



**Water Supplies Department**  
**The Government of the Hong Kong Special Administrative Region**

**Agreement No. CE 8/2015 (WS)**

**First Stage of Desalination Plant at Tseung Kwan O –  
Investigation, Design and Construction**

**SPECIAL CONDITIONS OF EMPLOYMENT**

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**Investigation, Design and Construction**

**SPECIAL CONDITIONS OF EMPLOYMENT**

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<u>Abbreviation</u>	<u>Full Title</u>
CRE	chief resident engineer
CRA	chief resident architect
SRE	senior resident engineer
RE	resident engineer
ARE	assistant resident engineer
RCTO	resident chief technical officer
RSIOW	resident senior inspector of works
RIOW	resident inspector of works
RAIOW	resident assistant inspector of works
RSCOW	resident senior clerk of works
RCOW	resident clerk of works
RACOW	resident assistant clerk of works
RWSI	resident works supervisor class I
RWSII	resident works supervisor class II
SRA	senior resident architect
RA	resident architect
ARA	assistant resident architect
SRQS	senior resident quantity surveyor
RQS	resident quantity surveyor
ARQS	assistant resident quantity surveyor
RPSO(Q)	resident principal survey officer (quantity)
RSSO(Q)	resident senior survey officer (quantity)
RSO(Q)	resident survey officer (quantity)
SRLS	senior resident land surveyor
RLS	resident land surveyor
ARLS	assistant resident land surveyor
RPSO(E)	resident principal survey officer (engineering)
RSSO(E)	resident senior survey officer (engineering)
RSO(E)	resident survey officer (engineering)
RSTO(C)	resident senior technical officer (civil)
RTO(C)	resident technical officer (civil)
RPTO(L)	resident principal technical officer (laboratory)
RSTO(L)	resident senior technical officer (laboratory)
RTO(L)	resident technical officer (laboratory)
RCO	resident clerical officer
RACO	resident assistant clerical officer
RCA	resident clerical assistant
RPSII	resident personal secretary class II
MOD Scale	model scale I
LRO	Labour Relations Officer

Employment of Resident Site Staff **S3** (A) Sub-clause (A) of Clause 36 of the General Conditions of Employment is deleted.

- (B) The Director's Representative shall, in consultation with the Consultants, determine the Resident Site Staff size and composition, and the period over which each post is required. Subsequently, the Director's Representative may, in consultation with the Consultants, review and amend these to suit circumstances which subsequently prevail.
- (C) The Consultants shall use their best endeavours to recruit Resident Site Staff locally. The Consultants shall make their own arrangement to employ persons to fill the posts on the Resident Site Staff establishment determined under sub-clause (B) of this Clause who meet the minimum qualification and experience requirements and are competent to carry out the respective duties stipulated in the Schedule of Resident Site Staff Standards and Duties attached to the consultancy agreement. The Consultants shall, when entering Resident Site Staff Employment Contract with the Resident Site Staff, incorporate in such Employment Contract the provisions set out in the Special Conditions of Employment and the Schedule of Fees regarding employment of Resident Site Staff. It is the Consultants' responsibility to verify the qualifications of individual candidates if they meet, or their qualifications are equivalent to, the required qualifications for the appointment. Any cost incurred in the process of such verification should be borne by the Consultants.
- (D) Members of the Resident Site Staff employed by the Consultants shall meet the safety training requirement shown in Annex. In addition, the Consultants shall ensure that a sufficient number of members of the Resident Site Staff shall have attended and completed training courses on first-aid and fire prevention including knowledge on fire-fighting. The Resident Site Staff are the Consultants' sole employees. The Consultants shall be responsible for the management of them.
- (E) If any member of the Resident Site Staff does not meet the "basic safety training" requirement as listed in Table 1 of Annex, the Consultants shall at no additional cost to the Employer make arrangement within two weeks from the date of employment of such member of the Resident Site Staff for him/her to attend the safety training courses appropriate to his/her rank/post set out in Table 1 of Annex or similar safety training courses of equivalent or higher standard and to complete the courses within 4 months from

the date of his/her employment. Further, members of the Resident Site Staff responsible for supervising works involving special risks shall have attended and completed the relevant “safety training for works involving special risks” as listed in Table 2 of Annex or similar safety training courses of equivalent or higher standard before engaging in such works. If they are supervising works involving special risks and have not received the “safety training for works involving special risks” concerned, the Consultants shall at no additional cost to the Employer make arrangement for them to attend and complete such courses within 1 month of their employment. Should any member of the Resident Site Staff fail to complete the required safety training within the period specified above, the Consultants shall provide suitable replacement upon the expiry of the specified period, at no additional cost to the Employer.

- (F) The Consultants shall also at no additional cost to the Employer make arrangement for the Resident Site Staff to attend refresher training throughout the period of their employment as members of the Resident Site Staff at intervals specified in Tables 1 and 2 of Annex after they have attended the respective training courses as listed in Tables 1 and 2 of Annex or after they have received any refresher training thereafter (whichever is the later) and if no such interval is specified in the Tables, the interval for the aforesaid purpose shall be taken as five years.
- (G) The Consultants shall provide to the Director's Representative safety training record of the Resident Site Staff quarterly. The record shall be in a format to be agreed between the Consultants and the Director's Representative. The safety training record shall include the name, post and date of employment of the individual member of the Resident Site Staff who has attended and completed the safety training course(s) as required under this Clause and the date(s) of the training course(s) or refresher course(s) attended, and do the same for those members of the Resident Site Staff who need to attend such training courses or refresher courses but have not yet attended and completed such courses and the proposed dates for attending those courses. The Consultants shall also include safety training courses on first-aid and fire prevention, and other safety training courses attended by members of the Resident Site Staff in their quarterly

report.

- (H) The Consultants shall provide induction training to newly recruited Resident Site Staff to introduce the Government requirements, including integrity requirements, and procedures relevant to their projects.
- (I) The Consultants shall, in the Resident Site Staff Employment Contract, explicitly prohibit their Resident Site Staff from soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance, and soliciting or accepting any excessive hospitality, entertainment or inducements which could impair their impartiality in relation to Government projects.
- (J) The duties of a person employed on the Resident Site Staff establishment shall include the respective duties as stipulated in the Schedule of Resident Site Staff Standards and Duties attached to the consultancy agreement and the usual duties of the post in which the person is employed. The Consultant shall ensure that Government has a prior call at all times on the abilities, energies and attention of Resident Site Staff. Outside work (whether paid or unpaid) which may impair a member of Resident Site Staff's performance of his duties or distract his attention from them must be avoided. The Resident Site Staff wishing to undertake outside work of any sort must obtain the prior written approval of the Director's Representative. Guidelines on outside work to be undertaken by Resident Site Staff will be issued by the Development Bureau. With the exception set out in the guidelines, failure to obtain such approval may result in disapproval of the employment of the Resident Site Staff. The Consultants shall include express provisions for this purpose in the Resident Site Staff Employment Contract.
- (K) The Consultants shall ensure that members of the Resident Site Staff shall not reveal any confidential or privileged information relating to Government projects to any third party without the prior written consent of Government.
- (L) The Consultants shall at no additional cost to the Employer make proper arrangements, including suitable allocation of duties among members of the Resident Site Staff when some members of the Resident Site Staff are on leave, including sick leave or vacation leave, or for any reasons

absent from duties, to ensure that the Services is in no way affected by such leave. The Consultants shall give prior notice to the Director's Representative on such arrangements. If the demand of the works precludes a member of the Resident Site Staff to take vacation leave during the currency of the works contract which he/she supervises, the Director's Representative shall have the right to require the vacation leave to be taken at the end of the works contract. Notwithstanding the foregoing, if a member of the Resident Site Staff is on maternity leave or prolonged sick leave, with agreement between the Director's Representative and the Consultants, a temporary staff with equivalent qualifications and experience could be employed to take up the duties of the Resident Site Staff for the period concerned. The Consultants shall be reimbursed the cost for employing such temporary staff.

- (M) Government will not post its staff on site.
- (N) The Consultants shall furnish the Director's Representative with the name and particulars of the person they intend to employ in each post on the Resident Site Staff establishment not less than 14 days prior to his/her employment. The Consultants shall furnish further information pertinent to the employment of such person if required by the Director's Representative.
- (O) The Consultants shall furnish the Director's Representative with the name and particulars of the person actually employed in each post on the Resident Site Staff establishment within 14 days of the person's appointment to the post. The Consultants shall furnish further information pertinent to the employment of such person if required by the Director's Representative.
- (P) The Director's Representative shall have the authority at any time to disapprove the employment of any person who is to be employed, or who has already been employed by the Consultants on the Resident Site Staff establishment if, in the opinion of the Director's Representative, the person
  - (i) does not meet the minimum qualification and/or experience requirements stipulated in this Agreement; or

(ii) misconducts himself/herself or is incompetent or negligent in the performance of his/her duties; or

(iii) whose employment is otherwise considered by the Director's Representative to be undesirable.

The Director's Representative shall state the reasons for the disapproval but the Consultants shall not disclose these to any person unless with the prior written approval of the Director's Representative.

(Q) In the event of the Director's Representative exercising disapproval under sub-clause (P) of this Clause, the person, if not already employed, shall not be employed, and that person, if already employed, shall have his/her employment on the Resident Site Staff curtailed by the Consultants.

(R) The responsibilities of the Consultants in connection with the Resident Site Staff shall not be affected irrespective of whether or not the Director's Representative disapproves under sub-clause (P) of this Clause. However the Employer will bear the cost incurred by the Consultants as a result of the disapproval, if its exercise does not result from the default of the Consultants in fulfilling their duties under this Agreement.

Site offices for Resident Site Staff **S4** The Consultants shall be provided with free furnished site office accommodation under the works contracts or WSD Term Contracts for the Resident Site Staff, including stationery, equipment and transport for official purposes for the administration of the works contracts or Term Contracts.

Annual rate of vacation leave, working period and reimbursement caps for Resident Site Staff **S5** (A) The Consultants shall seek the Director's Representative's confirmation on the annual rate of vacation leave, working period and various reimbursement caps for the different types of Resident Site Staff before entering or renewing or extending Employment Contracts with them. Any such confirmation by the Director's Representative shall take precedence over any other figure, rate, cap or adjustment method specified in the relevant clauses of the Schedule of Fees.

- (B) The Director's Representative shall have the authority to adjust the annual rate of vacation leave, working period and various reimbursement caps to tie in with the prevailing Government practices in respect of employment of staff.
- (C) For the purpose of determining the reimbursement caps of Resident Site Staff, the salary of Resident Site Staff shall be adjusted in line with adjustment in the Government pay scales, which can be upwards or downwards. In case the adjustment is announced in the middle of a financial year, and the adjustment is applied with retrospective effect from the beginning of the financial year, the same shall be applied to determine the reimbursement caps of Resident Site Staff. The Consultants are advised to include in the Resident Site Staff employment contracts express provisions for such adjustments. If there is downward adjustment in the Government pay scales applied with retrospective effect thus resulting in excess reimbursement to the Consultants, then the excess shall be recovered as a debt from the Consultants through deduction from subsequent reimbursement or where it is not sufficient for the purpose of such deduction monies due to the Consultants under this Agreement or any other consultancy agreements between the Government and the Consultants.
- (D) For the purpose of Government preventing, investigating and enforcing (including the taking of disciplinary action) any breach of the Civil Service Regulations (including the rules on prevention of double housing benefits), the Consultants shall solicit information set out in (i) below from the Resident Site Staff who are receiving housing benefits from the Consultants and the information set out in (ii) below from the spouse of such Resident Site Staff:
- (i) name, identity card number of the Resident Site Staff and the period during which such staff has been receiving housing benefits from the Consultants;
  - (ii) name, identity card number and employer(s) of the spouses of such Resident Site Staff if his/her spouse is currently employed by Government or has previously been employed by Government

and upon Government's request, transfer to Government such information as set out in (i) and (ii) above for the relevant Resident Site Staff whose spouse is currently employed by Government or has previously been employed by Government. The Consultants should ensure that the provisions of the Personal Data (Privacy) Ordinance, Cap. 486 are fully complied with in their collection of the personal data of the Resident Site Staff and their spouses, and the transfer of such data to the Government. These include the requirement to inform the Resident Site Staff and their spouses on or before the collection of their personal data, of the purpose for which the data are to be used and the possible transfer of such data to the Government for that purpose.

Performance  
Records of  
Resident Site  
Staff

- S6** (A) The Consultants shall include a condition in Resident Site Staff employment contracts that all poor performance records of the Resident Site Staff employment contract whether due to sub-standard work, poor integrity or matters of conduct (hereinafter referred to as Poor Performance Records) will be collected and disclosed by the Consultants to Government policy bureau and departments who shall disclose them to the Housing Authority in case the Resident Site Staff employment contract is terminated on the basis of poor performance whether due to sub-standard work, poor integrity or matters of conduct (hereinafter referred to as Poor Performance). The Poor Performance Records will be used for reference in vetting of Consultants' proposals for Resident Site Staff employment.
- (B) The Consultants shall, on or before entering into an employment contract with the Resident Site Staff, require the Resident Site Staff to sign a statement (sample attached at Appendix 1) to signify consent for the Consultants to disclose all their Poor Performance Records to Government policy bureaux and departments and for disclosure by Government policy bureaux and departments to the Housing Authority. The submission of a statement signed by the Resident Site Staff shall be a condition precedent for reimbursing the costs of the Resident Site Staff to the Consultants.

- (C) The Consultants shall notify the Director's Representative in writing upon the termination of employment contract due to Poor Performance of the Resident Site Staff. The Consultants shall only notify the Director's Representative upon completion of the appeal procedures, if any. The information to be provided shall include name, date of birth and identity card number (or passport number in case the Resident Site Staff has no identity card) of the Resident Site Staff, date of termination of Resident Site Staff employment contract and all Poor Performance Records.
- (D) The Consultants should take all practicable steps to ensure that the Poor Performance Records are accurate and fair and the assessment is based on solid evidence.
- (E) The Consultants should ensure that the provisions of the Personal Data (Privacy) Ordinance, Cap 486 are fully complied with in the collection of the personal data of the Resident Site Staff and the disclosure of such data to Government policy bureaux and departments and for disclosure by the Government policy bureaux and departments to the Housing Authority.
- (F) The Consultants should also inform the appraising officers concerned of the arrangements set out in this special condition.

Submission of  
declaration

- S7** (A) The Consultants shall, before entering into an employment contract with the prospective Resident Site Staff, require the prospective Resident Site Staff to submit a declaration (sample attached at Appendix 2) to declare whether or not the prospective Resident Site Staff has been convicted of offences under the Prevention of Bribery Ordinance, Cap 201 and the Theft Ordinance, Cap 210, the offence of conspiracy to defraud, and the offence of misconduct in public office, and whether or not he/she has been terminated for employment as a Resident Site Staff. Such submission by the prospective Resident Site Staff shall be a condition precedent for employment.
- (B) The Consultants shall make clear to the prospective Resident Site Staff that the information contained in the declaration shall be disclosed to Government policy bureaux and departments and obtain the consent of the

prospective Resident Site Staff.

- (C) The Consultants shall submit the declaration made by the prospective Resident Site Staff to the Director's Representative at least one week prior to offering employment to the prospective Resident Site Staff. The information in the declaration shall be taken into account in considering whether the Consultants' proposal for the Resident Site Staff employment should be approved.
- (D) The Consultants shall terminate the employment of the Resident Site Staff who has given false information in the declaration or is convicted of offences under the Prevention of Bribery Ordinance, Cap 201 and the Theft Ordinance, Cap 210, the offence of conspiracy to defraud, and the offence of misconduct in public office, during employment. Such provision for termination should be included in the employment contract of the Resident Site Staff.

Disclosure of fees **S8**  
payable to the  
Consultants

- (A) The Consultants hereby irrecoverably authorize, consent and agree that the Employer may, whenever the Employer considers appropriate or upon request by any person (written or otherwise) and without further reference to the Consultants, disclose to any person in such form and manner as the Employer deems fit -
  - (i) the fees, costs and expenses payable by the Employer for engaging the Consultants; and
  - (ii) the lump sum fee proposal submitted by the selected consultant (in case of assignment remunerated on lump sum fee basis) / the notional time charge ceiling for the consultancy study (in case of assignment remunerated on time-charge basis) / the estimated lump sum fee calculated based on the percentage-fee proposal submitted by the selected consultant (in case of assignment remunerated on percentage-fee basis).
- (B) The Consultants hereby waive and forego their right, if any, to make any claims against the Employer for any losses, damages, costs, charges, liabilities, demands, proceedings and actions that may arise out of or in consequence of such disclosure by the Employer.

Suspension,  
resumption or  
termination

**S9** (A) Clause 41 of General Conditions of Employment is amended by adding the following sub-clause:

41. (H) Upon suspension or termination, the Consultants shall forthwith at their own costs deliver to the Director's Representative 4 copies of all Deliverables thus far carried out up to the date of suspension or termination.

(B) Notwithstanding the provisions of Clause 41 of the General Conditions of Employment, it is agreed and understood:

(i) That no assurance is given by the Employer that it will instruct the Consultants to proceed with:

(a) All the Services set out in the Investigation Review and Design Phase, Tender Phase, Construction and Commissioning Phase or Initial Operation and Completion Phase (if instructed to proceed with Tender Phase, Construction and Commissioning Phase and/or Initial Operation and Completion Phase),

(b) Tender Phase, Construction and Commissioning Phase and/or Initial Operation and Completion Phase.

(ii) That should all the Services under Investigation Review and Design Phase, Tender Phase, Construction and Commissioning Phase and/or Initial Operation and Completion Phase not be instructed or should there be a delay in their instruction or should Tender Phase, Construction and Commissioning Phase and/or Initial Operation and Completion Phase not be proceeded with, such failure to instruct or any delay in so instructing shall not:

(a) constitute a suspension or termination for the purposes of Clause 41 of the General Conditions of Employment,

(b) entitle the Consultants to claim any costs as a consequence of Services not being instructed or a delay in their instruction.

Payment of  
accounts

**S10** Clause 31 of the General Conditions of Employment is deleted and replaced by the following:

31. (A) Except as provided for in sub-clause (B) of this Clause accounts of all money due from the Employer to the Consultants in accordance with this Agreement shall be paid within 28 days after receipt of the Consultants' invoice by the Director's Representative. In the event of failure by the Employer to make payment to the Consultants in compliance with the provisions of this Clause the Employer shall pay to the Consultants interest at one percent below the judgement debt rate prescribed from time to time by the Rules of the High Court (Chapter 4 of the Laws of Hong Kong) upon any overdue payment from the date on which the same should have been made.

(B) If any item or part of an item of an account rendered by the Consultants is reasonably disputed or reasonably subject to question by the Employer, the Employer shall within 14 days after receipt of the invoice by the Director's Representative inform the Consultants in writing of all items under dispute or subject to question. Payment by the Employer of the remainder of that account shall not be withheld on such grounds and the provisions of sub-clause (A) of this Clause shall apply to such remainder.

Approval of  
documents

**S11** Clause 15 of the General Conditions of Employment is deleted and replaced by the following:

15. (A) All drawings, designs, plans, specifications, bills of quantities or other documents, matters or things prepared by the Consultants for or in connection with any invitation for tenders shall not be used for such purpose unless they shall first have been approved by the Director's Representative in writing.

(B) Any major revisions to such approved drawings, designs, plans, specifications, bills of quantities or other documents, matters or things shall not be used for any purposes unless they have been approved by the Director's Representative in writing.

- (C) The Consultants shall, when so requested by the Director's Representative, submit in writing to him for his approval such drawings, designs, plans, specifications, bills of quantities or other documents, matters or things prepared by them as a direct requirement of the Assignment as he may specify or require.
- (D) No such approval shall affect the responsibility of the Consultants in connection with the Services.

Referral of variations and claims

**S12** Clause 25 of the General Conditions of Employment is deleted and replaced by the following:

- 25. (A) Notwithstanding the requirements of Clause 24 the Consultants when acting as Engineer to any works contract shall:
  - (i) refer the details of every variation to the contract works, including the reasons for it and its estimated value, to the Director's Representative for information as soon as the variation is ordered;
  - (ii) as soon as the value of a variation to the contract works has been determined, refer the details of the evaluation to the Director's Representative for information;
  - (iii) report to the Director's Representative all claims for additional payment made by the contractor and, except for those solely in respect of agreement of rates, refer the principles underlying their assessment of each claim, to enable the Employer to provide his view of the matter before the Consultants reach a decision; and
  - (iv) report to the Director's Representative all delays to the progress of the contract works and, except for those delays solely in respect of inclement weather conditions or the hoisting of storm signals, refer their assessment of grant of extension of time for completion, if any, to enable the Employer to provide his view of the matter before the Consultants reach a decision.

(B) The foregoing referrals and reporting to the Director's Representative shall be in writing.

Requirement for **S13** (A) Non-certified consultants  
ISO9000  
certification

- (i) Within three months of the award of this Agreement, the Consultant shall book with a certification body acceptable to the Employer, the date of audit for the ISO 9001:2008 certification; with detailed documented quality system procedures ready at the time of booking. If the Consultant is a joint venture, the certification audit referred to in this sub-clause shall mean that of the participant or shareholder whose quality system shall be implemented by the joint venture as specified in the declaration submitted with the expression of interest.
- (ii) Notwithstanding any other provision of this Agreement, compliance with sub clause (i) of this Clause shall be a condition precedent to the Consultant's entitlement to any payment or any further payment as the case may be under this Agreement.
- (iii) Sub-clauses (i) and (ii) of this Clause are not applicable if the Consultant or, where the Consultant is a joint venture, its specified participant or shareholder has already obtained ISO 9001:2008 certification on or before the date of the award of this Agreement.

(B) Scope of certification

- (i) Within three months of the award of this Agreement, the Consultant shall apply to the relevant certification body for revision of its current scope of ISO 9001:2008 certification to cover site activities service; with detailed documented quality system procedures ready at the time of applying for revision. If the Consultant is a joint venture, the ISO 9001:2008 certification referred to in this sub-clause shall mean the certification of the participant or shareholder whose quality system shall be implemented by the joint venture as specified in the declaration submitted with the expression of interest.

- (ii) Notwithstanding any other provision of this Agreement, compliance with sub clause (i) of this Clause shall be a condition precedent to the Consultant's entitlement to any payment or any further payment as the case may be under this Agreement.
- (iii) Sub-clauses (i) and (ii) of this Clause are not applicable if:
  - (a) site activities service is not required to be provided by the Consultant under this Agreement; or
  - (b) the scope of ISO 9001:2008 certification of the Consultant or, where the Consultant is a joint venture, its specified participant or shareholder has already been revised by the relevant certification body to cover site activities service on or before the date of the award of this Agreement.

Professional indemnity insurance

**S14** Clause 47 of the General Conditions of Employment is deleted and replaced by the following:

47. (A) Without limiting their obligations and responsibilities nor their liability to indemnify the Employer under Clause 22, the Consultants shall effect and maintain with well established insurers of repute, professional indemnity insurance for a minimum amount as stated in the Brief in respect of their obligations in relation to the Services or any part thereof, for any one occurrence or series of occurrences arising out of any one event, or each and every claim, from the date of commencement of this Agreement until 6 years from the date of notification of completion in writing issued by the Director's Representative (hereinafter referred to in this Clause as the "requisite period"). The professional indemnity insurance shall be effected with an insurer or insurers acceptable to the Employer. The Consultants shall immediately inform the Employer in writing if such insurance ceases to be available at reasonable commercial rates or otherwise is not maintained in accordance with this Clause or for any reason becomes void or unenforceable.

(B) If the insurance policy is project specific, the maximum deductible/excess allowed under the policy shall not exceed 20% of the minimum amount required under sub-clause (A) of this Clause.

(C) (i) If (1) the insurance policy contains a limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy, and (2) the period of insurance under the insurance policy is twelve 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) of this Clause; 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) of this Clause; 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) of this Clause.

(ii) If (1) the insurance policy contains a limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy, and (2) the period of insurance under the insurance policy exceeds twelve 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) this Clause; 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) of this Clause; 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) of this Clause.
- (D) The Consultants shall provide to the Employer within 60 days from the date of commencement of this Agreement and thereafter, in the case where the insurance policy does not cover the entire requisite period, 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 complies with the terms in this Clause in the Form stipulated in Appendix 3 to these General Conditions of Employment; and
  - (ii) a certified copy of the full insurance policy for the approval of the Employer unless the Consultants 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 Consultants

shall provide a certificate in the Form stipulated in Appendix 4 to these General Conditions of Employment 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.

- (E) If the Consultants shall fail upon request to produce to the Employer satisfactory evidence that there is in force professional indemnity insurance required under this Clause, the Employer may effect and keep in force any such insurance and pay such premium as may be necessary for that purpose. The Employer shall be entitled to deduct such premium, together with expenses incurred, in accordance with the provisions of Special Conditions of Employment Clause S23 and/or to recover such amount as a debt due from the Consultants..
- (F) In determining the period of insurance under an insurance policy for the purpose of this Clause, 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.

Exclusive ownership

**S15** Clause 21 of General Conditions of Employment is deleted and replaced with the following clauses:

- 21. (A) The Employer shall become the absolute and exclusive owner of all Deliverables and all intellectual property rights subsisting therein free from all encumbrances save those intellectual property rights belonging to a third party in respect of which sub-clause (C) of this Clause shall apply.
- (B) The Consultants hereby undertake and warrant to the Employer that they are, except in respect of those Deliverables referred to in sub-clause (C) of this Clause, the sole legal and beneficial owner of all intellectual property rights in all Deliverables.
- (C) The Consultants hereby further undertake and warrant to the Employer that to the extent that beneficial ownership of any intellectual property rights subsisting in any Deliverables are vested in anyone other than the Consultants, the Consultants

shall procure that the beneficial owner shall grant to the Employer and any person as the Director's Representative may instruct: (i) a transferable, non-exclusive, royalty-free and irrevocable licence (carrying the right to grant sub-licences) to utilize the intellectual property rights in such Deliverables for all purposes contemplated under this Agreement or expressly agreed to in writing by the relevant beneficial owner thereof; and (ii) an indemnity upon the same terms mutatis mutandis as those set out in sub-clause (E) of this Clause. For the avoidance of doubt, any such licence and indemnity granted shall not be determined if this Agreement is suspended or determined pursuant to Clause 41 or otherwise.

- (D) The Consultants shall, at the request of the Director's Representative, do such acts and execute all such deeds and documents (or procure that same be done or executed) as the Director's Representative may require to vest any or all of the rights referred to in this Clause in the Employer or any other person as the Director's Representative may instruct. The Consultants shall bear their own costs and expenses in relation thereto.
- (E) The Consultants hereby indemnify the Employer against all claims, proceedings, actions, damages and losses incurred or sustained by the Employer arising from the use of the Deliverables and the intellectual property rights subsisting therein (whether owned by the Consultants or other parties) provided that in respect of those intellectual property rights referred to in sub-clause (C) of this Clause, the liability of the Consultants under this sub-clause (E) shall be limited to liability arising from uses for the purposes contemplated under this Agreement or expressly agreed to in writing by the relevant beneficial owner thereof. The indemnity herein shall survive termination of this Agreement.
- (F) Solely for the purpose of this Clause and sub-clause (H) of Clause 41, "Deliverables" means all the reports, drawings, documents, software, certificates and other items described in the Brief (whether or not such reports, drawings, documents, software, certificates or other items described in the Brief are

in completed forms or otherwise) which are to be produced by the Consultants under the Assignment.

Phases subject to incorporation **S16** (A) The provisions of this Special Condition of Employment shall apply to those Services identified in the Brief as Phases Subject to Incorporation.

(B) The General Conditions of Employment are amended as follows:

(i) by the addition of the following definition to Clause 1:

"Phase Subject to Incorporation" means a Phase designated in the Brief (the details of which are known, but the implementation of which has not been decided upon by the Director's Representative at the time the documents inviting submissions for consultancy services are issued) which may be incorporated into the Project pursuant to Sub-clause (C) of this Special Condition of Employment

(ii) Clause 27 of the General Conditions of Employment is amended by the addition of the words “, and shall also include the total fees of the Phases Subject to Incorporation, which shall be inclusive of all labour, material and expenses incurred in the performance of the Services and which shall not be payable unless an instruction is issued in accordance with Sub-clause (C) of the Special Condition of Employment” at the end.

(C) Without derogating from the generality of Clause 17 and 23 of the General Conditions of Employment, the Director's Representative may, prior to the completion of the Investigation Review and Design Phase, instruct the Consultant in writing to proceed with the Services comprised within a Phase Subject to Incorporation.

(D) In the event that the Director's Representative issues an instruction in accordance with Sub-clause (C) of the Special Condition of Employment:

(i) the Consultant shall thereafter perform and complete the Services comprised within the relevant Phase Subject to Incorporation as part of the Project in accordance with the Agreement; the Consultant shall

commence providing the Services for the Phase Subject to Incorporation upon receipt of the instruction and shall complete that Phase within the time for completion of that Phase stated in the documents inviting submissions for consultancy services, or such extended time as may be approved by the Director's Representative. The time for completion commences from and includes the date for commencement of the Phase notified by the Director's Representative in accordance with Sub-clause (C) of this Special Condition of Employment.

- (ii) the Agreement shall thereafter be construed in every way as if the relevant Phase Subject to Incorporation had at all times formed part of the Project; and
  - (iii) the fees for the Phases Subject to Incorporation shall be payable in accordance with Clause 27 of the General Conditions of Employment.
- (E) In the event that the Director's Representative does not issue an instruction in accordance with Sub-clause (C) of this Special Condition of Employment:
- (i) without prejudice to the provisions of Clause 17 and 23 of the General Conditions of Employment, the Consultant shall not thereafter be obliged to execute and complete the Services comprised within the relevant Phase Subject to Incorporation;
  - (ii) the Consultant shall not be entitled to any payment or other compensation or relief in respect of or attributable to the relevant Phase Subject to Incorporation;
  - (iii) the Agreement shall thereafter be construed in every way as if the relevant Phase Subject to Incorporation had not at any time formed part of the Agreement and all references thereto shall be of no effect;

(iv) the Consultant shall review the Programme submitted pursuant to Clause 26 of the General Conditions of Employment and, if appropriate, revise and submit an amended or varied version of the same to the Director's Representative for approval under Clause 26(B) of the General Conditions of Employment;

(v) the Consultant shall review all drawings and other documents relating to its Services which have been submitted to the Director's Representative and if appropriate, revise and submit an amended or varied version of the same to the Director's Representative in accordance with Clause 15 of the General Conditions of Employment.

(F) The Consultant shall not commence the Services comprised within a Phase Subject to Incorporation without a written instruction to do so from the Director's Representative, pursuant to Sub-clause (C) of the Special Condition of Employment.

(G) For the avoidance of doubt, Phases Subject to Incorporation do not fall within the provisions of Clauses 33, 34 and 41 of the General Conditions of Employment.

Settlement of  
disputes

**S17** General Conditions of Employment Clause 44 is deleted and replaced by the following:

44. (A) If any dispute or difference of any kind whatsoever shall arise between the Employer and the Consultants in connection with or arising out of this Agreement, either party shall be entitled to refer the dispute or difference to the Director and the partner or director of the Consultants, who shall meet within 21 days of such matter being referred to them.

- (B) If the dispute or difference cannot be resolved within 2 months of a meeting under sub-clause (A) of this Clause or upon written agreement that the dispute or difference cannot be resolved, either the Employer or the Consultants may at any time thereafter request that the matter be referred to mediation in accordance with and subject to The Government of the Hong Kong Special Administrative Region Construction Mediation Rules or any modification thereof for the time being in force.
- (C) If the matter cannot be resolved by mediation, or if either the Employer or the Consultants do not wish the matter to be referred to mediation then either the Employer or the Consultants may within the time specified herein require that the matter shall be referred to arbitration in accordance with and subject to the provisions of the Arbitration Ordinance and any such reference shall be deemed to be a submission to arbitration within the meaning of such Ordinance. Any such reference to arbitration shall be made within 90 days of either the refusal to mediate, or the failure of the mediation.
- (D) (i) Subject to paragraphs (ii) and (iii) of this sub-clause, the Domestic Arbitration Rules (2014) of the Hong Kong International Arbitration Centre (the Arbitration Rules) shall apply to any arbitration instituted in accordance with this Clause.
- (ii) Notwithstanding any provision of the Arbitration Rules, the place of meetings and hearings in the arbitration shall be Hong Kong unless the parties otherwise agree.
- (iii) Article 20.1 of the Arbitration Rules shall be deleted and replaced by:

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

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

20.1 (b) Notwithstanding Article 20.1(a) 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.

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

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

Confidentiality     **S18** Clause 9 of the General Conditions of Employment is deleted and replaced by the following:

9. (A) Except as necessary for the performance of the Services, the Consultants shall not (except with the prior written consent or as instructed by the Director's Representative) disclose the terms and conditions of this Agreement or any report, document, specification, drawing, plan, software, data or other particulars furnished by or on behalf of the Employer in connection therewith, or any such or similar information generated or produced by the Consultants pursuant to this Agreement, to any person other than a person employed or engaged by the Consultants in carrying out this Assignment, an agent of the Consultants, any approved sub-consultant or the Consultants' accountants, insurers and legal advisers.

- (B) Any disclosure to any person, agent, sub-consultant, accountant, insurer, legal adviser permitted under sub-clause (A) of this clause shall be in strict confidence and shall be on a “need to know” basis and extend only so far as may be necessary for the purposes of this Agreement.
- (C) The Consultants shall take all necessary measures (including by way of contractual provisions where appropriate) to ensure that their directors, employees, agents, sub-consultants, accountants, insurers and legal advisers as mentioned in sub-clause (A) are aware of and shall comply with the confidentiality and non-disclosure provisions contained in this Agreement. If required by the Employer, the Consultants undertake to procure for and on behalf of the Employer a confidentiality agreement in a form to be prescribed by the Employer from any director, employee, agent, sub-consultant, accountant, insurer and legal adviser to whom any confidential information is to be disclosed.
- (D) The Consultants shall not, without the prior written consent of the Director’s Representative, publish, either alone or in conjunction with any other person, in any newspaper, magazine, periodical or through any electronic medium, any article, photograph or illustration relating to this Agreement.
- (E) If the Consultants have provided the Employer with documents and information which they have declared in writing to be confidential and stamped accordingly whether in relation to their practice or special circumstances or for other good causes, unless the Director within two months of receipt of such information by notice in writing disagrees, then that information will be treated as confidential. In relation to disputes between the Employer and the Consultants, the Employer may, subject to the following provisions, disclose the outline of any dispute and the terms of settlement for which a settlement agreement has been reached with the Consultants or the outcome of the arbitration or any other means of resolution of dispute to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said

Committee, the Employer shall inform the Consultants. Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the settlement agreement, arbitration award or, as the case may be, outcome of other means of resolution of dispute without the written consent of the Consultants but such consent shall not be unreasonably withheld. The Consultants shall be deemed to have given their 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 Consultants may, if they consider necessary to protect the sensitive nature of certain information relating to them, 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 Consultants' request, the Employer shall convey the request to the said Committee for its consideration.

(F) The Consultants shall indemnify and keep indemnified the Employer against all loss, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever the Employer may suffer, sustain or incur, whether direct or consequential, arising out of or in connection with any breach by the Consultants or their directors, employees, agents, sub-consultants, accountants, insurers or legal advisers of this clause.

(G) The provision of this clause shall survive the termination of this Agreement (however occasioned) and shall continue in full force and effect notwithstanding such termination.

Prevention of  
bribery

**S19** Clause 45 of the General Conditions of Employment is deleted and replaced by the following:

45. The Consultants shall prohibit their directors, employees, agents and sub-consultants who are involved in this Assignment from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance, Cap 201. The Consultants shall also caution their directors, employees, agents and sub-consultants

against soliciting or accepting any excessive hospitality, entertainment or inducements which would impair their impartiality in relation to the Assignment. The Consultants shall take all necessary measures (including by way of contractual provisions and/or providing training workshops where appropriate) to ensure that their directors, employees, agents and sub-consultants are aware of the aforesaid prohibition and will not solicit or accept any advantages, excessive hospitality etc when conducting business in connection with this Agreement.

- Declaration of ethical commitment      **S20** The Consultants shall submit a signed declaration in a form prescribed as Appendix 5 or approved by the Employer to confirm compliance with the provisions on confidentiality and ethical commitment as stated in Special Conditions of Employment Clauses S18 and S19 when demand is made for payment under this Agreement at a frequency, which shall not be more frequent than once per month, as specified by the Director’s Representative. If the Consultants fail to submit the declaration as required, the Employer shall be entitled to withhold payment until such declaration is submitted and the Consultants shall not be entitled to interest in that period.
- Acknowledgement of being notified of the ethical requirements      **S21** The Consultants acknowledge that they have been reminded that dishonesty, theft and corruption on their part or those of their directors, employees, agents or sub-consultants who are involved in this Agreement may lead to prosecution under, without limitation, section 9 of the Prevention of Bribery Ordinance, Cap 201; section 17, section 18D or section 19 of the Theft Ordinance, Cap 210 and section 161 of the Crimes Ordinance, Cap 200. These offences commonly carry upon conviction terms of imprisonment.
- Conflict of interest and debarring      **S22** Clause 46 of the General Conditions of Employment is deleted and replaced by the following:
46. (A) On appointment and during the term of this Agreement and for 6 months thereafter, the Consultants must declare any interest if it is considered to be in actual, apparent, potential or perceived conflict with the Services, including any interest or association the Consultants, their associated companies, their associates or associated persons or any of their sub-consultants may have with any contractors, suppliers, specialist contractors or sub-contractors. The Consultants shall during the

term of this Agreement and for 6 months thereafter forthwith notify the Employer in writing and keep the Employer notified of all or any facts which may reasonably be considered to give rise to a situation where the financial or other interest of the Consultants, their associated companies, their associates or associated persons or any of their sub-consultants, conflict or compete, or may conflict or compete, with the Consultants' duties to the Employer under this Agreement.

For purpose of this Clause 46 of the General Conditions of Employment, the "term of this Agreement" shall mean the period from appointment of the Consultants until completion of the Agreement, i.e. upon issue of the letter of completion of Agreement by the Employer.

- (B) The Consultants shall not, and shall ensure that any of their associated companies, their associates or associated persons or any of their sub-consultants shall not, during the term of this Agreement and for 6 months thereafter, undertake any services, tasks or jobs or do anything whatsoever for or on behalf of any third party (other than in the proper performance of this Agreement), which touches, concerns or affects the Services or which may reasonably be seen to touch, concern or affect the Services, except with the prior written approval of the Director's Representative which approval shall not be unreasonably withheld.
- (C) Without prejudice to the generality of sub-clause (B), the Consultants shall not (whether on their own or through their associated companies, associates or associated persons or in joint venture with others), and shall ensure that any of their sub-consultants shall not,
  - (i) undertake or compete for the role of a contractor or supplier or otherwise be involved as a shareholder of the contractor or supplier, in a subsequent procurement of any services and/or goods arising out of or relating to this Agreement;

- (ii) undertake any services for a contractor (including acting as a sub-contractor) or supplier in respect of a contract between that contractor or supplier and the Employer for which the Consultants are providing a service arising out of or relating to this Agreement ;
- (iii) undertake any services for, including without limitation provision of advice to, a bidder bidding for a contract arising out of or relating to this Agreement,

except with the prior written approval of the Employer.

In the event that the Consultants have advised on the preparation of the tender, including tender specifications and tender assessment, the Consultants undertake that under no circumstances will they bid, participate or be financially involved in that or related tender exercise.

The Consultants shall take all necessary steps to ensure that under no circumstances will their associated companies, associates, associated persons and sub-consultants participate or be financially involved in the tender exercise referred to in the preceding sub-paragraphs.

- (D) The Consultants shall render their advice or recommendations pursuant to this Agreement to the Employer on an impartial basis without giving favour to any particular product, services or equipment in which the Consultants have a commercial interest. The Consultants shall notify the Employer immediately and in writing and keep the Employer notified of any actual, apparent, potential or perceived conflict they or their associated companies, associates or associated persons or any of their sub-consultants may have in, or any association or connection they or the aforesaid persons may have with, any of the services, products or equipment proposed or recommended by the Consultants under this Agreement. The Consultants shall obtain from each and every one of their directors, employees, agents and sub-consultants who are involved in this

Agreement a binding undertaking to observe this sub-clause.

- (E) The Consultants shall require their directors, employees, agents and sub-consultants who are involved in this Agreement to declare in writing to the Consultants and keep the Consultants informed regularly of any actual, apparent, potential or perceived conflict between their personal/ financial interests and their duties in connection with this Agreement, including all or any facts which may reasonably be considered to give rise to a situation which the financial interests of such persons, conflict or compete, or may conflict or compete, with the Consultants' duties to the Employer under this Agreement. In the event that such conflict is disclosed in a declaration, the Consultants shall forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict so disclosed.
- (F) The Consultants shall prohibit their directors and employees who are involved in this Agreement from engaging in any work or employment other than in the performance of this Agreement, with or without remuneration, which could give rise to any actual, apparent, potential or perceived conflict between their personal/financial interests and their duties in connection with this Agreement. The Consultants shall require their agents and sub-consultants to impose similar restriction on their directors and employees by way of a contractual provision.
- (G) The Consultants shall take all necessary measures (including by way of contractual provisions where appropriate) to ensure that their directors, employees, agents and sub-consultants who are involved in this Agreement are aware of the provisions under the aforesaid sub-clauses (B) to (F). Where the Consultants have obtained the written approval of the Director's Representative to appoint sub-consultants to undertake any part of the Services, the Consultants shall take all necessary steps to procure and ensure that the same covenants as in this Special Conditions of Employment Clause, *mutatis mutandis*, are imposed on the sub-consultants and shall take all

necessary steps to enforce such covenants.

(H) In this Special Condition of Employment Clause,

“associated company” or “associated companies” in relation to the Consultants means

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

“associate” or “associates” in relation to the Consultants means

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

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

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

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

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

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

“director” means any person occupying the position

of director by whatever name called and without limitation a de facto or shadow director.

- (I) The Consultants shall submit a signed declaration in the form prescribed in Appendix 6 to these Special Conditions of Employment (with only such amendments thereto as may previously have been agreed in writing by the Employer) to confirm compliance with the provisions as stated in the above sub-clauses when demand is made for payment under this Agreement at a frequency, which shall not be more frequent than once per month, as specified by the Director's Representative. If the Consultants fail to submit the declaration as required, the Employer shall be entitled to withhold payment until such declaration is submitted and the Consultants shall not be entitled to interest in that period."

Setting off money due to the Employer from defaulting Consultants **S23** (A) All damages, losses, costs, expenses, debts or sums for which the Consultants are liable to the Employer under any provision of this Agreement may be deducted by the Employer from monies due to the Consultants under this Agreement and the Employer shall have the power to recover any balance not so deducted from monies due to the Consultants under any other Government consultancy agreement between the Employer and the Consultants.

- (B) All damages, losses, costs, expenses, debts or sums for which the Consultants are liable to the Employer under any provision of any other Government consultancy agreement between the Consultants and the Employer may be deducted by the Employer from monies due to the Consultants under this Agreement.

Retention of documents and inspection **S24** Clause 12 of the General Conditions of Employment is deleted and replaced by the following:

- (A) For a period of 12 years commencing from the date of substantial completion of any works contract or ground investigation contract (and where there are multiple sections for completion of the works, then the date of the last of such sections substantially completed and for the purposes of this Clause referred to as the "date of substantial completion"), supervision of which is part of the Services, the

Consultants shall store records, files, measurement books, accounts and other information (for the purposes of this Clause called the “documents”) however generated and whether generated by or received by the Consultants in respect of each works contract or ground investigation contract, in accordance with the approved storage and retrieval proposal as referred to in sub-clause (B) of this Clause.

- (B) The Consultants shall before the date of substantial completion submit a storage and retrieval proposal to the Director’s Representative for approval. The proposal may be approved by the Director’s Representative with or without conditions. On approval the Consultants shall subject to this Clause deal with the documents in strict accordance with the approved storage and retrieval proposal.
- (C) The Consultants shall give assistance to public officers authorized by the Employer to locate, retrieve, inspect or copy such documents and shall answer queries or supply information reasonably requested by such officers on the concerned documents.
- (D) Upon the expiry of and notwithstanding the 12 years period, the Consultants shall first obtain the written consent of the Employer before destroying any of the documents. If so instructed by the Employer, the Consultants shall deliver any or all of such documents to the Employer’s designated store.
- (E) The Consultants shall notify the Employer immediately in case of any accidents or incidents leading to the loss or damage of any of the documents. The Consultants shall also inspect the documents at regular intervals of not exceeding three years to ensure that they are in good condition and shall report to the Employer promptly in case of any sign of deterioration.
- (F) The Employer may before the expiry of the 12 years period request that any of the documents be transferred from the Consultants to the Employer’s designated store.

- (G) Notwithstanding sub-clause (A) to (F) of this Clause the Consultants may propose from time to time the destruction of certain documents or classes of documents and the Employer may consent to such destruction, such consent to be in writing.
- (H) The Director's Representative shall have power to order the amendment of or change to the approved storage proposal. Should the Director's Representative order such amendment or change the Consultants are entitled to be reimbursed any increase in the cost of storage.
- (I) For the avoidance of doubt, the Consultants' fee covers all of the obligations set out in this Clause, except instructions issued under sub-clause (H) of this Clause.

- Tax withholding **S25** (A) Where the Consultants are non-resident corporation or, where the Consultants are unincorporated joint venture or partnership or sole proprietorship, any one of the participants or partners or the sole proprietor is a non-resident (whether as declared in the consultancy proposals or as subsequently notified to or found out by the Government), the Government shall withhold a percentage equivalent to the prevailing Hong Kong profits tax rate applicable to unincorporated and incorporated business at the time the Services are rendered (the current rates being 15% for unincorporated business and 16.5% for incorporated business for the year of assessment of 2014/2015) of any fee payable to the Consultants, whether by way of lump sum, instalments or discounted payments, but exclusive of any reimbursement of expenses, if any, in respect of the Services performed/provided in Hong Kong for the settlement of Hong Kong profits tax chargeable on the fee. Any balance representing the excess of fees so withheld in the basis period of the year of assessment over the Consultants' tax liability for that year will be returned to the Consultants without interest within a reasonable time upon final determination and settlement of their tax liabilities.
- (B) The Consultants acknowledge and consent that in the event that the Consultants are non-resident corporation or,

where the Consultants are unincorporated joint venture or partnership or sole proprietorship, any one of the participants or partners or the sole proprietor is a non-resident, such data (including but not limited to their names, nature of engagement, consultancy period, consultancy fee, correspondence address (both local and overseas) and the amount of tax withheld) will be notified/provided to the Inland Revenue Department for tax assessment and collection purposes.

- (C) The Consultants shall notify the Director's Representative immediately whenever there is any change during the currency of the Agreement in their resident status or the sole proprietor's resident status or, where the Consultants are unincorporated joint venture or partnership, in any one of the participants' or partners' resident status, from that declared in the consultancy proposals.
- (D) "Non-resident" means in the case of an individual, one who maintains a place of abode outside Hong Kong; and in the case of a corporation, one which is not incorporated in Hong Kong.

Technical  
Proposal  
(incorporating IC  
Proposal)

**S26** (A) The Technical Proposal shall form part of this Agreement. The Consultants shall, subject to sub-clauses (B) to (L) of this Clause, perform the Services in accordance with the Technical Proposal.

- (B) (i) Without prejudice to the generality of sub-clause (A) of this Clause and subject to sub-clauses (B)(ii) and (B)(iv) below, the Consultants shall appoint and retain the sub-consultants named in the Technical Proposal to undertake the relevant parts of the Services as specified in the Technical Proposal.
- (ii) There shall be no changes of the sub-consultants named in the Technical Proposal except with the prior written approval of the Director's Representative under this sub-clause (B)(ii). If for any reason beyond the Consultants' control, it becomes necessary for the Consultants to replace any of the sub-consultants named in the Technical Proposal (whether prior to or after the appointment of such sub-consultant in accordance with sub-clause (B)(i) above), the Consultants shall notify the Director's Representative in writing as soon as

practicable of the reason for replacing the sub-consultant, and propose for the Director's Representative's approval a replacement sub-consultant to undertake the relevant part of the Services.

- (iii) The provisions of sub-clauses (B)(i) to B(ii) above shall apply in respect of the appointment, retention and replacement of a sub-consultant who has been approved under sub-clause (B)(ii) above. Such sub-consultant shall be regarded as a sub-consultant named in the Technical Proposal for the purposes of sub-clauses (B)(i) to B(ii) above.
- (iv) General Conditions of Employment Clause 38 shall not apply in respect of the appointment and replacement of the sub-consultants named in the Technical Proposal and sub-consultants approved under sub-clause (B)(ii) above.

(C) Without prejudice to the generality of sub-clause (A) of this Clause, the Consultants shall provide the staff and the manpower input for the Assignment in accordance with the Technical Proposal or necessarily inferred therefrom. For the purposes of this Clause, "staff" means the staff of the Consultants and the staff of any sub-consultant.

(D) (i) There shall be no changes of those members of staff named in the Technical Proposal as core personnel (each such member is hereinafter referred to in this Clause as "member of the core personnel") except as approved in accordance with this sub-clause (D)(i). If for any reason beyond the control of the Consultants or any sub-consultant, it becomes necessary for the Consultants or the sub-consultant to replace any member of the core personnel, the Consultants shall notify the Director's Representative in writing as soon as practicable of the reason for replacing the member of the core personnel, and propose for the Director Representative's approval a substitute having qualifications and experience equivalent to or better than the qualifications and experience of the member of the core personnel to be replaced.

(ii) The provisions of sub-clause (D)(i) above shall apply in respect of the replacement of a substitute

who has been approved under that sub-clause. Such substitute shall be regarded as a member of the core personnel for the purposes of sub-clause (D)(i) above.

- (E) (i) If the Consultants propose not to perform the Services in accordance with the Technical Proposal for any reasonable justification other than changes of sub-consultants or core personnel named in the Technical Proposal, the Consultants shall notify the Director's Representative in writing as soon as practicable of his justification for not performing the Services in accordance with the Technical Proposal (hereinafter referred to in this Clause as "the justification") and propose modifications or amendments to the Technical Proposal for the approval of the Director's Representative. Any such modifications or amendments shall conform to the Brief.
  - (ii) The modifications or amendments to the Technical Proposal referred to in sub-clause (E)(i) above shall be regarded as approved by the Director's Representative unless the Director's Representative informs the Consultants in writing of his disapproval within 21 days after his receipt of the notification of such modifications or amendments and the justification.
- (F) In the performance of the Services in accordance with the Technical Proposal, or the Technical Proposal with changes of sub-consultants approved under sub-clause (B)(ii) of this Clause or changes of core personnel approved under sub-clause (D)(i) of this Clause (hereinafter referred to in this Clause as "Technical Proposal with approved changes of sub-consultants or core personnel"), or the Technical Proposal modified or amended as provided in sub-clause (E) of this Clause (hereinafter referred to in this Clause as "modified Technical Proposal"), the Consultants shall strictly comply with this Agreement to the satisfaction of the Director's Representative and shall strictly comply with and adhere to the instructions of the Director's Representative on any matter relating to the Technical Proposal, or the Technical Proposal with approved changes of sub-consultants or core personnel, or the modified Technical Proposal.

- (G) The Consultants shall within 21 days when so requested by the Director's Representative give detailed information on the estimated cost of performance of the Services in accordance with the Technical Proposal and the cost of performance of the Services in accordance with the Technical Proposal with approved changes of sub-consultants or core personnel, or the modified Technical Proposal, as the case may be. The Director's Representative shall determine the savings of cost to the Consultants arising from the Technical Proposal with approved changes of sub-consultants or core personnel, or the modified Technical Proposal based on the information so provided by the Consultants. The savings of cost to the Consultants as determined by the Director's Representative shall be deducted from the fees payable to the Consultants under this Agreement.
- (H) The Consultants shall not be entitled to any additional payment for the performance of the Services in a manner which differs from the Technical Proposal (including the performance of the Services in accordance with the Technical Proposal with approved changes of sub-consultants or core personnel, or the modified Technical Proposal).
- (I) Any provision in the Technical Proposal purporting to impose any obligation on the Employer or the Director or the Director's Representative which is not an obligation of the Employer, the Director or the Director's Representative, as the case may be, under the other documents forming part of this Agreement, shall have no effect and shall not be binding on the Employer, the Director or the Director's Representative.
- (J) Any provision in the Technical Proposal purporting to confer any right or option on the Consultants which is not a right or option of the Consultants under the other documents forming part of this Agreement shall have no effect.
- (K) (i) General Conditions of Employment Clause 1 is amended by adding the following definition thereto:

“IC Proposal” means the innovation and creativity

proposal in the Consultants' tender for this Agreement.

“Technical Proposal” means the technical proposal in the Consultants' tender for this Agreement in response to the requirements in sub-sections (2)(b), (3)(a), (3)(b), (3)(d), (4)(a), (4)(b), (4)(c) and (4)(d) in paragraph 5 in the “Guidelines on the Preparation of Technical Proposal and Innovation and Creativity Proposal” and the IC Proposal, with the exception of any programme therein.

- (ii) General Conditions of Employment Clause 1 is amended by deleting the definition of “Agreement” and replacing it with the following:

“Agreement” means and includes the Memorandum of Agreement, the General Conditions of Employment of Engineering and Associated Consultants for an Investigation Assignment, any Special Conditions of Employment, the Brief, the Technical Proposal, the Schedule of Fees and such other documents as may be referred to in the Memorandum of Agreement.

- (L) General Conditions of Employment Clause 7 is deleted and replaced by the following:

7. (A) The several documents forming this Agreement shall, subject to sub-clause (B) of this Clause, be construed according to the following order of precedence:

- (i) The Special Conditions of Employment (if any);
- (ii) The General Conditions of Employment;
- (iii) The Brief;
- (iv) The Technical Proposal; and
- (v) Other documents forming part of this Agreement.

(B) In the event of conflict between the Technical Proposal and any other document forming part of this Agreement, the Technical Proposal shall prevail only in the case where, in the opinion of the Director's Representative, such Technical Proposal imposes higher requirements in terms of quality or quantity than those specified under or pursuant to the other document forming part of this Agreement or impose requirements on the part of the Consultants more onerous than those specified under or pursuant to the other document forming part of this Agreement and in all other cases the other document forming part of this Agreement shall prevail.

- 7A. (A) Subject to Clause 7, the several documents forming this Agreement are to be taken as mutually explanatory of one another but in the case of ambiguities and discrepancies the same shall be explained and adjusted by the Director's Representative.

(B) Where there is an ambiguity or discrepancy within the Technical Proposal, the Consultants shall inform the Director's Representative in writing of his proposed amendment to remove the ambiguity or discrepancy; and (subject always to compliance with statutory requirements) the Director's Representative may either issue instructions on such ambiguity or discrepancy or accept the Consultants' proposed amendment and the Consultants shall be obliged to comply with the instructions or acceptance by the Director's Representative without cost to the Employer. If in the opinion of the Director's Representative compliance with such instructions or acceptance of the Consultants' proposed amendment shall involve the Consultants in any saving then the Director's Representative shall value such saving and deduct the same from the fees payable to the Consultants under the Agreement accordingly."

**Table 1 - Basic Safety Training for Resident Site Staff**

<b>Rank/Post</b>	<b>Course Title</b>	<b>Course Content</b>	<b>Duration</b>	<b>Organisers*</b>
<b>Professional Staff</b> CRE, SRE, RE, ARE, RA  <b>Technical Inspectorate</b> RSIOW, RIOW, RAIOW, RCOW, RACOW	(1) Occupational Safety Management	<ul style="list-style-type: none"> <li>- Modern safety and health management</li> <li>- Fundamentals concepts of developing an effective safety management system</li> <li>- Key elements of safety management systems</li> <li>- Safety plans</li> <li>- Safety audits</li> </ul>	12 hours	OSHC
	OR  Basic Safety Management	<ul style="list-style-type: none"> <li>- Safety and Health Legislation</li> <li>- Risk assessment</li> <li>- Accident investigation and technique</li> <li>- Safety Management technique</li> </ul>	12 hours	HKPU
	(2) Basic Accident Prevention	<ul style="list-style-type: none"> <li>- Accident prevention and technique</li> </ul>	12 hours	OSHC
	(3)#Construction Industry Safety Card Course (Green Card)  OR Construction Industry Safety Card Revalidation Course	<ul style="list-style-type: none"> <li>- General duties of employers and employees</li> <li>- Potential hazards of construction works</li> <li>- Accident prevention</li> </ul> <p>Ditto (only for holders of Green Cards which validity period of 3 years expires)</p>	8 hours  3.5 hours	CICTA  OSHC CICTA

Rank/Post	Course Title	Course Content	Duration	Organisers*
<b>Supervisory Staff</b> RWSI, RWSII	(1) Safety & Health Supervisor (Construction) Course/ Construction Safety Supervisor Course (N.B.: this course is recognized to be exempted from the Green Card course. However, course participants has to attend the revalidation course after expiry of his/her Green Card)	<ul style="list-style-type: none"> <li>- Basic Safety Management</li> <li>- Basic Accident Prevention</li> <li>- Basic Occupational Health</li> <li>- Construction Safety</li> </ul>	42 hours	OSHC/ CICTA
	(2) Briefing Sessions on major regulations related to working in construction sites	<ul style="list-style-type: none"> <li>- Factories and Industrial Undertakings Ordinance &amp; Regulations</li> <li>- Construction Sites (Safety) Regulations</li> <li>- F &amp; IU (Lifting Appliances and Lifting Gear) Regulations</li> <li>- F &amp; IU (Electricity) Regulations</li> <li>- F &amp; IU (Confined Spaces) Regulations</li> </ul>	1/2 day	Labour Department
	(3) Marine Construction Works Supervisor Safety Course [For those whose works involve marine construction only]	<ul style="list-style-type: none"> <li>- Overview of legislative provisions on marine construction</li> <li>- General shipboard safety &amp; safe working environment</li> <li>- Safe working practices in marine construction</li> <li>- Safe material and equipment handling</li> <li>- Safe use of machinery, equipment and appliances</li> <li>- Emergency preparedness</li> </ul>	2 days	MSTI/VTC

Rank/Post	Course Title	Course Content	Duration	Organisers*
<u>Others</u>				
<b>(a) Engineering Survey staff:</b> SRLS, RLS, RPSO(E), RSSO(E), RSO(E), RSOT(E), Chainman	(1)#Construction Industry Safety Card Course (Green Card)	- General duties of employers and employees - Potential hazards of construction works - Accident prevention	8 hours	OSHC CICTA
	OR  Construction Industry Safety Card Revalidation Course	Ditto (only for holders of Green Cards which validity period of 3 years expires)	3.5 hours	OSHC CICTA
<b>(b) Quantity Survey Staff:</b> RSQS, RQS, ARQS, RSSO(Q), RSO(Q), RSOT(Q)	(2) Blue Card Shipboard Safety Training Course [For those who work on board a barge or ship only]	- Overview of legislative provisions - General shipboard safety - Safe cargo handling operation - Safe use of cargo handling equipment	1 day	MSTI VTC
<b>(c) Technical staff:</b> RPTO(Civil), RSTO(Civil), RTO(Civil), RTOT(Civil), RTO(Lab)				

Abbreviations: OSHC Occupational Safety and Health Council  
CICTA Construction Industry Council Training Authority  
HKPU Hong Kong Polytechnic University  
LD Labour Department  
MSTI Maritime Services Training Institute  
VTC Vocational Training Council

Notes : \* The list of organisers may not be exhaustive and there can be additional approved organisers.

# Not required if the staff are members of professional institutions who have satisfied the Commissioner for Labour (C for L) in respect of Section 6BA(4) of the Factories and Industrial Undertaking Ordinances; or have completed the "Multi-media Self-learning Package for Construction Industry Safety Card Course" and obtained a "Green Card " from CICTA, any other course considered equivalent by C for L such as Safety Course for Graduate Engineers, Construction Safety Officer Course, Construction Safety Supervisor Course, Assistant Safety Officer Course organised by CICTA.

**Table 2 - Safety Training for Works involving Special Risks**

<b>Types of works involving special risks</b>	<b>Course Title</b>	<b>Content</b>	<b>Duration</b>	<b>Organisers *</b>
Work in confined spaces	(1) Competent persons working with confined spaces  <u>N.B.</u> RSS shall receive refresher trainings at 3-year intervals	<ul style="list-style-type: none"> <li>- Regulations relating to confined spaces</li> <li>- Potential hazards</li> <li>- Risk assessment and control measures</li> <li>- Use of personal protective equipment and rescue equipment</li> </ul>	2 days	Organisers in LD's approved list
	(2) Certified workers working in confined spaces  <u>N.B.</u> RSS shall receive refresher trainings at 3- year intervals	<ul style="list-style-type: none"> <li>- Regulations relating to confined spaces</li> <li>- Potential hazards</li> <li>- Use of personal protective equipment and rescue equipment</li> </ul>	1 day	Organisers in LD's approved list
Work on or near roads/highways	Safety at Road Works	<ul style="list-style-type: none"> <li>- Legislative requirements</li> <li>- Traffic signs for use at road works</li> <li>- Arrangement of signs at road works</li> <li>- Planning for road works</li> <li>- Procedures during road works</li> </ul>	3.5 hours	OSHC
Work with asbestos	Safe handling of asbestos	<ul style="list-style-type: none"> <li>- Regulations relating to control of asbestos</li> <li>- Potential hazards</li> <li>- Preventive measures</li> </ul>	24 hours	OSHC
Noise assessment	Certificate of Competence in Workplace Noise Assessment	<ul style="list-style-type: none"> <li>- Legal requirement</li> <li>- Basic acoustics and effects of noise on human beings</li> <li>- Procedures for measuring noise</li> <li>- Hearing protection</li> </ul>	24 hours	OSHC
Manual handling	Certificate of Competence in Manual Handling	<ul style="list-style-type: none"> <li>- Legal requirement</li> <li>- Preliminary assessment</li> <li>- Related anatomy and physiology</li> <li>- Risk Assessment</li> <li>- Prevention and protection measures</li> </ul>	12 hours	OSHC

<b>Types of works involving special risks</b>	<b>Course Title</b>	<b>Content</b>	<b>Duration</b>	<b>Organisers *</b>
Use and handling of chemicals	Safe handling of chemicals	<ul style="list-style-type: none"> <li>- Hazards of chemicals</li> <li>- Labeling of chemicals</li> <li>- Use of personal protective equipment</li> </ul>	3.5 hours	OSHC
Work in dusty environment	Pneumoconiosis and its prevention	<ul style="list-style-type: none"> <li>- Pneumoconiosis and its prevention</li> <li>- Health effects of pneumoconiosis</li> <li>- Respiratory protection equipment</li> <li>- Pneumoconiosis (Compensation) Ordinance</li> </ul>	1 day	Pneumoconiosis Compensation Fund Board

Abbreviations: OSHC                      Occupational Safety and Health Council  
LD                                              Labour Department

- Notes :
1. The above safety training courses are applicable to Resident Site Staff responsible for supervising works involving special risks.
  2. The above-listed safety training courses are not exhaustive. Consultants shall determine if it is necessary for their Resident Site Staff to attend other safety training courses appropriate to suit operational needs.
- \* The list of organisers may not be exhaustive and there can be additional approved organisers.

**Sample Statement to be Signed by Resident Site Staff  
Signifying Consent for the Consultants to Disclose Poor Performance Records  
to the Government and the Housing Authority**

To : (the Consultants) (“the Company”)

I understand that for the purpose of ensuring the quality of site supervision of public works/housing projects, the Company shall prepare and collect poor performance records whether due to sub-standard work, poor integrity or matters of conduct (hereinafter referred to as Poor Performance Records) of the Resident Site Staff and disclose the Poor Performance Records to Government policy bureaux and departments and for the Government policy bureaux and departments’ disclosure to the Housing Authority.

I hereby consent to the Company’s disclosure of my personal data including name, date of birth, identity card (or passport) number, and all Poor Performance Records to Government policy bureaux and departments and for the Government policy bureaux and departments’ disclosure to the Housing Authority in case this employment contract is terminated on the basis of poor performance whether due to sub-standard work, poor integrity or matters of conduct as assessed by the Company.

Name (of Resident Site Staff) : \_\_\_\_\_

Identity Card/Passport Number : \_\_\_\_\_

Signature : \_\_\_\_\_

Date : \_\_\_\_\_

**Sample Declaration to Convictions for Offences and Information on Termination of Resident Site Staff Employment Contract**

To: (the Consultants) (“the Company”)

In consideration of your processing my application for the post of Resident Site Staff:

I hereby declare that I have not been convicted of any offence(s)<sup>@</sup> for the period \_\_\_\_ to \_\_\_\_\* / I have been convicted of an offence(s)<sup>@</sup> for the period \_\_\_\_ to \_\_\_\_\*#, details are as follows:

Offence <sup>@</sup>	Date of Conviction	Details

I hereby further declare that I have not been terminated for employment as a Resident Site Staff for the period \_\_\_\_ to \_\_\_\_\* by any company, corporation or partnership / I have been terminated for employment as a Resident Site Staff for the period \_\_\_\_ to \_\_\_\_\*# by a company, corporation or partnership, details are as follows:

Reason(s) for Termination	Date of Termination	Name/Address of Employer	Details

I hereby declare that the information contained in this declaration is true, accurate and complete to the best of my knowledge. I understand that if any information is untrue, inaccurate or incomplete, I may be subject to criminal investigation and prosecution, and the Company may terminate my employment as Resident Site Staff.

I understand that for the purpose of ensuring the quality of site supervision of public works projects, the above information will be disclosed by the Company to Government policy bureaux and departments.

I hereby consent to the Company’s disclosure of my personal data including my name, date of birth, identity card (or passport) number, and all of the above information to Government policy bureaux and departments to enable them to assess my eligibility for the post of Resident Site Staff.

Name (of Resident Site Staff) : \_\_\_\_\_  
Identity Card/Passport Number : \_\_\_\_\_  
Signature : \_\_\_\_\_  
Date : \_\_\_\_\_

**Notes**

<sup>@</sup> The declaration of conviction records covers conviction for offences under the Prevention of Bribery Ordinance (Cap 201) and the Theft Ordinance (Cap 210), the offence of conspiracy to defraud, and the offence of misconduct in public office.

<sup>#</sup> Delete whichever is inappropriate

<sup>\*</sup> The period shall cover 36 months immediately before the Date of Declaration.

**Sample letter of undertaking**

To the Government of the Hong Kong Special Administrative Region

Dear Sirs

Agreement No.: .....

Title: .....

Insurance Policy No.: .....

Name of Insurer : .....

We hereby undertake that the above professional indemnity insurance policy effected pursuant to sub-clause (A) of General Conditions of Employment 47 of the above Agreement complies with the terms of said General Conditions of Employment Clause 47.

Yours faithfully

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(Name of the Consultants) .....

(Name of the Signatory) .....

(Position of the Signatory) .....

(Date) .....

**CERTIFICATE OF INSURANCE**

**To the Government of the Hong Kong Special Administrative Region**

Dear Sirs,

**Insert** NAME OF INSURED

**Insert** AGREEMENT NUMBER

TITLE

DATE

PARTIES: The Government of the Hong Kong Special Administrative Region  
("the Employer") and [ ] ("the Consultant")

**Professional Indemnity Insurance**

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

Main terms of the Insurance Policy are as follows:

Insurers/Security:            Insert Insurer Name(s)

Policy No.:                    Insert Policy Number

Insured Business/ Project: Insert details

Retroactive Date (if any):

Professional Business/  
Firm's Business:            Insert Business Description/Professional Activities as  
shown on the policy schedule.

Sub Consultants:            Confirm that the policy extends to cover liability attaching  
to the Insured arising out of the services to be provided by  
any sub-consultants appointed by the Insured.

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

Jurisdiction:                 Confirm that the policy covers claims brought against the  
Insured under the Law of HKSAR and in the Courts of the  
HKSAR.

Indemnity Limit:            HK\$ \_\_\_\_\_ any one claim and/or  
HK\$ \_\_\_\_\_ in the aggregate and/or

Reinstatement(s) up to total HK\$ \_\_\_\_\_.

Excess: [For Project Specific policy only]  
Confirm that the Excess / Deductible level does not exceed 20% of the minimum amount stated in General Conditions of Employment Clause 47 of the above Agreement.

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

Yours faithfully,

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

\* Delete as appropriate.

**Sample Declaration Form by Consultants  
on their compliance with the ethical commitments requirements  
(to be attached to the payment application submitted by the Consultants)**

To: Director's Representative

Agreement No.: .....

Title: .....

In accordance with the Special Conditions of Employment Clause SCE 12:

- (1) We confirm that we have complied with the following provisions and have ensured that our directors, employees, agents and sub-consultants are aware of the following provisions:
  - (a) Prohibiting our directors, employees, agents and sub-consultants who are involved in this Agreement from offering, soliciting or accepting any advantage as defined in section 2 of the Prevention of Bribery Ordinance, Cap 201 when conducting business in connection with this Agreement;
  - (b) Taking all measures as necessary to protect any confidential/privileged information or data entrusted to us by or on behalf of the Employer from being divulged to a third party other than those allowed in this Agreement.
  
- (2) We further confirm that we have ensured that our accountants, insurers and legal advisers are aware of the provisions requiring us taking all measures as necessary to protect any confidential/privileged information or data entrusted to us by or on behalf of the Employer from being divulged to a third party other than those allowed in this Agreement.

\_\_\_\_\_  
(Name of the Consultants)

\_\_\_\_\_  
(Name of the Signatory)

\_\_\_\_\_  
(Position of the Signatory)

\_\_\_\_\_  
(Date)

**Sample Declaration Form by Consultants  
on their compliance with the conflict of interest avoidance  
and debarring requirements  
(to be attached to the payment application submitted by the Consultants)**

To: Director's Representative

Agreement No.: .....  
Title: .....

In accordance with SCE Clause S22, we confirm and declare that we have complied with the provisions stated therein. We further confirm and declare that we have taken action to ensure that our associated companies, associates or associated persons, sub-consultants, employees and agents are aware of the provisions therein stipulated including the following:

- (a) our associated companies, associates or associated persons or any of our sub-consultants shall not, during the term of this Agreement and for [ ] months thereafter, undertake any services, tasks or jobs or do anything whatsoever for or on behalf of third party (other than in the proper performance of this Agreement), which touches, concerns or affects the Services or which may reasonably be seen to touch, concern or affect the Services, except with the prior written approval of the Director's Representative;
- (b) our associated companies, associates or associated persons, and any of our sub-consultants shall not,
  - (i) undertake or compete for the role of a contractor or supplier or otherwise be involved as a shareholder of the contractor or supplier, in a subsequent procurement of any services and/or goods arising out of or relating to this Agreement;
  - (ii) undertake any services for a contractor (including acting as a sub-contractor) or supplier in respect of a contract between that contractor or supplier and the Employer for which we are providing a service arising out of or relating to this Agreement;
  - (iii) undertake any services for, including without limitation provision of advice to, a bidder bidding for a contract arising out of or relating to this Agreement,

except with the prior written approval of the Employer;

- (c) we are under an obligation to render advice or recommendations pursuant to this Agreement to the Employer on an impartial basis without giving favour to any particular product, services or equipment in which we have a commercial interest. We also have an obligation to notify the Employer immediately and in writing and keep the Employer notified of any actual, apparent, potential or perceived conflict we or our associated companies, associates or associated persons or any of our sub-consultants may have in, or any association or connection we or the aforesaid persons may have with, any of the services, products or equipment proposed or recommended by us under this Agreement. Each and every one of our directors, employees, agents and sub-consultants who are involved in this Agreement have given a binding undertaking to observe the aforesaid;
  
- (d) our directors, employees, agents and sub-consultants who are involved in the Agreement are required to declare in writing to us and keep us informed regularly any actual, apparent, or potential or perceived conflict between their personal/financial interests and their duties in connection with this Agreement, including all or any facts which may reasonably be considered to give rise to a situation which the financial interests of such persons, conflict or compete, or may conflict or compete, with our duties to the Employer under this Agreement. In the event that such conflict is disclosed in a declaration, we are under an obligation to forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict so disclosed; and
  
- (e) our directors and employees who are involved in the Agreement are prohibited from engaging in any work or employment other than in the performance of this Agreement, with or without remuneration, which could create or potentially give rise to any actual, apparent, potential or perceived conflict between their personal/financial interests and their duties in connection with the Agreement. Our agents and sub-consultants are required to impose similar restriction on their directors and employees by way of a contractual provision.

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(Name of the Consultants) .....

(Name of the Signatory) .....

(Position of the Signatory) .....

(Date) .....