ACES STANDARD CONDITIONS OF ENGAGEMENT

ASSOCIATION OF CONSULTING ENGINEERS SINGAPORE
MEMBER OF THE INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS (FIDIC)
SECTION 1.0 STANDARD CONDITIONS OF ENGAGEMENT

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1.1 DEFINITIONS AND INTERPRETATIONS

1.1.1 Definitions

The following words and expressions shall have the meanings assigned to them except where the context otherwise requires:

(i) "Agreement" means these STANDARD CONDITIONS OF ENGAGEMENT, THE MEMORANDUM OF AGREEMENT, SCOPE OF SERVICES, and additional documents specified in the SPECIFIC PROVISIONS (if any);

(ii) "Client" means the party named in the Memorandum of Agreement, who employs the Consulting Engineer to undertake the Services;

(iii) "Consulting Engineer" / "Engineer" means the party named in the Memorandum of Agreement, who is employed by the Client to perform the Services;

(iv) "Contractor" / "Sub-Contractor" means a third party engaged by the Client to execute the whole or part of the Works for the Project and includes any Sub-Contractor engaged by the Contractor;

(v) “Main Building Contractor” means the principal works contractor engaged by the client to carry out the Works;

(vi) "Other Consultants" means a third party engaged by the Client for other consulting or advisory services related to the Project, but does not include a Contractor;

(vi) "Party" means the Client or the Consulting Engineer, "parties" means the Client and the Consulting Engineer and “third party” means any other person or entity as the context requires;

(vii) "Principal" implies Partner or Director;

(viii) "Project" means the project named in the Memorandum of Agreement for which the Services are to be provided;

(ix) “Services” / “Scope of Services” means the services to be performed by the Consulting Engineer defined in the Memorandum of Agreement;

(x) "Time Base Rate" means a rate covering salary, fringe benefits, including bonus, provident fund, staff saving fund, payroll and any other statutory taxes, leave and holiday pay, subscriptions to professional institutions, medical and insurances, seminars, conferences and workshops, office administrative charges including rentals, local telephones, telex, fax and postal charges, stationeries, subscriptions to journals, promotion, training and scholarships, legal and audit fees, bank charges, idle time and profit;

(xi) "Working day" means the period between any one midnight and the next excluding Saturdays, Sundays and Statutory Holidays in the place where the Project is being carried out;

(xii) "Works" means all engineering and construction works in connection with the
1.1.2 Interpretation

(i) The headings in the Agreement shall not be used in its interpretation.

(ii) In the Agreement the singular shall include the plural, the masculine shall include the feminine and vice versa where the context requires.

(iii) All terms and conditions of the Agreement are contained within this Agreement and no terms of conditions may be implied from any other document or any other professional group, whether it refers to this Agreement or not.

(iv) If there is a conflict between the provisions of the Agreement the provisions shall take priority in the following order:

- MEMORANDUM OF AGREEMENT
- ADDITIONAL DOCUMENTS AS SPECIFIED IN THE SPECIFIC PROVISIONS
- SPECIFIC PROVISIONS
- CONDITIONS OF ENGAGEMENT

1.2. OBLIGATIONS OF THE CONSULTING ENGINEER

1.2.1 Scope of Services

The Consulting Engineer shall perform the Services relating to the Project in accordance with and subject to the terms of this Agreement. The Scope of Services forms a part of the Agreement.

1.2.2 Duty of Care

The Consulting Engineer shall exercise reasonable skill, care and diligence in the performance of the Consulting Engineer’s obligations under the Agreement.

1.2.2A Compliance with Laws

The Consulting Engineer shall perform the Services in compliance with applicable laws, applicable standards and codes of practice.

1.2.3 Professional Duty of Independent Judgment

When required by the Agreement to certify, decide or exercise discretion between the Client and a third party with whom the Client has a contract, the Consulting Engineer...
shall do so independently and as required by the terms of that contract as an independent professional acting with skill and judgment.

1.2.4 Authority of the Consulting Engineer

The Consulting Engineer is authorised to act as the Client’s agent when required by the Agreement but only in such matters as are set out in the Services.

1.2.5 Notice of Change to the Services

On becoming aware of any matter which will change or has changed the scope or timing of the Services then the Consulting Engineer shall give notice to the Client and the notice shall contain, particulars of the change, as far as is practicable in the circumstances.

If the Consulting Engineer is delayed in performing the Services for reasons beyond its reasonable control, the Consulting Engineer shall be entitled to recover its reasonable additional costs associated with such delay, provided always that the Consulting Engineer has complied with the notification requirements of this clause 1.2.5, the costs are additional and substantiated, and the Consulting Engineer has used reasonable endeavours to mitigate the delay.

1.2.6 Staged Services

Where the Services are specified as being staged, the Consulting Engineer shall not initiate or proceed with any subsequent stage of the Services without the written approval of the Client.

1.2.7 Other Consultants

To the extent required by the Services, the Consulting Engineer shall direct and co-operate with all Other Consultants and use reasonable skill and care to co-ordinate their work into that being undertaken by the Consulting Engineer and others, but shall not be responsible for them or their performance.

Unless stated otherwise in the Agreement, the Consulting Engineer is not the principal design consultant.

1.2.8 Specialist Suppliers/Contractors

The Consulting Engineer may recommend that specialist suppliers and/or contractors design and execute certain parts of the Works in which circumstances the Consulting Engineer shall co-ordinate the design of such part or parts with the overall design of the Works but he shall not be responsible for the design, manufacture, installation and performance of any such part or parts of the Works. The Consulting Engineer shall not be liable for acts of negligence, default or omission by such person or persons.

1.2.9 Accounts

Where Services are carried out on a time charge basis and for all other reimbursable costs, the Consulting Engineer shall maintain up to date records which clearly identify relevant time and expenses incurred in providing the Services to the Client.
1.2.10 Conflict of Interest

The Consulting Engineer warrants at the date of signing this Agreement, after making diligent enquiry, that no conflict of interest exists or is likely to arise during the performance of its obligations under this Agreement. The Consulting Engineer shall notify the Client in writing of any interest the Consulting Engineer has which may conflict with the interests of the Client under the Agreement and comply with the Client’s reasonable instructions in relation thereto.

1.3. OBLIGATIONS OF THE CLIENT

1.3.1 Payment to the Consulting Engineer

The Client shall pay the Consulting Engineer for the Services the amount of fees and expenses set out in or determined by this Agreement at the times and in the manner set out in this Agreement.

1.3.2 Provision of Information

The Client shall provide to the Consulting Engineer, free of cost all information which may be relevant to the provision of the Services. Following any request by the Consulting Engineer for additional information, the Client shall provide such additional information which is available, within a reasonable time to avoid delay to the provision of the Services.

1.3.3 Decisions by the Client

The Client shall provide the Consulting Engineer within a reasonable time that does not result in delay to the provision of the Services, a decision in writing on all matters properly referred to the Client in writing.

1.3.4 Assistance to the Consulting Engineer

The Client shall cooperate with the Consulting Engineer and shall not interfere with or obstruct the proper performance of the Services.

The Client shall as soon as practicable:

(i) Make available free of cost to the Consulting Engineer for the purposes of the Services the equipment, facilities and personnel described in Scope of Services;

(ii) Make arrangements to enable the Consulting Engineer to enter upon the site and other lands as necessary for the purposes of the Services; and

(iii) Obtain all approval, authorities, licences and permits which are required from governmental, statutory or other responsible authorities for the lawful implementation and completion of the Project, unless otherwise stated.
1.3.5 Services of Others
The Client shall arrange for the provision of services from Other Consultants or others as may be required and bear all costs.

1.3.6 Instructions to Others
Where the Consulting Engineer is required to administer the work of Other Consultants or other third parties who are directly contracted to the Client for services or where the Consulting Engineer is required to act as Engineer-to-the-Contract for any contract on behalf of the Client, then the Client shall give all instructions to such third parties through the Consulting Engineer.

1.3.7 Notice of Change to the Services
Subject to clause 1.9.5, within 5 Working Days of becoming aware of any matter which will change or has changed the scope or timing of the Services, or such time as is reasonably practicable in the circumstances, either Party shall give the other written notice of the change or likely change, and as far as is practicable in the circumstances, particulars of the change.

1.4. PAYMENT

1.4.1 Payment for Normal Services

1.4.1.1 Payment Depending Upon the Actual Cost of the Works
(i) Definition of Total Project Construction Cost (PCC)

The Project Construction Cost or any part thereof shall be deemed to include:

a) The cost to the Client of the Works however incurred, without deduction of any liquidated damages or penalties payable by the Contractor to the Client but including any payments made by the Client to the Contractor by way of bonus, incentive or ex-gratia payments, or in settlements of claims.

Including:

• foundations and excavations;
• all internal and external civil and structural works;
• all mechanical and electrical services including plant and equipment;
• all architectural works and finishes;
• landscaping works;
• identifiable furniture, fixtures and equipment;
• all other items necessary for the completion of the Works;
• geotechnical investigations, marine surveys;
• any works in connection with the provision of diversion of public utilities;

b) A fair valuation of any labour, materials, manufactured goods, machinery or other facilities provided by the Client, and of full benefit accruing to the Contractor from the use of construction plant and equipment belonging to the Client which the Client has required to be used in the execution of the Works.

c) The market value, as if purchased new, of any second-hand materials, manufactured goods and machinery incorporated in the Works.

d) A fair proportion of the total cost to the Client of any work in connection with the provision or diversion of public utilities systems which is carried out, other than by the Contractor, under arrangements made by the Consulting Engineer. The said fair proportion shall be assessed with reference to the costs incurred by the Consulting Engineer in making such arrangements.

e) Cost of Main Building Contractor's profit and attendance.

The cost of the Works shall not include:

a) Administration expenses incurred by the Client.

b) Costs incurred by the Client under this Agreement.

c) Interest on capital during construction, and the cost of raising moneys required for carrying out the construction of the Works.

d) Cost of land and wayleaves.

(ii) Where the Works are to be constructed in more than one phase, then fees for each phase and the provisions of this Agreement shall apply separately to each phase as if the expression “the Works” meant in the case of each phase, the work comprised in that phase.

1.4.1.2 Payment of a Lump Sum

The sum payable by the Client to the Consulting Engineer for his services shall be the sum specified in the Agreement, provided that the Consulting Engineer shall, in addition to the said sum, be paid additional fees for any additional services.

1.4.1.3 Payment on a Time Basis

(i) In respect of services provided by the Consulting Engineer, the Client shall pay the Consulting Engineer.

(a) at the hourly rate specified in the Memorandum of Agreement.
(b) Any charge for the use of special equipment.

(ii) Time spent by staff in travelling in connection with the Works shall be chargeable on the above basis.

(iv) Unless otherwise agreed between the Client and the Consulting Engineer, the Consulting Engineer shall not be entitled to any payment in respect of time spent by secretarial staff or by staff engaged on general accountancy or administration duties in the Consulting Engineer’s office.

(iv) The Consulting Engineer shall submit to the Client at the time of submission of the monthly accounts such supporting data as may be agreed between the Client and the Consulting Engineer.

1.4.2 Payment for Additional Services

1.4.2.1 In respect of additional services provided by the Consulting Engineer, until such time as an alternative arrangement is agreed in writing between the Client and the consulting engineer, the Client shall pay the Consulting Engineer in accordance with the Scale of Charges on a Time Basis as set out above.

1.4.3 Payment for use of Special Equipment

Except as expressly identified, the costs associated with all reasonably foreseeable special equipment required in the provision of the Scope of Services shall be deemed to be included.

Where unforeseen special equipment is required in carrying out the Services, or where the Consulting Engineer is expressly required by the Client to use special equipment in carrying out of his Services, the Client shall, unless otherwise agreed between the Client and the Consulting Engineer, pay the Consulting Engineer:

(a) for the time spent in connection with the use of special equipment, including the development and writing of programmes and the operation of the computer in trial and final runs, on a time basis when applicable and otherwise in accordance with the Scale of Charges on a Time Basis; and

(b) a reasonable charge for the use of special equipment, which charge shall be agreed between the Client and the Consulting Engineer before the work is put in hand.

1.4.4 Payment for Site Supervision

(i) In addition to any other payment to be made by the Client to the Consulting Engineer under this Agreement, the Client shall:

(a) reimburse the Consulting Engineer in respect of all salary and all other payments including bonus, provident fund, payroll and any other statutory taxes, leave and holiday pay, medical and insurance and transport costs made by the Consulting Engineer to or on behalf of site staff specifically recruited by the Consulting Engineer pursuant to the Scope of Services,
and in respect of all other expenditure incurred by the Consulting Engineer in connection with the selection, engagement and employment of site staff; and

(b) pay to the Consulting Engineer a sum calculated at 10% percent or at the percentage specified in the Memorandum of Agreement of the amounts payable to the Consulting Engineer under the preceding sub-clause in respect of head office overhead costs incurred on site staff administration; and

(c) reimburse the Consulting Engineer in respect of all salary and all other payments made by the Consulting Engineer to his staff seconded to site pursuant to or in respect of all head office overhead costs at the hourly rate specified in the Memorandum of Agreement,

provided that in lieu of the payments above, the Client and the Consulting Engineer may agree upon inclusive monthly or fixed head office overhead costs or other rates to be paid by the Client to the Consulting Engineer for each member of site staff employed by the Consulting Engineer.

(ii) The Client shall also in all cases be responsible for the cost of providing such site office accommodation, furniture, telephones, equipment and transport as shall be reasonably necessary for the use of site staff appointed and for the reasonable running costs of such necessary site office accommodation and other facilities, including those of stationery, telephone calls, internet access, taxes and postage. Unless otherwise agreed between the Client and the Consulting Engineer, the Consulting Engineer shall arrange, whether through the Contractor or otherwise, for the provision of site office accommodation and facilities for the use of site staff.

(iii) In cases where the Consulting Engineer has thought it proper that site staff should not be appointed, or where the necessary site staff is not available at site due to sickness or any other cause, the Consulting Engineer shall be paid in accordance with the Scale of Charges on a Time Basis for site visits which would have been unnecessary but for the absence or non-availability of site staff.

1.4.5 Disbursements

(i) The Client shall in all cases reimburse the Consulting Engineer in respect of all the Consulting Engineer's disbursements properly made in connection with:

(a) Printing, reproduction and purchase of all documents, drawings, maps, diskettes, records and photographs.

(b) Modem, overseas fax and telephone calls, and all courier services.

(c) Travelling, hotel expenses and other similar disbursements.

(d) Advertising for tenders and for site staff.

(e) The provision of additional services of the Client pursuant to the Scope of Services.

(ii) The Client, by agreement with the Consulting Engineer and in satisfaction of his liability to the Consulting Engineer in respect of these disbursements, may make
to the Consulting Engineer a lump sum payment or alternatively a sum calculated as a percentage of the fees and charges falling due as specified in the Memorandum of Agreement. The Consulting Engineer is also entitled to forfeit tender deposits from the successful renderers in order to reimburse him against costs incurred in the preparation of tender, contract documents and all documents required for contract administration.

1.4.6 Payment for Alteration or Modification to Design

1.4.6.1 If, at any time after the commencement of the Consulting Engineer's appointment, any design whether completed or in progress or any specification, drawing or other document prepared in whole or part by the Consulting Engineer shall require to be modified or revised by reason of instructions received by the Consulting Engineer from or on behalf of the Client, or by reason of circumstances which could not reasonably have been foreseen by the Consulting Engineer at the date of entering into the Agreement, then the Client shall make additional payment to the Consulting Engineer for making any necessary modifications or revisions and for any consequential reproduction of documents. Unless otherwise agreed between the Client and the Consulting Engineer, the additional sum to be paid to the Consulting Engineer shall be calculated in accordance with the Scale of Charges on a Time Basis and shall also include all disbursements provided always that the Consulting Engineer shall give the client written notice as soon as it is reasonably apparent that additional payments will arise under this Clause.

1.4.6.2 Where in the Consulting Engineer's reasonable opinion the Client's instruction necessitates a fundamental redesign of the part or parts of the Works affected by the instruction such that designs, specifications, drawings and other documents prepared by the Consulting Engineer cannot be modified or revised to take account thereof or where the modification or revision instructed by the Client results in a reduction in the cost of the part or parts of the Works affected thereby as contained in the Consulting Engineer’s most recent estimate by 10% or more, then such part or parts of the Works shall be deemed to have been abandoned and the Consulting Engineer shall be paid therefore in accordance with Clause 1.4.8. The Consulting Engineer shall carry out such further work and shall produce such further designs, specifications, drawings and other documents as may be reasonably necessary to comply with the Client's instructions and the Consulting Engineer shall be paid therefore in accordance with the provisions of this Agreement.

1.4.6.3 In any case in which the Consulting Engineer is paid a fixed sum for his services under the Scope of Service, any instruction from or on behalf of the Client under the preceding Clauses shall be subject to the prior written agreement of the Consulting Engineer and the Client and the Consulting Engineer shall agree to the appropriate adjustment to the sum payable.
1.4.7 Payment When Works are Damaged or Destroyed

If at any time before completion of the Works any part of the Works or any materials, plant or equipment whether incorporated in the Works or not shall be damaged or destroyed, the Client shall make additional payment to the Consulting Engineer in respect of any expenses incurred or additional work the Client instructs the Consulting Engineer to as a result of such damage or destruction. The amount of such additional payment shall be calculated in accordance with the Scale of Charges on a Time Basis and shall also include all disbursements.

1.4.8 Payment Following Termination or Suspension by the Client

(i) Upon a termination or suspension of this Agreement by the Client, the Client shall pay to the Consulting Engineer the sums specified in this sub-clause less the amount of payments previously made to the Consulting Engineer under the terms of this Agreement which include:

(a) A fair and reasonable proportion of the sum which would have been payable to the Consulting Engineer if no such termination or suspension had taken place. In the assessment of such proportion, the services carried out by the Consulting Engineer up to the date of termination or suspension and in pursuance of Clause 1.6(vii) shall be compared with a reasonable assessment of the services which the Consulting Engineer in accordance with this sub clause by reference to the cost of the Works, and to the extent that such cost is not known, the assessment shall be made upon the basis of the Consulting Engineer's best estimate of cost.

(b) Amounts due to the Consulting Engineer under any other clauses of this Agreement.

(c) A disruption charge equal to one-sixth of the difference between the sum which would have been payable to the Consulting Engineer but for the termination or suspension and the payment due under (a) above.

(ii) Upon a termination or suspension by the Client in pursuance of Clause 1.6(iv), the Client shall pay to the Consulting Engineer the sums specified below:

(a) A fair and reasonable proportion of the sum which would have been payable to the Consulting Engineer in respect of the services affected if no such termination or suspension had taken place. The proportion shall be calculated in accordance with the provisions of Sub-Clause (i)(a) above and

(b) A disruption charge to be calculated in accordance with the provision of Clause L4.8 (i) (c).

(iii) In any case in which the Client has required the Consulting Engineer to suspend the carrying out of the Consulting Engineer's Services, the Client may at any time from the date of the Client's notice require the Consulting Engineer in writing to resume the performance of such Services. In such event:

(a) On resumption within a period of 12 months, the Consulting Engineer shall within a reasonable time of receipt by him of the Client's said requirement in writing resume the performance of services in accordance
with this Agreement, the payment made under Sub-Clause (i)(a) or (ii)(a) as the case may be, ranking as a payment on account towards the total sum payable to the Consulting Engineer but, notwithstanding such resumption, the Consulting Engineer shall be entitled to retain the disruption charge referred above; and

(b) On resumption after a 12 month period, the Client shall pay an additional lump sum fee equivalent to one-tenth of the fee entitlement for work done for remobilisation and the remaining fee adjusted to allow for the inflation rate of the Country where the Works is to be undertaken but, notwithstanding such resumption, the Consulting Engineer shall be entitled to retain the disruption charge referred to in Clause 1.4.8(i) (c) above.

(iv) If the Consulting Engineer shall require or be required to perform any additional services in connection with the resumption of his Services, the Client shall pay the Consulting Engineer in respect of the performance of such additional services and all disbursements in accordance thereto.

1.4.9 Payment Following Termination by the Consulting Engineer

Upon a termination of this Agreement by the Consulting Engineer in pursuance of Clause 1.6(vi), the Client shall pay to the Consulting Engineer the sums specified above less the amount of payments previously made to the Consulting Engineer under the terms of this Agreement. Upon payment of such sums, the Consulting Engineer shall deliver to the Client such completed drawings, specifications and other similar documents relevant to the Works as are in his possession. The Consulting Engineer shall be permitted to retain copies of any documents so delivered to the Client.

1.4.10 Payment of Checking Design Work Prepared by Others

When the Consulting Engineer is engaged to check and report on designs, computations, plans and estimates for the Works. The Client shall pay the Consulting Engineer for such services as may be negotiated. In the case the Consulting Engineer is required to assume a design responsibility and to endorse the design drawings for submission to the Authorities, he shall be paid a fee of 30% of the total fee computed on the actual cost of the relevant Works.

1.4.11 Payment for Co-ordination of Works of Secondary Consulting Engineers or Other Consultants

(i) Where secondary consultants are directly appointed by the Client or where the Consulting Engineer if he considers it necessary and with the Client’s approval, obtain the services of secondary consultants, then the Consulting Engineer shall in this case be responsible for co-ordinating the services of these consultants.

(ii) Each such secondary consultant shall be paid fees in accordance with the scales of the recognized Institutions governing his profession or such other fees as may
be agreed with the Client.

(iii) The Client shall pay the secondary consultants directly or reimburse the Consulting Engineer for these fees. In addition, the Consulting Engineer shall be paid an additional fee which is not less than 25% of the fee paid to the Other Consultants.

1.4.12 Payment of Accounts

1.4.12.1 Unless otherwise agreed between the Client and the Consulting Engineer

(a) the sum payable to the Consulting Engineer shall, until the cost of the Works is known, be paid by the Client to the Consulting Engineer in installments and shall be calculated by reference to the most recent estimate of cost of the Works incorporating when available any accepted tender or tenders. Such installments shall be paid during each of the several stages of the Consulting Engineer's services at the intervals specified in the Memorandum of Agreement.

(b) the sum payable to the Consulting Engineer on fixed sum or time basis as the case may be shall be paid by the Client in the installments and at the intervals stated in the Memorandum of Agreement and the lump sum payable for disbursements shall be paid as stated in the Memorandum of Agreement.

(c) all other sums due to the Consulting Engineer shall be paid by the Client on accounts rendered monthly by the Consulting Engineer.

1.4.12.2 Installments paid by the Client to the Consulting Engineer shall constitute no more than payments on account. A statement of the total sum due to the Consulting Engineer shall be prepared when the cost of the Works is fully known, taking account, if appropriate, any change in the percentage(s) stated in the Memorandum of Agreement resulting from changes in the cost of the Works. Such statement, after giving credit to the Client for all installments previously paid, shall state the balance (if any) due from the Client to the Consulting Engineer or from the Consulting Engineer to the Client, as the case may be, which balance shall be paid to or by the Consulting Engineer as the case may require.

1.4.12.3 All sums due from the Client to the Consulting Engineer in accordance with the terms of this Agreement shall be paid within 30 days of the submission by the Consulting Engineer of his accounts therefore to the Client, and any sums unpaid at the expiry of such period of 30 days shall bear interest thereafter such interest to accrue from day to day at the rate of 2% per annum above the current Bank Prime Rate.

1.4.13 Disputed Invoices

If any item or part of an item of an account rendered by the Consulting Engineer is disputed or subject to question by the Client, the Client shall give prompt notice with reasons for disputing and shall not delay payment on the remainder of the account. However, the provisions of the preceding clause shall apply to such remainder and also
to the disputed or questioned item to the extent that it shall subsequently be agreed or determined to have been due to the Consulting Engineer.

1.4.14 Independent Audit

In the case of Services carried out on a time charge basis and for all other reimbursable costs, the Client may within one (1) year after completion or termination of the Services and upon written notice of not less than 10 working days require that a reputable and independent firm of accountants nominated by the Client and at the Client's expense, audit any amount claimed by the Consulting Engineer by attending during normal working hours at the office where the records are maintained.

1.5. LIABILITY AND INSURANCE

1.5.1 Liability of the Consulting Engineer

The Consulting Engineer shall only be liable to pay damages to the Client arising out of or in connection with this Agreement if a breach of duty of care is established against the Consulting Engineer.

1.5.2 Limitation of Consulting Engineer's Responsibility

(i) The Consulting Engineer shall have no responsibility or liability for costs, loss or damage of whatsoever nature arising from:

(a) any errors in or omissions from data, documents, plans, designs or specifications not prepared by the Consulting Engineer, the Consulting Engineer's employees or other personnel under the direct control of the Consulting Engineer;

(b) any act or omission or lack of performance or any negligent or fraudulent act or omission by the Client or any Other Consultant, Contractor or supplier to the Client or any employee or agent of the Client, Other Consultant, Contractor or supplier.

(ii) Notwithstanding any recommendation or lack of recommendation made by the Consulting Engineer to the Client, the Consulting Engineer shall not be held to have made any warranty or promise as to the suitability, competence or performance of any Other Consultant, Contractor, supplier, or other third party.

1.5.3 Damages

If it is found that either party is liable to the other, damages shall be payable on the following terms:

(i) damages payable by either party to the other shall be limited to the amount of reasonably foreseeable loss and damage suffered as a direct result of such breach;
(ii) The maximum aggregate amount of damages payable by either party to the other in respect of liability, whether under the law of contract, tort or otherwise, is limited to the amount specified in the Specific Provisions or, if no such amount is specified, to the lesser of $250,000 or two times the value of fees payable under this Agreement;

(iii) If either party is found to be liable to the other, in circumstances where the acts or omissions of a third party have contributed to the loss or damage, the proportion of damages payable by the party found liable shall be limited to that proportion which is attributable to that party's breach of duty, whether the claims are made under contract, tort or otherwise.

1.5.4 Duration of Liability

Neither party shall be considered liable for any loss or damage arising out of or in connection with the Agreement unless a claim is formally made against that party before the expiry of the period specified in the Specific Provisions or, if no such period is specified, six years from the completion of the Services, whether or not the loss or damage has become apparent, or been suffered, within that period.

1.5.5 Insurance for Liability and Indemnity

(i) The Consulting Engineer agrees to arrange and keep in force professional indemnity insurance cover to the extent of the liabilities under Clause 1.5.4 until the time at which that liability shall cease in terms of Clause 1.5.5. The insurance cover may alternatively be provided by means of an equivalent bond.

(ii) The Consultant agrees to arrange and keep in force public liability insurance until completion of the Services and workers compensation insurance as required by law.

1.5.6 Indemnity of Consulting Engineer's Employees

The Client shall not make any claim against any individual employee or employees of the Consulting Engineer for any costs, losses or damage sustained by the Client arising from the Services.

1.5.7 Indemnity by the Client

The Client shall indemnify the Consulting Engineer against the adverse effects of all claims including such claims by third parties which arise out of or in connection with the Agreement and are made after the expiry of the period of liability referred to in Clause 1.5.5, except insofar as they are covered by the insurances arranged under the terms of Clause 1.5.6.
1.5.8 Exceptions

Clauses 1.5.4 (ii) and 1.5.8 shall not apply to claims arising from deliberate and reckless misconduct or otherwise than in connection with the performance of obligations under this Agreement or anything else which cannot be excluded or limited by law.

1.6. DURATION OF ENGAGEMENT

(i) The appointment of the Consulting Engineer shall commence from the date stated in the Memorandum of Agreement or from the time when the Consulting Engineer shall have begun to perform for the Client any part of the Services specified in this Agreement, whichever is the earlier.

(ii) The Consulting Engineer shall not, without the consent of the Client, such consent not to be unreasonably withheld, assign the benefit or in any way transfer the obligations of this Agreement or any part thereof.

(iii) If at any time the Client decides to postpone or abandon the Works, he may thereupon by notice in writing to the Consulting Engineer forthwith terminate this Agreement, provided that, in any case the Consulting Engineer is paid for his Services. The Client may, in lieu of so terminating, by notice in writing to the Consulting Engineer require him to suspend the carrying out of his Services under this Agreement for the time being.

(iv) If at any time the Client decides to postpone or abandon any part of the Works, he may by notice in writing to the Consulting Engineer seek to vary this Agreement either by excluding the part of the Services to be performed by the Consulting Engineer in relation to such part of the Works, or by suspending performance of the same (unless the Consulting Engineer is to be paid for his services and in such notice, the Client shall specify the services affected). The Consulting Engineer shall forthwith comply with the Client's notice and the Client shall pay to the Consulting Engineer a sum in accordance with the provisions of this Agreement in respect of such compliance.

(v) If the Client has not given notice in writing to the Consulting Engineer to resume the performance of Services in respect of the whole or any part of the Works suspended under (iii) and (iv) hereof within a period of 12 months from the date of the Client's notice

a. In the case of a suspension under (iii) this Agreement shall forthwith automatically terminate, or

b. In the case of a suspension under Clause (iv) the suspended Services shall be deemed to have been excluded from the services to be performed by the Consulting Engineer under this Agreement.

(vi) In the event of the failure of the Client to comply with any of his obligations under this Agreement, or upon the occurrence of any circumstances beyond the control of the Consulting Engineer which are such as to delay for a period of more than 12 months or prevent or unreasonably impede the carrying out by the Consulting Engineer of his services under this Agreement, the Consulting Engineer may upon not less than 60 days' notice in writing to the Client terminate his
appointment under this Agreement, provided that in lieu of so terminating his appointment, the Consulting Engineer may

a. forthwith upon any such failure or the occurrence of any such circumstances suspend the carrying out of his Services hereunder for a period of 60 days (provided that he shall as soon as practicable inform the Client in writing of such suspension and the reasons therefore); and

b. at the expiry of such period of suspension either continue with the carrying out of his Services under this Agreement or else, if any of the reasons for the suspension then remain, forthwith in writing to the Client terminate his appointment under this Agreement. (vii) The Consulting Engineer shall, upon receipt of any notice in accordance with (iii) or in the event of the termination by him of his appointment in pursuance of (vi), proceed in an orderly manner but with all reasonable speed and economy to take such steps as are necessary to bring to an end his Services under this Agreement.

(viii) Unless terminated under this Clause the Consulting Engineer's appointment under this Agreement shall terminate when the Consulting Engineer shall make and issue the certificate authorizing the final payment to the Contractor.

(ix) Any termination under this Clause of the Consulting Engineer's appointment under this Agreement shall not prejudice or affect the accrued rights or claims of either party to this Agreement.

1.7. SUSPENSION OR TERMINATION OF SERVICES

1.7.1 Force Majeure

If circumstances arise for which the Consulting Engineer is not responsible and which make it impractical or impossible for the Consulting Engineer to perform in whole or in part the Services in accordance with the Agreement then the Consulting Engineer shall promptly notify the Client of the same.

1.7.2 Termination by the Client

(i) The Client may suspend all or part of the Services upon written notice, or terminate the Agreement by giving 30 days written notice, to the Consulting Engineer who shall immediately make arrangements to stop the Services and minimise further expenditure.

(ii) The Client may by giving written notice, terminate this Agreement if the Consulting Engineer is in breach of this Agreement and the breach has not been remedied within 15 days (or longer as the Client may allow) of a written notice given by the Client specifying the breach and requiring the breach to be remedied; or

(iii) The Client may terminate this Agreement if the Consulting Engineer becomes bankrupt, insolvent, or goes into liquidation, administration or receivership
1.7.3 Termination by the Consulting Engineer

The Consulting Engineer may by notice of no less than 30 days terminate the Agreement or at his or her discretion without prejudice to the right to terminate may suspend or continue suspension of performance of the whole or part of the Services:

(i) when 30 days after the due date for payment of any account the Consulting Engineer has not received payment of that part of it which has not by that time been contested in writing,

(ii) when Services have been suspended under either Clause 1.7.1 or 1.7.2 and the period of suspension has exceeded 6 calendar months, or it is clear to the Consulting Engineer that it will be impossible or impractical to resume the suspended Services before the period of suspension has exceeded six months; or

(iii) if the Client becomes bankrupt, insolvent or goes into liquidation, administration or receivership

1.7.4 Payment Due Upon Suspension, Termination and Reinstatement

Where the Services are suspended or terminated the Consulting Engineer shall be entitled to payment for the Services carried out and except where this Agreement is terminated in accordance with clauses 1.7.2(ii) or 1.7.2(iii) this shall include consequential costs, expenses and disruption fees incurred as a result of the suspension or termination in accordance with Clause 1.4.8 and remobilization fees on resumption.

1.7.5 Rights and Liabilities of the Parties

Suspension or termination of the Agreement shall not prejudice or affect the accrued rights or claims and liabilities of the parties.

1.8. SETTLEMENT OF DISPUTES

1.8.1 Disputes as to Interpretation

In the event that may difference shall arise as to the interpretation of this Agreement, such matter may be submitted to the President of the Institution of Engineers Singapore or the President’s nominee for the time being for an opinion on the same.

1.8.2 Notice of Dispute

If either party considers that a dispute has arisen under the terms of this Agreement then that party shall by notice in writing served on the other party inform the other party of the details of the dispute and request that the dispute be resolved by conciliation in accordance with Clause 1.8.3.

Should either party not wish the dispute to be referred to conciliation they may require arbitration of the dispute in accordance with Clause 1.8.4.
1.8.3 Conciliation

(i) If the notice served in Clause 1.8.2 requests conciliation and such request is agreed to by the other party, then the matter in dispute shall be referred to a conciliator to be agreed between the parties or, failing agreement as to the identity of the conciliator, within twenty (20) working days of the notice in Clause 1.8.2, the conciliator shall be nominated by the President of the Institution of Engineers Singapore for the time being at the request of either party.

(ii) The conciliator shall discuss the matter with the parties and endeavour to resolve it by their agreement. All discussions in conciliation shall be without prejudice and shall not be referred to in any latter proceedings. Failing agreement, the conciliator may by written decision determine the matter.

(iii) The conciliator’s determination shall be binding upon both parties unless within 10 working days from the conciliator’s written decision, either party notifies the other in writing that it rejects the conciliator's determination. Each party shall bear their own costs in respect of the conciliation and each shall pay half the cost of the conciliator.

1.8.4 Arbitration

(i) If the matter in dispute is not resolved in conciliation or if either party has within the prescribed time rejected the conciliator's determination then the matter in dispute shall be referred to arbitration.

(ii) The Arbitrator shall be mutually agreed upon or failing such agreement within two months, the President of the Institution of Engineers Singapore at the time being may be requested by both parties to the dispute to nominate an Arbitrator or a panel of not less than 3 names from which the parties may choose an Arbitrator. Failing the above procedure the dispute shall be referred to arbitration as prescribed by the Arbitration Act in force in Singapore. Work under this Agreement shall after consultation with the Client continue during arbitration proceedings and no payment the liability for which is not in issue or contingent upon the results of the proceedings shall be withheld on account of such proceedings.

(iii) The award in the arbitration shall be final and binding on both parties and the costs of any arbitration proceedings shall be borne as the arbitrator may direct.

1.9. GENERAL PROVISIONS

1.9.1 Governing Law

This Agreement shall be governed by Singapore law.
1.9.2 Changes in Legislation
If, after the date of the Agreement, the cost or duration of the Services is altered as a result of changes in, or additional to, any statute, regulation or by-law, or in the requirements of any authority having jurisdiction over any matter in respect of the Project, then the agreed remuneration and the for completion shall be adjusted in order to reflect the impact of those changes.

1.9.3 Notices
Notices under the Agreement shall be in writing and will take effect upon receipt at the addresses stated in the Specific Provisions. Delivery may be by hand or by facsimile message against a written confirmation of receipts or by registered letter.

1.9.4 Assignments and Sub-Contracts
(i) Each party binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of the other party in respect to all obligations and liabilities of this Agreement.

(ii) Neither party shall assign, sublet or transfer any substantial right or obligation under this Agreement without the written consent of the other party, which consent shall not be unreasonably withheld. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any obligation under this Agreement.

(iii) The Consulting Engineer shall not without the written consent of the Client, which consent shall not be unreasonably withheld, initiate, vary or terminate any Sub-Contract for performance of all or part of the Services. Any such sub-contracting will not relieve the Consulting Engineer from any liability or obligation under this Agreement.

(iv) The Client may novate this Agreement provided that it has obtained the Consulting Engineer's prior written consent (such consent not be unreasonably withheld) and the parties agree the terms of the novation.

1.9.5 Variations
(i) The Client may order variations to the Services in writing or may request the Consulting Engineer to submit proposals for variation to the Services;

(ii) The reasonable cost of preparation and submission of such proposals and of incorporating into the Agreement any variations to the Services ordered by the Client, including any increase in the Consulting Engineer's fees and reimbursable costs, shall be calculated by the Consulting Engineer in accordance with the rates set out in the Agreement, and where there are no rates, on the basis of reasonable rates, and shall be payable by the Client.
1.9.6 Ownership of Data, Design and Documents

(i) The Consulting Engineer shall retain copyright and all other intellectual property rights in all documents prepared by the Consulting Engineer. The Client shall be entitled to use them or copy them only for the Works and the purpose for which they are intended and need not obtain the Consulting Engineer’s permission to copy for such use.

(ii) The Client shall retain copyright and all other intellectual property rights in all documents prepared by the Client and the Consultant shall be entitled to use them or copy them only for the provision of the Services.

(iii) The ownership of data and factual information collected by the Consulting Engineer and paid for by the Client shall, after payment by the Client, lie with the Client;

(iv) The Client shall have no right to use any documents referred to in Clause 1.9.6 (i), and Clause 1.9.6 (ii) shall not apply, where any or all of the fees and expenses payable to the Consulting Engineer have not been paid in accordance with this Agreement.

1.9.7 Confidentiality

Both parties shall keep all commercially sensitive information obtained by them in the context of the Agreement confidential and shall not divulge it without the written approval of the other Party. Neither the Client or the Consulting Engineer shall disclose to third parties or use for any purpose other than as provided in the context of this Agreement, such confidential information provided by the other unless:

(a) the information is required by law to be disclosed; or

(b) the information is already generally known to the public; or

(c) the other party consents to the disclosure of the information.

1.9.8 Exclusion of third party rights

A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 2001 to enforce any term of this Agreement

END