tier of sub-contracting enters into any sub-contract for the extra tier of sub-contracting and the request is accompanied by an explanation with supporting evidence on the need for the extra tier of sub-contracting.
- (c) A request which has been made in strict compliance with sub-clause (b) above is taken to have been permitted by the Supervising Officer if it is not expressly rejected by the Supervising Officer in writing within 14 days from the date of receipt by the Supervising Officer of the request from the Contractor.

6A.6 The Contractor shall comply with and shall ensure that all sub-contractors (irrespective of any tier) shall comply with Clauses 6 and 6A and other relevant provisions of the Contract (“Sub-contractor Provisions”). If the Contractor or any of the sub-contractors (irrespective of any tier) fails to comply with the Sub-contractor Provisions, the Supervising Officer shall, without prejudice to any other rights and remedies, have full power to order the removal of any sub-contractor which has been engaged in contravention of any of the Sub-contractor Provisions from the Site, the Design, the Works and/or the Operation.

6A.7 In Clauses 6A.1 to 6A.6, unless the context otherwise requires:-

“Relevant Portion” means a portion of any part of the Design, the Works or the Operation which has been sub-contracted to a sub-contractor of the first or the second tier of sub-contracting under Clause 6A.2, and such portion comprises only work or services falling within the description of one or more of the “Construction Trades” which are listed under the trade classification of the Subcontractor Registration Scheme;

“Subcontractor Registration Scheme” means the Subcontractor Registration Scheme managed by the Construction Industry Council.

## **6B. SUB-CONTRACT CONDITIONS**

6B.1 Without prejudice to the generality of Clauses 6.1 to 6.24, if any part of the Works and the Operation is sub-contracted by the Contractor, the Contractor shall ensure that a clause on reimbursement of the sum equivalent to the amount of sub-contractor’s contribution to mandatory contribution under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) for the Site Personnel under the Contract and on payment of wages of Site Personnel in the form set out in *Appendix S* is included in all sub-contracts entered into with the Contractor. For sub-contractors at any lower tier of sub-contracting, the Contractor shall take all reasonable steps to ensure that such clause in the form set out in *Appendix S* is included in all sub-contracts at lower tiers of sub-contracting.

6B.2 The Contractor shall ensure that all sub-contractors engaged by the Contractor who are involved in the Contract shall include, observe and comply with the provisions which are in the terms of *Appendix S* in the relevant sub-contracts. For sub-contractors at any lower tier of sub-contracting, the Contractor shall take all reasonable steps to ensure that sub-contractors who are involved in the relevant sub-contracts of the Contract shall include, observe and comply with the provisions in the relevant sub-contracts which are mutatis mutandis in the terms of *Appendix S*.

- 6B.3 The Contractor shall submit copies of the relevant sub-contracts of the Contract to the Supervising Officer for the purpose of checking if the sub-contract provisions as required under Clauses 6B.1 and 6B.2 are included in the relevant sub-contracts. Upon request by the Supervising Officer, the Contractor shall provide the original of the relevant sub-contracts for inspection by the Supervising Officer.
- 6B.4 The Contractor shall comply with and shall ensure that all sub-contractors engaged by the Contractor shall comply with this Clause 6B; and shall, if necessary, within reasonable time enter into a supplemental agreement with his sub-contractor to ensure that the sub-contract complies with the requirements in Clauses 6B.1 and 6B.2 and shall take all reasonable steps to ensure that sub-contractors at any lower tier of sub-contracting shall include, observe and enter into a supplemental agreement if necessary and as required under this Clause 6B.4.
- 6B.5 If the Contractor or any of the sub-contractors (irrespective of any tier) fails to comply with this Clause 6B, the Supervising Officer shall, without prejudice to any other rights and remedies, have full power to order the removal of the sub-contractor from the Site, the Design, the Works and/or the Operation.

## 7. CONTRACT DOCUMENTS

- 7.1 Save to the extent that the Letter of Acceptance provides to the contrary, the provisions of the Conditions of Contract shall prevail over those of any other document forming part of the Contract.
- 7.2 Subject to Clause 7.1, several documents forming the Contract are taken to be mutually explanatory of one another but in case of ambiguities or discrepancies (other than ambiguities or discrepancies within the Contractor's Plans or between the Contractor's Plans and any other documents forming part of the Contract) the same shall be explained by the Employer who shall issue to the Contractor instructions clarifying such ambiguities or discrepancies. Where the Contractor makes a request in writing to the Employer for instructions under Clause 7.2, the Employer shall respond within 14 days of receipt of such request. It is also agreed that:
- (a) if in the opinion of the Employer compliance with such instructions shall cause the Contractor to incur any Expense that by reason of any ambiguity or discrepancy the Contractor did not and had no reason to anticipate as at the time of tender, such Expense shall be borne by the Employer and valued in accordance with Clause 43; and
  - (b) if in the opinion of the Employer compliance with such instructions shall cause the Contractor to have any saving then the Employer shall value such saving under Clause 43 and deduct the same from any payment due to the Contractor under Clauses 93, 94 and 97 as appropriate.
- 7.3 Where there is an ambiguity or discrepancy within the Contractor's Plans, the Contractor shall inform the Employer in writing of his proposed amendment to remove the ambiguity or discrepancy; and (subject always to compliance with statutory requirements) the Employer may either issue instructions on such ambiguity or discrepancy or accept the Contractor's proposed amendment and the Contractor shall be obliged to comply with the instructions or acceptance by the Employer without Cost to the Employer. If in the opinion of the Employer compliance with such instructions or acceptance of the Contractor's proposed amendment shall involve the Contractor in any saving, then the Employer shall

value such saving and deduct the same from any payment due to the Contractor under the Contract accordingly.

7.4 Where there is an ambiguity or discrepancy between the Contractor's Plans and any other documents forming part of the Contract:

- (a) The contents of such part of the Contractor's Plans shall prevail only in the case where they impose on the Contractor higher requirements in terms of quality or quantity than those specified under or pursuant to the other documents forming part of the Contract or impose on the Contractor requirements more onerous than those specified under or pursuant to the other documents forming part of the Contract; and
- (b) The requirements specified under or pursuant to the other documents forming part of the Contract shall prevail in all other cases, and the Contractor shall be bound by the said requirements.

## 8. INFORMATION NOT TO BE DIVULGED

8.1 The Contractor, his employees, agents, Design Checker and sub-contractors who are involved in the Contract, shall not use or divulge, except for the purpose of the Contract or with the written permission of the Employer, any information, drawings (including without limitation Employer's Drawings), specifications, documents, contracts, design materials and all other data and materials of any nature (in or on whatever media)) provided by the Employer or the Supervising Officer or accessible by the Contractor, its employees, agents, Design Checker and sub-contractors in connection with the Contract. Any disclosure to any person or employee or agent or sub-contractor for the purpose of the Contract shall be in strict confidence and shall be on a "need to know" basis and extend only so far as may be necessary for the purpose of the Contract. The Contractor shall take all necessary measures (including by way of contractual provisions where appropriate) to ensure that information is not divulged for purposes other than that of the Contract by such person, employee, agent or sub-contractor. The Contractor shall indemnify and keep the Employer fully and effectively indemnified from and against all loss, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever (including without limitation the fees and disbursements of lawyers, agents and expert witness) the Employer may suffer, sustain or incur, whether directly or indirectly, arising out of or in connection with any breach of the aforesaid non-disclosure provision by the Contractor or his employees, agents, Design Checker or sub-contractors.

8.2 The Employer, his authorised operators/users, assigns and successors-in-title, as well as any subsequent contractor engaged on the Facility, any contractor engaged on the Existing Facilities, any subsequent owners or occupiers of the Facility and any owners or occupiers of the Existing Facilities may use any information provided by the Contractor in accordance with the Contract. However, such information shall not be divulged except for the purposes of the Contract or for the purpose of carrying out any repair, amendment, extension or other work connected with the Design, the Works and the Operation, or for the purpose of selecting a contractor to operate the Facility at the expiry of the Operation Period or a contractor to operate the Existing Facilities. The Employer may also disclose such information that is reasonably necessary to educate and inform the public about the Facility and the Existing Facilities. Without prejudice to the foregoing, the Contractor shall provide all such information as the Employer may request from time to time.

8.3 Notwithstanding Clause 8.2, but subject to Clause 8.5, any contract rates or related information provided by the Contractor in connection with the Contract may be used by the

Employer, or his authorised operators/users, assigns and successors-in-title, for the sole purpose of cost estimation or cost analysis for other work that may or may not be connected with the Contract.

- 8.4 Subject to Clause 8.5, the Employer may also furnish such information referred to in Clause 8.3 of the Conditions of Contract to any third party engaged by the Employer for the sole purpose of cost estimation or cost analysis provided that he shall obtain from such third party an undertaking to maintain the confidentiality of the same and not to use it for any other purpose.
- 8.5 In connection with the use and/or furnishing of the contract rates and related information under Clauses 8.3 and 8.4, the Employer shall ensure that the Contract number, title and the Contractor's name are not used or furnished.
- 8.6 Notwithstanding Clause 8.2, but subject to the following provisions, the Employer may disclose the outline of any dispute and the terms of settlement for which a settlement agreement has been reached with the Contractor or the outcome of an arbitration or any other means of resolution of dispute to the Public Accounts Committee of the Legislative Council on its request. Before disclosures are made to the said Committee, the Employer shall inform the Contractor. Disclosures shall not be made to the said Committee before the expiry of the first 6 months from the date of the settlement agreement, arbitration award or, as the case may be, outcome of other means of resolution of dispute, without the written consent of the Contractor, but such consent shall not be unreasonably withheld. The Contractor shall be deemed to have given his consent to disclosures on the expiry of the first 6 months from the date of the settlement agreement, arbitration award or, as the case may be, outcome of other means of resolution of dispute. The Contractor may, if he considers it necessary to protect the sensitive nature of certain information relating to him, request the Employer to disclose such specified information to the said Committee strictly on a confidential basis. If the Employer considers that there are legitimate grounds to accede to the Contractor's request, the Employer shall convey the request to the said Committee for its consideration.
- 8.7 This Clause 8 shall survive the expiry, completion or termination of this Contract or determination of the employment of the Contractor (howsoever occasioned) and shall continue in full force and effect notwithstanding such expiry, completion, termination or determination.
- 8.8 The Contractor shall return to the Employer all documents including manuals and records, drawings (including without limitation Employer's Drawings), provided by the Employer at the expiry of the Operation Period or the earlier termination of the Contract, whichever is the earlier, if so instructed by the Employer.

## **9. CONTRACTOR'S GENERAL OBLIGATIONS**

- 9.1 The Contractor shall, subject to the provisions of the Contract, execute the Design, the Works and the Operation and provide all necessary Constructional Plant, Plant, Mobile Plant, labour, materials, Temporary Works, transport to and from the Site or in and about the Works and, as the case may be, the Facility, and the Operation and everything whether of a temporary or permanent nature required in and for such execution so far as necessary for providing the same is specified in or reasonably to be inferred from the Contract and for that purpose shall complete the Design including the selection of any specification for any kind and standard of the material, workmanship, Plant and Mobile Plant to be supplied in connection with the Works and the Operation so far as not specified in the Contract and shall carry out and comply with his other obligations in the Contract, with all due skill, diligence and expedition.

9.2 The Contractor hereby warrants and undertakes to the Employer that:

- (a) in preparing the design and complying with his obligations under Clause 9.2A, the Contractor shall, where prescribed in the Employer's Requirements, comply in all aspects with the Design Checking Procedures,
- (b) no examination or lack of examination of whatsoever nature by the Employer, its agents or employees of the Contractor's drawings, documents, calculations or details relating to the execution of the Works or the Operation or otherwise nor any certification, comment, consent, rejection or approval, expressed by such persons in regard thereto, either with or without modification, shall in any respect relieve or absolve the Contractor from any obligations or liability under or in connection with the Contract,
- (c) he has checked the Site's existing ground condition and the Existing Facilities to the extent practicably allowed up to the time of submission of the Tender, the Employer's Requirements, the Contractor's Plans and the Employer's Drawings and he is satisfied that they are in all respects suitable for the purposes expressed for them in or to be implied from the Contract,
- (d) he has checked the characteristics of the food waste in Hong Kong and the policies, the initiatives and the waste action programmes stipulated in the publications of the Environment Bureau of the Government, including the Waste Blueprint for Hong Kong 2035, Hong Kong Blueprint for Sustainable Use of Resources and A Food Waste & Yard Waste Plan for Hong Kong, and other papers and reports for the Panel on Environmental Affairs of the Legislative Council to the extent practicably allowed up to the time of submission of the Tender, and he is satisfied that his design is in all respects suitable to treat the food waste to be received throughout the Operation Period,
- (e) the Design, the Works, the Facility and the Contractor's Plans shall all strictly comply with the Contract, the provisions of any enactment, the rules and regulations or bye-laws of any local or duly constituted authorities or any public bodies and shall be and remain suitable for the purposes expressed in or to be implied from the Contract, and
- (f) notwithstanding any prior design work carried out by or on behalf of the Employer or, for the avoidance of doubt, any Employer's comment or direction on, review or acceptance of, consent to proceed with or request to revise any part of the Design carried out by the Contractor, the warranties in sub-clauses (c) to (e) shall not be affected and the Contractor shall continue to bear full liability and responsibility for the Design.
- (g) Not used.

9.2A The Contractor shall, unless it is otherwise provided in the Contract, have in respect of any defect or insufficiency in the Design (including any further design which the Contractor has to carry out as a result of a Change as defined in Clause 42 or 44) the like liability to the Employer, whether under statute or otherwise, as would an appropriate professional designer holding himself out as competent to take on the Design, provided always that:

- (a) where the Employer has relied upon the Contractor to select Plant and materials required by the Design to be incorporated in the Works, the Contractor shall ensure

that all such Plant and materials are reasonably suitable for the purpose intended by the Contract, and

- (b) subject to sub-clause (a) above, in no circumstances shall the Contractor be obliged to ensure that the Design is fit for the purpose intended by the Contract.

9.3 Without limitation to Clause 6.1, the Employer shall be entitled to assign the benefit of the warranties and undertakings in Clause 9.2 to a third party without the Contractor's consent. Where required by the Employer, the Contractor shall within 56 days of a written request execute a warranty under seal in the form set out in **Appendix J** (with only such amendments as may previously have been agreed in writing by the Employer) in favour of a third party to whom an assignment has been made under Clause 9.3 Clause 6.1. The execution of such deed of warranty shall not limit or affect the Contractor's obligations and liabilities under the Contract or under any assignment pursuant to Clause 9.3 or 6.1.

9.4 Subject to Clause 21.1 and subject to routine maintenance (as described in the Employer's Requirements or the Contractor's Plans) to be carried out by or on behalf of the Employer following the date of the Handover Certificate, the warranties and undertakings of the Contractor in Clause 9.2 shall continue to apply in respect of the Facility until the expiry of the Operation Period including any period as extended under Clause 61. It is also agreed that:

- (a) where there is a termination of the Contract prior to the expiry of the design life (as set out in the Employer's Requirements or the Contractor's Plans) of any Plant or any part of the Facility, in respect of such Plant or part of the Facility, the warranties and undertakings in Clause 9.2 shall apply until the expiry of the said design life; and
- (b) in respect of the Mobile Plant, the warranties and undertakings in Clause 9.2 shall continue to apply until the expiry of the Operation Period.

9.5 Save in so far as it is legally or physically impossible (except where the legal or physical impossibility arises from the Contractor's Design and/or the Contractor's Plans), the Contractor shall execute the Works and the Operation in strict accordance with the Contract to the satisfaction of the Employer and, as the case may be, the Supervising Officer and shall comply with and adhere strictly to the instructions of the Employer or, as the case may be, the Supervising Officer on any matter related to the Contract whether mentioned in the Contract or not.

9.6 The Contractor shall do everything necessary or appropriate for the safe and efficient Operation and shall so carry out the Operation so as to ensure the Facility and the Existing Facilities remain suitable for the purposes expressed in or to be implied from the Contract.

9.7 From the date for commencement of the Design and the Works notified by the Employer in accordance with Clause 83, the Contractor shall, at his own Cost, implement for the Design, the Works and the Operation a quality assurance or control system based on the outline quality assurance plan submitted as part of the Contractor's Plans that is compliant with the requirements of the International Standards Organisation (ISO) 9000, or a similar equivalent system approved by the Employer.

9.8 Within 3 months of the date of the Letter of Acceptance, the Contractor shall book with a certification body acceptable to the Employer the date of audit for the ISO 9001:2015 certification; with detailed documented quality system procedures ready at the time of booking. If the Contractor is a joint venture, the date of audit for ISO 9001:2015

certification shall mean that in respect of the specified participant or shareholder in the statement submitted in accordance with Clause 54 of the Conditions of Tender (a copy of which is at *Appendix Z3*). Notwithstanding any other provisions in the Contract, compliance with Clause 9.8 shall be a condition precedent to the Contractor's entitlement to any payment or any further payment as the case may be under the Contract.

- 9.9 Clause 9.8 is not applicable if the Contractor or, where the Contractor is a joint venture, its specified participant or shareholder has already obtained ISO 9001:2015 certification on or before the date of the Letter of Acceptance.
- 9.10 Within 2 years of the date of the Letter of Acceptance, the Contractor shall obtain certification for ISO 14000.
- 9.11 The Contractor shall apply the requirements of ISO 9000, or as the case may be ISO 14000, certification to the Design, the Works and the Operation. Once certified the Contractor shall ensure that these systems remain certified, including throughout the Operation Period.
- 9.12 The Contractor when called on to do so, shall enter into and execute Articles of Agreement that will be prepared at the expense of the Employer in the form set out in *Appendix A* or *Appendix E* with such modifications as may be necessary.
- 9.13 The Contractor shall be responsible throughout the Operation Period for the maintenance of the Facility including all repairs, replacements and renewals of the Plant, Mobile Plant and materials which at all times shall be maintained to perform in accordance with the Employer's Requirements. The Contractor shall effect all necessary or appropriate maintenance with due diligence and expedition.
- 9.14 If the service life of any Plant as determined according to the Employer's Requirements, or as otherwise established, expires during the Operation Period, the Contractor shall before such expiry renew or replace such Plant as necessary. The cost of such renewal or replacement shall be deemed to be included in the Operation Fees provided that with respect to the working life of any Plant which is due to expire but which Plant still performs safely and efficiently and in accordance with the Contract, the Contractor may, with the approval of the Employer, defer such renewal or replacement so long as the said performance continues but the Contractor shall in any event complete the said renewal or replacement before expiry of the Operation Period. The Contractor shall update the inventory database for asset management regularly and an independent audit of the inventory database shall be conducted every 25 months from the commencement of the Operation Period.
- 9.15 Not used.

#### **9A. CONTRACTOR'S JOINT VENTURE**

- 9A.1 Where the Contractor is an incorporated joint venture, it shall within 14 days of the date of the Letter of Acceptance provide to the Employer a joint venture guarantee in the form set out in *Appendix B* as required under Clause 10.1, executed by all the shareholders of the Contractor. For the purposes of this Clause 9A, the expressions "incorporated joint venture", "shareholder" and "participant" shall bear the same meanings as those given in paragraph 6 of the Environment, Transport and Works Bureau Technical Circular (Works) No. 50/2002 on Contractors' Joint Venture.
- 9A.2 Notwithstanding any other provision of the Contract, failure by the Contractor to provide a joint venture guarantee in strict accordance with Clause 9A.1 shall constitute a breach of the Contract entitling the Employer to damages and shall entitle the Employer to terminate the

Contract forthwith by notice in writing to that effect and the Contractor shall not be entitled to any compensation whatsoever as a consequence of such termination.

**9A.3** The Contractor shall not make any changes to:-

- (a) the financial participation of each participant or shareholder in a joint venture; or
- (b) the portion of the Works and the Operation for which each participant or shareholder in a joint venture is responsible;

during the continuance of the Contract unless prior written consent from the Employer is obtained in accordance with Clause 9A.4.

**9A.4** In the event that the Contractor considers a change to the details referred to in Clause 9A.3(a) or 9A.3(b) is necessary:

- (a) because any participant or shareholder in a joint venture shall become bankrupt or have a receiving order made against him or shall present his petition in bankruptcy or shall make an arrangement with or assignment in favour of his creditors or shall agree to carry out the Contract under a committee of inspection of his creditors or (being a corporation) shall go into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction); and
- (b) for satisfactory completion of the Works and the Operation,

the Contractor shall write to the Employer with detailed substantiation requesting the Employer's consent before any changes are made. The Employer may in his absolute discretion accept or reject the request but shall within 14 days from the date of receipt of such request inform the Contractor in writing whether consent is given.

**9B. JOINT AND SEVERAL LIABILITY OF PARTNERS AND UNINCORPORATED JOINT VENTURE PARTICIPANTS**

**9B.1** Where the Contractor is a partnership or an unincorporated joint venture, the liability of each partner of the partnership or participant of the unincorporated joint venture under the Contract shall be joint and several.

**9B.2** In relation to such Contractor only, the Articles of Agreement referred to in Clause 9.12 shall mean the Articles of Agreement for Unincorporated Joint Ventures as set out in *Appendix E*, with such modifications as may be necessary.

**9B.3** For the purposes of this Clause 9B, the expressions "unincorporated joint venture" and "participant" shall bear the same meanings as those given in paragraph 6 of the Environment, Transport and Works Bureau Technical Circular (Works) No. 50/2002 on Contractors' Joint Venture.

**9C. NOT USED**

**10. GUARANTEES, UNDERTAKINGS AND SECURITIES**

**10.1** Within 14 days of the date of the Letter of Acceptance, the Contractor shall provide to the Employer a guarantee in the form set out in *Appendix B* executed by each of the shareholders of the Contractor and a guarantee or, as the case may be, guarantees in the form set out in *Appendix C* executed by the person or, as the case may be, persons identified by the Employer.

- 10.2 Within 14 days of the date of the Letter of Acceptance, the Contractor shall provide to the Employer an undertaking or, as the case may be, undertakings in the form set out in *Appendix D* executed by the person or, as the case may be, persons identified by the Employer.
- 10.2A In the event that the Contractor, or where the Contractor is an unincorporated/incorporated joint venture, a participant/shareholder of the joint venture, has claimed his experience through any of his holding company, subsidiary company or another subsidiary company of the same holding company of the Contractor or, as the case may be, the participant/shareholder of the joint venture (“related company” or “related companies”) in the Tender, within 14 days of the date of the Letter of Acceptance, the Contractor shall provide to the Employer an undertaking or, as the case may be, undertakings in the form set out in *Appendix D1* from each of such related companies, duly executed, to ensure that the related companies shall provide technical inputs to the Contractor in the specific areas of expertise proposed in the Tender. For the purposes of this Clause 10.2A, the expressions “unincorporated joint venture”, “incorporated joint venture”, “shareholder” and “participant” shall bear the same meanings as those given in paragraph 6 of the Environment, Transport and Works Bureau Technical Circular (Works) No. 50/2002 on Contractors’ Joint Venture.
- 10.3 Notwithstanding any other provisions of the Contract, failure by the Contractor to provide the guarantee(s) or the undertaking(s) in strict accordance with Clause 10.1, 10.2 or 10.2A, as the case may be, shall constitute a breach of the Contract entitling the Employer to remedies including damages and shall entitle the Employer to terminate the Contract forthwith by notice in writing to that effect, in which case the Contractor shall not be entitled to any compensation whatsoever as a consequence of such termination.
- 10.4 (a) The Contractor shall within 21 days of the date of the Letter of Acceptance provide to the Employer a bond of a bank for the due performance of the Contract in the form set out in *Appendix M*. The bond shall be for the amount stated in the Form of Tender and shall be for a period from the date of the bond until the date of the Handover Certificate or until the bond is paid in full, whichever is the earlier.
- (b) If it is not reasonably practicable to provide the bond as required in sub-clause (a), upon proof to the satisfaction of the Employer and subject to the written approval of the Employer, the Contractor shall within 21 days of the date of the Letter of Acceptance provide a bond in the form set out in *Appendix M1*. Such bond shall be for the amount stated in the Form of Tender and shall be for a period of 3 years from the date of the bond until the expiry of the 3-year period or until the bond is paid in full, whichever is the earlier. Such bond, if not paid in full, shall be renewed, or replaced by a new bond, every 3 years upon the expiry of the earlier bond until the date of the Handover Certificate. The Contractor shall provide the renewed or replacement bond to the Employer at least 2 months before the expiry of the earlier bond.
- 10.4A A bond (including any renewed or replacement bond) required under Clause 10.4 shall be issued by a bank which holds a valid banking licence granted under Section 16 of the Banking Ordinance (Cap. 155).
- 10.5 Notwithstanding any other provisions of the Contract, failure by the Contractor to provide a bond (including any renewed or replacement bond) in strict accordance with Clauses 10.4 and 10.4A shall entitle the Employer to terminate the Contract forthwith by notice in writing to that effect, in which case the Contractor shall not be entitled to any compensation whatsoever as a consequence of such termination.

10.6 Notwithstanding any other provisions of the Contract, provision of the requisite guarantee(s), undertaking(s) or bond in accordance with the foregoing provisions of this Clause 10 shall be a condition precedent to the Contractor's entitlement to any payment or any further payment as the case may be under the Contract.

**10A. NOT USED**

**11. INSPECTION OF THE SITE AND DATA**

11.1 The Contractor shall be deemed to have undertaken his own surveys and tests, to have examined and inspected the Site together with the Existing Facilities and their surroundings, and to have satisfied himself, before submitting his Tender, as to the existing roads and other means of communication with and access to the Existing Facilities and the Site, the nature of the ground and sub-soil, the form and nature of the Existing Facilities and the Site, the risk of injury or damage to property, the nature of materials (whether natural or otherwise) to be excavated, the location and nature of utilities (within and outside the Site), the nature of the work and materials necessary for the execution of the Design, the Works and the Operation, the accommodation he may require and generally to have obtained his own information on all matters affecting his Tender and the execution of the Design, the Works and the Operation.

11.2 Without limitation to Clause 11.1, the Contractor shall be deemed to have examined and inspected all relevant data, whether or not mentioned in the tender documents or the Employer's Requirements, affecting or likely to affect the Design, the Works and the Operation and to have satisfied himself as to the types, characteristics, nature, sources, quantities, quality and possible changes of quality and/or characteristics of food waste that may be delivered to the Facility for the purpose of the Design, the Works or the Operation.

11.3 No claim by the Contractor for additional payment shall be allowed on the ground of any misunderstanding in respect of the matters referred to in Clause 11.1 or 11.2 or otherwise or on the ground of any allegation or fact that incorrect or insufficient information was given to him by any person whether in the employ of the Employer or not or of the failure of the Contractor to obtain correct and sufficient information, nor shall the Contractor be relieved from any risk or obligation imposed on or undertaken by him under the Contract on any such ground or on the ground that he did not or could not foresee any matter which may in fact affect or have affected the execution of the Design, the Works or the Operation.

**12. SUFFICIENCY OF TENDER**

12.1 The Contractor shall be deemed to have satisfied himself before submitting his Tender as to the correctness and sufficiency of his Tender for the Design, the Works and the Operation and of the rates and prices stated in the Schedule of Prices for Capital Value and the Schedule of Prices for Operation Fees, which rates and prices shall, except in so far as it is otherwise provided in the Contract, cover all his risks, liabilities and obligations set out or implied in the Contract and all matters and things necessary for the proper execution of the Design, the Works and the Operation.

12.2 Payments to the Contractor under the Contract shall be deemed to include all financing costs and interest charges associated with the Design, the Works and the Operation and, save only as expressly provided to the contrary in the Contract, shall be the Contractor's sole entitlement, remuneration or payment in relation to such Design, the Works and the Operation and to all his obligations under the Contract relating thereto.

12.3 Not used.

## 12A. EXISTING FACILITIES

- 12A.1 Without prejudice to Clauses 9.2, 11 and 12 and subject to Clauses 12A.2 and 12A.3, the Contractor acknowledges that he has had full opportunity to inspect and satisfy himself prior to submission of the Tender, as to all matters concerning the design, construction, operation and maintenance of the Existing Facilities, and whether or not he availed himself of such opportunity, the Contractor acknowledges that the design, construction, operation and maintenance of the Existing Facilities are in all respects suitable for the purposes expressed for them in or to be implied from the Contract.
- 12A.2 For the civil works and electrical and mechanical works forming part of the Existing Facilities which it would not have been practicable for the Contractor to check prior to submission of the Tender, the Contractor is entitled to use the as-built records to ascertain the design, construction, operation and maintenance of the Existing Facilities, based on which the Contractor shall protect the relevant parts of the Existing Facilities from being damaged by any acts done in connection with the Design, the Works or the Operation, failing which the Contractor shall repair, rectify or replace the damaged part to the satisfaction of the Employer and any owners or occupiers of the Existing Facilities.
- 12A.3 For the civil works and electrical and mechanical works forming part of the Existing Facilities which it would have been practicable for the Contractor to check prior to submission of the Tender and which have not been modified or reconstructed due to any enhancement, improvement and replacement works specified in the Contract, the Contractor shall protect the relevant parts of the Existing Facilities from being damaged by any acts done in connection with the Design, the Works or the Operation, failing which the Contractor shall repair, rectify or replace the damaged part to the satisfaction of the Employer and any owners or occupiers of the Existing Facilities.
- 12A.4 No part of the Existing Facilities shall be modified or altered by the Contractor without prior approval of the Employer and any owners or occupiers of the Existing Facilities.

## 13. MARKING SCHEME IN TENDER EVALUATION

- 13.1 The Contractor's Plans (a copy of which is at *Appendix Z*) shall form part of the Contract. The Contractor shall, subject to this Clause 13 and Clause 7, execute the Works and the Operation in accordance with the Contractor's Plan.
- 13.2 Without prejudice to Clauses 15 and 15A, the Contractor shall provide a management and design team including on and off Site suitably experienced staff in the Contractor's Plans or necessarily inferred therefrom.
- 13.3 Without prejudice to Clause 9.1, the Contractor shall provide all necessary Constructional Plant, Plant and Mobile Plant including those included in the Contractor's Plans or necessarily inferred therefrom which are necessary or desirable for the satisfactory execution and timely completion of the Works or the Operation.
- 13.4 In the event the Contractor is unlikely to provide or maintain any staff of the management and design team in the Contractor's Plans or necessarily inferred therefrom, he shall report to the Employer as soon as practicable and propose for the Employer's approval a substitute staff having experience and qualification on par with or better than the original personnel who is leaving the management and design team. The Employer shall determine any

savings of Cost to the Contractor, if any, due to such a change, which shall be deducted from any payment due to the Contractor under the Contract.

- 13.5 In the event that the Contractor is unlikely to provide or maintain any Constructional Plant, Plant or Mobile Plant included in the Contractor's Plans or necessarily inferred therefrom, he shall report to the Employer as soon as practicable and propose for the Employer's approval a modification of or amendment to the Contractor's Plans. The Employer shall determine any savings of Cost to the Contractor, if any, due to such a change, which shall be deducted from any payment due to the Contractor under the Contract.
- 13.6 If it is legally or physically impossible for the Contractor to execute the Works or the Operation in accordance with the Contractor's Plans, the Contractor shall, insofar as is necessary, modify or amend the Contractor's Plans to enable the execution of the Works or the Operation and shall inform the Employer in writing. Any such modifications or amendments to the Contractor's Plans shall conform to the requirements of the Contract.
- 13.7 If the Contractor shall decide not to execute the Works or the Operation in accordance with the Contractor's Plans for any other reasons, the Contractor shall make necessary modifications or amendments to the Contractor's Plans for the execution of the Works or the Operation and shall inform the Employer in writing. Any such modifications or amendments to the Contractor's Plans shall conform to the requirements of the Contract.
- 13.8 In the execution of the Works or the Operation in accordance with the Contractor's Plans or the Contractor's Plans as modified or amended under Clause 13.6 or 13.7, the Contractor shall strictly comply with the Contract to the satisfaction of the Employer and shall strictly comply with and adhere to the Employer's instructions on any matter relating to the Contractor's Plans or the modified or amended Contractor's Plans.
- 13.9 The Contractor shall, within 21 days when so requested by the Employer, give detailed information on the estimated Cost of execution in accordance with the Contractor's Plans and the Cost of execution in accordance with the Contractor's Plans as modified or amended under Clause 13.6 or 13.7. The Employer shall determine any savings of Cost to the Contractor arising from the modified or amended Contractor's Plans taking into account the information so provided by the Contractor. Such savings shall be deducted from any payment due to the Contractor under the Contract.
- 13.10 The Contractor shall not be entitled to, except and to the extent that the Contractor is in compliance with a Change as defined in and ordered by the Employer under Clause 42, any additional payment or extension of time for the execution of the Works or the Operation in a manner which differs from the Contractor's Plans (including the Contractor's Plans as modified or amended under Clause 13.6 or 13.7) or both.
- 13.11 Any provision in the Contractor's Plans purporting to impose any obligation on the Employer or the Supervising Officer which is not an obligation of the Employer or, as the case may be, the Supervising Officer under the other documents forming part of the Contract shall have no effect and shall not be binding on the Employer or, as the case may be, the Supervising Officer.
- 13.12 Any provision in the Contractor's Plans purporting to confer any right or option on the Contractor which is not a right or option of the Contractor under the other documents forming part of the Contract shall have no effect.

#### **14. PROGRAMME TO BE FURNISHED**

- 14.1 Within 14 days of the date of the Letter of Acceptance or within such other period of time as may be specified in the Contract, the Contractor shall submit to the Employer a programme showing the sequence, method and timing in which the Contractor proposes to carry out the Design, the Works and the Operation together with the other details referred to in the Employer's Requirements and shall, whenever required by the Employer, furnish for his information, particulars in writing of the Contractor's arrangements for carrying out the Design, the Works and the Operation, and the provision of Constructional Plant, Plant, Mobile Plant and Temporary Works that the Contractor intends to supply, use, construct, or operate as the case may be.
- 14.2 The programme submitted under Clause 14.1 shall be in the form required by the Employer's Requirements and the Contractor shall make due allowance in the programme for the carrying out of work relating to the modification to the Existing Facilities by others as required in Clause 1.12S of the Employer's Requirements and for the carrying out of work by any Utility Undertaking, and the programme shall be in all other respects in accordance with the Contract.
- 14.3 Not used.
- 14.4 Within 21 days of the receipt by the Employer of the Contractor's programme under Clause 14.1 (or a revised programme as mentioned in this Clause) the Employer shall inform the Contractor in writing whether the Employer consents or does not consent to the programme (or the revised programme). In the event that the Employer does not consent to the programme (or the revised programme), he shall specify the part of the programme (or the revised programme) with which he is not satisfied and the Contractor shall prepare a revised programme in accordance with Clause 14.1 for the consent of the Employer.
- 14.5 Should it appear to the Employer at any time that the actual progress of the Design, the Works or the Operation does not conform with the programme (or the revised programme) consented by the Employer under Clause 14.4, the Employer shall be entitled to require the Contractor to produce and submit to the Employer a revised programme in the form required by the Employer's Requirements showing such modification to the programme as may be necessary to ensure completion of the Design and the Works within the Time for Completion and timely execution of the Operation in accordance with the Contract.
- 14.6 Submission of a programme or revised programme or furnishing of such particulars under Clause 14.1 or the giving or withholding of consent by the Employer under Clause 14.4, shall not relieve the Contractor of any duty, obligation or responsibility under the Contract or bind or create any obligation or liability on the part of the Employer.
- 14.7 The Contractor shall prepare and submit to the Employer and, until the issue of the last of the Certificates of Completion for the Works, to the Supervising Officer, on a monthly and annual basis commencing from the date of the Letter of Acceptance, reports covering the topics described in the Employer's Requirements and shall, if requested by the Employer or Supervising Officer in writing, provide the Employer with such additional information or documents to substantiate any statement in such a report, or expand the scope of such a report to include other matters in relation to the Design, the Works and the Operation.

## **15. CONTRACTOR'S SUPERINTENDENCE**

- 15.1 The Contractor shall give or provide all necessary superintendence during the execution of the Design, the Works and the Operation and as long thereafter as the Employer may consider necessary for the proper fulfilment of the Contractor's obligations under the Contract.

- 
- 15.2 The Contractor shall appoint a Project Manager, who shall be resident in Hong Kong, to manage and co-ordinate the Design, the Works and the Operation so as to ensure that the Contractor performs his obligations in accordance with the Contract, and the Project Manager shall be authorised to receive on behalf of the Contractor all directions, instructions, decisions and certificates from the Employer and the Supervising Officer for the purpose of the Contract.
- 15.3 In the event that the Contractor wishes to replace the Project Manager, he shall seek the Employer's prior approval of the replacement by giving at least 28 days written notice of the intended replacement containing the name and such particulars as may reasonably be required by the Employer of the replacement Project Manager. The intended replacement shall be deemed to be approved by the Employer if the Employer does not issue any disapproval in writing within 14 days from the Employer's receipt of the said notice.
- 15.4 The Employer shall have the power, which power shall not be unreasonably exercised, to withdraw his approval of the Project Manager at any time. If such approval shall be withdrawn, the Contractor shall, within 21 days from the receipt of notice in writing of such withdrawal, remove the Project Manager from the Site and the Facility and shall not thereafter engage him for the purpose of the Contract in any capacity and shall replace him by another Project Manager approved by the Employer.
- 15.5 The Contractor shall ensure that he is at all times during execution of the Works represented on the Site by the Site Agent. The Site Agent shall be constantly on the Site and shall give his whole time to the superintendence of the Works. The Contractor shall not appoint the Project Manager as the Site Agent.
- 15.6 In the event that the Contractor wishes to replace the Site Agent, he shall seek the Employer's prior approval of the replacement by giving at least 28 days written notice of the intended replacement containing the name and such particulars as may reasonably be required by the Employer of the replacement Site Agent. The intended replacement shall be deemed to be approved by the Employer if the Employer does not issue any disapproval in writing within 14 days from the Employer's receipt of the said notice.
- 15.7 The Employer shall have the power, which power shall not be unreasonably exercised, to withdraw his approval of the Site Agent at any time. If such approval shall be withdrawn, the Contractor shall, within 21 days from the receipt of notice in writing of such withdrawal, remove the Site Agent from the Site and shall not thereafter engage him for the purpose of the Contract in any capacity and shall replace him by another Site Agent approved by the Employer.
- 15.8 The Site Agent shall be authorised to receive on behalf of the Contractor all directions, instructions, decisions and certificates from the Employer and the Supervising Officer in respect of the Site.
- 15.9 The Contractor shall ensure that he is at all times during execution of the Operation represented on the Site by the Operation Superintendent. The Operation Superintendent shall be constantly on the Site and shall give his whole time to the superintendence of the Operation. The Contractor shall not appoint the Project Manager as the Operation Superintendent.
- 15.10 In the event that the Contractor wishes to replace the Operation Superintendent, he shall seek the Employer's prior approval of the replacement by giving at least 28 days written notice of the intended replacement containing the name and such particulars as may reasonably be required by the Employer of the replacement Operation Superintendent. The intended

replacement shall be deemed to be approved by the Employer if the Employer does not issue any disapproval in writing within 14 days from the Employer's receipt of the said notice.

- 15.11 The Employer shall have the power, which power shall not be unreasonably exercised, to withdraw his approval of the Operation Superintendent at any time. If such approval shall be withdrawn, the Contractor shall within 21 days from the receipt of notice in writing of such withdrawal, remove the Operation Superintendent from the Site and the Facility and shall not thereafter engage him for the purpose of the Contract in any capacity and shall replace him by another Operation Superintendent approved by the Employer.
- 15.12 The Operation Superintendent shall be authorised to receive on behalf of the Contractor all directions, instructions, decisions and certificates from the Employer in respect of the Operation.
- 15.13 Any notification to be given by the Contractor under the provisions of the Contract to the Employer or the Supervising Officer shall be given by the Project Manager on behalf of the Contractor.
- 15.14 For the avoidance of doubt, the Contractor shall be responsible for any acts, defaults, omissions, breaches or negligence of the Project Manager, the Site Agent and the Operation Superintendent. All references in the Contract to any acts, defaults, omissions, breaches or negligence of the Contractor shall be construed accordingly to include any acts, defaults, omissions, breaches or negligence of the Project Manager, the Site Agent or the Operation Superintendent.
- 15.15 In the event that the Contractor wishes to replace any one of the key specialists or any of the staff members in the following disciplines in the Contractor's team referred to in Clause 15A.1:
- (a) Design Manager; and
  - (b) Food Waste Treatment Technology Specialist,

he shall seek the Employer's prior approval of the replacement by giving at least 28 days written notice of the intended replacement containing the name and such particulars as may reasonably be required by the Employer of the replacement staff member. The intended replacement shall be deemed to be approved by the Employer if the Employer does not issue any disapproval in writing within 14 days from the Employer's receipt of the said notice.

- 15.16 The Employer shall have the power, which power shall not be unreasonably exercised, to withdraw his approval of any one of the key specialists or the staff member at any time. If such approval shall be withdrawn, the Contractor shall within 21 days from the receipt of notice in writing of such withdrawal, remove the key specialist or the staff member from the Site and the Facility and shall not thereafter engage him for the purpose of the Contract in any capacity and shall replace him by another key specialist or staff member approved by the Employer.

## **15A. CONTRACTOR'S TEAM**

- 15A.1 Without prejudice to Clause 15, the Contractor shall provide a team of suitably qualified and experienced staff to manage and supervise the performance of the Contract throughout the execution of the Works and the Operation (hereinafter referred to as "the Team" in this Clause 15A). The Team shall comprise sufficient number of staff members in the following disciplines who shall be under the direct employment of the Contractor:-

- (a) Project Manager;
- (b) Site Agent;
- (c) Operation Superintendent;
- (d) Project Coordination Engineer; and
- (e) Safety Manager.

The Team shall also comprise sufficient number of key specialists of the following disciplines who shall be either under the direct employment of the Contractor or under the employment of a first-tier sub-contractor:

- (f) Design Manager; and
- (g) Food Waste Treatment Technology Specialist.

The Team shall also comprise sufficient number of staff members in the following disciplines who shall be either under the direct employment of the Contractor or under the employment of a first-tier sub-contractor:

- (h) Equipment Installation Superintendent;
- (i) Surveyor; and
- (j) Laboratory Technician.

- 15A.2 Members of staff on the Team are prohibited to be given a sub-contract to any part of the Works or the Operation or to have a vested interest in any of the sub-contractors irrespective of tiers including Specialist Sub-contractors and Nominated Sub-contractors.
- 15A.3 Within 14 days of the date of the Letter of Acceptance, the Contractor shall submit to the Employer a list of staff with all necessary details which comprised the Team.
- 15A.4 The Contractor shall either provide documentary proof on the employment status of the staff on the Team, such as employment contracts, tax returns, payment of salaries and the like upon request by the Employer, or provide a formal declaration to the effect that such a staff is indeed under the direct employment of the Contractor or under the employment of a first-tier sub-contractor. The declaration shall be signed by a person authorised to sign tenders on behalf of the Contractor.
- 15A.5 Unless otherwise consented by the Employer, members of staff as mentioned in Clause 15A.1 (b) and (d) shall be full time on Site during working hours for the execution of the Works.
- 15A.5A Unless otherwise consented by the Employer, the Operation Superintendent and the Laboratory Technician shall be full time on Site during working hours for the execution of the Operation. The Operation Superintendent shall also be present during the Testing of the Works.
- 15A.6 In the event that the Contractor wishes to replace any of the staff members on the Team, he shall seek the Employer's prior approval of the replacement by giving at least 28 days written notice of the intended replacement containing the name and such particulars as may reasonably be required by the Employer of the replacement staff member. The intended

replacement shall be deemed to be approved by the Employer if the Employer does not issue any disapproval in writing within 14 days from the Employer's receipt of the said notice.

15A.7 Unless otherwise consented by the Employer, the Food Waste Treatment Technology Specialist shall be full time on Site in the periods stated in the Employer's Requirements.

## **16. CONTRACTOR'S EMPLOYEES**

16.1 The Contractor shall provide and employ and shall ensure that any of his sub-contractors shall provide and employ in connection with the execution of the Design, the Works and the Operation:

- (a) such skilled and qualified designers as are necessary for the proper and timely execution of the Design,
- (b) such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Works and the Operation,
- (c) only such technical personnel as are skilled and experienced in their respective trades and callings and such sub-agents, foremen and leading hands as are competent to give proper training and supervision to the work that they are required to supervise, and
- (d) such managerial and supervisory staff and operatives as are necessary for the proper and timely execution of the Operation.

16.2 The Employer shall be at liberty to object to and require the Contractor to remove forthwith from the Design, the Works, or the Operation any person employed by the Contractor or by a sub-contractor in or about the execution of the Design, the Works or the Operation who in the opinion of the Employer misconducts himself or is incompetent or negligent in the proper performance of his duties or fails to comply with any particular provision with regard to safety or who does not have lawful permission to work in Hong Kong or whose employment is otherwise considered by the Employer to be undesirable, and such person shall not be again engaged in the Design, the Works or the Operation without the written permission of the Employer.

16.3 Any person so removed from the Design, the Works or the Operation shall be replaced as soon as possible by a competent substitute.

16.4 The Employer's power of removal under Clause 16.2 shall not be unreasonably exercised.

## **17. SAFETY AND SECURITY OF THE WORKS AND THE OPERATION**

17.1 The Contractor shall throughout the execution of the Works and the Operation take full responsibility for the adequate stability and safety of all work and operations on the Site and the Facility and have full regard for the safety and health of all persons on the Site and the Facility. The Contractor shall keep the Site, the Facility and the Works in an orderly state appropriate to the avoidance of danger to all persons.

17.2 The Contractor shall in connection with the Works (before and after their completion) and the Operation provide and maintain all lights, guards, fences and warning signs and provide watchmen when and where necessary or required by the Employer or by any competent statutory or other authority for the protection of the Works (before and after their completion) or the Operation or for the safety and convenience of the public or others.

- 17.3 The Contractor shall ensure that all parts of the Site and the Facility, are so lighted as to ensure the safety of all persons on or in the vicinity of the Site and the Facility, and of such work or operation.
- 17.4 The Contractor, after obtaining any necessary approval from any relevant authority, shall submit to the Employer proposals showing the layout of pedestrian routes, lighting, signing and guarding for any road opening or traffic diversion which may be required in connection with the execution of the Works or the Operation. No such road opening or traffic diversion shall be brought into operation or use unless the proposals submitted have been previously approved by the Employer and properly provided and implemented on the Site and, as the case may be, on the Facility.
- 17.5 The Contractor shall prepare a draft Safety and Health Plan in accordance with the Employer's Requirements and the outline Safety and Health Plan submitted in the Tender and submit within 14 days of the date of the Letter of Acceptance three copies of such draft Safety and Health Plan to the Employer.
- 17.6 Within 7 days from the submission of the draft Safety and Health Plan, the Contractor shall arrange and hold an ad hoc meeting (or meetings if necessary) with the Employer and the Supervising Officer to discuss the draft Safety and Health Plan. Where the Employer is of the opinion that the draft Safety and Health Plan does not meet the requirements of the Contract, he shall request that the Contractor remedies the deficiency prior to submitting the Safety and Health Plan to the Supervising Officer under Clause 17.7.
- 17.7 The Contractor shall submit within 35 days of the date of the Letter of Acceptance six copies of the Safety and Health Plan to the Supervising Officer.
- 17.8 The Contractor shall review the Safety and Health Plan at monthly intervals and shall revise and update the Safety and Health Plan if necessary.
- 17.9 In addition to Clause 17.8, if the Employer is of the opinion that the Safety and Health Plan does not meet the requirements of the Contract, the Employer may at any time by notice in writing require the Contractor to revise or update the Safety and Health Plan and the Contractor shall comply with that requirement within 7 days of the date of the notice.
- 17.10 The Contractor shall provide all facilities, access and assistance to the Employer and the Supervising Officer to periodically verify that the Safety and Health Plan is being properly and fully implemented. If the Employer or the Supervising Officer is of the opinion that the Safety and Health Plan is not being properly and fully implemented and that the failure may adversely affect the safety and health of any person or the safety of any property on or adjacent to the Site or the Facility, the Employer may notify the Contractor in writing of such failure and the Contractor shall forthwith take all necessary steps to rectify that failure accordingly. For the avoidance of doubt, this Clause 17.10 does not limit or take away from the Employer any power under the Contract including the power to suspend the execution of the Works or the Operation or any part thereof under Clause 38.
- 17.11 The Contractor shall comply with the Safety and Health Plan in the execution of the Works and the Operation and ensure his employees and sub-contractors of all tiers comply with the Safety and Health Plan. The Contractor shall ensure that the Safety Manager and all Safety Officers and Safety Supervisors and all sub-contractors' personnel who are in a position of authority have access to a copy of the Safety and Health Plan and are made aware of their obligation to comply with the Safety and Health Plan. The Contractor shall provide any other parties working on the Site including Utility Undertaking with a copy of the Safety

and Health Plan and shall ensure that those parties comply with it. The Contractor shall report any person who fails to comply with the Safety and Health Plan to the Employer.

- 17.12 Submission to the Employer of the Safety and Health Plan and of any proposed revision or update shall not relieve the Contractor from any of his obligations or responsibilities under the Contract.
- 17.13 The implementation of the Safety and Health Plan by the Contractor shall be entirely without prejudice to and shall not derogate from any of his responsibilities under the Contract or any statutory regulation with respect to health and safety and shall not impose any obligation or responsibility on the Employer beyond that under the Contract.
- 17.14 The Contractor shall provide to the Employer and the Supervising Officer at monthly intervals a complete list of all sub-contractors on the Site or the Facility for the purpose of the Works or the Operation and the names of the Safety Officers and the Safety Supervisors for each such sub-contractor, whether the employment of such a Safety Officer or Safety Supervisor is made under the Contract or by virtue of any enactment.
- 17.15 Not Used.

**17A. NOT USED**

**17B. NOT USED**

**18. ENVIRONMENTAL MANAGEMENT PLAN**

- 18.1 The Contractor shall prepare a draft Environmental Management Plan (EMP) in accordance with the requirements set out in the Employer's Requirements and based on the Contractor's Plans submitted by the Contractor in the Tender and submit 3 copies of the draft EMP to the Supervising Officer for comment within 28 days of the date of the Letter of Acceptance.
- 18.2 If the Supervising Officer is of the opinion that the draft EMP does not meet the requirements of the Contract, he shall request the Contractor to revise the draft EMP by notice in writing and the Contractor shall revise the draft EMP and re-submit within 7 days of the date of the notice.
- 18.3 The Contractor shall finalise the EMP within 45 days of the date of the Letter of Acceptance and submit 3 hard copies of the EMP and a soft copy in Microsoft Word format to the Supervising Officer.
- 18.4 The Contractor shall review and update the EMP monthly and submit 3 hard copies of the updated part of the EMP and a soft copy in Microsoft Word format to the Supervising Officer.
- 18.5 The Contractor shall provide all facilities, access and assistance to the Supervising Officer to periodically verify the implementation of the EMP. If the Supervising Officer is of the opinion that the EMP is not being properly implemented, the Supervising Officer shall notify the Contractor in writing of such failure and the Contractor shall take all necessary steps promptly to rectify that failure.
- 18.6 The Contractor shall comply with the EMP and ensure compliance with the provision of the necessary environmental measures as specified in the Contract in the execution of the Works and the Operation, including the compliance by his employees and sub-contractors of all tiers. The Contractor shall provide any other parties working on the Site or, as the case may be, the Facility, including Utility Undertakings, with a copy of the EMP and shall

request those parties to comply with it. The Supervising Officer shall have the power to order removal of any person who, or Constructional Plant or equipment that, fails to comply with the EMP from the Site or, as the case may be, the Facility, and suspension of any work activity which fails to comply with the EMP.

- 18.7 The submission of the EMP shall not relieve the Contractor from any of his obligations or responsibilities under the Contract.
- 18.8 For works involving demolition, the Contractor shall submit a method statement for the works as part of the EMP to the Employer for approval prior to the commencement of the demolition on the Site or, as the case may be, the Facility. The Contractor shall include in the method statement the sequence of demolition and the work programme to facilitate effective recovery of reusable and/or recyclable portions of the C&D materials at the earliest stage, so as to minimise the need for subsequent sorting, and specify the measures to minimise nuisance affecting the immediate vicinity. Particular attention shall be given to materials that will cause contamination or ill-health to workers. C&D materials arising from demolition debris shall be separated into the following categories:
- (a) broken concrete
  - (b) other inert materials, e.g. blockwork, brickwork etc.
  - (c) metals, e.g. reinforcement bars, mechanical and electrical fittings, building services fittings, hardware etc.
  - (d) general refuse
  - (e) hazardous materials

## **19. USE OF ULTRA LOW SULPHUR DIESEL**

- 19.1 All Constructional Plant, Plant and Mobile Plant powered by diesel fuel, whether they belong to the Contractor or his sub-contractors, shall only be replenished with ultra low sulphur diesel (ULSD) (defined as diesel fuel containing not more than 0.005% by weight of sulphur) when working on the Site or the Facility, as the case may be. The Contractor shall maintain a summary record of all delivery notes of ULSD delivered to the Site or, as the case may be, the Facility, including those ordered by his sub-contractors, together with the details of consumption of such fuel by the individual Constructional Plant, Plant and Mobile Plant on the Site or, as the case may be, the Facility, and the date of arrival and departure of the Constructional Plant, Plant and Mobile Plant to and from the Site. The record of fuel deliveries shall be supported by the original receipts of the delivery notes from oil companies. Both the record and the delivery notes shall be kept on the Site or, as the case may be, the Facility, for ready inspection by the Employer on request.
- 19.2 The Employer may order at any time any number of fuel samples to be taken from any diesel-operated Constructional Plant, diesel-operated Plant, diesel-operated Mobile Plant, fuel tank and/or container on the Site or, as the case may be, the Facility, except those which the Contractor can substantiate that the Constructional Plant, Plant, Mobile Plant, fuel tank and container concerned has/have been brought to the Site or, as the case may be, the Facility, recently according to the summary record maintained under Clause 19.1, and has/have never been replenished with any fuel since its arrival. The sulphur content of the fuel samples shall be tested by a HOKLAS accredited laboratory using internationally recognised testing methods such as ASTM D2622, ISO 14596 and ISO 20884. The laboratory to carry out the test shall be proposed by the Contractor and agreed by the Employer.

## **20. SUSPENSION OF WORKS FOR NON-COMPLIANCE OF CONSTRUCTIONAL**

## PLANT

- 20.1 The Supervising Officer shall have power to order suspension of the Works or any part thereof:
- (a) where any Constructional Plant, irrespective of whether it belongs to the Contractor or any of his sub-contractors, used for the Works or part thereof fails to comply with the emission requirement set out in the Employer's Requirements;
  - (b) where any Constructional Plant or equipment, irrespective of whether it belongs to the Contractor or any of his sub-contractors, falls under a category of Quality Powered Mechanical Equipment (QPME) as described under "Equipment Description" of the up-to-date table "Noise > Quality Powered Mechanical Equipment (QPME) > What is QPME system > Types of Construction Equipment included in the QPME System" ("type table") on the Environmental Protection Department (EPD)'s website at <http://www.epd.gov.hk> (which may be amended/updated from time to time) used in the Works or part thereof and is not a model from the table "Noise > Quality Powered Mechanical Equipment (QPME) > QPME Table – QPME type information" ("model table") on the same EPD's website; or
  - (c) where any Constructional Plant or equipment, irrespective of whether it belongs to the Contractor or any of his sub-contractors, falls under a category of QPME as described under "Equipment Description" of the up-to-date type table on the EPD's website at <http://www.epd.gov.hk> (which may be amended/updated from time to time) used in the Works or part thereof and is a model from the model table but the Contractor has not registered the Constructional Plant or equipment with EPD or failed to affix the QPME label on the Constructional Plant or equipment concerned in accordance with the guidelines in the aforesaid website.

- 20.2 Notwithstanding Clause 38.2, the Contractor shall not be entitled to any extension of time, additional cost or compensation whatsoever irrespective of whether he incurs any additional time or expenditure by reason of any order for suspension under this Clause 20.

## CARE OF THE WORKS AND THE FACILITY

- 21.1 From and including the date for the commencement of the Design and the Works in accordance with Clause 83 until 28 days after the date of handover certified by the Employer in the Handover Certificate or until the date the Employer takes over the Site, or as the case may be, the Facility, if earlier, the Contractor shall take full responsibility for the care of the Facility (including for the avoidance of doubt the Works), or any part thereof, and for the care of any Constructional Plant, temporary buildings, Plant, Mobile Plant and things whatsoever whether on or off the Site or the Facility or delivered to or placed on the Site or the Facility in connection with or for the purposes of the Works or the Operation.
- 21.2 In case any damage, loss or injury from any cause whatsoever, except the "excepted risks" as defined in Clause 21.4, shall happen to the Facility or any part thereof, or to any Constructional Plant, temporary buildings, Plant, Mobile Plant or things whatsoever whether on or off the Site during the period prescribed in Clause 21.1, the Contractor shall at his own Cost and with all possible speed make good, or at the option of the Employer shall pay to the Employer the Cost of making good, any such damage, loss or injury to the satisfaction of the Employer and shall, notwithstanding such damage, loss or injury, proceed with the execution of the Design, the Works and the Operation in all respects in accordance with the Contract and the Employer's instructions.

- 21.3 To the extent that any damage, loss or injury arises from any of the “excepted risks” as defined in Clause 21.4, the Contractor shall, if instructed by the Employer, repair and make good the same at the Cost or proportionate Cost of the Employer. Any sum payable under Clause 21.3 by the Employer shall be valued by the Employer in the same manner as a sum payable in respect of a Change as defined in ordered by the Employer under Clause 42.
- 21.4 The “excepted risks” 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 foreign terrorists in Hong Kong;
  - (d) civil war, rebellion, revolution 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 sub-contractor currently or formerly engaged on the Design, the Works or the Operation;
  - (f) a cause due to the occupation by the Employer, his agents, employees or other contractors not being employed by the Contractor, of any part of the Site or as, the case may be, the Facility, and such being authorised and required by the Employer;
  - (g) a cause due to any neglect or default by the Employer or his employees or agents in the course of their employment; and
  - (h) ionising radiations 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 provided always that the same are not caused in whole or in part by the Contractor or any sub-contractor, employee or agent of the Contractor.

## 22. DAMAGE TO PERSONS, PROPERTY AND THE ENVIRONMENT

- 22.1 The Contractor shall, except if and so far as the Contract otherwise expressly provides, indemnify and keep indemnified the Employer from and against all liabilities, indebtedness, expenses, costs, losses, claims, demands, actions, proceedings, arbitrations for or arising out of or in connection with or relating in any to:
- (a) the non-availability or defect or breakdown of the Facility or the Site or part thereof any time during the Operation Period;
  - (b) the death or injury or damage to any person or property whatsoever that may arise out of or in consequence of the Design, the Works or the Operation, or the Contractor’s performance of his other obligations under the Contract;
  - (c) not used;
  - (d) the Contractor’s failure to execute the Design, the Works or the Operation or to perform his other obligations under the Contract in accordance with all requirements of the Contract;
  - (e) not used;
  - (f) the Contractor’s failure to comply with or observe any enactment in the execution of the Design, the Works or the Operation or performance of his other obligations under the Contract;
  - (g) not used;

- (h) any conveyance of Pre-treated Food Waste from the Facility to the designated parts of the Existing Facilities notwithstanding the Employer's instruction to stop the conveyance;
- (i) any warranty or representation given by the Contractor in this Contract or from time to time to the Employer is incorrect, inaccurate, incomplete or misleading;
- (j) the omission, negligence, recklessness or willful misconduct of the Contractor in the execution of the Design or the Works or the Operation or performance of his other obligations under the Contract; or
- (k) any breach of any provision of this Contract by the Contractor.

Each of the sub-clauses (a) to (k) is separate and shall be construed independently and shall not prejudice or be limited by reference to or inference from the other of them or other provisions of this Contract.

22.2 Without limitation to the generality of the foregoing, the Contractor shall be responsible for all expenses, costs, losses and claims in respect of the rectification of or as a consequence of environmental damage, pollution or contamination arising as aforesaid whether on or off the Site or as the case may be, the Facility.

- (a) Not used.
- (b) Not used.

22.3 The Contractor shall make good or at the option of the Employer shall pay to the Employer the Cost of making good any damage, loss or injury that may occur to any property of the Employer and shall recompense the Employer in respect of any damage, loss or injury that may occur to any agent or employee of the Employer by or arising out of or in consequence of the execution of the Design, the Works or the Operation or in the performance of the Contract.

Provided that:

- (a) the Contractor's liability to indemnify or recompense the Employer under Clauses 22.1, 22.2 and 22.3 shall be reduced proportionately to the extent that the act or neglect or negligence (as defined in section 2(1) of the Control of Exemption Clauses Ordinance (Cap. 71)) of the Employer, his agents (in the course of appointment) or employees (in the course of employment) contributed to the damage, loss or injury;
- (b) nothing herein contained shall be deemed to render the Contractor liable for or in respect of or to indemnify the Employer against any compensation or damages for or with respect to:
  - (A) the use or occupation of land provided by the Employer for the Works or the Operation, or interference, whether temporary or permanent, with any right of way, light, air or water or other easement or quasi easement that is the unavoidable result of the execution of the Works or the Operation in accordance with the Contract, or
  - (B) the right of the Employer to carry out the Works and the Operation on, over, under, in or through any land, or
  - (C) injuries or damage to persons or property which are the unavoidable result of

the proper execution of the Works or the Operation in accordance with the Contract provided that they could not have been avoided by the Contractor having adopted any alternative design which would have complied with the Contract and which in all the circumstances would have been reasonable for the Contractor to adopt, or

for or in respect of all claims, demands, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto.

- 22.4 The indemnities given herein by the Contractor shall not be rendered ineffective or reduced by reason of any omission of the Employer or the Supervising Officer in watching and inspecting the Design, the Works and the Operation, or in testing and examining any material to be used and workmanship employed by the Contractor in connection with the Works and the Operation, or in supervising or controlling or inspecting the Contractor's site activities or methods of working or Temporary Works, or in detecting or preventing or remedying defective work, or in ensuring proper performance of any other obligation of the Contractor under the Contract.

## **23. INTERFERENCE WITH TRAFFIC AND ADJOINING PROPERTIES**

- 23.1 All operations necessary for the execution of the Works or the Operation shall be carried on so as not to interfere unnecessarily or improperly with:

- (a) the convenience of the public or the owner / operators of the Existing Facilities, or
- (b) the access to or use and occupation of public or private roads or footpaths or navigation channels to or of properties whether in the possession of the Employer or any other person.

The Contractor shall be deemed to have satisfied himself as to the precautions, times and methods of working and operation necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties.

- 23.2 The Contractor shall save harmless and indemnify the Employer in respect of all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in relation to any such matters in so far as the Contractor is responsible therefor.

- 23.3 Within 28 days of the date of the Letter of Acceptance, the Contractor shall submit a proposal to the Supervising Officer on measures for dealing with potential objections from any third parties or interest groups to the execution of the Works or the Operation, including the establishment of hotline and written communication to address any concerns or complaints, the issuance of regular updates on progress of the Works and the Operation, and the adoption of good neighbour policies.

The Supervising Officer and the Contractor shall agree the details of such measures as soon as practicable and in any event no later than 28 days after the commencement of the Design and the Works. Such measures shall be subject to review by the Supervising Officer once every 3 months.

## **24. INSURANCE**

- 24.1 Without limiting the Contractor's obligations and liabilities under the Contract, the Contractor shall insure in the joint names of the Employer, the Contractor and all sub-contractors of any tier and any other parties that the Employer may elect against:

- (a) all risks of loss or damage from whatever cause, other than the “excepted risks” as defined in Clause 21.4, to the Works and the Facility (including, for the avoidance of doubt, the Mobile Plant and Constructional Plant) and those things brought onto the Site for the purposes of the Works and the Operation, to their full replacement value together with sufficient allowance for professional fees and in such manner that the said property is covered from the commencement of the Design and the Works under Clause 83 until 28 days after the date of handover certified by the Employer in the Handover Certificate;
- (b) a sufficient allowance for all costs associated with the salvage, recovery or demolition or removal of debris whether damaged or undamaged of the property insured under sub-clause (a);
- (c) business interruption insurance, from the date for commencement of the Operation, sufficient to cover increased costs of working including the provision of temporary alternative facilities and all costs of transportation thereto and therefrom arising out of loss of or damage to the Facility or other property insured against under the terms of sub-clause (a); and
- (d) legal liability for loss or injury (including injury to health) to persons or loss of or damage to property (including property of the Employer, his servants or agents, and pollution and contamination damage to persons, property and the environment as a result of a “sudden and accidental” occurrence) arising out of or in connection with the Design, the Works, the Operation and the carrying out of the Contract, and in such manner that the parties are covered from the commencement of the Design and the Works under Clause 83 until 28 days after the date of handover certified by the Employer in the Handover Certificate.

Subject to Clause 24.6, the cover to be provided under sub-clause (d) shall be for an amount no less than that stated in the Form of Tender. The insurance policy to be procured under sub-clauses (a) and (d) shall be consistent with the terms in the specimen in **Appendix T** and shall at least cover the risks stipulated therein.

24.2 Without limiting the Contractor's obligations and liabilities under the Contract:

- (a) The Contractor shall effect and maintain, with well-established insurers of repute, professional indemnity insurance for a minimum amount stated in the Form of Tender in respect of his obligations in relation to the Design carried out by or on behalf of the Contractor pursuant to the Contract for any one occurrence or series of occurrences arising out of any one event, or each and every claim, for a period from the date for the commencement of the Design and the Works until 6 years after the date of the Certificate of Completion for the Works.
- (b) The Contractor shall procure that each of the designers and Design Checker appointed or engaged by the Contractor in connection with the Design or checking of the Design and the Works, shall effect and maintain, with well-established insurers of repute, professional indemnity insurance for a minimum amount of two times the lump sum fee of the engineering service or HK\$ 10 million, whichever is the higher, in respect of his obligations in relation to the Design, for any one occurrence or series of occurrences arising out of any one event, or each and every claim for a period from the respective dates of commencement of appointment or engagement of the designer until 6 years after the date of the Certificate of Completion for the Works.

- (c) The professional indemnity insurance referred to in sub-clause (a) or (b) shall respectively be effected with an insurer or insurers acceptable to the Employer. The Contractor shall immediately inform the Employer in writing if such insurance ceases to be available or otherwise is not maintained in accordance with this Clause 24.2 or for any reason becomes void or unenforceable.
- (d) If the insurance policy effected pursuant to sub-clauses (a) and/or (b) is project specific, the maximum deductible/excess allowed under the insurance policy shall be limited to a maximum of 20% of the minimum amount required under sub-clause (a) or (b), as the case may be.
- (e) (I) If (i) the insurance policy effected pursuant to sub-clause (a) or (b) contains a limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy, and (ii) the period of insurance under the insurance policy is 12 months or less, then either:
  - (A) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall be reinstated in full upon exhaustion of the limit of indemnity by reason of indemnity payments made on account of any claim, loss, damage, liability, cost or expense paid or payable under the insurance policy until the total amount of indemnity payable by the insurer under the insurance policy reaches 2 times the minimum amount required under sub-clause (a) or (b), as the case may be; or
  - (B) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall not be less than 2 times the minimum amount required under sub-clause (a) or (b), as the case may be; or
  - (C) the limit of indemnity for any one occurrence or series of occurrences arising out of any one event, or each and every claim under the insurance policy shall not be less than 2 times the minimum amount required under sub-clause (a) or (b), as the case may be.
- (II) If (i) the insurance policy effected pursuant to sub-clause (a) or (b) contains a limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy, and (ii) the period of insurance under the insurance policy exceeds 12 months, then either:
  - (A) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall be reinstated in full upon exhaustion of the limit of indemnity by reason of indemnity payments made on account of any claim, loss, damage, liability, cost or expense paid or payable under the insurance policy until the total amount of indemnity payable by the insurer under the insurance policy reaches 3 times the minimum amount required under sub-clause (a) or (b), as the case may be; or
  - (B) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall not be less than 3 times the minimum amount required under sub-clause (a) or (b), as the case may be; or

- (C) the limit of indemnity for any one occurrence or series of occurrences arising out of any one event, or each and every claim under the insurance policy shall not be less than 3 times the minimum amount required under sub-clause (a) or (b), as the case may be.
- (f) (I) The Contractor shall provide to the Employer within 60 days from the date of the Letter of Acceptance and thereafter, in the case where the insurance policy effected pursuant to sub-clause (a) does not cover the entire period of insurance as specified in sub-clause (a) within 7 days of professional indemnity insurance being effected upon the expiry of the earlier insurance policy:
- (i) an undertaking that the current insurance policy effected pursuant to sub-clause (a) complies with this Clause 24.2, in the form as set out in **Appendix O**; and
  - (ii) a certified copy of the full insurance policy effected pursuant to sub-clause (a) for the approval of the Employer unless the Contractor can demonstrate to the satisfaction of the Employer that it is not reasonably practicable to provide a certified copy of the full insurance policy in which event the Contractor shall provide a certificate in the form set out in **Appendix P** issued by the insurer or insurance broker of the insurance policy and any information relating to the insurance policy that the Employer may reasonably require.
- (II) The Contractor shall provide to the Employer within 60 days from the respective dates of appointment or engagement of his designer, and thereafter, in the case where the insurance policy effected pursuant to sub-clause (b) does not cover the entire period of insurance as specified in sub-clause (b), within 7 days of professional indemnity insurance being effected upon the expiry of the earlier insurance policy:
- (i) an undertaking that the current insurance policy effected pursuant to sub-clause (b) complies with this Clause 24.2, in the form as set out in **Appendix O**; and
  - (ii) a certified copy of the full insurance policy effected pursuant to sub-clause (b) for the approval of the Employer unless the Contractor can demonstrate to the satisfaction of the Employer that it is not reasonably practicable to provide a certified copy of the full insurance policy in which event the Contractor shall provide a certificate in the form set out in **Appendix P** issued by the insurer or insurance broker of the insurance policy and any information relating to the insurance policy that the Employer may reasonably require.
- (g) Not Used.
- (h) Not Used.
- (i) In determining the period of insurance under an insurance policy for the purpose of this Clause 24.2, any extension or renewal of the insurance policy shall be treated as a separate insurance policy and shall not have the effect of extending the period of insurance.

- 24.3 Without limiting the Contractor's obligations and liabilities under the Contract, the Contractor shall maintain either in the joint names of the Employer, the Contractor and all sub-contractors of any tier or cause any sub-contractor of any tier to maintain 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 a sub-contractor, as the case may be, and arising out of and in the course of such person's employment in connection with this Contract and such insurance shall comply with the Employees' Compensation Ordinance (Cap. 282) or any amendment or re-enactment thereof. The insurance policy affected under this Clause 24.3 shall be endorsed as set out in **Appendix G**.
- 24.4 Without prejudice to Clause 27, the Contractor shall comply and cause any sub-contractor of any tier to comply with the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272) or any amendment or re-enactment thereof, provided that the limit of indemnity under such insurance shall, subject to Clause 24.6, be the limit (if any) stated in the said Ordinance or not less than the amount stated in the Form of Tender whichever is the greater, per occurrence.
- 24.5 The term "review date" in Clause 24.6 means the date falling on the expiry of the three-year period following the commencement of the Design and the Works under Clause 83 and such date falling on the expiry of each subsequent three-year period.
- 24.6 Each of the sums referred to in Clauses 24.1(d), 24.3 and 24.4 shall be increased (and in no event shall be decreased) on a review date if there are changes in any matters that may affect the insurance or insurability including the following:
- (a) awards of damages by arbitrators or courts in Hong Kong;
  - (b) legislative and procedural matters in Hong Kong affecting litigation;
  - (c) the revelation of as yet unrealised medical or environmental results of Operation or the Facility; or
  - (d) the limits of coverage that are available at reasonable commercial rates in local and international insurance markets.
- 24.7 For the purpose of Clause 24.6, not less than 6 months prior to a review date, the Contractor shall provide the Employer with a detailed written proposal showing the amount proposed to be insured for the following three years under Clauses 24.1(d), 24.3 and 24.4 of the Conditions of Contract. Such proposal shall refer to the matters set out in Clause 24.6 and contain justification for any proposed increase or for proposing no change. The Employer shall within 3 months thereafter notify the Contractor in writing of the amount to be insured under Clauses 24.1(d), 24.3 and 24.4.

It is agreed that:

- (a) in the event that the Contractor fails to provide the detailed proposal in respect of the amount to be insured under Clause 24.1(d), 24.3 or 24.4 within the prescribed time, the Employer shall, in his absolute discretion, be entitled to determine the amount to be insured under Clause 24.1(d), 24.3 or 24.4 and shall then notify the Contractor in writing no later than 2 months before the relevant review date.
- (b) the Employer is not obliged to consider any late submission by the Contractor.

- 
- 24.8 All amounts to be covered by insurance determined in accordance with this Clause 24 shall be binding on the Contractor whether by agreement or by the Employer in his absolute discretion.
- 24.9 Revisions made under Clauses 24.6 and 24.7 shall be for the purpose of determining the insurance cover only and shall have no effect whatsoever on any claims made by the Contractor for payment or otherwise under the Contract. For the avoidance of doubt, the Contractor shall not be entitled to any increase in the Capital Value or the Operation Fees and shall not be entitled to make any claims against the Employer whatsoever as a result of any increase in the premium payable under any policy of insurance taken out pursuant to the Contract.
- 24.10 An insurance to be provided under this Clause 24 shall be effected with an insurer or insurers and in terms approved by the Employer.
- 24.11 In the event that any insured loss or damage occurs in respect of the cover provided under Clause 24.1(a), the Contractor shall take all necessary steps to ensure that insurance monies shall in the first instance be paid to the Employer. If and when the Contractor becomes entitled to payment under the Contract in respect of such loss or damage, the Employer shall use the insurance monies received to pay the Contractor provided that the Contractor shall not be entitled, notwithstanding any other provision of the Contract, to any monies in respect of the said loss or damage in excess of the insurance monies received by the Employer. The Contractor shall become entitled to insurance monies received by the Employer, if any, when the said loss or damage to which the monies relate has been fully replaced or repaired to the standard required by the Contract and the said insurance monies have been received by the Employer. The said insurance monies shall be paid to the Contractor not later than 28 days after the Contractor becomes entitled to such monies.
- 24.12 The Contractor shall within 21 days of being called on to do so lodge with the Employer the originals or certified true copies of the policy or policies of insurance specified in this Clause 24 and copies of the receipts for payment of the current premiums.
- 24.13 On discovering any event likely to give rise to a claim or claims under the said policy or policies then the Contractor shall forthwith give notice in writing to the Employer and to the relevant insurers with full particulars thereof including the extent, nature and location of any such loss or damage.
- 24.14 The Contractor shall copy to the Employer all claims, notices and correspondence made under or in connection with the policies.
- 24.15 If the Contractor shall fail on request to provide a policy or policies under Clause 24.12 or to produce to the satisfaction of the Employer documentary evidence that there is in force insurance under Clause 24, the Employer may effect and keep in force any such insurance and pay such premiums as may be necessary for that purpose. The Employer shall be entitled to deduct the premium so paid, together with expenses incurred, from any sums due to the Contractor in accordance with Clause 55 and/or to recover such amount as a debt due from the Contractor. Any exercise or non-exercise by the Employer of his rights under Clause 24.15 shall not relieve any obligation of the Contractor under this Clause 24.
- 24.16 Wherever insurance is effected in more than one name, the policy of such insurance shall insofar as the policy may cover more than one insured:
- (a) provide that all insurance agreements and endorsements operate in the same manner

as if there were a separate policy of insurance covering each party comprising the insured;

- (b) provide that the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties comprising the insured and that failure by any insured to observe and fulfil the terms of the policy does not prejudice the insurance in regard to any other insured party; and
- (c) contain a non-imputation clause providing that any non-disclosure or misrepresentation (whether fraudulent or otherwise), any breach of term or condition of the policy, or any fraud or other act, omission or default by one insured does not affect another insured provided that the said acts or omissions were not made with the connivance of that other insured.

**24A. NOT USED**

**25. ACCIDENT OR INJURY TO WORKERS**

- 25.1 The Employer shall not be liable for or in respect of any damages or compensation payable at law in respect of or in consequence of any accident or injury to any worker or other person in the employ of the Contractor or any sub-contractor save and except an accident or injury resulting from any act or default of the Employer, his employees or agents and the Contractor shall indemnify and keep indemnified the Employer against all such damages and compensation, save and except as aforesaid, and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- 25.2 In the event that any worker or other person employed on the Design, the Works or the Operation or in connection with the Contract whether in the employ of the Contractor or a sub-contractor suffering any personal injury and whether there be a claim for compensation or not, the Contractor shall, without delay, notify the Commissioner for Labour in such form and manner as required by the Employees' Compensation Ordinance (Cap. 282) and shall report the matter to the Employer in the form prescribed in the Contract.

**26. INTELLECTUAL PROPERTY RIGHTS AND ROYALTIES**

- 26.1 Except in respect of those Intellectual Property Rights referred to in Clause 26.6, all Intellectual Property Rights that subsist in the Design, the Works (or as the case may be, the Facility) and the Operation shall be and at all times remain vested in the Contractor.
- 26.2 The Contractor shall not infringe any Intellectual Property Rights or any other rights of any person, whether or not in connection with the Design or any Plant, Mobile Plant, Constructional Plant, machine, work, method or material or anything whatsoever required for any part of the Works and / or the Operation developed, adopted, produced or used by himself, his sub-contractors or the manufacturers of any proprietary product or system selected by him in or for the execution of the Works and / or the Operation and / or the performance of the Contract.
- 26.3 The Contractor warrants that:
  - (a) the provision of the Design or any part or component of the resultant Works or the Operation or any Plant, Mobile Plant, Constructional Plant, machine, work, method or material or anything whatsoever required for any part of the Works and / or the Operation by the Contractor, his sub-contractors or the manufacturers of any

proprietary product or system required or selected by him in or for the execution of the Works and / or the Operation and / or the performance of the Contract and the use, operation, custody or possession and / or the alteration, extension and maintenance of the Facility or any part(s) thereof and the resultant work by the Employer, his authorised operators / users, assigns and successors-in-title as well as any subsequent contractor engaged on the Facility and the Existing Facilities and any subsequent owners or occupiers of the Facility and the Existing Facilities will not infringe any Intellectual Property Rights or any other rights of any person;

- (b) in respect of any article, component, process or invention in the Design, the Works, the Operation, the Facility, the Plant, Mobile Plant, Constructional Plant, machines, works, methods, materials or anything whatsoever required for any part of the Works and / or the Operation developed, adopted, produced or used by the Contractor, his sub-contractors or the manufacturers of any proprietary product or system required or selected by him in or for the execution of the Works and / or the Operation and / or the performance of the Contract, the Intellectual Property Rights of which are vested in a third party ("Third Party Materials"), prior to the use of the Third Party Materials, the Contractor shall have obtained from such third party Intellectual Property Rights owner the grant of all necessary licences for itself, its sub-contractors or the manufacturers and the Employer, his authorised operators / users, assigns and successors-in-title as well as any subsequent contractor engaged on the Facility and the Existing Facilities and any subsequent owners or occupiers of the Facility and the Existing Facilities to use, operate and possess, and / or alter, extend and maintain the Facility and the Existing Facilities or any part(s) thereof, and to use the Third Party Materials for all purposes contemplated by this Contract and all purposes of any other contracts or projects executed by the Employer or any other parties engaged by the Employer (whether or not the Contractor is the contractor of such contracts or projects). The cost of the above licences shall be borne solely by the Contractor;
- (c) he has the full capacity, power and authority to enter into the Contract including the grant of the rights referred to in Clause 26.5;
- (d) except for the Third Party Materials, the Design, the Works, the Operation, the Facility, the Plant, the Mobile Plant, the Constructional Plant, and other machines, works, methods, materials or anything whatsoever required for any part of the Works and / or the Operation developed by the Contractor specifically under the Contract shall be or shall consist of original works created, developed or made by the Contractor for the Employer during the course of or in connection with the Contract; and
- (e) the exercise by the Employer, his authorised operators / users, assigns and successors-in-title as well as any subsequent contractor engaged on the Facility and the Existing Facilities or any subsequent owners or occupiers of the Facility and the Existing Facilities of any of the rights granted under the Contract will not infringe any Intellectual Property Rights of any party.

26.4 The Contractor shall indemnify and keep the Employer, his authorised operators / users, assigns and successors-in-title as well as any subsequent contractor engaged on the Facility and the Existing Facilities and any subsequent owners or occupiers of the Facility and the Existing Facilities fully and effectively indemnified against all proceedings, actions, costs, claims, demands, damages, losses, expenses (including the fees and disbursements of lawyers, agents and expert witnesses) and any compensation and costs that may be agreed to be paid in settlement of any proceedings and liabilities of whatsoever nature arising out

of or in connection with any allegation and / or claim that the use, development, custody, possession or operation of any article, component, process or invention in the Design, the Works, the Operation, the Plant, Mobile Plant, Constructional Plant, machine, work, method or material or anything whatsoever required for any part of the Works and / or the Operation developed, adopted, produced or used by the Contractor, his sub-contractors or the manufacturers of any proprietary product or system required or selected by him in or for the execution of the Works and / or the Operation and / or the performance of the Contract, or the use, operation, custody or possession and / or the alteration, extension and maintenance of the Facility and / or the Existing Facilities or any part(s) thereof and the resultant work by the Employer, his authorised operators / users, assigns and successors-in-title as well as any subsequent contractor engaged on the Facility and the Existing Facilities and any subsequent owners or occupiers of the Facility and the Existing Facilities infringes any Intellectual Property Rights or any other rights of any person.

- 26.5 The Contractor hereby grants at its own cost and expense for the benefits of the Employer, his authorised operators / users, assigns and successors-in-title as well as any subsequent contractor engaged on the Facility or any subsequent owners or occupiers of the Facility an irrevocable, royalty-free, non-exclusive, worldwide, perpetual and sub-licensable licence to exercise all Intellectual Property Rights in or connected with the Works, the Facility, the Design, and the Operation, to use, operate and possess, and / or alter, extend and maintain the Facility or any part(s) thereof and for all purposes contemplated by this Contract and all purposes of any other contracts or projects executed by the Employer or any other parties engaged by the Employer (whether or not the Contractor is the contractor of such contracts or projects).
- 26.6 To the extent that ownership of any Intellectual Property Rights in the Design, the Works (or as the case may be the Facility), the Operation, the Plant, Mobile Plant and Constructional Plant is vested in anyone other than the Contractor or the Employer (“Third Party Intellectual Property Rights”), the Contractor shall either obtain a valid and continuing licence under which he is entitled to sub-license the Third Party Intellectual Property Rights or procure that the relevant owner of the Third Party Intellectual Property Rights shall grant a licence together with an indemnity for the benefits of the Employer, his authorised operators / users, assigns and successors-in-title as well as any subsequent contractor engaged on the Facility and the Existing Facilities or any subsequent owners or occupiers of the Facility and the Existing Facilities upon the same terms mutatis mutandis as those set out in Clauses 26.4 and 26.5 respectively. The Contractor shall obtain the relevant licences at its own cost and expense.
- 26.7 The Contractor hereby irrevocably waives and undertakes to procure at its own cost and expense that its employees, sub-contractors, agents and all relevant authors to irrevocably waive all and any moral rights (whether past, present or future) arising whether under statute or otherwise in documents and/or articles in connection with the Design, the Works (or as the case may be the Facility) and the Operation and other things and materials developed by the Contractor specifically under this Contract (collectively “such items”). Such waiver shall operate in favour of the Government, its authorised users, assigns and successors-in-title and shall take effect upon delivery of such item to the Employer or upon the grant of licence to the Employer (as the case may be).
- 26.8 Not used.
- 26.9 Except when otherwise specified in the Contract, the Contractor shall pay all tonnage and other royalties, rent and other payments or compensation (if any) for getting stone, sand, gravel, clay or other materials required for the Works.

- 26.10 The Contractor shall at its own cost and expense do all such further acts, deeds and things and execute all such further documents, instruments and deeds (or procure that the same be done or executed) as may be required by the Employer at any time hereafter to give full effect to and for the purposes of implementing Clause 26 and Clause 9. The Contractor shall provide all such documents and materials to the Employer within 14 days of the date of the Employer's written request or such longer period as may be agreed by the Government in writing.
- 26.11 The provisions of Clause 26 including any licence and indemnity granted, as the case may be, pursuant thereto shall survive the expiry, completion or termination of this Contract or determination of the employment of the Contractor (howsoever occasioned) and shall continue in full force and effect notwithstanding such expiry, completion, termination or determination.
- 26.12 Not used
- 26.13 Upon the issue of the Handover Certificate or after termination, abandonment or determination of the Contractor's employment, entry and expulsion in accordance with Clause 101, frustration or termination in accordance with Clause 103 or 105 or where the Employer has appointed other contractors to perform work pursuant to Clause 53 the Contractor shall be deemed to have granted for the benefits of the Employer and the subsequent owners or occupiers of the Works free of all fee a non-exclusive, irrevocable transferrable, worldwide and perpetual licence to use all Intellectual Property Rights which have been provided or procured by the Contractor provided that the Employer shall make use of such Intellectual Property Rights solely in connection with the execution of the Works and the Operation and/or the subsequent alteration, extension and maintenance thereof and for all purposes contemplated by this Contract and all purposes of any other contracts or projects executed by the Employer or any other parties engaged by the Employer (whether or not the Contractor is the contractor of such contracts or projects). In the event of different Handover Certificate having been issued for different Sections or parts of the Works pursuant to Clause 47, the expression "Handover Certificate" shall for the purpose of this Clause 26.13 mean the last of such certificates.

## **27. COMPLIANCE WITH ENACTMENTS AND REGULATIONS**

- 27.1 The Contractor shall in executing the Design, the Works and the Operation conform in all aspects with:
- (a) not used;
  - (b) the provisions of any enactment;
  - (c) the regulations or bye-laws of any local or duly constituted authority; and
  - (d) the rules and regulations of such public bodies and statutory authorities as are referred to in the Contract;

and any additions or amendments thereto or any new enactments, regulations, bye-laws or rules made during the execution of the Design, the Works or the Operation, which are applicable to the Design, the Works or the Operation, and shall be responsible for the payment of all penalties and fines and discharge of all liabilities under such enactments, regulations, bye-laws or rules and shall keep the Employer indemnified against all penalties and fines and liabilities of every kind for breach of any such enactments, regulations, bye-laws or rules. For the avoidance of doubt, the Contractor shall, under no circumstances, be

paid by the Employer for any penalties, fines and liabilities under such enactments, regulations, bye-laws or rules nor shall the Capital Value or the Operation Fees be adjusted for that purpose.

- 27.2 The Contractor shall give all notices and pay all taxes, duties, licences, levies, premiums or other fees (including supervisory fees) required to be given or paid by reason of any enactment or any regulation or bye-law of any local or other duly constituted authority in relation to the execution of the Design, the Works or the Operation and by the rules and regulations of all public bodies and statutory authorities whose property or rights are affected or may be affected in any way by the Design, the Works or the Operation, including any new fee and any change in existing fees:
- (a) made on or after the date 10 days prior to the tender closing date; or
  - (b) made before the date 10 days prior to the tender closing date and the commencement date of which is only ascertainable on or after the date 10 days prior to the tender closing date.
- 27.3 The Employer shall reimburse the Contractor in respect of payments made by the Contractor for rates (if any) levied in respect of the Works or, as the case may be, the Facility, by the Government under the Rating Ordinance (Cap. 116), provided that the Employer shall not be responsible for any interest or other charges thereon.
- 27.4 Not used.
- 27.5 Any notice required to comply with any enactment or the rules and regulations of the Government or other competent authority and which the Contractor may have to exhibit either for the benefit of the public or for the benefit of his employees shall be written in English and traditional Chinese.
- 27.6
- (a) Notwithstanding the Contractor's obligations under Clause 27.1., in the event that there is any Change in Law, either or both sub-clause (b) or (c) is/are applicable.
  - (b) If in the opinion of the Employer the Employer's Requirements is precluding conformity with a Change in Law, the Employer shall order a Change as defined in Clause 42.1 to ensure conformity with such Change in Law and such Change shall be valued in accordance with Clause 43.
  - (c) If, irrespective of whether a Change is ordered for the purpose of sub-clause (b), the Employer is of the opinion that the Contractor has been or is likely to be involved in decrease in Cost (but excluding overheads whether on or off the Site or the Facility) to the Contractor in the performance of the Contract resulting from any Change in Law, or upon written application by the Contractor to the, the Employer is of the opinion that the Contractor has been or is likely to be involved in increase in Cost (but excluding overheads whether on or off the Site or the Facility) to the Contractor in the performance of the Contract for which the Contractor would not be reimbursed by a payment made under any other provision of the Contract resulting from any Change in Law, the Employer shall value the decrease or, as the case may be, ascertain the increase and shall certify in accordance with Clause 93 or 97. The Capital Value and/or the Operation Fees shall be adjusted to take into account any decrease or increase in Cost (excluding overheads whether on or off the Site or the Facility) to the Contractor in the performance of the Contract resulting from any Change in Law.
  - (d) Where a Change is ordered for the purpose of sub-clause (b), the Employer when valuing the decreased Cost (excluding overheads whether on or off the Site or the

Facility) or, as the case may be, ascertaining the increased Cost (excluding overheads whether on or off the Site) resulting from such a Change in Law under sub-clause (c) shall take into account the adjustment to the Capital Value and/or the Operation Fees already made under any provision in the Contract as a result of the change.

**27A. NOT USED**

**27B. NO WARRANTY OR ASSURANCE BY THE EMPLOYER**

- 27B.1 Where the Contractor's Design (whether included in the Tender or arising after the date of the Letter of Acceptance) and/or the Contractor's Plans require amendment to the existing Engineering Conditions and/or the latest Sha Tin Outline Zoning Plan, the Employer is not obliged to procure the initiation to amend the existing Engineering Conditions, and/or to conduct the statutory procedures under Town Planning Ordinance (Cap. 131) ("TPO") to amend the Sha Tin Outline Zoning Plan. The Employer also does not give any warranty or assurance that the agreement, assistance and/or co-operation of the relevant public bodies, statutory authorities, Government departments and/or public officers with respect to the initiation to amend the existing Engineering Conditions, and/or to conduct the statutory procedures under the TPO to amend the latest Sha Tin Outline Zoning Plan will be forthcoming. The Contractor shall be deemed to have noted the foregoing and Clause 27B.2 and to have checked and liaised with the relevant public bodies, statutory authorities, Government departments and/or public officers and to have satisfied himself, when preparing his Design and the Contractor's Plans, as to whether the agreement, assistance and/or co-operation of the relevant public bodies, statutory authorities, Government departments and/or public officers will be forthcoming and generally as regards the feasibility of his Design and the Contractor's Plans taking into account, inter alia, the Time for Completion.
- 27B.2 The Employer does not give any warranty or assurance that any proposed amendment to the existing Engineering Conditions will be approved by the District Lands Officer or any proposed amendment to the latest Sha Tin Outline Zoning Plan will be authorised under the TPO.
- 27B.3 The Contractor shall not be entitled to any additional payment or extension of Time for Completion if, in relation to any of the Contractor's Design (whether included in the Tender or arising after the date of the Letter of Acceptance) and/or the Contractor's Plans requiring amendment to the existing Engineering Conditions and/or the latest Sha Tin Outline Zoning Plan, the agreement, assistance and/or co-operation of the relevant public bodies, statutory authorities, Government departments and/or public officers with respect to the initiation to amend the existing Engineering Conditions and/or statutory procedures of the TPO to amend the latest Sha Tin Outline Zoning Plan is not forthcoming or the proposed amendment to the existing Engineering Conditions has not been approved by the District Lands Officer and/or any proposed amendment to the latest Sha Tin Outline Zoning Plan has not been authorised under the TPO.
- 27B.4 Not used.
- 27B.5 Where the Contractor's Design (whether included in the Tender or arising after the date of the Letter of Acceptance) and/or the Contractor's Plans require amendment to the existing Engineering Conditions and/or the latest Sha Tin Outline Zoning Plan, and if:
- the Employer has informed the Contractor in writing that he does not agree to procure the initiation to amend the existing Engineering Conditions and/or to conduct the statutory procedures under the TPO to amend the latest Sha Tin Outline Zoning Plan;
  - the agreement, assistance and/or co-operation of the relevant public bodies, statutory

- authorities, Government departments and/or public officers with respect to the initiation to amend the existing Engineering Conditions and/or to conduct the statutory procedures under the TPO to amend the latest Sha Tin Outline Zoning Plan is not forthcoming; or
- (c) the proposed amendment to the existing Engineering Conditions has been rejected by the District Lands Officer; or
  - (d) not used; or
  - (e) not used; or
  - (f) the proposed amendment to the latest Sha Tin Outline Zoning Plan has not been authorised under the TPO,

the Contractor shall make necessary modifications or amendments to the relevant part of the Design and/or Contractor's Plans and shall inform the Employer in writing. Any such modifications or amendments shall comply with the existing Engineering Conditions and/or the latest Sha Tin Outline Zoning Plan and shall conform to the Employer's Requirements

27B.6 In the execution of the Works in accordance with the Contractor's Design and/or the Contractor's Plans as modified or amended under Clause 27B.5, the Contractor shall strictly comply with the Contract to the satisfaction of the Employer and shall strictly comply with and adhere to the Employer's instructions on any matter relating to the Contractor's Design and/or the Contractor's Plans as modified or amended. The Contractor shall not be entitled to any additional payment or extension of Time for Completion of the Works arising out of or in consequence of such modifications or amendments.

27B.7 This Clause 27B shall not prejudice Clause 13.

## **27C. NON-FETTER OF STATUTORY DISCRETION**

27C.1 Nothing in the Contract shall be construed as constituting or imposing any fetters on the powers, discretions and duties of any public bodies, statutory authorities, Government departments or officers under the law to the extent that such public bodies, statutory authorities, Government departments or officers are to act in a governmental capacity or as a competent authority.

## **28. SITE DIARY AND LABOUR RETURNS**

28.1 The Contractor shall record daily (from the commencement of the Design and the Works in accordance with Clause 83 until 28 days after the date of handover certified by the Employer in the Handover Certificate) in a site diary information with regard to labour, Mobile Plant, Constructional Plant, Plant, materials, utilities, work carried out and instructions issued to the Contractor and all other facts that may affect the progress or quality of the Design, the Works and the Operation. The site diary shall be in the form and contain the details set out in the Employer's Requirements or as the Employer directs, and shall be signed daily by the Site Agent or the Operation Engineer as appropriate, appointed under Clause 15 .

28.2 The Contractor shall provide a copy of the daily site diary to the Employer and the Supervising Officer within 24 hours of the end of the day to which it relates. The Employer or the Supervising Officer or such other person the Employer may direct shall sign the site diary daily indicating his agreement to the information recorded. If the Employer or the Supervising Officer or such other person the Employer may direct does not agree with any

of the items recorded in the site diary, he may draw reference to the points of disagreement in writing in the site diary.

28.3 The Contractor shall, as and when called on to do so by the Employer or the Supervising Officer, make available to the Employer or the Supervising Officer, such information as the Employer or, as the case may be, the Supervising Officer considers necessary to enable him properly to keep and maintain his site record and the site diary, but in any event and without prejudice to the generality of the foregoing, the Contractor shall deliver to the office of the Employer or the Supervising Officer by not later than 1.00pm on each working day a return in such form as the Employer or the Supervising Officer may prescribe showing in detail the numbers of several classes of labour on the Site and, as the case may be, the Facility, that day together with the numbers of the several classes of labour so employed during the preceding 24 hours who were not included in the return for the previous day together with such information concerning materials, Constructional Plant, Plant, Mobile Plant and other such matters as the Employer or the Supervising Officer may require.

## **29. FACILITIES FOR AND CO-ORDINATION WITH OTHERS**

29.1 The Contractor shall in accordance with the requirements of the Employer afford all reasonable facilities for any person who may be carrying out, on or adjacent to the Site or the Facility, any work not included in the Contract but required by the Employer, any Utility Undertaking or other duly constituted authority.

29.2 Save where any services of the kind referred to in Clause 29.1 are expressly referred to elsewhere in the Contract, if the Contractor shall on written request of the Employer either:

- (a) make available any road or way for the maintenance of which the Contractor is responsible to;
- (b) permit the use of any Constructional Plant, Plant or Mobile Plant by; or
- (c) provide any other service of whatsoever nature to,

any person who may be carrying out, on or adjacent to the Site or the Facility, any work not included in the Contract but required by the Employer, any Utility Undertaking or other duly constituted authority, the Employer shall pay to the Contractor in respect of such use or service such sum which the Employer may value in the same manner as a sum payable in respect of a Change as defined in and ordered under Clause 42.

29.3 In accordance with the Contract and/or the reasonable instructions of the Employer, the Contractor shall not impede and shall afford all reasonable facilities, access and/or services to the Employer, Utility Undertakings, other duly constituted authorities and other contractors (whether employed by the Employer or not) who are carrying out, on or in the vicinity of the Site or the Facility, works not included in the Contract. The Contractor shall indemnify and keep the Employer indemnified at all times from and against all loss, liability, damages, costs and expenses of any nature arising out of or in connection with any breach of this Clause 29.3 by the Contractor or his employees, agents, servants or sub-contractors.

29.4 The Contractor shall take all reasonable steps to ensure that the Works and the Operation are co-ordinated and integrated with the design and execution of such other works as referred to in Clause 29.3, and shall in particular (but without limitation) consult, liaise and co-operate with those responsible for carrying out such other works including where necessary in the preparation of joint programmes, method statements, co-ordination drawings and specifications.

29.5 The Contractor shall be deemed to have made adequate allowance in the Capital Value and the Operation Fees and in the programme referred to in Clause 14 in respect of his obligations under Clauses 29.3 and 29.4.

29.6 Not used.

### **30. PUBLICATION OF PROJECT INFORMATION**

30.1 The Contractor shall not publish or otherwise circulate photographs or video recordings of the Site, the Works, the Facility, or the Operation, or any part thereof or anything therein except with the permission in writing of the Employer.

30.2 No such permission shall exempt the Contractor from complying with any statutory provision in regard to the matters referred to in Clause 30.1.

30.3 The Employer may take photographs and video recordings of the Site, the Works, the Facility and the Operation for internal purposes or for the purposes of the Contract.

### **31. PREVENTION OF BRIBERY**

31.1 If the Contractor or any of his employees or agents shall be found to have offered or given any advantage, gratuity, bonus, discount, bribe or loan of any sort to any employee or agent of the Employer or to the Supervising Officer or his employees or agents or to the Design Checker (including any sub-consultants) or to any member of the Design Checker's staff, the Employer shall be at liberty to terminate the Contract forthwith and to hold the Contractor liable for any loss or damage that the Employer may thereby sustain.

31.2 The Contractor shall prohibit his employees, agents, consultants and sub-contractors who are involved in the Contract from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) when conducting business in connection with the Contract.

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

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

31.5 The Contractor shall take all necessary measures (including by way of contractual provisions and/or issuing a code of conduct, with a copy provided to the Supervising Officer, and/or providing training workshops where appropriate) to ensure that his employees, agents, consultants and sub-contractors are aware of the prohibitions in this Clause 31.

31.6 The Contractor acknowledges that he has been reminded that dishonesty, theft and corruption on his part or those of his employees, agents, consultants or sub-contractors who are involved in the Contract may lead to prosecution under, without limitation, section 9 of the Prevention of Bribery Ordinance (Cap. 201), sections 17, 18D or 19 of the Theft Ordinance (Cap. 210) and section 161 of the Crimes Ordinance (Cap. 200). These offences commonly carry terms of imprisonment on conviction.

## **32. ACCESS FOR EMPLOYER AND OTHERS**

32.1 The Employer, the Supervising Officer and any persons authorised by either of them shall at all times have access to and to be present on the Site, the Facility and the Works and to the place of design and to all workshops and places where Plant, Mobile Plant, materials or manufactured articles are being supplied by the Contractor or any sub-contractor for any purpose that the Employer deems necessary or desirable. The Contractor shall issue a pass under Clause 37 to any person as directed by the Employer, the Supervising Officer and any person so authorised by the Employer or the Supervising Officer. The Contractor shall render every assistance to the Employer, the Supervising Officer and any person so authorised by the Employer or the Supervising Officer to obtain access when required to such other workshops and places from where Plant, Mobile Plant, materials or manufactured articles are being obtained for incorporation into the Works and/or the Operation.

32.2 Without limitation to the generality of Clause 32.1:

- (a) the Employer, the Supervising Officer and any persons authorised by either of them shall have reasonable access (including access for necessary vehicles and boats) to the Site, the Facility and the Works to take photographs, to show guests around and to train their employees in the Operation;
- (b) the Employer, the Supervising Officer and any persons authorised by either of them and any representatives of any relevant and duly constituted authority shall have reasonable access (to include access for necessary vehicles and boats) to the Site to inspect the Works and to evaluate the performance of the Contractor in respect of the Works;
- (c) the Employer, the Supervising Officer and any persons authorised by them shall have reasonable access (including access for necessary vehicles and boats) to the Site, the Facility and the Works to carry out environmental monitoring (and for such purpose the Employer, the Supervising Officer and any persons authorised by either of them shall be entitled to use the Contractor's environmental monitoring equipment);
- (d) the Employer, the Supervising Officer, any person authorised by either of them and any representatives of any relevant and duly constituted authority shall have reasonable access (including access for necessary vehicles and boats) to the Site and the Facility to inspect the Operation and to evaluate the performance of the Contractor in respect of the Operation.

32.3 The Contractor shall allow inspection of the Facility by the Employer and/or potential tenderers for any follow-on contract(s), prior to the expiry of the Operation Period. Written notification of the date of inspection shall be given to the Contractor by the Employer at least 7 days prior to the inspection.

### **33. CUSTOMS DUTIES AND TAXES**

33.1 The Contractor shall in good time procure any necessary import permits and promptly pay all customs and import duties that may become payable on the importation into Hong Kong of Plant, Constructional Plant, Mobile Plant or other things relating to the Works or the Operation.

### **34. ENGAGEMENT OF LABOUR**

34.1 The Contractor shall make his own arrangements in regard to the provision of such labour, skilled and unskilled, as may be required for the execution of the Design, the Works and the Operation and shall use all diligence in arranging for a sufficient and suitable supply of such labour but all such arrangements shall be in accordance with general local usage and subject to such regulations as the Government may from time to time require to be observed.

34.2 Further to Clauses 16.1 and 34.1, the Contractor shall employ no less than the minimum number of Qualified Tradesmen/Qualified Skilled Workers and Intermediate Tradesmen/Qualified Semi-skilled Workers of each of the specified trades as set out in the Employer's Requirements.

34.3 Not used.

34.4 Not used.

34.5 Not used.

34.6 As far as practicable all labour both skilled and unskilled shall be engaged in Hong Kong.

### **35. FAIR WAGES**

35.1 The Contractor shall pay rates of wages and observe hours and conditions of labour that are not less favourable than the general level of wages, hours and conditions observed by other employers in Hong Kong whose general circumstances in the trade or industry in which the Contractor is engaged are similar.

35.2 The Contractor shall in respect of all persons employed by him, whether in carrying out the Contract or otherwise, in every workshop or other place occupied or used by him for carrying out the Design, the Works or the Operation, comply with this Clause 35.

35.3 The Contractor shall be responsible for the observance of this Clause 35 by sub-contractors employed in the carrying out of the Design, the Works or the Operation.

35.4 In the event of default being made in the payment of any money in respect of wages of any person employed by the Contractor in and for carrying out the Contract and if a claim therefor is filed in the office of the Labour Department and proof thereof (including, where the claim is disputed by the Contractor or it is found necessary by the Commissioner for Labour, proof of final determination of the claim by an award or order of the Labour Tribunal or as the case may be the Minor Employment Claims Adjudication Board or a judgment of the District Court or, where the matter is subsequently further disputed by way of appeal, by a judgment of the Court of First Instance or the Court of Appeal) is furnished to the satisfaction of the Commissioner for Labour, the Employer may, failing payment of the said money by the Contractor, make payment of such claim on behalf of the Contractor to that person and any sums so paid shall be recoverable by the Employer from the Contractor.

**35A. NOT USED**

**35B. PAYMENT OF WAGES OF SITE PERSONNEL**

- 35B.1 Subject to those Casual Workers referred to in Clause 1.29.10(l) of Employer's Requirements on "Causal Workers", all Site Personnel shall be engaged in accordance with Clause 1.29.10 of Employer's Requirements on "Payment of Wages of the Site Personnel". Such Site Personnel shall be engaged with a written employment contract with their respective employers who shall be either the Contractor or any of his sub-contractors, as submitted in the Sub-contractor Management Plan under Clause 6. The terms of the employment contract shall be not less favourable to the terms provided in the Specimen Employment Contract which may as necessary be revised by the Supervising Officer from time to time at *Appendix Q* as far as the Site Personnel are concerned. Payment of wages shall be made at least once per month. Employment contracts which stipulate a payment cycle in less frequent than once per month will not be permitted under the Contract.
- 35B.2 The Contractor shall ensure that all workers who are self-employed persons engaged to work on the Site shall each be covered by a personal accident insurance plan with a minimum cover of HK\$1,000,000 by extending either the Contractor's employees compensation insurance policy or his third party liability and all risks insurance policy. Alternatively the Contractor shall arrange a separate personal accident insurance plan for all self-employed workers for a minimum cover of HK\$1,000,000 in the form set out in *Appendix R* and shall maintain such policy for the duration of the self-employed workers being engaged in the Contract. The Contractor shall produce evidence of such insurance before the self-employed workers are issued a smart-card as described in Clause 1.29.10 of Employer's Requirements. The Contractor shall inform the Supervising Officer immediately when the insurance policy of a self-employed worker has expired together with evidence showing its renewal as appropriate.
- 35B.3 Lorry drivers engaged for the Works and the Operation (excluding those lorry drivers engaged by suppliers to deliver material to the Site) may be either a Site Personnel or a self-employed person.
- 35B.4 The Contractor shall provide and maintain an attendance recording system comprising smart-card cum biometric authentication to record and verify the information of all Site Personnel entering and leaving the Site in accordance with Clause 1.29.10 of Employer's Requirements on "Payment of Wages of the Site Personnel".
- 35B.5 Within 14 days of the date for commencement of the Design and the Works, the Contractor shall make necessary arrangements with a bank to implement the arrangement on payment of wages to Site Personnel in accordance with Clause 1.29.10 of Employer's Requirements on "Payment of Wages of Site Personnel". The Contractor shall submit a written declaration that all Site Personnel's wages payable have been paid when the Contractor submits the instruction records as specified in Clause 1.29.10 of Employer's Requirements on "Payment of Wages of Site Personnel" to the Supervising Officer. Site Personnel who are not able to open a personal bank account in Hong Kong shall be paid by personal cash cheques in accordance with Clause 1.29.10 of Employer's Requirements.
- 35B.6 The Contractor shall provide suitably qualified staff to act as Labour Relations Officers referred to in Clause 1.29.10(j) of Employer's Requirements to monitor payment of wages.
- 35B.7 Pursuant to Clause 6.3, failure to comply with Clause 1.29.10 of Employer's Requirements by any of the sub-contractors may render the removal of the sub-contractor from the Site, the Works, and/or the Facility.

- 35B.8 (a) Without prejudice to any of the provision under Clause 35 and in the event of default being made in the payment of any wages of any Site Personnel employed by the Contractor or any of the sub-contractors in and for carrying out this Contract and if a claim therefore is filed in the office of the Labour Department and proof thereof (including, where the claim is disputed by the Contractor or by any of the responsible sub-contractors, as the case may be, or it is found necessary by the Commissioner for Labour, proof of final determination of the claim by an award or order of the Labour Tribunal or as the case may be the Minor Employment Claims Adjudication Board or a judgment of the District Court or, where the matter is subsequently further disputed by way of appeal, by a judgment of the Court of First Instance or the Court of Appeal) is furnished to the satisfaction of the Commissioner for Labour; provided that the subject incident of default in payment of wages is reported to the Labour Relations Officer within 7 working days (Sundays and public holidays excluded) of the final due date for payment as prescribed under section 23 of the Employment Ordinance (Cap. 57), the Employer may, after the Contractor or the sub-contractor, as the case may be, who is in default of paying any wages to the Site Personnel, make payment of such wages or claim for wages on behalf of the Contractor or the sub-contractor to the Site Personnel and any sums so paid shall be recoverable by the Employer as a debt from the Contractor.
- (b) For the avoidance of doubt, Site Personnel employed by the Contractor are not subject to the reporting requirement to the Labour Relations Officer under sub-clause (a).
- (c) For the further avoidance of doubt, where any self-employed worker is found by the Labour Tribunal or as the case may be the Minor Employment Claims Adjudication Board or a judgment of the District Court or, where the matter is subsequently further disputed by way of appeal, by a judgment of the Court of First Instance or the Court of Appeal to be an employee instead of a self-employed worker, sub-clause (a) shall apply to that self-employed worker provided that the subject incident of default in payment of wages is similarly reported to the Labour Relations Officer within 7 working days (Sundays and public holidays excluded) of the final date for payment under section 23 of the Employment Ordinance (Cap. 57).
- 35B.9 For the purpose of this Clause 35B, “sub-contractors” means sub-contractors, irrespective of tiers.
- 36. SITE CLEANLINESS**
- 36.1 The Contractor shall provide and maintain efficient and hygienic toilet facilities for the use of all persons on the Site and the Facility, and shall keep the whole of the Site and the Facility, in a clean and hygienic condition.
- 36.2 From the date for commencement of the Design and the Works to the date of the Handover Certificate issued under Clause 47, the Contractor shall, unless otherwise instructed by the Employer, (except on a General Holiday) carry out either Daily Cleaning or Weekly Tidying. The time for commencing Weekly Tidying and the day of every week for the Cleaning Week Day shall be agreed with the Employer within 7 days of the date for commencement of the Works. If a day on which the Weekly Tidying is scheduled falls on a General Holiday, then it shall be carried out on the day following that is not a General Holiday.

- 
- 36.3 The Employer has absolute discretion to instruct the Contractor to cease or suspend all or part of the Daily Cleaning and/or Weekly Tidying of the Site at any time. Such instruction shall not constitute a change under Clause 42 and the Contractor shall not be entitled to be reimbursed any Expense arising out of or in relation to the instruction.
- 36.4 The Employer has the power to instruct the Contractor to clean and tidy up the areas around the Site or, as the case may be, the Facility, if to the judgment of the Employer, the rubbish and debris are likely to be connected with the Works or disposed of by persons working on the Site or, as the case may be, the Facility, and the Contractor shall not be entitled to claim for any additional cost due to such cleaning and tidying up work performed outside the Site boundary.
- 36.5 The Contractor shall be entitled to the sums measured in accordance with the Site Cleanliness and Tidiness Section of the Schedule of Prices for Capital Value, provided that the Contractor shall have complied to the extent specified for each item therein. For the avoidance of doubt, the payment of the site cleanliness during the Operation Period shall be deemed to be included in the monthly payment, and no separate measurement shall be made for it.
- 36.6 The Contractor shall only be entitled to payment for only one day of "Daily Cleaning" or "Weekly Tidying", but not more of either, for the cleaning and tidying up work carried out by the Contractor on any one Cleaning Day or Cleaning Week Day.
- 36.7 The Contractor shall not be entitled to any payment for Daily Cleaning or Weekly Tidying carried out if in the opinion of the Employer, such work has not been satisfactorily performed on the relevant working day.

### **37. PASSES**

- 37.1 Unless expressly provided otherwise in the Employer's Requirements, the Contractor shall arrange the issue of passes for the admission of workers to the Site and to the Facility and for the admission of persons authorised by the Employer under Clause 32.1 and in such event any person who fails to show his pass on demand to any duly authorised person may be refused admission.
- 37.2 If required by the Employer, the Contractor shall submit a list of the names of all his workers to whom passes have been issued together with two photographs of each person and shall satisfy the Employer of their bona fides and identity.
- 37.3 Any pass so issued shall be returned at any time on the demand of the Contractor or on the cessation of the bearer's employment on the Design, the Works or the Operation and in any case on the issue of the Handover Certificate.

### **38. SUSPENSION OF THE WORKS OR THE OPERATION**

- 38.1 The Contractor shall on the written order of the Employer or Supervising Officer suspend the progress of the Design, the Works or the Operation or any part thereof for such time or times and in such manner as the Employer or Supervising Officer may consider necessary and shall during such suspension properly protect and secure the Design, the Works or the Operation so far as is necessary in the opinion of the Employer or Supervising Officer. Within 7 days of the expiry of the time prescribed in the order and subject to any further order of the Employer or Supervising Officer, the Contractor shall revise the programme referred to in Clause 14.

- 38.2 If on written application by the Contractor to the Employer or Supervising Officer, the Employer or Supervising Officer is of the opinion that the Contractor has been involved in additional expenditure by reason of a suspension order given by the Employer or Supervising Officer under this Clause 38, then the Employer or Supervising Officer shall ascertain the Cost incurred and shall certify in accordance with Clauses 93, 94, 97 and 100, unless such suspension order is:
- (a) otherwise provided for in the Contract, or
  - (b) necessary by reason of weather conditions affecting the safety or quality of the Works or the Operation or any part thereof, or
  - (c) necessary by reason of some default on the part of the Contractor or any person carrying out the Design, the Works or the Operation, or
  - (d) necessary for the proper execution of the Design, the Works or the Operation or for the safety of the Works or the Operation or any part thereof or for the safety and health of any person or the safety of property on or adjacent to the Site or the Facility in as much as such necessity does not arise from any act or default of the Employer or Supervising Officer or from any of the excepted risks as defined in Clause 21.
- 38.3 If the progress of the Design, the Works or the Operation or any part thereof is suspended on the written order of the Employer or Supervising Officer and if written permission to resume work is not given by the Employer or Supervising Officer within a period of 90 days after the commencement date of suspension, then the Contractor may, unless such suspension is occasioned by the circumstances described in Clauses 38.2(a) to (d), serve a notice in writing on the Employer or Supervising Officer requiring permission within 28 days after the receipt by the Employer or Supervising Officer of such notice to proceed with the Design, the Works, or as the case may be, the Operation or that part thereof in regard to which progress is suspended. If within the said 28 days the Employer or Supervising Officer does not grant such permission, the Contractor by a further notice in writing served on the Employer or Supervising Officer may, but is not bound to, elect to treat the suspension where it affects part only of the Design, the Works or the Operation as an omission of such part pursuant to a Change as defined in and ordered under Clause 41 or where it affects the whole of the Design, the Works and the Operation as an abandonment of the Contract by the Employer.
- 38A. NOT USED**
- 39. POSSESSION OF THE SITE**
- 39.1 Save in so far as the Contract may prescribe herein the extent of Portions of the Site of which the Contractor is to be given possession from time to time and the order in which such Portions shall be made available to him and, subject to any requirement in the Contract as to the order in which the Works and/or the Operation shall be executed, the Employer shall give to the Contractor on the date for commencement of the Design and the Works in accordance with Clause 83 possession of so much of the Site as may be required to enable the Contractor to commence and proceed with the execution of the Works and/or the Operation in accordance with the programme referred to in Clause 14.

- 39.2 The Employer shall from time to time, as the Works proceed, give to the Contractor possession of such further parts of the Site as may be required to enable the Contractor to proceed with the execution of the Works with due dispatch in accordance with the programme consented to by the Employer under Clause 14 or at such earlier times as the Employer may notify the Contractor in writing not later than 28 days before the giving of possession.
- 39.3 Unless the Contract expressly provides to the contrary, the Contractor shall not be entitled to exclusive possession of or uninterrupted access to the Site or any part of the Site and shall co-ordinate his activities with others on or in the vicinity of Site as described in Clause 29 and elsewhere in the Contract.
- 39.4 If on written application having been made by the Contractor to the Employer, the Employer is of the opinion that the Contractor has been involved in additional expenditure by reason of the progress of the Works or the Operation or any part thereof having been materially affected by the failure of the Employer to give possession in accordance with Clause 39.1 or 39.2, then the Employer shall ascertain the Cost incurred and shall certify in accordance with Clauses 93, 94, 97 and 100.
- 39.5 The right of possession conferred under this Clause 39 in respect of the Site shall be subject to the provisions herein for termination of the Contract and handover of the Facility.
- 39.6 The right of possession conferred under this Clause 39 shall be purely a contractual right and shall not be construed as conferring on the Contractor any tenancy, lease or title in respect of the Site, the Works or the Facility or any ownership of the Plant, Mobile Plant or any other part of the Works or the Facility, all of which shall at all times remain vested in the Employer as the property of the Employer.
- 39.7 The Contractor shall bear all Expenses and charges for special or temporary wayleave required by him in connection with access to the Site.

#### **40. CLEARANCE OF THE SITE ON COMPLETION AND ON HANDOVER**

- 40.1 As soon as practicable after the issue of the Certificate of Completion for the Works , the Contractor shall clear away and remove from the Site all Constructional Plant, surplus Plant and materials (which are not required for the Operation) and rubbish of any kind whatsoever leave the Works in a clean and tidy condition.
- 40.2 As soon as practicable after the issue of the Handover Certificate, the Contractor shall clear away and remove from the Site and the Facility all Constructional Plant, surplus Plant and rubbish of any kind whatsoever and leave the Site and the Facility in a clean and tidy condition.
- 40.3 If the Contractor fails to comply with Clause 40.1 or 40.2, the Employer may, after giving notice in writing to the Contractor, have the work of cleaning and tidying up carried out by other persons and the cost so incurred by the Employer may be recovered as a debt due from the Contractor, or may be deducted by the Employer from any monies that may then be or thereafter become payable to the Contractor under the Contract.

#### **41. CHANGES**

- 41.1 If there is a Change as defined in and ordered under Clause 42 or 44, the Contractor shall forthwith implement the Change and, save as otherwise instructed by the Employer in

accordance with this Clause 41.1, the provisions of the Contract shall apply to all work the subject matter of the Change, provided that:

- (a) the application of Part B and/or Part C to any Change shall be subject to such reasonable alternative requirements as may be instructed by the Employer, where in the opinion of the Employer, any provisions of Part B and/or Part C are not applicable to such Change;
- (b) no such Change shall require significant alteration or modification in the Design already checked by the Design Checker without the consent of the Contractor which consent shall not be unreasonably delayed or withheld; and
- (c) without prejudice to the Contractor's right to receive payment under Clause 43 for any Change ordered under Clause 42, the exercise of the said right to instruct such reasonable alternative requirements shall not entitle the Contractor to any additional payment whatsoever under the Contract.

- 41.2 No Change as defined in and ordered under Clause 42 or 44 shall be made by the Contractor without an order in writing by the Employer. No Change (for the avoidance of doubt including a change ordered under Clause 44.7) shall in any way vitiate or invalidate the Contract or relieve the Contractor from any of his liabilities or obligations under the Contract.
- 41.3 For the avoidance of doubt, all items of work comprising the Works, except those items of work that are subject to measurement as provided in the Contract, shall be on a lump sum basis. No Change shall be ordered any change in the quantity of any work where the change is not the result of an order given under Clauses 42 or 44 of the Conditions of Contract but is the result of the quantities necessary to meet the Contractor's obligations under the Contract exceeding those stated anywhere in the Contract or reasonably inferred from the Contract and the Contractor shall not be entitled to any further payment or extension of time due to any such increase.

## **42. EMPLOYER'S CHANGES**

- 42.1 The Employer may order any Change to the Design, the Works or the Operation at any time until the issue of the Handover Certificate. For the purpose of this Clause 42, the term "Change" means:

- (a) a change in the Employer's Requirements that makes necessary the alteration or modification of:
  - (A) the Design or the Registered Design, or
  - (B) not used
  - (C) the quality or quantity (including but not limited to additions, omissions and substitutions) of the Works or the Facility, or
  - (D) the Contractor's Plans, or
- (b) a change in the Employer's Requirements relating to:
  - (A) the safety of the Works, or

- (B) the Operation, or
- (C) the Environmental and Safety Performance Requirements or the Operational Performance Requirements, or
- (D) the abatement of public or private nuisance, or
- (E) the protection of the environment, or
- (c) not used
- (d) a change to a programme consented to by the Employer under Clause 14.4 (which for the avoidance of doubt does not include a revision to such programme pursuant to any other provision of the Conditions of Contract), or
- (e) a change to the Time for Completion, or
- (f) not used
- (g) not used
- (h) not used
- (i) a change in the sequence, method or timing of construction specified in the Contract, or
- (j) the ordering of the work or services (not already covered as part of the Works or the Operation) and of the kind referred to in the Employer's Requirements and priced by the Contractor in the Schedule of Prices for Capital Value or the Schedule of Prices for Operation Fees. Provided that, in addition to the work or services that may be ordered as set out in the Schedule of Prices for Capital Value or the Schedule of Prices for Operation Fees, the Employer shall be entitled to order pursuant to Clause 42.1 of the Conditions of Contract any similar work or services, which for the avoidance of doubt shall be work or services ancillary to the Works or the Operation.
- 42.2 For the avoidance of doubt, compliance with any enactments under Clause 27 shall not be or be deemed as a Change under Clause 42.1.
- 42.3 Within 28 days of receiving an order under Clause 42.1, the Contractor shall provide the Employer with:
- (a) with respect to the Capital Value, an estimate of the net additional Expense that the Contractor will incur or, as the case may be, net saving in Cost that the Contractor will obtain, as a result of implementing the Change;
  - (b) with respect to the Operation Fees, an estimate of the effect (by way of increase or, as the case may be, decrease), if any, that the Change will have on the Operation Fees; and
  - (c) with respect to the programme consented to by the Employer under Clause 14, an estimate of the effect, if any, that the Change will have on the programme.

The Contractor shall not in the meantime proceed with the Change unless specifically instructed by the Employer in writing.

- 42.4 Within 28 days of receipt of the Contractor's said estimates, the Employer shall either:
- (a) instruct the Contractor in writing to proceed with the Change, in which case the Contractor shall be entitled to any additional Expense and/or increase in the Operation Fees or, as the case may be, the Employer is entitled to any net saving in Cost and/or decrease in Operation Fees, to be valued in accordance with Clause 43 provided that in the case of an increase to the Capital Value and/or the Operation Fees this shall not be in excess of that set out in his estimate; or
  - (b) cancel the order, in which case the Contractor shall not be entitled to any Cost incurred in the preparation of the estimates under Clause 42.3.
- 42.5 If the Contractor fails to provide the said estimates within the prescribed time, the Employer shall within 28 days of the expiry of the prescribed time be entitled to instruct the Contractor to proceed with the Change and the same shall be valued in accordance with Clause 43.
- 42.6 Notwithstanding Clauses 42.3 and 42.4, if in the Employer's opinion a Change is required to be made without delay, the Employer shall be entitled to instruct the Contractor to implement the Change forthwith without the estimates as required under Clause 42.3 or the instruction under Clause 42.4 and the same shall be valued in accordance with Clause 43.
- 42.7 The Contractor shall strictly comply with all reasonable directions of the Employer given in connection with a Change within the meaning set out in Clause 42.1(j).
- 42.8 The Employer shall not provide any land for the execution of the work or services in connection with a Change within the meaning set out in Clause 42.1(j) to the extent that such work or services is executed outside the Site.
- 42.9 Notwithstanding other provisions in this Clause 42, the Employer shall always have the right to instruct the Contractor to carry out a Change at any time before receiving the Contractor's estimates, whether within the time prescribed in Clause 42.3 or not, or where appropriate, whether within the time prescribed in Clause 42.5 or not. The Contractor shall comply with such instruction and the same shall be valued in accordance with Clause 43.

### **43. VALUING EMPLOYER'S CHANGES**

43.1 Save where agreement is reached as provided in Clause 43.2, the Employer shall determine the sum that in his opinion is to be added to or deducted from the Capital Value as a result of a Change as defined in and ordered under Clause 42, or where a provision of the Contract otherwise expressly provides for a valuation under Clause 43, in accordance with the following principles:

- (a) Any Plant, Mobile Plant supplied or work carried out that is the same as or similar in character to and supplied or executed under the same or similar conditions and circumstances to any Plant, Mobile Plant or any work priced in the Contract shall be valued at the rate or rates set out in the Contract for such item.
- (b) Any Plant, Mobile Plant supplied or work carried out that is not the same as or similar in character to or is not supplied or executed under the same or similar conditions or circumstances to any Plant, Mobile Plant or any work priced in the Contract (which shall include for the avoidance of doubt Plant or work that is ordered after the date of completion stated in the Certificate of Substantial Completion for the Works) shall be valued at a reasonable sum based, so far as may

be reasonable, on the rate or rates in the Contract.

- (c) Any Plant, Mobile Plant or item of work omitted shall be valued at the rate or price set out in the Contract for such Plant, Mobile Plant or work or, in the absence of such a rate or price, at a rate or price agreed between the Employer and the Contractor.
- 43.2 The Employer and the Contractor shall attempt to reach agreement on any valuation under Clause 43.1 failing which the Employer shall determine such sum as provided in Clause 43.1 and notify the Contractor accordingly.
- 43.3 The sum to be added to or deducted from the Capital Value shall be the sum agreed under Clause 43.2 or determined by the Employer under Clause 43.1 (allowance being made for any saving in Cost to the Contractor) unless the Contractor's estimate shall be the relevant sum to be added to the Capital Value.
- 43.4 Should any Change as defined in and ordered under Clause 42 render, in the Employer's opinion, the Operation Fees in the Schedule of Prices for Operation Fees (including any minimum limit related thereto) or calculation thereof unreasonable or inapplicable, then a new amount of payment to reflect any increase or decrease in the Operation Fees shall be agreed between the Employer and the Contractor failing which the Employer shall determine such new amount as is reasonable based on the Operation Fees in the Schedule of Prices for Operation Fees and notify the Contractor accordingly. Such new amount of payment shall be applicable to the Operation after implementation of the Change.
- 43.5 The Employer shall ascertain and determine the sum payable to the Contractor for the work or services provided in response to a Change within the meaning set out in Clause 42.1(j) in accordance with the Schedule of Prices for Capital Value or the Schedule of Prices for Operation Fees. In the event that the proviso to Clause 42.1(j) applies and where such work or services shall form part of the Operation, any sums to which the Contractor is so entitled shall form part of the Operation Fees and be included in the Contractor's statement under Clause 97.1 in respect of the month following the month in which the Employer ascertains and determines the sum under this Clause 43.
- 43.6 The Employer gives no warranty as to whether there will be a Change within the meaning set out in Clause 42.1(j) or the quantity of such work or services that may be ordered. For the avoidance of doubt, the implementation of such a Change shall not relieve the Contractor from any of his liabilities, obligations or duties under the Contract.
- 43.7 To assist the Employer's valuation of a Change as defined in and ordered under Clause 42 or, as the case may be, a Change as defined in and ordered under Clause 44, the Contractor shall upon request provide a detailed breakdown of his estimate submitted under Clause 42.3 or, as the case may be, Clause 44.3, including relevant rates, and cost of labour, plant and materials, to the Employer within 21 days of receipt of such request. Where his sub-contractors are to be engaged in implementing such a Change, the Contractor shall obtain competitive quotes from his sub-contractors the Employer's approval before implementation?

#### **44. CONTRACTOR'S CHANGES**

- 44.1 The Contractor may, or he shall in the event that the Contractor discovers or is brought to his attention that he will fail or has failed to comply with any of his obligations under the Contract considers that a change is necessary to prevent or remedy such a failure, at any time until the date of the Handover Certificate, propose in writing to the Employer and the

Supervising Officer that the Design, the Works or the Operation be changed. For the purpose of this Clause 44, the term "Change" means a change:

- (a) in the Employer's Requirements, or
- (b) to the Registered Design, or
- (c) to the quality or quantity (including additions, omissions and substitutions) of the Design, the Works, the Operation or the Facility, or
- (d) to the Project Management and Technical Resources Plan, Design and Works Plan, or Operation Plan consented to by the Employer or the Supervising Officer under Clause 1.27 of the Employer's Requirements, or
- (e) to any programme consented to by the Employer under Clause 14; or
- (f) to the methods of construction consented to by the Supervising Officer under Clause 73.8.
- (g) Not used.

Without limitation to the Contractor's obligation to propose a Change for the purpose of preventing or remedying his failure to comply with the Contract as aforesaid, if, in the Employer's opinion, there is any ambiguity or discrepancy between the Employer's Requirements on the one hand, and the Design or the Contractor's Plans on the other hand (whether or not such ambiguity or discrepancy arose as a result of a Change as defined in and ordered under Clause 42 or 44), the Contractor, having notified by the Employer of such ambiguity or discrepancy and the document that the Employer wishes to amend for the purpose, shall promptly propose a Change as defined in Clause 44.1 to remove such ambiguity or discrepancy.

- 44.1A Should the Contractor for any reason wish to change his design of the Works after the design has been checked under Clause 9.2, he shall comply in all respects with the Design Checking Procedures.
- 44.2 Any saving to the Employer as a result of a Change shall be deducted from the Capital Value and/or the Operation Fees due to the Contractor; and any additional Cost incurred by the Employer as a result of a Change shall be borne by the Contractor.
- 44.3 The Contractor shall submit with his proposal under Clause 44.1 such details as will enable the Employer and, until the issue of the Certificate of Completion for the Works, the Supervising Officer to identify the reason why the Change is being proposed and to consider whether the Change as proposed is feasible and in accordance with the general intent and purport of the Contract including its effects (adverse or beneficial), if any, on the Design, the Works, or the Operation. The Contractor shall also include in his proposal under Clause 44.1 details of any decrease in the Capital Value or Operation Fees that will result from the Change as proposed.
- 44.4 Within 28 days of receipt by the Supervising Officer of the Contractor's proposal, the Supervising Officer shall provide a report to the Employer and the Contractor on the matters referred to in Clause 44.3 and thereafter the Employer, subject to Clause 44.6, may in his absolute discretion within 28 days of receipt of the Supervising Officer's report order a Change. Where the Contractor's proposal is made after the issue of the Certificate of Completion for the Works, the Employer, subject to Clause 44.6, may in his absolute

discretion within 28 days of receipt by the Employer of the Contractor's proposal, order a Change. The Contractor shall not be entitled to review or open up any opinion or view in the Supervising Officer's report or Employer's decision not to order a Change.

- 44.5 The sum to be deducted from the Capital Value (if any) and/or the decrease in the Operation Fees (if any) shall be either the sum or payment agreed by the Employer and the Contractor or failing such agreement the sum or payment to be valued under Clause 43.
- 44.6 Where a Change proposed by the Contractor under Clause 44.1 is, in the Supervising Officer's opinion as stated in his report referred to in Clause 44.4, or after the issue of the Certificate of Completion for the Works, in the Employer's opinion, necessary for the purpose of preventing or remedying the Contractor's failure to comply with the Contract, the Employer shall order the Change, provided that such Change is, in the Supervising Officer's opinion or, as the case may be, the Employer's opinion, feasible and in accordance with the general intent and purport of the Contract.
- 44.7 If the Contractor fails to propose a Change for the purpose of preventing or remedying his failure to comply with the Contract as mentioned in Clause 44.1, or to implement a Change as ordered under Clause 44.6, the Employer shall be entitled to order a Change as he considers necessary which shall be implemented by the Employer or his employees or contractors, and any Cost so incurred by the Employer shall be borne by the Contractor and recoverable as a debt by the Employer from the Contractor. For the purpose of this Clause 44.7, the term "Change" has the meaning as defined in Clause 42.1 or Clause 44.1.

## **45. INVESTIGATING DEFECTS**

- 45.1 At any time prior to the date of handover certified by the Employer in the Handover Certificate:
- (a) the Contractor shall, if instructed by the Employer in writing, investigate the cause of any defect, imperfection or fault under the directions of the Employer. The Contractor shall, within the time specified in the Employer's instruction or such further time as the Employer may allow, submit to the Employer an investigation report of the cause of the defect, imperfection or fault; and
- (b) notwithstanding Clause 45.4, in the event that the Contractor fails to carry out or complete the investigation within the prescribed time, the Employer shall be entitled, after giving notice in writing to the Contractor, to have such work carried out by his own employees or contractors in accordance with Clause 53.
- 45.2 In the event that the Employer, following the issue of the Certificate of Completion for the Works, considers that there is any defect, imperfection, fault, or any lack of proper preventive or reactive maintenance in the Works and the Facility, save for that which is reasonably expected through normal wear and tear consistent with the design life of that part of the Works and the Facility, he may notify the Contractor by a notice in writing specifying the said defect, imperfection, fault or any lack of proper preventive or reactive maintenance. If such notice is not accompanied by any instructions to investigate the cause under Clause 45.1, the Contractor shall be entitled to carry out any investigation but Clause 45.4 shall not apply to such investigation.
- 45.3 If such defect, imperfection or fault shall be one for which, in the Employer's opinion, the Contractor is liable under the Contract, the Cost incurred in investigating as aforesaid shall be borne by the Contractor and he shall in such case repair, rectify and make good such defect, imperfection or fault together with any consequential damage at his own Cost.

45.4 If such defect, imperfection or fault shall be one for which, in the Employer's opinion, the Contractor is not so liable, then any investigation and remedial work carried out by the Contractor as aforesaid shall be valued by the Employer as if it were a Change as defined in and ordered under Clause 42 .

#### **46. RECTIFICATION OF DEFECTS**

46.1 The Contractor shall, at his own Cost, be responsible for the maintenance of and rectification of defects in the Works and the Facility to ensure delivery of the Facility up to the Employer in the condition required by the Contract, including all repairs, replacements and renewals of any part of the Works and the Facility (whether provided for in the Employer's Requirements or not). The Facility shall at all times be maintained to perform in accordance with the Contract.

46.2 The Employer may by notice in writing require the Contractor to carry out any maintenance of or rectification of defects in the Works and the Facility including any work of repair or rectification, or to make good any defect, imperfection, shrinkage, settlement or other fault identified, and the Contractor shall carry out such work as soon as practicable to the satisfaction of the Employer. Where the Employer requires such work to be carried out urgently, the Contractor shall carry out such work in compliance with such terms contained in the notice imposed by the Employer as the Employer may consider necessary and reasonable in the circumstances.

46.3 All such work shall be carried out by the Contractor at his own Cost if the necessity for such work shall, in the Employer's opinion, be due to the Design or the use of Plant, Mobile Plant, materials or workmanship not in accordance with the Contract or due to neglect or failure on the part of the Contractor to comply with any obligation expressed or implied on the Contractor's part under the Contract. If in the opinion of the Employer such necessity shall be due to any other cause, the work shall be valued by the Employer as if it were a Change as defined in and ordered under Clause 42.

46.4 If the Contractor fails to carry out any outstanding work as required by Clause 89.2 or fails to carry out any work that the Employer requires the Contractor to carry out under Clause 46.2, the Employer shall be entitled, after giving notice in writing to the Contractor, to have such work carried out by his own employees or contractors in accordance with Clause 53.

46.5 This Clause 46 shall apply to the Works and the Facility until they are the subject of a Handover Certificate. Part C shall remain applicable to the rectification of defects carried out under this Clause 46 during the Operation Period

#### **47. HANDOVER OF FACILITY**

47.1 The Operation Period shall expire on the occurrence of any of the following events, whichever is the earlier:

- (a) the expiry of the Operation Period, or such other period as may be ascertained in accordance this Clause 47, whichever is the earlier; or
- (b) the expiry of a notice of termination of the Contract given by the Employer under Clause 101.1, 102.2, 103.1 or 105.1 (or otherwise the date of termination as specified in the notice under Clause 105.1) or by the Contractor under Clause 104.1.

- 47.2 By a notice in writing to the Contractor to be given by the Employer at least 91 days prior to the expiry of the Operation Period or by the notice referred to in Clause 47.1(b), the Employer may require the Contractor to assign and transfer to the Employer or a person nominated by the Employer and if so required the Contractor shall forthwith assign to the Employer or the person nominated by the Employer the rights and/or obligations under any agreement for the supply of any Plant, Mobile Plant or materials and/or for the execution of any work and/or for the Operation of the Facility that the Contractor may have entered into. In the case of transfer of obligations under any agreement, the Contractor shall also procure the agreement of the counter-parties to agree to such transfer on the terms of a novation deed to be entered into by the Employer (or a person nominated by the Employer), the Contractor and such counter-parties.
- 47.3 Following the expiry of the Operation Period or the period of the notice referred to in 47.1(b), the Employer shall issue the Handover Certificate stating the date on which, in the Employer's opinion, the Contractor has achieved completion of the Operation in accordance with the Contract but no Handover Certificate will be issued in the case of termination of the Contract under Clause 101.1 or 102.2 or 103 or 105.1 in the latter case the Contractor would still have to perform all obligations as specified in this Clause 47. In any event, the issue of the Handover Certificate will not waive or relieve any other of the Contractor's obligations under the Contract which are to be complied with or observed or remains to be complied with or observed. Subject to the foregoing, it shall be a condition precedent to the issue of the Handover Certificate that:
- (a) the Contractor shall have handed over to the Employer the Facility (including the Plant and the Mobile Plant) in a clean and tidy condition without any materials, Constructional Plant or any other things relating to the Works and the Facility that are not required to be there in accordance with the Contract;
  - (b) all the Contractor's personnel and the personnel of his sub-contractors shall have left the Facility, with the exception of the personnel immediately engaged by the Employer pursuant to Clause 70.2;
  - (c) the Contractor shall have assigned to the Employer, if so required by the Employer in the notice referred to in Clause 47.2, the benefit of the agreement referred to in the aforesaid notice;
  - (d) the Employer is satisfied that the Works and the Operation have been carried out in full accordance with the Registered Design, the programme consented to by the Employer under Clause 14 and all other provisions of the Contract;
  - (e) the Employer is satisfied that the Facility (including the Plant and the Mobile Plant) are in the conditions required by the Contract on the issue of the Handover Certificate, including Clauses 9.2 and 9.3;
  - (f) the Contractor shall have carried out all their obligations specified in the Operation Plan;
  - (g) the Contractor shall have carried out such repairs and/or maintenance and/or rectification and replacements required under Clause 68;
  - (h) the Contractor shall have provided the Employer with all assistance and information reasonably requested by the Employer to enable the Operation to be provided by the Employer himself, or by another contractor, in a manner which ensures an orderly transition and continuity of the Operation without interruption or disruption;
  - (i) the Contractor shall have, if so required by the Employer, terminate, assign or novate

to the Employer at no cost to the Employer any agreement for the supply of materials or goods, entered into by the Contractor in connection with the Operation;

- (j) the Contractor shall have, if so required by the Employer, terminate, assign or novate to the Employer at no cost to the Employer any sub-contract, including those for the hire of plant, services and insurance, entered into by the Contractor in connection with the Operation;
- (k) the Contractor shall have assigned warranties for materials placed on the Site or any Plant and Mobile Plant;
- (l) the Contractor shall have protected work executed under the Contract or any work required to leave the Site in a clean and safe condition;
- (m) the Contractor shall have removed materials placed on the Site including the removal of any debris or rubbish, and the clearing and making good of the Site;
- (n) the Contractor shall have delivered to the Employer:
  - (A) a full set of keys for the Facility;
  - (B) a complete set of operation and maintenance records for the Facility, showing the exact locations, sizes and details of the Facility;
  - (C) a complete set of operation and maintenance manuals for the Facility, in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair the Facility;
  - (D) any applicable spare parts required for the continuing operation and maintenance of the Facility; and
  - (E) any other data relating to the Facility or part of the Facility the subject of the termination to enable the Employer to continue with the Operation.
- (o) the Contractor shall have completed any other matter arising out of the Contract with regard to which the Employer may decide that directions are necessary or expedient;
- (p) the Contractor shall have, if so required by the Employer, entered into and performed all deeds of assignment, transfer or novation in favour of the Employer or in favour of any person whom the Employer may designate, for the assignment, transfer or novation of any contract, arrangement or other subject matter whatsoever (including warranty for any of the Facility, maintenance or support agreement for any of them, insurance policy, equipment lease, software licence) on such terms and conditions as the Employer may stipulate, and procure any other third party whom the Employer considers necessary for effecting or perfecting such assignment, transfer or novation to enter into and perform any such deeds of assignment, transfer or novation;

(Provided that it shall be the Contractor's duty to ensure that the conditions referred to in sub-clauses (a) to (p) shall be complied with within the period stated in the Form of Tender following the expiry of the Operation Period unless the notice of termination to be issued under Clause 101.1 or 102.2 or 103 or 105.1 of the Conditions of Contract specifies another shorter period for fulfilling any of these conditions or unless any provision in Clause 101,

102, 103 or 104 or 105 of the Conditions of Contract specifies another period or deadline or unless the Employer requires a shorter period for any of these conditions to be fulfilled by giving not less than 1 month's notice to the Contractor, in which case that other shorter period shall apply)

- (q) the Contractor shall have duly and punctually performed and observed all obligations to be fulfilled by it as stated in the Contract following from the termination under Clause 101.1 or 102.2 or 103 or 104.1 or 105.1 (where applicable) including those obligations as specified in the aforesaid Clauses. In the event of any inconsistency between the obligations as stated in any sub-clause of this Clause 47.3 or in any of the aforesaid Clauses, the wider or more stringent obligations of the Contractor shall apply; and
- (r) where at the time of Termination as defined in Clause 101.2, the Certificate of Substantial Completion for the Works had already been issued, to prepare for the handover with the activities as specified above and to ensure the prompt commencement or continuity of the Operation without interruption (as the case may be), even prior to the expiry of the Operation Period as specified in Clause 47.1(a) or (b) (and in the case of Clause 47.1(a), within the 6-month period preceding to the scheduled expiry, as soon as the relevant notice of termination is issued) of the Conditions of Contract, the Contractor shall provide all such assistance and perform all acts and sign all such documents as the Employer may request to facilitate the takeover of the Operation by either the Employer or another contractor to be appointed by the Contractor of the Operation.

47.4 The issue of the Handover Certificate shall not be taken as relieving either the Contractor or the Employer from any liability one towards the other arising out of or in any way connected with the performance of their respective obligations under the Contract. Provided that the Employer shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract or the execution of the Works or the Operation unless the Contractor shall have made a claim in relation thereto in accordance with the time limits specified in Clause 49 or 86.

47.5 Not used.

#### **48. NOT USED**

#### **49. NOTICE OF CLAIMS**

49.1 If the Contractor intends to claim a higher rate, fee or sum than one notified to him by the Employer pursuant to Clause 43.2, 43.4 or 102.5 or any other provision of the Contract under which the Contractor is notified, the Contractor shall within 28 days of such notification give notice in writing of his intention to claim to the Employer.

49.2 If the Contractor intends to claim an additional payment (additional to or by way of increase in the Capital Value or the Operation Fees under any provisions of the Contract other than as mentioned in Clause 49.1), or compensation as damages, the Contractor shall, within 28 days after the happening of the events giving rise to a claim, serve notice in writing on the Employer of his intention to claim and the contractual or other provisions or basis on which the claim is based.

49.3 The Contractor shall keep such contemporary records as may reasonably be necessary to support any claim and shall give to the Employer details of the records being kept in respect

thereof. Without necessarily admitting the Employer's liability, the Employer may require the Contractor to keep and agree with the Employer any additional contemporary records as are reasonable and may in the opinion of the Employer be material to the claim. The Contractor shall permit the Employer to inspect all records kept pursuant to this Clause 49.3 and shall supply copies thereof as and when the Employer shall so require.

- 49.4 After the giving of a notice to the Employer under this Clause 49, the Contractor shall, as soon as is reasonable, send to the Employer a first interim account giving full and detailed particulars of the circumstances giving rise to the claim, the rate or sum claimed and the manner in which such rate or sum is calculated. Thereafter, at such intervals as the Employer may reasonably require, the Contractor shall send to the Employer further up-to-date accounts giving the accumulated total of the claim and any further full and detailed particulars in relation thereto.
- 49.5 If the Contractor fails to comply with the notice provisions contained in Clause 49.1 or 49.2 in respect of any claim, such claim shall not be considered.
- 49.6 If the Contractor fails to comply with the provisions of Clause 49.3 or 49.4 in respect of any claim, the Employer may consider such claim only to the extent that the Employer is able on the information made available.

Provided that the Employer shall not be obliged to take into account, when considering a claim relating to Design/Works or "Operation", any particulars of the claim received by him after the expiry of a period of 180 days calculated from the date of completion stated in the Certificate of Substantial Completion for the Works or Handover Certificate respectively. In the event of different certificates of completion or handover certificates having been issued for different sections of the Works or parts of the Operation, the expression "Certificate of Substantial Completion for the Works" or "Handover Certificate" shall, for the purpose of this Clause 49.6, mean the last of such certificates.

**50. ENVIRONMENTAL MONITORING AND COMPLIANCE WITH ENVIRONMENTAL AND SAFETY PERFORMANCE REQUIREMENTS**

- 50.1 The Contractor shall carry out the environmental monitoring as set out in the Employer's Requirements throughout the execution of the Works and the Operation.
- 50.2 The Contractor shall prepare an environmental monitoring report on all matters required under the Employer's Requirements and provide the same to the Employer and the Supervising Officer once every month within the time after the end of the relevant month as set out in the Employer's Requirements and at any further time as may be reasonably required by the Employer and the Supervising Officer in the form and with the detail set out in the Employer's Requirements.
- 50.3 The Supervising Officer shall, within 14 days of receipt of the report referred to in Clause 50.2, either:
- certify that the Contractor has complied with his obligations under Clauses 50.1 and 50.2 during the relevant period; or
  - certify that the Contractor has not complied with his obligations under Clauses 50.1 and/or 50.2 of the Conditions of Contract during the relevant period.

Provided that in the event that the Contractor fails to provide any environmental monitoring report under Clause 50.2 within the prescribed time, then (without prejudice to the

Employer's other remedies) for the purposes of Clauses 71 and 92, Clauses 50.4 and 50.5 shall apply and the Contractor shall be deemed, for the relevant month, to have failed to have complied with his obligations under Clauses 50.1 and 50.2 and to have failed to have complied with the Environmental and Safety Performance Requirements notwithstanding the late provision of any such report or any other proof that the Contractor has so complied (in whole or in part).

- 50.4 In the event that the Supervising Officer certify under Clause 50.3(b) that the Contractor has not complied with his obligations under Clauses 50.1 and/or 50.2, then without prejudice to the Employer's other remedies under the Contract, such non-compliance by the Contractor shall be allocated the points as set out in the Employer's Requirements equating to the number of failures to comply with the Environmental and Safety Performance Requirements for the purposes of Clause 71, and the Contractor shall forthwith remedy such non-compliance.
- 50.5 In the event that the Supervising Officer considers that the Contractor has failed or is failing to comply with the Environmental and Safety Performance Requirements (and whether or not such non-compliance results from the activities comprised in the Works or in the Operation), he shall certify the same and notify the Employer and the Contractor as soon as is practicable specifying the failure with reference to the Environmental and Safety Requirements and, without prejudice to Clause 71, the Contractor shall forthwith remedy such non-compliance.
- 50.6 The Supervising Officer shall in his sole discretion be entitled to conduct any independent inquiries, monitoring or testing as he thinks fit before he certifies under Clause 50.3 or 50.5.
- 50.7 The duties and powers of the Supervising Officer in this Clause 50 shall be vested in the Employer following the issue of the Certificate of Substantial Completion for the Works.
- 50.8 In the event that the Contractor is in the Employer's opinion grossly negligent or reckless in disregarding the Environmental and Safety Performance Requirements, the Employer shall have the power at any time to order suspension of the Operation or any part thereof under Clause 38.

## **51. CONSTRUCTIONAL PLANT, TEMPORARY BUILDINGS, PLANT AND MOBILE PLANT**

- 51.1 All Constructional Plant and temporary buildings owned by the Contractor, when brought onto the Site or when used in connection with the Works or the Operation regardless of whether on the Site or not, shall be and become the property of the Employer, but may be removed or cause to be removed from the Site or taken out of use from the Works or the Operation unless such removal or taking out of use is expressly prohibited by the Employer in writing. On completion of the Works or the Operation, or removal from the Site or taking out of use from the Works or the Operation, the remainder of such Constructional Plant and temporary buildings shall re-vest in the Contractor.
- 51.2 Not used.
- 51.3 All Plant, Mobile Plant and materials shall be or shall become the property of the Employer on delivery to the Site, and, subject to Clause 51.4, shall not be removed without instructions of the Employer. Those Plant, Mobile Plant and materials or the remainder thereof shall re-vest in the Contractor to the extent that the Employer considers them to be surplus on, or prior to, completion of the Works or the Operation, as the case may be, except that:

- 
- (a) if at any time prior to the expiry of the Operation Period, the Plant, Mobile Plant or materials that have reached the end of their useful life as described in the Employer's Requirements shall re-vest in the Contractor
  - (b) not used

All such Plant, Mobile Plant and materials that have been so re-vested in the Contractor shall be removed forthwith from the Site by the Contractor at his own Cost. This Clause 51.3 shall not be deemed to imply any approval by the Employer or the Supervising Officer of such Plant, Mobile Plant or materials or to prevent any refusal by the Employer or Supervising Officer of any Plant, Mobile Plant or materials at any time.

51.4 The Contractor may from time to time after delivery of any Mobile Plant to the Site remove such Mobile Plant from one part of the Site to another part thereof for use in connection with the Operation in that other part or to such other places outside the Site for such other purpose as may be specified in the Employer's Requirements without instructions of the Employer.

51.5 In respect of any item of Constructional Plant brought onto the Site, the Contractor shall on written request by the Supervising Officer (which may be issued by the Supervising Officer from time to time or at any time during the continuance of the Works) produce to the Supervising Officer proof of ownership of such item of Constructional Plant to the satisfaction of the Supervising Officer, or where any item of Constructional Plant is not solely owned by the Contractor, a written undertaking, in a form approved by the Supervising Officer, from the owner of the relevant item of Constructional Plant to the Supervising Officer that:

- (a) the owner of the Constructional Plant will consent to the assignment by the Contractor to the Employer of the benefit of any hiring or hire-purchase or other agreement made with the Contractor in respect of the relevant Constructional Plant in the event of either the determination of the Contractor's employment or termination of the Contract by the Employer in accordance with the provisions of the Contract or the abandonment of the Contract by the Contractor before completion of the Works; and
- (b) subject to any assignment under sub-clause (a), the owner of the Constructional Plant will permit the Employer, or any other contractor employed by the Employer, to use the relevant Constructional Plant for the purpose of completion of the Works.

The Supervising Officer may make as many separate written requests as he thinks fit during the continuance of the Works.

51.5A In the event that the Supervising Officer shall certify in writing to the Employer that the Contractor has failed to comply with any written request referred to in Clause 51.5 within 28 days of the date of issue of the written request and without prejudice to any other rights or remedies available to the Employer, the Employer may, subject to the proviso to this Clause 51.5A, withhold a sum equal to 5 percent of the total certified sum referred to Clause 93, 94 or 97 (as appropriate) from each interim payment otherwise due to the Contractor in accordance with the Contract until such time as such failure to comply with the relevant written request is rectified to the satisfaction of the Supervising Officer or until the item or, as the case may be, all the items of Constructional Plant specified in the relevant written request shall be removed from the Site by the Contractor in accordance with the provisions of the Contract, whichever is the earlier, and upon such time the total sum withheld by the Employer shall be returned to the Contractor without interest in the next interim payment. Provided that the total sum withheld by the Employer on the ground of failure to comply

with any written request referred to in Clause 51.5 shall not exceed an amount equal to the market value or as the case may be the total market value of the relevant item or items of Constructional Plant as determined by the Supervising Officer and notified in writing by the Supervising Officer to the Employer and the Contractor.

- 51.5B The application of Clauses 51.5 and 51.5A is limited to items of Constructional Plant which, in the Supervising Officer's opinion, are essential to the completion of the Works and are difficult to replace in the event of termination of the Contract under Clause 101 .
- 51.6 On the issue of the Certificate of Substantial Completion for the Works, the Contractor shall remove all Constructional Plant, temporary buildings and surplus materials from the Site, except those required to complete any outstanding work in accordance with Clause 89.2 or to discharge the Contractor's other obligations under the Contract (including the execution of the Operation).
- 51.7 If the Contractor shall fail to remove from the Site any Constructional Plant, temporary buildings or surplus materials as required under Clause 51.6 within 60 days after the issuance of the Certificate of Completion of the Works , the Employer may take possession of all or any such Constructional Plant, temporary buildings or surplus materials, and may then either:
- (a)
  - (b) sell any such Constructional Plant, temporary buildings or surplus materials, and after deducting from any proceeds of sale the charges and expenses of and in connection with such sale, 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 the excess shall be recoverable by the Employer from the Contractor, or
  - (c) return Constructional Plant hired or the subject of a hire-purchase agreement to the firm or company from whom it was so hired by the Contractor, and shall recover the charges and expenses of and in connection with such return from the Contractor.
- 51.8 In the event of the Employer entering into any agreement of hiring or hire-purchase under Clause 51.5, all sums paid by the Employer under such agreement and all expenses incurred by the Employer in entering into such agreement shall be deemed to be part of the Cost of completing the Works or the Operation, and shall be recoverable by the Employer from the Contractor.
- 51.9 Save as stated in Clause 22, the Employer shall not at any time be liable for the loss of or damage to any of the Constructional Plant, or temporary buildings, Plant, Mobile Plant, or materials that have become the property of the Employer under Clause 51.1 or 51.3 or loss of or damage to any hired or hire-purchase Constructional Plant brought onto the Site in accordance with Clause 51.5.
- 51.10 The Contractor shall when entering into any sub-contract for the execution of any part of the Works or the Operation incorporate in such sub-contract the provisions of Clauses 51.1 to 51.9 and shall ensure that they are observed.

## **51A. SPECIFIED PROCESS SYSTEMS**

- 51A.1 All plant and equipment of the specified process systems which include Deodorisation System, Food Waste Conveyance System, Pre-treated Food Waste Conveyance System, Pre-treatment System, Reception System and other associated systems/equipment required for Operation upon its delivery to the Site or when used in connection with the Operation shall

not be removed or replaced without prior written approval of the Employer. Such approval shall not be unreasonably withheld when replacement of any of the specified process systems or part thereof is needed for the purpose of the Operation and/or compliance with the Contract. If approval is given, the specified process system or part thereof shall be removed and/or disposed of by the Contractor within 90 days of the approval at his own costs and expenses.

- 51A.2 The Contractor shall be responsible for the loss of or any cost for the damage of the specified process systems or part thereof or any damage or injury or loss of life caused by the specified process systems or part thereof during the Operation Period.
- 51A.3 The Employer shall have the right to purchase either all or part thereof of the specified process systems in accordance with Clause 68.2. The ownership of the specified process system shall be transferred to the Employer after the execution of the rights to purchase the specified process systems. Unless the Employer executes the rights to purchase them, the specified process systems shall remain to be the Contractor's property and the specified process systems shall be removed and/or disposed of at the Contractor's own costs and expenses within 90 days after the Employer's approval in accordance with Clause 51A.1 of the Conditions of Contract, or within 90 days after the issue of the Employer's order of removal of the in the event that the Contract is terminated.
- 51A.4 For the avoidance of doubt, approval of the Employer shall not be required for the Contractor to mobilise the specified process systems deployed on the Site so long as it does not affect the operation of the Existing Facilities.
- 51A.5 If the Contractor fails to remove from the Site any specified process system or part thereof in accordance with Clause 51A.1, then the Employer may take possession of all or any such specified process system or part thereof, and may then either:
- (a) not used;
  - (b) sell any such specified process system or part thereof , and after deducting from any proceeds of sale the charges and expenses of and in connection with such sale, 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 the excess shall be recoverable by the Employer from the Contractor, or
  - (c) return the specified process system hired or the subject of a hire-purchase agreement to the firm or company from whom it was so hired by the Contractor, and shall recover the charges and expenses of and in connection with such return from the Contractor.
- 51A.6 The Employer shall not at any time be liable for the loss of or damage to any of the specified process systems or part thereof throughout the Operation Period.

## **52. PROVISION OF RECORD DRAWINGS AND MANUALS**

- 52.1 The Contractor shall keep records of levels and dimensions during the course of the Works and the Operation and shall prepare comprehensive record drawings showing the details of the Works as built including the position of the services, Plant, equipment and details of pipes, ducts, cables and other things that form part of the Works. The Contractor shall at his own Cost supply the Employer and the Supervising Officer with as many sets of such record drawings in the form and number set out in the Employer's Requirements.

- 52.2 The Contractor shall at his own Cost issue to the Employer and the Supervising Officer fully comprehensive sets of operation and maintenance manuals for all mechanical, electrical, building services, finishes and equipment systems included in the Works (including Plant and Mobile Plant), in the form and number set out in the Employer's Requirements. The manuals shall give details of the required maintenance and servicing for all items and components of the Works to ensure that the same can be kept in proper working order by the Employer in the event of termination of the Contract.
- 52.3 The record drawings and manuals referred to in Clauses 52.1 and 52.2 shall be issued to the Employer and the Supervising Officer at the times set out in the Employer's Requirements and shall be updated and re-issued at the Contractor's Cost following any subsequent necessary modification thereof.

### **53. WORK BY PERSON OTHER THAN THE CONTRACTOR**

- 53.1 If the Contractor shall in the opinion of the Employer fail to carry out any work required under the Contract or refuse to comply with any instruction or order given by the Employer in accordance with the Contract or fail to comply with any of his obligations under the Contract within the prescribed time or otherwise, if no time is prescribed, a reasonable time, the Employer may give the Contractor 14 days' notice in writing to carry out such work or to comply with such instruction or order, or to comply with such obligations under the Contract. If the Contractor fails to comply with such notice, the Employer shall be entitled to carry out such work, instruction or order whether by his own employees or contractors. Without prejudice to any other remedy, all additional expenditure properly incurred by the Employer in carrying out the work, instruction or order shall be recoverable by the Employer from the Contractor.
- 53.2 If by reason of any accident or failure or other event occurring to, in, or in connection with the Works, the Facility or the Operation, any remedial or other work is in the opinion of the Employer urgently necessary and the Contractor is unable or unwilling at once to do such remedial or other work, the Employer shall be entitled to carry out such work whether by his own employees or contractors. If such work is work that, in the Employer's opinion, the Contractor was liable to do under the Contract, all expenses properly incurred in carrying out the same shall be recoverable by the Employer from the Contractor, provided that the Employer shall as soon after the occurrence of any such emergency as may be reasonably practicable notify the Contractor thereof in writing.

### **54. TEMPORARY REINSTATEMENT**

- 54.1 If in the course or for the purpose of the execution of the Works or the Operation, any highway or other road or way shall have been broken into, then notwithstanding any other provision of the Contract:
- (a) if the permanent reinstatement of such highway or other road or way is to be carried out by the appropriate authority or by some person other than the Contractor, the Contractor shall at his own Cost and independently of any requirement of or notice from the Employer be responsible for the making good of any subsidence or shrinkage or other defect, imperfection, settlement or fault in the temporary reinstatement of such highway or other road or way or seawall or jetty and for the execution of any necessary repair or amendment thereof from whatever cause the necessity arises until the date of handover certified by the Employer in the Handover Certificate in respect of the work beneath such highway or other road or way or seawall or jetty or until the authority or other person as aforesaid shall have taken possession of the Site for the purpose of carrying out permanent reinstatement,

whichever is the earlier. The Contractor shall indemnify the Employer against and from any damage or injury to the Employer or to third parties arising out of or in consequence of any neglect or failure of the Contractor to comply with the foregoing obligations or any of them and against and from all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto;

- (b) as from the date of handover certified by the Employer in the Handover Certificate or the taking of possession as aforesaid, whichever is the earlier, the Employer shall indemnify the Contractor against and from any damage or injury as aforesaid arising out or in consequence of or in connection with the said permanent reinstatement or any defect, imperfection or failure of or in such work of permanent reinstatement and against and from all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto; and
- (c) where the authority or other person as aforesaid takes possession of the Site as aforesaid in parts, the responsibility of the Contractor under sub-clause (a) shall cease in regard to any such part at the time possession thereof is so taken but shall during the continuance of the Operation Period continue in regard to any part of which possession has not been so taken and the indemnities given by the Contractor and the Employer respectively under sub-clauses (a) and (b) shall be construed and have effect accordingly.

## **55. RECOVERY OF MONEY DUE TO THE EMPLOYER**

- 55.1 All damages (including liquidated damages), costs, charges, expenses, debts or sums for which the Contractor is liable to the Employer under any provision of the Contract may be deducted by the Employer from monies due to the Contractor under the Contract (including Retention Money) and the Employer shall have the power to recover any balance not so deducted from monies due to the Contractor under any other contract between the Employer and the Contractor.
- 55.2 All damages (including liquidated damages), costs, charges, expenses, debts or sums for which the Contractor is liable to the Employer under any provision of any other contract between the Contractor and the Employer may be deducted by the Employer from monies due to the Contractor under the Contract (including Retention Money).

## **56. NOTICES**

- 56.1 Any notice to be given to the Contractor under the provisions of the Contract must be in writing and may be served:
  - (a) personally, or
  - (b) by post addressed to the Contractor's last known place of business or in the event of the Contractor being
    - (i) a firm, to the last known place of residence of the owner or any of the partners thereof, or
    - (ii) a company, at the registered office in Hong Kong of such company, or
  - (c) by leaving such notice at the Contractor's last known place of business or, in the event of the Contractor being

- (i) a firm, to the last known place of residence of the owner or any of the partners thereof, or  
(ii) a company, at the registered office in Hong Kong of such company, or
- (d) by posting a copy in a conspicuous position upon the Site or the office of the Project Manager.
- 56.2 Any notice to be given to the Employer under the provisions of the Contract shall be served by sending the same by post or leaving the same at the address of the Environmental Protection Department as specified in the Letter of Acceptance (or other address subsequently notified to the Contractor in writing).
- 56.3 Any notice to be given to the Design Checker under the provisions of the Contract shall be served by sending the same by post to or leaving the same at his office on the Site, the registered office or the place of business of the Design Checker or, in the event of subsequent change of address, such other address as may be notified by the Design Checker to the Employer and the Contractor in writing.
- 56.4 Any notice to be given to the Supervising Officer under the provisions of the Contract shall be served by sending the same by post or leaving the same at the office of the Supervising Officer, which address shall be set out in the notification issued by the Employer to the Contractor under Clause 3.7 or, in the event of subsequent change of address, such other address as may be notified by the Supervising Officer to the Employer and the Contractor in writing.
- 56.5 Notice may be served by facsimile only if the recipient has previously notified the other party and the Employer in writing that it is prepared to accept service of notices in that manner. It shall in any event be a condition of valid service by facsimile that the hard copy of subsequently sent forthwith to the recipient in accordance with Clause 56.1, 56.2, 56.3 or 56.4.
- 57. INSPECTION OF ACCOUNTS AND PERIODIC FINANCIAL CAPABILITY ASSESSMENT**
- 57.1 The Employer shall be entitled to inspect the Contractor's accounts and financial records pertaining to the Contract. The Contractor shall also provide to the Employer each year with a copy of his certified annual audited accounts that the Contractor is required to prepare in accordance with the Companies Ordinance (Cap. 622).
- 57.2 The Employer will carry out periodic financial assessment on financial capability of the Contractor to ensure that the Contractor remains financially healthy to fulfil the obligations under the Contract. Within 28 days of the Employer's request, the Contractor shall supply all financial information concerning the Contractor and the holding company or companies, as the case may be, of the Contractor as set out in Appendix Z2 for such an assessment.
- 57A. NOT USED**
- 57B. PERMIT FOR EXCAVATION WORKS UNDER LAND (MISCELLANEOUS PROVISIONS) ORDINANCE CAP. 28**
- 57B.1 For the purpose of this Clause and except when the context otherwise requires,

“Authority” means the Authority referred to in the Ordinance.

“Economic Cost” means the economic costs referred to in Schedule 3 of the Ordinance.

“Excavation Permit” means any excavation permit issued by the Authority in respect of the Works or the Operation or any part thereof under the Ordinance, including any extension and amendment of the excavation permit

“Nominated Permittee” has the same meaning as “nominated permittee” defined in the Ordinance.

“Ordinance” means the Land (Miscellaneous Provisions) Ordinance (Cap. 28).

“Permittee” has the same meaning as “permittee” defined in the Ordinance.

“Street Maintained by the Highways Department” has the same meaning as “street maintained by the Highways Department” defined in the Ordinance.

- 57B.2 (a) Where excavation in Street Maintained by the Highways Department that requires Excavation Permit under the Ordinance is required for execution of the Works or the Operation or any part thereof, the Contractor shall request the Employer to apply for Excavation Permit and the Employer shall be the Permittee and the Contractor shall be nominated by the Employer as the Nominated Permittee of the Excavation Permit. The Contractor shall not withhold his consent to the nomination and agreement to comply with the conditions in the Excavation Permit or, in the case where such consent and agreement have been given, shall not withdraw his consent to the nomination and agreement to comply with the conditions in the Excavation Permit. The Contractor shall take all necessary actions to comply with the conditions stipulated in the Excavation Permit including those conditions applicable to the Permittee and shall use his best endeavours to assist the Employer and his agents, employees or workers to comply with the same.
- (b) Where excavation in land other than Street Maintained by the Highways Department that requires Excavation Permit under the Ordinance is required for execution of the Works or the Operation or any part thereof, the Contractor shall apply to the Authority for an Excavation Permit or for an exemption under section 10B of the Ordinance as the case may be for the Works or the Operation or the relevant part and, where an Excavation Permit has been applied for, the Contractor shall be the Permittee.
- 57B.3 Notwithstanding Clause 101.1, if the Contractor shall have unreasonably withheld or withdrawn his consent to be the Nominated Permittee of and his agreement to comply with the conditions in any Excavation Permit for excavation in Street Maintained by the Highways Department required for execution of any part of the Works or the Operation, or if the Contractor shall have failed to obtain the approval to be a Nominated Permittee from or have his approval withdrawn by the Authority in relation to any Excavation Permit for excavation in Street Maintained by the Highways Department required for the execution of any part of the Works or the Operation, the Employer may give the Contractor 14 days’ notice to rectify such situation. If the Contractor fails to comply with such notice, the Employer may but shall not be obliged to carry out such works by its own workers or to nominate other contractors to be the Nominated Permittee and shall have such works carried out by those other contractors. Without prejudice to any other remedy, all additional expenditure properly incurred by the Employer in having such works carried out shall be recoverable by the Employer from the Contractor.

57B.4 In relation to any Excavation Permit referred to Clause 57B.2(a) or any extension in respect thereof,

- (a) save as expressly provided elsewhere in the Contract, the Employer shall pay all prescribed fees under the Ordinance except that the Employer shall be entitled to recover from the Contractor the prescribed fees for such Excavation Permit as may be required for carrying out any maintenance work including any work of repair or rectification, or making good any defect, imperfection, shrinkage, settlement or other fault and any the necessity for such work is, in the Employer's opinion, due to the use of Plant, materials or workmanship not in accordance with the Contract or due to neglect or failure on the part of the Contractor to comply with any obligation expressed or implied on the Contractor's part under the Contract as specified in Clause 46.3;
- (b) the Employer shall notify the Contractor when an Excavation Permit has been obtained. If during the course of the Works or the Operation or during the continuance of the Contract a revision to an Excavation Permit has become necessary, the Contractor shall notify the Employer immediately;
- (c) the Contractor shall, when required by the Employer in writing and before the commencement of any part of the Works or the Operation covered by the Excavation Permit, send to the Authority pursuant to section 10I of the Ordinance a notice in writing using the prescribed form enclosed in **Appendix N** or, if so required by the Employer, using such other form as may be required by the Employer giving his consent to be the Nominated Permittee of the Excavation Permit and agreement to comply with the conditions in the Excavation Permit;
- (d) the Contractor shall advise the Employer promptly the need for an extension to an Excavation Permit and request the Employer to apply for such extension for the satisfactory completion of the Works or the Operation;
- (e) the Contractor shall render all necessary assistance to the Employer in the process of any application for an Excavation Permit or any extension in respect thereof, including supply of all necessary information to the Employer;
- (f) the Employer shall not be liable in any way for failing to submit any application for an Excavation Permit and/or any extension in respect thereof unless the Contractor shall have complied with his obligations under Clauses 57B.2(a) and 57B.4(a), (b), (c), (d) and (e) and shall have allowed the Employer sufficient time to prepare the application; and
- (g) the Employer shall be entitled to recover from the Contractor any fees including Economic Cost paid by the Employer for an extension in respect of a permit referred to in sections 10A(3) and 10D(4) of the Ordinance and may but shall not be bound to deduct the amount either in whole or in part in accordance with Clause 55.

Provided that the Employer shall return to the Contractor any refund from the Authority of any fees including Economic Cost so recovered or deducted. The Contractor shall provide all necessary assistance or information to the Employer to assist him in applying to the Authority for any review under the Ordinance for the purpose of refund of fees including Economic Cost.

Provided further that on application of the Contractor, the Employer is of the opinion that the need for such extension is partly or wholly caused by:

- (i) the progress of the Works or the Operation or any part thereof being materially affected by any Change as defined in and ordered under Clause 42; or
- (ii) an instruction issued under Clause 7; or
- (iii) a disturbance for which the Employer, the Supervising Officer or a person or company, not being a Utility Undertaking, engaged by the Employer in supplying materials or in executing work directly connected with but not forming part of the Works or the Operation is responsible,

the Employer shall determine a fair share of the fees including Economic Cost to be borne by the Employer who shall return such share to the Contractor.

For the avoidance of doubt, the opening up for inspection in accordance with Clause 81 of any work covered up or put out of view after compliance with the requirements of Clause 80, or the testing of Plant, materials or workmanship not required by the Contract but directed by the Employer in accordance with Clause 78.1 shall not be regarded as a disturbance within the meaning of paragraph (iii) in the last proviso to this sub-clause (g) unless the inspection or test showed that the Plant, work, materials or workmanship were in accordance with the Contract.

- 57B.5 In relation to any Excavation Permit referred to in Clause 57B.2(b) or any extension in respect thereof, the Contractor shall pay all prescribed fees under the Ordinance. In relation to any Excavation Permit under Clause 57B.2(a) or (b) and without prejudice to Clause 27, the Contractor shall conform in all respects with the conditions stipulated in any Excavation Permit which are applicable to any Works or the Operation to the extent that such conditions are to be observed by the Contractor under the Ordinance or under the Contract and shall indemnify and keep indemnified the Employer, his agents, employees and workers against all penalties or liabilities of every kind for breach of any such conditions stipulated in any Excavation Permit, whether such conditions are stipulated in the Excavation Permit to be observed by the Permittee, the Nominated Permittee or both the Permittee and the Nominated Permittee if and to the extent that such breach is attributable to the act, default or neglect of the Contractor, his agents, employees or workers, his sub-contractors at all tiers, or the agents, employees or workers of his sub-contractors at all tiers.
- 57B.6 The Contractor shall continue to be responsible for liaising with Utility Undertakings and other relevant parties identified in the Contract in connection with the execution of the Works or the Operation, including co-ordinating and agreeing a programme with the relevant Utility Undertakings or other parties where such is applicable.
- 57B.7 It is incumbent upon the Contractor to plan and programme his Works or the Operation to cater for any restrictions imposed by the Authority.
- 57B.8 The Contractor shall allow for in his plan and programme his obligation to comply with this Clause (including Clauses 57B.2(a) and (b), 57B.4(a), (b), (c), (d) and (e), 57B.5, 57B.6 and 57B.7) and the time that may be taken by the Authority to process the application for an Excavation Permit and any extension in respect thereof.
- 57B.9 Notwithstanding Clause 57B.2(a), the Employer may apply for an Excavation Permit for the execution of the Works or the Operation in the absence of a request to do so from the Contractor. For the avoidance of doubt, the obligations of the Contractor under this Clause 57B remain unchanged (with the exception of making a request to the Employer in respect of application for the Excavation Permit) if the Employer chooses to apply for an Excavation

Permit out of his own volition whether before, on, or after the date of the Letter of Acceptance.

**57C. DISPOSAL GROUNDS**

- 57C.1 The Contractor shall not dispose of construction and demolition materials generated by the Site at any place other than the disposal grounds designated in the Contract or directed by the Supervising Officer or such alternative disposal grounds as proposed by the Contractor and approved by the Supervising Officer in accordance with Clause 1.29.13 of the Employer's Requirements.
- 57C.2 Notwithstanding any other provisions in the Contract, the Supervising Officer's approval or disapproval of any alternative disposal ground proposed by the Contractor shall not in any way relieve the Contractor of any duty or responsibility under the Contract nor entitle the Contractor to any additional payment or extension of time.

**57D. NOT USED**

57D.1 (a) Not used.

(b) Not used.

57D.2 Not used.

(a) Not used;

(b) Not used;

(c) Not used.

57D.3 (a) Not used.

(b) Not used.

57D.4 Not used.

57D.5 (a) Not used.

(b) Not used.

(c) Not used.

57D.6 Not used.

(i) Not used.

(ii) Not used.

**57E. INTELLECTUAL PROPERTY RIGHTS RELATING TO SITE UNIFORM**

57E.1 The Contractor warrants to the Employer that:

(a) the design including the Contractor's logo and/or any logo of a sub-contractor

employed by the Contractor to carry out any part of the any part of the Works and the Operation, manufacture and supply of the site uniform (hereinafter collectively referred to in this Clause 57E as “design of the site uniform”) in accordance with Clause 1.29.12 of the Employer’s Requirements does not and will not infringe any Intellectual Property Rights or any other rights of any person; and

- (b) if the design of the site uniform contains any works or materials of which the Intellectual Property Rights are vested in a third party, prior to the use and incorporation of such works and materials in the design of the site uniform, the Contractor shall have obtained from such third party Intellectual Property Rights owner the grant of all necessary licences for itself and for the Employer, its authorised users, assigns and successors-in-title to use such works or materials in the manner and for any of the purposes contemplated by this Contract.

- 57E.2 Without prejudice to Clause 26, the Contractor shall indemnify the Employer and keep the Employer fully and effectively indemnified against all actions, costs, claims, demands, damages, expenses (including the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings and liabilities of whatsoever nature arising out of or in connection with any allegation and/or claim that the design of the uniform, its possession or use infringes any Intellectual Property Rights or any other rights of any person.
- 57E.2A For the avoidance of doubt, the design, manufacture, supply and/or use by the Contractor of the anti-heat stress uniform of the Hong Kong Polytechnic University referred to in Clause 1.29.12 of Employer’s Requirements, shall not in any way relieve the Contractor from the warranty under Clause 57E.1 above or the indemnity under Clause 57E.2.
- 57E.3 This Clause 57E shall survive the expiry, completion or termination of the Contract or determination of the employment of the Contractor (howsoever occasioned) and shall continue in full force and effect notwithstanding such expiry, completion, termination or determination.

#### **57F. CONTRACTS (RIGHT OF THIRD PARTIES) ORDINANCE**

- 57F.1 Nothing in this Contract confers or purports to confer on any third party any benefit or any right pursuant to the Contracts (Rights of Third Parties) Ordinance (Cap. 623) to enforce any term of the Contract.

#### **57G. COMPUTER AIDED DRAFTING STANDARD FOR WORKS PROJECTS**

- 57G.1 CAD drawings shall be prepared conforming to the CAD Standard for Works Projects version 1.03.00 (or later versions as agreed between the Employer and the Contractor from time to time) as posted on the Development Bureau’s website:  
[http://www.devb.gov.hk/en/construction\\_sector\\_matters/electronic\\_services/cad\\_standard/computer\\_aided\\_drafting/cad/index.html](http://www.devb.gov.hk/en/construction_sector_matters/electronic_services/cad_standard/computer_aided_drafting/cad/index.html)

#### **57H. NOT USED**

#### **57I. NOT USED**

#### **57J. USE OF STEEL REINFORCING BAR PRODUCTS SUPPLIED BY APPROVED STEEL REINFORCING BAR PREFABRICATION YARD**

- 57J.1 Where the Contractor opts to engage a prefabrication yard to supply steel reinforcing bar (“rebar”) products for any part or parts of the Works or Operation, the Contractor shall ensure that such prefabrication yard is included in the “List of Approved Steel Reinforcing Bar Prefabrication Yards for Public Works” maintained by the Government (such List is hereinafter referred to in this Clause 57J as “the List” and a prefabrication yard included in

the List is hereinafter referred to in this Clause 57J as “approved prefabrication yard”). Should the Contractor opt to engage such prefabrication yard, he shall submit a proposal (hereinafter referred to in this Clause 57J as “the Contractor’s proposal”) to the Employer for approval including the following information prior to the supply of such rebar products from the approved prefabrication yard:

- (a) the name of the approved prefabrication yard to be engaged;
- (b) the part or parts of the Works or Operation where the rebar products supplied from the approved prefabrication yard are to be used (hereinafter referred to in this Clause as “the works concerned”);
- (c) whether the cutting and bending of rebars at the approved prefabrication yard are involved;
- (d) whether the carrying out of the fabrication of reinforcement cages or threading / coupling of rebars using reinforcement connectors at the approved prefabrication yard is involved; if affirmative, records showing the approved prefabrication yard has obtained separate approval from the Government for such fabrication process(es) to be carried out at the approved prefabrication yard; and
- (e) the storage and traceability system of rebar products within the Site and the Facility for identification purpose if the Contractor opts to engage an approved prefabrication yard to supply rebar products for the works concerned and at the same time purchase rebars for on-site cutting and bending (or for fabrication of reinforcement cages or threading / coupling of rebars using reinforcement connectors for on-site installation) for other parts of the Works or Operation.

57J.2 Further to Clause 57J.1, upon delivery of the rebar products to the Site or the Facility, the Contractor shall submit to the Employer the documents showing that such products are produced by the approved prefabrication yard and are in compliance with the quality assurance scheme of the approved prefabrication yard, and the products are in compliance with the Construction Standard CS2: 2012 including any amendments thereto and replacement thereof and other relevant prevailing technical memorandums, practice notes, codes of practice and specifications related to testing of reinforcement or threading / coupling rebars using reinforcement connectors issued by the Government.

57J.3 If the supply of rebar products under the Contractor’s proposal involves cutting and bending of rebars at the approved prefabrication yard, the requirements pertaining to submission of particulars of reinforcement and testing of reinforcement under the Contract shall not apply in respect of the works concerned. Those requirements not to be applied include the following:

- (a) Submissions  
General Specification for Civil Engineering Works 2006 Edition Clauses 15.12 and 15.17(a), (e) and (f); and
- (b) Testing  
General Specification for Civil Engineering Works 2006 Edition Clauses 15.30, 15.31, 15.32, 15.33A, 15.36 and 15.37.

57J.4 Where the Contractor’s proposal involves the carrying out of the fabrication of reinforcement cages or threading / coupling of rebars using reinforcement connectors at the approved prefabrication yard which has obtained separate approval from the Government

for such fabrication process(es) to be carried out at the approved prefabrication yard, the Contractor shall include such records as required under Clause 57J.1(d) when submitting the Contractor's proposal under Clause 57J.1.

57J.5 If the supply of rebar products under the Contractor's proposal involves the carrying out of the fabrication of reinforcement cages at the approved prefabrication yard, the requirements pertaining to submission of particulars of reinforcement and testing of reinforcement under the Contract, including those listed in Clause 57J.3, shall not apply in respect of the works concerned.

57J.6 If the supply of rebar products under the Contractor's proposal involves the carrying out of threading / coupling of rebars using reinforcement connectors at the approved prefabrication yard, the requirements pertaining to submission of particulars of reinforcement connectors and testing of reinforcement connectors under the Contract shall not apply in respect of the works concerned. Those requirements not to be applied include the following:

(a) **Submissions**

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

(b) **Testing**

General Specification for Civil Engineering Works 2006 Edition Clauses 15.30, 15.31, 15.32, 15.35 and 15.40.

57J.7 Save as expressly provided in Clauses 57J.2 to 57J.6, the engagement by the Contractor of an approved prefabrication yard to supply rebar products shall not relieve the Contractor from any liability or obligation under the Contract and shall not in any way limit or exclude any right or remedy which the Employer may have against the Contractor under the Contract.

57J.8 In the event that the approved prefabrication yard engaged by the Contractor is removed from the List, the Contractor shall not use any rebar products produced on or after the date of removal from the List by the prefabrication yard concerned in the Works or Operation. The Contractor shall not be entitled to any additional payment or compensation arising out of or in connection with the removal of the prefabrication yard concerned from the List.

**57K. USE OF NON-ROAD MOBILE MACHINERY APPROVED UNDER THE AIR POLLUTION CONTROL (NON-ROAD MOBILE MACHINERY)(EMISSION) REGULATION**

57K.1 In this Clause 57K –

- (a) “approved” has the meaning given by section 2 of the Air Pollution Control (Non-road Mobile Machinery)(Emission) Regulation (Cap. 311Z);
- (b) “exempted” has the meaning given by section 2 of the Air Pollution Control (Non-road Mobile Machinery)(Emission) Regulation (Cap. 311Z);
- (c) “kW” means kilowatt;
- (d) “non-road mobile machinery” has the meaning given by section 2 of the Air Pollution Control (Non-road Mobile Machinery)(Emission) Regulation (Cap. 311Z);
- (e) “rated engine power output” means the maximum net power of an engine.

57K.2 Subject to Clause 57K.3, machinery of the types and quantities listed below must be approved non-road mobile machinery:

- (a) all generators on the Site,
- (b) all air compressors on the Site,
- (c) at least 50% of the total quantity of all excavators on the Site, and
- (d) at least 50% of the total quantity of all crawler cranes on the Site

which are powered by internal combustion engines and the rated engine power output of which is greater than 19 kW but not greater than 560 kW.

57K.3 The Employer may permit the use of exempted non-road mobile machinery for any type of machinery listed in Clause 57K.2 if he is satisfied that there is no feasible alternative. The Employer's permission under this Clause 57K.3 may cover the whole or part of the quantity specified in Clause 57K.2 in respect of the type of machinery concerned.

57K.4 Nothing in the Clause 57K shall derogate from or in any way affect the obligation of the Contractor to comply with the applicable law in Hong Kong, including the obligation of the Contractor to comply with the Air Pollution Control (Non-road Mobile Machinery)(Emission) Regulation (Cap. 311Z) in respect of all non-road mobile machinery on the Site.

**57L. NOT USED**

## B. OPERATION OF THE FACILITY

### 58. LICENCE FOR OPERATION

- 58.1 The Contractor shall apply for and obtain all licences, permits and certificates necessary for the Operation and performance of his other obligations of this Contract so to enable the Contractor to execute the Operation, to make available the Facility and to perform his other obligations in accordance with the Contract.
- 58.2 The Contractor shall maintain all licences, permits and certificates applied under Clause 58.1, and make such changes to the Works or the Operation as may be required following any alteration or modification of the requirements of the relevant licence(s), permit(s) or certificate(s).
- 58.3 The Contractor shall grant for the benefits of the Employer, his authorised operators/users, assigns and successors-in-title as well as any other contractor engaged on the Facility and the Existing Facilities or any subsequent owners or occupiers of the Facility and the Existing Facilities all licences, permits and certificates applied under Clause 58.1 free of all fees such that the Employer, his authorised operators/users, assigns and successors-in-title as well as any subsequent contractor engaged on the Facility and the Existing Facilities or any subsequent owners or occupiers of the Facility and the Existing Facilities can use, operate and possess, alter, extend and maintain the Facility or any part(s) thereof upon the issue of the Handover Certificate.

### 59. OPERATION PLAN

- 59.1 The Contractor shall submit within 28 days of the date of the Letter of Acceptance or within such other period of time as may be specified in the Contract to the Employer, the Design Checker and the Supervising Officer a draft Operation Plan that shall contain the matters and details set out in the Employer's Requirements.
- 59.2 The draft Operation Plan submitted under Clause 59.1 shall be in accordance with the Contract, and shall not, subject to Clauses 42 and 44, differ in any material respect from the Operation Plan in the Tender.
- 59.3 Without prejudice to Clauses 42 and 44, within 28 days of receipt by the Design Checker of the draft Operation Plan submitted under Clause 59.1, the Design Checker shall certify that such draft Operation Plan is in accordance with the Contract, provided that the Design Checker shall be entitled to refuse to so certify if in the Design Checker's opinion the Contractor has not complied with Clause 59.2 in which case the Design Checker shall notify the Contractor and the Contractor shall within 14 days of receiving the notification submit a revised draft Operation Plan under Clause 59.1.
- 59.4 Within 28 days of the receipt by the Supervising Officer of the certificate under Clause 59.3 issued by the Design Checker, the Supervising Officer shall inform the Contractor in writing that the Supervising Officer consents or does not consent to the draft Operation Plan as certified. In the event that the Supervising Officer does not consent to such draft Operation Plan, he shall specify those parts of the draft Operation Plan with which he is not satisfied and the Contractor shall prepare a revised draft Operation Plan in accordance with Clause 59.1 for certification by the Design Checker under Clause 59.3 and the consent of the Supervising Officer under this Clause 59.4. The Contractor shall be entitled to additional payment in accordance with Clause 43 in respect of any Cost incurred as a result of the Supervising Officer withholding any consent unless in the Supervising Officer's opinion the

draft Operation Plan in respect thereof should not have been certified by the Design Checker under Clause 59.3.

- 59.5 The submission to the Employer, the Supervising Officer or the Design Checker of such draft Operation Plan or the giving or withholding of consent by the Supervising Officer or the certification or refusal thereof by the Design Checker under Clause 59.3 shall not relieve the Contractor of any duty, obligation or responsibility under the Contract.
- 59.6 The Contractor shall review the Operation Plan biannually and shall revise and update the Operation Plan if necessary.

## **60. TEMPORARY WORKS DURING OPERATION**

- 60.1 The design, construction, installation, use and removal of Temporary Works:
- (a) in respect of the Operation carried out at any time, and
  - (b) in respect of the rectification of defects in the Works and the implementation of any Change as defined in and ordered under Clause 42 subsequent to the issue of the Certificate of Completion of the Works,

shall be certified in advance by an engineer who is approved by the Employer and is independent of the Contractor and of the Contractor's designer and such certification shall be subject to such reasonable alternative requirements as may be instructed by the Employer where, in the opinion of the Employer, Clauses 73, 74 and 75 are inapplicable. The checking of the Temporary Works shall be in the manner as prescribed in Clause 1.7.1D of the Employer's Requirements.

## **61. COMMENCEMENT OF OPERATION**

- 61.1 The Operation shall commence on the day following the date of substantial completion of the Works.
- 61.2 The Contractor shall from the date for commencement of the Operation as referred to in Clause 61.1, execute the Operation (and on every day of the Operation Period, including General Holidays, unless otherwise instructed or agreed in writing by the Employer) in strict accordance with the Registered Design, the Operation Plan consented to by the Supervising Officer under Clause 59.4, the programme consented to by the Employer under Clause 14, and the provisions of the Contract.
- 61.3 Without prejudice to Clause 53, if the Employer is of the opinion that the Operation is not being or has not been executed in accordance with the Registered Design, the Operation Plan consented to by the Employer under Clause 59.4, the programme consented to by the Employer under Clause 14, or the provisions of the Contract, he shall inform the Contractor of the non-compliance, and the Contractor shall rectify the same at his own Cost.
- 61.4 The Employer shall have the power to extend the Operation Period for a period that is not longer than the Adjustment Period by giving the Contractor at least 6 months' notice in writing.
- 61.5 Where the Operation Period is extended by virtue of Clause 61.4, the Contract shall continue to be in full force and effect during the period of extension of Operation Period on and subject to the same terms and conditions except Clause 61.4.

## **61A. PROVING STAGE AND POST-COMMISSIONING STAGE**

- 61A.1 The Operation Period shall comprise of Proving Stage and Post-commissioning Stage. The Proving Stage shall commence on the day the Operation commences and the Post-commissioning Stage shall commence on the day following the date of the Certificate of Completion for the Works.
- 61A.2 The Contractor shall satisfactorily carry out and complete the Commissioning Tests in accordance with Clause 72A and the Employer's Requirements during the Proving Stage. Unless otherwise instructed by the Employer, the period of the Proving Stage shall in no circumstances be less than 180 days.
- 61A.3 The Proving Stage shall expire on the day the Certificate of Completion for the Works is issued and the Post-commissioning Stage shall expire on the day the Operation Period expires. For avoidance of doubt, the Operation Period shall expire as provided in Clause 47.1.

## **62. COMPLIANCE WITH OPERATIONAL PERFORMANCE REQUIREMENTS**

- 62.1 In the event that the Employer considers that the Contractor has failed or is failing to comply with the Operational Performance Requirements, he shall certify the non-compliance and notify the Contractor of such non-compliance as soon as is practicable. In such event, the Contractor shall forthwith remedy such non-compliance, and without prejudice to the Employer's other remedies, such non-compliance shall be allocated the points as set out in the Employer's Requirements equating to the number of failures to comply with the Operational Performance Requirements for the purpose of Clause 71.
- 62.2 In the event that the Employer considers that the Contractor has failed or is failing to comply with such provisions in the Contract (other than the Operational Performance Requirements) that relate to the Operation, or has failed or is failing to comply with the Operation Plan consented to by the Employer under Clause 59.4, he shall certify the non-compliance and notify the Contractor of such non-compliance as soon as practicable. In such event, the Contractor shall forthwith remedy such non-compliance, and without prejudice to the Employer's other remedies, such non-compliance shall be allocated the points as set out in the Employer's Requirements equating to the number of failures to comply with the Operational Performance Requirements for the purpose of Clause 71.

## **63. OWNERSHIP OF MOBILE PLANT AND SPARES**

- 63.1 Without limitation to Clause 51, all Mobile Plant and spares referred to in the Contractor's Plans owned by the Contractor shall become the property of the Employer on first delivery to the Site notwithstanding that they are purchased or supplied by the Contractor and that the Contractor has custody and control of such Mobile Plant and spares for the execution of the Operation. The Contractor shall deliver to the Employer sufficient documentary evidence to verify the transfer to the Employer of unencumbered title to the said Mobile Plant and spares. For the avoidance of doubt and notwithstanding any other provision in the Contract, the Facility (including the Mobile Plant and spares) shall be the property of the Employer.
- 63.2 Replacement Mobile Plant and spares required under Clause 66.1 shall be the property of the Employer and no residual value shall be repaid by the Employer on completion of the Contract.
- 63.3 The Contractor shall store spares in a store room, and issue spares through an issue system with inventory control procedures consented to by the Employer. The Contractor shall submit to the Employer annual returns showing details of spares issued and their use. The

Contractor shall carry out a spares stock inventory annually, and shall provide the Employer with a list of inventory with details of spares withdrawals, spares replacement and spares in hand. Any shortfall of spares shall be made good by the Contractor as soon as possible at his Cost.

- 63.4 Mobile Plant shall, without prejudice to Clause 27, comply with all relevant enactments and shall be registered as required under any relevant enactment. Where registration is required under an enactment, Mobile Plant shall be registered in the name of the Contractor but the registration documents shall be provided to and kept by the Employer, together with blank duly signed ownership transfer forms.
- 63.5 A plate shall be affixed to Mobile Plant stating that the Mobile Plant is owned by the Employer and operated by the Contractor. The type of plate and the wording thereon shall be approved by the Employer.

#### **64. NON-PERMITTED WASTE**

- 64.1 The Contractor shall not be entitled to refuse any food waste delivery vehicles or food waste containers suspected of carrying Non-Permitted Waste from entering the Facility and the Existing Facilities without prior approval of the Employer.
- 64.2 The Contractor shall carry out checking of the Food Waste in accordance with the requirements of the Contract. If the Contractor finds any of the Food Waste the acceptance or treatment of which at the Facility would give rise to a breach of the Contract, the Contractor shall verbally notify the Employer of such a situation within one hour and give a written report giving all relevant details within a reasonable time following the verbal notification.
- 64.3 Not used.
- 64.4 In the event that Non-Permitted Waste is found, the Contractor shall notify the Employer immediately and attend to the Non-Permitted Waste until disposal in accordance with this Clause 64.4. Having notified the Employer, the Contractor shall dispose of such Non-Permitted Waste to landfills or other disposal locations as consented by the Employer, or engaging a licensed chemical waste collector / a licensed clinical waste collector to collect and deliver such Non-Permitted Waste to appropriate disposal locations in Hong Kong for disposal as consented by the Employer, and shall obtain a receipt from the disposal facility showing all details of the transaction record, including the net weight of the disposal load. All cost incurred by the Contractor for compliance with this Clause 64.4 shall be deemed to be included in Schedule No. P2 of the Schedule of Prices for Operation Fees.
- 64.5 For the purposes of this Clause 64, the Contractor shall be deemed not to be in breach of the Contract by treating Non-Permitted Waste that is subsequently removed from the Facility for disposal under Clause 64.4.

64.6

#### **65. SHUTDOWNS AND EMERGENCIES**

- 65.1 The Contractor shall notify the Employer in advance in writing of all shutdowns of and interruptions to any part of the Operation. In the event of an emergency shutdown or any emergency action at the Facility, the Contractor shall forthwith give verbal notice of it to the Employer by telephone and as soon as practicable thereafter give written notice to the Employer specifying the probable cause, effect and extent of such emergency.

65.2 The Contractor shall provide from time to time all practicable temporary arrangements and contingency provisions necessary to maintain the Operation during Commissioning Tests, Performance Tests, Condition Surveys and Residual Life Assessments under Clause 68, overhaul, renewal or breakdown and subsequent repair of Plant, Mobile Plant or any other part of the Facility. Without limitation to the generality of the foregoing:

- (a) the Contractor shall not be permitted to suspend the Operation by reason of any such event;
- (b) not used.

and the implementation of any temporary or contingency provisions shall not relieve the Contractor from any of his obligations under the Contract.

65.3 In the event that the Operation or any part thereof may become or cause or has become or caused a danger to any person or property, the Contractor shall notify the Employer of the danger immediately in accordance with Clause 65.1. The Contractor shall investigate and report in the form set out in the Employer's Requirements to the Employer the full details of the incident within 7 days of the occurrence. Where the circumstances of an incident renders it impracticable to report within 7 days of the occurrence, the Contractor shall submit a preliminary report in the form set out in the Employer's Requirements within 72 hours of the occurrence and a report giving full details within 14 days of the occurrence or such other longer period as may be agreed to by the Employer in writing.

65.4 Without limitation to the Contractor's obligations under the Contract, the Employer may by notice in writing require the Contractor to rectify any defects identified in the report or preliminary report submitted under Clause 65.3 and/or to carry out other necessary work to ensure the Facility can be re-opened without the danger and Clause 46 shall apply in respect of such rectification of defects.

65.5 Not used.

## **66. REPLACEMENT OF PLANT AND MOBILE PLANT**

66.1 The Contractor shall provide a schedule with the replacement dates for the Plant and Mobile Plant. Unless otherwise agreed in writing by the Employer, the Contractor shall also provide replacement Plant, Mobile Plant and spares as set out in the Employer's Requirements or, as the case may be, the Contractor's Plans or when necessary, and shall carry out the replacement as scheduled and as and when necessary as a result of fair wear and tear, damage caused by any reason whatsoever including damage caused by the Contractor's fault, or that such Plant, Mobile Plant or spares are no longer suitable for their purposes, whichever is the earlier. The Contractor may, with the Employer's written consent, defer a replacement of Plant, Mobile Plant and spares which still perform safely and efficiently and in accordance with the Contract, until a time specified by the Employer, but in any event the replacement shall be carried out and completed before the expiry of the Operation Period.

66.2 The cost of such replacement Plant, Mobile Plant and spares shall be deemed to be included in the Operation Fees. The Contractor shall not use such replacement Plant or Mobile Plant or spares in the Operation without the written consent of the Employer. Upon completion of replacement, the Plant or Mobile Plant or spares, as the case may be, that has been replaced shall become the property of the Contractor and shall be disposed of by the Contractor and not be incorporated into any part of the Facility, or used in the Operation.

## **67. PERFORMANCE TESTS**

- 67.1 The Facility shall at all times have the necessary capacity to treat the amount of Food Waste as set out in the Employer's Requirements or, as the case may be, the Contractor's Plans (subject to Clause 7.4) or the Registered Design or as ordered by the Employer pursuant to Clause 42 of the Conditions of Contract and shall in addition but without limitation, meet the other requirements set out in the Contract (including those set out in Clause 9).
- 67.2 Without limitation to the Contractor's obligations under Clause 67.1, the Employer shall have the power to instruct the Contractor to carry out Performance Tests once every year to verify the performance of the Facility. Such Performance Tests shall be completed within 42 days of such instruction. The Contractor shall give 7 days' notice to the Employer in writing of the date and time of such Performance Tests and shall carry out the same in the presence of the Employer, who shall be afforded every opportunity to witness every aspect of such Performance Tests. The Contractor shall provide to the Employer full, accurate and complete records of such Performance Tests within 28 days of the completion of the Performance Tests, or at a time agreed in writing with the Employer.
- 67.3 The Cost of complying with Clause 67.2 shall be borne by the Contractor. If upon completion of the Performance Tests the Facility is shown to have complied with the requirements of the Contract (including the requirement that it is suitable for its purposes), the Contractor shall be paid Operation Fees for the Food Waste treated during the Performance Tests.
- 67.4 If upon completion of the Performance Tests it is shown that the Facility or any part thereof requires adjustment, modification, repair or replacement:
- (a) The Contractor shall make such adjustment, modification, repair or replacement to the Facility as is necessary and at his own Cost in order that the Facility complies with the requirements of the Contract (including that it shall be suitable for its purposes) and pass further Performance Tests to be held as soon as practicable after the Performance Tests.
  - (b) The Contractor shall not be paid Operation Fees for the Food Waste treated during the Performance Tests or the further Performance Tests until the Employer's certification that the Facility fully complies with the requirements of the Contract.
- 67.5 Without prejudice to the other provisions of this Clause 67, the Employer shall have the power to order the Contractor to carry out within the time specified in the order, and the Contractor shall accordingly carry out, such interim tests on the performance of the Facility or part thereof if the Employer reasonably believes that the Facility will not or is unlikely to comply with the requirements of the Contract (including the requirement that the Facility is suitable for its purposes) before the next annual Performance Tests are due to take place. The Contractor shall give 7 days' notice to the Employer in writing of the date and time of such interim tests and shall carry out the same in the presence of the Employer, who shall be afforded every opportunity to witness every aspect of such interim tests. The Contractor shall provide to the Employer full, accurate and complete records of such interim tests within 14 days of the completion of such interim tests, or at a time agreed in writing with the Employer. The expense of carrying out such interim tests shall be borne by the Employer, save where such interim tests show that the Contractor will not or is unlikely to comply with the requirements of the Contract (including the requirement that the Facility is suitable for its purpose) before the anniversary of the previous annual Performance Tests, in which case the Contractor shall at his own Cost make such adjustment, modification, repair or

replacement to the Facility as is necessary with a view to preparing the Facility for further interim tests to verify the result of the adjustment, modification, repair or replacement.

## **68. CONDITION SURVEYS AND RESIDUAL LIFE ASSESSMENTS**

- 68.1 The Contractor shall, at his own Cost, engage an Independent Surveyor to carry out Condition Surveys of the Facility with the Contractor in the presence of the Employer. The Condition Surveys shall be carried out at least 9 months but not more than 12 months prior to the expiry of the Operation Period in accordance with the Employer's Requirements, and shall include Residual Life Assessments in accordance with the Employer's Requirements.
- 68.2 Within 28 days of the completion of the Condition Survey referred to in Clause 68.1, the Independent Surveyor shall prepare and submit to the Contractor and the Employer a detailed report on the general condition of the Facility, the methodology of the surveys, any damage or defects identified, the Residual Life Assessments and any proposed rectification works to be carried out. The Employer may, having considered the result of the surveys and the report require the Contractor to carry out any maintenance or rectification works (which may not be limited to the works proposed in the report) under Clause 46.
- 68.3 The Employer shall be entitled to make available all reports submitted to him pursuant to Clause 68.2, including any supporting information from the Contractor, to any person, firm or company participating in the tendering process of any future contract for the Operation.

## **69. GUARANTEE OF PERFORMANCE**

- 69.1 The Contractor's guarantees given in the Schedule of Guaranteed Performance in respect of Guaranteed Performance of the Facility shall be binding during the continuance of the Contract. The fulfilment or otherwise of the Guaranteed Performance shall be verified in the manner as prescribed in the Employer's Requirements.
- 69.2 In the event that the Facility fails to attain the Guaranteed Performance, the Contractor shall be deemed to have failed to comply with the Operational Performance Requirements as provided in Clause 62.1.
- 69.3 Nothing in Clause 69 shall prejudice the right of the Employer or the Supervising Officer to reject any Plant or Mobile Plant for non-compliance with any requirements of the Contract.

## **70. TRAINING OF OPERATORS**

- 70.1 The Contractor shall in the manner described in the Employer's Requirements with appropriate demonstration train the Employer's employees and contractors in the Operation.
- 70.2 On the expiry of the Operation Period or the termination of the Contract (howsoever occasioned) and on taking possession of the Site, the Works or the Facility by the Employer, the Contractor's employees or his sub-contractors on the Operation may, in the Employer's absolute discretion, be engaged immediately by the Employer for continuing the Works or the operation and maintenance of the Facility. The Contractor shall upon request do everything necessary to ensure that the relevant employees and sub-contractors are not prevented from so engaged by the Employer exclusively or not.

70.3

## **71. OPERATION FEES**

- 71.1 The Operation Fees included in the Contractor's statement under Clause 97.1 shall be:
- (a) the amount ascertained and determined in accordance the relevant Schedule of Prices for Operation Fees in respect of fixed costs for the Proving Stage;
  - (b) the amount ascertained and determined in accordance the relevant Schedule of Prices for Operation Fees in respect of fixed costs for the Post-commissioning Stage;
  - (c) the amount ascertained and determined in accordance with the relevant Schedule of Prices for Operation Fees in respect of Pre-treatment;
  - (d) Not used;
  - (e) Not used;
  - (f) Not used;
  - (g) Not used;
  - (h) Not used; and
  - (i) the amount, if any, ascertained and determined in accordance with Clause 43.5, subject to and in accordance with this Clause 71.
- 71.2 Not used.
- 71.3 Not used.
- 71.4 Not used.
- 71.5 Not used.
- 71.6 The Operation Fees set out in the Schedule of Prices for Operation Fees shall be (or shall be deemed to be) allotted as stated in the Form of Tender, to the activities set out below collectively comprising the Operation:
- (a) compliance with the Operational Performance Requirements;
  - (b) compliance with the Environmental and Safety Performance Requirements; and
  - (c) all other activities comprising the Operation.
- 71.7 In the event of a certification of non-compliances under Clause 50.3(b), 50.5 or 62.1, the Contractor shall not be entitled to payment of that part of the Operation Fees set out in the Schedule of Prices for Operation Fees (as adjusted pursuant to Clause 99.1), for the month in which such non-compliance was certified, allotted to such compliance in accordance with the following formula:

$$S = \frac{(P \times Q)}{R} \times \text{Operation Fees}$$

where

Operation Fees comprise the total of the monthly fixed Operation Fees and the variable Operation Fees for that month.

S = the part of the Operation Fees to which the Contractor is not entitled in the relevant month.

P = the sum of the percentage of the Operation Fees allotted to compliance with the Operational Performance Requirements and the percentage of the Operation Fees allotted to compliance with the Environmental and Safety Performance Requirements as stated in the Form of Tender.

Q = the total number of points attributable to the non-compliances certified by the Employer as aforesaid, calculated in accordance with the Employer's Requirements.

R = total number of points allocated to the Operational Performance Requirements and the Environmental and Safety Performance Requirements as set out in the Employer's Requirements.

- 71.8 The Operation Fees shall be decreased in accordance with this Clause 71 in the event that the Employer notifies the Contractor of his non-compliance with the Operational Performance Requirements or the Environmental and Safety Performance Requirements under the Contract.
- 71.9 The Operation Fees shall, save only as expressly provided to the contrary in the Contract, be the Contractor's sole entitlement, remuneration or payment in relation to the Operation and to all his obligations under the Contract relating thereto.
- 71.10 For the avoidance of doubt, both the allocation of the Operation Fees under Clause 71.6 and any part thereof to which the Contractor may not be entitled under Clause 71.8 shall include or be deemed to include any adjustments for fluctuations that may be or may have been applicable under Clause 100.
- 71.11 Details of the deductions, if any, to be made from the Operation Fees under this Clause 71 shall be notified to the Contractor by the Employer on a monthly basis, and for the purposes of Clause 97 the deductions shall be made from the next monthly payment of Operation Fees to which the Contractor is entitled following receipt of the Employer's notification.
- 71.12 Any reduction in, or non-payment of part of, the Operation Fees under Clause 71 as a result of the Contractor's failure to comply with any of the Operational Performance Requirements shall not relieve the Contractor from any of his obligations under the Contract or any liability to the Employer for damages, costs, charges, expenses, debts or other sums for which he is liable under the Contract or otherwise save that the amount of such liability shall be reduced by the amount of any such reduction or non-payment in respect of the Contractor's failure to comply with the relevant Operational Performance Requirements.
- 71.13 As soon as practicable but in any event within 14 days of any certification of non-compliance under Clause 50 and 62.1, the Contractor may serve notice in writing to the Employer requesting the Employer to decide whether the relevant non-compliance is attributable to the activities comprising the Operation. The Contractor shall provide together with such notice all information pertaining to the relevant non-compliance and such further details as are required in writing by the Employer to enable the Employer to make a decision. All information and details shall, unless provided elsewhere in the Contract to the contrary, be

submitted in duplicate to the Employer. The Employer shall, as soon as practicable after receipt of all relevant information and details from the Contractor, inform the Contractor in writing his decision. For the avoidance of doubt, Clause 71.7 shall not apply to any non-compliance that the Employer has decided under this Clause to be not attributable to the activities comprising the Operation.

## **72. DEDUCTIONS FROM OPERATION FEES**

- 72.1 If the Contractor shall be in breach of any of the provisions of the Contract or shall be failing to otherwise comply with any requirements of the Contract with regard to the Operation, the Employer shall have the power at any time to order the Contractor to rectify the breach or, as the case may be, rectify the failure to comply within a reasonable time. All such orders shall be in writing and shall state the time within which the breach or failure to comply shall be rectified.
- 72.2 If the Contractor fails within the time prescribed in an order under Clause 72.1 to rectify the breach or to remedy the failure, the Employer may withhold the whole or any part of any one or more instalments of the Operation Fees. The Employer shall be entitled to deduct from any sums retained under this Clause 72 any loss, Cost or damages whether incurred by the Employer in rectifying/remedying or attempting to rectify/remedy any such breach or failure or otherwise arising from any such breach or failure (including any Cost or Expense incurred or estimated by the Employer under Clause 53).
- 72.3 The balance, if any, of the sums retained after any deduction made under Clause 72.2 shall be paid to the Contractor after the breach or failure has been rectified/remedied satisfactorily but the Contractor shall have no entitlement to interest on such balance.
- 72.4 The Contractor shall have the right to appeal to the Employer within 14 days of receipt of an order under Clause 72.1. Such appeal shall be made in writing giving sufficient details of the grounds of such appeal to enable the Employer to reach a decision on such appeal.
- 72.5 The Employer shall notify the Contractor in writing of his decision on any appeal made by the Contractor under Clause 72.4 within 21 days of receipt of such appeal.
- 72.6 In the event that any appeal under Clause 72.4 is allowed by the Employer, the deduction in Operation Fees (if any) made under Clause 72.2 in relation to the successful appeal shall be paid without interest to the Contractor by including it in the next monthly payment of Operation Fees under Clause 97 following the decision on the appeal.
- 72.7 This Clause 72 shall not prejudice any other rights or powers of the Employer whether at law or in the Contract.

## **72A. COMMISSIONING TESTS**

- 72A.1 The Contractor shall, for each of the Commissioning Tests, give to the Employer 14 days' notice in writing of the date after which he shall be ready to make the test. Unless otherwise agreed the test shall commence on such day or days as the Employer shall notify the Contractor in writing which shall be within 7 days of the date specified in the Contractor's notice.
- 72A.2 If the Employer fails to appoint a time for the commencement of the test in respect of any item of Plant or any other part of the Works after having been asked to do so or fails to attend at any time or place duly appointed for making the test, the Contractor shall be entitled to

proceed in the absence of the Employer and shall supply the Employer with full details of the result of the test.

- 72A.3 The Contractor shall at his own expense provide everything including labour, materials, electricity, fuel, water, stores and apparatus as may be required to carry out the Commissioning Tests efficiently.
- 72A.4 Any part of the Works which has failed to pass the Commissioning Tests shall be re-tested within a reasonable time at the Contractor's expense.

**72B. CERTIFICATION OF COMPLETION**

- 72B.1 When the outstanding work referred to in Clause 89.2 and the Commissioning Tests referred to in Clause 72A shall have been completed in accordance with the Contract to the satisfaction of the Employer, the Employer shall issue the Certificate of Completion for the Works stating the date on which the Contractor completed the outstanding work and related tests. Unless otherwise instructed by the Employer in accordance with Clause 61A.2, the Certificate of Completion for the Works shall not be issued before 180 days from the day the Operation commences.
- 72B.2 A certificate issued by the Employer under Clause 72B.1 shall not be deemed to constitute approval of any work or matter that has not been carried out in accordance with the Contract.

## C. DESIGN AND EXECUTION OF THE WORKS

### 73. DESIGN OF THE WORKS

- 73.1 The Contractor shall submit to the Design Checker adequate details of the design criteria, codes of practice and design standards that were outlined in the Contractor's Plans and proposed in the Tender to be used in the Design and execution of the Works. The Design Checker shall certify in accordance with the Design Checking Procedures that such design criteria, codes of practice and design standards are in accordance with the Employer's Requirements, the Contractor's Plans and sound engineering design practices. If the Design Checker does not certify, the Contractor shall submit further details of the said design criteria, codes of practice and design standards, as the case may be, until the Design Checker's certificate is obtained.
- 73.2 Within 28 days of the receipt by the Supervising Officer of the certificate under Clause 73.1 issued by the Design Checker, the Supervising Officer shall inform the Contractor in writing that the Supervising Officer consents or does not consent to the certified design criteria, codes of practice and design standards. In the event that the Supervising Officer does not consent, he shall specify those parts of the certified design criteria, codes of practice and design standards with which he is not satisfied and the Contractor shall submit further details in accordance with Clause 73.1 for certification by the Design Checker and the consent of the Supervising Officer under this Clause 73.2. If the Supervising Officer does not inform the Contractor within the 28-day period that he does not consent, the Supervising Officer's consent is then deemed to be given upon expiry of the 28-day period.
- 73.3 The information required by Clause 73.7(a) to (c) shall be provided by the Contractor to the Design Checker in accordance with the programme consented to by the Employer under Clause 14. The certifications by the Design Checker referred to in Clause 73.7, the Supervising Officer's consent and any statutory approval or consent shall be obtained before execution of the particular part of the Works commences.
- 73.4 The Contractor shall provide such drawings, calculations and other documents in connection with the Design and execution of the Works as are necessary or appropriate or as are required in writing by the Design Checker to enable the Design Checker to fully understand and monitor the Design and execution of the Works and to fulfil their obligations to check, ensure and certify that the Design complies with the Contract (including for the avoidance of doubt, the Contractor's Plans), sound engineering design practices, and the design criteria, codes of practice and design standards certified by the Design Checker under Clause 73.1. All such drawings, calculations and documents shall, unless provided elsewhere in the Contract to the contrary, be submitted in duplicate to the Design Checker (with copies to the Employer and the Supervising Officer at the same time as the provision to the Design Checker) at least 91 days, or such other shorter period as the Supervising Officer and the Design Checker may agree with the Contractor, before the work shown or described thereon is to be carried out so as to permit the Design Checker and the Supervising Officer sufficient time to examine the Contractor's proposals properly. In executing the Design the Contractor shall strictly comply in all respects with the Design Checking Procedures and the provisions of the Contract. Drawings, calculations and other documents submitted under this Clause 73, may, without the consent of the Contractor, be used by the Employer for any purpose connected with the Facility.
- 73.5 The Design Checker, the Employer and the Supervising Officer shall have the right at all reasonable times to inspect at the premises of the Contractor or of any sub-contractor all

drawings, calculations and documents in connection with the Design and execution of the Works or any parts thereof and the Contractor shall procure access for this purpose.

- 73.6 Should the Contractor discover or be informed by the Design Checker at any time after submission of the drawings, calculations and documents under Clause 73.4 that the drawings, calculations or documents do not comply with the Contract, or that they are contrary to sound engineering design practices or the design criteria, codes of practice or design standards consented to by the Supervising Officer under Clause 73.2 the Conditions of Contract, or that they are inconsistent with drawings, calculations or documents previously submitted under Clause 73.4, the Contractor shall promptly make such alterations or additions as are necessary to remedy such non-compliance or inconsistency at the Contractor's own Cost and shall re-submit any altered drawings, calculations or documents to the Design Checker (with copies to the Employer and the Supervising Officer) in accordance with Clause 73.4.
- 73.7 The Design Checker shall issue such certificates as are specified in the Design Checking Procedures (with or without conditions specified by the Supervising Officer) only when they are satisfied that the Contractor:
- (a) has complied in all respects with Clauses 73 and 75;
  - (b) has obtained all requisite statutory approvals and consents, if any are required, in connection with the Design;
  - (c) has obtained the advices from the Government departments as set out in the Employer's Requirements and such other departments as are notified by the Supervising Officer from time to time that they have no comment on the Design; and
  - (d) has supplied the Supervising Officer and the Design Checker with a copy each of all requisite statutory approvals and consents referred to in sub-clause 7(b) and advices referred to in sub-clause (c).
- For the avoidance of doubt, the Design Checker shall not issue any certificate that is conditional on the granting of a statutory approval or consent, or the giving of an advice as required under sub-clause (b) or (c) respectively.
- 73.8 Upon each certification by the Design Checker as referred to in Clause 73.7, the Contractor shall provide to the Employer and the Supervising Officer:
- (a) a list of all information, drawings, documents and calculations comprising the certified Design, together with a copy each of any information, drawings, documents or calculations referred to in the list that have been altered in any way from those submitted to the Employer and the Supervising Officer under Clause 73.4; and
  - (b) a list of all information, drawings, documents and calculations comprising the methods of construction certified by the Design Checker together with a copy of each of any information, drawings, documents or calculations referred to in the list that have been altered in any way whatsoever from those submitted under Clause 75.1,

and within 28 days of receipt thereof the Supervising Officer shall inform the Contractor in writing that the Supervising Officer consents or does not consent to the Design and the methods of construction as certified by the Design Checker. In the event that the

Supervising Officer does not consent to either or both of the Design and the methods of construction, he shall specify those parts of the Design or methods of construction with which he is not satisfied and the Contractor shall prepare further submissions in accordance with this Clause 73 for certification by the Design Checker and the consent of the Supervising Officer. The Contractor shall be entitled to additional payment in accordance with Clause 43 in respect of any Cost incurred as a result of the Supervising Officer failing to give any consent aforesaid unless in the Supervising Officer's opinion the certified Design and methods of construction in respect thereof should not have been certified by the Design Checker under Clause 73.7 or 75.3 respectively.

- 73.9 Upon receipt of the Supervising Officer's consent to any certified Design, the Contractor shall, unless otherwise instructed by the Supervising Officer in writing, deposit two complete sets of all drawings, calculations and documents comprising such Design with each of the Employer, the Supervising Officer and the Design Checker, and such Design shall thereafter be the Registered Design.
- 73.10 The Contractor shall not be entitled to make any claim in respect of any delay either by the Design Checker or any of the authorities granting the statutory approvals or consents as referred to in Clause 73.7(b) or any of the Government departments in the giving of the advices as referred to in Clause 73.7(c). The Contractor shall allow and shall be deemed to have allowed sufficient time in his programme under Clause 14 to obtain such certification, approvals, consents and advices. Neither shall the Contractor be entitled to make any claim against the Employer in respect of any failure of the Contractor to obtain the advices referred to in Clause 73.7(c), whether such failure is due to any requirement of the relevant Government department that the Contractor did not anticipate as at the date of the Letter of Acceptance.
- 73.11 For the avoidance of doubt neither a certificate issued by the Design Checker, nor the Supervising Officer's consent under this Clause 73 shall relieve the Contractor from any of his obligations, liabilities or duties under the Contract.
- 73.12 The reference in the Contract to the Registered Design shall include any changes thereto in accordance with Clause 42 or 44.

#### **74. CONSTRUCTION IN ACCORDANCE WITH REGISTERED DESIGN**

- 74.1 Before execution of the part of the Works to which any Design is applicable is commenced, the Contractor shall have obtained the Supervising Officer's consent under Clause 73.8 in respect of the Design and the Design Checker's certification under Clause 75.3 in respect of the methods of construction in respect of such part of the Works and have complied with Clause 73.9 in respect of the Design for such part of the Works.
- 74.2 The Contractor shall execute the Works strictly in accordance with the Registered Design and the methods of construction consented to by the Supervising Officer under Clause 73.8. The Design Checker shall check and certify that the Works are constructed in accordance with the Registered Design and the methods of construction aforesaid and shall inspect and monitor the execution of the Works and shall carry out tests of the Works as specified in and in accordance with the Contract. In executing the Works, the Contractor shall strictly comply in all respects with the Construction Checking Procedures and the provisions of the Contract. In the event that the Contractor discovers or is informed by the Design Checker or the Supervising Officer that the execution of the Works strictly in accordance with the methods of construction consented to by the Supervising Officer under Clause 73.8 may be detrimental to the Works, the Contractor shall immediately notify the Employer and the

Supervising Officer in writing giving full details of the problem and shall as soon as practicable propose alternative methods of construction in accordance with Clause 75. The Contractor shall not be entitled to any extension of time or any Cost as a result of the requirement for such alternative methods of construction and, where such alternative methods of construction have been certified by the Design Checker under Clause 75.3, for compliance with the same.

- 74.3 If the Design Checker is of the opinion that the Works are not being or have not been executed in accordance with the Registered Design or the methods of construction certified by the Design Checker under Clause 75.3 , he shall promptly inform the Contractor and the Supervising Officer. The Contractor shall rectify at his own Cost the said Works.
- 74.3A The Contractor shall provide the Design Checker's certification issued under Clause 74.2 to the Supervising Officer and, within 28 days of receipt thereof, the Supervising Officer shall inform the Contractor in writing that the Supervising Officer consents or does not consent to the certification. In the event that the Supervising Officer does not consent to the certified Works, he shall specify those parts of the Works with which he is not satisfied and the Contractor shall promptly rectify at his own Cost such Works.
- 74.4 The Contractor and the Design Checker should check and certify in accordance with Clause 1.7.1D of the Employer's Requirements that the Temporary Works are executed in accordance with the Registered Design.
- 74.5 For the avoidance of doubt, no certificate issued by the Design Checker nor the Supervising Officer's consent under this Clause 74 shall relieve the Contractor from any of his obligations, liabilities or duties under the Contract.

## **75. METHODS OF CONSTRUCTION**

- 75.1 The Contractor shall provide such information, drawings and other documents pertaining to the methods of construction for the Works (including the use of the Constructional Plant and methods of manufacture, preservation, transportation, storage, installation, calibration and testing) which the Contractor proposes to adopt together with such calculations of loading, stresses, strains, settlements and deflections that will arise from the adoption of such methods in the execution of the Works as are safe or necessary or appropriate or as are required in writing by the Design Checker to enable the Design Checker to decide whether the Works can be executed in a safe manner in accordance with the Design and without detriment to the Works or the Facility if such methods are adopted. All such information, drawings, documents and calculations shall, unless provided elsewhere in the Contract to the contrary, be submitted in duplicate to the Design Checker (with copies to the Employer and the Supervising Officer at the same time as the provision to the Design Checker) at least 91 days, or such other shorter period as the Supervising Officer and the Design Checker may agree with the Contractor, before the work shown or described thereon is to be carried out so as to permit the Design Checker and the Supervising Officer sufficient time to examine the Contractor's proposals properly.
- 75.2 Should the Contractor discover or be informed by the Design Checker at any time after submission of the information, drawings, documents and calculations under Clause 75.1 that the information, drawings, documents and calculations do not comply with the Contract, or that they fail to meet the requirements of the Design, or that their adoption would be detrimental to the Works or the Facility, or if further information, drawings, documents and calculations are required to enable the Design Checker to properly assess them, the

Contractor shall promptly make such alterations or additions as are necessary to remedy such non-compliance or inadequacy at the Contractor's own Cost and re-submit any altered drawings, documents or calculations to the Design Checker (with copies to the Employer and the Supervising Officer) in accordance with Clause 75.1.

- 75.3 The Design Checker shall certify in writing the Contractor's methods of construction when he is satisfied that the methods of construction have complied in all respects with this Clause 75.
- 75.4 For the avoidance of doubt, a certificate issued by the Design Checker shall not relieve the Contractor from any of his obligations, liabilities or duties under the Contract.
- 75.5 The information, drawings, documents and calculations required under this Clause 75 shall be provided by the Contractor to the Design Checker or, as the case may be, the Supervising Officer to accord with the programme consented to by the Employer under Clause 14.

## **76. SETTING OUT**

- 76.1 The Contractor shall be responsible for the true and proper setting-out of the Works in relation to original points, lines and levels of reference 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.
- 76.2 If at any time during the progress of the Works or the Operation any error shall appear or arise in the position, level, dimensions or alignment of any part of the Works, the Contractor shall draw the attention of the Employer, the Supervising Officer and the Design Checker to the same and on being required so to do the Contractor shall, at his own Cost, rectify such error to the satisfaction of the Employer, the Supervising Officer and the Design Checker.
- 76.3 The Contractor shall carefully protect and preserve all benchmarks, sight rails, pegs and other things used in setting out the Works and shall compile and maintain records of all benchmarks and setting-out data.
- 76.4 The checking of any setting-out or of any points, lines or levels by the Employer, the Supervising Officer or the Design Checker shall not in any way relieve the Contractor of his responsibility for the correctness thereof.

## **77. FOSSILS**

- 77.1 All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the Site shall, as between the Employer and the Contractor, be the absolute property of the Employer, and the Contractor shall take reasonable precautions to prevent his workers or any other persons from removing or damaging any such article or thing and shall immediately on discovery thereof and before removal acquaint the Supervising Officer of such discovery and carry out at the expense of the Employer the instructions of the Supervising Officer as to the disposal of the same. The Contractor shall indemnify and keep the Employer indemnified at all times from and against all loss, liability, damages, costs and expenses of any nature arising out of or in connection with any breach of this Clause by the Contractor, his employees, agents, servants or sub-contractors.

## **78. QUALITY OF PLANT, MOBILE PLANT, MATERIALS AND WORKMANSHIP**

- 78.1 All Plant, Mobile Plant, materials and workmanship shall be of the respective character, quality or kind required by the Contract and shall be subjected to such examinations, measurements or tests as the Contract shall require or as ordered by the Employer at any time at the place of manufacture, or on the Site, or at such other place or places as may be specified in the Contract, or at all or any such places, until the issue of the Handover Certificate.
- 78.2 In the event that the Supervising Officer or the Design Checker decides that any examinations, measurements or tests not required by the Contract are desirable, he shall notify in writing the Employer and the Contractor specifying their reasons for such decision. The Employer may order the carrying out of such examinations, measurements or tests under Clause 78.1. If the Contractor is informed that the Employer decides not to so order, the Contractor shall be entitled to request the Supervising Officer or the Design Checker to carry out such examinations, measurements or tests at the Contractor's Cost, in which case Clause 78.4 shall not apply to such examinations, measurements or tests.
- 78.3 The Contractor shall provide such assistance, instruments, Constructional Plant, machines, labour and other facilities as may be necessary for examining, measuring or testing any work and the quality, weight or quantity of any Plant, Mobile Plant or material used and, before incorporation into the Works, shall supply for examining, measuring or testing such Plant, Mobile Plant or samples of materials as may be selected or required by the Supervising Officer or the Design Checker.
- 78.4 The Cost of complying with Clauses 78.2 and 78.3, including any transportation costs, shall be borne by the Contractor in so far as the Contract provides for such examinations, measurements or tests, but if, in the Employer's opinion, the Contract does not so provide and subject to Clause 78.2, then the Employer shall value the Contractor's Cost as if it were a Change as defined in and ordered under Clause 42 at the rate or rates set out in the Contract for testing or, where such compliance takes place after the date of completion stated in the Certificate of Substantial Completion for the Works, based so far as may be reasonable on such rate or rates or, in the absence of such rate or rates, in accordance with Clause 43, and the Employer shall reimburse the Contractor in respect thereof. Provided that:
- (a) such Cost relating to any examination, measurement or test that shows the Plant, Mobile Plant, materials or workmanship not to be in accordance with the Contract shall be borne by the Contractor; and
  - (b) in the event that any test shows, in the opinion of the Supervising Officer or the Design Checker, that the Contractor has failed to comply with the requirements of the Contract, the Contractor shall at his own Cost propose and carry out further or any other tests as the Supervising Officer or the Design Checker may decide.
- 78.5 The proviso to Clause 78.4 shall apply to any series of tests made on any part of the Works the results of which indicate that, in the opinion of the Supervising Officer, the Contractor has failed to comply with the requirements of the Contract notwithstanding there being satisfactory individual tests included in any such series of tests.
- 78.6 The Employer, the Supervising Officer and the Design Checker shall be notified in writing 7 days prior to any test conducted by the Contractor under this Clause 78 and shall be afforded the opportunity to attend and witness such tests. The Contractor shall be liable for the Cost of any subsequent attendance by the Employer and the Supervising Officer consequent on the failure of any test.

- 78.7 Without prejudice to Clauses 44 and 82, any deficiency of capacity or performance of the Works or unsuitability of the Design and the Works for the purposes expressed in or to be implied from the Contract identified by any test or otherwise shall immediately be rectified by the Contractor at the Contractor's own Cost and whether or not such rectification involves the repair or replacement of any part of the Works.
- 78.8 Notwithstanding the above, testing carried out in the Employer's laboratories in connection with the Works shall be free of charge.
- 78.9 All structural concrete for incorporation into the Works or the Facility as the case may be shall be produced at a certified plant and supplied by a concrete supplier certified under the Quality Scheme for the Production and Supply of Concrete by Hong Kong Quality Assurance Agency or other certification bodies accredited by the Hong Kong Accreditation Service.

## **79. ACCESS TO SITE AND PLACES OF CONSTRUCTION OR MANUFACTURE**

- 79.1 The Supervising Officer, the Design Checker, and any persons authorised by either of them shall be entitled during construction or manufacture to inspect, examine and test on the Site and at the Contractor's premises, the Plant, Mobile Plant, materials and workmanship to be supplied under the Contract, and if part of the Plant, Mobile Plant, materials or workmanship is being manufactured or prepared on other premises the Contractor shall obtain permission for the Supervising Officer, the Design Checker or persons authorised by either of them to inspect, examine and test at those premises. The Supervising Officer and the Design Checker and such authorised persons shall be entitled to attend any such inspection, examination or test and the Contractor shall procure permission for the Supervising Officer, the Design Checker and such authorised persons to attend any such test not carried out on the Contractor's premises.
- 79.2 The Contractor shall satisfactorily complete the off-Site tests described in the Employer's Requirements, if any, before delivering Plant, Mobile Plant or materials to which they relate, to the Site. Whenever the Contractor is ready to conduct any such test, he shall notify the Supervising Officer and the Design Checker of the place where and time when he intends to conduct it, such time being at least 90 days after the receipt of the notice by the Supervising Officer and the Design Checker.
- 79.3 The Contractor shall conduct every off-Site test at the time and place notified under Clause 79.2 and shall provide the Employer, the Supervising Officer and the Design Checker each with a certified copy of the test results. If either or both of the Supervising Officer and the Design Checker fails to attend any such test, or if it is agreed between the Supervising Officer, the Design Checker and the Contractor that the Supervising Officer and the Design Checker shall not do so, then the Contractor shall conduct the test in the absence of the Supervising Officer and/or the Design Checker and a certified copy of the test results shall be deemed to be a correct record thereof.

## **80. EXAMINATION OF WORKS BEFORE COVERING UP**

- 80.1 The Contractor shall not cover up or put out of view any construction work without first giving full opportunity for the Supervising Officer and the Design Checker to examine and measure, as appropriate, any such work that is about to be covered up or put out of view and to examine any foundation before permanent work is placed thereon.

- 80.2 The Contractor shall give reasonable notice to the Supervising Officer and the Design Checker whenever any such work is ready for examination and measurement or foundation is ready for examination, and the Supervising Officer and the Design Checker shall, without unreasonable delay and unless they consider it unnecessary and advise the Contractor accordingly, attend for the purpose of examining and measuring such work or of examining any such foundation.
- 80.3 For the purpose of Clause 80.2, the Contractor shall submit inspection forms to the Employer, the Supervising Officer and the Design Checker at least 48 hours before any such work is ready for examination and measurement or foundation is ready for examination.

## **81. UNCOVERING OF WORKS AND MAKING OPENINGS**

- 81.1 The Contractor shall uncover any part of the Works or make such openings in or through the same as the Supervising Officer and the Design Checker may from time to time direct and shall reinstate and make good any such part in accordance with the Contract.
- 81.2 Not used.
- 81.3 If any such part has been covered up or put out of view after compliance with Clause 80 and is found, in the opinion of the Supervising Officer and the Design Checker, to be executed in accordance with the Contract, the Cost of uncovering, making openings in or through, reinstating and making good the same under Clause 81.1 shall be valued by the Supervising Officer as if it were a Change as defined in and ordered under Clause 42 at the rate or rates set out in the Contract for such work or, where such work is carried out after the date of completion stated in the Certificate of Substantial Completion for the Works, based so far as is reasonable on such rate or rates or, in the absence of such rate or rates, in accordance with Clause 43 and the Employer shall reimburse the Contractor, but in any other case the Cost shall be borne by the Contractor.
- 81.4 Not used.

## **82. REMOVAL OF UNSATISFACTORY PLANT, MOBILE PLANT, MATERIAL AND WORK**

- 82.1 The Employer or the Supervising Officer shall during the progress of the Works and the Operation have the power to order in writing:
- the removal from the Site or, as the case may be, the Facility, within such time as may be specified in the order, of any Plant, Mobile Plant or material that in the opinion of the Employer or the Supervising Officer is not in accordance with the Contract,
  - the substitution of proper and suitable Plant, Mobile Plant or material, and
  - the removal and proper re-execution, notwithstanding any previous examination, measurement or test thereof or any interim payment therefor, of any work that, in respect of Plant, Mobile Plant, materials, workmanship or Design, is not (in the

opinion of the Employer or the Supervising Officer) in accordance with the Contract.

- 82.2 Not used.
- 82.3 The Contractor shall bear the Cost of uncovering, breaking up and removal from the Site or the Facility of any Plant, Mobile Plant, material or work not in accordance with the Contract and the Contractor shall also bear the Cost of reinstating and making good all consequential damage to the Works resulting from such uncovering, breaking up or removal.
- 82.4 Where the rectification of any work or replacement of any material by the Contractor which is not in accordance with the Contract would involve the removal and re-execution of the original permanent work, the Employer or the Supervising Officer may but shall not be obliged to either:
- (a) give directions for a Change within the meaning set out in Clause 42.1 in lieu of such removal and re-execution at no additional expense to the Employer, provided that if in the opinion of the Employer or the Supervising Officer such a Change has involved the Contractor in expense in excess of that which would have been involved in the removal and re-execution of the original permanent work, then the Employer or the Supervising Officer shall value such excess in accordance with Clause 43 and shall certify in accordance with Clause 93 or 97 as appropriate; or
  - (b) with the prior agreement in writing of the Employer, accept any work which, in respect of Plant, Mobile Plant, materials or workmanship, is not in accordance with the Contract without requiring rectification and replacement or removal and re-execution, in which event the Capital Value or the Operation Fees shall be reduced by such amount as may be determined by the Employer or the Supervising Officer in respect of any loss or damage suffered or likely to be suffered by the Employer or any saving in Cost to the Contractor in carrying out the work which is not in accordance with the Contract, whichever is the greater but in no event such amount shall exceed the cost of removal and re-execution of the original permanent work. The Employer/Supervising Officer and the Contractor shall attempt to reach agreement on the amount to be reduced, failing which the Employer/Supervising Officer shall determine such amount as provided herein.
- 82.5 In the event that the Employer or the Supervising Officer exercises any of his powers under Clause 82.1 concerning materials supplied by the Employer, and if in the opinion of the Employer or the Supervising Officer the Contractor could not have reasonably ascertained that the material was not in accordance with the Contract, then the Employer or Supervising Officer shall ascertain the Cost incurred, and shall certify in accordance with Clause 93 or 97 as appropriate.

### **83. COMMENCEMENT OF THE DESIGN AND THE WORKS**

- 83.1 The Contractor shall commence the Design and the execution of the Works on the date for commencement of the Design and the Works as notified in writing by the Employer and shall proceed with the same with due diligence and expedition. The date so notified by the Employer shall be within the period of time as stated in the Form of Tender. The Contractor shall not, unless otherwise agreed in writing by the Employer, commence the Design of the Works or its construction before the notified date for commencement of the Design and the Works. Provided that the execution of the Works or part of the Works including work or equipment manufactured off the Site, shall not commence until the Design for the whole of the Works or, as the case may be, the entirety of such part, have been consented to by the

Supervising Officer under Clause 73.8, and the relevant methods of construction have been certified by the Design Checker under Clause 75.3.

83.2 Not used.

**84. NOT USED**

**85. TIME FOR COMPLETION**

85.1 The Contractor shall substantially complete the Works and obtain the Certificate of Substantial Completion for the Works within the Time for Completion starting from and including the date for commencement of the Design and the Works as notified by the Employer under Clause 83 or such extended time as may be determined under Clause 86.

85.2 General Holidays shall be included in the Time for Completion unless otherwise stated in the Contract.

85.2A Not used.

**86. EXTENSION OF TIME FOR COMPLETION OF THE WORKS**

86.1 As soon as practicable but in any event within 42 days of the cause of any delay to the progress of the Works (including any delay to the carrying out of any final test that may be prescribed by the Contract) has arisen, the Contractor shall give notice in writing to the Employer of the cause and probable extent of the delay.

Provided that as soon as the Contractor can reasonably foresee that any order or instruction issued by the Employer or the Supervising Officer is likely to cause a delay to the progress of the Works (including a delay to the carrying out of any final test that may be prescribed by the Contract) the Contractor shall forthwith give notice in writing to the Employer and specify the probable effect and extent of such delay. Such notice shall not in any event be given later than 42 days after the Employer has issued the relevant order or instruction.

86.2 If in the opinion of the Employer the cause of the delay is:

- (a) inclement weather and/or its consequence adversely affecting the progress of the Design and Works, or
- (b) the hoisting of tropical cyclone warning signal No.8 or above, or
- (c) a Black Rainstorm Warning, or
- (d) an instruction given by the Employer under Clause 7.2, or
- (e) a Change as defined in and ordered under Clause 42, or
- (f) the Contractor not being given possession of the Site or any part thereof in accordance with the Contract or is subsequently deprived of it by the Employer, or
- (g) a disturbance to the progress of the Works for which either or both of the Employer and the Supervising Officer are responsible including any matter referred to in Clause 91, or
- (h) the suspension of the Works (or any part thereof) in accordance with Clause 38 in so far as the suspension is not occasioned by the circumstances described in Clause 38.2(a) to (d), or
- (i) the temporary discontinuance of the Works or any part thereof in accordance with

Clause 38A, or

- (j) any Utility Undertaking or other duly constituted authority failing to commence or to carry out in due time any work directly affecting the execution of the Works, provided that the Contractor has taken all practical steps to cause the Utility Undertaking or duly constituted authority to commence or to proceed with such work, or
- (k) any utility services work directly connected with but not forming part of the Works and which in the opinion of the Employer could not have been foreseen by an experienced contractor based on the information available as at the tender closing date, or
- (l) not used
- (m) any Change in Law, or
- (n) any special circumstances of any kind whatsoever,

then the Employer shall within a reasonable time consider whether the Contractor is fairly entitled to an extension of time for the completion of the Works. Provided that the Contractor shall not be entitled to an extension of time by reason of any delay unless the Employer is satisfied that such delay will or has affected the completion of the Works.

86.3 Notwithstanding the powers of the Employer under Clause 86.2 to decide whether the Contractor is fairly entitled to an extension of time for the completion of the Works, the Contractor shall not be entitled to any extension of time if the cause of the delay is:

- (a) a suspension occasioned by the circumstances described in Clause 38.2, or
- (b) a shortage of Constructional Plant; or
- (c) defective or late Design by the Contractor, or
- (d) failure of the Contractor to interpret properly the Employer's Requirements and the Employer's Drawings or identify any ambiguity or discrepancy therein that could have been reasonably foreseen by an experienced contractor, or
- (e) change in quantities as described or implied in the Contract other than by way of a Change as defined in and ordered under Clause 42, or
- (f) not used
- (g) failure of the Contractor to co-ordinate the execution of the Works with any other part thereof, or the Operation , or the operation and maintenance of the Existing Facilities, or
- (h) interference by reason of provision of facilities, access or services to the Employer or third parties in accordance with the Contractor's obligations under Clause 29; or
- (i) failure of the Contractor to comply with any requirement of the Contract.

86.4 The Contractor shall use and continue to use all reasonable endeavours to avoid or reduce the effect of any cause of delay to the progress of the Works and as soon as practicable but in any event within 28 days of notification under Clause 86.1 submit to the Employer:

- (a) full and detailed particulars of the cause and actual or likely extent of the delay to

- the progress of the Works; or
- (b) where a cause of delay has a continuing effect or where the Contractor is unable to determine whether a cause of delay will in fact cause delay to the progress of the Works, such that it is not practicable for the Contractor to submit full and detailed particulars as required in sub-clause (a), a statement to that effect with reasons together with interim written particulars (including details of the likely consequences of the cause of delay on progress of the Works and an estimate of the likelihood or likely extent of the delay); and the Contractor shall thereafter submit to the Employer at intervals of every 28 day period further interim written particulars until the actual or likely extent of the cause of delay (if any) is ascertainable, whereupon the Contractor shall as soon as practicable but in any event within 28 days submit to the Employer full and detailed particulars of the cause and actual or likely extent of the cause of delay; and
- (c) details of the measures which the Contractor has adopted and/or proposes to adopt to avoid or reduce the effect of such cause of delay to the progress of the Works.
- 86.5 If in accordance with Clause 86.2 the Employer considers that the Contractor is using and will continue to use all reasonable endeavours to make good any delay, and that the Contractor is fairly entitled to an extension of time for the completion of the Works, the Employer shall within 28 days or such further time as may be reasonable in the following circumstances:
- (a) the Employer's receipt of final full and detailed particulars of the cause of delay and actual or likely effect of the cause of delay, or
- (b) where a cause of delay has a continuing effect or where the Employer anticipates a significant delay before the actual or likely effect of a cause of delay becomes ascertainable and the Employer considers an interim extension of time should be granted, the Employer's receipt of such particulars as in the Employer's opinion are sufficient for him to determine such an interim extension of time,
- determine, grant and notify in writing to the Contractor such extension. The Employer in determining any extension shall take into account all the circumstances known to him at that time, including the effect of any omission of work, substantial decrease in quantity of any item of work arising from any Change as defined in and ordered under Clause 42 or 44.
- Provided that:
- (i) the Employer may at any time following notification of a cause of delay under Clause 86.1 determine and notify the Contractor in writing as to whether or not the cause of delay constitutes a potential ground upon which an extension of time may be granted in accordance with Clauses 86.2 and this Clause 86.5.
- (ii) The Employer may in the absence of any claim assess and determine the delay that he considers has been suffered by the Contractor as a result of any of the events described in Clause 86.2, in which case he shall determine, grant and notify in writing to the Contractor any such extension he considers appropriate;
- (iii) Notwithstanding Clause 86.4 and this Clause 86.5, the Employer may in the event of failure by the Contractor to comply with Clause 86.4 consider such extension to the extent that the Employer is able on the information available.

- 
- 86.6 If the Employer decides that the Contractor is not entitled to an extension, the Employer shall as soon as reasonable notify the Contractor in writing accordingly.
- 86.7 Without prejudice to the Employer's powers under Clause 86.5(b), the Contractor shall not be entitled to an extension of time by reason of any delay unless such delay in fact affects substantial completion of the Works.
- 86.8 The Employer shall within 28 days of the issue of the Certificate of Substantial Completion for the Works review and finally determine and certify the overall extension of time (if any) to which he considers the Contractor is entitled in respect of the Works. Such final review shall not result in a decrease in any extension of time already granted by the Employer under Clause 86.5.
- 86.9 Whenever the Employer grants an extension of time for the completion of the Works in accordance with Clause 86, the Contractor shall revise the programme referred to in Clause 14 accordingly.
- 86.10 Except as provided elsewhere in the Contract, any extension of time granted by the Employer to the Contractor shall 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 such extension shall have been granted and any extension shall exonerate the Contractor from any claim or demand on the part of the Employer for the delay during the period of such extension but not for any delay continued beyond such period.
- 86.11 For the avoidance of doubt, this Clause 86 shall apply to the Time for Completion in respect of the Works only, not the Operation.
- 86.12 For the purpose of this Clause 86, "Black Rainstorm Warning" means a warning issued by the Director of the Hong Kong Observatory of a heavy rainstorm in, or in the vicinity of, Hong Kong by the use of the heavy rainstorm signal commonly referred to as Black.
- 86.13 For the avoidance of doubt, if the Employer grants an extension of time in respect of a cause of delay occurring after the Employer is entitled to recover liquidated damages in respect of the Works, the period of extension of time granted shall be added to the Time for Completion or, if the same has been extended in accordance with this Clause 86, the previously extended Time for Completion.

## **87. RATE OF PROGRESS**

- 87.1 If the rate of progress of the Design or the Works is at any time in the opinion of the Employer too slow to ensure substantial completion of the Works within the Time for Completion as prescribed by Clause 85 or as extended or revised under Clause 86 or 42 as the case may be, the Employer may so inform the Contractor in writing and the Contractor shall immediately take such steps as are necessary to expedite the progress of the Design or the Works. The Contractor shall inform the Employer of such proposed steps and revise the programme referred to in Clause 14 accordingly.
- 87.2 Notwithstanding Clause 87.1 and subject to compliance with any enactment, the Employer shall have the power to instruct the Contractor in writing to carry out the Works or any part thereof during any hours of the day where the Employer considers it necessary owing to the default, negligence, omission or slow progress of the Contractor.
- 87.3 The Contractor shall not be entitled to any additional payment for complying with any instruction given in accordance with Clause 87.

## **88. LIQUIDATED DAMAGES FOR DELAY**

- 88.1 If the Contractor fails to substantially complete the Works within the Time for Completion as prescribed by Clause 85 or as extended or revised under Clause 86 or 42, then the Employer shall be entitled to recover from the Contractor liquidated damages, and may but shall not be bound to deduct such damages either in whole or in part in accordance with Clause 55. The payment of such damages shall not relieve the Contractor from his obligations to complete the Works or from any other of his obligations under the Contract.
- 88.2 The liquidated damages shall be calculated using the rate per day as stated in the Form of Tender. Provided that, if the Employer certifies completion under Clause 89 of any part of the Works before completion of the Works, then the rate per day of liquidated damages for the Works shall from the date of such certification be reduced in the proportion which the value of the part so certified bears to the value of the Works, both values as of the date of such certification shall be determined by the Employer.
- 88.3 Not used.
- 88.4 The period for which liquidated damages shall be calculated shall be the number of days that shall elapse from the end of the Time for Completion as prescribed by Clause 85 or as extended or revised under Clause 86 or 42 until and including the date of completion stated in the Certificate of Substantial Completion for the Works. Provided that if the Employer subsequently grants an extension of time that affects such period, then the Employer shall reimburse the Contractor the liquidated damages for the number of days so affected at the rate described in Clause 88.2 together with interest at the rate provided for in Clause 98 in the next certificate under Clause 93 or 94, as the case may be, following the granting of such extension of time.
- 88.5 Not used.
- 88.6 All monies payable by the Contractor to the Employer pursuant to this Clause 88 shall be paid as liquidated damages for delay and not as a penalty.
- 88.7 Without prejudice to Clause 86, if an event as described in Clause 86.2 occurs after liquidated damages have become payable under Clause 88.1:
- (a) the Contractor shall as soon as reasonably practicable notify the Employer in writing of the cause and probable extent of the delay to the completion of the Works;
  - (b) if, in the Employer's opinion, such event has resulted in further delay to the completion of the Works, the Employer shall so notify the Contractor in writing and the Employer's entitlement to liquidated damages under Clause 88.1 shall be suspended for the period from commencement of the further delay (the date of which shall be determined by the Employer and stated in such notice) until the further delay has come to an end (the date of which shall be determined by the Employer and stated in a written notice to be issued to the Contractor as soon as reasonably practicable thereafter), provided that the extent of the further delay as aforesaid for which liquidated damages shall be suspended shall not exceed such period that in the Employer's opinion the Contractor has been fairly delayed by any such event;
  - (c) if the Employer has continued to deduct liquidated damages after the date on which they should have become suspended, the Employer may retain such sums without incurring liability for interest thereon under Clause 98, provided that the total

amount deducted does not exceed the amount properly recoverable having regard to the further delay; and

- (d) the Employer may take the steps described in sub-clause (b) notwithstanding the absence of any or any timely notification from the Contractor under sub-clause (a).

88.8 Notwithstanding the proviso to Clause 88.2, the resulting rate per day of liquidated damages for the Works after reduction in accordance with that proviso shall not be less than the minimum rate per day of liquidated damages for the Works as stated in the Form of Tender.

## **89. SUBSTANTIAL COMPLETION OF THE WORKS**

89.1 When the Works have been substantially completed and have satisfactorily passed Factory Acceptance Tests, Site Acceptance Tests and System Acceptance Tests as prescribed in the Contract and the Supervising Officer has consented under Clause 74 that the Works were constructed in accordance with the Registered Design and the methods of construction as certified by the Design Checker under Clause 75.3, the Contractor may serve notice in writing to that effect to the Employer, accompanied by an undertaking to carry out any outstanding work in accordance with Clause 89.2, requesting the Employer to issue the Certificate of Substantial Completion for the Works. The Employer shall, within 21 days of the receipt of such notice either:

- (a) issue the Certificate of Substantial Completion for the Works stating the date on which, in the Employer's opinion, the Works were substantially completed in accordance with the Contract, or
- (b) give instructions in writing to the Contractor specifying all the work that, in the Employer's opinion, is required to be done by the Contractor before such certificate can be issued, in which case the Contractor may serve a further notice under this Clause 89.1 when he has carried out such work.

89.1A The Employer, following a written request from the Contractor under Clause 89.1, may but shall not be bound to issue a Certificate of Substantial Completion for the Works in respect of any substantial part of the Works which were completed to the satisfaction of the Supervising Officer before the completion of the Works and will enable the Contractor to operate the Facility in accordance with the Contract.

89.2 The Contractor shall carry out any outstanding work as soon as practicable after the issue of the Certificate of Substantial Completion for the Works (or any substantial part of the Works pursuant to Clause 89.1A) or as reasonably directed by the Employer, but in any event within 56 days of the date of completion stated in such certificate. The Supervising Officer shall check and certify that such work has been carried out in accordance with the Contract.

89.3 For the avoidance of doubt, a certificate issued by the Employer under this Clause 89 shall not constitute any admission on the part of the Employer that the Contractor has satisfied any of his obligations under the Contract.

**89A. NOT USED**

**90. NOT USED**

**91. DISTURBANCE TO THE PROGRESS OF THE WORKS**

91.1 If on written application by the Contractor to the Employer, the Employer is of the opinion that the Contractor has been or is likely to be involved in expenditure for which the Contractor would not be reimbursed by a payment made under any other provision in the Contract by reason of the progress of the Design or the Works or any part thereof having been materially affected by:

- (a) not used
- (b) any Change as defined in and ordered under Clause 42, or
- (c) the opening up for inspection in accordance with Clause 81 of any work covered up or put out of view after compliance with the requirements under Clause 80, or the testing of Plant, Mobile Plant, materials or workmanship not required by the Contract but directed by the Employer in accordance with Clause 78 unless the inspection or test showed that the work, Plant, Mobile Plant, materials or workmanship were not in accordance with the Contract, or
- (d) delay caused by any person, not being a Utility Undertaking, engaged by the Employer in supplying materials or in executing work directly connected with but not forming part of the Works, save to the extent that such delay was caused or contributed to by default on the part of the Contractor (including any failure by the Contractor to comply with Clause 29),

then the Supervising Officer shall ascertain the Cost incurred that shall be borne by the Employer, but other than that the Contractor shall have no entitlement, remuneration or payment for the matters referred to in this Clause 91.1.

## **92. COMPLIANCE WITH ENVIRONMENTAL AND SAFETY PERFORMANCE REQUIREMENTS DURING CONSTRUCTION OF THE WORKS**

92.1 The part of the Capital Value comprising payments for the Works set out in the Summary of Prices shall be (or shall be deemed to be) allotted as stated in the Form of Tender to the activities collectively comprising the Works:

- (a) in compliance with the Environmental and Safety Performance Requirements; and
- (b) all the other activities comprising the Works.

92.2 In the event, before the issue of the Certificate of Substantial Completion for the Works, that the Supervising Officer certifies a non-compliance under Clause 50.3(b) or 50.5, the whole of the Capital Value set out in the Summary of Prices allotted to compliance with the relevant requirements, in respect of the Works shall be decreased by applying the following formula:

$$X = \frac{(N \times Y)}{Z} \times CV,$$

where

X = the amount of the decrease of the Capital Value in the reporting month.

N = the percentage of the Capital Value for the Works allocated to compliance with the Environmental and Safety Performance Requirements as stated in the Form of Tender.

---

Y	=	the total number of points attributable to the non-compliance certified by the Supervising Officer, calculated in accordance with the Employer's Requirements in the reporting month.
Z	=	the total number of points allocated to the Environmental and Safety Performance Requirements as set out in the Employer's Requirements throughout the period in respect of the Design and the Works.
CV'	=	the part of the Capital Value set out in the Summary of Prices for the Works (i.e. sum of Schedule of Prices Nos. C1, C3 to C5) to which the Contractor is entitled in the reporting month.

- 92.3 Details of the deduction, if any, to be made from the Capital Value under this Clause 92 shall be notified to the Contractor by the Employer on a monthly basis and, for the purpose of Clause 93, the deduction shall be made from the relevant payment of the Capital Value to which the Contractor is entitled. In the event that the amount of the deduction is larger than the amount of the relevant payment of the Capital Value, the whole of the relevant payment of the Capital Value shall be deducted and the difference between the amount of the deduction and the relevant payment of the Capital Value shall be deducted from the payment of the Capital Value payable to the Contractor in the next reporting month.
- 92.4 As soon as practicable but in any event within 14 days of any certification of non-compliance under Clause 50, the Contractor may serve notice in writing to the Employer requesting the Employer to decide whether the relevant non-compliance is attributable to the Works. The Contractor shall provide together with such notice all information pertaining to the relevant non-compliance and such further details as are required in writing by the Employer to enable the Employer to make a decision. All information and details shall, unless provided elsewhere in the Contract to the contrary, be submitted in duplicate to the Employer with a copy to the Supervising Officer at the same time as the provision to the Employer. The Supervising Officer may provide a report on the Contractor's submission within 28 days of the receipt of the same. The Employer shall, as soon as practicable after receipt of all relevant information and details from the Contractor, inform the Contractor in writing his decision. For the avoidance of doubt, Clause 92.2 shall not apply to any non-compliance that the Employer has decided under this Clause to be not attributable to the Works.

**D. PAYMENT, TERMINATION AND DISPUTE RESOLUTION**

**93. PAYMENT OF CAPITAL VALUE**

93.1 The Contractor shall submit to the Supervising Officer after the end of each period of interim certificate stated in the Form of Tender (the first of such periods shall commence on the date for commencement of the Design and the Works) a statement showing the amount of Capital Value which the Contractor considers to be payable for that period:

- (a) the part of the Capital Value relating to the cumulative value of the relevant Milestones achieved or, as the case may be, the value of a Change as referred to and determined in accordance with Clause 43;
- (b) all additions to the Capital Value to which the Contractor considers himself entitled under the Contract;
- (c) all deductions from the Capital Value that are due to be made under the Contract; and
- (d) all further estimated sums which the Contractor considers to be due to him under the Contract.

As a condition precedent to consideration by the Supervising Officer of an application for payment of Capital Value in respect of a particular Milestone, each such application shall be accompanied by the Milestone Certificate issued for such period by the Supervising Officer in accordance with Clause 93.1A. Further, the Contractor is entitled to make such an application only if, by the time of application, all the testing/sampling results and information in respect of the reporting month for the purpose of checking compliance with the Environmental and Safety Performance Requirements shall be available and all the associated certification of the number of points attributable to the non-compliances in respect of the reporting month under Clause 92 shall be completed.

93.1A At the end of each period of interim certificate stated in the Form of Tender, the Supervising Officer shall check that any Milestone has been completed in accordance with the Contract during that period. If the Supervising Officer is satisfied with such Milestone has been so completed, the Supervising Officer shall issue to the Contractor a Milestone Certificate certifying the achievement of such Milestone during that period.

93.2 The statement under Clause 93.1 shall be prepared on a form supplied by and at the Cost of the Contractor and in the style and number of copies as set out in the Employer's Requirements. The Contractor shall complete the required number of copies of the statement and deliver them to the Supervising Officer for checking and, if necessary, correction in accordance with Clause 93.3. One corrected copy shall be returned to the Contractor.

93.3 Within 21 days of the receipt by the Supervising Officer of the statement under Clause 93.1, the Supervising Officer shall value and certify that:

- (a) the part of the Capital Value under Clause 93.1 or, as the case may be, the value of a Change as referred to and determined in accordance with Clause 43, and
- (b) any other sum to which, in the opinion of the Supervising Officer, the Contractor is entitled in accordance with the Contract.

Provided that the total certified amount shall be adjusted by the Supervising Officer to take into account:

- (c) any sum that the Employer is entitled to recover but has not been recovered from the Contractor under the Contract,
- (d) any adjustment made for fluctuation in accordance with Clause 100,
- (e) the Retention Money comprising an amount that shall be the percentage stated in the Form of Tender of the sums referred to in sub-clauses (a) and (b) in respect of any part of the Works or any Change completed on or before the date of completion stated in the Certificate of Substantial Completion for the Works,

and the Supervising Officer shall state in such certificate the balance owed by the Employer to the Contractor.

- 93.4 Within 21 days after the issue of the certificate under Clause 93.3, the Employer shall pay the amount certified therein to the Contractor after deducting any previous payments on account.
- 93.5 The amount certified in the certificate issued by the Supervising Officer under Clause 93.3 shall be calculated on the basis of the information available to him at the relevant time.
- 93.5A The Employer shall, within 14 days of the issue of the Certificate of Substantial Completion for the Works, issue a certificate for the payment of not more than 50% of the Retention Money giving due account to the cost of the outstanding work referred to in Clause 89 and all work of maintenance, repair, rectification and making good of any defects, imperfection, shrinkage, settlement and other fault referred to in Clause 46 which have been notified in writing to the Contractor (“Outstanding Work”). Subject to Clause 55, the Employer shall pay such portion of the Retention Money to the Contractor within 21 days of the issue of such certificate.
- 93.6 Further to Clause 93.5A and within 14 days after the date of issue of the Certificate of Completion for the Works, the Employer shall issue a certificate for the payment of the remaining portion of the Retention Money. Subject to Clause 55, the Employer shall pay such remaining portion of the Retention Money to the Contractor within 21 days of the issue of such certificate.
- 93.7 The Employer shall have the power to omit from any certificate under this Clause 93 the value of any work done, materials supplied or services rendered with which the Employer or Supervising Officer may for the time being be dissatisfied and for that purpose, or for any other reason which to the Employer may seem proper, may by any certificate delete, correct or modify any sum previously certified by him.
- 93.8 The Contractor shall also submit a signed declaration in the form as set out in **Appendix H** (except for any changes to the form previously agreed to by the Employer) to confirm compliance with the provisions on ethical commitment and confidentiality as stated in Clauses 8 and 31 as part of the Contractor's statement to be submitted under Clause 93.1. If the Contractor fails to submit the declaration as required, the Employer shall be entitled to withhold payment until such declaration is submitted and the Contractor shall not be entitled to interest as provided for under Clause 98 in that period.

#### **94. CONTRACTOR'S STATEMENT FOR THE FINAL CAPITAL VALUE**

- 94.1 Within 91 days after the issue of the last of the Certificates of Substantial Completion for the Works, the Contractor shall submit to the Employer a statement of final account and

supporting documentation showing in detail the Capital Value together with all further sums that the Contractor considers to be due to him under the Contract up to the date of the issue of such certificate. Within 91 days after the receipt of such statement and of all information reasonably required for its verification, the Employer shall issue a final payment certificate stating the final Capital Value. The final Capital Value shall be the Capital Value with such additions thereto and deductions therefrom as provided for under the Contract.

- 94.2 If the Contractor fails to submit a statement of final account within 91 days of the issue of the last of the Certificates of Substantial Completion for the Works in accordance with Clause 94.1, the Employer shall be entitled to issue the final payment certificate without reference to the Contractor.
- 94.3 The final Capital Value shall be adjusted by the Employer to give credit to the Employer for all sums previously paid by the Employer in respect of the Capital Value and for all sums to which the Employer is entitled under the Contract up to the date of issue of the last of the Certificates of Substantial Completion for the Works and thereafter the Employer shall issue a final payment certificate that shall state the balance, if any, due from the Employer to the Contractor or from the Contractor to the Employer, as the case may be. Such balance shall be paid to or by the Contractor, as the case may be, within 42 days of the issue of such final payment certificate.

**95. NOT USED**

**96. INSTRUCTIONS ON PROVISIONAL AND CONTINGENCY SUMS AND ACCOUNTING OF PROVISIONAL AND CONTINGENCY SUMS**

- 96.1 Any Provisional Sum and Contingency Sum set out in the Contract shall only be used upon the written instruction of the Employer.
- 96.2 Any Provisional Sum and Contingency Sum shall be deducted from the Capital Value or the Operation Fees and in lieu thereof shall be added the value of work ordered by Employer, determined in accordance with Clause 43.

**97. PAYMENT OF OPERATION FEES**

- 97.1 The Contractor shall submit to the Employer after the end of each month (the first month or, as the case may be, part of a month, to be the month during which the Operation Period commences) a statement showing the amount of Operation Fees to be derived in accordance with the Schedule of Prices for Operation Fees that the Contractor considers to be payable for that month in accordance with Clause 71. The Contractor is entitled to make such an application only if, by the time of application, all the testing/sampling results and information in respect of the reporting month for the purpose of checking compliance with the Environmental and Safety Performance Requirements and the Operational Performance Requirements shall be available and all the associated certification of the number of points attributable to the non-compliances in respect of the reporting month in accordance with Clause 71 shall be completed.
- 97.2 The statement under Clause 97.1 shall be prepared on a form supplied by and at the Cost of the Contractor and in the style and number of copies as set out in the Employer's Requirements, which shall include the information and accompanying documents as required in the Employer's Requirements. The Contractor shall complete the required number of copies of the statement and deliver them to the Employer for checking and, if necessary, correction. One corrected copy shall be returned to the Contractor.

- 97.3 Within 21 days of the receipt by the Employer of the under Clause 97.1, the Employer shall issue a certificate to the Contractor stating the Operation Fees payable for that month in accordance with Clause 71 (for the avoidance of doubt, the amount so certified shall have taken account of the application of Clause 71.8 if applicable). Provided that the total certified amount shall be adjusted by the Employer to take into account:
- (a) any adjustment to be made for fluctuations in accordance with Clause 100 , and
  - (b) any sum that the Employer is entitled to recover but has not been recovered from the Contractor under the Contract,
- and the Employer shall state in such certificate the balance owed by the Employer to the Contractor.
- 97.4 The amount certified in the certificate issued by the Employer under Clause 97.3 shall be calculated on the basis of the information available to him at the relevant time.
- 97.5 Within 21 days after the issue of the certificate under Clause 97.3, the Employer shall pay the amount certified therein to the Contractor.
- 97.6 The Employer shall have the power to omit from any certificate under this Clause 97 the value of any work done, materials supplied or services rendered with which the Employer may for the time being be dissatisfied and for that purpose, or for any other reason which to the Employer may seem proper, may by any certificate delete, correct or modify any sum previously certified by him.
- 97.7 The Contractor shall also submit a signed declaration in the form as set out in **Appendix H** (except for any changes to the form previously agreed to by the Employer) to confirm compliance with the provisions on ethical commitment and confidentiality as stated in Clauses 8 and 31 as part of the Contractor's statement to be submitted under Clause 97.1. If the Contractor fails to submit the declaration as required, the Employer shall be entitled to withhold payment until such declaration is submitted and the Contractor shall not be entitled to interest as provided for under Clause 98 in that period.
- 97.8 Within 91 days after the expiry of the Operation Period, the Contractor shall submit to the Employer a statement of final account and supporting documentation showing in detail the final account for the Operation Fees, together with all further sums that the Contractor considers to be due to him under the Contract.
- 97.9 Within 91 days after the receipt of such statement and of all information reasonably required for its verification, the Employer shall issue a final payment certificate stating the final certified amount. The final certified amount shall be the Operation Fees with such additions thereto and deductions therefrom, as provided for under the Contract.
- 97.10 If the Contractor fails to submit a statement of final account within 91 days of the expiry of the Operation Period in accordance with Clause 97.8, the Employer shall be entitled to issue the final payment certificate without reference to the Contractor.
- 97.11 The final certified amount shall be adjusted by the Employer to give credit to the Employer for all sums previously paid by the Employer in respect of the Operation Fees and for all sums to which the Employer is entitled under the Contract up to the issue of the last of the certificates by the Employer under Clause 97.3.

## **98. INTEREST**

- 98.1 In the event of failure by the Employer to make payment to the Contractor in accordance with the Contract, the Employer shall pay to the Contractor interest at the specified interest rate on any overdue payment from but not including the date on which the same should have been made.
- 98.2 The Employer shall not under any circumstances be liable to pay to the Contractor interest on any sum payable to the Contractor under or arising out of the Contract, whether on the certificate of the Employer or otherwise, at a rate in excess of the specified interest rate.
- 98.3 For the purpose of this Clause 98:
- (a) “specified interest rate” means a rate equal to the average of the best lending rates for Hong Kong dollars quoted from time to time by the note-issuing banks plus one percent per annum;
  - (b) “note-issuing bank” has the same meaning as in the Legal Tender Notes Issue Ordinance (Cap. 65).

## **99. ADJUSTMENT OF THE CAPITAL VALUE AND OPERATION FEES**

- 99.1 Any decrease of the Capital Value under Clause 92 or of the Operation Fees under Clause 71 for any particular non-compliance shall not relieve the Contractor from any of his obligations under the Contract or any liability to the Employer for damages, costs, charges, expenses, debts or other sums for which he is liable under the Contract or otherwise, save that the extent of such liability shall be reflected in such decrease in respect of the relevant non-compliance.

## **100. FLUCTUATIONS TO CAPITAL VALUE AND OPERATION FEES**

- 100.1 The amount payable in any interim or final payment certificate certified by the Employer as being due (other than sums due under this Clause 100) shall be increased or decreased in accordance with this Clause 100 if there shall be any changes in the index figures listed below:

as far as payment for the Design and execution of the Works is concerned:

- (a) Index Numbers of the Costs of Labour and Materials Used in Public Sector Construction Projects (April 2003 = 100) compiled by the Census and Statistics Department of the Government and applicable to those items included in the Schedule of Proportions for the Design and construction of the Works;

as far as payment for the Operation is concerned:

- (b) Consumer Price Index (B), Quarterly Producer Price Indices for Manufacturing Industry (Industry Group – Metal, computer, electronic and optical products, machinery and equipment), Nominal Wage Indices for Employees up to Supervisory Level by Selected Industry Sector (Excluding Managerial and Professional Employees) – All Selected Industry Sectors Sections, and Index Numbers of the Costs of Labour and Materials used in Public Sector Construction Projects (April 2003 = 100), compiled by the Census and Statistics Department of the Government and applicable to those items included in the Schedule of Proportions for the Operation.

100.2 The net total of such increases and decreases shall be given effect to in determining the Capital Value and the Operation Fees.

100.3 For the purpose of this Clause 100:

- (a) “Index Figure” shall mean any index figure, as the case may be, appropriate to Clause 100.1.
- (b) “Base Index Figure” shall mean the appropriate index figure applicable to the date 42 days prior to the tender closing date or, if extended, the extended date.
- (c) “Current Index Figure” shall mean the appropriate index figure to be applied in respect of any interim or final payment certificate issued by the Supervising Officer or, as the case may be, the Employer and shall be the appropriate Index Figure applicable to the date 42 days prior to:-
  - (A) the due date (or, as the case may be, extended or revised date) for completion of the Works or, as the case may be, the expiry of the Operation Period as stated in the Form of Tender, or
  - (B) the date of substantial completion of the Works certified pursuant to Clause 89 or, as the case may be, the expiry of the Operation Period as provided in Clause 47, or
  - (C) the last day of the period or Milestone to which the payment certificate relates, whichever is the earliest.

Provided that in respect of any work the value of which is included in any such certificate and which work forms part of the Works for which the due date (or, as the case may be, extended or revised date) for completion has passed without substantial completion pursuant to Clause 89 being achieved, the Current Index Figure shall be the Index Figure applicable to the date 42 days prior to the due date (or, as the case may be, extended or revised date) for substantial completion of the Works.

- (d) The “Effective Value” in respect of the Works shall be the difference between:
  - (A) the sum, exclusive of any increase or decrease made in accordance with this Clause 100, which in the opinion of the Supervising Officer is due to the Contractor under Clause 93, before deducting Retention Money (where appropriate) and before deducting previous payments on account, less all sums in respect of items based on actual cost or current prices and Plant and materials for any work under a Change as defined in and ordered under Clause 42 or 44 that is to be valued on the basis of actual cost or current prices; and
  - (B) the sum calculated in accordance with (A) above and included in the last preceding interim payment certificate issued by the Supervising Officer.

Provided that in the case of the first certificate the Effective Value shall be the sum calculated in accordance with (A) above.

- (e) The “Effective Value” in respect of the Operation shall be the sum, exclusive of any

increase or decrease made in accordance with this Clause 100, which in the opinion of the Employer is due to the Contractor under Clause 97, less all sums in respect of items based on actual cost or current prices and Plant and materials for any work under a Change as defined in and ordered under Clause 42 or 44 that is to be valued on the basis of actual cost or current prices.

- 100.4 The increase or decrease in the sums otherwise payable in an interim or final payment certificate pursuant to Clause 100.1 shall be calculated by multiplying the Effective Value in respect of the Works or, as the case may be, the Operation by a price fluctuation factor. The price fluctuation factor in respect of the Works shall be the net sum of the products obtained by multiplying each of the calculated proportions given in column 4 of the Schedule of Proportions for the Design and construction of the Works by a fraction the numerator of which is the relevant Current Index Figure minus the relevant Base Index Figure and the denominator of which is the relevant Base Index Figure. The price fluctuation factor in respect of the Operation shall be the net sum of the products obtained by multiplying each of the calculated proportions given in column 4 of the Schedule of Proportions for the Operation by a fraction the numerator of which is the relevant Current Index Figure minus the relevant Base Index Figure and the denominator of which is the relevant Base Index Figure.

Provided that if any appropriate Current Index Figure has not been published at the time of issue of any payment certificate, the increase or decrease in the sum payable in respect of that certificate will be provisionally calculated and added to or deducted from the sum payable in the certificate by the Supervising Officer or, as the case may be, the Employer using the latest published Current Index Figure and shall be corrected in the next certificate following the publishing of the relevant Current Index Figure.

- 100.5 In this Clause 100, “Schedule of Proportions for the Design and construction of the Works” and “Schedule of Proportions for the Operation” shall mean (irrespective of the actual constituents of the works) the “Schedule of Proportions for the Design and construction of the Works” and the “Schedule of Proportions for the Operation” submitted with the Tender and with the calculations duly completed.

**100A. NOT USED**

**101. REMEDIES AND POWERS**

- 101.1 The Employer may early terminate the Contract by giving not less than 7 days' notice in writing to the Contractor upon occurrence of any of the following:

- (a) a petition is presented or a proceeding is commenced or an order is made or an effective resolution is passed for the winding-up, insolvency, bankruptcy, administration, reorganisation, reconstruction, or dissolution of the Contractor, or if the Contractor is a joint venture, a participant or shareholder of the joint venture, otherwise than for the purpose of a solvent reconstruction or amalgamation previously approved by the Employer in writing, or the Contractor, or if the Contractor is a joint venture, a participant or shareholder of the joint venture, makes any composition or arrangement with creditors; or a receiver, administrator, trustee or similar officer has been appointed in respect of the Contractor or the participant or shareholder, as the case may be, or all or any part of its business or assets; or if anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the Contractor or the participant or shareholder, as the case may be, or

- (b) the Contractor has ceased or threatens to cease to carry on business, or the Contractor shall have assigned the Contract without the prior consent in writing of the Employer or shall have an execution levied on his goods, or
- (c) the Contractor has abandoned the Contract, or
- (d) without reasonable excuse the Contractor has failed to commence the Design and the Works in accordance with Clause 83 within 28 days of the date for commencement notified in writing by the Employer, or
- (e) the Contractor has failed to commence the Operation within 7 days in accordance with Clause 61, or
- (f) the Contractor has suspended the progress of the Design, the Works or the Operation for 14 days after receiving from the Employer's notice in writing to proceed, and has failed to proceed with the Design, the Works or the Operation within 28 days of receiving a further notice from the Employer requiring him to do so, or
- (g) the Contractor has failed to comply with any order or instruction from the Employer or the Supervising Officer under the provisions of the Contract, and has failed to remedy such failure within 28 days of receiving a further notice from the Employer requiring him to do so, or
- (h) despite previous warning by the Employer in writing, the Contractor has failed to proceed with the Design, the Works or the Operation with due diligence or is persistently in breach of any of his obligations under the Contract, or
- (i) the Contractor has sub-contracted the whole of the Works or the whole of the Operation, or
- (j) the Contractor has without obtaining the prior written consent of the Employer or in defiance of the Employer's instruction to the contrary sub-contracted any part or the whole of the Design, the Works or the Operation or any of its other obligations; or
- (k) the Contractor has materially or persistently failed to comply with the Environmental and Safety Requirements or the Operational Performance Requirements, or
- (l) not used,
- (m) the Contractor has failed to carry out the Operation in accordance with the terms of the Contract and has failed to remedy such failure within 28 days of receiving a notice from the Employer requiring him to do so, or
- (n) the Contractor has failed to maintain in full force and effect the insurances as required under Clause 24 due to the negligence of, or any intentional act or omission of, the Contractor and the relevant insurance is not reinstated or a substitute insurance entered into within 14 days of receiving a notice from the Employer requiring him to do so,
- (o) the Contractor has unreasonably withheld or withdrawn his consent to be the

Nominated Permittee of and his agreement to comply with the conditions in any Excavation Permit for excavation in Street Maintained by the Highways Department required for execution of the Works or the Operation or any part thereof, or

- (p) the Contractor has failed to obtain the approval to be a Nominated Permittee from or has his approval withdrawn by the Authority in relation to any Excavation Permit for excavation in Street Maintained by the Highways Department required for the execution of the Works or the Operation or any part thereof, or
- (q) any other event as mentioned in any other provision of the Contract which confers the power on the Employer to early terminate the Contract upon occurrence of such event.

101.2 In the event of termination of the Contract (howsoever occasioned) (including termination under Clause 101.1, 102.2, 103, 104.1 or 105.1) or expiry of the Operation Period (hereinafter referred to as "Termination" (upper or lower case) in each case), all of the following shall apply immediately upon such Termination (or otherwise at such other applicable time or period as specified in the relevant sub-clauses below):

- (a) the Contract shall be of no further force and effect, but without prejudice to:
  - (1) a party's rights and claims under the Contract or otherwise at law against the other party arising from antecedent breaches of the Contract (including any breach(es) which entitle that party to terminate the Contract);
  - (2) the rights and claims which have accrued to a party prior to the Termination; and
  - (3) the continued existence and validity of those provisions which are expressed to or which in their context appropriately survive Termination; and which are to be performed or observed upon or following from or notwithstanding the Termination; provisions stipulating obligations which are indemnities (including the indemnities in Clause 22) and warranties and representations (including those set out in Clause 9.2); and any provisions of the Contract necessary for the interpretation or enforcement of the Contract; the obligations of the parties under these provisions shall continue to subsist notwithstanding the Termination regardless of whether or not it is so expressly stated in these individual provisions;
- (b) save to the extent expressly provided for in the Contract, the Employer shall not be responsible for any claim, legal proceeding, arbitration, liability (including liability to pay damages or compensation), loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damage (including any direct, special, indirect or consequential damage of whatsoever nature) or any cost or expense, suffered or incurred by the Contractor due to the Termination;
- (c) the Employer may immediately upon Termination enter the Site and repossess the Works or, as the case may be, the Facility, and (in the case of Termination under Clause 101.1) expel the Contractor therefrom or (in the case of Termination under other applicable Clause) the Contractor shall immediately vacate the Site and the Works or, as the case may be, the Facility; and in any case of Termination,
  - (1) if no Certificate of Completion for the Works had ever been issued at the time of the Termination, the Employer may complete the Design and the Works or may employ any other contractor to complete the Design and the Works and the Employer or such other contractor may use for such completion so much of the Plant, Constructional Plant, Mobile Plant, Temporary Works, temporary buildings and unused materials which become the property of the Employer under Clause 51 (unless the Employer issues any instruction under sub-clause (n) or under Clause 102.3, 104.2, or 105.4(c) or (d) that the Plant, Constructional Plant, Mobile Plant, Temporary Works, temporary buildings

and/or unused materials should be removed by the Contractor) and so much of the Design as the Employer may think proper; and/or the Employer may at any time sell any of the said Plant, Constructional Plant, Mobile Plant, Temporary Works, temporary buildings and unused materials and the sale proceeds obtained therefrom shall be applied in the manner specified in sub-clause (o); and

- (2) if a Certificate of Completion for the Works had already been issued prior to the Termination, after the Termination, the Employer may commence and continue with all or any part of the Operation in such manner as it deems fit (including on its own and/or through the appointment of another contractor) without any restriction whatsoever;
- (d) in the event of Termination under Clause 101.1 and that the Capital Value had already been paid in full prior to such Termination, without prejudice to the other rights and claims of the Employer, the Contractor shall be liable for all losses, damage, liabilities, costs and expenses incurred or sustained by the Employer arising from the Termination including:-
  - (1) the amounts payable to contractors and/or suppliers and/or the wages/salaries and benefits payable to new or redeployed employees (on whatsoever basis) to perform all services and supply all goods to replace the Contract including the Operation, which are in excess of the amount would have been payable to the Contractor had there been no Termination over a duration which is equal in length to such part of the earlier terminated Operation Period;
  - (2) all administrative and legal costs incurred in (i) monitoring the Contract over any delay prior to the Termination; (ii) effecting the Termination; and (iii) procuring replacement services and/or goods or the cost of hiring or deploying employees as mentioned in (1) above; and
  - (3) the costs of all stop-gap measures to be implemented pending the appointment of a contractor and/or in-house team in replacement of the Contractor for all or any part of the Operation; interim and/or final statements of these losses, damage, liabilities, costs and expenses may be issued from time to time after the Termination by the Employer to the Contractor whereupon the Contractor shall be liable to pay such amount as demanded in each of these statements within 7 days;
- (e) where the Operation Period has commenced prior to the Termination, and regardless of the cause of the Termination, the Employer shall subject to the right of deductions, set-off and counter-claim which the Employer may have under the Contract or at law including under Clause 55, pay to the Contractor such portion of the Operation Fee as is fairly and equitably payable to the Contractor for such part of the Operation performed by the Contractor in the period up to the effective date of Termination (and which remains unpaid pursuant to the payment schedule under the Contract), having regard to the Operation actually performed by the Contractor fully and punctually in due accordance with the terms and conditions of the Contract, and the rates specified in the Schedule of Prices for the Operation Fees;
- (f) where the Termination occurs at the time when no Certificate of Substantial Completion for the Works had ever been issued, and in the case of Termination under Clause 101.1, Clauses 101.3 to 101.6 shall apply to determine the amount payable by the Contractor to the Employer upon Termination (if any); in the case of Termination under Clause 102.2 or 103, Clause 102.4 shall apply to determine the amount payable by the Employer to the Contractor following from such Termination (if any); in the case of Termination under Clause 104.1, Clause 104.3 shall apply to determine the amount payable by the Employer to the Contractor (if any); in the case

of Termination under Clause 105.1, Clause 105.7 shall apply to determine the amount payable by the Employer to the Contractor following from such Termination (if any);

- (g) the Contractor shall make good, to the satisfaction of the Employer, any damage to the Works or the Facility or the Existing Facilities or any part thereof;
- (h) at the request of the Employer, the Contractor shall enter into and perform all deeds of assignment, transfer or novation in favour of the Employer or in favour of any person whom the Employer may designate, for the assignment, transfer or novation of any contract, arrangement or other subject matter whatsoever (including guarantees, bonds and product warranties for any of the Facility, maintenance or support agreement for any of them, insurance policy, equipment lease, software licence) on such terms and conditions as the Employer may stipulate; and procure any other third party whom the Employer considers necessary for effecting or perfecting such assignment, transfer or novation to enter into and perform any such deeds of assignment, transfer or novation; without prejudice to the generality of the foregoing, within 28 days from the date of Termination, the Employer may require the Contractor to assign to the Employer and if so required the Contractor shall forthwith assign or novate (with the consent of the relevant supplier) to the Employer any agreement for the supply of any Plant or Mobile Plant or other materials and/or for the performance of any work for the purposes the Design or Construction or Operation which the Contractor may have entered into;
- (i) in addition to the power of the Employer under Clause 70.2, the Contractor agrees and acknowledges that notwithstanding any agreement or restriction binding on any past or existing Contractor Personnel to the contrary (if any), the Employer or any other person designated by the Employer may employ or appoint any past or existing Contractor Personnel (“nominated Contractor Personnel”). Any such employment or appointment may come into effect at such time the parties to the relevant appointment or employment may agree. The Contractor hereby waives, and will procure its connected persons and sub-contractors will waive, and will at the request of the Employer or the nominated Contractor Personnel separately execute or procure the execution of all such deeds of waiver in favour of that nominated Contractor Personnel under which it will waive, or will procure its connected persons and sub-contractors to waive (to the extent necessary and in the manner as aforementioned), all rights and claims which the Contractor or any of its connected persons and sub-contractors may have on or against such nominated Contractor Personnel arising from a breach of contract or otherwise at law due to the employment or appointment by the Employer or by such other person designated by the Employer of such nominated Contractor Personnel;
- (j) the Contractor shall, and shall procure its connected persons to, do all such acts, and sign all such deeds and documents, which are required to be done or signed, under the Contract, or otherwise as directed by the Employer, to ensure the complete handover of the Works, the Facility and the Operation to the Employer or a succeeding contractor, or otherwise as may be necessary or desirable to implement or to give legal effect to the provisions of the Contract, and the transactions provided for or contemplated by the Contract including Clause 47, this Clause 101, and Clauses 102 to 105 (where applicable);
- (k) the Contractor shall take all necessary or appropriate steps in a safe and orderly fashion to cease all works and operations on the Site so as to enable the Employer to take full, sole and unencumbered possession of the Site and the Contractor shall ensure that, all Contractor Personnel have left the Site, that full sets of keys, operational and maintenance manuals and all information and documents relating to or containing the Design, the Works and/or where applicable the Operation have been delivered up to the Employer, and that the Works, as the case may be, the Facility, are in good repair and conditions for the Employer to continue with the

Design, the Works and/or where applicable the Operation; notwithstanding the foregoing, the Employer may identify such members of the Contractor Personnel to be excluded from the requirement of this sub-clause in pursuance of his rights under Clause 70.2 and sub-clause (i) above;

- (l) upon receipt of the notice of Termination under Clause 101.1, 102.2, 103 or 105.1, or upon issue of notice of Termination under Clause 104.1, (and regardless of whether the notice period has expired), the Contractor shall, unless directed by the Employer, suspend all the Works or Operation (as the case may be) and stop incurring further expenditure with respect to the Work or Operation except to the extent necessary for the protection of life or property or for the safety of the Works or the Operation; except that in the case of Termination under Clause 105.1 after commencement of the Operation Period, the Contractor shall unless otherwise directed by the Employer continue with the Operation in accordance with the Contract up to the date of the Termination;
- (m) all obligations specified in the Contractor's Plans including the Asset Management Plan and the Handback Plan shall have been carried out by the Contractor, including all the obligations required under Clause 68;
- (n) if no Certificate of Substantial Completion for the Works has ever been issued at the time of Termination, upon the direction of the Employer (which the Employer may but is not obliged to give), the removal of all or any part of the Constructional Plant, Plant, Mobile Plant, Temporary Works and temporary buildings, and unused materials from the Site (save to the extent the Employer wishes to exercise its power to retain these items or sell these items under sub-clause (c));
- (o) if at the time of Termination, no Certificate of Substantial Completion for the Works has ever been issued, the Constructional Plant, Plant, Mobile Plant, Temporary Works, temporary buildings and materials that have become the property of the Employer under Clause 51 shall upon removal by the Contractor in accordance with any direction to be given under sub-clause (n) or Clause 102.3, 104.2 or 105.4(c) (as the case may be) re-vest in the Contractor. If the Contractor shall fail to remove any such Constructional Plant, Plant, Mobile Plant, Temporary Works, temporary buildings or unused materials in accordance with such direction or if the Employer wishes to sell under sub-clause (c), the Employer may:
  - (A) sell any such Constructional Plant, Plant, Mobile Plant, Temporary Works, temporary buildings or unused materials that has become the property of the Employer under Clause 51 and after deducting from any proceeds of sale the costs, charges and expenses of and in connection with such sale, the balance, if any, shall be settled in accordance with Clause 101.5(b) (in the case of Termination under Clause 101.1), or in accordance with Clause 102.4 (in the case of Termination under Clause 102.2, 103, or 104.1), or in accordance with Clause 105.7 (in the case of Termination under Clause 105.1) but to the extent that the proceeds of sale are insufficient for such purpose the deficiency shall be a debt due from the Contractor to the Employer and may be deducted by the Employer from any money due or which may become due to the Contractor whether under this or any other contract with the Employer in accordance with Clause 55; or
  - (B) dispose the same whether or not in return for any consideration in a manner that the Employer considers appropriate and any costs, charges and expenses so incurred shall be recoverable by the Employer from the Contractor in the manner aforesaid.

Provided that in the event of any such Constructional Plant not solely owned by the Contractor and the Contractor fails to remove such Constructional Plant, the

Employer may return such Constructional Plant at the expense of the Contractor to the person, firm or company from whom such Constructional Plant was held by the Contractor and any expense so incurred may be recovered by the Employer from the Contractor in the manner aforesaid.

Provided further that the Employer shall not at any time be liable for the loss of or damage to any Constructional Plant, Plant, Mobile Plant, Temporary Works, temporary buildings or materials that the Contractor shall fail to remove from the Site under this Clause 101.2;

- (p) deliver to the Employer:
  - (A) a full set of keys for the Facility;
  - (B) a complete set of operation and maintenance records for the Facility, showing the exact locations, sizes and details of the Facility;
  - (C) a complete set of operation and maintenance manuals for the Facility, in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair the Facility;
  - (D) any applicable spare parts required for the continuing operation and maintenance of the Facility; and
  - (E) any other information and documents relating to the Facility or part of the Facility or part of the Existing Facilities;
- (q) all Contractor Personnel shall have left the Site and the Facility together with their personal belongings, with the exception of the personnel immediately engaged by the Employer or another party specified by the Employer pursuant to Clause 70.2 or sub-clause (i);
- (r) the Contractor shall have provided the Employer with all assistance and information reasonably requested by the Employer to enable the Operation to be provided by the Employer himself, or by another contractor, in a manner which ensures an orderly transition and continuity of the Operation without interruption or disruption;
- (s) the Contractor shall have carried out such repairs and/or maintenance and/or rectification and replacements required under Clause 68;
- (t) Not used.
- (u) the removal of any debris or rubbish and the clearing and making good of the Site and the Facility;
- (v) as soon as after the issue of the notice of Termination to the Contractor, the Employer shall as soon as practicable and in any case not later than the date of termination specified in the notice give directions with which the Contractor shall comply with all reasonable despatch as to all or any of the following matters:
  - (A) the performance of further work in accordance with the provisions of the Contract, where such further work is necessary for the protection of life or property or for the safety of the Works or the Operation;
  - (B) the protection of work executed under the Contract or any work required to leave the Site in a clean and safe condition;
  - (C) hand over to the Employer the Facility (including the Plant and the Mobile Plant) in good repair and clean and tidy condition;
- (w) Not used; and

- (x) any other matter arising out of the Contract with regard to which the Employer may decide that directions are necessary or expedient.
- 101.3 As soon as may be practicable after Termination under Clause 101.1, the Employer shall, as may be appropriate, ascertain and record (but this Clause 101.3 shall not apply if at the time of Termination, the Capital Value had already been paid in full):
- (a) the sum representing that proportion of the Capital Value estimated at the date of Termination corresponding to the proportion of the Design and the Works properly carried out at that date (excluding such Constructional Plant, Plant, Mobile Plant, Temporary Works, temporary buildings and unused materials which are to be removed by the Contractor under the direction given under Clause 101.2(n) or which are to be sold by the Employer under Clause 101.2(c) or 101.2(o)(A) or disposed of or returned to another person, firm or company under Clause 101.2(o)(B) (or under any other applicable provision of the Contract) ("Exclusion"));
  - (b) the fixed and unfixed Plant, the quantity of unused or partially used materials and list any Constructional Plant, Plant, Mobile Plant, Temporary works and temporary buildings, which have become the property of the Employer under the Contract save for the Exclusion;
  - (c) the amount of any other sums due to the Contractor, up to the date of Termination, in accordance with the express provisions of the Contract, save for those in respect of the Exclusion;
  - (d) the reasonable value of all things other than the Works including tools, fuel and administrative articles belonging to the Contractor and intended by him for use in the Design or the Works save for the Exclusion;
  - (e) the amount of the Retention Money, if any, at the date of the Termination
  - (f) the net amount of the saving of costs and expenses to the Contractor by reason of his having been relieved of his obligations to complete performance of the Contract; and
  - (g) the net amount due to the Employer in respect to costs and expenses incurred by the Termination of the Contract, which costs and expenses may include, inter alia, any salary or wages or termination payments due to the Contractor's staff or workmen unpaid at the date of Termination.
- 101.4 For the purpose of Clause 101.3, the Contractor shall provide all necessary information and documents as may be reasonably required by the Employer. However if such information or documents are not made available to the Employer within a reasonable time or if by reason of any unresolved disputes between the Contractor and the Employer or any sub-contractor or if by reason of any other matter which prevents the Employer from ascertaining any of the items listed in Clause 101.3, then the Employer shall be entitled to serve a written notice on the Contractor stating the reason and at the expiry of a period of 91 days from the date of such notice issue a statement which shall contain the best estimate(s) that can be made at that time.
- (a) Not used.
  - (b) Not used.
  - (c) Not used.
  - (d) Not used.
  - (e) Not used.
  - (f) Not used.
  - (g) Not used.

- 101.5 (a) In the event of Termination under Clause 101.1 and that at the time of Termination, no Certificate of Substantial Completion for the Works had ever been issued, the Employer shall not be liable to pay the Contractor any money under the Contract (whether in respect of amounts certified by the Employer or otherwise) unless and until the Employer certifies that an amount is due to the Contractor under sub-clause (b).
- (b) The Employer shall certify the difference between:
- (A) such sum as would have been due to the Contractor under the Contract if he had duly completed the Design and the Works together with any proceeds of sale after the deduction under Clause 101.2(o)(A); and
- (B) (i) all losses, damage, liabilities, costs and expenses incurred or sustained by the Employer arising from the Termination and the delay prior to the Termination (if any) including those referred to in Clause 101.2(d)(2) and (3), and all portions of Capital Value which had been paid prior to the Termination in respect of or otherwise attributable to the cost of such Constructional Plant, Plant, Mobile Plant Temporary Works, temporary buildings and unused materials that have been removed by the Contractor in accordance with any direction to be given under Clause 101.2(n) or sold or disposed of or returned to another person or firm or company by the Employer under Clause 101.2(c) or 101.2(o)(A) or (B) or other applicable provision of the Contract;
- (ii) the costs of completing the Design and/or the Works following from the Termination (whether or not the Design or the Works are completed under one or more separate contract(s) or by any in-house project team); and
- (iii) all other sums specified to be due or payable by the Contractor under all applicable provisions of the Contract.
- (c) Such difference as certified by the Employer under sub-clause (b), subject to adjustment by the Employer to take account of the amount (if any) certified by the Employer under Clause 101.6 and already paid by the Contractor, shall be a debt due to the Employer or the Contractor as the case may be and shall be paid by or to the Contractor within 21 days of the date of certification by the Employer. Provided that the Employer shall make such ascertainment under Clause 101.3 within 2 years of the date of Termination aforesaid but without prejudice to his right to claim against the Contractor sums in excess of the amount so ascertained at a later date.
- 101.6 If the Employer is satisfied at any time prior to the completion of the Design or the Works that the whole or part of the amounts referred to in Clause 101.5(b)(B) exceed such sum as calculated under Clause 101.5(b)(A), he may issue an interim certificate stating the amount of such excess and such amount so certified by the Employer shall be considered as a debt due from the Contractor to the Employer and shall be paid by the Contractor within 21 days of the issue of the interim certificate.
- (a) Not used.
- (b) Not used.
- (c) Not used.
- 101.7 If at the time of Termination under Clause 101.1, no Certificate of Substantial Completion for the Works had ever been issued, amounts (if any) payable to the Contractor pursuant to Clause 101.5(c) (where applicable and if any) shall be the sole compensation (if any) payable to the Contractor in the event of Termination under Clause 101.1 and the Employer shall have no other liability whatsoever to the Contractor in connection with such Termination including those as specified in Clause 101.2(b).
- 101.8 If:
- (a) the Contractor is unable or unwilling with all reasonable despatch to carry out any

- work or other matter specified in the direction given to him by the Employer under Clause 101.2(n), 102.3, 104.2 or 105.4 or other applicable provision of the Contract, or
- (b) the Employer considers that any other urgent work not specified in the direction given to the Contractor under Clause 101.2(n), 102.3, 104.2 or 105.4 or other applicable provision of the Contract shall be carried out by a person other than the Contractor, the Employer may authorise the carrying out of such work or such other urgent work by a person other than the Contractor and if such work or other work is work which, in the opinion of the Employer , the Contractor was liable to do at his own expense under the Contract, all costs, charges and expenses properly incurred in carrying out the same shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any money due or which may become due to the Contractor whether under this or any other contract with the Employer in accordance with Clause 55.
- 101.9 The Contractor shall, in any sub-contract or contract made by him in connection with or for the purposes of the Contract, reserve the power to early terminate such sub-contract or contract in the event of the termination of the Contract by the Employer on terms similar to the provisions of Clauses 101, 102, 104 and 105 where applicable, mutatis mutandis. References in these provisions to the Employer shall then mean the Contractor and references to the Contractor shall mean the sub-contractor and references to the Contract shall mean the sub-contract. Notwithstanding anything in the Contract to the contrary, the Contractor shall not be entitled to compensation from the Employer of any cost, expense, loss, damage, liability (including liability to pay damages or compensation), claim, proceeding or arbitration resulting from compliance or non-compliance with this requirement.
- 101.10 If upon Termination (and regardless of whether under Clause 101.1, 102.2, 103, 104.1 or 105.1) the Operation had already commenced, the amount specified in Clause 101.2(e) (where applicable and if any) shall be the sole compensation (if any) payable to the Contractor (subject to the right of deduction, set-off and counter-claim which the Employer may have under the Contract or at law including that under Clause 55), and the Employer shall have no other liability whatsoever to the Contractor in connection with such Termination including those as specified in Clause 101.2(b). For the avoidance of doubt, Clauses 101.3 to 101.6 shall not apply to any Termination which takes effect after commencement of the Operation and the Capital Value had already been paid in full prior to such Termination.
- 102. SPECIAL RISKS**
- 102.1 If during the continuance of the Contract, 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 Design, the Works or the Operation, or
- (b) an invasion of Hong Kong, or
- (c) civil war, rebellion, revolution or military or usurped power in Hong Kong, or
- (d) riot, commotion or disorder in Hong Kong otherwise than amongst the employees of the Contractor or any sub-contractor currently or formerly engaged on the Works or the Operation, or
- (e) act of foreign terrorists in Hong Kong;
- hereinafter comprehensively referred to as “the special risks”, the Contractor shall, unless and until the Contract is terminated under this Clause 102, use his best endeavours to complete the execution of the Design, the Works and the Operation.

- 102.2 The Employer shall be entitled at any time after the occurrence of any of the special risks to terminate the Contract by giving 7 days' written notice to the Contractor, and upon expiry of the notice period, the Contract shall terminate. Upon such Termination, the consequences specified in Clauses 101.2, 101.8 to 101.10 and those specified in this Clause 102 shall apply (unless otherwise expressly excluded).
- 102.3 Where no Certificate of Substantial Completion for the Works had ever been issued at the time of Termination under Clause 102.2, the Contractor shall with all reasonable despatch remove from the Site all Constructional Plant, Plant, Mobile Plant, Temporary Works, temporary buildings and unused materials in accordance with any direction which may be given by the Employer (if any) and shall similarly require his sub-contractors to do so.
- 102.4 In the event of Termination under Clause 102.2 and that at the time of such Termination, no Certificate of Substantial Completion for the Works had ever been issued, the Contractor shall be paid by the Employer, in so far as such items have not already been covered by payment on account made to the Contractor (including any instalments of the Capital Value already paid), for all work executed prior to the date of Termination at the prices and rates provided in the Contract (excluding such Constructional Plant, Plant, Mobile Plant, Temporary Works, temporary buildings and unused materials which are to be removed by the Contractor under the direction given under Clause 102.3 or Clause 101.2(n) or other applicable provision of the Contract or which are to be sold by the Employer under Clause 101.2(c) or 101.2(o)(A) or disposed of or returned to another person, firm or company under Clause 101.2(o)(B) (or under any other applicable provision of the Contract) ("Exclusion")), and in addition:
- (For the avoidance of doubt, if, at the time of Termination under Clause 102.2, the Certificate of Substantial Completion for the Works had already been issued and the Capital Value had already been paid in full, this Clause does not apply and the only amount payable to the Contractor shall be as stated in Clause (if any).)
- (a) the sum representing that proportion of the Capital Value not already paid to be estimated at the date of termination corresponding to the proportion of the Design and the Works properly carried out at that date save for the Exclusion;
  - (b) a sum to be certified by the Employer being any Cost reasonably incurred by the Contractor for the purpose of completion of the Design, or the Works in so far as, such Cost shall not have been paid in accordance with any other provision of Clause 102 or any other provision of the Contract, save for the Exclusion;
  - (c) the Cost of materials reasonably ordered for the Works which shall have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery, such materials becoming the property of the Employer upon such payment being made by the Employer (which payment not yet having been made), save for the Exclusion;
  - (d) the sale proceeds after the deduction referred to in Clause 101.2(o)(A) (if any) save for sale proceeds in respect of items sold or disposed which are covered by portions of Capital Value which had already been paid prior to the Termination;
  - (e) any other sums that shall become due to the Contractor under the Contract prior to the said Termination; and
  - (f) the amount of the Retention Money, if any, at the date of the Termination.
- Any amount already taken into account in any one of sub-clauses (a) to (f) shall not be double-counted in any other sub-clauses.
- 102.5 The Employer and the Contractor shall attempt to reach agreement on the amount due to the Contractor under Clause 102.4, failing which the Employer shall determine the amount and

notify the Contractor accordingly. If, at the time of Termination under Clause 102.2, no Certificate of Substantial Completion for the Works had ever been issued, payment to the Contractor under Clause 102.4 , subject to the right of deduction, set-off and counter-claim which the Employer may have under the Contract or at law including that under Clause 55, shall be in full and final settlement of all claims, costs and charges incurred by the Contractor as a result of the Termination under Clause 102.2. If the Termination takes effect after the commencement of the Operation and the Capital Value had already been paid in full, the only amount payable to the Contractor is as stated in Clause 101.2(e) (if any).

**102.6** Whether the Contract shall be terminated in accordance with Clause 102.2 or not, the following provisions shall apply or be deemed to have applied as from the occurrence of any of the special risks notwithstanding anything expressed in or implied by the other provisions of the Contract :

- (a) The Contractor shall be under no liability whatsoever whether by way of indemnity or otherwise for or in respect of damage to the Works (other than work condemned under Clause 68) and, as the case may be, the Facility, or to property (other than property of the Contractor and property deemed to vest in the Employer under Clause 51 or property hired by the Contractor for the purposes of executing the Works or the Operation) whether of the Employer or of third parties or for or in respect of injury or loss of life of any person which is not a Contractor Personnel which is wholly the consequence of the occurrence of any of the special risks and not due to any default, omission or negligence on the part of the Contractor or the Contractor Personnel, and the Employer shall indemnify the Contractor against all such liabilities and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of or in relation thereto.
- (b) If any of the special risk occurs when no Certificate of Substantial Completion for the Works has ever been issued, and if the Works or any Mobile Plant, Plant or material on the Site shall be destroyed or damaged by reason of any of the special risks and not due to any default, omission or negligence on the part of the Contractor or the Contractor Personnel, the Contractor shall be entitled to recover from the Employer the expense incurred in making good any such destruction or damage to the Works and in replacing or making good such Mobile Plant, Plant or materials so far as may be required by the Employer, or as may be necessary for the completion of the Works, to be valued at a sum agreed between the Employer and the Contractor. In the event of failure to reach agreement by the Employer and the Contractor, the Employer shall determine such sum as shall in his opinion be reasonable based on prices or rates in the Contract and notify the Contractor accordingly.
- (c) Destruction, damage, injury or loss of life caused by the explosion or impact, whenever and wherever occurring, of any mine, bomb, shell, grenade, missile, munition or explosive of war shall be deemed to be a consequence of the special risks.

### **103. FRUSTRATION**

**103.1** In the event of the Contract being frustrated whether by war or otherwise howsoever, the Employer may terminate the Contract by giving not less than 7 days' notice in writing to the Contractor. If at the time of Termination no Certificate of Substantial Completion for the Works had ever been issued, the sum payable by the Employer to the Contractor shall be the same as that which would have been payable under Clause 102.4 as if the Contract had been terminated under Clause 102.2. If at the time of Termination the Certificate of Substantial Completion for the Works had already been issued, the only sum payable by the Employer

to the Contractor shall be the amount as specified in Clause 101.2(e) (if any). Such payment shall be in full and final settlement of all claims, costs and charges incurred by the Contractor as a result of, in relation to and arising from such Termination. Subject to the foregoing, all consequences specified in Clauses 101.2, 101.8 to 101.10 shall apply (unless otherwise expressly excluded).

#### **104. DEFAULT OF THE EMPLOYER**

- 104.1 In the event of the Employer failing to pay to the Contractor any sum payable in accordance with Clause 93, 94 or 97 within 42 days after the same shall have become due under the Contract, the Contractor may give 14 days' notice in writing to the Employer to make payment of the sum due. Such notice shall make express reference to this Clause 104.1. In the event of failure by the Employer to make such payment within such 14-day notice period, the Contractor shall be entitled to terminate the Contract by giving not less than 1 month's notice and on expiry of such notice period, the Contract shall terminate. Upon such termination, all consequences specified in Clauses 101.2, 101.8 to 101.10 and this Clause 104 shall apply (unless otherwise expressly excluded) and in the event of any inconsistency, the wider and more stringent obligations of the Contractor shall apply.
- 104.2 So long as (a) no notice of Termination under Clause 101.1, 102.2, 103, or 105.1 is given to the Contractor either before or during the 14-day notice period under Clause 104.1, and (b) the 14-day notice is given under Clause 104.1 upon failure to pay any due and payable but outstanding portion of the Capital Value, on the expiry of 14day notice period, the property in all Mobile Plant, Constructional Plant, Plant, Temporary Works, temporary buildings and unused materials brought on the Site by the Contractor that equals to the amount of the due and payable but outstanding Capital Value only shall thereupon re-vest in him and he shall with all reasonable despatch remove the same from the Site. For the avoidance of doubt, this Clause does not apply in the event of Termination under Clause 104.1 which takes effect after the commencement of the Operation Period and that the Capital Value had already been paid in full.
- 104.3 In the event of Termination under Clause 104.1 and if at the time of Termination, no Certificate of Substantial Completion for the Works had ever been issued, the sum payable by the Employer to the Contractor shall be the same as that which would have been payable under Clause 102.4 (in which case Clause 102.6 shall not apply) as if the Contract had been terminated in accordance with Clause 102. Such payment, subject to the right of deduction, set-off and counter-claim which the Employer may have under the Contract or at law including that under Clause 55, shall be in full and final settlement of all claims, costs and charges incurred by the Contractor as a result of the Termination. Where the Termination takes effect after the commencement of the Operation and the Capital Value had already been paid in full, this Clause does not apply, and the only amount payable to the Contractor is as stated in Clause 101.2(e) (if any).

#### **105. RIGHT OF GOVERNMENT TO TERMINATE FOR CONVENIENCE**

- 105.1 Notwithstanding any other provisions in the Contract, the Employer shall, in addition to any other power enabling it to terminate the Contract, have power to terminate the Contract at any time by giving not less than 3 months' notice in writing to the Contractor and the Termination shall take effect on the date specified in the notice but without prejudice to the claims of either party in respect of any antecedent breach thereof. Upon such Termination, the consequences specified in Clauses 101.2, 101.8 to 101.10 and those specified in this Clause 105 shall apply (unless otherwise expressly excluded).
- 105.2 Except as provided in Clause 105.3, if at the time of Termination under Clause 105.1, no Certificate of Substantial Completion for the Works had ever been issued,, the Employer shall not terminate the Contract under Clause 105.1 in order to execute the Works himself or to arrange for the Works to be executed by another contractor.

- 105.3 The Employer is entitled to terminate the Contract under Clause 105.1 and thereafter to execute the Works himself or to arrange for the Works to be executed by another contractor if the Supervising Officer shall certify in writing to the Employer that in his opinion the completion of the Works will be delayed by a period of not less than 1 year due to interfacing problems or programme slippages of associated works outside the scope of the Contract.
- 105.3A Clauses 105.2 and 105.3 shall not apply to Termination under Clause 105.1 if at the time of Termination, the Certificate of Substantial Completion for the Works had already been issued, in which case the Employer shall upon Termination be free to commence and continue with the Operation in such manner as it deems fit (including on its own and/or through the appointment of another contractor) without any restriction whatsoever.
- 105.4 After the issue of the notice to the Contractor under Clause 105.1, the Employer or the Supervising Officer shall as soon as practicable and in any case not later than the date of Termination as specified in the notice give directions with which the Contractor shall comply with all reasonable despatch as to all or any of the following matters:
- (a) the performance of further work in accordance with the provisions of the Contract, where such further work is necessary for the protection of life or property or for the safety of the Works or the Operation;
  - (b) the protection of work executed under the Contract or any work required to leave the Site in a clean and safe condition;
  - (c) the removal of all Constructional Plant, Plant, Mobile Plant, Temporary Works and temporary buildings from the Site to such extent if and as identified in the notice;
  - (d) the removal of unused materials placed on the Site;
  - (e) the removal of any debris or rubbish and the clearing and making good of the Site;
  - (f) the termination or assignment of any sub-contracts and contracts, including those for the hire of plant, services and insurance, entered into by the Contractor for the purposes of or in connection with the Contract;
  - (g) the assignment of warranties for materials placed on the Site; and
  - (h) any other matter arising out of the Contract with regard to which the Employer may decide that directions are necessary or expedient.
- 105.4A Not used
- 105.5 If at the time of Termination under Clause 105.1, no Certificate of Substantial Completion for the Works had ever been issued, all Constructional Plant, Plant, Mobile Plant, Temporary Works, temporary buildings and unused materials properly brought on to the Site shall be removed by the Contractor as and when they cease to be required in accordance with directions given by the Employer or the Supervising Officer under Clause 101.2(n) or 105.4 . The Constructional Plant, Plant, Mobile Plant, Temporary Works, temporary buildings and unused materials which have become the property of the Employer under Clause 51 shall upon such removal re-vest in the Contractor. If the Contractor shall fail to remove any such Constructional Plant, Plant, Mobile Plant, Temporary Works, temporary buildings or unused materials as aforesaid, the Employer may:
- (a) sell any such Constructional Plant, Plant, Mobile Plant, Temporary Works, temporary buildings or materials which has become the property of the Employer under Clause 51 and after deducting from any proceeds of sale the costs, charges and expenses of and in connection with such sale, the balance, if any, shall be settled in accordance with Clause 105.7 but to the extent that the proceeds of sale are insufficient for such purpose, the deficiency shall be a debt due from the Contractor to the Employer and may be deducted by the Employer from any money due or which may become due to the Contractor whether under this or any other contract

with the Employer in accordance with Clause 55; or

- (b) dispose the same in a manner which the Employer considers appropriate and any costs, charges and expenses so incurred shall be recoverable by the Employer from the Contractor in the manner aforesaid.

Provided that in the event of any such Constructional Plant not solely owned by the Contractor and the Contractor fails to remove such Constructional Plant, the Employer may return such Constructional Plant at the expense of the Contractor to the person, firm or company from whom such Constructional Plant was held by the Contractor and any expense so incurred may be recovered by the Employer from the Contractor in the manner aforesaid.

Provided further that the Employer shall not at any time be liable for the loss of or damage to any Constructional Plant, Plant, Mobile Plant, Temporary Works, temporary buildings or unused materials which the Contractor shall fail to remove from the Site under this Clause.

105.6 If:

- (a) the Contractor is unable or unwilling with all reasonable despatch to carry out any work or other matter specified in the direction given to him by the Employer or the Supervising Officer under Clause 101.2(n) or 105.4 or any other applicable provision of the Contract, or
- (b) the Employer considers that any other urgent work not specified in the direction given to the Contractor under Clause 101.2(n) or 105.4 or any other applicable provision of the Contract shall be carried out by a person other than the Contractor,

the Employer or the Supervising Officer may authorise the carrying out of such work or such other urgent work by a person other than the Contractor and if such work or other work is work which, in the opinion of the Employer or the Supervising Officer, the Contractor was liable to do at his own expense under the Contract, all costs, charges and expenses properly incurred in carrying out the same shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any money due or which may become due to the Contractor whether under this or any other contract with the Employer in accordance with Clause 55.

105.7 In the event of Termination of the Contract under Clause 105.1 and that at the time of such Termination, no Certificate of Substantial Completion for the Works had ever been issued, the Contractor shall be paid by the Employer, in so far as such items have not already been covered by payment on account made to the Contractor (including any instalments of the Capital Value already paid), for all work executed prior to the date of termination to be valued in accordance with the Contract (excluding such Constructional Plant, Plant, Mobile Plant, Temporary Works, temporary buildings and unused materials which are to be removed by the Contractor under the direction given under Clause 105.4(c) or 101.2(n) or other applicable provision of the Contract or which are to be sold by the Employer under Clause 101.2(c) or 101.2(o)(A) or disposed of or returned to another person, firm or company under Clause 101.2(o)(B) or under any other applicable provision of the Contract ("Exclusion")) and in addition:

(For the avoidance of doubt, if at the time of Termination under Clause 105.1 the Certificate of Substantial Completion for the Works had already been issued, this Clause 105.7 does not apply, and the only amount payable to the Contractor is as stated in Clause 101.2(e) (if any).)

(Any amount already taken into account in any one of sub-clause (a) to (f) below shall not be double-counted in any other sub-clauses.)

- (a) the sums payable in respect of preliminary items in so far as the work or service comprised therein has been carried out or performed and a proper proportion, as certified by the Employer, of all such items the work or service comprised therein has been partially carried out or performed save for the Exclusion;
- (b) the Cost of materials ordered for the Works which have been delivered to the Contractor or of which the Contractor is liable to accept delivery or any advanced payment made for materials ordered for the Works, such materials becoming the property of the Employer upon such payment being made by the Employer (which payment not yet having been made), save for the Exclusion;
- (c) a sum to be certified by the Employer being any Cost reasonably incurred by the Contractor for the purpose of completing the Works in so far as such Cost shall not have been paid in accordance with any other provision of this Clause 105 or any other provision under the Contract, save for the Exclusion;
- (d) the additional cost of removal, as compare to removal if the Contract had been performed to completion, under Clause 105.5 or 101.2(n) of all Constructional Plant, Plant, Mobile Plant, Temporary Works, temporary buildings and unused materials from the Site and, if required by the Contractor, return thereof to the Contractor's country of origin or to any other destination at no greater cost and certified by the Employer or the Supervising Officer as reasonable;
- (e) the balance of sale proceeds under Clause 101.2(o)(A) (if any), save for the part of sale proceeds in respect of items sold or disposed which are covered by portions of Capital Value which had already been paid prior to the Termination;
  - (A) Not used.
  - (B) Not used.
- (f) a sum to be certified by the Employer or the Supervising Officer being any reasonable sum expended by the Contractor because of the Termination under Clause 105.1 in respect of:
  - (A) the uncompleted part of any sub-contract and other contracts (including those for the hire of plant, services and insurance), and
  - (B) the curtailment of any contract of employment,entered into exclusively in connection with the Contract.

Provided always that against any payments due from the Employer under this sub-clause the Employer shall be entitled to be credited with rebates from insurance, credit value of plant/equipment for the Employer's use prematurely re-delivered to the Contractor and any outstanding balances due from the Contractor for advances in respect of plant and materials and any sum paid in advance by the Employer to the Contractor in respect of the execution of the Works.

105.8 Not used.

- 105.9 Within 90 days after the issue of the notice of Termination under Clause 105.1 and unless at the time of Termination, the Certificate of Substantial Completion had been issued or the Capital Value has been paid in full, the Contractor shall submit to the Employer or the Supervising Officer a statement of account and supporting documentation showing in detail the value in accordance with the Contract of the work done as of the date of Termination together with all further sums which the Contractor considers to be due to him under Clause 105.7. Within 90 days after receipt of the final account and of all information reasonably required for its verification, the Employer or the Supervising Officer shall issue a payment certificate stating the sum that in his opinion is finally due to the Contractor on Termination under Clause 105.1. The sum shall be paid to the Contractor by the Employer within 21 days of the date of the certification.
- 105.10 If at the time of Termination under Clause 105.1, no Certificate of Substantial Completion had ever been issued, payment to the Contractor under Clause 105.7, subject to the right of deduction, set-off and counter-claim which the Employer may have under the Contract or at law including that under Clause 55, shall be in full and final settlement of all claims, costs and charges incurred by the Contractor as a result of the Termination under Clause 105.1. Where the Termination occurs after the commencement of the Operation and the Capital Value had already been paid in full, the only amount payable to the Contractor is as stated in Clause 101.2(e) of the Conditions of Contract (if any).
- 105.11 Without prejudice to Clause 101.2(a)(3), this Clause 105 shall survive and remain in force after Termination of the Contract.
- 106. CONTINUING LIABILITY**
- 106.1 For the avoidance of doubt, Termination of the Contract, whether under Clause 101, 102, 103, 104 or 105 or otherwise, shall not have any effect whatsoever on any accrued claims of either party under the Contract.
- 107. SETTLEMENT OF DISPUTES**
- 107.1 Any and all disputes shall be settled in accordance with this Clause 107.
- 107.2 For the purpose of this Clause 107, dispute means any dispute or difference of any kind whatsoever between the Employer and the Contractor arising under, out of or in connection with the Contract or the carrying out of the Design, the Works or the Operation including any dispute as to any decision, instruction, opinion, order, direction, certificate or valuation by the Employer or the Supervising Officer whether during the progress of the Design, the Works or the Operation or after their completion and whether before or after the termination, abandonment or breach of the Contract.
- 107.3 For the purpose of this Clause 107 and notwithstanding Clause 107.2, a dispute shall be deemed to arise when either the Contractor or the Employer serves on the Supervising Officer and the other party a notice in writing stating the nature of the dispute.
- 107.3A Not used.
- 107.4 The Supervising Officer shall within 28 days of receipt of the notice referred to in Clause 107.3 decide the dispute and notify the Employer and the Contractor in writing of his decision. Such decision shall be final and binding upon the Employer and the Contractor unless and until the same shall be revised in mediation or arbitration as hereinafter provided.
- 107.5 Unless the Contract shall have been already terminated or abandoned the Contractor shall in every case continue to proceed with the Design, the Works and the Operation and his other obligations under the Contract with all due diligence and he shall give effect forthwith to every such decision of the Supervising Officer unless and until the same shall be revised in mediation or arbitration as hereinafter provided.

- 107.6 If the Supervising Officer shall fail to give such decision in accordance with Clause 107.4 or if either the Employer or the Contractor is dissatisfied with such decision then either the Employer or the Contractor may within 28 days after receiving notice of such decision, or within 28 days after the expiration of the said decision period of 28 days, as the case may be, request that the dispute be referred to mediation in accordance with and subject to The Government of the Hong Kong Special Administrative Region Construction Mediation Rules or any modification thereof being in force at the date of such request.
- 107.7 If the dispute cannot be resolved by mediation, or if either the Employer or the Contractor does not wish the dispute to be referred to mediation then either the Employer or the Contractor may within the time specified herein require that the dispute shall be referred to arbitration in accordance with and subject to the provisions of the Arbitration Ordinance (Cap. 609) and any such reference shall be deemed to be a submission to arbitration within the meaning of such Ordinance. Subject to Clause 107.8, any reference to arbitration shall be made within 90 days of:
- the receipt of a request for mediation and subsequently the recipient of such request having failed to respond, or
  - the refusal to mediate, or
  - the failure of the mediation proceedings to produce a settlement acceptable to the Employer and the Contractor, or
  - the abandonment of the mediation, or
  - where the Supervising Officer has failed to give a decision within the 28 days allowed under Clause 107.4 after being requested to do so, the expiry of the subsequent period of 28 days for the Employer or the Contractor to request that the matter be referred to mediation, and neither the Employer nor the Contractor having requested mediation within that subsequent period of 28 days, or
  - where the Supervising Officer has given a decision within the 28 days allowed under Clause 107.4, the expiry of the period of 28 days after receipt of the notice of the Supervising Officer's decision for the Employer or the Contractor to request that the matter be referred to mediation, and neither the Employer nor the Contractor having requested mediation within that period of 28 days.
- 107.8 The arbitrator appointed shall have full power to open up, review and revise any decision (other than a decision under Clause 82 not to issue an order), instruction, opinion, order, direction, certificate or valuation by the Employer or the Supervising Officer and neither party shall be limited in the proceedings before such arbitrator to the evidence or arguments put before the Supervising Officer for the purpose of obtaining his decision referred to above. Save as provided for in Clauses 107.9 and 107.9A no steps shall be taken in the reference to the arbitrator until after the completion or alleged completion of the Works unless with the written consent of the Employer and the Contractor.
- Provided that:
- the giving of the Certificate of Substantial Completion for the Works or the Certificate of Completion for the Works shall not be a condition precedent to the taking of any step in such reference;
  - no decision given by the Supervising Officer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator on any matter whatsoever relevant to the dispute so referred to the arbitrator as aforesaid.

- 107.9 In the case of any dispute as to the exercise of the Employer's and the Supervising Officer's powers under Clause 101, the reference to the arbitrator may proceed notwithstanding that the Works shall not then be or be alleged to be complete.
- 107.9A In the case where the Contract has been terminated under Clause 101.1, 102.2, 103, 104.1 or 105.1 or has expired or abandoned, the reference to the arbitrator may proceed notwithstanding that the Works shall not then be or be alleged to be completed.
- 107.10 (a) Subject to sub-clauses (b) and (c), the Domestic Arbitration Rules (2014) of the Hong Kong International Arbitration Centre ("Arbitration Rules") shall apply to any arbitration instituted in accordance with this Clause 107.
- (b) Notwithstanding any provision of the Arbitration Rules, the place of meetings and hearings in the arbitration shall be Hong Kong unless the parties otherwise agree.
- (c) Article 20.1 of the Arbitration Rules shall be deleted and replaced by:
- "20.1(a) The arbitration proceedings are private and confidential between the parties and the arbitrator. Subject to the provisions of section 18 of the Ordinance and these Rules, no information relating to the arbitration shall be disclosed by any person within the written consent of each and every party to the arbitration. Disclosures are permissible where disclosures-
- (a) are necessary for implementation or enforcement;
- (b) are required by the parties' auditors or for some other legitimate business reason;
- (c) are required by any order of the courts of Hong Kong or other judicial tribunal;
- (d) are necessary for the making of claims against any third party or to defend a claim brought by any third party.
- 20.1(b) Notwithstanding Article 20.1(a) and subject to the following provisions, the party comprising the Government of the Hong Kong Special Administrative Region (the Government party) may disclose the outline of any dispute with the other party and the outcome of the arbitration to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said Committee, the Government party shall inform the other party. Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the outcome of the arbitration without the written consent of the other party but such consent shall not be unreasonably withheld. The other party shall be deemed to have given his consent to disclosures on the expiry of the first 6 months from the date of the outcome of the arbitration. The other party may, if he considers necessary to protect the sensitive nature of certain information relating to him, request the Government party to disclose such specified information to the said Committee strictly on a confidential basis. If the Government party considers that there are legitimate grounds to accede to the other party's request, the Government party shall convey the request to the said Committee for its consideration."
- 107.11 All the provisions in Schedule 2 to the Arbitration Ordinance (Cap. 609) shall apply to any arbitration instituted in accordance with this Clause 107.
- 107.12 For the purpose of this Clause 107, "Arbitration Ordinance" means the Arbitration Ordinance (Cap. 609) or any statutory modifications thereof for the time being in force.

**108. NOT USED**