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## GENERAL CONDITIONS OF CONTRACT FOR BUILDING AND CIVIL WORKS

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GENERAL CONDITIONS OF CONTRACT
BUILDING AND CIVIL WORKS

DEFINITIONS AND INTERPRETATION

1. Definitions and Interpretation

1.1 In the Contract, the following words and expressions shall (except to the extent that the context in which they appear otherwise requires) have the meanings hereby assigned to them respectively:-

"Airport" means the Hong Kong International Airport at Chek Lap Kok;

"Arbitration Rules" means the rules for the reference of Disputes to arbitration in accordance with the Dispute resolution provisions under the Contract and contained in schedule 8;

"Articles of Agreement" means the articles of agreement as prepared and executed pursuant to Clause 11;

"Checking Engineer" means the person or firm, or any replacement, appointed in accordance with Clause 10;

"Completion Certificate" means a certificate issued pursuant to Clause 48 when the Works are or any Section or any other part of the Works is substantially complete and the date of substantial completion of the Works, any Section or any other part of the Works shall be the date identified in the relevant Completion Certificate;

"Contract" means the Articles of Agreement, the Tender and the Letter of Acceptance, the Employer's Drawings, these General Conditions, the Special Conditions and the Specification;

"Contract Rate of Interest" means the rate equivalent to 1% above the rate per annum from time to time announced by The Hongkong & Shanghai Banking Corporation Limited to be its prime lending rate for Hong Kong Dollars or if such rate shall cease to be announced, the nearest equivalent benchmark rate for the lending of Hong Kong Dollars by note issuing banks in Hong Kong;

"Contract Sum" means the total of the Cost Centre Values at the date of the Letter of Acceptance;

"Contractor's Drawings" means all drawings, design calculations, software documentation, specifications, samples, patterns, models, testing procedures and other documents and things submitted by the Contractor and reviewed without objection by the Project Manager, and subject to any amendment reviewed without objection by the Project Manager, provided that this definition shall exclude documents submitted pursuant to Clause 15.1 and insurance policies;

"Contractor's Equipment" means all equipment of every kind (including, without limitation, plant, vehicles, tools and other things), and the constituent parts forming or intended to form part thereof, required for the execution of the Works but does not include the Permanent Works or the Temporary Works;
"Cost" means expenditure wholly and necessarily incurred by the Contractor in connection with the Works including, without limitation, overheads whether on or off the Site, finance charges (limited to simple interest at the Contract Rate of Interest) and depreciation in value of Contractor's Equipment owned by the Contractor but excluding profit;

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

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

"Defects Liability Certificate" means the certificate issued pursuant to Clause 68.1 at the expiry of all Defects Liability Periods;

"Defects Liability Period" means, in respect of any Section or of any other part of the Works for which a Completion Certificate is issued pursuant to Clause 48, the period calculated from the date of substantial completion identified in the relevant Completion Certificate until twelve months after the date of substantial completion identified in the Completion Certificate for the Works; in respect of the Works, the expression means the said twelve months, and, in respect of work executed pursuant to Clauses 50.1 and 51.1(b) (other than work to which Clause 51.2 applies), the expression means twelve months from the date of completion of such work;

"Dispute" means a dispute or difference of any kind whatsoever between the Employer and the Contractor arising under, out of or in connection with the Contract or the carrying out of the Works including, without limitation, any dispute as to any decision, opinion, instruction, notice, order, direction withholding of permission or consent, determination, certificate, statement of objection, assessment or valuation of the Project Manager whether during the execution of the Works or thereafter and whether before or after the termination, abandonment or breach of the Contract;

"Employer's Drawings" means the drawings identified as such in the Specification subject to any amendment to such drawings made by or on behalf of the Employer and such other drawings identified as Employer's Drawings, subject as aforesaid, as may from time to time be issued by the Project Manager to the Contractor;

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

"Final Contract Sum" means the sum to be ascertained and paid pursuant to Clause 67 for the execution of the Works in accordance with the Contract;

"Form of Tender" means the form of tender duly completed and signed by or on behalf of the Contractor and included in the Tender;

"General Conditions" means the Clauses of and schedules to these general conditions of contract;
“General Holiday” means every Sunday or any other day which is a general holiday by virtue of the General Holidays Ordinance (Cap. 149);

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

“Hong Kong” means the Hong Kong Special Administrative Region;

“Interim Payment Schedule” means the schedule as completed by the Contractor and included in the Pricing Document to be used for the calculation of interim payments in relation to each Cost Centre, as the schedule may be revised from time to time pursuant to Clause 66;

“Key Date” means a date identified as such in the Specification as the same may be changed pursuant to Clause 44 or, by agreement, Clause 46;

“Letter of Acceptance” means the letter from the Employer to the Contractor accepting the Tender subject to any matter agreed between the parties and identified in or in an attachment to the letter;

“Mediation Rules” means the rules for the reference of Disputes to mediation in accordance with the Dispute resolution provisions under the Contract and contained in schedule 7;

“Milestone” means an event or degree of completion of the Works set out and described in the Schedule of Milestones;

“Nominated Sub-Contractor” means any entity executing part of the Works appointed pursuant to Clause 63 and references in the Contract to “sub-contractor” shall include Nominated Sub-Contractors;

“Option” means in respect of works identified as such in the Specification or the Pricing Document the right to require the carrying out of the whole or part of such works on the terms identified in the Specification, the Pricing Document and Clause 78;

“Other Contractors” means any of the following whose activities or the works they are engaged to provide in any way at any time affect or are affected by the Works:

(a) contractors and utility companies engaged from time to time by the Employer or by any subsidiary company of the Employer;

(b) contractors and utility companies engaged from time to time by Government or the MTR Corporation Limited or other public body;

(c) franchisees, concessionaires, tenants and licensees of the Employer or of any subsidiary company of the Employer; and

(d) sub-contractors of any tier of the contractors within categories (a) and (b) above and contractors and sub-contractors of any tier of the utility companies, franchisees, concessionaires, tenants and licensees within categories (a) to (c) above
provided that the definition shall exclude the Contractor and his sub-contractors of any tier both as Contractor or sub-contractor of any tier in relation to the Works and in any other capacity which would otherwise fall within categories (a) to (d) above in relation to other works;

"Permanent Works" means all permanent works of every kind (including, without limitation, foundations, structures, plant, equipment, cladding, roads and drains), and the goods, materials and other constituent parts forming or intended to form part thereof, to be provided in accordance with the Contract;

"Personal Data" means personal data as defined in Section 2 of the Personal Data (Privacy) Ordinance (Chapter 486, Laws of Hong Kong);

"Pricing Document" means the document (including its preamble) identified as such, completed by the Contractor and forming part of the Tender;

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

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

"Project Manager's Representative" means a person appointed from time to time by the Project Manager pursuant to Clause 3.1;

"Project Site" means the island of Chek Lap Kok formed for the construction of the Airport and all developments connected therewith;

"Provisional Sum" means a sum so designated in the Pricing Document for the execution of work, which sum may be used pursuant to Clause 63;

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

"Retention Money" means the amount of money withheld by the Employer by way of retention pursuant to Clauses 67.3 to 67.6;

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

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

"Site" means the lands and other places within the Project Site, at, on, under, over or through which the Permanent Works are to be constructed or work is to be carried out, as identified in the Specification and/or the Employer's Drawings together with such other lands and places as may subsequently be agreed by the Project Manager and the Contractor as forming part of the Site;
"Special Conditions" means the special conditions of contract (if any) issued by the Employer and identified as such;

"Specification" means the document or documents identified as such and issued by or on behalf of the Employer subject to any amendment thereof or addition thereto as may from time to time be issued by the Project Manager;

"Stage" means any stage in the progress of the Works identified as such in the Specification to which a Key Date is allocated and in respect of which a Stage Certificate is to be issued;

"Stage Certificate" means a certificate issued pursuant to Clauses 48.3 or 48.5 in respect of the achievement of any Stage or any part of a Stage and the date of achievement of any Stage or any part of a Stage shall be the date identified in the relevant certificate;

"Temporary Works" means all temporary works of every kind (including, without limitation, falsework, temporary structures, temporary earthworks and other things), and the goods, materials and other constituent parts forming or intended to form part thereof, required for the execution of the Works but does not include Contractor's Equipment;

"Tender" means the Form of Tender and the appendices thereto as accepted by, and subject to the terms of, the Letter of Acceptance;

"Works" means the design, procurement, manufacture, supply, construction, commissioning, testing, maintenance and other operations expressly or impliedly required by the Contract in relation to, and including the provision of, the Permanent Works and also means the Permanent Works themselves and/or the Temporary Works;

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

1.2 In the Contract:-

(a) to the extent that the context in which they appear or the circumstances to which they apply so require:-

(i) words importing the singular shall include the plural and vice versa;

(ii) words importing persons or parties shall include corporations, partnerships and other entities, corporate or unincorporated, having legal capacity;

(iii) words importing the masculine shall include the feminine and vice versa;
(iv) words importing the neuter shall include the masculine or feminine and vice versa;

(v) "sub-contractor" shall include supplier; and

(vi) "manufacture" shall include preparation, assembly and fabrication;

(b) the indices, headings and marginal notes shall not be taken into consideration in the interpretation of the Contract;

(c) all references in these General Conditions to Clauses are references to Clauses or parts thereof in these General Conditions and not to any other document forming part of the Contract and references to schedules are to the schedules to these General Conditions;

(d) all references to the Contractor shall have effect, if the Contractor comprises more than one entity, so that those entities shall be jointly and severally liable for any breach of the Contractor's obligations;

(e) where the words "liability" and "liabilities" and grammatical variations thereof are used, they shall (except to the extent that the context in which they appear otherwise requires) include responsibility under or in connection with the Contract, in contract, tort (including negligence) or otherwise, for damages, costs, charges, proceedings, losses and expenses;

(f) where the word "obligations" and grammatical variations thereof is used, it shall mean obligations under or in connection with the Contract;

(g) where the words "duty" and "duties" are used, they shall be interpreted as obligations under the Contract and not in tort;

(h) where the word "any" is used, it shall (except to the extent that the context in which it appears otherwise requires) mean any one or more than one;

(i) where the word "execute" and grammatical variations thereof is used, it shall (except to the extent that the context in which it appears otherwise requires) mean carry out and complete;

(j) where the word "work" is used it shall (except to the extent that the context in which it appears otherwise requires) include operations and the product of those operations and the supply of Permanent Works, Temporary Works, Contractor's Equipment and services and the things supplied;

(k) where the words "substantial completion" and grammatical variations thereof are used, in relation to the Works, any Section or any other part of the Works they shall mean substantial completion excluding work in any Defects Liability Period;
(l) wherever provision is made for the giving or issue of any notice, consent, permission, certificate, instruction, direction, request or decision by any person, or the agreement of any person, unless otherwise specified, the notice, consent, permission, certificate, instruction, direction, request, decision or agreement shall be in writing and the words "notify", "consent", permit", "certify", "instruct", "direct", "request", "decide" or "agree" and grammatical variations thereof shall be construed accordingly;

(m) wherever provision is made for the giving or issue of the things referred to in Clause 1.2(l) they shall, unless otherwise specified, be given or issued by the Project Manager;

(n) any communication under the Contract required to be in writing may be hand-written, typed or printed; and

(o) the Contractor and his sub-contractors of any tier shall be liable for the acts and omissions of their servants, workmen and agents.

1.3 The principal text of any communication pursuant to the Contract including notices, consents, permissions, certificates, instructions, directions, requests, decisions, drawings, design data, test reports, information and documents of any kind relating to the Contract shall be in the English language.

1.4 Subject to any express provision to the contrary contained elsewhere in the Contract, any period of time fixed or decided in accordance with the Contract for doing any act or thing shall be reckoned in accordance with the following provisions:-

(a) General Holidays shall be included in the period of time;

(b) "month" shall mean a calendar month;

(c) where the act or thing is required to be done within or not less than a specified period before a specified date, the period shall end immediately before that date;

(d) where the act or thing is required to be done within a specified period after or from a specified date, the period shall begin immediately after that date; and

(e) where the act or thing is required to be done within a specified period, the period shall end at the conclusion of the last day of the period.

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

2. **Duties and Powers of the Project Manager**

2.1 The Project Manager shall carry out those duties and may exercise those powers which are expressly or by necessary implication identified in the Contract as powers or duties of the Project Manager. The Project Manager shall act fairly and reasonably within the terms of the Contract.

2.2 In relation to instructions, the Project Manager:

   (a) shall issue instructions which in his opinion are necessary for the execution of the Works; and

   (b) may issue any other instruction which in his opinion is desirable in connection with the Works,

provided that, except as required by the Contract apart from this Clause 2.2, the Project Manager shall not:

   (c) have the power to amend the terms of the Contract; or

   (d) be obliged to issue any instruction relating to any matter which, in his opinion, is the responsibility of the Contractor under the Contract in the absence of the instruction.

2.3 The instructions referred to in Clause 2.2 may be issued pursuant to that Clause 2.2 or pursuant to any other provision of the Contract as, in the Project Manager’s opinion, shall be appropriate.

2.4 Subject to the provisions of Clause 3, the Contractor shall take instructions only from the Project Manager.

2.5 The Contractor shall give reasonable notice to the Project Manager of any further instruction that the Contractor may require for the execution of the Works provided that the Project Manager shall not be bound to issue any such instruction which, in his opinion, is not necessary.

2.6 If, as a result of an instruction pursuant to Clause 2.2, or as a result of any failure or inability of the Project Manager to issue, or delay in the issue of any instruction pursuant to Clause 2.2(a) which was the subject of a notice in accordance with Clause 2.5, the Contractor is prevented from achieving any Stage or substantially completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate then, if the Contractor claims additional time and/or payment therefor, the Project Manager shall give a decision pursuant to Clause 44 and/or, in respect of instructions pursuant to Clause 2.2, Clauses 54 and/or 55 and, in respect of failure, inability or delay as aforesaid, Clause 55.
3. **The Project Manager's Representative and his assistants**

3.1 The Project Manager shall notify the Contractor of the appointment of any Project Manager's Representative and of any replacement from time to time. The delegated duties and powers of any Project Manager's Representative are to watch and inspect the Works in a manner appropriate to the quality system implemented by the Contractor and to carry out such other duties and to exercise such other powers vested in the Project Manager as may be delegated to him by the Project Manager pursuant to Clause 3.2.

3.2 The Project Manager may from time to time delegate to any Project Manager's Representative any of the duties and powers vested in him. Any such delegation shall be in writing signed by the Project Manager and shall specify the duties and powers thereby delegated. No such delegation shall have effect until a signed copy thereof has been delivered to the Contractor. Any instruction or decision given or deemed to be given by any Project Manager's Representative to the Contractor within the terms of such delegation, but not otherwise, shall be deemed to have been given by the Project Manager provided that, if the Contractor shall be dissatisfied by reason of any instruction or decision given or deemed to be given by any Project Manager's Representative, the Contractor may, within a reasonable time, refer the matter to the Project Manager who shall, within a reasonable time, in writing confirm, reverse or vary the instruction or decision.

3.3 The Project Manager or any Project Manager's Representative may appoint and replace any person to act as assistant to any Project Manager's Representative in carrying out his duties and exercising his powers. Upon any such appointment or replacement the Contractor shall be notified by the Project Manager or any Project Manager's Representative of the names, duties and powers of each such person. Such assistants shall have no power to issue any instruction or decision to the Contractor save insofar as such instruction or decision may be necessary to enable them to carry out their duties and exercise their powers. Any instruction or decision given by any such assistant for these purposes shall be deemed to have been given by the Project Manager's Representative for whom he acts provided that, if the Contractor shall be dissatisfied by reason of any instruction or decision of any such assistant, the Contractor may, within a reasonable time, refer the matter to the Project Manager's Representative for whom the assistant acts who shall, within a reasonable time, in writing confirm, reverse or vary the instruction or decision.

3.4 Until the Project Manager, or, as the case may be, any Project Manager's Representative, confirms, reverses or varies any instruction or decision pursuant to the provisos to Clauses 3.2 or 3.3, the Contractor and the Employer shall remain bound by the instruction or decision and if, as a result of any reversal or variation, the Contractor is prevented from achieving any Stage or substantially completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate, then if the Contractor claims additional time and/or payment therefor, the Project Manager shall give a decision pursuant to Clauses 44 and/or 55.
3.5 Notwithstanding any other provision of the Contract:-

(a) no act or omission by the Project Manager or any Project Manager's Representative or the assistants to any Project Manager's Representative (including, without limitation, the giving of permission or consent or the issuing of any certificate or notice of no objection) shall:-

(i) relieve the Contractor of any of his obligations or liabilities or give rise to any waiver or estoppel in relation to any of his obligations or liabilities; or

(ii) constitute a warranty by the Employer in relation to the Contractor's performance of the Contract; or

(iii) otherwise create any obligation or liability on the part of the Employer unless (in relation to this Clause 3.5(a)(iii) only) the act or omission occurs in the performance of duties or the exercise of powers pursuant to the Contract; and

(b) notwithstanding Clause 3.5(a) no failure by the Project Manager, any Project Manager's Representative or any assistant to any Project Manager's Representative to reject any work, drawing or document which is not in accordance with the Contract shall prejudice the power of any of those people subsequently to reject the work, drawing or document nor shall the Employer incur any obligation or liability to the Contractor arising out of such failure.

3.6 If for any reason the Project Manager or any Project Manager's Representative or any assistant to any Project Manager's Representative considers it necessary to give any instruction or decision orally, he may do so, and the Contractor shall comply with the instruction or decision. The oral instruction or decision shall be confirmed in writing by the Project Manager, the Project Manager's Representative or assistant to any Project Manager's Representative, as the case may be, as soon as practicable after the instruction or decision was given provided that, if the Contractor within 72 hours, confirms in writing to the Project Manager the oral instruction or decision and if the confirmation is not contradicted in writing within 72 hours of receipt of the confirmation, it shall be deemed to be an instruction or decision of the Project Manager.

3.7 The Project Manager, any Project Manager's Representative and any assistant to any Project Manager's Representative shall have no personal liability to the Contractor for their acts and omissions in the performance of duties or exercise of powers pursuant to the Contract.

3.8 The Project Manager, Project Manager's Representatives and his assistants may be employees of the Employer or may be independent consultants or contractors.
ASSIGNMENT AND SUB-CONTRACTING

4. Assignment

4.1 Subject to Clause 4.2, the Contractor shall not assign or otherwise transfer the benefit of the Contract or any part thereof or any interest or right therein or thereunder without the prior consent of the Employer and any assignment shall be on terms and in a form previously reviewed without objection.

4.2 Upon fourteen days prior notice served on the Employer and with the prior consent of the Employer (such consent not to be unreasonably withheld) the Contractor may:-

(a) grant a charge on any monies due or to become due to the Contractor under the Contract in favour of his bankers or a third party providing finance to the Contractor for the Works; or

(b) assign to his bankers or the third party the right to receive any monies due or to become due under the Contract to the Contractor,

provided that no charge or assignment shall operate so as to give any chargee or assignee or any third party any greater right than the Contractor would have had under the Contract but for the charge or the assignment and any charge or assignment shall be subject to all rights and remedies of whatever nature the Employer may have pursuant to or arising from or connected with the Contract or at law.

4.3 The Employer shall be entitled at any time to assign or transfer any of:-

(a) the benefit of the Contract, any part thereof, any interest therein or thereunder and any right thereunder, whether past, present or future, to any third party. The third party shall from the date of transfer or assignment have the same rights and remedies as it would have had if it had at all times been the original contracting party; and

(b) the burden of the Contract including accrued liabilities, any part thereof and any interest therein or thereunder.

5. Sub-contracting

5.1 The Contractor shall not sub-contract the Works. Except where otherwise provided by the Contract the Contractor shall not sub-contract any part of the Works without prior consent.

5.2 The Project Manager shall not unreasonably withhold consent to any sub-contracting provided that the Project Manager shall have the absolute right to withhold consent to the replacement of any sub-contractor referred to in the Letter of Acceptance as a key sub-contractor. The Project Manager may make consent conditional upon reasonable conditions with which the Contractor shall comply.
5.3 No sub-contracting shall relieve the Contractor from any obligation or liability nor create any obligation or liability on the part of the Employer and the Contractor shall be liable for the acts and omissions of his sub-contractors of any tier as if they were the acts and omissions of the Contractor.

5.4 The Project Manager shall be entitled to communicate directly with the Contractor's sub-contractors of any tier, keeping the Contractor reasonably informed of any significant communication, provided that the Project Manager shall not be entitled to issue any instruction or decision affecting the Contractor's obligations or liabilities to a sub-contractor of any tier and provided further that the power given by this Clause 5.4 shall not, save as provided in Clause 64, be used so as to affect the contractual relationship between the Contractor and any sub-contractor.

5.5 If the Contractor wishes to sub-contract any part of the Works, he shall submit in writing to the Project Manager:-

(a) full particulars of any part of the Works to be sub-contracted;
(b) the proposed terms (other than prices) upon which the sub-contractor is to be employed; and
(c) full particulars of the sub-contractor to be employed

in time to enable the Project Manager after due consideration to complete his investigation into the capacity and ability of the sub-contractor and to enable other arrangements to be made by the Contractor to fulfil the Contractor's obligations should the Project Manager withhold consent. The Contractor shall, after receiving consent, supply to the Project Manager such copies of the terms of the sub-contract (other than prices) as the Project Manager may instruct and the Contractor shall not thereafter amend, vary or waive the terms in any respect material to compliance by the Contractor with his obligations without prior consent.

5.6 The Contractor shall ensure that the terms of any sub-contract impose on the sub-contractor such of the terms of the Contract as are applicable and appropriate to any part of the Works to be sub-contracted so as to enable the Contractor to comply with his obligations.

5.7 The Project Manager may, without prejudice to Clause 5.2, after due warning in writing to the Contractor, instruct the Contractor to discontinue the participation in the Works of any of the Contractor's sub-contractors of any tier who in the Project Manager's opinion causes or contributes to a material breach by the Contractor of any term of the Contract and the sub-contractor shall not again participate in the Works without prior consent.

5.8 Without prejudice to Clause 17, the Contractor shall provide sufficient superintendence to ensure that the work to be carried out by his sub-contractors shall comply with the requirements of the Contract.
5.9 If a sub-contractor of any tier provides to the Contractor a warranty in connection with the Works, or undertakes a continuing obligation in respect thereof, and if the Project Manager so instructs, the Contractor shall assign the benefit of the warranty or obligation to the Employer or, as instructed, to a third party, provided that, without prejudice to Clause 71.2, in the event of such an assignment, the Employer shall exhaust all remedies under the said warranty or obligation before enforcing this Contract against the Contractor in respect of any matter for which a cause of action exists against the sub contractor under the said warranty or obligation.

5.10 The Contractor shall procure that a sub-contractor warranty in the form appearing in schedule 4 shall be duly executed as a deed by any sub-contractor as is identified in the Letter of Acceptance and shall deliver the same to the Employer within three months of the date of the Letter of Acceptance, or such longer period as the Project Manager may agree in writing. The Contractor shall provide the Project Manager with documentary evidence to confirm the identity and address of the sub-contractor and the scope of the sub-contract works for the purpose of preparing a sub-contractor warranty.

CONTRACT DOCUMENTS

6. Precedence of documents and entire agreement

6.1 Except to the extent that any other provision of the Contract provides to the contrary by express reference to the order of precedence of documents:-

(a) the provisions of any Special Conditions shall prevail over those of any other document forming part of the Contract;

(b) subject to Clause 6.1(a), the provisions of these General Conditions shall prevail over those of any other document forming part of the Contract; and

(c) subject to Clause 6.1(a) and (b), the documents forming the Contract are to be taken as mutually explanatory.

6.2 If the Contractor shall find any ambiguity or discrepancy in or between the documents comprising the Contract, he shall notify the Project Manager immediately who shall, within a reasonable time, issue instructions to the Contractor which in the Project Manager's opinion resolve the ambiguity or discrepancy. If, in compliance with an instruction issued pursuant to this Clause 6.2, the Contractor is prevented from achieving any Stage or substantially completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate then, if the Contractor claims additional time and/or payment therefor, the Project Manager shall give a decision pursuant to Clause 44 and/or Clauses 54 and/or 55.
6.3 Notwithstanding anything to the contrary expressed in or to be implied from the Contract, the documents referred to in Clause 1.1 as comprising the Contract contain the entire agreement between the parties which supersedes any previous agreement and understanding between the parties in relation to the subject matter of the Contract, and the Contractor acknowledges that in entering into the Contract he has not relied on any statement, representation, warranty or undertaking (whether in or relating to instructions to tenderers or otherwise howsoever) which is not expressly set out in the Contract and that the Employer shall have no liability to the Contractor in respect of the same in the absence of fraud or dishonesty.

7. Provision of Employer's Drawings and the Specification

7.1 One negative and two positive sets of the Employer's Drawings and two copies of the Specification shall be issued to the Contractor free of charge; any further copy requested by the Contractor shall be issued upon payment of reasonable charges.

7.2 Subject to Clause 7.3, the Project Manager shall issue to the Contractor from time to time during the progress of the Works one negative and two positive sets of such further or amended drawings and two copies of such further or amended specifications (excluding drawings and documents which the Contractor is expressly or impliedly obliged to produce under the Contract) as shall in the Project Manager's opinion be necessary for the execution of the Works and the Contractor shall be bound by the same.

7.3 The Project Manager shall not be bound to issue any drawing or specification relating to any matter which, in his opinion, is the responsibility of the Contractor under the Contract in the absence of the drawing or specification.

7.4 The Contractor shall give notice to the Project Manager, in sufficient time to enable the Project Manager to arrange for the preparation of and to issue the drawings or specifications without delaying the progress of the Works, of any further or amended drawing or specification which the Contractor may require to execute the Works but the Project Manager shall not in any event be obliged to issue the relevant drawings or specifications in advance of dates for their issue identified in the Works Programme.

7.5 If, as a result of any failure or inability of the Project Manager to issue pursuant to Clause 7.2 at a time reasonable in all the circumstances further or amended drawings or specifications which were the subject of notice in accordance with Clause 7.4, the Contractor is prevented from achieving any Stage or substantially completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate, then, if the Contractor claims additional time and/or payment therefor, the Project Manager shall give a decision pursuant to Clauses 44 and/or 55.
8. **Review procedure**

8.1 Where the Contractor is required by the Contract to submit drawings, documents or other things for review he shall do so in accordance with the relevant provisions for submission set out in the Specification and, in any event:

(a) in time to enable the Project Manager properly to examine the drawings, documents or other things submitted without delaying the progress of the Works; and

(b) not later than any relevant date identified in the Works Programme.

8.2 The Project Manager shall notify the Contractor of the outcome of his review pursuant to the provisions referred to in Clause 8.1 within such period as may be expressly stipulated in the Contract or, in the absence of stipulation, within a reasonable period. A drawing, document or other thing to which a notice of no objection is given under the said provisions is referred to in the Contract as having "reviewed without objection".

8.3 Should the Project Manager notify the Contractor or the Contractor discover at any time that any of the Contractor's Drawings is not in accordance with the Contract or does not agree with other Contractor's Drawings, the Contractor shall make such amendments as are necessary to remedy the non-compliance and shall submit all amended Contractor's Drawings for review pursuant to Clause 8.1.

8.4 The Contractor shall, subject to any provision of the Contract to the contrary, execute the Works in accordance with the Contractor's Drawings.

**GENERAL OBLIGATIONS**

9. **Contractor's general responsibilities**

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

(a) execute the Works in accordance with the Contract and, subject thereto, to the satisfaction of the Project Manager;

(b) comply with the Project Manager's instructions;

(c) provide all staff, labour, work, transport to and from and about the Site and the Project Site, accommodation, storage and disposal facilities, consumables and everything whether of a temporary or permanent nature required in and for the execution of the Works so far as the necessity for providing the same is identified in the Contract or could reasonably be inferred therefrom by a competent contractor experienced in operations of similar nature and scope to the Works; and

(d) discharge his obligations with the skill and care to be expected of a contractor with the experience referred to in Clause 9.1(c).
10. **Design responsibility**

10.1 The Contractor shall, in accordance with the Contract, design:-

(a) the Temporary Works, save to the extent expressly provided to the contrary; and

(b) any part of the Permanent Works expressly required to be designed by the Contractor

and the design shall include the selection and specification of the kinds and standards of Permanent Works, Temporary Works and Contractor's Equipment and workmanship to be used therein or in relation thereto so far as not described or stated in the Specification or the Employer's Drawings.

10.2 The Contractor shall be fully responsible for the Contractor's design, and liable for any mistake, inaccuracy, discrepancy or omission in it. Nothing contained in the Contractor's design shall relieve the Contractor from his obligations or liabilities pursuant to Clause 10.3.

10.3 To the extent of his obligations pursuant to Clauses 10.1 and 10.2 the Contractor warrants to the Employer that:-

(a) he has exercised and shall continue to exercise in the design of the Works all the skill and care to be expected of a professionally qualified and competent designer experienced in work of a similar nature and scope;

(b) the Works shall comply in all respects with the Contract;

(c) the Works have been or shall be designed using proven up-to-date good practice and to standards which are consistent with the Contract;

(d) the Works shall, when completed, comply with the Enactments;

(e) no part of the Works generally known to be deleterious or otherwise not in accordance with good engineering practice has been or shall be specified or selected by the Contractor or anyone acting on his behalf. No part of the Works which, after its specification or selection by or on behalf of the Contractor but before being incorporated into the Works, becomes generally known to be deleterious or otherwise not in accordance with good engineering practice shall be incorporated into the Works; and

(f) the design of the Works has taken or shall take full account of the effects of the intended manufacturing and construction methods (including the use of Contractor's Equipment).
10.4 (a) The Contractor's design of any part of the Permanent Works shall be checked with proper skill, care and diligence and certified by the Checking Engineer and the Contractor in the terms appearing in schedule 6. The certificate shall be submitted to the Project Manager before construction of the part commences and the part shall be constructed in accordance with the certified design save insofar as any design change in accordance with the Contract is further certified by the Checking Engineer and the Contractor before the change is implemented.

(b) The Contractor's design of and the means of loading, dismantling and removing Temporary Works shall be checked with proper skill, care and diligence and certified by the Checking Engineer and the Contractor in accordance with the requirements of the Specification.

10.5 The Checking Engineer shall be a professionally qualified engineer and a member of the Hong Kong Institution of Engineers, the United Kingdom Institution of Civil Engineers or an equivalent body and he shall have relevant and appropriate experience. He shall be independent of the Contractor and shall have taken no part in the Contractor's design nor be associated with any person or organisation that undertakes any part of the design.

10.6 The Contractor shall appoint, and pay all fees and disbursements of, the Checking Engineer having first submitted to the Project Manager for review, pursuant to Clause 8, details of the terms of appointment, qualifications and experience of the Checking Engineer and having received notice of no objection to his appointment. The terms of appointment shall require the Checking Engineer to act independently with all proper skill, care and diligence and to provide to the Contractor records to be kept in accordance with Clause 57 and the appointment shall include obligations equivalent to those imposed on the Contractor pursuant to Clause 29.1.

10.7 The Checking Engineer's appointment shall not be terminated by the Contractor without prior consent. The Project Manager may instruct the termination of the appointment of the Checking Engineer if, in the Project Manager's opinion, the Checking Engineer fails properly to discharge his duties.

10.8 If the appointment of the Checking Engineer is terminated for any reason, the Contractor shall as soon as reasonably possible appoint a replacement in accordance with Clause 10.6.

10.9 No certificate, act or omission of the Checking Engineer shall release the Contractor from any of his obligations or liabilities.

11. **Articles of Agreement**

11.1 The Contractor shall, when called upon to do so, duly execute the Articles of Agreement as a deed which shall be prepared at the expense of the Employer in the form appearing in schedule 1.
12. **Bonds and guarantees**

12.1 The Contractor shall, within fourteen days of the date of the Letter of Acceptance, submit to the Employer:-

(a) a bond for an amount equivalent to that stated in Appendix 1 to the Form of Tender, in the form appearing in schedule 2, duly executed as a deed by the insurance company or bank which is identified in the Letter of Acceptance. Subject to Clause 12.5, the validity of the bond shall be maintained by the Contractor until the issue of the Defects Liability Certificate. The bond shall initially have a fixed expiry date of the date stated in Appendix 1 to the Form of Tender. Within seven days of the submission of the bond by the Contractor to the Employer, the Employer shall release the tender bond submitted by the Contractor with the Form of Tender; and

(b) a guarantee in the form appearing in schedule 3, duly executed as a deed by such of the shareholders, parent company or holding company of the Contractor as is identified in the Letter of Acceptance.

12.2 The Contractor shall submit to the Employer, at the times required by the preamble to the Pricing Document, bonds required by the said preamble as security for and as a condition precedent to payment for any part of the Permanent Works manufactured off-shore in the form appearing in schedule 5, duly executed as a deed by the insurance company or bank which is identified in the Letter of Acceptance.

12.3 Without prejudice to any other right or remedy of the Employer, until the Contractor has complied with Clause 12.1, the Employer shall be entitled to withhold any interim payment due to the Contractor.

12.4 If the Contractor comprises more than one entity, the Contractor's obligations pursuant to Clause 12.1(b) shall apply to each entity.

12.5 Following issue of the Completion Certificate for the Works, the Employer shall, on receipt of a bond executed as a deed which is:

(a) from an insurance company or bank which has previously been reviewed without objection;

(b) in an amount which is equivalent to:-

(i) 2.5% of the total of the Cost Centre Values for the time being; and

(ii) the Project Manager's bona fide estimate at the date of issue of the Completion Certificate for the Works of the value of any outstanding works and all maintenance work which the Project Manager anticipates the Contractor will be required to execute in accordance with the Contract;
stated to expire on a date having previously been notified by the
Project Manager to the Contractor representing the Project Manager’s
estimate of the date on which the Defects Liability Certificate is likely to
be issued; and

save as aforesaid, in the same form as the bond referred to in Clause
12.1 (a).

release the bond previously submitted by the Contractor pursuant to Clause
12.1 (a).

12.6 If the Defects Liability Certificate has not been issued 14 days prior to the fixed
expiry date specified in any bond submitted by the Contractor to the Employer
pursuant to Clause 12.5 or this Clause 12.6, and the Project Manager notifies a
date to the Contractor representing the Project Manager's revised estimate of
the date on which the Defects Liability Certificate is likely to be issued which is
later than such expiry date, the Contractor shall forthwith submit to the
Employer a replacement bond in the same form as the bond previously
provided by the Contractor pursuant to Clause 12.5 or this Clause 12.6, but with
a fixed expiry date representing the Project Manager’s revised estimate of the
date on which the Defects Liability Certificate is likely to be issued. On receipt
of the replacement bond, the Employer shall release the bond earlier submitted
under Clause 12.5 or this Clause 12.6.

13. Inspection of Site and information and sufficiency of Tender

13.1 The Contractor shall be deemed prior to the date of the Letter of Acceptance to
have:

inspected the Project Site and its surroundings and examined all
information in connection with the Works made available to the
Contractor by or on behalf of the Employer prior to the said date;

obtained for himself all other necessary information in connection with
the Works and his obligations;

satisfied himself as to the form and nature of the Project Site including
its substrata, access to and communication with the Project Site and
the Site, the environmental conditions affecting the Project Site and the
Site, the interfaces with Other Contractors and other works at the
Project Site and, without limitation, all other matters whatsoever
affecting his obligations; and

satisfied himself that the descriptions of Cost Centres and item
descriptions and quantities within the Pricing Document (as those
descriptions and quantities may have been revised by the Contractor)
are consistent with the scope of the Works ascertainable in accordance
with the Contract apart from those descriptions and quantities.
13.2 The Contractor shall be deemed prior to the date of the Letter of Acceptance, on the basis indicated in Clause 13.1 and generally, to have allowed a correct and sufficient Contract Sum and rates and prices included in the Pricing Document to cover all his obligations and to have allowed the necessary resources and allocated the necessary time to enable him to substantially complete the Works and any Section and to achieve any Stage by the relevant Key Dates. Except insofar as otherwise provided in the Contract, the Contract Sum and the said rates and prices shall cover all the Contractor's obligations and, except as aforesaid, the periods ending on the Key Dates shall be deemed sufficient for the Contractor to substantially complete the Works and any Section and to achieve any Stage.

13.3 The Employer shall have no obligation to make additional payment and the Project Manager shall have no obligation to grant any extension of time on the ground of:-

(a) any misunderstanding or misapprehension in respect of the matters referred to in Clause 13.1; or

(b) except as otherwise provided in the Contract (including, without limitation, pursuant to Clauses 13.4, 13.5 and 13.6), incorrect or insufficient information given to the Contractor by any person whether or not in the employ of the Employer; or

(c) the Contractor failing to obtain correct and sufficient information,

nor shall the Contractor be relieved from any of his obligations or liabilities on any such ground or, subject to Clauses 73 and 74, on the ground that he did not or could not foresee any matter which may in fact affect or have affected his obligations, provided that the foregoing shall not affect the Contractor's rights or obligations pursuant to Clauses 13.4 to 13.7 and Clause 24.2.

13.4 If, during the execution of the Works, the Contractor shall encounter within the Site, physical conditions (other than weather conditions or conditions due to weather conditions) or artificial obstructions which could not, in his opinion, reasonably have been foreseen by an experienced contractor at the date of the Letter of Acceptance, the Contractor shall, as soon as practicable thereafter, and in any event within 28 days of encountering such conditions, give notice thereof to the Project Manager. Without prejudice to Clauses 44, 52, 55 and 56, such notice shall specify the physical condition or artificial obstruction within the Site, the effects thereof, the measures the Contractor has taken or is proposing to take to overcome the physical condition or artificial obstruction, their estimated cost, and the extent of the anticipated delay in, or interference with, the execution of the Works.

13.5 Following receipt of any notice served by the Contractor in accordance with Clause 13.4, and without prejudice to any other power which the Project Manager may have under the Contract, the Project Manager may:

(a) instruct the Contractor to investigate and report upon the practicability and cost and timing effects of the Contractor taking measures which may be available to overcome the physical condition or artificial obstruction within the Site;
(b) consent to the measures notified by the Contractor in accordance with Clause 13.4, with or without modification;

(c) give an instruction as to how the physical condition or artificial obstruction is to be dealt with; and/or

(d) order a suspension under Clause 49 or a variation under Clause 52.

13.6 If by reason of:

(a) the presence of the physical condition or artificial obstruction within the Site notified by the Contractor in accordance with Clause 13.4 which in the Project Manager’s opinion could not have been reasonably foreseen by an experienced contractor at the date of the Letter of Acceptance; and

(b) the measures taken by the Contractor to overcome the physical condition or artificial obstruction notified by the Contractor in accordance with Clause 13.4 and made the subject of the Project Manager’s consent pursuant to Clause 13.5(b); or

(c) instructions issued by the Project Manager pursuant to Clause 13.5(a) or (c),

the Contractor is prevented from achieving any Stage or substantially completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate then, if the Contractor claims additional time and/or payment therefor, the Project Manager shall give a decision pursuant to Clause 44 and/or Clause 54 and/or Clause 55.

13.7 If the Project Manager shall decide that the physical condition or artificial obstruction within the Site which is the subject of a claim for additional time and/or payment, could in whole or in part have been reasonably foreseen by an experienced contractor at the date of the Letter of Acceptance, he shall so notify the Contractor in writing as soon as he shall have reached that decision. Notwithstanding such notification, any claim by the Contractor for additional time and/or payment in respect of any suspension or variation previously instructed by the Project Manager shall be decided in accordance with Clause 44 and/or Clause 54 and/or Clause 55.

13.8 If in the opinion of the Project Manager any physical conditions encountered by the Contractor within the Site were more favourable than could reasonably have been foreseen by an experienced contractor at the date of the Letter of Acceptance, the Project Manager shall agree with the Contractor (or, if no agreement can be reached within a reasonable time, shall make and notify the Contractor) a fair and reasonable assessment of the reduction in the cost of the Works to the Contractor attributable to such more favourable conditions. The Project Manager may at his discretion reduce by an amount in aggregate equal to such reduction in the cost of the Works either or both of (a) the Cost Centre Value(s) relating to part of the Works for which the favourable physical conditions have been encountered and (b) the aggregate sum certified under Clause 55. This Clause 13.8 shall only operate to reduce the aggregate sum to be finally certified pursuant to Clauses 54 and/or 55 so that the consequences of unforeseen physical conditions or artificial obstructions shall not result in a

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net reduction in the Cost Centre Values at the date of the Letter of Acceptance or reduce below zero the aggregate sum certified under Clause 55.

14. **Not Used**

15. **Programmes and progress reports**

15.1 The Contractor shall submit to the Project Manager in accordance with the Specification:-

(a) the Works Programme;

(b) the monthly progress reports; and

(c) such other programmes, schedules and reports as may be identified in the Specification or instructed.

15.2 Review without objection of any of the documents referred to in Clause 15.1 shall not, if the document indicates that a Key Date has not or will not be met, constitute any form of acknowledgment that the Contractor is or may be entitled to an extension of time in relation to the Key Date.

15.3 Not Used.

15.4 Not Used.

15.5 No provision or reference in any of the documents referred to in Clause 15.1 shall constitute a notice for the purpose of any of the provisions of the Contract.

16. **Method statement**

16.1 The Contractor shall submit to the Project Manager for review, pursuant to Clause 8, all drawings and other documents as may be identified in the Specification or instructed relating to methods by which (including the use of Contractor's Equipment and Temporary Works), and the places where, the Contractor shall execute the Works.

16.2 The Contractor warrants to the Employer that the methods of delivery, assembly and construction (including the use of Contractor's Equipment and Temporary Works) and the Contractor's Equipment and Temporary Works themselves shall be consistent with the requirements of the Contract.

17. **Contractor's superintendence and staff**

17.1 The Contractor shall provide all necessary superintendence during the execution of the Works.

17.2 The Contractor shall employ or cause to be employed in connection with the Works on the Site or off-Site at any place of manufacture or source of material and in the superintendence thereof only such technical personnel as are skilled and experienced in their respective trades and callings and such sub-agents, foremen, leading hands and labour as are competent to carry out their respective duties in connection with the Works.
17.3 The Project Manager may instruct the Contractor to remove or cause to be removed from the Works or the Project Site any person employed thereon without stating any reason if, in the Project Manager's opinion, the person misconducts himself, is incompetent, is negligent in the performance of his duties, fails to conform with any provision in the Contract with regard to safety or persists in any conduct which is prejudicial to safety or health. Such person shall not be again employed in connection with the Works or on the Project Site without prior consent.

17.4 Any person removed from the Works or the Project Site pursuant to Clause 17.3 shall be replaced as soon as possible by a competent substitute.

17.5 The Contractor shall indemnify the Employer and Other Contractors in respect of liability under the Immigration Ordinance (Cap. 115) to the extent that such liability arises from the presence on or off the Site of any employee, agent or representative of the Contractor or of his sub-contractors of any tier.

18. Setting-out and dimensions

18.1 The Contractor shall be responsible for the setting out of the Works relative to data in the Employer's Drawings or notified by the Project Manager and for the correctness of the position, level, dimensions and alignment of all parts of the Works and for the provision of all necessary instruments, appliances and labour in connection therewith.

18.2 If at any time during the execution of the Works any error shall appear or arise in the position, level, dimension, or alignment of the Works or any part thereof the Contractor shall immediately give notice of the same to the Project Manager and shall, on being instructed so to do, rectify the error to the satisfaction of the Project Manager. Provided that if, in the Project Manager's opinion, the error is the result of incorrect data in the Employer's Drawings or notified by the Project Manager and if, in compliance with an instruction pursuant to this Clause 18.2, the Contractor is prevented from achieving any Stage or substantially completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate then, if the Contractor claims additional time and/or payment therefor, the Project Manager shall give a decision pursuant to Clause 44 and/or Clauses 54 and/or 55.

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

19. Safety

19.1 The Contractor shall throughout the execution of the Works take full responsibility for the adequacy, stability and safety of the Works (except for any part for which the Employer has responsibility pursuant to Clause 20) and the Contractor's Equipment, having full regard for the safety of all persons on or in the vicinity of the Site, and providing and maintaining all necessary lights, guards, fences, warning signs and storage areas.
19.2 The Contractor shall:-

(a) submit to the Project Manager for his review, pursuant to Clause 8, a safety plan which shall set out in accordance with the Specification details of the safety measures to be implemented by the Contractor to comply with his obligations under or in connection with the Contract (including, without limitation, Clause 24). Any supplemental submission to the Project Manager for his review, pursuant to Clause 8, of amendments, variations or additions to the safety plan shall be made not less than twenty-eight days before commencement of any work which is the subject of the submission;

(b) appoint a competent English speaking agent or representative who has been reviewed without objection and who is not otherwise involved in the Works to act as the manager and supervisor of the safety plan and to participate in the Employer's airport-wide health and safety programme;

(c) adhere to the principles and procedures contained in the safety plan and in any amendment, variation or addition thereto which have been reviewed without objection; and

(d) ensure that sufficient personnel are dedicated to the implementation of the safety plan and all safety procedures contained therein.

19.3 If at any time:-

(a) the safety plan is, in the Project Manager's opinion, insufficient or requires revision or modification to ensure the security of the Works and the safety of all workmen upon and visitors to the Site; or

(b) the level of accidents on any part of the Site exceeds any level laid down in Government proposals for safety,

the Project Manager may instruct the Contractor to revise the safety plan and the Contractor shall within fourteen days submit the revised plan to the Project Manager for review pursuant to Clause 8.

19.4 If at any time the safety plan is not, in the Project Manager's opinion, being properly and fully implemented, the Project Manager may notify the Contractor in writing of such failure and the Contractor shall take all necessary steps to rectify the failure immediately.

19.5 Without prejudice to the generality of this Clause 19, the Contractor shall:

(a) provide all facilities, access and assistance to the Project Manager to enable him to monitor and verify that the safety plan is being properly and fully implemented;

(b) continuously review the safety plan and submit any revisions to the Project Manager for his review pursuant to Clause 8;
19.6 The Contractor shall co-operate with the Employer in the implementation of the Employer’s airport-wide health and safety programme, health and safety management plans and related policies of the Employer.

20. Care of the Works

20.1 The Contractor shall, subject to Clauses 20.3 and 20.5, be fully responsible for the care of:-

(a) the Works (whether on the Site or elsewhere); and

(b) all Contractor's Equipment and consumables on the Project Site or being delivered to the Project Site in connection with the Works

from the date for the commencement of the Works identified in the Specification until twenty-eight days after the date of issue of the Completion Certificate for the Works whereupon the responsibility for the care of the Works shall pass to the Employer.

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

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

(a) execute the remainder of the Works in such manner as not to prejudice the care, maintenance and condition of the Section or other part; and

(b) cease to be responsible, under Clause 20.1, for the care of the Section or other part twenty-eight days after the date of issue of that Completion Certificate whereupon the responsibility for the care of the Section or other part shall pass to the Employer.

20.4 Except to the extent caused by any of the Excepted Risks defined in Clause 20.6, if any loss or damage arises to:-

(a) the Works; or

(b) Contractor's Equipment or consumables

while the Contractor is responsible for the care thereof the Contractor shall, with all possible speed, rectify the loss or damage so that the Works are executed in accordance with the Contract. The Contractor shall also be liable for any loss or damage to the Works occasioned by him in the course of any operation carried out by him for the purpose of complying with his obligations under Clause 51.
20.5 If and to the extent that there is any loss or damage to the Works, Contractor's Equipment or consumables caused by any of the Excepted Risks, the Contractor shall, if and to the extent instructed, rectify the loss or damage. If, in compliance with an instruction issued pursuant to this Clause 20.5, the Contractor is prevented from achieving any Stage or substantially completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate then, if the Contractor claims additional time and/or payment therefor, the Project Manager shall give a decision pursuant to Clause 44 and/or Clauses 54 and/or 55.

20.6 "Excepted Risks" are:-

(a) outbreak of war (whether war be declared or not) in which Hong Kong shall be actively engaged;

(b) invasion of Hong Kong;

(c) act of terrorists in Hong Kong;

(d) civil war, rebellion, revolution, insurrection or military or usurped power in Hong Kong;

(e) riot, commotion or disorder in Hong Kong otherwise than amongst the employees of the Contractor, or any of his sub-contractors of any tier currently or formerly engaged on the Works;

(f) ionising radiation, or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, unless the source or cause of the radiation, radioactivity or other hazard is brought to or near the Project Site by the Contractor or any of his sub-contractors of any tier;

(g) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;

(h) the Employer's design of the Works insofar as damage or loss is the direct consequence thereof; and

(i) a cause due to use or occupation of the Works or any part thereof or the neglect or default by or on behalf of the Employer.

21. Damage to property and injury to persons - indemnities

21.1 The Contractor shall (save to the extent that the Contract expressly provides otherwise) be liable for and indemnify the Employer against liability in connection with:-

(a) the death or illness of or injury to any person; and

(b) the loss of or damage to any property other than the Works arising out of or in connection with the Works.
21.2 The scope of the Contractor's liability and indemnity pursuant to Clause 21.1 shall be reduced proportionately to the extent that any neglect or default of the Employer caused or contributed to the death, illness, injury, loss or damage.

21.3 The Employer shall be liable for and indemnify the Contractor against liability in connection with death, illness, injury, loss and damage referred to in Clause 21.1 arising out of or connected with:-

(a) the use or occupation of land provided by the Employer by the Permanent Works or for the purposes of the execution of the Works or interference, whether temporary or permanent, with any right of way, navigation, light, air or water or other easement or quasi easement;

(b) the right of the Employer to execute the Works on, over, under, in or through any land, sea or foreshore;

(c) damage that is the inevitable consequence of the execution of the Works; and

(d) neglect or default of the Employer.

21.4 The scope of the Employer's liability and indemnity pursuant to Clause 21.3 shall be reduced proportionately to the extent that the act or neglect of the Contractor or his sub-contractors of any tier caused or contributed to the death, illness, injury, loss or damage.

22. Giving of notices and payment of fees etc

22.1 The Contractor shall give all notices and pay all fees required to be given or paid by any Enactment in connection with the execution of the Works and by the rules and regulations of any Relevant Authority whose property or rights are or may be affected in any way by the Works or their execution; if any new fee is imposed or if any existing fee is increased, after the date of the Letter of Acceptance, the new fee or increase shall, notwithstanding the terms of Clause 24.2, also be at the expense of the Contractor.

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

23. Audited accounts

23.1 The Contractor shall submit to the Employer copies of his six-monthly and annual audited accounts within three months of the end of the period to which the accounts relate and such other additional financial information relating to the said accounts as the Employer may reasonably request from time to time.

23.2 The Contractor shall inform the Employer if he becomes aware of any material adverse change to his financial position since he last submitted accounts pursuant to this Clause 23.

23.3 If the Contractor comprises more than one entity, the Contractor's obligations pursuant to this Clause 23 shall apply to each entity.
23.4 The Contractor shall use all reasonable endeavours to procure the submission to the Employer of copies of any Nominated Sub-Contractor's annual audited accounts within three months of the end of the period to which the accounts relate and such other additional financial information relating to the said accounts as the Employer may reasonably request from time to time. The Contractor shall also inform the Employer if he becomes aware, and shall use all reasonable endeavours to procure that any Nominated Sub-Contractor informs the Employer if the Nominated Sub-Contractor becomes aware of any material adverse change to the Nominated Sub-Contractor's financial position since the Nominated Sub-Contractor's accounts were last submitted pursuant to this Clause 23.

24. Compliance with Enactments

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

(a) the provisions of any Enactment;

(b) any condition attached to any permit or exemption issued pursuant to any Enactment; and

(c) the rules and regulations of Relevant Authorities,

and any addition or amendment made thereto after the date of the Letter of Acceptance and shall indemnify the Employer against any liability and/or penalty to the extent arising from breach by the Contractor of the Enactment, condition, rules or regulations.

24.2 In the event that, after the date of the Letter of Acceptance, any addition or amendment is made to any Enactment or any condition attached to any permit or exemption issued pursuant to any Enactment which, in the opinion of the Project Manager, could not reasonably have been foreseen by an experienced contractor at the date of the Letter of Acceptance, then, without prejudice to Clause 13.3, if the Contractor is prevented from achieving any Stage or substantially completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate (other than in respect of any new fee or increase in any existing fee required to be given or paid by any Enactment in connection with the execution of the Works) then, if the Contractor claims additional time and/or payment therefor, the Project Manager shall give a decision pursuant to Clause 44 and/or Clause 54 and/or Clause 55.

25. Language of notices etc

25.1 Any notice which the Contractor is required to exhibit either for the benefit of the public or his employees and all written and printed matter, affixed to the Permanent Works or otherwise required for operation and maintenance shall be in English and in Chinese characters and such other language as may be required.
26. **Interference and nuisance**

26.1 The Works shall, so far as compliance with the requirements of the Contract permit, be executed so as to avoid unnecessary or improper nuisance or disturbance to or interference with the public or the access to or use or occupation of public roads, footpaths, waterways, anchorages, navigation channels or properties whether in the possession of the Employer or of any other person.

26.2 The Contractor shall be liable for and indemnify the Employer against liability in connection with any breach of Clause 26.1 save to the extent that any neglect or default of the Employer caused or contributed to the breach.

27. **Intellectual property rights**

27.1 The Contractor shall indemnify the Employer against liability in Hong Kong or any country in connection with infringement of any intellectual property right existing anywhere in the world in respect of anything used in or required for the Works or their operation and maintenance in service (except to the extent that infringement was unavoidable as a result of the requirements of the Specification, the Employer’s Drawings or any instruction save insofar as they incorporated the Contractor’s design).

27.2 The Contractor shall, at the Employer’s request and in accordance with the Employer’s requirements, defend any claim or proceeding against the Employer in connection with any alleged infringement referred to in Clause 27.1.

27.3 In so far as the intellectual property rights existing anywhere in the world in respect of anything used in or required for the Works or their operation, repair, maintenance, replacement or extension shall be vested in the Contractor, the Contractor grants to the Employer, his successors and assigns a royalty-free, non-exclusive and irrevocable licence (carrying the right to grant sub-licences) to use, reproduce, modify, adapt and translate any of the works, designs or inventions incorporated or referred to in anything used or required as aforesaid for all purposes relating to the Works or the Airport. To the extent that beneficial ownership of any such intellectual property right is vested in anyone other than the Contractor, the Contractor shall use his best endeavours (save in respect of and to the extent of the things excepted from Clause 27.1, as to which the Contractor shall use reasonable endeavours) to procure that the beneficial owner thereof shall as soon as possible grant a like licence to the Employer. Any licence pursuant to this Clause 27.3 shall not be determined if the Contractor shall for any reason cease to be employed in connection with the Works and the Contractor shall execute such documents and do all other things as may be necessary to give effect to and protect the licence including, without limitation, notifying purchasers of any right of the existence of the licence.

27.4 If the Contractor uses proprietary software for the purpose of storing or utilising records the Contractor shall procure the grant of a licence or sub-licence to use, reproduce, modify, adapt and translate the software in favour of the Employer and shall pay such licence fee or other payment as the grantor of the licence may require provided that the licence may be restricted to use, reproduction, modification, adaptation and translation relating to the Airport.
27.5 In this Clause intellectual property rights shall include, but not be limited to, patent, copyright, design rights, trademarks and confidential information.

28. **Other Contractors**

28.1 The Contractor shall be deemed to be aware that the continuing operation and development of the Airport involves many contractors and activities and therefore requires continuous and close co-ordination and co-operation amongst the Contractor, Other Contractors and Relevant Authorities. Without prejudice to Clause 15, the Contractor shall co-ordinate the execution of the Works with the works and activities of Other Contractors and Relevant Authorities and shall be deemed to have made adequate allowance in the Works Programme in respect of its obligations under this Clause 28.

28.2 The Contractor shall (independent of any liability pursuant to Clause 47 in respect of delay in the substantial completion of the Works or any Section or the achievement of any Stage) be liable for any loss and expense incurred by the Employer arising from any breach by the Contractor of his obligations under Clause 28.1.

29. **Publicity and disclosure**

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

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

(a) he first obtains the Project Manager's consent (which shall not be unreasonably withheld); and

(b) he shall use his reasonable endeavours to procure that the bankers and third parties shall keep the information confidential.

29.3 The Employer and any third party referred to in Clause 4.3 may use any information provided by the Contractor in accordance with the Contract, but the Employer shall not, and the Employer shall use reasonable endeavours to procure that any third party referred to in Clause 4.3 shall not, divulge that information except for any purpose connected with the Works or the Airport.
30. **Offering advantages and collusion**

30.1 The Contractor shall not, and shall procure that its employees, agents, consultants and sub-contractors of any tier who are involved in this Contract shall not, offer, give, solicit or accept any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) in respect of or in connection with the Works or the Contract. The Contractor shall take all necessary measures (including without limitation by way of a code of conduct or contractual provisions) to ensure that its employees, agents, consultants and sub-contractors of any tier are aware of and bound by the said prohibition and the Contractor shall enforce the same. If the Contractor is in breach of this Clause, the Contractor shall be liable for any loss or expense incurred by the Employer and the Employer shall be entitled to exercise its rights under Clause 71.

30.2 If the Contractor shall be found to have communicated to any person other than the Employer the amount or other details of the Tender, adjusted the amount or other details of the Tender by arrangement with any other person, made any arrangement with any other person about whether or not it or that other person should tender or otherwise colluded with any other person in any manner whatsoever during the tendering process for the Contract, otherwise than communications in strict confidence with its own insurers or brokers to obtain an insurance quotation for computation of the Tender price and communications in strict confidence with its consultants or sub-contractors to solicit their assistance in preparation of the Tender, the Contractor shall be liable for any loss or expense incurred by the Employer and the Employer shall be entitled to exercise its rights under Clause 71.

**INSURANCE**

31. **Employer’s insurance**

31.1 Without limiting the Employer’s other obligations or the Contractor’s obligations, the Employer shall take out and maintain (subject to any amendment required by insurers other than as a result of default of the Employer) the policies of insurance referred to in respect of this Clause 31 in the Specification for the benefit of and in the joint names of the Employer, the Contractor and his sub-contractors of any tier.

31.2 The Contractor shall comply with the terms of the policies referred to in Clause 31.1 and shall notify insurers and the Employer forthwith if an event giving rise to an insurance claim occurs and shall do all things necessary to obtain proper settlement of the claim. Subject to any term requiring payment to or as directed by security agents or equivalent third parties, all moneys payable under the said policies shall be, and the Contractor shall procure that they shall be, paid to the Employer who shall release any part thereof relating to claims of the Contractor to the Contractor within a reasonable time having regard to the progress of rectification of the loss or damage to which the claim relates.
32. **Contractor’s insurance**

32.1 Without limiting his other obligations or the obligations of the Employer, the Contractor shall:

(a) in the joint names of the Employer, the Contractor and his sub-contractors of any tier, insure and keep insured the Works and consumables for their full replacement value, during manufacture and in transit to the point where the Works or consumables are covered by the policies effected pursuant to Clause 31.1, against all perils usually and reasonably insurable provided that the Project Manager may review without objection a policy of insurance notwithstanding it is not in the joint names of the Employer and the Contractor, if the Employer’s interest is notified to and accepted in writing by the insurer;

(b) in the joint names of the Employer, the Contractor and his sub-contractors of any tier, insure and keep insured the Contractor’s Equipment for its full replacement value, whilst on or off the Site or in transit, against all perils usually and reasonably insurable provided that the Project Manager may review without objection of a policy of insurance notwithstanding it is not in the joint names of the Employer and the Contractor, if the Employer’s interest is notified to and accepted in writing by the insurer;

(c) if required by Appendix 1 to the Form of Tender, take out and maintain in respect of his design obligations under Clause 10.3(a) professional indemnity insurance for a limit of cover of not less than levels stated in Appendix 1 to the Form of Tender for each occurrence or series of occurrences arising out of one event (with reinstatement of cover twice) from the date of the Letter of Acceptance until twelve years from the date of the issue of the Completion Certificate for the Works provided that if the Contractor considers that such cover is not available at reasonable rates, the Contractor shall immediately inform the Project Manager and the level of cover or terms for the purposes of this Clause 32.1(c) shall be the maximum level or best terms which are obtainable in the international insurance market at rates which are, in the Project Manager’s opinion, reasonable; and

(d) take out and maintain insurance in respect of claims for the death of or bodily injury to any person under a contract of service or apprenticeship with the Contractor or any of his sub-contractors of any tier and arising out of and in the course of the person’s employment.

32.2 Insurances in accordance with Clause 32.1 shall be effected with insurers and on terms reviewed without objection, shall cover all risks usually covered by such insurances and shall, to the extent of the cover, indemnify the Employer in respect of loss, expense and liability in connection with the Works.

32.3 Notwithstanding Clause 32.1(b), the Employer may at its discretion elect to insure any of the Contractor’s Equipment by notifying the Contractor of such election and identifying the relevant Contractor’s Equipment. If the Employer exercises this option the Contractor’s obligation to insure such identified Contractor’s Equipment shall cease with effect from seven days after the date of such notification.
32.4 The Contractor shall procure that the insurance referred to in or required by Clause 32.1(d) and all insurances in respect of vehicles and craft used in connection with the Works as required by any Enactment shall be endorsed to note the interest of the Employer.

33. **General insurance obligations**

33.1 If the Employer fails to comply with the terms of the policies of insurance effected by him pursuant to Clauses 31.1 and 32.3 or if the Contractor fails to comply with the terms of any of the insurance policies effected in connection with the Works, the party that is in default shall indemnify the other party against all loss, expense and liability arising from the failure.

33.2 If the Employer or the Contractor fails to effect and keep in force any of the insurance policies referred to in Clauses 31 and 32 respectively, the party that is not in default may effect and keep in force that insurance and may recover from the party in default a sum equivalent to the premium or premiums paid.

33.3 The Contractor shall be deemed to have satisfied himself and to have caused his sub-contractors of any tier to have satisfied themselves with regard to the extent of the cover provided by the policies referred to in Clause 31.1.

33.4 The Contractor shall promptly supply to insurers all documentation and information which they may reasonably require to effect and maintain the policies effected in connection with the Works and shall comply with all reasonable procedural requirements of insurers which may be issued from time to time. In the case of policies effected by the Employer pursuant to Clauses 31.1 and 32.3, the Contractor shall supply all documentation and information to the Project Manager for onward transmission to insurers.

33.5 The Employer shall whenever reasonably required, produce to the Contractor confirmation from his insurers, or their duly authorised agents, that the policies effected by him pursuant to Clauses 31.1 and 32.3 remain current together with evidence of payment of the last premium due.

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

**QUALITY OF PERMANENT WORKS AND WORKMANSHIP; DEFECTS AND TESTS**

34. **Quality management**

34.1 The Contractor shall:

(a) establish, maintain and implement a quality system in accordance with the Specification; and

(b) submit to the Project Manager for review, pursuant to Clause 8, fully detailed quality plans in accordance with the Specification.
35. **Permanent Works and workmanship**

35.1 All goods, materials and other constituent parts of the Permanent Works, consumables and workmanship shall be of the respective character, standard or kind required by the Contract and where goods, materials and other constituent parts of the Permanent Works and consumables are specified or selected by the Contractor, he shall use all the skill and care to be expected of a professionally qualified and competent designer experienced in work of a similar nature and scope to the Works in such specification or selection. Unless expressly provided to the contrary in the Contract, all goods, materials and other constituent parts of the Permanent Works (save in respect of any fill or naturally occurring material to be used in the Permanent Works) and consumables shall be new.

36. **Inspection**

36.1 The Project Manager and others authorised by him shall have the right to watch and inspect the Works at all times during the execution of the Works and in all places whether on or off the Site.

37. **Covering and uncovering parts of the Works**

37.1 The Contractor shall give notice to the Project Manager, in sufficient time to enable the Project Manager to carry out inspection without delaying the progress of the Works, before covering up any work or putting it out of view.

37.2 The Contractor shall uncover or make openings in any part of the Works as may be instructed at any time during the progress of the Works and shall reinstate the part in accordance with the Contract.

37.3 If, as a result of any instruction pursuant to Clause 37.2, the Contractor is prevented from achieving any Stage or substantially completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate, then, if the Contractor claims additional time and/or payment therefor, the Project Manager shall give a decision pursuant to Clauses 44 and/or 55 provided that this Clause 37.3 shall not apply if part of the Works to which the instruction related was found not to comply with the Contract or if the instruction resulted from breach of Clause 37.1.

38. **Removal of unsatisfactory parts of the Works**

38.1 The Project Manager may at any time give instructions to the Contractor in regard to the removal, re-execution or substitution of the Works or any part thereof if, in the Project Manager's opinion, the Works are not or the part is not in accordance with the Contract.

38.2 If, in the Project Manager's opinion, the Permanent Works are not, or any part thereof is not, in accordance with the Contract, he may:-

(a) issue a Completion Certificate in respect of the Permanent Works pursuant to Clause 48.4 or issue a notice of acceptance of the part of the Permanent Works although the Permanent Works are not, or the part thereof is not, in accordance with the Contract. The exercise of these powers shall be without prejudice to the Employer's other rights and remedies which shall include the right for the Project Manager to
reduce the Final Contract Sum by such amount as, in the Project Manager's opinion, reflects the reduction in value of the Permanent Works or part thereof; or

(b) if, in the Project Manager's opinion, the Employer is substantially deprived of the benefit of the Permanent Works or the part thereof, issue a certificate to that effect and within seven days the Employer may by notice terminate the Contractor's employment in relation to the Permanent Works or the part thereof. The Employer shall, without prejudice to his other rights and remedies, be entitled to recover all sums paid in respect of the Permanent Works or the part thereof together with the cost of dismantling the same, clearing the Site and returning the Permanent Works or the part thereof to the Contractor or otherwise disposing thereof in accordance with the Contractor's requirements. Notwithstanding any other provision of the Contract, the Contractor shall have no right to payment for the Permanent Works or the part thereof and property therein shall revest in the Contractor upon its return or other disposal.

38.3 Upon the issue of a notice of acceptance pursuant to Clause 38.2(a), the Contractor shall not be obliged to do further work to the part of the Permanent Works which is the subject of the notice unless and until otherwise instructed but the part of the Permanent Works shall remain at the Contractor's risk until it is the subject of a Completion Certificate.

38.4 The powers of the Project Manager pursuant to this Clause 38 shall not be exercisable in relation to the Works, or any part thereof, if the Works are, or the part is, the subject of a Completion Certificate. In any such case the Project Manager's powers shall be those set out in Clause 51.

39. Testing

39.1 The Works shall be subjected from time to time during the execution of the Works to such tests (including the provision of samples and procuring and permitting third party inspections) as are:-

(a) specified in the Contract; or

(b) instructed or reviewed without objection

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

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

39.3 The Contractor shall comply with the testing procedures set out in the Specification and shall submit to the Project Manager for review, pursuant to Clause 8, all documents required by those procedures or otherwise necessary in advance of testing.
39.4  The Contractor shall submit to the Project Manager for his information test data as follows:-

(a) at the beginning of each week, or at such other interval as the Project Manager may instruct, a written report summarising the outcome of all tests undertaken during the preceding week or interval, identifying the results, certificates and other data relating to the tests which have been archived in accordance with Clause 57 and identifying, in the case of failed tests, the remedial measures being taken and the provisions for re-testing; and

(b) without delay following the request, any other information relating to tests requested by the Project Manager.

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

39.6  Without prejudice to the Project Manager's powers pursuant to Clause 38.2, if, in the Project Manager's opinion, the Works fail, or any part thereof fails, any test, the Contractor shall submit such proposals and carry out or facilitate such investigations and further or repeat tests as may be instructed and the Contractor shall be liable to the Employer for all loss and expense incurred in relation thereto including the costs of re-testing the works of Other Contractors. The Contractor shall also execute all necessary repairs, replacement and making good.

39.7  If, as a result of any test instructed pursuant to Clause 39.1(b), the Contractor is prevented from achieving any Stage or substantially completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate, then, if the Contractor claims additional time and/or payment therefor, the Project Manager shall give a decision pursuant to Clause 44 and/or Clauses 54 and/or 55 provided that this Clause 39.7 shall not apply if the test indicates that any part of the Works was not in accordance with the Contract or to any repeat test in accordance with the Contract.

40.  **Access**

40.1  The Contractor shall give or procure access and all reasonable facilities for the Project Manager and others authorised by him to all places on or off the Site to enable the Project Manager's powers and duties to be exercised and performed.
COMMENCEMENT, COMPLETION AND DELAY

41. **Commencement**

41.1 The Contractor shall commence the Works on the date for commencement of the Works identified in the Specification and shall execute the Works with due diligence and expedition.

42. **Rights of access**

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

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

42.3 The Contractor shall give notice to the Project Manager, in sufficient time for the Employer to arrange for access to be given without delaying the progress of the Works, of the access the Contractor requires to execute the Works. The Employer shall not in any event be obliged to give access in advance of dates for access identified in the Works Programme.

42.4 If, as a result of any failure or inability to provide or delay in providing access pursuant to Clause 42.1 following a notice in accordance with Clause 42.3, the Contractor is prevented from achieving any Stage or substantially completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate then, if the Contractor claims additional time or payment therefor, the Project Manager shall give a decision pursuant to Clauses 44 and/or 55.

43. **Time for completion**

43.1 The Contractor shall substantially complete the Works and any Section and achieve any Stage by the relevant Key Dates.

44. **Extension of Time**

44.1 The Contractor shall give notice to the Project Manager as soon as the Contractor can reasonably foresee any event occurring which is liable to cause any delay to substantial completion of the Works or any Section or to the achievement of any Stage. The notice shall in any event be given within fourteen days after commencement of the event, and shall state the likelihood and probable extent of the delay and specify whether the Contractor considers he is or may become entitled to an extension of time in respect of the effects of the event; if so, the Contractor shall cite the provision of Clause 44.3 which the Contractor considers to be applicable identifying, in the case of Clause 44.3(a), the relevant Clauses.
44.2 The Contractor shall use and continue to use all reasonable endeavours to avoid or reduce the effects of the event on substantial completion of the Works or any Section or the achievement of any Stage and shall as soon as practicable but in any event within twenty-eight days of notification pursuant to Clause 44.1 submit by further notice to the Project Manager:-

(a) full and detailed particulars of the cause, effect and actual extent of the delay to substantial completion of the Works or any Section or to the achievement of any Stage; or

(b) where an event has a continuing effect or where the Contractor is unable to decide whether the effect of an event will actually cause delay to substantial completion of the Works or any Section or the achievement of any Stage, such that it is not practicable for the Contractor to submit full and detailed particulars pursuant to Clause 44.2(a), a statement to that effect with reasons together with interim written particulars (including details of the likely consequences of the event on progress of the Works and an estimate of the likelihood or likely extent of the delay); the Contractor shall thereafter submit to the Project Manager at intervals of not more than twenty-eight days, or such other period as the Project Manager may direct, further interim written particulars until the actual delay caused (if any) is ascertainable, whereupon the Contractor shall as soon as practicable but in any event within twenty-eight days submit to the Project Manager full and detailed particulars of the cause, effect and actual extent of the delay; and, in any event

(c) details of the documents that will be maintained to support the claim in accordance with Clause 57; and

(d) details of the measures which the Contractor has adopted and/or proposes to adopt to avoid or reduce the effects of the event upon substantial completion of the Works or any Section or achievement of any Stage.

44.3 If the event notified by the Contractor pursuant to Clause 44.1 is:-

(a) the subject of a claim pursuant to Clauses:

(i) 2.6 (the issue by the Project Manager of an instruction or the failure or inability to issue or delay in issue of an instruction);

(ii) 3.4 (the reversal or variation of an instruction or decision by the Project Manager, or the Project Manager’s Representative);

(iii) 6.2 (ambiguities in or discrepancies between the documents comprising the Contract);

(iv) 7.5 (the failure or inability to issue or delay in issue of further or amended Drawings or Specifications by the Project Manager);
(v) 13.6 (the presence of unforeseeable physical conditions or artificial obstructions within the Site);

(vi) 18.2 (errors in setting out due to incorrect data);

(vii) 20.5 (instructions for the rectification of loss or damage due to Excepted Risks);

(viii) 24.2 (addition or amendment to any Enactment or condition attached to any permit or exemption);

(ix) 37.3 (the uncovering of acceptable work);

(x) 39.7 (ad hoc successful tests);

(xi) 42.4 (access constraints);

(xii) 49.1 (suspension of the Works);

(xiii) 52.2 (variations);

(xiv) 63.4 (Provisional Sums and Prime Cost Sums);

(xv) 64.8 (engagement of a Nominated Sub-Contractor); or

(xvi) 74.4(b) (special risks); or

(b) any other cause of disturbance to the progress of the Works for which the Employer or the Project Manager is responsible whether pursuant to or in breach of any provision of the Contract or otherwise including but not restricted to any act of prevention or delay by the Employer or the Project Manager then the Project Manager shall assess and decide whether the Contractor may fairly be entitled to an extension of any of the Key Dates.

44.4 Notwithstanding the powers of the Project Manager pursuant to this Clause 44 to assess and decide whether the Contractor is fairly entitled to an extension of time, the Contractor shall not in any circumstance be entitled to an extension of time if and to the extent, in the Project Manager's opinion, that the relevant delay is caused directly or indirectly by breach of the Contract or other default of the Contractor, by the Contractor's failure to make the proper time allowance which he is deemed to have made pursuant to Clause 13.2, or by an event which is not expressly described in Clause 44.3. Without prejudice to the generality of the foregoing, the Contractor shall not be entitled to an extension of time if the cause of the delay is:-

(a) non-availability or shortage of Contractor's Equipment, Temporary Works, labour, utility services or parts of the Permanent Works;

(b) an increase in the quantity of any item of work except to the extent that the increase is the consequence of an instructed variation pursuant to Clauses 2 or 52;
(c) any instruction in relation to matters which are the responsibility of the Contractor under the Contract in the absence of the instruction; or

(d) inclement weather conditions adversely affecting the progress of the Works (including, without limitation, the hoisting of any rain or storm warning or strong wind signal).

**44.5** If, pursuant to Clause 44.3 the Project Manager considers that the Contractor may fairly be entitled to an extension of any of the Key Dates, the Project Manager shall within twenty-eight days or such further time as may be reasonable in the circumstances of:-

(a) receipt of full and detailed particulars of the cause and actual effect of any delaying factor; or

(b) where an event has a continuing effect or where the Project Manager anticipates a significant delay before the actual effect of an event becomes ascertainable and the Project Manager considers an interim extension of time should be granted, receipt of such particulars as in the Project Manager's opinion are sufficient for him to decide the interim extension of time,

assess, decide, grant and notify the Contractor of the extension. The Project Manager in assessing and deciding any extension shall take into account all the circumstances known to him at that time, including the effect of any omission of work or substantial decrease in the quantity of work.

**44.6** The Project Manager may at any time following notification of an event pursuant to Clause 44.1 assess, decide and notify the Contractor whether or not the event constitutes a potential ground upon which an extension of time may be granted pursuant to this Clause 44.

**44.7** The Project Manager may, in the absence of any claim in accordance with the requirements of this Clause 44, assess and decide the delay that he considers has been suffered by the Contractor as a result of any of the events described in the Clauses to which Clause 44.3(a) refers or any of the events described in Clause 44.3(b); in which case he shall grant and notify the Contractor of the extension to any Key Date which he decides upon.

**44.8** If the Project Manager decides that the Contractor is not entitled to an extension, the Project Manager shall as soon as reasonably practicable notify the Contractor accordingly.

**44.9** (a) Without prejudice to the Project Manager's powers pursuant to Clauses 44.5(b) and 44.7, the Contractor shall not be entitled to an extension of time by reason of any delay unless the delay actually affects substantial completion of the Works or any Section or the achievement of any Stage by the relevant Key Date;

(b) whether or not the Contractor fails to achieve any Milestone by reason of any delay shall not of itself be material to the issue of the Contractor's entitlement to an extension of time; and
44.10 The Project Manager shall within fifty-six days of the issue of the Completion Certificate for the Works review and finally decide and certify the overall extensions of time (if any) to which he considers the Contractor is entitled in respect of the Works, any Section or any Stage. The final review shall not result in a decrease in any extension of time already granted by the Project Manager pursuant to Clauses 44.5 or 44.7 or in any period of suspension of liquidated damages or general damages, assessed and decided pursuant to Clause 47.9(c).

44.11 Any extension of time granted by the Project Manager to the Contractor shall, except as provided elsewhere in the Contract, be deemed to be in full compensation and satisfaction for any loss or injury sustained or sustainable by the Contractor in respect of any matter or thing in connection with which the extension shall have been granted and every extension shall exonerate the Contractor from any claim or demand on the part of the Employer for the delay during the period of the extension but not for any delay prior to or continued beyond such period.

45. Rate of progress

45.1 In circumstances where, in the Project Manager's opinion, the Contractor is not entitled to an extension of time pursuant to Clause 44, the Project Manager may, if he considers that the progress of the Works is too slow to ensure the achievement of any Stage or the substantial completion of the Works or any Section by the relevant Key Date, notify the Contractor and the Contractor shall forthwith propose and, subject to consent, take such steps as are necessary to speed up progress. If the Project Manager considers that the Contractor's proposals will not ensure the achievement of any Stage or the substantial completion of the Works or any Section by the relevant Key Date then the Contractor shall take such other steps as the Project Manager may instruct. If any step taken by the Contractor involves the Employer in additional costs the costs shall be assessed and decided by the Project Manager and shall be recoverable by the Employer from the Contractor.

46. Acceleration

46.1 If, in the Project Manager's opinion, the Contractor might, by taking certain measures:

(a) overcome or reduce delays for which the Contractor would otherwise be entitled to an extension of time pursuant to Clause 44; or

(b) be able to achieve any Stage or substantially complete the Works or any Section earlier than the relevant Key Date

then the Project Manager may notify the Contractor of the measures and/or request the Contractor to submit proposals on the measures to be taken.
46.2 Within fourteen days of receipt by the Contractor of a request pursuant to Clause 46.1 the Contractor shall supply to the Project Manager his written proposals containing the following information:-

(a) the nature of the measures which the Contractor proposes to adopt;
(b) an estimate of any saving of time which could be made by the adoption of the measures;
(c) the proposed price for the measures; and
(d) any other term proposed by the Contractor.

46.3 Within fourteen days of receipt of any proposal supplied by the Contractor pursuant to Clause 46.2 the Project Manager may instruct the Contractor:-

(a) to provide such further information in connection with the proposals as the Project Manager may request; and
(b) if in his opinion it is necessary, to submit revised proposals.

46.4 At any time, whether or not the procedures in Clauses 46.1 to 46.3 have been followed, the Project Manager may:-

(a) instruct the Contractor to take any measure agreed between the Project Manager and the Contractor or, in the absence of agreement, other measures to accelerate the execution of the Works to achieve any Stage or substantially complete the Works or any Section by a specified date earlier than the relevant Key Date and the Contractor shall carry out the measures as instructed with due diligence; or
(b) decide not to instruct any measure for the time being or at all.

46.5 Subject to the terms of any agreement between the Project Manager and the Contractor pursuant to this Clause 46, if by adopting measures instructed, the Contractor does not extinguish delays for which he would have been entitled to an extension of time in the absence of the measures, the Contractor shall nevertheless be granted an extension of time of the duration of the unextinguished delay.

46.6 The price to be paid for the measures, if the price is not agreed between the Project Manager and the Contractor, shall be assessed and decided by the Project Manager as such revisions to the Cost Centre Values as shall, in the Project Manager's opinion, be fair in all the circumstances.

47. **Liquidated damages for delay**

47.1 The obligations to achieve any Stage and to substantially complete the Works and any Section by the relevant Key Dates are separate obligations of the Contractor.
47.2 Appendix 1 to the Form of Tender may attribute to any Key Date a sum which represents or is less than the Employer's genuine pre-estimate (at a daily or other periodic rate) of the damages likely to be suffered by the Employer if the Works are not or any Section is not substantially complete or any Stage is not achieved by the relevant Key Date. The sum shall constitute liquidated damages and not a penalty.

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

47.4 In respect of Key Dates to which liquidated damages are attributed, if the Contractor does not achieve any Stage or substantially complete the Works or any Section by the relevant Key Date the Contractor shall pay or allow to the Employer liquidated damages calculated using the rates referred to in Clause 47.2 as reduced by any certificate issued pursuant to Clause 47.5 until the date when the Stage is achieved or the Works are or the Section is substantially completed.

47.5 In the event that:

(a) a Completion Certificate is issued in respect of any part of the Works (such part not being a Section) before the substantial completion of the Works; or

(b) a Completion Certificate is issued in respect of any part of a Section before the substantial completion of the whole of the Section; or

(c) a Stage Certificate is issued in respect of any part of a Stage before achievement of the whole of the Stage;

the rate of liquidated damages specified in Appendix 1 to the Form of Tender in respect of the Works, the Section or Stage, as the case may be (or any rate previously calculated in accordance with this Clause 47.5), shall be reduced by the proportion which the value of the part completed or achieved bears to the value of the Works, the Section or Stage (or the remainder thereof) as appropriate, as the same is assessed by the Project Manager. The Project Manager shall issue a certificate to the Contractor identifying the reduced rate of liquidated damages which shall be payable by the Contractor in the event that the remainder of the Works, or the Section is not substantially completed or the remainder of the Stage is not achieved, by the relevant Key Date.

47.6 In respect of Key Dates to which no liquidated damages are attributed, the damages to be paid or allowed by the Contractor to the Employer for failing to achieve any Stage or to substantially complete the Works or any Section by the relevant Key Date shall be general damages, as certified by the Project Manager, to compensate the Employer for the consequences of that failure.
47.7 The total amount of liquidated damages for delay and general damages for delay in respect of the Works, any Section and any Stage shall be limited in aggregate to the sum identified as such limit in Appendix 1 to the Form of Tender. If no such limit is identified the said total shall be unlimited.

47.8 The Employer may:-

(a) deduct and retain the amount of any liquidated damages becoming due pursuant to this Clause 47 from any sum due or which becomes due to the Contractor; or

(b) require the Contractor to pay such amount to the Employer forthwith provided that if upon any subsequent review the Project Manager:-

(c) grants a relevant extension or further extension of time or issues a suspension notice pursuant to Clause 47.9(c), the Employer shall no longer be entitled to liquidated damages in respect of the period of such extension or suspension; or

(d) issues a certificate pursuant to Clause 47.5 reducing the rate of the liquidated damages, the Employer shall no longer be entitled to liquidated damages at the previous rate for any period after the date on which the reduced rate became applicable,

any sum in respect of any of the said periods in excess of the Employer's entitlement which may already have been recovered pursuant to this Clause 47 shall be reimbursed forthwith to the Contractor together with interest at the Contract Rate of Interest from the date on which the sum was recovered from the Contractor.

47.9 Without prejudice to Clause 44, if an event as described in Clause 44.3 should occur after liquidated damages have become payable in respect of the Works, any Section or any Stage:-

(a) the Contractor shall as soon as reasonably practicable so notify the Project Manager and shall provide such particulars and details of the type described in Clause 44.2 as may be requested;

(b) the Contractor shall use and continue to use his best endeavours to avoid or reduce delay to the Works, any Section or any Stage other than any further delay resulting from the said event as to which the Contractor shall use his reasonable endeavours;

(c) if, in the Project Manager's opinion, the event has resulted in further delay to the Works, any Section or any Stage, the Project Manager shall so notify the Contractor and the Employer's entitlement to liquidated damages in respect of the Works, the Section or the Stage shall be suspended for the period from commencement of the further delay (the date of which shall be assessed by the Project Manager and stated in the said notice) until the further delay has either come to an end or, as the case may be, should have come to an end had the Contractor used his reasonable endeavours (the date of which shall be assessed by the Project Manager and stated in a notice to be issued to the Contractor as soon as reasonably practicable thereafter);
(d) any such suspension shall not invalidate any entitlement to liquidated damages before the period of further delay started to run or after it ceases; and

(e) the Project Manager may take the steps described in Clause 47.9(c) notwithstanding the absence of any or any timely notification from the Contractor pursuant to Clause 47.9(a).

47.10 The payment of any liquidated damages pursuant to this Clause 47 shall not relieve the Contractor of any obligation or liability save in relation to the payment of damages in respect of delay in achieving any Stage or substantially completing the Works or any Section.

COMPLETION CERTIFICATES

48. Completion Certificates

48.1 When the Contractor considers that the Works have been substantially completed including having satisfactorily passed any of the tests that may be prescribed by the Contract and provided that he has supplied to the Project Manager the documents which the Contractor is required by the Contract to supply prior to substantial completion, he may give notice to that effect to the Project Manager accompanied by a list of the items of work that are outstanding or defective together with an undertaking to finish those items of work by dates during the relevant Defects Liability Period. The notice, list and undertaking shall each be in a form acceptable to the Project Manager and shall be deemed to be a request by the Contractor for the Project Manager to issue the Completion Certificate for the Works. The Project Manager shall within twenty-one days of the date of delivery of the notice, list and undertaking either:-

(a) issue to the Contractor the Completion Certificate stating the date on which in his opinion the Works were substantially completed in accordance with the Contract; or

(b) issue instructions to the Contractor specifying the items of work which in the Project Manager's opinion still need to be done before the issue of the Completion Certificate for the Works, in which event the Contractor shall be entitled to receive the Completion Certificate within twenty-one days of completion to the satisfaction of the Project Manager of the items of work specified by the instructions, provided that if at any time after the instructions before the issue of the Completion Certificate for the Works the Project Manager discovers other items of work which in his opinion need to be done before the issue of the Completion Certificate for the Works he may issue further instructions pursuant to this Clause 48.1(b).

48.2 Following the same procedure as that described in Clause 48.1 for the Works, the Contractor may request and the Project Manager may issue a Completion Certificate for any Section provided that for any Section the references to tests and to documents in Clause 48.1 shall be deemed to be references to any test prescribed by the Contract to be completed and any document required by the Contract to be supplied prior to substantial completion of the Section.
48.3 Following the same procedure as that described in Clause 48.1 for the Works, the Contractor may request and the Project Manager may issue a Stage Certificate when any Stage has been achieved provided that for any Stage, the references to tests and to documents in Clause 48.1 shall be deemed to be references to any test prescribed by the Contract to be completed and any document required by the Contract to be supplied prior to achievement of the Stage, and the undertaking to finish outstanding items of work shall be to do so as soon as is practicable, but within no more than forty-two days from the date of issue of the Stage Certificate.

48.4 If, in the Project Manager's opinion, the Works have been or any Section or any other part of the Works has been substantially completed or substantially completed subject to certain outstanding items (including, without limitation, tests) he may issue a Completion Certificate in respect of the Works, the Section or the other part of the Works and upon the issue of the certificate the Contractor shall be deemed to have undertaken to complete the outstanding items of work during the relevant Defects Liability Period by dates to be instructed.

48.5 If, in the Project Manager's opinion, any Stage or any part of any Stage has been achieved or achieved subject to certain outstanding items (including, without limitation, tests) he may issue a Stage Certificate in respect of the Stage or the part of the Stage and upon the issue of the certificate the Contractor shall be deemed to have undertaken to complete the outstanding items of work by dates to be instructed.

48.6 Achievement of any Stage shall not of itself constitute completion or substantial completion of any Section or any other part of the Works for the purposes of Clauses 48.2 and 48.4.

SUSPENSION

49. Suspension

49.1 The Contractor shall, on the Project Manager's instruction, suspend the execution of the Works, any Section or any other part of the Works for such time or times and in such manner as the Project Manager may consider necessary and shall during the suspension properly protect and secure the Works or the Section or other part of the Works which is subject to that instruction. If, as a result of compliance with an instruction pursuant to this Clause 49, the Contractor is prevented from achieving any Stage or substantially completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate then, if the Contractor claims additional time and/or payment therefor, the Project Manager shall, except to the extent that the suspension is:-

(a) instructed pursuant to Clause 49.2;

(b) necessary by reason of weather conditions affecting the safety or quality of the Works; or

(c) necessary for the proper execution or for the safety of the Works,

give a decision pursuant to Clauses 44 and/or 55.
49.2 The Project Manager may issue instructions to suspend the Works, any Section or any other part of the Works if, in the Project Manager's opinion, the Contractor is in breach of any of his obligations.

49.3 If, when an instruction has been given pursuant to this Clause 49, there has not been an instruction to resume work within a period of three months from the date of the instruction to suspend work, then the Contractor may, unless the suspension is otherwise provided for in the Contract or continues to be necessary by reason of some breach of the Contract or other default on the part of the Contractor, serve a notice on the Project Manager requesting him, within twenty-eight days from the receipt of the notice, to issue an instruction to resume work. If within the said twenty-eight days the Project Manager does not issue the instruction or give notice that in his opinion the suspension continues to be necessary by reason of some breach or default as aforesaid, the Contractor by a further notice may elect to treat the suspension, where it affects part only of the Works, as an omission of the part pursuant to Clause 52 or, where it affects the Works, as a termination of the Contractor's employment by the Employer.

OUTSTANDING WORK AND DEFECTS

50. Outstanding Work

50.1 The Contractor shall at the times instructed by the Project Manager execute any work outstanding or defective referred to in an undertaking given or deemed to be given pursuant to Clause 48 and shall deliver up to the Employer the Works, any Section or any other part of the Works to which the work outstanding or defective relates in the condition required by the Contract (fair wear and tear excepted) as soon as practicable and in accordance with instructions.

50.2 If the work outstanding or defective is of such a character as may affect the validity of the results of any of the tests required by the Contract, the Project Manager may within one month of the completion of that work instruct the Contractor to repeat such tests in which case the tests shall be carried out as provided in Clause 39.

50.3 Where the execution of the work outstanding or defective could interfere with work by Other Contractors, with the use of the Airport or with the use of the Works, any Section or any other part of the Works by the Employer the Contractor shall execute the work in a manner and at times instructed by the Project Manager so as to avoid or, if it cannot be avoided, minimise interference.
51. **Investigating defects and work of repair and additional work**

51.1 The Contractor shall, in accordance with any instruction issued during any Defects Liability Period or within fourteen days after its expiration:-

(a) investigate the cause of any defect, imperfection or fault;

(b) execute maintenance work including any work of replacement, repair, rectification and making good any defect, imperfection, settlement or other fault (whether intermittent or otherwise) identified before the expiry of the Defects Liability Period. The work shall be executed within such period as instructed, or in the absence of such instruction, as soon as is practicable; and

(c) execute any other work in connection with the Permanent Works, including the supply of goods and materials which, in the Project Manager's opinion, it is feasible and reasonable for the Contractor to execute.

51.2 If, in the Project Manager's opinion, the defect, imperfection or fault investigated or the work executed pursuant to Clause 51.1(a) and (b) is not the result of any breach of the Contract or other default on the part of the Contractor then, if the Contractor claims additional payment therefor, the Project Manager shall give a decision pursuant to Clause 55.

51.3 In relation to any work executed pursuant to Clause 51.1(c), the Project Manager shall give a decision pursuant to Clause 55. The Cost of the said work shall, notwithstanding the definition of Cost, include a reasonable allowance for profit.

51.4 Where any work is carried out pursuant to Clause 51.1(b) and is not work to which Clause 51.2 applies then the terms of this Clause 51 shall apply to the work for the extended Defects Liability Period and similarly to outstanding work executed pursuant to Clause 50.1.

51.5 If, during any Defects Liability Period or within fourteen days of its expiry, in the Project Manager's opinion, the Permanent Works are not, or any part thereof is not, in accordance with the Contract, he may:-

(a) issue a notice of acceptance of the Permanent Works or the part thereof although the Permanent Works are not, or the part thereof is not, in accordance with the Contract whereupon the Contractor shall not be obliged to do further work to the Permanent Works or the part thereof which is the subject of the notice unless and until otherwise instructed. The exercise of these powers shall be without prejudice to the Employer's other rights and remedies which shall include the right for the Project Manager to reduce the Final Contract Sum by such amount as, in the Project Manager's opinion, reflects the reduction in value of the Permanent Works or the part thereof; or
(b) if the Employer is substantially deprived of the benefit of the Permanent Works or the part thereof, issue a certificate to that effect and within seven days the Employer may by notice terminate the Contractor's employment in relation to the Permanent Works or the part thereof. The Employer shall, without prejudice to his other rights and remedies, be entitled to recover all sums paid in respect of the Permanent Works or the part thereof together with the cost of dismantling the same, clearing the Site and returning the Permanent Works or the part thereof to the Contractor or otherwise disposing thereof in accordance with the Contractor's requirements. Notwithstanding any other provision of the Contract, the Contractor shall have no right to payment for the Permanent Works or the part thereof and property therein shall revest in the Contractor upon its return or other disposal.

51.6 If the maintenance work is such that it may affect the validity of any of the tests required by the Contract, the Project Manager may instruct, within twenty-eight days after completion of the work, that the tests be repeated to the extent necessary. The tests shall be carried out in accordance with Clause 39 and the maintenance work shall not be considered as completed until satisfactory completion of the repeat tests.

51.7 Within fourteen days of completion of the maintenance work in accordance with Clause 51.1(b), the Contractor shall, where applicable, submit to the Project Manager for review, pursuant to Clause 8, appropriate revisions to the documents referred to in Clause 48.1.

VARIATIONS

52. Variations

52.1 The Project Manager may instruct any variation to the Works that is in his opinion desirable in connection with the Works. The variations may include but shall not be limited to:-

(a) additions, omissions, substitutions, alterations, changes in quality, form, character, kind, position, dimension, level or line;

(b) changes to any sequence, method or timing of construction specified in the Contract; and

(c) changes to access to the Project Site, or the Site or any parts thereof.

52.2 If, in compliance with an instruction pursuant to Clause 52.1, the Contractor is prevented from achieving any Stage or substantially completing the Works or any Section by the relevant Key Date or becomes entitled to an extension of time pursuant to Clause 52.5(b) or incurs Cost which the Contractor did not and had no reason to anticipate and is not recovered pursuant to Clauses 53 or 54 then, if the Contractor claims additional time and/or payment therefor, the Project Manager shall give a decision pursuant to Clauses 44 and/or 55.

52.3 No variation shall be made by the Contractor without an instruction by the Project Manager.
52.4 No variation instructed pursuant to Clause 52.1 shall in any way vitiate or invalidate the Contract, which shall continue to apply to the Works as varied, but the value (if any) of all variations shall be taken into account by the Project Manager in assessing and deciding revisions to the Cost Centre Values in accordance with Clause 54 or in valuing the variation as dayworks pursuant to Clause 53.

52.5 The Employer may procure that work, omitted as a variation to the Works by instruction pursuant to Clause 52.1, be executed by another contractor provided always that:-

(a) upon such omitted work being let to another contractor, the Project Manager shall assess and decide a fair amount in respect of the profit reasonably anticipated by the Contractor in respect of such omitted work as at the time of the relevant instruction and shall make such revision to the relevant Cost Centre Value as may be appropriate pursuant to Clause 54; and

(b) if the effect of the omission of such work would be to reduce an extension of time to which the Contractor would otherwise have been entitled had no such variation been instructed, the Project Manager shall take the effect of the omission into account and, subject to the provisions of Clause 44, grant such extension of time (if any) so as to put the Contractor in no better and no worse position than if the said variation had not been instructed.

53. **Daywork**

53.1 The Project Manager may instruct that any work to be executed as the result of an instruction given pursuant to Clauses 52.1 or 63.1(b) shall be executed on a daywork basis under the conditions and valued at the rates set out in the Pricing Document; unless the work instructed starts immediately the Contractor shall give the Project Manager notice before starting the work.

53.2 The Contractor shall furnish to the Project Manager such receipts or other vouchers as may be necessary to prove the amounts paid by the Contractor in executing the work and before ordering work shall submit to the Project Manager quotations for the same for review pursuant to Clause 8.

53.3 In respect of all work executed on a daywork basis the Contractor shall, during the continuance of such work, deliver each day to the Project Manager an exact list in duplicate of the names and occupations of and time worked by all workmen employed on such work and a statement also in duplicate showing the descriptions and quantities of all work executed the previous day. One copy of each list and statement shall if correct or when agreed be signed by or on behalf of the Project Manager and returned to the Contractor.
53.4 At the end of each month the Contractor shall deliver to the Project Manager a detailed priced statement of the work executed (separately identifying labour and things supplied) and the Contractor shall not be entitled to any payment unless the lists and statements required in accordance with this Clause 53 have been fully and punctually rendered. Provided always that if the Project Manager shall consider that for any reason the sending of such list or statement by the Contractor in accordance with the foregoing provisions was impracticable he shall nevertheless be entitled to authorise payment for such work either under the conditions set out in the Pricing Document (on being satisfied as to the details of the work executed) or at such value therefor as he shall consider fair and reasonable.

VALUATION

54. Valuation

54.1 Subject to Clause 56, the Project Manager shall assess and decide the sum which in his opinion is due to the Contractor as a result of an instruction pursuant to Clauses 52.1 (Variations) or 63.1(a) (Provisional Sums) or matters claimed in accordance with Clauses:

(i) 2.6 (the issue by the Project Manager of an instruction or the failure or inability to issue or delay in issue of an instruction);

(ii) 6.2 (ambiguities in or discrepancies between the documents comprising the Contract);

(iii) 13.6 (the presence of unforeseeable physical conditions or artificial obstructions within the Site);

(iv) 18.2 (errors in setting out due to incorrect data);

(v) 20.5 (instructions for the rectification of loss or damage due to Excepted Risks);

(vi) 24.2 (addition or amendment to any Enactment or condition attached to any permit or exemption);

(vii) 39.7 (ad hoc successful tests); or

(viii) 74.4 (b) (special risks),

(insofar as in the Project Manager's opinion some or all of the claim relates to work equivalent to a variation as described in Clause 52.1; insofar as in the Project Manager's opinion any balance of the claim relates to disturbance to the progress of the Works or any part thereof he shall assess and decide the balance pursuant to Clause 55) as follows:-

(a) where work added or omitted is, in the Project Manager's opinion, of similar character and executed under similar conditions to work for which there is a rate or price in the Pricing Document it shall be valued at that rate or price; or
(b) where work added or omitted is, in the Project Manager's opinion, not of a similar character or is not executed under similar conditions, it shall be valued at a rate or price based on any of the rates or prices contained in the Pricing Document so far as may be reasonable, failing which a fair valuation shall be made which shall be derived so far as may be reasonable from the Contract Sum; and

(c) if the nature or extent of the work added or omitted relative to the nature or extent of the Works or any part thereof shall be such that, in the Project Manager's opinion, any rate or price contained in the Pricing Document for any other work is by reason of such variation rendered unreasonable or inapplicable, then a new rate or price shall be agreed between the Project Manager and Contractor for that work, using the rates and prices contained in the Pricing Document as the basis for decision; or

(d) if the Project Manager and the Contractor fail to reach agreement on any rate or price pursuant to Clause 54.1(c) the Project Manager shall assess and decide a rate that is in his opinion reasonable using the rates and prices contained in the Pricing Document as the basis for decision and shall notify the Contractor accordingly,

and following such a decision the Project Manager shall make pursuant to Clause 66 revisions (if any and if appropriate) to the relevant Cost Centre Value and/or the Schedule of Milestones and/or the Interim Payment Schedule and shall notify the Contractor accordingly.

54.2 The Contractor shall not be entitled to any payment pursuant to this Clause 54 to the extent, in the Project Manager's opinion, connected with:-

(a) any breach of the Contract or other default on the part of the Contractor;

(b) any instruction in relation to matters which, in the Project Manager's opinion, are the responsibility of the Contractor in the absence of the instruction; or

(c) failure by the Contractor to make the proper allowance in the Contract Sum and the rates and prices in the Pricing Document which he is deemed to have made pursuant to Clause 13.2.
54.3 The Contractor shall supply all information and documents requested by the Project Manager to facilitate the performance of the Project Manager's duties under this Clause 54 including, without limitation, details or further details of:-

(a) the rates and prices in the Pricing Document; and/or

(b) amounts claimed by relevant sub-contractors

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

55. Cost and disturbance to the progress of the Works

55.1 If, in the Project Manager's opinion, the Contractor has incurred or is likely to incur Cost for which the Contractor would not be reimbursed by a payment made pursuant to any other provision in the Contract by reason of any matter which is the subject of a claim pursuant to Clauses:

(i) 2.6 (the issue by the Project Manager of an instruction or the failure or inability to issue or delay in issue of an instruction);

(ii) 3.4 (the reversal or variation of an instruction or decision by the Project Manager, or the Project Manager's Representative);

(iii) 6.2 (ambiguities in or discrepancies between the documents comprising the Contract);

(iv) 7.5 (the failure or inability to issue or delay in issue of further or amended Drawings or Specifications by the Project Manager);

(v) 13.6 (the presence of unforeseeable physical conditions or artificial obstructions within the Site);

(vi) 18.2 (errors in setting out due to incorrect data);

(vii) 20.5 (instructions for the rectification of loss or damage due to Excepted Risks);

(viii) 24.2 (addition or amendment to any Enactment or condition attached to any permit or exemption);

(ix) 37.3 (the uncovering of acceptable work);

(x) 39.7 (ad hoc successful tests);

(xi) 42.4 (access constraints);

(xii) 49.1 (suspension of the Works);
(xiii) 51.2 (investigation of defects, imperfections or faults or the execution of maintenance work not the result of any breach by the Contractor);

(xiv) 51.3 (execution of work not included in the Drawings and/or the Specification);

(xv) 52.2 (variations);

(xvi) 63.4 (Provisional Sums and Prime Cost Sums);

(xvii) 64.8 (engagement of a Nominated Sub-Contractor);

(xviii) 64.9 (insolvency, receivership or liquidation of a Nominated Sub-Contractor);

(xix) 74.4 (b) (special risks); or

(xx) 44.3 (b) (any other cause of disturbance to the progress of the Works for which the Employer or the Project Manager is responsible)

then the Project Manager shall as soon as reasonably practicable assess the sum in respect of the Cost incurred and give a decision as to the sum to the Contractor.

55.2 The Contractor shall not be entitled to any payment pursuant to this Clause 55 to the extent, in the Project Manager's opinion, connected with:-

(a) any breach of the Contract or other default on the part of the Contractor;

(b) any instruction in relation to matters which, in the Project Manager's opinion, are the responsibility of the Contractor in the absence of the instruction; or

(c) failure by the Contractor to make the proper allowance in the Contract Sum and the rates and prices in the Pricing Document which he is deemed to have made pursuant to Clause 13.2.

56. **Notice of claims for additional payment**

56.1 (a) Notwithstanding any other provision of the Contract but subject to Clause 56.1(b), if the Contractor at any time intends to claim payment additional to the then current total of Cost Centre Values and other amounts previously decided to be due or damages under or for breach of or otherwise in connection with the Contract he shall give notice to the Project Manager of his intention within twenty-eight days of the date when the event (including, without limitation, any instruction or decision) giving rise to the claim commenced or, if later, when the Contractor ought reasonably to have realised that the event was liable to give rise to a claim.
(b) The Contractor shall be entitled to payment following instructions pursuant to Clauses 46.4, 52.1, 63.1 and 63.2 in which it is expressly stated that they will be subject to valuation in accordance with the Project Manager's decisions as to the value thereof pursuant to Clauses 46.6, 53.1, 54.1 or 64.4, as the case may be, without being required to give notice in accordance with Clause 56.1(a) but if the Contractor seeks payment in excess of the value so decided or any other payment in respect of the said instructions or in respect of instructions in which it is not expressly stated that they will be subject to valuation, notice in accordance with Clause 56.1(a) shall be required. In addition, no notice shall be required in respect of any price agreed by the Project Manager pursuant to Clause 46.6.

56.2 Within twenty-eight days, or such other reasonable time as may be permitted by the Project Manager, after the date of a Contractor's notice pursuant to Clause 56.1, the Contractor shall send to the Project Manager detailed particulars of the amount claimed and the grounds and/or contractual provisions upon which the claim is based and the documents to support the claim. Where the event giving rise to the claim has a continuing effect the account shall be considered an interim account and the Contractor shall, at such intervals as the Project Manager may reasonably instruct, send further interim accounts giving the current amount of the claim and specifying any further ground or evidence in support of the claim. The Project Manager may, if in his opinion he has sufficient information for the purpose, give an interim decision. The Contractor shall, within twenty-eight days of the continuing effect coming to an end, or such other period as the Project Manager may instruct, submit final particulars.

56.3 Notwithstanding any other provision of the Contract the Contractor shall not be entitled to any decision or to any revision of Cost Centre Values or to any payment, damages or other relief in respect of the event giving rise to his claim unless he shall have first complied with the terms of this Clause 56 and in default of compliance the Contractor shall be deemed to have waived all rights, claims and damages to which he might have become entitled either under the Contract or as a result of its breach by the Employer.

57. Maintenance of records

57.1 The Contractor shall establish at the Site, and may establish at other places which have been reviewed without objection, records offices containing an archive of all documents in connection with and arising out of the Contract and a complete record of all transactions (with copies of all relevant documents) entered into by the Contractor in connection with the Contract. These offices and the archive shall, in accordance with the Specification, be established and maintained by the Contractor subject to any partial take-over of the archive by the Employer.

57.2 If the Contractor serves a notice pursuant to Clauses 44.1 or 56.1 or if an event occurs in respect of which the Contractor may subsequently make a financial claim, the Contractor shall keep such contemporary records as may reasonably be necessary to support any claim he may subsequently wish to make.
57.3 Without admitting the Employer's liability the Project Manager may instruct the Contractor to keep such further contemporary records as he reasonably considers desirable or material to any claim of which notice pursuant to Clauses 44.1 or 56.1 has been given.

57.4 To the extent that the records of the Contractor are to be created and/or maintained on a computer or other electronic storage device, the Contractor shall agree (agreement not to be unreasonably withheld) with the Project Manager a procedure for back-up and storage at other locations of copies of the records and shall adhere, and shall cause his sub-contractors of any tier to adhere, to the agreed procedures and to demonstrate compliance with the agreed procedure as and when requested by the Project Manager.

57.5 The Contractor shall allow the Project Manager and those authorised by the Project Manager access to the records offices and shall permit them to inspect any of the documents in the archive at all reasonable times.

PROPERTY IN PERMANENT WORKS AND CONTRACTOR'S EQUIPMENT AND TEMPORARY WORKS

58. Vesting of Contractor's Equipment and Temporary Works

58.1 Contractor's Equipment (excluding, for the purposes of this Clause 58.1 only, marine vessels), Temporary Works and consumables which are owned by the Contractor shall on delivery to the Project Site become the property of the Employer.

58.2 Contractor's Equipment, Temporary Works and consumables shall not be removed from the Site or the Project Site or taken out of use for the Works without prior consent.

58.3 Upon the completion of the Works or the taking out of use or removal as aforesaid or pursuant to Clause 74.2, the Contractor's Equipment, Temporary Works and surplus consumables which have vested in the Employer shall re-vest in the Contractor.

59. Vesting of Permanent Works

59.1 Any part of the Permanent Works:-

(a) which is owned by the Contractor shall:-

(i) become the property of the Employer upon delivery to the Project Site except to the extent that property in the part has already passed to the Employer pursuant to Clause 59.1(b); and

(ii) not be removed from the Site or Project Site without prior consent.
which is manufactured or obtained off-Site shall become the property of the Employer upon property in the part vesting in the Contractor or otherwise passing unconditionally to the Contractor or his agent or nominee and the Contractor shall and shall procure that any of his sub-contractors supplying any part of the Permanent Works to the Contractor shall:

(i) upon property in the part vesting in the Contractor, provide to the Project Manager such documentary or other evidence thereof as may be appropriate or as the Project Manager may request;

(ii) upon the part being substantially ready for delivery to the Project Site, suitably mark or otherwise plainly identify it so as to show that its destination is the Project Site, that it is the property of the Employer and (where it is not stored at the premises of the Contractor) to whose order it is held, and set aside and store the part so marked or identified to the satisfaction of the Project Manager;

(iii) send to the Project Manager a schedule listing and giving the value of every part so marked, identified, set aside and stored and inviting him to inspect them; and

(iv) if so instructed by the Project Manager provide to the Project Manager an opinion in writing by an established and qualified lawyer in the country where the part is situated that the actions taken by the Contractor are sufficient to show an intention to vest the property in it in the Employer and to protect it against seizure by a third party (including any liquidator, receiver or similar officer of the Contractor)

provided that the operation of this Clause 59 shall not be deemed to imply any acceptance of any part of the Permanent Works or prevent its rejection by the Project Manager at any time.

59.2 The parts of the Permanent Works referred to in Clause 59.1(b) shall be in the possession of the Contractor or his sub-contractors for the sole purpose of delivering them to the Employer for the execution of the Works and shall not be within the ownership, control or disposition of the Contractor or his sub-contractors and save only as stated in Clause 20 the Contractor shall be responsible for any loss or damage to such parts and for the expense involved in storing, handling and transporting the same.

59.3 The Contractor shall ensure that there shall be no lien whether in equity, common law or otherwise on any part of the Permanent Works which has vested in the Employer pursuant to Clause 59.1 for any sum due to the Contractor, his sub-contractors or any other person and the Contractor shall ensure that the title of the Employer and the exclusion of any lien are brought to the notice of his sub-contractors and other persons dealing with or transporting any part.
59.4 Subject to Clauses 38.2(b) and 51.5(b), if the Contract or the Contractor's employment thereunder is terminated before the completion of the Works the Contractor shall deliver to the Employer any part of the Permanent Works owned by the Employer by virtue of Clause 59.1, and if the Contractor shall fail to do so the Employer may enter any premises of the Contractor, and the Contractor shall procure that the Employer may enter any premises of any of his sub-contractors, to remove the part and the Employer may recover the cost of so doing from the Contractor.

60. **Use of Contractor's Equipment**

60.1 In respect of any item of Contractor's Equipment brought onto the Site or the Project Site or used in connection with the Works, which is not solely owned by the Contractor, the Project Manager may instruct the Contractor to procure:

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

(i) the owner shall, and shall procure that the beneficiary of any relevant charge, other security interest or reservation of title (of whatever nature) shall, without payment, execute any deed or document in favour of the Employer to assign to the Employer the benefits under any lease, charter-party, hiring, hire-purchase, supply, operation or other agreement made with the Contractor in respect of the item in the event of the termination of the Contract or of the employment of the Contractor thereunder;

(ii) the agreement shall permit the Employer, or any third party employed by the Employer, to use the item until completion of the Works upon the same terms as those enjoyed by the Contractor prior to the assignment; and

(iii) the owner shall not, without first giving the Employer not less than twenty-one days prior notice, exercise any right the owner may have to terminate the lease, charter-party, hiring, hire-purchase, supply, operation or other agreement, or treat the same as having been repudiated by the Contractor or terminated, howsoever otherwise, or withhold performance of the owner's obligations thereunder or remove the item from Hong Kong; and

(b) the provision of any information that the Project Manager by instruction requests in relation to any charge, other security interest or reservation of title (of whatever nature) that may subsist in the item.

60.2 All sums paid by the Employer under the provisions of any agreement, deed or document referred to in this Clause 60 and all cost or expense incurred by him in entering into the agreement, deed or document shall be recoverable by the Employer from the Contractor.

60.3 The Project Manager may instruct the Contractor to produce all documents evidencing title to, or the contractual basis of the Contractor's right to use, any item of Contractor's Equipment.
60.4 If the Contractor fails to comply with his obligations pursuant to this Clause 60, without prejudice to any other right or remedy available to the Employer, the Employer may withhold from interim payments due to the Contractor an amount equivalent to the value of the Contractor's Equipment concerned until such time as the failure is rectified or remedied to the satisfaction of the Project Manager.

61. **Removal of Contractor's Equipment and Temporary Works**

61.1 After the issue of any Completion Certificate, the Contractor shall clear away and remove from the relevant part of the Site and the Project Site any item of Contractor's Equipment, Temporary Works and surplus consumables (except those required to discharge the Contractor's other obligations under or in connection with the Contract) for which consent has been given pursuant to Clause 58.2 and the Contractor shall leave the Works, or the Section or other part of the Works to which the Completion Certificate relates, in a clean and tidy condition.

61.2 If the Contractor fails to comply with Clause 61.1 within a reasonable time after issue of the relevant Completion Certificate, the Employer may:--

(a) sell the item, and, after deducting from any proceeds of sale the charges and expenses of and in connection with such sale, pay the balance, if any, to the Contractor but, to the extent that the proceeds of sale are insufficient to meet all such charges and expenses, the excess shall be recoverable by the Employer from the Contractor; or

(b) return the item (if hired or the subject of a hire-purchase, supply or operation agreement, charter-party or lease) to the owner from whom it was so hired, chartered or leased, and recover the charges and expenses of and in connection with such return from the Contractor.

62. **Liability for loss or damage to Permanent Works, Contractor's Equipment, etc**

62.1 The Employer shall not at any time be responsible for the care of, nor liable for the loss of or damage to the Permanent Works, Contractor's Equipment, Temporary Works or consumables which have become the property of the Employer pursuant to Clauses 58 and 59 except as provided in Clause 20.
PROVISIONAL SUMS AND PRIME COST SUMS

63. Provisional Sums and Prime Cost Sums

63.1 Any work in relation to which a Provisional Sum is stated in the Pricing Document shall only be executed in whole or in part upon the Project Manager’s instruction pursuant to this Clause 63.1. If the Project Manager issues no such instruction the said work shall not form part of the Works and the Contractor shall not be entitled to payment for it. The Project Manager may instruct any such work:-

(a) to be executed by the Contractor, but not as daywork, in which case its value shall be assessed and decided pursuant to Clause 54;

(b) to be executed by the Contractor as daywork, in which case its value shall be assessed and decided pursuant to Clause 53; or

(c) to be executed by a Nominated Sub-Contractor, in which case the provisions of Clause 64 shall apply.

63.2 Any work in relation to which a Prime Cost Sum is stated in the Pricing Document shall be carried out by a Nominated Sub-Contractor upon the Project Manager’s instruction pursuant to this Clause 63.2.

63.3 Without prejudice to Clause 13.2, the Contractor shall be deemed to have allowed the necessary time and resources to enable the work in relation to which Prime Cost Sums and Provisional Sums are stated in the Pricing Document to be executed by all relevant Key Dates and within the Contract Sum insofar as the scope and nature of the work was reasonably foreseeable on the basis of the deeming provisions of Clause 13.1 (a).

63.4 If, in compliance with any instruction pursuant to Clause 63.1(a) or (b), the Contractor is prevented from achieving any Stage or substantially completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate and which is not recoverable pursuant to Clauses 53 or 54 then, if the Contractor claims additional time and/or payment therefor, the Project Manager shall give a decision pursuant to Clauses 44 and/or 55.

64. Nominated Sub-Contractors

64.1 Upon receipt of an instruction to enter into a sub-contract with a Nominated Sub-Contractor pursuant to Clause 63, the Contractor shall, subject to Clause 64.2, forthwith enter into a sub-contract with the Nominated Sub-Contractor identified in the instruction on the form identified in the instruction, which shall be based upon the form appearing in schedule 9 with such amendments as may be identified in the instruction, and the Contractor shall not thereafter amend or waive any of the terms of the sub-contract without prior consent nor shall the Contractor accept any repudiation or otherwise terminate the sub-contract or terminate or suspend the Nominated Sub-Contractor's employment thereunder without prior consent. The Contractor shall procure that the Nominated Sub-Contractor shall provide to the Employer and to the Contractor all bonds, warranties and guarantees required by the sub-contract and, without prejudice to any other right or remedy of the Employer, the Employer shall be entitled to withhold from interim payments due to the Contractor an amount equivalent to the value of the sub-contract until all the bonds, warranties and guarantees have been provided.
64.2 Subject to Clause 64.3, the Contractor shall be entitled to object to any instruction pursuant to Clause 63 on the ground:

(a) that the sub-contract completion dates are inconsistent with the progress of the Works; or

(b) that any amendment to the form appearing in schedule 9 is inconsistent with the Contractor's obligations under the Contract,

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

64.3 Upon receipt of any objection in accordance with Clause 64.2, the Project Manager shall either:-

(a) re-issue the original instruction pursuant to Clause 63, in which case the Contractor shall have no rights of objection under Clause 64.2 and shall forthwith enter into the sub-contract with the Nominated Sub-Contractor; or

(b) issue a new instruction pursuant to Clause 63; or

(c) issue any other instruction, including an instruction pursuant to Clause 52 to omit part of the Works.

64.4 In accordance with Clause 66.2 the Project Manager shall assess and decide the amount to be added to the relevant Cost Centre Value in relation to any Nominated Sub-Contractor which shall be:-

(a) the total amount paid or payable by the Contractor to the Nominated Sub-Contractor under the sub-contract between the Contractor and the Nominated Sub-Contractor, less:-

(i) all discounts;

(ii) amounts excluded pursuant to Clauses 64.5 and 64.6;

(iii) amounts paid or payable by the Contractor under the relevant sub-contract as a result of breach of the sub-contract or other default on the part of the Contractor or any of his other sub-contractors of any tier;

(iv) amounts paid or payable by the Contractor under the relevant sub-contract which are recoverable by the Contractor pursuant to any other provision of the Contract; and

(b) in respect of attendance on the Nominated Sub-Contractor and all other charges and profit related thereto:-

(i) any sum included in that regard in the Pricing Document together with the product of the percentage quoted by the Contractor in the Pricing Document and the actual sum added to the relevant Cost Centre Value pursuant to Clause 64.4(a); or
64.5 No revision shall be made to any relevant Cost Centre Value and the Contractor shall not otherwise be entitled to any payment in respect of any increase in excess of the total sum payable to a Nominated Sub-Contractor at the time the relevant sub-contract was entered into unless before taking the action which led to the increase the Contractor gave notice of the action to the Project Manager and obtained consent to it.

64.6 If any sub-contract or the Nominated Sub-Contractor's employment thereunder shall be terminated for any reason the Project Manager shall as soon as reasonably practicable either:

(a) issue a further instruction pursuant to Clause 63; or

(b) issue any other instruction, including an instruction pursuant to Clause 52 to omit part of the Works,

provided that where a further instruction is issued as referred to in Clause 64.6(a), in the adjustment to the relevant Cost Centre Value pursuant to Clause 66.2 there shall be added only the amount which would have been paid or payable upon the proper completion of the sub-contract between the Contractor and the Nominated Sub-Contractor first employed and the Contractor shall not be entitled to any further or other adjustment to the relevant Cost Centre Value or to make any other claim for payment or extension of time, subject however to Clause 64.9.

64.7 If, in the Project Manager's opinion after inviting representations from the Contractor and considering any representation received within the time specified in the invitation, the Contractor has failed to make any payment due to any Nominated Sub-Contractor, the Employer may pay direct to the Nominated Sub-Contractor any sum certified by the Project Manager as the amount of the non-payment and the Employer may deduct the sum from amounts payable to the Contractor or otherwise recover the sum from the Contractor.

64.8 If, in compliance with any instruction pursuant to Clause 63 (other than a further instruction as referred to in Clause 64.6(a)) to engage a Nominated Sub-Contractor reissued pursuant to Clause 64.3(a), the Contractor is prevented from achieving any Stage or substantially completing the Works or any Section by the relevant Key Date or incurs Cost which the Contractor did not and had no reason to anticipate and which is not recoverable pursuant to Clause 64.4 or from the Nominated Sub-Contractor and the prevention or Cost results from the grounds of objection made pursuant to Clause 64.2 in relation to the Nominated Sub-Contractor then, if the Contractor claims additional time and/or payment therefor, the Project Manager shall give a decision pursuant to Clauses 44 and/or 55.
64.9 If, as a result of the insolvency, receivership or liquidation of any Nominated Sub-Contractor and of any guarantor of the Nominated Sub-Contractor, the Contractor incurs Cost (including any liquidated or other damages payable to the Employer) which the Contractor did not and had no reason to anticipate and because of the insolvency, receivership or liquidation, the Contractor can recover the Cost neither from the Nominated Sub-Contractor nor from any guarantor of the Nominated Sub-Contractor then, if the Contractor claims additional payment (to the extent of the irrecoverable Cost) therefor, the Project Manager shall give a decision pursuant to Clause 55.

64.10 Clause 5.3 shall apply to Nominated Sub-Contractors subject only to the express provisions of this Clause 64 to the contrary.

65. Production of Vouchers

65.1 The Contractor shall, when instructed by the Project Manager, obtain and submit any quotation which the Project Manager may reasonably request and produce all invoices, vouchers and accounts or receipts in connection with expenditure in respect of Provisional Sums and Prime Cost Sums.

CERTIFICATES AND PAYMENT

66. Interim Payment Schedule, Cost Centre Values and Milestones

66.1 The Interim Payment Schedule sets out the maximum accumulative percentage of each Cost Centre Value in relation to each month for which the Contractor may apply for payment, subject to the achievement of Milestones and to application for payment in accordance with Clause 67.

66.2 The Cost Centre Values shall be revised by the Project Manager by the deduction therefrom of any Provisional Sum and Prime Cost Sum (and associated amounts included in the Cost Centre Value in respect of attendance, charges and profit) and upon:-

(a) a decision or agreement pursuant to Clause 46.6, by adding to the relevant Cost Centre Value the amount as agreed or decided;

(b) a decision pursuant to Clause 54, by adding to or deducting from the relevant Cost Centre Value the value as decided;

(c) a decision pursuant to Clause 64.4, by adding to the relevant Cost Centre Value the amount decided;

(d) a decision to exercise any option identified in the Pricing Document or a Special Condition of Contract by adding to or deducting from the relevant Cost Centre Value, the amount specified in the Pricing Document; or

(e) any other decision of the Project Manager of an amount or allowance due to the Contractor under the Contract (including without limitation any amount or allowance in respect of any re-measurement of any quantity of work executed by the Contractor as permitted by the Pricing Document) which has not been or will not otherwise be the subject of an interim payment pursuant to Clause 67.2(b), by adding to or deducting from the relevant Cost Centre Value as appropriate the amount or allowance as decided.
66.3  (a) The Project Manager may assess and decide which Cost Centre is to be the relevant Cost Centre for the purpose of Clause 66.2 if and in so far as the same is not identified in the Pricing Document, and shall notify the Contractor upon making any decision.

(b) Notwithstanding Clause 66.2, the Project Manager may decide not to include a sum payable to the Contractor pursuant to the Contract in a Cost Centre Value in which case the Project Manager shall notify the Contractor of the decision and the Contractor may apply for payment of the sum in accordance with Clause 67.1(b).

66.4  If a Milestone is not achieved by the end of the month in which it is scheduled to be achieved, the Project Manager shall follow the procedures set out below when certifying payments:-

(a) all payments relating to the Cost Centre in which the Milestone in question has not been achieved shall be suspended at the amount decided by reference to the percentage appearing for that Cost Centre in the Interim Payment Schedule applicable to the month prior to the month in which the Milestone was due to have been achieved;

(b) payments suspended pursuant to Clause 66.4(a) shall be resumed by being included in the next application for interim payment made after the Milestone is achieved at the percentage of the Cost Centre Value for the relevant Cost Centre appearing in the Interim Payment Schedule applicable to the month in which the Milestone was due to have been achieved; and

(c) in relation to the relevant Cost Centre, the Interim Payment Schedule shall be revised by the Project Manager within twenty-one days of receipt of an application for resumption of payments pursuant to Clause 66.4(b) to take account of:-

(i) the date by which, in the Project Manager's opinion, the Milestone next following the non-achieved Milestone is likely to be achieved;

(ii) any subsequent Milestone which, in the Project Manager's opinion, is not likely to be achieved by its stipulated date; and

(iii) the earliest subsequent Milestone which, in the Project Manager's opinion, is likely to be achieved by its stipulated date

and the Project Manager shall notify the Contractor accordingly.

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

(a) the Project Manager reviews without objection a revised Works Programme containing a change to the sequence and timing of the execution of the Works;

(b) the Project Manager grants an extension of time pursuant to Clause 44;
(c) the Contractor adopts acceleration measures pursuant to Clause 46.4;
(d) the Project Manager instructs a suspension of the Works or any part thereof pursuant to Clause 49;
(e) the Project Manager instructs a variation pursuant to Clause 52;
(f) the Project Manager instructs the expenditure of Provisional Sums or Prime Cost Sums pursuant to Clause 63;
(g) following the suspension of payment pursuant to Clause 66.4(a) the relevant Milestone shall not have been achieved within three months of the date stipulated in the Schedule of Milestones; or
(h) there shall be a significant change in a Cost Centre Value by reason of a decision of the Project Manager in accordance with the Contract,

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

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

(a) interim payments; and
(b) progress of the Works,
established by the Interim Payment Schedule as at the date of the Letter of Acceptance has not been or will not be maintained, then the Project Manager may give fourteen days' notice to the Contractor of his intention to prepare a revised Interim Payment Schedule and/or a revised Schedule of Milestones which will in his opinion restore so far as reasonably practicable the said relationship. On the expiration of the said notice and after considering any representation the Contractor may have made in the meantime the Project Manager shall if he is still of the opinion that revisions ought to be made, revise the Interim Payment Schedule and the Schedule of Milestones in any manner which he sees fit based on the rate of progress of the Works which he anticipates and with the objective of restoring so far as reasonably practicable the said relationship.

66.7 When making any revision to the Interim Payment Schedule in accordance with the Contract, the Project Manager may reduce or extend the period over which interim payments may be made.
67. **Payment Statements**

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

(a) the amount claimed to be payable pursuant to Clause 67.2(a) setting out the percentage of each Cost Centre Value claimed according to the Interim Payment Schedule;

(b) any other amount claimed to be payable pursuant to a decision of the Project Manager identifying the relevant decision; and

(c) any part of amounts claimed in accordance with Clause 67.1(a) and (b) claimed to be payable to Nominated Sub-Contractors setting out each part in respect of each Nominated Sub-Contractor.

67.2 Within twenty-one days following receipt of an application in accordance with Clause 67.1, the Project Manager shall issue to the Employer, with a copy to the Contractor, an interim payment certificate showing the amount payable by the Employer to the Contractor by way of interim payment and identifying any amount payable to any Nominated Sub-Contractor. The interim payment shall be the sum of:-

(a) the amounts shown to be due for the month in respect of which the application is made by reference to the Interim Payment Schedule in accordance with Clause 66; and

(b) the amounts assessed and decided by the Project Manager to be due in respect of:-

(i) Cost incurred, pursuant to Clause 55;

(ii) work executed on a daywork basis, pursuant to Clause 53; and

(iii) any other amount or allowance to which the Contractor is entitled under the Contract save insofar as account has been or will be taken of the amount or allowance by way of a revision of a Cost Centre Value pursuant to Clause 66.2;

less:-

(c) the Retention Money as provided for in Clauses 67.3 to 67.6; and

(d) any amount certified for payment on interim payment certificates previously issued.
67.3 (a) Retention Money:-

(i) up to 10 percent of any amount due to the Contractor from time to time and identified as payable to any Nominated Sub-Contractor shall be retained until there shall be a reserve in the hands of the Employer equal to 5 percent of the total for the time being of the amount added to the relevant Cost Centre Value pursuant to Clause 64.4(a) in respect of the Nominated Sub-Contractor; and

(ii) up to 10 percent of any other amount due to the Contractor from time to time shall be retained until there shall be a reserve in the hands of the Employer equal to 5 percent of the total for the time being of the Cost Centre Values excluding amounts added to that total pursuant to Clause 64.4(a).

(b) If, for any reason, any reserve referred to in Clause 67.3(a) has a value of less than the applicable 5 percent at any time prior to the date of issue of the Completion Certificate for the Works, further Retention Money up to 10 percent of the applicable amount referred to in Clause 67.3(a) shall be retained until the reserve is restored to the applicable 5 percent.

67.4 The Retention Money retained pursuant to Clause 67.3 shall be held by the Employer without obligation to invest it or account for interest thereon or to place it in a designated account.

67.5 (a) Within 21 days of the date of issue of any Completion Certificate for any Section or part of the Works, the Project Manager shall issue to the Employer, with a copy to the Contractor, a retention release certificate entitling the Contractor to be paid by the Employer one quarter of that part of the Retention Money which bears the same proportion to the whole of the Retention Money as the value of the Section or part at the date of the Letter of Acceptance bears to the Contract Sum and identifying any part thereof payable to any Nominated Sub-Contractor. Provided that the aggregate of all sums certified pursuant to this Clause 67.5(a) shall not exceed one quarter of the whole of the Retention Money.

(b) Within 21 days of the date of issue of the Completion Certificate for the Works and achievement of a Category “B” status as defined in the Specification in respect of all as built drawings and operation and maintenance manuals to be submitted by the Contractor under the Contract, the Project Manager shall issue to the Employer, with a copy to the Contractor, a retention release certificate entitling the Contractor to be paid by the Employer one quarter of the whole of the Retention Money (less any sums already certified for release pursuant to Clause 67.5 (a)) and identifying any part thereof payable to any Nominated Sub-Contractor.
(c) Within 21 days after completion of all outstanding works and repairs of defects as specified by the Project Manager in the Completion Certificate for the Works and achievement of a Category “A” status as defined in the Specification in respect of all as built drawings and operation and maintenance manuals to be submitted by the Contractor under the Contract, or within 21 days of the date of issue of the Completion Certificate for the Works (if no outstanding works or defects are specified) and achievement of a Category “A” status as defined in the Specification in respect of all as built drawings and operation and maintenance manuals to be submitted by the Contractor under the Contract, the Project Manager shall issue to the Employer, with a copy to the Contractor, a retention release certificate entitling the Contractor to be paid by the Employer three quarters of the whole of the Retention Money (less any sums already certified for release pursuant to Clauses 67.5 (a) and (b)) and identifying any part thereof payable to any Nominated Sub-Contractor.

67.6 Within 21 days of the date of issue of the final certificate by the Project Manager pursuant to Clause 67.7, the Project Manager shall issue to the Employer, with a copy to the Contractor, a retention release certificate entitling the Contractor to be paid by the Employer the balance of the Retention Money then held by the Employer and identifying any part thereof payable to any Nominated Sub-Contractor.

67.7 Not later than three months after the date of issue of the Defects Liability Certificate the Contractor shall submit to the Project Manager a statement of final account and supporting documentation showing in detail the total amount payable in respect of the Works in accordance with the Contract together with all further sums which the Contractor considers to be due to him under the Contract up to the date of the Defects Liability Certificate and identifying any part of the final account payable to any Nominated Sub-Contractor. Within three months after receipt of this statement of final account and of all information reasonably required for its verification, but in no circumstances earlier than the date of issue of the Defects Liability Certificate, the Project Manager shall issue a final certificate. The said final certificate shall state the Final Contract Sum namely the sum of the Cost Centre Values following their final adjustment and of the amounts finally decided by the Project Manager to be due in respect of the matters identified in Clause 67.2(b) and the final certificate shall identify any part of the Final Contract Sum due to any Nominated Sub-Contractor. From this sum there shall be deducted all amounts previously certified by the Project Manager and all amounts which, in the Project Manager's opinion, are due to the Employer pursuant to, or as a result of breach of, the Contract and the said final certificate shall state the balance, if any, due from the Employer to the Contractor or from the Contractor to the Employer as the case may be. The balance of any payment shall be paid to the Contractor and the balance of any over-payment shall be paid by the Contractor.
67.8 Subject to any deduction, withholding or condition precedent pursuant to the Contract, amounts from time to time certified by the Project Manager shall be paid in Hong Kong by the Employer to the Contractor within twenty-one days after the date of issue of the relevant certificate in accordance with the Contract. Unless otherwise expressly provided, all payments shall be made in Hong Kong dollars and no adjustment shall be made to any payment or to the Final Contract Sum on account of any variation in the exchange rate between the Hong Kong dollar and any other currency.

67.9 If either the Employer or the Contractor fails to make payment of amounts due in accordance with the Contract within twenty-one days after the date of issue of the relevant certificate the Employer shall pay to the Contractor or the Contractor shall pay to the Employer as the case may be simple interest upon any payment overdue at the Contract Rate of Interest.

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

**DEFECTS LIABILITY CERTIFICATE**

68. Defects liability

68.1 Upon the expiry of the Defects Liability Period, or where there is more than one Defects Liability Period, upon the expiry of all of the Defects Liability Periods and when all outstanding work referred to in Clause 50 and all maintenance work referred to in Clause 51 shall have been completed and any warranty required to be assigned pursuant to Clause 5.9 shall have been so assigned and provided always that the Contractor shall have supplied to the Project Manager all documents in compliance with the requirements of the Contract the Project Manager shall issue the Defects Liability Certificate stating the date on which the Contractor shall have completed his obligations.

**REMEDIES AND POWERS**

69. Work by others

69.1 If the Contractor shall fail to execute any work required under or in connection with the Contract or refuse to comply with any instruction in accordance with the Contract within a reasonable time, the Project Manager may give the Contractor fourteen days' notice to execute the work or comply with the instruction. If the Contractor fails to comply with the notice, the Employer shall be entitled to execute the work or implement the instruction by the Employer's own workmen or by third parties. Without prejudice to any other right or remedy, all additional expenditure properly incurred by the Employer in having such work executed or such instruction implemented shall be recoverable by the Employer from the Contractor.
69.2 If by reason of any accident, failure, emergency or other event occurring to, in or in connection with the Airport, the Works or any part thereof either during the execution of the Works or during any Defects Liability Period any remedial or other work or repair shall in the Project Manager's opinion be urgently necessary and the Contractor is unable, unwilling or not available at once to do the work or repair, the Employer may by his own or other workpeople do the work or repair.

69.3 If the work or repair so done by the Employer is work which, in the Project Manager's opinion, the Contractor was liable to do at his own expense under or in connection with the Contract all costs properly incurred by the Employer in so doing shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor.

70. Insolvency or change in control

70.1 If the Contractor (which for the purposes of this Clause 70.1 shall also mean any entity comprising the Contractor) shall be in default in that the Contractor:-

(a) becomes insolvent or has a receiving order made against the Contractor or makes an arrangement or assignment or composition with or in favour of the Contractor's creditors or agrees to carry out the Contract under a committee of inspection of the Contractor's creditors, or goes into liquidation or commences to be wound up, not being a members voluntary winding up for the purpose of amalgamation or reconstruction to which the Employer has given his prior consent, such consent not to be unreasonably withheld, or has a receiver, liquidator, trustee or similar officer appointed over all or any part of the Contractor's undertaking or assets or if distress, execution or attachment is levied on, or if an encumbrancer takes possession of any of the Contractor's assets, or any proceeding or step is taken which has an effect comparable to the foregoing in any relevant jurisdiction;

(b) becomes a subsidiary, within the meaning of the Companies Ordinance (Cap.32) or the equivalent in any relevant jurisdiction of a company of which the Contractor was not a subsidiary on the date of the Letter of Acceptance or if by virtue of any agreement, offer or scheme the Contractor comes under the control of two or more firms or companies acting in concert so that if they were one company the Contractor would be the company's subsidiary; or

(c) is in breach of Clause 4

then the Employer may give notice to the Contractor pursuant to Clause 71.1.
71. Termination

71.1 If the circumstances of default referred to in Clause 70 occur or if the Project Manager shall have certified to the Employer that, in the Project Manager's opinion, the Contractor:-

(a) has abandoned the Contract;

(b) without reasonable excuse has failed to commence the Works pursuant to Clause 41 or has suspended the execution of the Works, any Section or any other part of the Works for fourteen days after receiving from the Project Manager notice to proceed;

(c) despite a written warning by the Project Manager is failing in the Project Manager's opinion to proceed with the Works with due diligence or is persistently or significantly in breach of his obligations;

(d) is in breach of Clauses 12 or 30,

then the Employer may:-

(i) in the circumstances of default referred to in Clause 70, forthwith by notice to the Contractor; or

(ii) in the circumstances of default referred to in this Clause 71.1 (a) to (d), after giving not less than fourteen days' notice to the Contractor of the default, and, by reference to this Clause, requiring the Contractor to remedy such default, and the Contractor throughout such fourteen-day period fails to remedy such default, by further notice terminate the Contractor's employment under the Contract and, if the Contractor is on the Site, enter upon the Site and expel the Contractor from the Project Site or any part thereof without thereby avoiding the Contract or releasing the Contractor from any of his obligations or liabilities or affecting the rights and powers conferred on the Employer or the Project Manager by the Contract. Thereafter, the Employer may execute the Works or any part thereof or may employ any third party to execute the same and the Employer or such third party may use, to execute the same, any of the Contractor's Equipment, Temporary Works and Permanent Works which have become the property of the Employer pursuant to Clauses 58 and 59 and the Employer may at any time sell any of the said Contractor's Equipment, Temporary Works and Permanent Works and apply the proceeds of sale in or towards the satisfaction of any sum due or which may become due to the Employer from the Contractor under or in connection with the Contract.

71.2 If the Employer terminates the Contractor's employment pursuant to this Clause 71 the Contractor shall forthwith assign to the Employer, as instructed by the Employer, the benefit of any agreement for the execution of any work for the purposes of the Contract which the Contractor may have entered into and, if so instructed by the Employer, shall enter into novation agreements, in such form as the Employer may reasonably require, in respect of the said agreements.
71.3 If the Employer terminates the Contractor's employment pursuant to this Clause 71 the Employer shall not be liable to pay to the Contractor any money on account of the Contract until the expiration of the Defects Liability Period or the last Defects Liability Period and thereafter until the cost of completion of the Works pursuant to Clause 71.1, maintenance, damages for delay in completion (if any) and all other expenses incurred by the Employer have been ascertained and the amount thereof certified by the Project Manager. The Contractor shall then be entitled to receive only such sum or sums (if any) as the Project Manager may certify would have been due to the Contractor upon completion of the Works by him after deducting the said amount. If such amount exceeds the sum which would have been payable to the Contractor on completion of the Works by him then the Contractor shall upon demand pay to the Employer the amount of the excess and it shall be deemed to be a debt due by the Contractor to the Employer and shall be recoverable accordingly.

71.4 As soon as may be practicable after any such termination by the Employer the Project Manager shall assess and decide:-

(a) the amount (if any) which had been earned by or would accrue to the Contractor in respect of work actually done by him under or in connection with the Contract; and

(b) the value of any unused or partially used parts of the Permanent Works and any Contractor's Equipment and Temporary Works which had become the property of the Employer pursuant to Clauses 58 and 59

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

72. Recovery of money due to the Employer

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

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

72.3 If, in the Project Manager's opinion, the Employer may claim any deduction pursuant to this Clause 72, the Project Manager may issue a certificate stating his bona fide estimate of amounts deductible and the estimate certified shall bind the Contractor until otherwise agreed or resolved pursuant to the Dispute resolution provisions under the Contract provided that such estimate shall not prejudice such resolution. The Project Manager shall, upon request from the Contractor, give to the Contractor in writing the grounds upon which the Project Manager's opinion was based and reasonable details of the quantification of the estimate certified.

General Conditions of Contract
Building and Civil Works
Issue No.11
FRUSTRATION AND SPECIAL RISKS

73. Frustration

73.1 If the Contract is frustrated whether by war or by any other supervening event which may occur outside the control or reasonable contemplation of the parties the sum payable by the Employer to the Contractor in respect of the work executed shall be the same as that which would have been payable pursuant to Clause 74 if the Contract had been terminated thereunder. The Contract shall not be frustrated by inclement weather conditions of any kind adversely affecting the progress of the Works. The Clauses referred to in the proviso to Clause 74.1 shall continue to have effect notwithstanding the frustration.

74. Special risks

74.1 If, before the Defects Liability Certificate shall have been issued pursuant to Clause 68, there shall be:-

(a) an outbreak of war (whether war be declared or not) in any part of the world which, whether financially or otherwise materially affects the execution of the Works;

(b) an invasion of Hong Kong;

(c) acts of terrorists in Hong Kong;

(d) civil war, rebellion, revolution, insurrection or military or usurped power in Hong Kong;

(e) riot, commotion or disorder in Hong Kong otherwise than amongst the employees of the Contractor or any of his sub-contractors of any tier currently or formerly engaged on the Works;

(f) ionising radiation, or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, unless the source or cause of the radiation, radioactivity or other hazard is brought to or near the Site by the Contractor or any of his sub-contractors of any tier; or

(g) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds

(referred to in this Clause 74 as the "special risks"), the Contractor shall, unless and until the Contract is terminated pursuant to this Clause 74 use his best endeavours to:-

(h) continue with the execution of the Works in accordance with the Contract;

(i) submit for review, pursuant to Clause 8, proposals setting out the manner in which the Contractor proposes to complete the execution of the Works; and
(j) if the proposals are reviewed without objection, complete the execution of the Works in accordance therewith

provided that the Employer shall be entitled, at any time after occurrence of any of the special risks, to terminate the Contract (with the exception of the provisions of Clauses 27, 29, this Clause 74, the Dispute resolution provisions and any other provision which is expressly stated to survive termination of the Contract or is necessary for interpretation of the aforesaid Clauses or in relation to work executed prior to termination) by giving notice to the Contractor. Upon the notice being given, the Contract shall terminate but without prejudice to the claims of either party in respect of any antecedent breach thereof.

74.2 If there is a termination pursuant to the proviso to Clause 74.1, the Contractor shall make safe the Site and with all reasonable despatch remove all Contractor's Equipment and Temporary Works.

74.3 If there is a termination in accordance with the proviso to Clause 74.1, the Contractor shall be paid by the Employer, in so far as such items have not already been covered by interim payments made to the Contractor:

(a) the total of the value of all work executed prior to the date of termination;

(b) the Cost of any part of the Permanent Works or services properly ordered for the Works for which the Contractor shall have paid or for which the Contractor is legally bound to pay and on such payment by the Employer the part of the Permanent Works or product of the services so paid for shall become the property of and shall be delivered to the Employer; and

(c) a sum to be certified by the Project Manager in respect of the Cost incurred by the Contractor in the expectation of completing the Works in so far as the Cost shall not have been paid in accordance with any other provision of this Clause 74.

74.4 Whether the Contract shall be terminated pursuant to this Clause 74 or not, the following provisions shall apply, or be deemed to have applied, as from occurrence of any of the special risks, notwithstanding anything expressed in or implied by the other terms of the Contract:

(a) the Contractor shall have no liability whatsoever, by way of indemnity or otherwise, for or in respect of damage to parts of the Works on the Project Site or to property (other than parts of the Works off the Project Site, property of the Contractor including property temporarily vested in the Employer pursuant to Clause 58 or property hired by the Contractor for the purposes of executing the Works) whether of the Employer or of third parties or for or in respect of injury or loss of life to persons which damage, injury or loss is the consequence whether direct or indirect of the occurrence of any of the special risks and the Employer shall indemnify the Contractor against all liability whatsoever in respect thereof or in relation thereto;
(b) if the Works are destroyed or damaged by reason of any of the special risks the Contractor shall nevertheless make good the destruction or damage so far as may be necessary for the execution of the Works or for safety. If, in compliance with his obligations pursuant to this Clause 74, the Contractor is prevented from achieving any Stage or substantially completing the Works or any Section by the relevant Key Date or incurs Cost in making good under this Clause 74.4(b) which the Contractor did not and had no reason to anticipate then, if the Contractor claims additional time and/or payment therefor, the Project Manager shall give a decision pursuant to Clause 44 and/or (in relation to the said making good only) Clauses 54 and/or 55;

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

SETTLEMENT OF DISPUTES

75. Settlement of Disputes

75.1 Any Dispute shall be settled in accordance with this Clause 75.

75.2 For the purpose of the following provisions of this Clause 75, any Dispute shall be deemed to arise when either the Contractor serves a notice on the Employer or the Employer serves a notice on the Contractor, in each case stating the nature of the Dispute. A Dispute shall be deemed not to have arisen in the absence of the service of such a notice.

75.3 Within thirty days of receipt by the Employer or the Contractor, as the case may be, of a notice pursuant to Clause 75.2, the Project Manager shall assess and decide the Dispute and give notice of his decision to the Employer and the Contractor.

75.4 Unless the Contract has by then been terminated or abandoned or the Employer has exercised his rights pursuant to Clause 71, the Contractor shall in every case continue to proceed with the Works in accordance with the Contract regardless of the nature of the Dispute provided that the Employer and the Contractor shall give effect forthwith to every decision of the Project Manager pursuant to Clause 75.3 which shall be final and binding except and to the extent that it shall have been revised by agreement or an arbitral award.

75.5 If:

(a) the Project Manager fails to give a decision or notice pursuant to Clause 75.3; or

(b) either the Contractor or the Employer is dissatisfied with a decision of the Project Manager pursuant to Clause 75.3,

then either the Contractor or the Employer may within thirty days thereafter give notice to the other party requesting that the Dispute be referred to mediation ("Request for Mediation") in accordance with and subject to the mediation provisions contained in the Mediation Rules. Upon service of a Request for
Mediation, the Dispute shall be considered in accordance with and subject to the Mediation Rules, and each party shall comply with the requirements of the Mediation Rules and shall make a bona fide attempt to resolve the Dispute by mediation.

75.6 Within 30 days of the conclusion or termination of the mediation referred to in Clause 75.5 in accordance with the Mediation Rules, but not otherwise, either party may refer such Dispute to arbitration subject to the following provisions of this Clause 75.

75.7 For the purposes of Clause 75.5, a bona fide attempt to resolve the Dispute by mediation shall be deemed to have been made provided the following minimum steps have been taken:

(a) a mediator has been appointed; and

(b) either party has attended at least one meeting with the mediator (whether with or without the presence of the other party).

75.8 Save in cases where the Works are abandoned and save as provided for in Clause 75.9 and in Article 1 of the Arbitration Rules, no steps shall be taken in any reference of a Dispute to arbitration until after the substantial completion or alleged substantial completion of the Works except with the written consent of the Contractor and the Employer, provided that:

(a) the giving of a Completion Certificate for the Works shall not be a condition precedent to taking any step in the reference; and

(b) no decision given by the Project Manager in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before an arbitrator on any matter whatsoever relevant to a Dispute so referred to arbitration as aforesaid.

75.9 In the case of any Dispute as to the exercise of the Employer’s rights pursuant to Clause 71, the reference to the arbitrator may proceed notwithstanding that the Works shall not then be or be alleged to be substantially complete.

75.10 Subject to Clause 75.12, reference of a Dispute to arbitration shall be conducted in accordance with the Arbitration Rules. Sections 3, 4, 5, 6 and 7 of Schedule 2 of the Arbitration Ordinance (Cap. 609) shall apply to such arbitration.

75.11 Save as otherwise provided, the arbitrator shall have full power to direct such valuation as may, in his opinion, be desirable in order to determine the rights of the parties and to ascertain and award any sum which ought to have been the subject of or included in any certificate and to open up, review and revise any notice, withholding of permission or consent, certificate, instruction, request or decision of the Project Manager relating to the Dispute. The arbitrator shall have full power to order the rectification of the Contract subject to any rule of law which would restrict this power.
75.12 The Employer may by notice to the Contractor require that:

(a) any Dispute referred to arbitration pursuant to this Clause 75 shall be referred to the arbitrator appointed or to be appointed in the arbitration of any dispute or difference in connection with the Works (whether or not relating to issues similar to those in the Dispute) between the Employer and any party other than the Contractor; or

(b) any dispute or difference in connection with the Works (whether or not relating to issues similar to those in the Dispute) between the Employer and any party other than the Contractor shall be referred to the arbitrator appointed or to be appointed in the arbitration of any Dispute referred pursuant to this Clause 75,

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

75.13 Subject to the foregoing provisions of this Clause 75, the Contractor and the Employer agree to submit to the non-exclusive jurisdiction of the Courts of Hong Kong. Without prejudice to the generality of their powers, the Courts of Hong Kong shall have power to direct such valuations as may, in their opinion, be desirable in order to determine the rights of the parties and to ascertain and award any sum which ought to have been the subject of or included in any certificate and to open up, review and revise any notice, withholding of permission or consent, certificate, instruction, request or decision of the Project Manager relating to the Dispute and to determine all matters in dispute in the same manner as if no such notice, withholding of permission or consent, certificate, instruction, request or decision had been given, issued or made.

NOTICES

76. Service of notices

76.1 Any document arising under, out of or in connection with the Contract shall be served on the Employer or the Contractor at the address stated in the Articles of Agreement, or such other address in Hong Kong as may be notified to the other party, expressly for the purpose of service of documents. Service of documents may be by hand or by post or, subject to Clause 76.2, by facsimile.

76.2 Documents may be served by facsimile only if the recipient has previously notified the other party that he is prepared to accept service of documents or a document in that fashion. It shall be a condition of valid service by facsimile that a hard copy be served on the recipient pursuant to Clause 76.1 within seven days.
DEFAULT

77. Default of Employer to pay

77.1 If the Employer fails to pay the Contractor any amount due to be paid to the Contractor by the Employer within two months of the last date upon which the same ought to have been paid in accordance with the Contract then provided that after the expiry of the said two-month period the Contractor shall have given the Employer notice requesting the payment to be made and the Employer shall have remained in default for a further fourteen days the Contractor shall be entitled without prejudice to any other right or remedy to suspend the execution of the Works or to terminate the Contract by giving further notice to the Employer. The bona fide exercise or purported exercise by the Employer of either a right of set-off or counter-claim or a right under or in connection with the Contract to deduct amounts from monies otherwise due shall not be treated as a failure by the Employer to make a payment for the purposes of this Clause 77.1.

77.2 Upon the giving of such further notice the property in all Contractor's Equipment and Temporary Works brought upon the Project Site by the Contractor shall thereupon re-vest in the Contractor and the Contractor shall with all reasonable despatch remove the same from the Project Site.

77.3 In the event of such termination the Employer shall be under the same obligations to the Contractor in regard to payment as if the Contract had been terminated pursuant to the provisions of Clause 74.1 (and the same provisions shall survive) but in addition to the payments specified in Clause 74.3 the Employer shall pay to the Contractor the amount of any loss or damage to the Contractor arising out of or in connection with or by consequence of such termination.

OPTIONS

78. Exercise of Options

78.1 The Project Manager may exercise an Option in whole or in part by instructing the Contractor to execute the work, or part thereof, comprised therein at any time within the period identified for so doing within the Specification.

78.2 If the Project Manager exercises an Option in whole or in part in accordance with this Clause, the Contractor shall carry out the work comprised therein subject to and in accordance with the Contract as if it had at all times formed part of the Works and all provisions of the Contract shall apply to the Works incorporating the work under the Option.

78.3 Upon the exercise of an Option, the Cost Centre Values, Sections, Stages, and Key Dates, together with such other matters as may be identified, shall be adjusted as identified in the Pricing Document and the Specification in respect of such Option. The Contractor shall not be entitled to any extension of time to any Key Date or to any payment of Cost or any other financial compensation by reason of the exercise of an Option, except as expressly provided in the Pricing Document or the Specification.
78.4 The work comprised within an Option which the Project Manager does not exercise shall not form part of the Works and the Contractor shall not be entitled to any payment for or in connection with such Option or the work comprised therein.

78.5 If the Project Manager exercises an Option, the limit for general and liquidated damages for delay stated in Appendix 1 to the Form of Tender (if any) shall be increased by 10% of the value of the Option identified in the Pricing Document.

INTERFACE ISSUES

79. Claims between contracts

79.1 The Contractor shall not be entitled to claim any extension of time, additional payment or any other compensation whatsoever in connection with the Contract in respect of or arising from any matters for which the Contractor is responsible under any other contract between the Employer and the Contractor.

80. Compulsory access for Other Contractors

80.1 Without prejudice to any other rights or remedies of the Employer or any other power of the Project Manager, if the Contractor is in breach of his obligation to achieve any Stage or substantially complete the Works or any Section thereof by the relevant Key Date the Project Manager may at any time serve a notice on the Contractor which specifies:

(a) the name(s) of the Other Contractor(s) (which may, for the purposes of this Clause 80, include persons who are sub-contractors of the Contractor for works other than the Works) who require access to that Section or part of the Works to carry out other work;

(b) the part of the Site to which access is required; and

(c) the date from which the Contractor shall start to allow access in accordance with this Clause.

80.2 After the Project Manager's service of a notice pursuant to Clause 80.1:

(a) the Contractor shall continue to execute the Works whilst allowing the Other Contractor(s) to have access in accordance with the notice;

(b) the Contractor shall have no claim for compensation in respect of any delay, disruption or expense whatsoever which the Contractor may suffer as a consequence of compliance with his obligations under this Clause; and

(c) the Contractor shall co-operate and co-ordinate with the Project Manager and the Other Contractor(s) to allow the Other Contractor(s) to execute their works in the most efficient manner which the circumstances may permit.
PERSONAL DATA

81. Personal Data (Privacy) Ordinance (Chapter 486, Laws of Hong Kong) ("PDPO")

81.1 The Contractor confirms that:

(a) it has obtained appropriate consents from all individuals ("Data Subjects") in accordance with PDPO before the Contractor supplies the Data Subjects’ Personal Data to the Employer from time to time for the purposes of implementation; administration; management; and executing the Works of this Contract;

(b) each of the Data Subjects fully understands the extent of the Personal Data supplied to the Employer, agrees to the purposes for which the Personal Data are used, and agrees that the Personal Data may be transferred to third parties including the Employer's employees, the Employer's insurers, the Employer's design consultants, Aviation Security Company Limited, relevant Government departments/authorities for such purposes; and

(c) it is duly authorized to receive on behalf of the Data Subjects any data protection notices.

81.2 The Contractor shall and shall procure its employees, sub-contractors, agents and consultants involved in the performance of the Contract to comply with the data protection principles in accordance with the PDPO and the codes of practice and/or guidelines issued from time to time by the Office of the Commissioner for Data Privacy, Hong Kong.

81.3 The Contractor shall take all necessary measures and actions to protect the Personal Data which may be collected, handled or processed by the Contractor under this Contract, including without limitation:

(a) not to collect Personal Data which is unnecessary or excessive for the purpose of executing the Works;

(b) not to use, disclose or transfer the Personal Data for any purpose other than the purpose of executing the Works;

(c) to ensure that the Personal Data are protected against unauthorized or accidental access, processing, erasure, loss or use;

(d) to ensure that the Personal Data and any copy thereof (in whatever format) shall be timely returned to the Employer, destroyed or deleted in accordance with the instructions of the Employer when such data is no longer necessary for the purpose for which the data is used;
(e) not to sub-contract any of the Works without the Project Manager’s prior written consent and if the consent is granted, it will be subject to such conditions as the Project Manager may impose, including without limitation that the Contractor shall impose the same obligations in relation to protection of the Personal Data on the sub-contractor and that notwithstanding the sub-contract, the Contractor shall remain fully liable to the Employer for fulfilment of its obligations under the Contract;

(f) to immediately report to the Employer if there is any sign of abnormalities (e.g. audit trail showing unusual frequent access of the Personal Data by an employee of the Contractor at odd hours) or if there is any incident of security breach (e.g. unauthorised disclosure or loss of Personal Data) and to submit a written report to the Employer within 7 days thereafter with full details thereof;

(g) to establish and implement appropriate privacy policy, procedures and effective security measures for personal data protection;

(h) to provide sufficient training to its employees in respect of personal data protection;

(i) to provide such information and assistance to the Employer as it may reasonably require in order that the Employer can inspect, monitor and audit the compliance by the Contractor of its obligations under this Clause 81.3 and can perform any activity which is necessary or required for compliance with the PDPO;

(j) to ensure that its employees, sub-contractors, agents and consultants involved in the performance of the Contract will take all necessary measures and actions to protect the Personal Data in accordance with this Clause 81.3; and

(k) to indemnify the Employer against any and all actions, damages, claims, demands, costs and expenses arising from or incurred by reason of the act, negligence or omission by the Contractor or any of its employees, sub-contractors, agents and consultants in connection with the performance of the Contract; and any breach, non-observance or non-compliance by the Contractor or any of its employees, sub-contractors, agents and consultants of the obligations under this Clause 81.3.
SCHEDULE 1

ARTICLES OF AGREEMENT
[this page not used]
CONTRACT [NUMBER] – [CONTRACT TITLE]
ARTICLES OF AGREEMENT

THIS AGREEMENT is made the [Date] day of [Month and Year].

BETWEEN

(1) THE AIRPORT AUTHORITY of HKIA Tower, 1 Sky Plaza Road, Hong Kong International Airport, Lantau, Hong Kong (together with its successors and assigns, "the Employer"); and

(2) [ ] a company incorporated in and in accordance with the laws of [ ] of [ ] (and [ ] a company incorporated in and in accordance with the laws of [ ] of [ ]) [See Note 1] ("the Contractor").

WHEREAS

(A) The Employer requires the Works to be executed and has accepted the Tender.

(B) The Contractor has (jointly and severally) [See Note 1] agreed to execute the Works.

NOW IT IS HEREBY AGREED AS FOLLOWS:-

1. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby (jointly and severally) [See Note 1] covenants with the Employer to execute the Works in accordance with the Contract.

2. The Employer hereby covenants to pay to the Contractor in consideration of the execution of the Works the Final Contract Sum or such other sums as may be payable to the Contractor in accordance with the Contract at the times and in the manner prescribed by the Contract.

3. The Contract comprises the entire agreement between the parties hereto relating to the transactions provided for therein and supersedes any previous agreements between the parties relating thereto or any part thereof. Save to the extent that any statement, condition, qualification, warranty, representation or undertaking made in the Tender, or in any discussion or correspondence thereon or relating thereto, is expressly incorporated in the Contract, the same is not so incorporated and is hereby withdrawn.

4. The Employer's address for service of documents shall be the address first referred to above and the Contractor's address for service of documents shall be [ ] Hong Kong [See Note 2].

5. Words and expressions used in these Articles of Agreement shall have the same meaning as are respectively assigned to them in clause 1 of the General Conditions attached hereto.
IN WITNESS WHEREOF this Agreement has been executed and delivered as a deed the day and year first above written.

THE COMMON SEAL of
THE AIRPORT AUTHORITY
was affixed hereto and authenticated by

Mr. [name]
as [title]
of the Airport Authority

THE COMMON SEAL of
[Name of the Contractor]
was affixed hereto in the presence of
Mr. [name]
as [title]
[name of the Contractor]

OR

EXECUTED and DELIVERED as a DEED
and SIGNED
by [name] [capacity]
and [name] [capacity]
for and on behalf of
[name of the Contractor]

Witnessed by:

Signature: __________________________

Full Name: __________________________

Address: __________________________
__________________________
__________________________

[See Notes 1 and 3 to 6]
Notes (for preparation of but not inclusion in the engrossment of the Articles of Agreement):-

1. If the Contractor comprises a partnership, consortium or other multi-partite body, liability shall be joint and several. Each member must execute these Articles and the bracketed words shall be included as appropriate. Foreign corporations shall be described appropriately.

2. The address for service shall be in Hong Kong.

3. The Articles of Agreement shall be executed under seal or as a deed by the Contractor.

4. This may be done either by:
   (1) affixing the Common Seal of the Contractor in the presence of authorized signatories in accordance with the Articles of Association or other constitutional documents of the Contractor, or executed and delivered as a deed pursuant to section 127 of the Companies Ordinance (Cap. 622);
   or
   (2) by execution under seal by an attorney appointed by a valid and binding Power of Attorney given by the Contractor in accordance with its Articles of Association or other constitutional documents.

5. The following documents shall be submitted with the executed Articles of Agreement:
   (1) if executed by affixing the Common Seal or executed and delivered as a deed:-
       (a) a certified copy of the Board Resolution of the Contractor authorizing the execution of the Articles of Agreement and, if applicable, the use of Common Seal of the Contractor;
       (b) a certified copy of extract of provisions of the Contractor’s Articles of Association governing the quorum for directors’ meeting and, if applicable, execution of documents under Common Seal; and
       (c) a certified copy of the latest Annual Return of the Contractor and, if applicable, with updated information.
   (2) if executed by an attorney on behalf of the Contractor:-
       (a) a certified copy of the Power of Attorney with the Contractor’s Common Seal affixed thereto by which the attorney is appointed by the Contractor to execute the Articles of Agreement on its behalf;
       (b) a certified copy of extract of provisions of the Contractor’s Articles of Association governing the appointment of the attorney;
       (c) a certified copy of the Board Resolution of the Contractor authorizing the execution of the Power of Attorney and the use of Common Seal of the Contractor;
(d) a certified copy of extract of provisions of the Contractor’s Articles of Association governing the quorum for directors’ meeting and execution of documents under Common Seal; and

(e) a certified copy of the latest Annual Return of the Contractor and, if applicable, with updated information.

(3) If the Contractor is incorporated outside of Hong Kong, a legal opinion in the form required by the Employer shall be provided confirming the validity of the execution of the Articles of Agreement and of any Power of Attorney.

6. If the Articles of Agreement is executed by an attorney, the execution clause shall be replaced as follows:-

SIGNED SEALED AND DELIVERED  
by  
the lawful attorney of the Contractor  
in the presence of:-  

)  
)  
)  
)
SCHEDULE 2

FORM OF CONTRACTOR'S BOND
[this page not used]
FORM OF CONTRACTOR'S BOND

BY THIS BOND dated the [Date] day of [Month and Year].

[ ] a company incorporated in and in accordance with the laws of [ ] of [ ] [See Note 1] ("the Bondsman") is irrevocably and unconditionally bound to the Airport Authority of HKIA Tower, 1 Sky Plaza Road, Hong Kong International Airport, Lantau, Hong Kong (together with its successors and assigns, "the Employer") in the sum of [ ] Hong Kong Dollars (HK$[ ]) ("the Bonded Sum") for payment of which sum the Bondsman binds himself in accordance with the provisions of this Bond.

WHEREAS

(A) By a contract reference [Contract Number] – [Contract Title] dated [ ] ("the Contract") made between the Employer and [the name of Contractor] ("the Contractor"), the Contractor has agreed to execute the Works (as defined in the Contract) and upon the terms contained in the Contract.

(B) Pursuant to the terms of the Contract, the Contractor agreed to procure the provision to the Employer of a bond in the terms hereof.

NOW THE TERMS of this Bond are:-

1. Where applicable, words and expressions used in this Bond shall have the meaning assigned to them in the Contract.

2. The Bondsman hereby irrevocably and unconditionally undertakes to pay to the Employer upon receipt from the Employer of a written demand substantially in the form attached hereto as Schedule 1 signed on behalf of the Employer an amount equal to the lesser of:

(a) the amount specified in such demand; and

(b) the Bonded Sum less the aggregate of all previous payments made under this Bond.

3. The liability of the Bondsman under this Bond shall remain in full force and effect and shall not be affected or discharged in any way by, and the Bondsman hereby waives notice of:-

(a) any suspension of the Works or variation to or amendment of the Works or the Contract (including without limitation extension of time for performance and adjustment to the amount payable to the Contractor under the Contract);

(b) the termination of the Contract or of the employment of the Contractor under the Contract;

(c) any forbearance or waiver of any right of action or remedy the Employer may have against the Contractor, or negligence by the Employer in enforcing any such right of action or remedy;
(d) any other bond, security or guarantee held or obtained by the Employer for any of the obligations of the Contractor under the Contract or any release or waiver thereof;

(e) any act or omission of the Contractor pursuant to any other arrangement with the Bondsman;

(f) the issue of any Stage Certificate or Completion Certificate;

(g) any breach of the Contract by or other default of the Employer;

(h) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable; and

(i) any other action, event or condition which, but for this provision, would operate by law to discharge the Bondsman from liability under this Bond.

4. The liability of the Bondsman under this Bond shall cease on whichever of the following events first occurs:-

(a) payment by the Bondsman of the Bonded Sum in full to the Employer;

(b) issue of the Defects Liability Certificate or [Date], whichever is the first to occur; or

(c) return of the Bond by the Employer to the Contractor.

5. The Employer may make one or more demands hereunder.

6. The Bondsman acknowledges that the Employer shall be entitled to assign the benefit of this Bond or any part thereof, any interest therein or thereunder and any right thereunder, whether past, existing or future, without the prior written consent of the Bondsman, or the Contractor being required.

7. All documents arising out of or in connection with this Bond shall be served upon the Bondsman, at [                    ] Hong Kong [See Note 2].

8. The Employer and the Bondsman may change their respective nominated addresses for service of documents to another address in Hong Kong by providing not less than five business days' written notice to each other.

9. All demands and notices shall be in writing and in English.
10. This Bond shall be governed by and construed according to the laws for the time being in force in the Hong Kong Special Administrative Region ("Hong Kong") and the Bondsman agrees to submit to the non-exclusive jurisdiction of the courts of Hong Kong.

IN WITNESS whereof this Bond has been executed and delivered as a deed on the date first above written.

THE COMMON SEAL OF
[name of the Bondsman] was affixed hereto in the presence of:-

_________________________
Mr. [Name], [Title]

OR

EXECUTED and DELIVERED as a DEED by [name] [capacity] and [name] [capacity] for and on behalf of [name of the Bondsman]

Witnessed by:

Signature: __________________________

Full Name: __________________________

Address: __________________________

________________________
[See Notes 3 and 4]
[Date]

To: [Bondsman’s name]
    Hong Kong

For the attention of: [name]

Dear Sirs,

Contract for [Contract Description] at the
Hong Kong International Airport at Chek Lap Kok
Bond

1. We refer to the Bond No. [ ] dated [ ].

2. Terms defined in the above Bond have the same meaning when used in this demand.

3. We confirm that the Contractor is in default of one or more of the Contractor's obligations under the Contract.

4. We now demand immediate payment of HK$[figure] ([words] Hong Kong dollars).

5. We confirm that the signatory of this letter is authorised by the Employer to make this demand on behalf of the Employer.

6. This demand is governed by Hong Kong law.

Yours faithfully,

……………………..
for and on behalf of
Airport Authority
NOTES FOR GUIDANCE IN PREPARATION OF BOND BY BONDSMAN

These notes are prepared in order to assist the Bondsman in the preparation of the Contractor's Bond and cross refer to the note references contained in the draft Bond. The note references contained in the draft Bond shall be deleted from the engrossment of the Bond when prepared by the Bondsman.

NOTE 1

1. The place of incorporation of the Bondsman shall be inserted together with:
   (1) its registered address in the place of incorporation; and
   (2) the address of its place of business in Hong Kong.

NOTE 2

1. The address for service of notices and demands on the Bondsman shall be in Hong Kong and, preferably, at the Bondsman's place of business in Hong Kong.

NOTE 3

1. The Contractor's Bond shall be executed under seal or as a deed by the Bondsman.

2. This may be done either by:
   (1) affixing the Common Seal of the Bondsman in the presence of authorised signatories in accordance with the Articles of Association or other constitutional documents of the Bondsman, or executed and delivered as a deed pursuant to section 127 of the Companies Ordinance (Cap. 622); or
   (2) by execution under seal by an attorney appointed by a valid and binding Power of Attorney given by the Bondsman in accordance with its Articles of Association or other constitutional documents.

3. The following documents shall be submitted with the executed Bond:
   (1) if executed by affixing the Common Seal or executed and delivered as a deed:-
      (a) a certified copy of the Board Resolution of the Bondsman authorizing the execution of the Contractor's Bond and, if applicable, the use of Common Seal of the Bondsman;
      (b) a certified copy of extract of provisions of the Bondsman's Articles of Association governing the quorum for directors' meeting and, if applicable, execution of documents under Common Seal; and
      (c) a certified copy of the latest Annual Return of the Bondsman and, if applicable, with updated information.
(2) if executed by an attorney on behalf of the Bondsman:

(a) a certified copy of the Power of Attorney with the Bondsman’s Common Seal affixed thereto by which the attorney is appointed by the Bondsman to execute the Contractor’s Bond on its behalf;

(b) a certified copy of extract of provisions of the Bondsman’s Articles of Association governing the appointment of the attorney;

(c) a certified copy of the Board Resolution of the Bondsman authorizing the execution of the Power of Attorney and the use of Common Seal of the Bondsman;

(d) a certified copy of extract of provisions of the Bondsman’s Articles of Association governing the quorum for directors’ meeting and execution of documents under Common Seal; and

(e) a certified copy of the latest Annual Return of the Bondsman and, if applicable, with updated information.

(3) if the Bondsman is incorporated outside of Hong Kong, a legal opinion in the form required by the Employer shall be provided confirming the validity of the execution of the Contractor’s Bond and of any Power of Attorney.

4. If the Contractor’s Bond is executed by an attorney, the execution clause shall be replaced as follows:-

SIGNED SEALED AND DELIVERED )
by )
the lawful attorney of the Bondsman )
in the presence of:- )
SCHEDULE 3

FORM OF PARENT COMPANY GUARANTEE
FORM OF PARENT COMPANY GUARANTEE

THIS GUARANTEE is made the [Date] day of [Month and Year].

BY:

(1) [ ] a company incorporated in and in accordance with the laws of [ ] of [ ] (and [ ] a company incorporated in accordance with the laws of [ ] of [ ]) [See Note 1] ("the Guarantor");

TO:

(2) The Airport Authority of HKIA Tower, 1 Sky Plaza Road, Hong Kong International Airport, Lantau, Hong Kong (together with its successors and assigns, "the Employer").

WHEREAS

(A) By a contract reference [Contract Number] – [Contract Title] dated [ ] ("the Contract") made between the Employer and [the name of Contractor] ("the Contractor"), the Contractor has agreed to execute the Works (as defined in the Contract) and upon the terms contained in the Contract.

(B) Pursuant to the terms of the Contract, the Contractor agreed to procure the provision of a guarantee in the terms hereof. [See Note 2]

(C) At the request of the Contractor, the Guarantor has (jointly and severally) [See Note 1] agreed to guarantee performance of the Contract by the Contractor [See Note 3] as set out herein.

IT IS HEREBY AGREED AS FOLLOWS:-

1. Where applicable, words and expressions used in this Guarantee shall have the meaning assigned to them in the Contract.

2. In consideration of the Employer accepting this Guarantee pursuant to the Contract, the Guarantor (jointly and severally) [See Note 1] irrevocably and unconditionally guarantees to the Employer as a primary obligation and not as a surety due performance by the Contractor of all of his obligations and liabilities under and arising out of the Contract save that nothing herein shall be construed as imposing greater obligations or liabilities on the Guarantor than are imposed on the Contractor by the Contract.

3. The obligations of the Guarantor under this Guarantee shall remain in full force and effect and shall not be discharged in any way by and the Guarantor hereby waives notice of:-

(a) any suspension of the Works or variation to or amendment of the Works or the Contract (including without limitation extension of time for performance and adjustments to the amount payable to the Contractor under the Contract);
(b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;

(c) the termination of the Contract or of the employment of the Contractor under the Contract;

(d) any forbearance or waiver of any right of action or remedy the Employer may have against the Contractor or negligence by the Employer in enforcing any such right of action or remedy;

(e) any bond, security or other guarantee held or obtained by the Employer for any of the obligations of the Contractor under the Contract or any release or waiver thereof;

(f) any breach of the Contract by or other default of the Employer; and

(g) any other action, event or condition which, but for this provision, would operate by law to discharge the Guarantor from liability under this Guarantee.

4. This Guarantee shall extend to any variation of or amendment to the Contract and to any agreement supplemental thereto agreed between the Employer and the Contractor and the Guarantor hereby authorises the Employer and the Contractor to make any such amendment, variation or supplemental agreement.

5. This Guarantee is a continuing guarantee and accordingly shall cover all of the obligations and liabilities of the Contractor under and arising out of the Contract and remain in full force and effect until all the said obligations and liabilities of the Contractor shall have been carried out, completed and discharged in accordance with the Contract. This Guarantee is in addition to any other security which the Employer may at any time hold and may be enforced without first having recourse to any such security or taking any steps or proceedings against the Contractor.

6. Until the date of issue of the Defects Liability Certificate, the Guarantor shall not on any ground whatsoever make any claim or threaten to make any claim whether by proceedings or otherwise against the Contractor nor, if the Contractor comprises more than one entity, against any such entity for the recovery of any sum paid by the Guarantor pursuant to this Guarantee. Any such claim shall be subordinate to any claims (contingent or otherwise) which the Employer may have against the Contractor and/or any entity as aforesaid arising out of or in connection with the Contract until such time as the Employer's claims shall be satisfied by the Contractor and/or any entity as aforesaid or the Guarantor as the case may be. To that intent the Guarantor shall not claim or have the benefit of any security which the Employer holds or may hold for any monies or liabilities due or incurred by the Contractor and/or any entity as aforesaid to the Employer and, in case the Guarantor receives any sum from the Contractor and/or any entity as aforesaid in respect of any payment by the Guarantor hereunder, the Guarantor shall hold such sum in trust for the Employer for so long as any sum is payable (contingently or otherwise) under this Guarantee.
7. (a) The Employer shall be entitled, with the prior written consent of the Guarantor, (such consent not to be unreasonably withheld or delayed) to assign or transfer the benefit of this Guarantee or any part thereof, any interest therein or thereunder and any right thereunder, whether past, existing or future, to any third party.

(b) In the event of any assignment or transfer by the Employer in accordance with clause 7(a) above, the assignee or transferee shall from the date thereof have the same rights, powers and remedies as it would have had if it had at all times been the Employer under this Guarantee. Without prejudice to the generality of the foregoing, all losses, costs, demands, claims proceedings or any other right or benefit whatsoever, (whether past, present or future) of the Employer related to or in any way connected with or arising out of this Guarantee, shall be deemed to be those of any assignee or transferee of the Employer.

8. All documents arising out of or in connection with this Guarantee shall be served upon the Guarantor, at [ _____ ], Hong Kong [See Note 4].

9. The Employer and the Guarantor may change their respective nominated addresses for service of documents to another address in Hong Kong by providing not less than five business days' written notice to each other.

10. All demands and notices shall be in writing and in English.

11. This Guarantee shall be governed by and construed according to the laws for the time being in force in the Hong Kong Special Administrative Region ("Hong Kong") and the Guarantor agrees to submit to the non-exclusive jurisdiction of the courts of Hong Kong.

IN WITNESS whereof this Guarantee has been executed and delivered as a deed on the date first before written.

THE COMMON SEAL of
[_____] was affixed hereto in the presence of:-

Mr. [Name], [Title]

OR

EXECUTED and DELIVERED as a DEED and SIGNED by [name] [capacity] and [name] [capacity] for and on behalf of [name of the Guarantor]

Witnessed by:

Signature: ___________________________
Name: ___________________________
Address: ___________________________

[See Notes 1 and 5]
NOTES FOR GUIDANCE IN PREPARATION OF GUARANTEE BY GUARANTOR

These notes are prepared in order to assist the Guarantor in the preparation of the Guarantee and cross refer to the note references contained in the draft Guarantee. The note references contained in the draft Guarantee shall be deleted from the engrossment of the Guarantee when prepared by the Guarantor.

NOTE 1

1. If more than one company executes this Guarantee in respect of the Contractor or any entity comprising the Contractor (e.g. because the Contractor or any entity has more than one parent company) the Guarantors under the Guarantee shall have joint and several liability and the square brackets shall be deleted.

2. If only one party is acting as Guarantor under the Guarantee, the square brackets and the words within, relating to the second Parent Company and joint and several liability, should be deleted.

NOTE 2

1. If the Contractor comprises more than one legal entity, a Guarantee in this form shall be provided in respect of each entity.

NOTE 3

1. If the circumstances referred to under Note 2 apply, and the Contractor comprises more than one legal entity, the Guarantor shall guarantee the performance of the Contractor as a whole because each entity comprising the Contractor shall have joint and several liability for the acts and omissions of the Contractor as a whole.

NOTE 4

1. The address for service shall be in Hong Kong.

NOTE 5

1. Each entity comprising the Guarantor shall execute the Guarantee under seal or as a deed.

2. This may be done either by:

   (1) affixing the Common Seal of the Guarantor in the presence of authorised signatories in accordance with the Articles of Association or other constitutional documents of the Guarantor, or executed and delivered as a deed pursuant to section 127 of the Companies Ordinance (Cap. 622); or

   (2) by execution under seal by an attorney appointed by a valid and binding Power of Attorney given by the Guarantor in accordance with its Articles of Association or other constitutional documents.
3. The following documents shall be submitted with the executed Guarantee:

(1) if executed by affixing the Common Seal or executed and delivered as a deed:-

(a) a certified copy of the Board Resolution of the Guarantor authorizing the execution of the Guarantee and, if applicable, the use of Common Seal of the Guarantor;

(b) a certified copy of extract of provisions of the Guarantor's Articles of Association governing the quorum for directors' meeting and, if applicable, execution of documents under Common Seal; and

(c) a certified copy of the latest Annual Return of the Guarantor and, if applicable, with updated information.

(2) if executed by an attorney on behalf of the Guarantor:-

(a) a certified copy of the Power of Attorney with the Guarantor's Common Seal affixed thereto by which the attorney is appointed by the Guarantor to execute the Contractor's Bond on its behalf;

(b) a certified copy of extract of provisions of the Guarantor's Articles of Association governing the appointment of the attorney;

(c) a certified copy of the Board Resolution of the Guarantor authorizing the execution of the Power of Attorney and the use of Common Seal of the Guarantor;

(d) a certified copy of extract of provisions of the Guarantor's Articles of Association governing the quorum for directors' meeting and execution of documents under Common Seal; and

(e) a certified copy of the latest Annual Return of the Guarantor and, if applicable, with updated information.

(3) if the Guarantor is incorporated outside of Hong Kong, a legal opinion in the form required by the Employer shall be provided confirming the validity of the execution of the Guarantee and of any Power of Attorney.

4. If the Guarantee is executed by an attorney, the execution clause shall be replaced as follows:-

SIGNED SEALED AND DELIVERED )
by )
the lawful attorney of the Guarantor )
in the presence of:- )
[this page not used]
SCHEDULE 4

FORM OF SUB-CONTRACTOR WARRANTY
FORM OF SUB-CONTRACTOR WARRANTY

THIS WARRANTY is made the [Date] day of [Month and Year]

BY:

1. [ ] a company incorporated in and in accordance with the laws of [ ] of [ ] [See Note 1] ("the Sub-contractor");

TO:

2. The Airport Authority of HKIA Tower, 1 Sky Plaza Road, Hong Kong International Airport, Lantau, Hong Kong (together with its successors and assigns, "the Employer").

WHEREAS

(A) By a contract reference [Contract Number] – [Contract Title] dated [ ] ("the Contract") made between the Employer and [Contractor's name] ("the Contractor"), the Contractor has agreed to execute the Works (as defined in the Contract) and upon the terms contained in the Contract.

(B) The Sub-contractor has had an opportunity of reading and noting the provisions of the Contract (other than details of the Contractor's prices and rates).

(C) Pursuant to the Contract, the Contractor wishes to enter into an agreement with the Sub-contractor ("the Sub-contract") for the Sub-contractor to carry out and complete a part of the Works as more particularly described in the Sub-contract ("the Sub-contract Works").

(D) The Contract stipulates that the Contractor shall obtain the consent of the Project Manager (as identified in the Contract) before entering into the Sub-contract, and that the Contractor shall procure that the Sub-contractor executes a warranty in favour of the Employer.

NOW IT IS HEREBY AGREED AS FOLLOWS:-

1. Where applicable, words and expressions used in this Warranty shall have the meaning assigned to them in the Contract.

2. In consideration of the Employer accepting this Warranty pursuant to the Contract and the Project Manager consenting to the Contractor and the Sub-contractor entering into the Sub-contract, the Sub-contractor warrants and undertakes to the Employer that:-

   (a) he shall execute the Sub-contract Works, and has carried out and will carry out each and all of the obligations, duties and undertakings of the Sub-contractor under the Sub-contract when and if such obligations, duties and undertakings shall become due and performable, in accordance with the terms of the Sub-contract (as the same may from time to time be varied or amended with the consent of the Project Manager); and
(b) he shall supply the Project Manager with all information which the Project Manager may reasonably require from time to time in relation to progress of the Sub-contract Works.

3. The Sub-contractor undertakes to indemnify the Employer against each and every liability which the Employer may have to any person whatsoever and against any claims, demands, proceedings, loss, damages, costs and expenses sustained, incurred or payable by the Employer to the extent arising from breach of this Warranty by the Sub-contractor provided that the Sub-contractor shall have no greater liability to the Employer by virtue of this clause 3 than the liability of the Contractor to the Employer under the Contract to the extent that the same shall have arisen by reason of any breach by the Sub-contractor of his obligations under the Sub-contract.

4. No allowance of time by the Employer hereunder or by the Contractor under the Sub-contract nor any forbearance or forgiveness in or in respect of any matter or thing concerning this Warranty or the Sub-contract on the part of the Employer or the Contractor, nor anything that the Employer or the Contractor may do or omit or neglect to do, shall in any way release the Sub-contractor from any liability under this Warranty.

5. The Sub-contractor agrees that he will not without first giving the Employer not less than twenty-one days' prior notice in writing exercise any right he may have to terminate the Sub-contract or his employment thereunder or withhold performance of his obligations under the Sub-contract.

6. (a) Notwithstanding anything to the contrary in the Sub-contract, if the Contract or the employment of the Contractor under the Contract is terminated for any reason whatsoever and if so requested by the Employer in writing within twenty-one days of such termination, the Sub-contractor shall enter into a novation agreement with the Employer and the Contractor in which the Sub-contractor will undertake inter alia to perform the Sub-contract and be bound by its terms as if the Employer had originally been named as a contracting party in place of the Contractor and as if neither the Contract or the Contractor's employment thereunder nor the Sub-contract or the Sub-contractor's employment thereunder had been terminated. The said novation agreement will be in such form as the Employer may reasonably require.

(b) If the Employer does not require the Sub-contractor to enter into a novation agreement as required by clause 6(a) above, the Sub-contractor shall have no claim whatsoever against the Employer for any damage, loss or expense howsoever arising out of or in connection with this Warranty.

7. Insofar as the copyright or other intellectual property rights (in Hong Kong or any country) in any plans, calculations, drawings, documents, materials, know-how and information relating to the Sub-contract Works shall be vested in the Sub-contractor, the Sub-contractor grants to the Employer, his successors and assigns a royalty free, non-exclusive and irrevocable licence (carrying the right to grant sub-licences) to use, reproduce, modify, adapt and translate any of the works designs or inventions incorporated and referred to in such documents or materials and any such know-how and information for all purposes relating to the Works or the Airport. To the extent that beneficial ownership of any such copyright or other intellectual property right is vested in anyone other than the
Sub-contractor, the Sub-contractor shall use best endeavours to procure that the beneficial owner thereof shall grant a like licence to the Employer. Any licence granted pursuant to this clause 7 shall not be determined if the Sub-contractor shall for any reason cease to be employed in connection with the Sub-contract Works and the Sub-contractor shall execute all documents and take all such other steps as may be necessary to effect and protect the licences (including, without limitation, registration and notification to purchasers of the Sub-contractor's or other owner's rights).

8. If there is any ambiguity or conflict between the terms of the Sub-contract and this Warranty, the terms of this Warranty shall prevail.

9. The provisions of this Warranty shall be without prejudice to and shall not be deemed or construed so as to limit or exclude any right or remedy which the Employer may have against the Sub-contractor whether in tort or otherwise.

10. (a) The Employer shall be entitled, with the prior written consent of the Sub-contractor, such consent not to be unreasonably withheld or delayed, to assign or transfer the benefit of this Warranty or any part thereof, any interest therein or thereunder and any right thereunder, whether past, existing or future, to any third party.

(b) In the event of any such assignment or transfer by the Employer in accordance with clause 10(a) above, such assignee or transferee shall from the date thereof have the same rights, powers and remedies as it would have had if it had at all times been the Employer under this Warranty. Without prejudice to the generality of the foregoing, all losses, costs, demands, claims, proceedings or any other rights or benefits whatsoever, (whether past, present or future) of the Employer related to or in any way connected with or arising out of this Warranty, shall be deemed to be those of any assignee or transferee of the Employer.

11. All documents arising out of or in connection with this Warranty shall be served:-

(a) upon the Employer at HKIA Tower, 1 Sky Plaza Road, Hong Kong International Airport, Lantau, Hong Kong marked for the attention of the Chief Executive Officer; and

(b) upon the Sub-contractor, at [                      ], Hong Kong [See Note 2].

12. The Employer and the Sub-contractor may change their respective nominated addresses for service of documents to another address in Hong Kong by providing not less than five business days' written notice to each other.

13. All demands and notices shall be in writing and in English.

14. Subject to clause 16, any dispute or difference of any kind whatsoever between the Employer and the Sub-contractor arising under, and out of or in connection with this Warranty shall be referred to arbitration. The reference to arbitration shall be conducted in accordance with the Arbitration Rules and in those rules "Dispute" shall be deemed to include any dispute or difference between the Employer and the Sub-contractor. Sections 3, 4, 5, 6 and 7 of Schedule 2 of the Arbitration Ordinance (Cap. 609) shall apply to such arbitration.
15. The arbitrator shall have full power to open up, review and revise any decision, instruction, notice, withholding of approval or consent, certificate, assessment or valuation of the Project Manager or the Contractor relating to the dispute or difference.

16. The Employer may by notice to the Sub-contractor require that:-
   (a) any dispute or difference to be referred to arbitration pursuant to clause 14 shall be referred to the arbitrator appointed or to be appointed in the arbitration of any dispute or difference in connection with the Works between the Employer and any party other than the Sub-contractor; or
   (b) any dispute or difference in connection with the Works between the Employer and any party other than the Sub-contractor shall be referred to the arbitrator appointed or to be appointed in the arbitration of any dispute or difference referred pursuant to clause 14,

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

17. This Warranty and all disputes arising under, out of or in connection therewith shall be governed by and construed according to the laws for the time being in force in the Hong Kong Special Administrative Region ("Hong Kong") and, subject to clause 14, the Sub-contractor agrees to submit to the non-exclusive jurisdiction of the courts of Hong Kong.

IN WITNESS whereof this Warranty has been executed and delivered as a deed on the date first before written.

THE COMMON SEAL of [ ]
was affixed hereto in the presence of:-
___________________________
Mr. [Name], [Title]

OR

EXECUTED and DELIVERED as a a DEED
and SIGNED
by [name] [capacity]
and [name] [capacity]
for and on behalf of [name of the Sub-contractor]

Witnessed by:

Signature: ____________________
Name: _______________________
Address: _______________________

[See Note 3]
NOTES FOR GUIDANCE IN PREPARATION
OF WARRANTY BY SUB-CONTRACTOR

These notes are prepared in order to assist the Sub-contractor in the preparation of the Warranty and cross refer to the note references contained in the draft Warranty. The note references contained in the draft Warranty shall be deleted from the engrossment of the Warranty when prepared by the Sub-contractor.

NOTE 1

1. The name, place of incorporation and registered address of the Sub-contractor shall be inserted.

2. If the Sub-contractor is an unincorporated joint venture, the party clause 1 of the Warranty shall be amended as follows:

[ ] a company incorporated in and in accordance with the laws of [ ] and whose registered office is at [ ] and [ ] a company incorporated in and in accordance with the laws of [ ] and whose registered office is at [ ] acting in joint venture under the name of [ ] (hereinafter collectively referred to as “the Sub-contractor”).

NOTE 2

1. The address for service shall be in Hong Kong.

NOTE 3

1. The Sub-contractor shall execute the Warranty under seal or as a deed.

2. This may be done either by:

   (1) affixing the Common Seal of the Sub-contractor in the presence of authorised signatories in accordance with the Articles of Association or other constitutional documents of the Sub-contractor, or executed and delivered as a deed pursuant to section 127 of the Companies Ordinance (Cap. 622); or

   (2) by execution under seal by an attorney appointed by a valid and binding Power of Attorney given by the Sub-contractor in accordance with its Articles of Association or other constitutional documents.

3. The following documents shall be submitted with the executed Warranty:

   (1) if executed by affixing the Common Seal or executed and delivered as a deed:-

       (a) a certified copy of the Board Resolution of the Sub-contractor authorizing the execution of the Warranty and, if applicable, the use of Common Seal of the Sub-contractor;
(b) a certified copy of extract of provisions of the Sub-contractor’s Articles of Association governing the quorum for directors’ meeting and, if applicable, execution of documents under Common Seal; and

(c) a certified copy of the latest Annual Return of the Sub-contractor and, if applicable, with updated information.

(2) if executed by an attorney on behalf of the Sub-contractor:-

(a) a certified copy of the Power of Attorney with the Sub-contractor’s Common Seal affixed thereto by which the attorney is appointed by the Sub-contractor to execute the Warranty on its behalf;

(b) a certified copy of extract of provisions of the Sub-contractor’s Articles of Association governing the appointment of the attorney;

(c) a certified copy of the Board Resolution of the Sub-contractor authorizing the execution of the Power of Attorney and the use of Common Seal of the Sub-contractor;

(d) a certified copy of extract of provisions of the Sub-contractor’s Articles of Association governing the quorum for directors’ meeting and execution of documents under Common Seal; and

(e) a certified copy of the latest Annual Return of the Sub-contractor and, if applicable, with updated information.

(3) if the Sub-contractor is incorporated outside of Hong Kong, a legal opinion in the form required by the Employer shall be provided confirming the validity of the execution of the Warranty and of any Power of Attorney.

4. If the Warranty is executed by an attorney, the execution clause shall be replaced as follows:-

SIGNED SEALED AND DELIVERED )
by )
the lawful attorney of the )
Sub-contractor in the presence of:- )
SCHEDULE 5

FORM OF BOND FOR OFF-SHORE MANUFACTURE
[this page not used]
FORM OF BOND FOR OFF-SHORE MANUFACTURE

BY THIS BOND dated the [Date] day of [Month and Year]

[ ] a company incorporated in and in accordance with the laws of [ ] of [ ] [See Note 1] ("the Bondsman") is irrevocably and unconditionally bound to the Airport Authority of HKIA Tower, 1 Sky Plaza Road, Hong Kong International Airport, Lantau, Hong Kong (together with its successors and assigns, "the Employer") for payment of a sum not exceeding the sum stated in clause 2 below in accordance with the provisions of this Bond.

WHEREAS:

(A) By a contract reference [Contract Number] – [Contract Title] dated [ ] ("the Contract") made between the Employer and [the name of Contractor] ("the Contractor"). the Contractor has agreed to execute the Works (as defined in the Contract) and upon the terms contained in the Contract.

(B) Pursuant to the terms of the Contract, the Employer is obliged to pay the Contractor the sum of [ ] Hong Kong dollars (HK$ [ ]) [See Note 2] ("the Off-shore Payment") by instalments in accordance with the Interim Payment Schedule for the activities described in (Part A of) [See Note 3] Cost Centre [No. ].

(C) Pursuant to the said activities, certain components of the Works falling within (Part A of) [See Note 3] Cost Centre [No. ] ("the Manufactured Goods") as identified in the Schedule of Goods Manufactured Offshore contained in the Pricing Document, are to be manufactured offshore Hong Kong for subsequent delivery to and installation at the Site.

(D) Pursuant to the terms of the Contract, the Contractor, as a condition precedent to his entitlement to receive any payment instalment under (Part A of) [See Note 3] Cost Centre [No. ], is obliged to provide a bond in the terms hereof.

NOW THE TERMS of this Bond are:–

1. Where applicable, words and expressions used in this Bond shall have the meaning assigned to them in the Contract.

2. The Bondsman hereby irrevocably and unconditionally undertakes to pay to the Employer an amount not exceeding [ ] Hong Kong dollars (HK$ [ ]) [See Note 4] upon receipt from the Employer of a written demand substantially in the form of the Schedule to this Bond signed on behalf of the Employer stating:–

(a) that the Contractor is in default of one or more of the Contractor's obligations under the Contract; and

(b) the amount due and payable under this Bond in accordance with clause 4 below.
3. The Bondsman shall pay to the Employer the amount thus demanded without requiring further evidence or proof of:

(a) the default of the Contractor; or

(b) the amount due and payable under this Bond.

4. The amount payable under this Bond shall be the aggregate of the instalments of the Off-shore Payment (net of Retention Money) prior to the date of the written demand referred to in clause 2 above less the aggregate as certified by the Project Manager of any and all sums in respect of the Manufactured Goods delivered to Hong Kong in accordance with the terms of the Contract provided always that the liability of the Bondsman under this Bond shall not exceed the sum stated in clause 2 above.

5. The liability of the Bondsman under this Bond shall remain in full force and effect and shall not be affected or discharged in any way by, and the Bondsman hereby waives notice of:

(a) any suspension of the Works or variation to, or amendment of the Contract or the Works (including without limitation extension of time for performance and adjustment to the amount payable under the Contract);

(b) the termination of the Contract or of the employment of the Contractor under the Contract;

(c) any forbearance or waiver of any right of action or remedy the Employer may have against the Contractor or negligence by the Employer in enforcing any such right of action or remedy;

(d) any other bond, security or guarantee held or obtained by the Employer for any of the obligations of the Contractor under the Contract or any release or waiver thereof;

(e) any act or omission of the Contractor pursuant to any other arrangement with the Bondsman;

(f) any breach of the Contract by or other default of the Employer;

(g) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable; and

(h) any other action, event or condition which, but for this provision, would operate by law to discharge the Bondsman from liability under this Bond.

6. The liability of the Bondsman under this Bond shall cease on whichever of the following events first occurs:

(a) payment in full by the Bondsman to the Employer of a sum demanded under clause 2 above;
(b) receipt of written notification from the Project Manager that all of the Manufactured Goods have been delivered to Hong Kong and inspected by him; or

(c) [date] [see Note 5].

7. The Bondsman acknowledges that the Employer shall be entitled to assign the benefit of this Bond or any part thereof, any interest therein or thereunder and any right thereunder, whether past, existing or future, without the prior written consent of the Bondsman or the Contractor being required.

8. Any documents arising out of or in connection with this Bond shall be served upon the Bondsman, at [               ] Hong Kong [See Note 6].

9. The Employer and the Bondsman may change their respective nominated addresses for service of documents to another address in Hong Kong but by providing not less than five business days’ written notice to each other.

10. All demands and notices shall be in writing and in English.

11. This Bond shall be governed by and construed according to the laws for the time being in force in the Hong Kong Special Administrative Region (“Hong Kong”) and the Bondsman agrees to submit to the non-exclusive jurisdiction of the courts of Hong Kong.

IN WITNESS whereof this Bond has been executed and delivered as a deed on the date first before written.

THE COMMON SEAL of

[               ]

was affixed hereto in

the presence of:-

Mr. [Name], [Title]

OR

EXECUTED and DELIVERED as a DEED

and SIGNED

by [name] [capacity]

and [name] [capacity]

for and on behalf of

[name of the Bondsman]

Witnessed by:

Signature: _______________________

Name: _______________________

Address: _______________________

[See Note 7]
SCHEDULE TO BOND

FORM OF DEMAND

[Date]

To: [Bondsman’s name ]
Hong Kong

For the attention of: [ name ]

Dear Sirs,

Contract No. [ ] – [Contract Title]
Bond for Offshore Manufacture

1. We refer to the Bond for Off-shore Manufacture dated [ ].

2. Terms defined in the above Bond have the same meaning when used in this demand.

3. We confirm that the Contractor is in default of one or more of the Contractor’s obligations under the Contract.

4. We now demand payment of HK$[ figures ] ([ words ] Hong Kong dollars) by [ Date ], being the amount due in accordance with clause 4 of the above Bond.

5. We confirm that the signatory of this letter is authorised by the Employer to make this demand on behalf of the Employer.

6. This demand is governed by Hong Kong law.

Yours faithfully,

(Authorised Signatory)

......................................
for and on behalf of
The Airport Authority
NOTES FOR GUIDANCE IN PREPARATION OF OFF-SHORE MANUFACTURING BOND

These notes are prepared in order to assist the Bondsman in the preparation of the Off-shore Manufacturing Bond(s) and cross refer to the note references contained in the draft of the Bond. The note references contained in the draft Bond shall be deleted from the engrossment of the Bond when prepared by the Bondsman.

NOTE 1

1. The place of incorporation of the Bondsman should be inserted together with:
   
   (1) its registered address in the place of incorporation; and
   
   (2) the address of its place of business in Hong Kong.

NOTE 2

1. This amount shall be the Cost Centre Value of the relevant Cost Centre which is to be paid for offshore goods or, where relevant, the part of the Cost Centre Value.

NOTE 3

1. Delete the bracketed words if the Cost Centre is undivided and insert relevant Cost Centre numbers as referred to in the Pricing Document contained in the Contract.

NOTE 4

1. The amount to be inserted shall be 95% of the figure referred to in Recital (B).

NOTE 5

1. The date to be inserted shall be in accordance with the Preamble to the Pricing Document.

NOTE 6

1. The address for service shall be in Hong Kong.

NOTE 7

1. The Bond shall be executed under seal or as a deed by the Bondsman.

2. This may be done either by:

   (1) affixing the Common Seal of the Bondsman in the presence of authorised signatories in accordance with the Articles of Association or other constitutional documents of the Bondsman, or executed and delivered as a deed pursuant to section 127 of the Companies Ordinance (Cap. 622); or

   (2) by execution under seal by an attorney appointed by a valid and binding Power of Attorney given by the Bondsman in accordance with its Articles of Association or other constitutional documents.
3. The following documents shall be submitted with the executed Bond:

(1) if executed by affixing the Common Seal or executed and delivered as a deed:-
   
   (a) a certified copy of the Board Resolution of the Bondsman authorizing the execution of the Off-Shore Manufacturing Bond and, if applicable, the use of Common Seal of the Bondsman;
   
   (b) a certified copy of extract of provisions of the Bondsman's Articles of Association governing the quorum for directors' meeting and, if applicable, execution of documents under Common Seal; and
   
   (c) a certified copy of the latest Annual Return of the Bondsman and, if applicable, with updated information.

(2) if executed by an attorney on behalf of the Bondsman:-
   
   (a) a certified copy of the Power of Attorney with the Bondsman's Common Seal affixed thereto by which the attorney is appointed by the Bondsman to execute the Off-Shore Manufacturing Bond on its behalf;
   
   (b) a certified copy of extract of provisions of the Bondsman's Articles of Association governing the appointment of the attorney;
   
   (c) a certified copy of the Board Resolution of the Bondsman authorizing the execution of the Power of Attorney and the use of Common Seal of the Bondsman;
   
   (d) a certified copy of extract of provisions of the Bondsman's Articles of Association governing the quorum for directors' meeting and execution of documents under Common Seal; and
   
   (e) a certified copy of the latest Annual Return of the Bondsman and, if applicable, with updated information.

(3) if the Bondsman is incorporated outside of Hong Kong, a legal opinion in the form required by the Employer shall be provided confirming the validity of the execution of the Off-Shore Manufacturing Bond and of any Power of Attorney.

4. If the Off-Shore Manufacturing Bond is executed by an attorney, the execution clause shall be replaced as follows:-

SIGNED SEALED AND DELIVERED )
by )
the lawful attorney of the Bondsman)
in the presence of:- )
SCHEDULE 6

FORM OF DESIGN CHECK CERTIFICATE
CERTIFICATE OF THE CONTRACTOR’S DESIGN
OF PERMANENT WORKS

Part 1
(To be signed by a professionally qualified member of the Contractor’s staff, or of his
sub-contractor’s staff, responsible for the Contractor’s Design)

Contract No. & Name: ____________________________________________________________

Part of Works
Designed: ______________________________________________________________________

Drawings as Listed in Attachment 1 (Number of Drawings: __________ no.)

Calculations
Title: ______________________________________________________________________

Prepared by: __________________________________________________________________

Dated: __________________________ No. of Pages _____ Rev.: _____

Method Statement
Title: ______________________________________________________________________

Submission No.: _____________________________________________________________ Rev.: _____

Certification
I certify that the part of the Permanent Works described above has been designed in
accordance with the Contract and that the design has been checked and found
satisfactory by the undersigned.

Signed: ___________________________ Date: ______________

For and on behalf of the Contractor

Name and qualifications of signatory: _____________________________________________
Part 2
(To be signed by the Checking Engineer)

Certification
I certify that the part of the Permanent Works described above has been designed using all the skill and care to be expected of a professionally qualified and competent designer experienced in work of a similar nature and scope and that I have checked the design and drawings and found them satisfactory.

Signed: ____________________________ Date: __________

Name and qualifications of the Checking Engineer:

______________________________

Name of firm or company:

______________________________

Refer to Attachment 1 (also to be endorsed by the Contractor and the Checking Engineer)
Attachment 1 to the Certificate of the Contractor’s Design of Permanent Works

Contract No. & Name:  

Element of Works Designed:  

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Signed:  

For and on behalf of the Contractor  

Date:  

Signed:  

Checking Engineer  

Date:  

General Conditions of Contract  

Building and Civil Works, Issue No. 11  

Schedule 6 – Form of Design Check Certificate
[this page not used]
SCHEDULE 7

MEDIATION RULES
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MEDIATION RULES
(2010 EDITION)

Mediation

1. These Rules are the Mediation Rules (2010 Edition).

2. Words and expressions used in these Rules have the same meanings as are assigned to them respectively in the Contract.

3. Mediation under these Rules is a private and confidential dispute resolution process in which a neutral person (the “mediator”) helps the parties to resolve their Disputes. The mediator has no advisory or determinative role in regard to the content of the Dispute or the outcome of its resolution.

4. Either party may require the other party to participate in a mediation process in accordance with these Rules, as provided for in clause 75 of the Contract. Clause 75 requires all Disputes to be referred to mediation first before proceeding to arbitration or litigation.

Initiation of the Mediation Process

5. If a Dispute has arisen, and the Contractor or the Employer has sought a decision of the Project Manager pursuant to clause 75.3, the Contractor or the Employer may:

5.1 in the case that the Project Manager has failed to give a decision or notice within thirty (30) days pursuant to clause 75.3; or

5.2 in the case that the Project Manager has given a decision pursuant to clause 75.3;

within thirty (30) days thereafter initiate mediation by delivering a written request for mediation (“Request for Mediation”) to the other party.

6. Such Request for Mediation shall:

6.1 contain a brief self-explanatory statement of the nature of the Dispute, the quantum in dispute (if any), and the relief or remedy sought;

6.2 state the name of up to three persons who are willing and able to act as the mediator; and

6.3 attach their terms and conditions of appointment.
Response to Request for Mediation

7. The party who receives a Request for Mediation (“Responding Party”) shall within fourteen (14) days of the service of the Request for Mediation serve a written notice (“Response”) to the other party stating which (if any) of the persons named in the Request for Mediation are acceptable to act as the mediator in the order of preference. Alternatively, the Responding Party shall nominate up to three persons thought suitable to act as the mediator in the Response.

Appointment of the Mediator

8. The parties shall attempt to agree on the appointment of a mediator within fourteen (14) days of the service of the Response or such extended period as the parties may otherwise agree. If the parties agree on a mediator and the proposed mediator is willing to serve, the mediation shall then proceed in accordance with these Rules.

9. Failing agreement in accordance with Rule 8, either party may request the Hong Kong International Arbitration Centre (“HKIAC”) to nominate a single mediator. The HKIAC shall as soon as possible nominate a mediator who is willing to serve and is not disqualified under Rule 10 for appointment by the parties.

Disqualification of the Mediator

10. No person shall act as mediator in any Dispute in which that person has any financial or personal interest in the result of the mediation except by written consent of the parties. Before accepting an appointment, the proposed mediator shall disclose to the parties (and to the HKIAC if the HKIAC has made the nomination under Rule 9) any circumstances which may create a presumption of bias or prevent a prompt resolution of the Dispute. If the HKIAC has made the nomination under Rule 9, the HKIAC shall upon receipt of any such information from the proposed mediator immediately communicate the information in writing to the parties for their comments. If any party serves on the HKIAC and the other party a written objection within seven (7) days of receipt of such communication, the proposed mediator shall not be appointed. In that case, the parties or the HKIAC shall as soon as possible nominate another suitable mediator who is willing to serve and is not disqualified under this Rule 10 in accordance with the preceding Rules.

The Mediation Process

11. The mediator shall commence the mediation as soon as possible after his appointment and shall use his best endeavours to conclude the mediation within forty two (42) days of his appointment. His appointment shall not extend beyond a period of three (3) months without the written consent of the parties.
Role of the Mediator

12. The mediator may conduct the mediation in such manner as he considers appropriate, taking into account the circumstances of the case, the wishes of the parties and the need for a speedy settlement of the Dispute.

Role of the Parties

13. The mediator may communicate with the parties together or with any party separately, including private meetings, and each party shall co-operate with the mediator. A party may request a private meeting with the mediator at any time. The parties shall give assistance to enable the mediation to proceed and be concluded within the time stipulated.

Representation

14. The parties may be represented or assisted by persons of their choice. Each party shall notify in advance the names and the role of such persons to the mediator and the other party.

Confidentiality

15. Mediation is a private and confidential process. Every document, communication or information made or disclosed for the purpose of or related to the mediation process shall be made or disclosed on a privileged and without prejudice basis. Confidentiality extends to any settlement agreement signed by the parties except where disclosure:

15.1 is necessary for implementation or enforcement;

15.2 is required by the party’s auditors or for some other legitimate business reason;

15.3 is required by any order of the courts of Hong Kong or other judicial tribunal; and/or

15.4 is necessary for the making of claims against any third party or to defend a claim brought by any third party.

16. The parties shall not rely on or introduce as evidence in any subsequent arbitral or judicial proceedings:

16.1 any oral or written exchanges within the mediation between a party and the mediator or between the parties;

16.2 any views expressed or suggestions made within the mediation by the mediator or by either party in respect of a possible settlement of the Dispute;

16.3 any admission made by a party within the mediation;
16.4 the fact that a party had or had not indicated a willingness to accept any suggestion or proposal for settlement by the mediator or by the other party; and

16.5 any documents brought into existence for the purpose of the mediation including any notes or records made in connection with the mediation by the mediator or by either party.

17. Nothing that transpires during the course of the mediation is intended to or shall in any way affect the rights or prejudice the position of the parties to the Dispute in any subsequent arbitration or litigation, and without derogating from the generality of the foregoing and merely by way of examples:

17.1 the fact that document or information of whatsoever nature was made available in the mediation does not mean that privilege or confidentiality is waived for any subsequent purpose, including arbitration or litigation; and

17.2 the fact that the accuracy of information or the validity or meaning of documents was not challenged during the mediation does not preclude challenge in subsequent arbitration or litigation.

Costs

18. Unless otherwise agreed, each party shall bear its own costs regardless of the outcome of the mediation or of any subsequent arbitral or judicial proceedings. Subject to any agreement to the contrary, all other costs and expenses shall be borne equally by the parties, including:

18.1 the mediator’s fees and expenses;

18.2 expenses for any witness or expert advice or opinion requested by the mediator with the consent of the parties; and

18.3 any administrative costs in support of the mediation.

19. The mediator may at any time after his appointment require the parties to pay deposits to cover the anticipated fees and expenses of the mediation as reasonably assessed by the mediator. Each party shall pay 50% of the required amount. The mediator may suspend or abandon the mediation process if the deposit is not made.

20. Any surplus funds deposited shall be returned to the parties at the conclusion or termination of the mediation in equal shares.

Conclusion or Termination of the Mediation

21. The mediation process shall come to an end:

21.1 upon the signing of a settlement agreement by the parties; or

21.2 upon the written advice of the mediator after consultation with the parties that in the opinion of the mediator further attempts at mediation are no longer justified; or
21.3 upon written notification by any party to the mediator and the other party that the mediation is terminated; or

21.4 upon abandonment of the mediation process by the mediator pursuant to Rule 19.

**Mediator Not Subsequently to Act as Arbitrator**

22. Unless the parties otherwise agree in writing, the mediator shall not be appointed as arbitrator, representative, counsel or expert witness of any party in any subsequent arbitral or judicial proceedings between the parties, whether arising out of the Dispute, the mediation or otherwise in connection with the Contract. Neither party shall be entitled to call the mediator as a witness in any subsequent arbitral or judicial proceedings arising out of the Contract provided that if any party enforces a settlement agreement, any party may call evidence of the settlement agreement including evidence from the mediator and any other person engaged in the mediation.

**Exclusion of Liability**

23. Except in the case of fraud or dishonesty, the mediator and the HKIAC shall not be liable to any party for any act or omission in connection with or arising out of or in relation to any mediation conducted under these Rules.

**Language**

24. The mediation shall be conducted in the English language unless the parties and the mediator otherwise agree.
[this page not used]
SCHEDULE 8

ARBITRATION RULES
[this page not used]
Preamble

Where any agreement, submission or reference provides for arbitration under the Airport Authority's Arbitration Rules, the parties shall be taken to have agreed that the arbitration shall be conducted in accordance with the following rules (the Rules). The Rules are subject to such modification as the parties may agree in writing at any time. References in the Rules to the ‘Arbitration Ordinance’ are to the Arbitration Ordinance, Cap. 609 of the Laws of Hong Kong.

Article 1 Commencement of Arbitration

1.1 Any party wishing to commence an arbitration (the Claimant) in respect of a dispute or difference required to be referred to and determined by arbitration in accordance with the Rules (the Dispute), shall send to the other party (the Respondent) a written notice requiring the Respondent to appoint or to concur in appointing an Arbitrator (the Notice of Arbitration) which shall include, or be accompanied by:-

(a) the names and addresses (together with telephone and fax numbers and email addresses as appropriate) of the parties to the Dispute and, where the parties choose to be represented by a Representative (under Article 7) and wish to have communications sent to their Representative, the Representative's name and address (together with telephone and fax numbers and email address);

(b) reference to the principal contractual documents in which the arbitration clause is contained or under which the arbitration arises;

(c) a brief statement describing the nature and circumstances of the Dispute, and specifying in outline the relief claimed; and

(d) subject to Article 1.4 a proposal that the Hong Kong International Arbitration Centre (HKIAC) appoint the arbitrator or a list of up to three names from which the Respondent may choose an Arbitrator.

The arbitration shall be deemed to commence on the date of receipt by the Respondent of the Notice of Arbitration.

1.2 A copy of the Notice of Arbitration shall be sent to the Secretary General of HKIAC (the Secretary General) at the same time that it is sent to the Respondent.

1.3 For the purpose of facilitating the choice of an Arbitrator, within twenty-eight days of receipt of the Notice of Arbitration, the Respondent shall send to the Claimant a Response containing:-

(a) confirmation or denial of his willingness to arbitrate and, if denial, the grounds relied upon; and
(b) subject to Article 1.4:-

(i) confirmation or denial of all or part of the claims;

(ii) a brief statement of the nature and circumstances of any envisaged counterclaims;

(iii) details of its Representative, if appropriate; and

(iv) a response to any proposal under Article 1.1(d), including confirmation of agreement or a list of up to three names from which the Claimant may choose an Arbitrator.

1.4 If the parties' agreement provides that no steps shall be taken in any reference of the Dispute to arbitration until after the substantial completion or alleged substantial completion of particular works or any other identified point in time and the Notice of Arbitration is served before such time:-

(a) the Claimant need not include in the Notice of Arbitration the details identified in Article 1.1(d);

(b) the Respondent need not include in the Response the details identified in Article 1.3(b); and

(c) if either party wishes to take steps in the reference after the time restriction has passed, he shall serve written notice to that effect upon the other party and:-

(i) if the Claimant serves such notice, he shall include in it the details identified in Article 1.1(d);

(ii) if the Respondent serves such notice, he shall include in it the details identified in Article 1.3(b)(i) - (iii) and a list of up to three names from which the Claimant may choose an Arbitrator;

(iii) the recipient of such notice shall respond accordingly within twenty-eight days of receiving it; in the case of the Respondent in accordance with Article 1.3(b) (insofar as he has not previously responded) and in the case of the Claimant by confirmation of agreement to a name in the Respondent's list or by submitting a list of up to three names from which the Respondent may choose an Arbitrator; and

(iv) for the purposes of Article 3.3 only, the commencement of the arbitration shall be deemed to be the date of receipt of such notice.

1.5 A copy of the Response shall be sent to the Secretary General at the same time that it is sent to the Claimant.

1.6 Failure to send a Response shall not preclude the Respondent from denying the claim nor from setting out a counterclaim in its Statement of Defence.
Article 2  Appointing Authority

2.1 Unless otherwise agreed by the parties, the Appointing Authority shall be HKIAC whose current address is:

38/F, Two Exchange Square,
8 Connaught Place,
Central,
Hong Kong Special Administrative Region,
People’s Republic of China
Tel: (852) 2525 2381
Fax: (852) 2524 2171
Email: adr@hkiac.org

2.2 Any application to the Appointing Authority to act in accordance with the Rules shall be accompanied by:

(a) copies of the Notice of Arbitration and Response and any other related correspondence;

(b) confirmation in writing that a copy of the application has been sent to or received by the other party; and

(c) particulars of any method or criteria of selection of the arbitrator agreed by the parties.

Article 3  Appointment of Arbitrator

3.1 There shall be a sole Arbitrator.

3.2 (a) The Arbitrator shall be and remain at all times wholly independent and impartial and shall not act as advocate for any party.

(b) Prior to and after appointment the Arbitrator shall disclose to the parties any circumstances likely to give rise to justifiable doubts as to his impartiality or independence or prevent a prompt resolution of the Dispute.

3.3 The Arbitrator may be appointed by agreement of the parties. Failing such agreement within forty-two days of the commencement of the arbitration in accordance with Article 1, the Arbitrator shall upon the application of either party be appointed by the Appointing Authority.

Article 4  Communication between Parties and the Arbitrator

4.1 Where the Arbitrator sends any communication to one party, he shall send a copy to the other party.

4.2 Where a party sends any communication (including Statements and documents under Article 6) to the Arbitrator, it shall be copied to the other party and be indicated to the Arbitrator to have been so copied.
4.3 The addresses of the parties for the purpose of all communications arising under the Rules shall be those set out in the Notice of Arbitration, or as either party may at any time notify the Arbitrator and the other party.

4.4 Unless the contrary is proved, any communication by post shall be deemed to be received in the ordinary course of mail and any instantaneous means of communication (e.g. facsimile or email) shall be deemed to be received on the same day as transmitted. It shall be a condition of valid service by facsimile that the hard copy is subsequently sent forthwith to the recipient by hand or post.

4.5 No communications between the parties and the Arbitrator (and vice versa) nor any other information concerning the arbitration shall be disclosed to third parties without the agreement of all parties, except as permitted by section 18(2) of the Arbitration Ordinance.

Article 5 Conduct of the Proceedings

5.1 In the absence of procedural rules agreed by the parties or contained herein, the Arbitrator shall have the widest discretion allowed by law to conduct the proceeding so as to ensure the just, expeditious, economical, and final determination of the Dispute.

5.2 Any party wishing the Arbitrator to adopt a simplified or expedited procedure should apply to the Arbitrator as soon as is reasonably practicable after the Arbitrator's acceptance of his appointment.

Article 6 Submission of Written Statements and Documents

6.1 Subject to any procedural rules agreed by the parties or determined by or requested from the Arbitrator under Article 5, the written stage of the proceedings shall be as set out in this Article (and in accordance with Article 4).

6.2 Within twenty-eight days of receipt by the Claimant of notification of the Arbitrator's acceptance of the appointment, the Claimant shall send to the Arbitrator a Statement of Claim setting out a full description in narrative form of the nature and circumstances of the Dispute specifying all factual matters and, if necessary, for the proper understanding of the claim, a summary of any propositions of law relied upon.

6.3 Within thirty-five days of receipt of the Statement of Claim, the Respondent shall send to the Arbitrator a Statement of Defence setting out a full description in narrative form which of the factual matters and propositions of law in the Statement of Claim he admits or denies, on what grounds, and specifying any other factual matters and, if necessary for the proper understanding of the defence, a summary of any propositions of law relied upon. Any Counterclaims shall be submitted with the Statement of Defence in the same manner as claims are set out in the Statement of Claim.

6.4 Within twenty-one days of receipt of the Statement of Defence, the Claimant may send to the Arbitrator a Statement of Reply which, where there are Counterclaims, shall include a Defence to Counterclaims.
6.5 If the Statement of Reply contains a Defence to Counterclaims, the Respondent may within a further twenty-one days send to the Arbitrator a Statement of Reply regarding Counterclaims.

6.6 All Statements referred to in this Article shall be accompanied by copies (or, if they are especially voluminous and by leave of the Arbitrator, lists) of all essential documents on which the party concerned relies and which have not previously been submitted by any party, and (where appropriate) by any relevant samples.

6.7 The Arbitrator may order the parties to produce any additional documents he may specify.

6.8 As soon as practicable following completion of the submission of the Statements specified in this Article, the Arbitrator shall proceed in such manner as has been agreed by the parties, or pursuant to his authority under the Rules.

Article 7 Representation

7.1 A party may conduct his case in person or be represented throughout or in part by lawyers or other advisers or representatives of his choice (the Representative). A party shall notify the Arbitrator and the other parties of the name of his Representative and his address (and telephone and fax numbers and email address) and of any change therein as soon as practicable after any such change.

Article 8 Hearings

8.1 Subject to Article 12, each party has the right to be heard before the Arbitrator, unless the parties have agreed to a documents-only arbitration under Article 22.

8.2 The Arbitrator shall fix the date, time and place of any meetings and hearings in the arbitration, and shall give the parties reasonable notice thereof.

8.3 The Arbitrator may in advance of hearings provide the parties with a list of matters or questions to which he wishes them to give special consideration.

8.4 The Arbitrator may order opening and closing statements to be in writing and shall fix the periods of time for communicating such statements and any replies that may be necessary.

8.5 The Arbitrator may also order a transcript of any hearing or part of any hearing.

8.6 All meetings and hearings shall be in private unless the parties agree otherwise.
Article 9 Witnesses

9.1 The Arbitrator may require each party to give notice of the identity of witnesses he intends to call. Before a hearing the Arbitrator may also require the exchange of witness statements and of expert reports.

9.2 The Arbitrator has discretion to allow, limit, or refuse to allow the appearance of witnesses, whether witnesses of fact or expert witnesses.

9.3 Any witness who gives oral evidence may be questioned by each party or its Representative, under the control of the Arbitrator, and may be required by the Arbitrator to testify under oath or affirmation in accordance with the Arbitration Ordinance. The Arbitrator may put questions at any stage of the examination of the witnesses.

9.4 The testimony of witnesses may be presented in written form, either as signed statements or by duly sworn affidavits as the Arbitrator may order, and the Arbitrator may order that such statements or affidavits shall stand as evidence-in-chief. Subject to Article 9.2 any party may request that such a witness should attend for oral examination at a hearing. If the witness fails to attend, the Arbitrator may place such weight on the written testimony as he thinks fit, or may exclude it altogether.

Article 10 Assessor Appointed by the Arbitrator

10.1 Unless otherwise agreed by the parties, the Arbitrator:-

(a) may appoint an Assessor to assist him; and

(b) may require a party to give any such Assessor any relevant information or to produce, or to provide access to, any relevant documents, goods or property for inspection by the Assessor.

Article 11 Powers and Jurisdiction of the Arbitrator

11.1 Without prejudice to the generality of Article 5.1, and unless the parties at any time agree otherwise, the Arbitrator shall have the power and/or jurisdiction to:-

(a) allow any party, upon such terms (as to costs and otherwise) as he shall determine, to amend any document submitted under Article 6;

(b) extend or abbreviate any time limits provided by these Rules or by his directions;

(c) conduct such enquiries as may appear to the Arbitrator to be necessary or expedient;

(d) order the inspection, photographing, preservation, custody, detention or sale of any relevant property or thing;

(e) order samples to be taken from, observations to be made of, or experiments to be conducted on any relevant property or thing;
(f) order any party to produce to the Arbitrator, and to the other parties for inspection, and to supply copies of any documents or classes of documents in their possession, custody or power which the Arbitrator determines to be relevant;

(g) order the delivery of interrogatories and answers thereto;

(h) order the rectification in any written agreement of any mistake which he determines to be common to the parties;

(i) rule on the existence, validity or termination of any agreement;

(j) rule on his own jurisdiction, including any objections with respect to the existence or validity of the agreement to arbitrate or to his terms of reference;

(k) determine any question of law arising in the arbitration;

(l) receive and take into account such written or oral evidence as he shall determine to be relevant, whether or not strictly admissible in law;

(m) proceed in the arbitration and make an award notwithstanding the failure or refusal of any party to comply with the Rules or with the Arbitrator's written orders or written directions, or to exercise its right to present its case, but only after giving that party written notice that he intends to do so;

(n) order any party to provide security for the legal or other costs of any other party by way of deposit or bank guarantee or in any other manner the Arbitrator thinks fit; and

(o) order any party to provide security for all or part of any amount in dispute in the arbitration.

Provided that nothing in this Article shall have the effect of derogating from the powers and/or jurisdiction given to the Arbitrator by sections 35, 37 and/or 56 of the Arbitration Ordinance.

**Article 12  Default by a Party**

12.1 If the Claimant fails to attend any hearing of which due notice has been given, the Arbitrator may make an award on the substantive issues and an award as to costs, with or without a hearing. If the Respondent fails to submit a Statement of Defence or to attend any hearing after due notice has been given, the Arbitrator may conduct the hearing in the absence of the Respondent and make an award on the evidence.

**Article 13  Place of Arbitration**

13.1 The place of the arbitration will be Hong Kong but the Arbitrator may decide for the purpose of expediting any hearing or saving costs to hear witnesses or oral argument or consult with an Assessor (if appointed) at any place the Arbitrator deems appropriate having regard to the circumstances of the arbitration.
Article 14  Language

14.1 The language of the arbitration shall be English and all written communications and statements, and all hearings shall be conducted in the English language unless the parties and the Arbitrator otherwise agree.

14.2 The Arbitrator may order that any documents other than written statements which are produced in the course of the arbitration in their original language shall be accompanied by a translation into the language of the arbitration, such translation to be appropriately certified if not agreed.

14.3 Unless the Arbitrator otherwise orders, witnesses shall be entitled to give their evidence in the language of their choice and the Arbitrator may order the translation of that evidence into the language of the arbitration by a suitably qualified person.

Article 15  Deposits and Security

15.1 The Arbitrator may direct the parties, in such proportions as he deems just, to make one or more deposits to secure the Arbitrator's fees and expenses. Such deposits shall be made to and held by the Arbitrator, or HKIAC or some other person or body to the order of the Arbitrator, as the Arbitrator may direct, and may be drawn from as required by the Arbitrator. Interest on sums deposited, if any, shall be accumulated to the deposits.

Article 16  Award

16.1 The Arbitrator shall make his award in writing and, unless all the parties agree otherwise, shall state the reasons upon which his award is based. The award shall state its date and the place of arbitration and shall be signed by the Arbitrator.

16.2 The Arbitrator shall be responsible for delivering the award or certified copies thereof to the parties provided that the Arbitrator has been paid his fees and expenses.

16.3 The Arbitrator may make interim awards or separate awards on different issues at different times.

16.4 If, before the award is made, the parties agree on a settlement of the Dispute, the Arbitrator shall either issue an order for termination of the reference to arbitration or, if requested by both parties and accepted by the Arbitrator, record the settlement in the form of a consent award. The Arbitrator shall then be discharged and the reference to arbitration concluded, subject to payment by the parties of any outstanding fees and expenses of the Arbitrator.
Article 17  Correction, interpretation of award and additional award

17.1 Within fourteen days of receipt of the award a party (with written notice to the other party) may:-

(a) request the Arbitrator to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature; and/or

(b) if so agreed by the other party, request the Arbitrator to give an interpretation of a specific point or part of the award.

If the Arbitrator considers the request to be justified, he shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

17.2 The Arbitrator may correct any error of the type referred to in Article 17.1(a) on his own initiative within thirty days of the date of the award.

17.3 A party (with written notice to the other party) may request, within thirty days of receipt of the award, the Arbitrator to make an additional award as to claims presented in the arbitration but omitted from the award. If the Arbitrator considers the request to be justified, he shall make the additional award within sixty days.

17.4 The Arbitrator may extend, if necessary, the period of time within which he shall make a correction, interpretation or an additional award under Article 17.1 or 17.3.

17.5 The provisions of Article 16 shall apply to a correction or interpretation of the award or to an additional award.

17.6 The Arbitrator has the power to make other changes to the award which are necessitated by, or consequential on, the correction of any error in the award or the interpretation of any point or part of the award under this Article.

17.7 The Arbitrator may review an award of costs within thirty days of the date of the award if, when making the award, the Arbitrator was not aware of any information relating to costs (including any offer for settlement) which he should have taken into account.

17.8 On a review under Article 17.7, the Arbitrator may confirm, vary or correct the award of costs.

Article 18  Costs

18.1 The Arbitrator may include in the award directions with respect to the costs of the arbitration.

18.2 The Arbitrator may, having regard to all relevant circumstances (including the fact if appropriate that a written offer of settlement of the Dispute has been made), direct in the award to whom and by whom and in what manner the costs are to be paid.
18.3 The Arbitrator may also, in his discretion, order costs to be paid by a party in respect of a request made by any of the parties for an order or direction (including an interim measure).

18.4 The Arbitrator may direct that the costs ordered under Article 18.3 are to be paid forthwith or at the time that the Arbitrator may otherwise specify.

18.5 The Arbitrator shall assess the amount of costs to be awarded or ordered to be paid (other than the fees and expenses of the Arbitrator) and award or order those costs (including the fees and expenses of the Arbitrator).

18.6 The Arbitrator shall only allow costs that are reasonable having regard to all the circumstances, and may allow costs incurred in preparing for the arbitration prior to its commencement.

18.7 The term ‘costs’ when used in this Article shall, unless expressly provided otherwise, include the legal or other costs incurred by either party, the fees and expenses of the Arbitrator and any other costs or disbursements incurred relating to the conduct of the arbitration.

**Article 19 Interest**

19.1 The Arbitrator may order that interest be paid in accordance with section 79 of the Arbitration Ordinance, subject to and in accordance with any written agreement between the parties.

**Article 20 Exclusion of Liability**

20.1 Without prejudice to any existing rule of law, it is agreed that neither the Arbitrator, the Appointing Authority nor the Secretary General shall be liable to any party for any act or omission in connection with any arbitration conducted under the Rules, save for the consequences of fraud or dishonesty.

20.2 After the award has been made and the possibilities of interpretation, correction and additional awards referred to in Article 17 have lapsed or been exhausted, the Arbitrator shall not be under any obligation to make any statement to any person about any matter concerning the arbitration, and no party shall seek to make the Arbitrator a witness in any legal proceedings arising out of the arbitration.

**Article 21 Waiver**

21.1 A party which knew or ought to have known of non-compliance with the Rules and yet proceeds with the arbitration without promptly stating its objection to such non-compliance, shall be deemed to have waived its right to object. The Arbitrator shall determine any issue which may arise as to whether a party has waived the right to object to the non-compliance by any other party with the Rules.
Article 22  Documents-Only Arbitration

22.1 If the parties agree in writing at any time that a documents-only arbitration procedure shall be adopted, the parties shall not be entitled to a hearing and the testimony of any witness shall be presented in written form and shall be submitted in accordance with Article 6.6. If the Arbitrator feels unable to make an award on the basis of the documents submitted, he shall be entitled to require further evidence or submissions whether oral or in writing.

22.2 If a party fails to submit any statement in accordance with Article 6, the Arbitrator may make an award on the substantive issues and an award as to costs without a hearing.
SCHEDULE 9

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