

## **OPTION MODULE E COLLABORATIVE CONTRACTING**

### **E1.0 Definitions**

- (1) “Commencement” means the date when the Contractor is to commence the Works pursuant to Clause 12.1 of the Conditions.
- (2) “Early Notification Register” means the record that consists of a written compilation of early notice matters that are notified by the Superintending Officer to the Contractor or vice versa. This record is to include the date on which the early notice is given, details of the matter for which an early notice is given, and how the adverse effects of the matters are to be avoided or mitigated.
- (3) “Dispute Board” means the panel that is set up by the Parties in accordance with Clause 35A of the Conditions.
- (4) “Key Performance Incentives” shall have the meaning ascribed to it in Clause E6.0.

### **E2.0 Working Relationship**

- (1) The Contractor and the Employer shall act in accordance with, and shall ensure that their agents and representatives act in accordance with this Contract.
- (2) The Contractor and the Employer shall, and shall ensure that their agents and representatives use their best endeavours to work together in a collaborative environment and act in a spirit of mutual trust and cooperation.
- (3) For the avoidance of doubt, nothing in this Clause E2.0 shall derogate from, or alter the Contractor’s obligations and liabilities under the Conditions, including but not limited to Clause 6.1 of the Conditions.

### **E3.0 Early Notice**

- (1) The Employer shall ensure that the Superintending Officer prepares a first Early Notification Register and issues the same to the Contractor within 7 days from the Commencement of the Works. The Employer shall further ensure that the Superintending Officer complies with all its obligations set out in this Clause E3.0.
- (2) As soon as either the Contractor or the Superintending Officer becomes aware of any matter which may:
  - (a) lead to an increase in the Contract Sum;
  - (b) result in a delay to the Time or Times for Completion;

- (c) have an adverse impact on the performance of the Works; or
- (d) have an adverse impact on the achievement of the Key Performance Incentive(s),

then the party concerned must give an early notice to the other party.

- (3) The Contractor or the Superintending Officer may also give an early notice to one another in respect of such other matter that they may agree upon in writing.
- (4) For the avoidance of doubt, where the Conditions impose a duty on the Contractor to give notice to the Superintending Officer, that duty applies notwithstanding the Superintending Officer's duty to give early notice to the Contractor of any matter under this Clause E3.0.
- (5) Within 14 days from the Commencement of the Works, the Superintending Officer shall organise, and the Contractor shall attend the first early notice meeting. The Superintending Officer and the Contractor may then hold subsequent early notice meetings during the Time or Times for Completion at such regular intervals that they may agree upon in writing. In addition, the parties may also hold an early notice meeting on an ad-hoc basis if one party makes a written request for such a meeting.
- (6) If the Superintending Officer or Contractor is of the view that the attendance of any sub-contractor or third party will facilitate the discussion and decision-making process during the early notice meeting, the Superintending Officer or Contractor, as the case may be, may instruct its sub-contractor, or invite the third party, to attend the early notice meeting.
- (7) The objective of an early notice meeting is for all attendees to work together in a spirit of mutual trust and cooperation and to consider how to avoid or mitigate the adverse effects of the matters in the Early Notification Register. Attendees are to explore possible solutions to the problem and decide on the actions that each party will take.
- (8) The Superintending Officer is responsible for managing the Early Notification Register. This includes:
  - (a) updating the Early Notification Register to reflect the early notices that parties have given to each other throughout the course of the Works; and
  - (b) keeping a proper written record of the discussion and decisions taken at each early notice meeting, and issuing the updated Early Notification Register to the Contractor within 7 days of each early notice meeting.
- (9) The Superintending Officer is to issue such written instruction to the Contractor, as may be required for the Contractor to proceed with the decision that has been taken at the early notice meeting.

- (10) If the progress or completion of the Works or any part of the Works has already been materially affected at the time that the early notice is given, then subject to compliance by the Contractor with Clauses 14, 23 and 32 of the Conditions, the Superintending Officer may:
  - (a) grant an extension of time pursuant to Clause 14; and
  - (b) certify pursuant to Clause 32, such sum as may be reasonable in respect of any Loss and Expense incurred by the Contractor.
- (11) For the avoidance of doubt, the Superintending Officer's duty to give an early notice to the Contractor is subject to such restrictions that the Employer may impose on the Superintending Officer in relation to the disclosure of information that the Employer deems to be sensitive or otherwise confidential under statutory laws and/or contract.

#### **E4.0 Settlement of Disputes**

A new Clause 35A shall be inserted immediately before Clause 35 of the Conditions as follows:

##### **“35A Singapore Infrastructure Dispute-Management Protocol 2018**

- (1) Within 60 days of the Commencement of the Works, the Employer and Contractor shall establish a Dispute Board in accordance with the Singapore Infrastructure Dispute-Management Protocol 2018 (“**SIDP**”), which is hereby incorporated by reference. The Dispute Board shall comprise one member.
- (2) The Dispute Board shall assist parties in preventing, managing and resolving differences or disputes (including but not limited to a difference or dispute that is referred to the Dispute Board under Clause 35.2 of the Conditions) by providing assistance or mediation, or by rendering an opinion or formal determination in accordance with the terms of the **SIDP**.”

Clause 35 of the Conditions is herewith deleted and replaced with the following:

**“35 Settlement of Disputes**

**35.1 Reference to the Superintending Officer**

- (1) If a dispute or difference of whatsoever kind shall arise between the Employer or the Superintending Officer or the Superintending Officer's Representative and the Contractor in connection with or arising out of the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after any termination of the Contract or the Contractor's employment, including any dispute or difference as to any opinion, instruction, determination, decision, certificate or valuation of the Superintending Officer or the Superintending Officer's Representative, it shall in the first place be referred by either party in writing to the Superintending Officer for his decision. Such reference shall state that it is made pursuant to this Clause and a copy shall be sent to the other party to the Contract.
- (2) No later than the expiry of 30 days after the date upon which the Superintending Officer received such reference, the Superintending Officer shall give notice of his decision in writing to the Employer and to the Contractor and shall for information state therein that it is given pursuant to this Clause. Such decision shall identify the reference pursuant to which it is made and shall be final and binding on the parties to this Contract unless the Contractor refers the decision to adjudication under the Building and Construction Industry Security of Payment Act (if applicable), or either party refers the decision to a Dispute Board pursuant to Clause 35.2 or arbitration.
- (3) Unless the Contract has already been repudiated or the employment of the Contractor terminated or the carrying out of the Works completed, the Contractor shall, in case of any reference, continue to proceed with the Works in accordance with his obligations under the Contract and the Contractor and the Employer shall give effect forthwith to every decision of the Superintending Officer unless and until the same shall be revised by the Dispute Board, the adjudicator under the Building and Construction Industry Security of Payment Act (if applicable), or an arbitrator as hereinafter provided.

### **35.2 Reference to Dispute Board**

- (1) The Employer or Contractor may make a referral to the Dispute Board if either party is dissatisfied with the decision of the Superintending Officer made pursuant to Clause 35.1, or if the Superintending Officer fails to give notice of his decision on or before the expiry of the 30 day period following the date on which the Superintending Officer has received the reference. A referral that is made under this Clause 35.2(1) shall be made within 14 days from the date of receipt of the aforesaid decision of the Superintending Officer, or within 14 days from the date of expiry of the aforesaid 30 day period.
- (2) Unless and until resolved by adjudication under the Building and Construction Industry Security of Payment Act, an arbitral tribunal or the court, the Employer and Contractor remain bound to comply with all outcomes of the Dispute Board which are expressed to be binding.
- (3) Nothing in Clause 35.2 or in the SIDP shall limit, restrict or derogate from the Superintending Officer's duties and powers under the Contract.
- (4) In the event where there is inconsistency between the SIDP and the Contract, the Contract shall prevail to the extent of such inconsistency.

### **35.3 Reference to Arbitration**

- (1) The Employer or the Contractor may, within 90 days from:
  - (a) the date of receipt of the decision of the Superintending Officer under Clause 35.1; or
  - (b) the date of expiry of the aforesaid 30 day period as specified in Clause 35.2(1),

give notice to the other party, with copies extended to the Superintending Officer and the Dispute Board for their information, of his intention to refer the dispute or difference to an arbitrator.

- (2) The Employer or the Contractor, if dissatisfied with: (a) the outcome of a difference or dispute that had been referred to the Dispute Board in accordance with Article 6 of the SIDP; or (b) the other party's non-compliance with that outcome, may within 90 days from the date of that outcome or non-compliance, give notice to the other party, with copies extended to the Superintending Officer and the Dispute Board for their information, of his intention to refer to an arbitrator. For the avoidance of doubt, where the dissatisfied Party intends to refer the difference or dispute or non-compliance to an arbitrator, the dissatisfied Party shall also comply with all applicable processes and provisions prescribed in the SIDP including the requirement to have served a notice of objection in respect of the determination of the Dispute Board, and, unless and until revised by the arbitrator, comply with all outcomes of the Dispute Board which are expressed to be binding.
- (3) Any dispute or difference arising out of or in connection with this Contract, including any question regarding:
- (a) its existence, validity or termination; or
  - (b) any opinion, decision or determination of a Dispute Board; or
  - (c) compliance with Article 10 of the SIDP,

that is referred to arbitration shall be resolved by arbitration in Singapore under the rules of the Singapore International Arbitration Centre. The arbitrator may be agreed upon by the parties and failing such agreement, shall be a person to be nominated on the application of either party by the President of the Court of Arbitration of the Singapore International Arbitration Centre. Any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act or any re-enactment or modification thereof.

- (4) Notwithstanding the giving of a notice by a dissatisfied Party of its intention to refer a dispute or difference to arbitration, arbitration proceedings shall not, without the Employer's consent in writing, be commenced before the Date of Substantial Completion of the Works (or if there is more than one such Date of Substantial Completion, the latest) or alleged Date of Substantial Completion of the Works.

### **35.4 Disputes concerning Termination, Repudiation or Abandonment**

Notwithstanding any of the foregoing, if the dispute or difference concerns the termination of the employment of the Contractor or the repudiation or abandonment of the Contract by either party, such dispute or difference shall not be referred to the Superintending Officer for decision pursuant to Clause 35.1, but shall be referred to the Dispute Board in accordance with the SIDP if the Dispute Board has been established, or to arbitration under Clause 35.3 if the Dispute Board has not been established, within 60 days of the notice of termination or act of repudiation or abandonment. Failure to do so within such period shall bar the Contractor absolutely from pursuing such dispute or difference before the Dispute Board or in any arbitration or court proceedings whatsoever.

### **35.5 Powers of the Arbitrator**

An arbitrator appointed pursuant to Clause 35.3 or Clause 35.4 hereof shall have full power to open up, review and revise any certificate, opinion, decision, requirement, notice or determination of the Superintending Officer and/or of the Dispute Board and to determine all matters in dispute or difference which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice, or determination had been given or entered into, subject to any provision of the Contract and/or the SIDP and/or other agreement which may constitute a decision or determination or certificate or other document as final and binding or any document or event or omission as barring or preventing a claim being advanced by one party against the other.

### **35.6 Reference to Adjudication**

Notwithstanding Clause 35.1 or Clause 35.2, if a dispute or difference involves a Payment Claim or Payment Response to which the Building and Construction Industry Security of Payment Act applies, the Contractor shall be entitled to make an adjudication application in accordance with the Building and Construction Industry Security of Payment Act, in which case the provisions of the Act shall apply.”

## **E5.0 Partnering Workshops**

- (1) Subject to the Specifications and other documents forming part of the Contract, the Employer and Contractor shall ensure that their key officers, and shall further ensure that key officers of their agents and sub-contractors, participate in partnering workshops to enable them to work in a collaborative environment.
- (2) The costs incurred for organising the partnering workshops are to be borne equally by the Employer and the Contractor.

## **E6.0 Key Performance Incentives**

- (1) The Employer may stipulate in the Appendix, targets for the Contractor to achieve, and the corresponding bonus that will be paid to the Contractor upon the achievement of the stipulated targets (the “Key Performance Incentives”).
- (2) The Employer may, at any time during the Time for Completion, add a Key Performance Incentive to the Appendix, but may not delete or reduce or otherwise vary any existing Key Performance Incentive to the detriment of the Contractor.
- (3) The Contractor shall, at agreed intervals, submit a report to the Superintending Officer on its status towards achieving each of the Key Performance Incentive. The report shall state the forecasted result, and the actual measured result (where available) against each target.
- (4) If the Contractor’s forecast result shows that the status of the Works is such that the Key Performance Incentive targets are unlikely to be met, then the Contractor is to give an early notice to the Superintending Officer in accordance with Clause E3.0.
- (5) Where the Superintending Officer certifies that the Contractor has achieved the Key Performance Incentive, the Contractor may include the bonus that is pegged to the achievement of that Key Performance Incentive in the next Payment Claim that is submitted under Clause 32.1.

## **E7.0 Revision of Programme**

Clause 9.2 of the Conditions is herewith deleted and replaced by the following:

### **“9.2 Revision of Programme**

- (a) Should it appear to the Superintending Officer at any time that the actual progress of the Works does not conform with the programme accepted under Clause 9.1, the Superintending Officer may instruct the Contractor in writing to supply additional particulars or to submit a revised or modified programme (or both) in order to show and to ensure completion of the Works within the Time for Completion or any extended time made pursuant to Clause 14. The Contractor is to comply with such an instruction within 7 days or such other period as the Superintending Officer may specify in the instruction.



- (b) Within 30 days of receiving the revised or modified programme and any additional particulars that the Contractor has supplied, the Superintending Officer is to notify the Contractor in writing as to whether it accepts the revised or modified programme or the additional particulars that have been supplied by the Contractor. Where the Superintending Officer does not accept the revised or modified programme or the additional particulars that the Contractor has supplied, the Superintending Officer shall state the reasons for his rejection. If the Contractor does not receive a notification from the Superintending Officer within the aforesaid 30 day period, the revised or modified programme or additional particulars supplied is deemed to be accepted by the Superintending Officer.
- (c) Where the Superintending Officer has notified the Contractor under Clause 9.2(b) that the revised or modified programme or additional particulars supplied remains unacceptable, the Contractor is to submit a further revised or modified programme or further additional particulars to the Superintending Officer within 14 days of the receipt of the Superintending Officer's notification.

Subject to Clause 31.1, the Superintending Officer is to notify the Contractor in writing within 14 days of the receipt of the Contractor's further revised or modified programme or further additional particulars supplied, as to whether it accepts such further revised or modified programme or such further additional particulars supplied. Where the Superintending Officer does not accept the further revised or modified programme or the further additional particulars supplied, the Superintending Officer shall state the reasons for his rejection and the same procedure set out in this Clause 9.2(c) shall apply until the Superintending Officer accepts the programme or additional particulars submitted by the Contractor. If the Contractor does not receive a notification from the Superintending Officer within the aforesaid 14 day period, the further revised or modified programme is deemed to be accepted by the Superintending Officer.”

## **E8.0 Extension of Time**

Clause 14.3(3) of the Conditions is herewith deleted and replaced with the following:

### **“14.3 Notice**

- (3) The Superintending Officer is to reply to the Contractor's notice for an extension of time within:
  - (a) 60 days of the date that the Superintending Officer has received sufficient information to decide on the Contractor's application for an extension of time; or
  - (b) such longer period which the Contractor has agreed to in writing.

The Superintending Officer shall make in writing to the Contractor such extension of time, if any, of the whole or any phase or part of the Works (as the case may be) as may in his opinion be fair, reasonable and necessary for the completion of the Works. The Superintending Officer shall take into account the effect, or extent, of any work omitted under the Contract and shall also take into account whether the event in question is one which will delay completion of the Works. The Superintending Officer shall also take into account any delays which may operate concurrently with the delay due to the event or events in question and which are due to acts or default on the part of the Contractor. For the avoidance of doubt, a failure by the Superintending Officer to reply to the Contractor's notice within the time stipulated in Clause 14.3(3) shall not be deemed as an implied instruction for the Contractor to accelerate the Works.”

**APPENDIX**

To be inserted at the end of the Appendix:

"If Option Module E is used

CLAUSE

KEY  
PERFORMANCE  
INCENTIVES

E6.0(1)

<b>Key Performance Incentives (KPI)</b>	<b>Measurement</b> (standards and metrics to determine extent to which KPI has been achieved)	<b>Bonus allocated on achievement of each KPI</b> (\$\$ or %)
KPI 1 -		
KPI 2 -		
KPI 3 -		
KPI 4 -		
KPI 5 -		
<b>Total Bonus \$</b>		

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