General Conditions of Contract

General Conditions of Contract for Maintenance Works
Electrical and Mechanical Services Department

1. Definitions and Interpretation

Definitions and Interpretation

"Constructional Plant" means all appliances or things of whatsoever nature required for the execution of the Works but does not include Plant, materials or other things intended to form or forming part of the permanent work or vehicles engaged in transporting any personnel, Constructional Plant, Plant, materials or other things to or from the Site.

"Contract" means the Quotation and the acceptance thereof by way of Service Order or Letter of Acceptance by the Employer, Drawings, General Conditions of Contract for Maintenance Works, Specification and Schedule of Rates.

"Contractor" means the person, firm or company whose Quotation has been accepted by the Employer and includes the Contractor's personal representatives, and successors.

"Employer" means the Government of the Hong Kong Special Administrative Region.

"Engineer" means the Chief Engineer or such other person as may be appointed from time to time by the Director of Electrical and Mechanical Services and notified to the Contractor.

"Engineer's Representative" means any person or persons appointed from time to time by the Engineer and notified to the Contractor to perform the duties set forth in Clause 2.

"Plant" means the machinery, equipment and apparatus of all kinds other than the Constructional Plant to be supplied and installed by the Contractor for the Works.

"Service Order" means the Departmental Order for Provision of Service (G.F.220) issued to the Contractor.

"Site" means the lands and other places provided by the Employer for the purpose of the execution of the Works.

"Specification" means the specifications referred to in the Contract and any modification thereof or addition thereto as may from time to time be furnished or approved in writing by the Engineer.

"Temporary Works" means all temporary work of every kind required for the carrying out, completion and maintenance of the Works.

"Test" means any test prescribed by the Contract or instructed by the Engineer or Engineer's Representative and includes commissioning of the Works and any commissioning test.

"Works" means all the works and things to be executed, supplied and or carried out by the Contractor under the Contract.

2. Duties and Powers of the Engineer and the Engineer's Representative

Duties and Powers of the Engineer and the Engineer's Representative

Save in so far as it is legally or physically impossible, the Contractor shall provide the maintenance service as specified in the Specification, to the satisfaction of the Engineer.

(1) The Engineer shall carry out such duties as are specified in the Contract with due expedition. The Contractor shall take instructions, orders or directions only from the Engineer and the Engineer's Representative.

(2) The duties of the Engineer's Representative are to watch and inspect the Works, to test and examine any material and equipment to be used and workmanship employed by the Contractor in connection with the Works and to carry out such duties and exercise such powers vested in the Engineer as may delegated to him by the Engineer.

3. Payment

Payment

(1) In consideration of the said services, the Employer shall pay to the Contractor the respective sum or sums more particularly set out or referred to in Schedule of Rates, provided that if the Contractor shall have failed to provide the services as specified in the Specification the Employer may without prejudice to other remedies

(a) withhold payment until such services have been duly carried out; or

(b) if any payment has been made in advance, demand a rebate of such sum or sums which the Contractor shall forthwith pay back to the Employer.

(2) Payment will be made after the completion of any Tests carried out pursuant to Clause 19 and submission of testing reports as required under the Contract and the acceptance of the Works by the Engineer or the Engineer's Representative.

(3) Notwithstanding sub-clause (2) of this Clause, the Employer may pay any sum at any time provided that the Engineer or the Engineer's Representative is satisfied with the Works completed so far and the invoice submitted by the Contractor. For the avoidance of doubt,

satisfaction by the Engineer or the Engineer's Representative under this sub-clause does not constitute acceptance of the Works by the Engineer or the Engineer's Representative under sub-clause (2) of this Clause.

4. Renewal of Contract

Renewal of Contract

This Contract is not automatically renewable. If the Contractor is desirous of renewing the Contract, he shall, at least three months prior to the expiry of this Contract submit to the Employer for its consideration a quotation for renewing the Contract for another term.

5. Accident or injury to workmen

Accident or injury to workmen

The Employer shall not be liable for or in respect of any damages or compensation payable at law in respect of or in consequence of any accident or injury to any workman or other person in the employ of the Contractor or any sub-contractor save and except an accident or injury resulting from any act or default of the Employer, his agents or employees and the Contractor shall indemnify and keep indemnified the Employer against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

6. Damage to Persons and Property

Damage to Persons and Property

(1) The Contractor shall, except when directly caused by the acts or omissions of the Employer, indemnify and keep indemnified the Employer against all losses and claims for injury or damage to any person or property whatsoever, which may arise out of or in consequence of the execution of the maintenance work and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

(2) The Contractor shall make good or at the option of the Employer shall pay to the Employer the cost of making good any damage, loss or injury which may occur to any property of the Employer and shall recompense the Employer in respect of any damage, loss or injury which may occur to any employee of the Employer by or arising out of or in consequence of the execution of the maintenance work or in the carrying out of the Contract.

(3) The Contractor's liability to indemnify or recompense the Employer under sub-clauses (1) and (2) of this Clause shall be reduced proportionately to the extent that the act or neglect of the Engineer or the Employer, their respective agents or employees shall have contributed to the damage, loss or injury.

7. Variations

Variations

(1) The Engineer shall make any variation as he may consider necessary in the form, character or quality of any work detailed in the Specification or the Schedule of Rates, or to order different work of any kind which is not detailed in the Specification or Schedule of Rates and no such variation or order for different work shall in any way vitiate or invalidate the Contract.

(2) No such variation shall be made without an order in writing from the Engineer.

(3) The rate for any work which is not the same as or similar in character to or is not executed under the same or similar conditions or circumstances to any item of work in the Schedule of Rates shall be ascertained by the Engineer, based on the rates in the Contract so far as may be reasonable, and be agreed upon between the Engineer and the Contractor.

8. Repair Work

Repair Work

Repairs necessitated by reasons of negligence or misuse of the equipment by the Employer's staff and/or any other cause beyond the Contractor's control shall be carried out by the Contractor if so required by the Engineer at an additional charge to be agreed upon between the Engineer and the Contractor.

9. Assignment

Assignment

The Contractor shall not assign the Contract or any interest there in without the written consent of the Employer and any assignment shall be in a form approved by the Employer.

10. Sub-contracting

Sub-contracting

The Contractor shall not sub-contract any of the Contractor's duties without written approval from the Engineer.

11. Remedy on Contractor's failure to Perform

Remedy on Contractor's failure to Perform

If the Contractor shall fail to carry out any work required under the Contract or refuse to comply with any instruction or order given by the Engineer in accordance with the Contract within a reasonable time, the Engineer may give the Contractor 14 days' notice in writing to carry out such work or comply with such instruction. If the Contractor fails to comply with such notice, the Employer shall be entitled to carry out such work or instruction by his own workmen or by other contractors. Without prejudice to any other remedy, all additional expenditure properly

incurred by the Employer in having such work or instruction carried out shall be recoverable by the Employer from the Contractor by deduction from moneys due to the Contractor under this Contract or under any other contract between the Employer and the Contractor.

12. Compliance with the Construction Workers Registration Ordinance, Cap. 583

Compliance with the Construction Workers Registration Ordinance, Cap. 583

The Contractor shall provide the Engineer with all relevant information regarding their compliance with the Construction Workers Registration Ordinance, Cap. 583. The Contractor shall prepare and submit the required information in accordance with the requirements set out by the Engineer.

13. Labour Returns

Labour Returns

The Contractor shall, as and when called upon to do so by the Engineer or the Engineer's Representative, submit to the Engineer or Engineer's Representative, information in a format specified by the Engineer or the Engineer's Representative on workers employed by the Contractor on site, including the worker categories, man-hours of workers and any other information as required by the Engineer or the Engineer's Representative.

14. Information not to be divulged

Information not to be divulged

(1) The Contractor and its employees, agents, sub-contractors and any other persons engaged in connection with the Contract (collectively, "Related Persons" and each a "Related Person") shall not use or divulge any Confidential Information except for the proper performance of the Contract. This restriction does not apply

(a) to a disclosure of any Confidential Information to a Related Person in circumstances where such disclosure is necessary for the proper performance of the Contractor's duties and obligations under the Contract, provided that the Contractor has imposed on the Related Person an absolute and legally binding obligation to refrain from disclosing the Confidential Information to a third party,

(b) to a disclosure of any Confidential Information already known to the recipient other than as a result of disclosure by the Contractor or a Related Person in breach of its duty of confidence under this clause or otherwise,

(c) to a disclosure of any Confidential Information which is or becomes public knowledge other than as a result of disclosure by the Contractor or a Related Person in breach of its duty of confidence under this clause or otherwise,

(d) to a disclosure of any Confidential Information in circumstances where such disclosure is required pursuant to any law, regulation, rule of any relevant stock exchange, or an order of a court or arbitral authority of a competent jurisdiction, or

(e) to a disclosure of any Confidential Information with the prior written consent of the Employer.

(2) Any disclosure of Confidential Information by the Contractor or any Related Person shall be in strict confidence and shall be on a "need to know" basis and extend only so far as may be necessary for the purpose of this Contract.

(3) The Contractor shall take all necessary measures (including but not limited to security measures, and contractual provisions where appropriate) to ensure that Confidential Information is not used or divulged by the Contractor and each Related Person other than in the proper performance of the Contract.

(4) The Contractor shall ensure that each Related Person is aware of and comply with the provisions of this clause and the Official Secrets Ordinance (Cap. 521).

(5) If so requested by the Employer, the Contractor shall submit

(a) a separate confidentiality agreement executed in favour of the Employer on the terms and in the form prescribed by the Employer, and

(b) a separate confidentiality agreement executed by a Related Person in favour of the Employer on the terms and in the form prescribed by the Employer.

(6) The Contractor shall promptly notify the Employer, the Engineer or the Engineer's Representative of any breach or suspected breach of this clause by the Contractor or any Related Person. The Contractor and each Related Person shall give the Employer, the Engineer or the Engineer's Representative all reasonable assistance in connection with any action or proceedings the Employer or any of its authorised users, assigns and successors-in-title may take to pursue against any party a breach or suspected breach of this clause.

(7) The Contractor and each Related Person shall comply with the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"). Neither the Contractor nor any Related Person uses personal data provided by the Employer, the Engineer, the Engineer's Representative or a delegate of any of them (each a "Data Owner") for any purpose other than that specified by the Data Owner or for the proper performance of

the Contract. A Data Owner may, from time to time or prior to provision of any personal data, require the Contractor to demonstrate that adequate measures are in place to ensure compliance with the PDPO and that all personal data is protected against any inadvertent or unauthorised access, processing, erasure, loss and use. A Data Owner may prescribe restrictions on or conditions of use of the personal data, or instruct the Contractor to ensure security of the personal data. The Contractor shall comply, and shall ensure that each Related Person comply, with these restriction, conditions and instructions, at his own cost.

(8) The provisions of this clause shall survive the completion or termination of the contract (howsoever occasioned) and shall continue in full force and effect notwithstanding such completion or termination.

(9) The Employer, the Engineer, the Engineer's Representative or a delegate of any of them may use any information provided by the Contractor under the Contract but shall not divulge such information except for the purpose of

(a) carrying out any repair, amendment, extension or other work connected with the Works,

(b) exercising their rights or carrying out their duties under the Contract,

(c) the use, alteration or demolition of the Works,

(d) giving publicity to the Works, or

(e) the Employer's duties under the Code on Access to Information.

(f) cost estimation or analysis of the Employer's work connected or unconnected with the contract, and compiling tender estimate for use by the Government and the public, provided that for this purpose:

(i) the Employer does not disclose the contract number, contract title and Contractor's name to a third party, and

(ii) when the Employer discloses other information to a third party, the Employer obtains an undertaking from the third party to not disclose it for any other purpose,

(g) complying with any law, regulation, rule of any relevant stock exchange, or an order of a court or arbitral authority of a competent jurisdiction, or

(h) initiating, defending or resolving any dispute to which the Employer is a party.

(10) Without prejudice to any other provision of the contract, the Contractor shall indemnify and keep the Employer and its authorised users, assigns and successors-in-title fully and effectively indemnified against any and all proceedings, actions, claims, demands, losses, liabilities, damages, costs, legal costs, professional and other expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses) of any nature whatsoever which the Employer or its authorised users, assigns and successors-in-title may suffer, sustain or incur, whether directly or consequentially, as a result of or in relation to any breach of confidence (whether under the contract or otherwise) or this provision by the Contractor or a Related Person.

(11) In this clause, "Confidential Information" means any information, drawings, specifications, documents, contracts, design materials and data (including without limitation any personal particulars, records and personal data (as defined in the PDPO) and materials of any nature (in or on whatever media)) accessible by the Contractor under the contract or provided by the Employer, the Engineer or the Engineer's Representative for the purposes of or in the course of performing the contract.

15. Ethical Commitment

Ethical Commitment

(1) If the Contractor or any of his agents or employees shall be found to have offered or given any advantage, gratuity, bonus, discount, bribe or loan of any sort to any agent or employee of the Employer or to the Engineer or to any member of the Engineer's staff, the Employer may terminate forthwith the employment of the Contractor under the Contract, and to hold the Contractor liable for any loss or damage which the Employer may thereby sustain.

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

(3) The Contractor shall require his employees, agents and sub-contractors who are involved in this Contract to declare in writing to the Contractor any conflict or potential conflict between their personal/financial interests and their duties in connection with this Contract. In the event that such conflict or potential conflict is disclosed in a declaration, the Contractor shall forthwith take such

reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed.

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

(5) The Contractor shall take all necessary measures (including by way of contractual provisions and/or providing training workshops where appropriate) to ensure that his employees, agents and sub-contractors are aware of the prohibitions in this clause.

16. Contractor's interim statements

Contractor's interim statements

(1) During the progress of any Works the Contractor may submit a statement requesting an interim payment for such Works in respect of the following: -

(a) the estimated value of the work carried out in accordance with the Contract; and

(b) (not used)

(c) any other estimated sum to which the Contractor considers to be due to him under the Contract.

(2) (not used)

(3) The Contractor shall also submit a signed declaration in a form prescribed in Appendix to GCC for Maintenance Works or approved by the Employer to confirm compliance with the provisions on ethical commitment and confidentiality as stated in GCC Clauses 14 and 15 as part of the Contractor's interim statement. If the Contractor fail to submit the declaration as required, the Employer shall be entitled to withhold payment until such declaration is submitted and the Contractor shall not be entitled to interest in that period.

17. Acknowledgement of being notified of the ethical requirements

Acknowledgement of being notified of the ethical requirements

The Contractor acknowledges that he has been reminded that dishonesty, theft and corruption on his part or those of his employees, agents or sub-contractor who are involved in the Contract may lead to prosecution

under, without limitation, section 9 of the Prevention and Bribery Ordinance, Cap 201; section 17, section 18D or section 19 of the Theft Ordinance, Cap 210 and section 161 of the Crimes Ordinance, Cap 200. These offences commonly carry upon conviction terms of imprisonment.

18. Contractor's superintendence

Contractor's superintendence

(1) The Contractor shall give or provide all necessary superintendence during the execution of the Works and as long thereafter as the Engineer may consider necessary for the proper fulfilment of the Contractor's obligations under the Contract.

(2) The Contractor shall ensure that he is all times represented on the Site by a competent and authorized agent who shall be deemed to be approved by the Engineer provided the agent is not expressly disapproved by the Engineer in writing within 14 days from the serving of a notice in writing upon the Engineer by the Contractor of the appointment of the agent. The authorized agent shall be constantly on the Site and shall give his whole time to the superintendence of the Works.

(3) The Engineer shall have the power to withdraw his approval of the authorized agent at any time. If such approval shall be withdrawn the Contractor shall, after receiving notice in writing of such withdrawal, remove the agent from the Site forthwith and shall not thereafter employ him again on the Site in any capacity and shall replace him by another competent agent approved by the Engineer.

(4) The authorized agent shall receive on behalf of the Contractor directions and instructions from the Engineer and the Engineer's Representative.

19. Quality of Plant, materials and workmanship and Tests

Quality of Plant, materials and workmanship and Tests

(1) All Plant, materials, and workmanship shall be of the respective character, quality or kind required by the Contract and in accordance with the Engineer's instructions and shall be subjected to such examinations, measurements or Tests as the Contract shall require or as ordered by the Engineer or the Engineer's Representative at the place of manufacture, or on the Site, or at such other place or places as may be specified in the Contract, or at all or any such places. All Plant and materials shall be of recent manufacture and not previously used.

(2) The Contractor shall provide such assistance, instruments, machines, labour and other facilities as may be necessary for examining, measuring or testing any work and the quality, weight or quantity of any Plant and/or material used and, before incorporation into the

Works, shall supply for examining, measuring or testing such samples of Plant and/or materials as may be selected or required by the Engineer or the Engineer's Representative.

(3) The Contractor shall bear the expense and costs of any examination, measurement or Test and of complying with the requirements of sub-clause (2) of this Clause, including without limitation any transportation costs and shall reimburse the Employer in respect of the costs of the Engineer in attending such examination, measurement or Test, if such examinations, measurements or Tests and all repetitions thereof are clearly intended or provided for in the Contract.

(4) If any examination, measurement or Test not so intended or provided for in the Contract is ordered by the Engineer or the Engineer's Representative, then such expense and costs of such examination, measurement or Test including those of the Engineer's attendance shall be borne by the Contractor if the examination, measurement or Test shows the Plant, materials or workmanship not to be in accordance with the Contract or with the Engineer's instructions but otherwise such expense and costs shall be borne by the Employer.

(5) In the event that any Test shows that the Contractor has failed to comply with the requirements of the Contract or with the Engineer's instructions in respect of Plant, materials or workmanship, the Contractor shall propose and carry out at his own expense further or any other Tests as the Engineer may approve.

(6) Sub-clauses (4) and (5) of this Clause shall apply to any series of Tests carried out on any part of the Works the results of which indicate that in the opinion of the Engineer the Contractor has failed to comply with the requirements of the Contract or with the Engineer's instructions in respect of Plant, materials or workmanship notwithstanding there being satisfactory individual Tests included in any such series of Tests.

(7) Notwithstanding the above, testing carried out in the Employer's laboratories in connection with the Works shall be free of charge.

(8) If the Contractor is required by the Contract or ordered by the Engineer to carry out any examination, measurement or Test, then the Contractor shall give notice to the Engineer specifying the procedures that the Contractor intends to adopt and the time and location of the examination, measurement or Test. If no period of notice is specified in the Contract then reasonable notice shall be given by the Contractor having regard to the type and location of the material, Plant and workmanship to be examined, measured or tested.

20. Rejection and removal of unsatisfactory Plant and material

Rejection and removal of unsatisfactory Plant and material

(1) The Engineer shall during the progress of the Works have the power to order in writing:

(a) the rejection and the removal from the Site within such time as may be specified in the order of any Plant or material which in the opinion of the Engineer is not in accordance with the Contract,

(b) the substitution of proper and suitable Plant or material, and

(c) the removal and proper re-execution, notwithstanding any previous examination, measurement or Test thereof or any interim payment therefor, of any work which, in respect of Plant, materials or workmanship, is not in accordance with the Contract.

(2) The Contractor shall bear the expense of uncovering, dismantling, breaking up and removal from the Site of any Plant, material or work not in accordance with the Contract and the Contractor shall also bear the expense of reinstating and making good all consequential damage to the Works resulting from such uncovering, dismantling, breaking up or removal.

(3) Where the rectification of any work or replacement of any Plant or material by the Contractor which does not comply with the Contract would involve the removal and re-execution of the original permanent work the Engineer may but shall not be obliged to give directions for a variation of the Works in lieu of such removal and re-execution at no additional expense to the Employer.

Provided that if in the opinion of the Engineer such variation has involved the Contractor in expense in excess of that which would have been involved in the removal and re-execution of the original permanent work then the Engineer shall value such excess in accordance with Clause 7 and shall make payment in accordance with Clause 3 .

(4) In the event that the Engineer exercises any of his powers under sub-clause (1) of this Clause concerning materials supplied by the Employer, and if in the opinion of the Engineer the Contractor could not have reasonably ascertained that the material was not in accordance with the Contract then the Engineer shall ascertain the cost incurred, and shall make payment in accordance with Clause 3.

(5) Unless authorized otherwise by the Engineer, all replacement parts, which during the progress of the Works are required to be fitted to

any Plant, shall be genuine proprietary standard parts produced or recommended by the manufacturer of the Plant.

(6) The Engineer's power under this clause shall be in addition to, and without prejudice to, other powers of the Engineer under this Contract.

21. Vesting of Constructional Plant and temporary buildings

Vesting of Constructional Plant and temporary buildings

All Constructional Plant and temporary buildings owned by the Contractor shall when brought onto the Site be and become the property of the Employer but may be removed from the Site by the Contractor at any time unless removal is expressly prohibited by the Engineer in writing. Upon removal as aforesaid such Constructional Plant and temporary buildings shall re-vest in the Contractor. Upon completion of the Works the remainder of such Constructional Plant and temporary buildings shall re-vest in the Contractor.

22. Vesting of Plant and materials

Vesting of Plant and materials

All Plant and materials owned by the Contractor for incorporation in the Works shall be and become the property of the Employer upon delivery to the Site, and shall not be removed without an instruction or the prior written consent of the Engineer. Plant and materials and equipment shall only re-vest in the Contractor to the extent that they may be found to be surplus to requirements upon or prior to completion of the Works. The operation of this Clause shall not be deemed to imply any approval by the Engineer of such Plant or materials or prevent the rejection by the Engineer of any Plant or material at any time.

23. Recovery of money due to the Employer

Recovery of money due to the Employer

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

(2) All damages (including liquidated damages), costs, charges, expenses, debts or sums for which the Contractor is liable to the Employer under any provision of any other contract between the Contractor and the Employer may be deducted by the Employer from monies due to the Contractor under the Contract.

24. Right of Government to terminate for convenience

Right of Government to terminate for convenience

(1) Notwithstanding the provisions of any other clause in the Contract,

the Employer shall, in addition to any other power enabling it to terminate the Contract, have power to terminate the Contract at any time by notice in writing to the Contractor and the termination shall take effect on a date specified in the notice but without prejudice to the claims of either party in respect of any antecedent breach thereof. Upon receipt of the notice of termination the Contractor shall, unless directed by the Engineer pursuant to sub-clause (4) hereunder, suspend all the work and stop incurring further expenditure with respect to any work under the Contract except for work which is necessary for the protection of life or property or for the safety of the Works.

(2) Except as provided in sub-clause (3) of this Clause, the Employer shall not terminate the Contract under this Clause in order to execute the Works himself or to arrange for the Works to be executed by another contractor.

(3) The Employer is entitled to terminate the Contract under this Clause and thereafter to execute the Works himself or to arrange for the Works to be executed by another contractor if the Engineer shall certify in writing to the Employer that in his opinion the completion of the Works will be delayed by a period of not less than one year due to interfacing problems or programme slippages of associated works outside the scope of the Contract.

(4) After the issue of the notice of termination to the Contractor under sub-clause (1), the Engineer shall as soon as practicable and in any case not later than the date of termination specified in the notice give directions with which the Contractor shall comply with all reasonable despatch as to all or any of the following matters:

(a) the performance of further work in accordance with the provisions of the Contract, where such further work is necessary for the protection of life or property or for the safety of the Works;

(b) the protection of work executed under the Contract or any work required to leave the Site in a clean and safe condition;

(c) the removal of all Constructional Plant, Temporary Works and temporary buildings from the Site;

(d) the removal of materials placed on the Site;

(e) the removal of any debris or rubbish and the clearing and making good of the Site;

(f) the termination or assignment of any sub-contracts and contracts, including those for the hire of Plant, services and

insurance, entered into by the Contractor for the purposes of or in connection with the Contract;

(g) the assignment of warranties for materials placed on the Site; and

(h) any other matter arising out of the Contract with regard to which the Employer may decide that directions are necessary or expedient.

(5) All Constructional Plant, Temporary Works, temporary buildings and materials properly brought on to the Site shall be removed by the Contractor as and when they cease to be required in accordance with directions given by the Engineer under sub-clause (4). The Constructional Plant, Temporary Works, temporary buildings and materials which have become the property of the Employer under Clauses 21 and 22 shall upon such removal re-vest in the Contractor. If the Contractor shall fail to remove any such Constructional Plant, Temporary Works, temporary buildings or materials as aforesaid, the Employer may

(a) sell any such Constructional Plant, temporary Works, temporary buildings or materials which has become the property of the Employer under Clauses 21 and 22 and after deducting from any proceeds of sale the costs, charges and expenses of and in connection with such sale shall pay the balance, if any, to the Contractor but to the extent that the proceeds of sale are insufficient to meet all such costs, charges and expenses the excess shall be a debt due from the Contractor to the Employer and may be deducted by the Employer from any money due or which may become due to the Contractor whether under this or any other contract with the Employer in accordance with the provision of Clause 23; or

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

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

Provided further that the Employer shall not at any time be liable for

the loss of or damage to any Constructional Plant, Temporary Works, temporary buildings or materials which the Contractor shall fail to remove from the Site under this sub-clause.

(6) If –

(a) the Contractor is unable or unwilling with all reasonable despatch to carry out any work or other matter specified in directions given to him by the Engineer in terms of sub-clause (4), or

(b) the Employer considers that any other urgent work not specified in directions given to the Contractor under sub-clause (4) shall be carried out by a person other than the Contractor, the Engineer may authorize the carrying out of such work or such other urgent work by a person other than the Contractor and if such work or other work is work which, in the opinion of the Engineer, the Contractor was liable to do at his own expense under the Contract, all costs, charges and expenses properly incurred in carrying out the same shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any money due or which may become due to the Contractor whether under this or any other contract with the Employer in accordance with the provision of Clause 23.

(7) In the event of termination of the Contract under this Clause the Contractor shall be paid by the Employer, in so far as such items have not already been covered by payment on account made to the Contractor, for all work executed prior to the date of termination to be valued in accordance with the Contract and in addition, subject to sub-clause (8):

(a) the sums payable in respect of preliminary items in so far as the work or service comprised therein has been carried out or performed and a proper proportion, as certified by the Engineer, of all such items the work or service comprised therein has been partially carried out or performed;

(b) the cost of materials ordered for the Works which have been delivered to the Contractor or of which the Contractor is liable to accept delivery or any advanced payment made for materials ordered for the Works, such materials becoming the property of the Employer upon such payment being made by the Employer;

(c) a sum to be certified by the Engineer being any cost reasonably incurred by the Contractor for the purpose of completing the Works in so far as such cost shall not have been paid in accordance with any other sub-clause of this Clause or any other

Clause under the Contract.

(d) the additional cost of removal, as compare to removal if the contract had been performed to completion, under sub-clause (5) of all Constructional Plant, Temporary Works, temporary buildings and materials from the Site and, if required by the Contractor, return thereof to the Contractor's country of origin or to any other destination at no greater cost and certified by the Engineer as reasonable;

(e) a sum to be certified by the Engineer being any reasonable sum expended by the Contractor because of the termination of the Contract in respect of

(i) the uncompleted part of any sub-contract and other contracts (including those for the hire of Plant, services and insurance), and

(ii) the curtailment of any contract of employment,

entered into exclusively in connection with the Contract.

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

(8) The Contractor shall, in any sub-contract or contract made by him in connection with or for the purposes of the Contract, reserve the power to determine such sub-contract or contract in the event of the termination of the Contract by the Employer in accordance with the provisions of this Clause upon terms similar to the terms of this Clause. The Contractor shall not be entitled to compensation of any expenditure resulting from non-compliance with this requirement.

(9) Within 90 days after the date of issue of the notice of termination under sub-clause (1), the Contractor shall submit to the Engineer a statement of account and supporting documentation showing in detail the value in accordance with the Contract of the work done as of the date of termination together with all further sums which the Contractor considers to be due to him under this Clause. Within 90 days after receipt of the statement of account and of all information reasonably required for its verification, the Engineer shall value and certify the sum which in his opinion is finally due to the Contractor

on termination under this Clause and within a further 21 days the Employer shall make payment of the certified sum to the Contractor.

(10) Payment to the Contractor under sub-clause (7) shall be in full and final settlement of all claims, costs and charges incurred by the Contractor as a result of the Contract under this Clause.

(11) This Clause shall survive and remain in force after termination of the Contract in accordance with this Clause.

General Conditions of Contract

APPENDIX to GCC for Maintenance Works

COMPLIANCE WITH THE ETHICAL COMMITMENTS & PDPO REQUIREMENTS

(Appendix to GCC 16)

To: The Engineer of the Contract

Contract No.: _____

Contract Title:_____

In accordance with the General Conditions of Contract for Maintenance Works Clause 16, we confirm that we have complied with the following provisions and have ensured that our directors, employees, sub-contractors and agents are aware of the following provisions:

(a) Prohibiting our directors, employees, agents and sub-contractors who are involved in this Contract from offering, soliciting or accepting any advantage as defined in section 2 of the Prevention of Bribery Ordinance, Cap 201 when conducting business in connection with this Contract;

(b) Requiring our directors, employees, agents and sub-contractors who are involved in this Contract to declare in writing to us any conflict or potential conflict between their personal/financial interests and their duties in connection with this Contract. In the event that a conflict or potential conflict is disclosed, we will take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed;

(c) Prohibiting our directors and employees who are involved in this Contract from engaging in any work or employment other than in the performance of this Contract, with or without remuneration, which could create or potentially give rise to a conflict between their personal/financial interests and their duties in connection with this Contract and requiring our sub-contractors to do the same;

(d) Taking all measures as necessary to protect any Confidential Information or personal data as defined in the Personal Data (Privacy) Ordinance entrusted to us by or on behalf of the Employer from being divulged to a third party other than those allowed in this Contract.

_____

(Name of the Contractor) ……..

(Name of the Signatory) ……..…..

(Position of the Signatory) ……..

(Date) ……

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