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PART 2
GENERAL CONDITIONS OF CONTRACT

1. Contract Period

Subject to the other provisions of the Contract, this Contract shall be for a period of **24** months. The Contractor shall provide the Services to the Government for the period commencing **1 June 2009** and expiring **31 May 2011**, both dates inclusive.

2. Total Services and Variation

(a). The Services to be performed under the Contract shall include those as laid down in the Schedules and Special Conditions of Contract and shall be carried out, as and when required, to the satisfaction of the Inspecting Officer. All instructions or directions shall be issued in writing and Government will not be responsible for any service performed on oral instructions issued by any person whomsoever.

(b). The Contractor shall not extend the Services beyond the requirements specified in the Schedules and Special Conditions of Contract except as directed in writing by the Government Representative; but the Government Representative may, subject to the proviso hereinafter contained, at any time during the Contract Period by seven (7) days notice in writing direct the Contractor to alter, amend, omit, add to, or otherwise vary any of the Services and the Contractor shall carry out such variations, and be bound by the same conditions, so far as are applicable, as though the said variations were stated in the Contract.

(c). Provided that no such variation shall, except with the consent in writing of the Contractor, involve a net addition to or deduction from the Contract price of more than twenty (20) percent unless otherwise mutually agreed by the Contractor and Government.

(d). Where a variation has been made to the Contract the amount to be added to or deducted from the Contract price in accordance with that variation shall be determined in accordance with the Rates so far as the same may be applicable and where rates are not contained in the said Schedules, or are not applicable, such amount shall be such sum as is reasonable in the circumstances.

(e). Due account shall be taken of any partial execution of the Services which are rendered useless by any such variation.

3. Quality of Services

(a). The Services shall include those as specified in the Schedules and Special Conditions of Contract and shall fulfill all the conditions and terms of the Contract, and any drawings and specifications (if any) from time to time supplied to the Contractor by the Government Representative.

(b). Any drawings and specifications reasonably required for the Contractor's guidance in the execution of the Contract shall be provided by Government Representative free of charge but shall be returned on completion of the Contract.

4. Payment for Services

- (a). If the Contractor has performed the Services in accordance with the terms and conditions of the Contract to the satisfaction of the Government, the Government shall pay to the Contractor the Monthly Payment in accordance with the sub-Clause (b) below.
- (b). Provided that in relation to each month of the Contract Period, the Contractor shall have performed all Services in accordance with the Contract and that the Inspecting Officer has so certified that in writing, the Government shall pay to the Contractor in arrears an amount equal to one monthly instalment as specified in Schedule 2 for the Services subject to any payment discount or deductions provided for in the Contract and in the manner hereinafter provided (“Monthly Payment”).
- (c). Monthly invoice shall be sent by the Contractor to the Government Representative or as otherwise directed. Notwithstanding anything herein to the contrary, payment of the Monthly Payment in respect of each month of the Contract Period shall be made within one month after the receipt of invoice, or upon certification by the Inspecting Officer that the Services have, in all respects, been performed in accordance with the terms and conditions of the Contract and to the satisfaction of the Government Representative, whichever is later.
- (d). Unless the Government Representative otherwise notifies in writing, all invoices and correspondence concerning payment shall be addressed to the offices as detailed below. The Government Representative shall not be liable for any delay in payment if invoices and correspondence are not so addressed.

Contact Person/Post and Contact Tel. No.	Address for Receiving the Invoice
Wetland Park Manager (Ecological Monitoring) Tel No.: 2445 1655 Fax no.: 3152 2668	Hong Kong Wetland Park Wetland Park Road, Tin Shui Wai, New Territories.

- (e). Without prejudice to any rights or remedies the Government may have, the Government shall be entitled to offset or deduct from the Monthly Payment any monies which the Contractor may owe to the Government and claim for any outstanding balance from the Contractor.
- (f). Apart from the Monthly Payment, under no circumstances whatsoever will the Government be liable to pay to the Contractor or any other person any money. The Government will not reimburse or compensate the Contractor for all or any costs, expenses, losses and liabilities which may be incurred or suffered by the Contractor in undertaking the Services. All things done by the Contractor shall be deemed as things which the Contractor is required to do for performing the Services, and be compensated for in the form of the Monthly Payment only. All vehicles, vessels and equipment, all materials and all labour and services used and hired by the Contractor for performing the Services will be provided by the Contractor at its sole cost.

- (g). Without prejudice to the generality of sub-Clause (f) above, for the avoidance of doubt, no extra payment shall be made by the Government for additional Staff provided by the Contractor in performing Services over the minimum requirement specified in Clause 6.1 of Schedule 4, unless this is provided in compliance with a specific written request by the Government for addition of Staff. No extra payment shall be made by the Government for the provision of audited financial statements pursuant to Clause 4 of Schedule 4.

5. Government Property

If any Government property shall be issued to the Contractor under the Contract, the Contractor shall be responsible for the due return of all such property upon termination of the Contract or upon the first written demand of the Government at any time during the Contract Period. If any such property shall be lost or damaged from any cause whatsoever while in the possession or control of the Contractor or his sub-contractors, employees or agents, the Contractor shall forthwith repair (in the case of damage) or replace the property (in the case of loss) with another in the same or better condition, brand, model, quantity and quality to the satisfaction of the Government Representative at the Contractor's own cost. A count of the articles or material in the possession of the Contractor may be made at any time by the Government Representative and the Contractor shall render such assistance as is necessary for this purpose.

6. Government Premises

- (a). The Contractor shall ensure that all persons engaged by him in carrying out the Contract keep to such parts of Government premises as are necessary for the due discharge of the Contractor's obligations under the Contract.
- (b). The safety of any equipment or vehicle used by the Contractor and brought alongside or onto Government premises shall be the responsibility of the Contractor, who shall indemnify the Government in respect of any loss or damage to such Government premises.

7. Recovery of Sums Due

Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under the Contract or any other Government contracts.

8. Assignment

The Contract is personal to the Contractor. The Contractor shall not, without the prior written consent of the Government Representative, assign or transfer or otherwise deal with the Contract or any of its rights or obligations thereunder.

9. Sub-contracting

- (a). The Contract shall be personal to the Contractor who shall have complete control of the Service and shall efficiently direct and supervise the performance of the Services to the full extent of its ability and with its full attention.

- (b). The Contractor may not sub-contract all or any part of the Services except with the prior written approval of the Government. Without prejudicing the absolute discretion of the Government in considering whether or not to give approval, the Government's approval will normally only be granted in case of an emergency or under special circumstances.
- (c). An application to the Government Representative for his approval of any proposed sub-contract to be made by the Contractor shall be accompanied with the particulars of the proposed sub-contractor, the Contractor's reasons for the proposed sub-contracting, and a draft of the sub-contract. Without prejudice to sub-Clause (b) above specifying the restricted circumstances under which an approval may only be given, the Government Representative may stipulate as a condition to his approval, such other terms and conditions to be set out in the sub-contract as the Government Representative in his absolute discretion considers appropriate, and take into account the matters mentioned in sub-Clause (d) below. The Contractor shall within three (3) days after receiving a written approval of the Government, and the signing of the sub-contract in the form and substance approved by the Government Representative provide the Government Representative with a certified true and complete copy of such sub-contract, and shall not without the prior written consent of the Government Representative, propose to amend or accept any proposal to amend the sub-contract.
- (d). The Contractor shall remain fully responsible for the performance of the Services and shall not be relieved from any of its obligations under the Contract by entering into any sub-contract for the performance of any part of the Contract and the Contractor shall be fully liable for all acts, omissions, defaults and neglect of any sub-contractor, its employees and agents as if they were its own.

10. Liability and Indemnity

- (a). None of the Government, its employees and agents shall be liable in any way for or in respect of :
 - (i). any loss of or damage to any of the Contractor's property or that of its employees, agents or sub-contractors howsoever caused whether by any act, omission, default or Negligence of the Government or any of its employees or agents or otherwise; or
 - (ii). any injury to or death of any of the Contractor's employees, agents or sub-contractors save and to the extent any such injury or death is caused by the Negligence of the Government or any of its employees or agents (in which case the Government will be liable or vicariously liable for any such injury or death).
- (b). Without prejudice to sub-Clause (a) above, the Contractor shall indemnify the Government and keep the Government fully and effectively indemnified from and against (1) all and any claims (whether or not successful, compromised or settled), actions, proceedings, threatened, brought or instituted against the Government; and (2) all liabilities (including liability to pay compensation or damages), damages, costs, losses, charges and expenses (including the fees payable to all lawyers and expert witnesses and other costs and expenses, on a full indemnity basis, which the Government may pay or incur in initiating or defending any claim, counter-claim, action or proceeding); and (3) any awards

and costs which ordered by the court or as may be agreed to be paid in settlement of any proceedings, which in any case arise directly or indirectly from, or in connection with, or out of, or which relate in any way to:

- (i). the negligence, recklessness or willful misconduct of the Contractor or any of its employees, agents or sub-contractor; or
 - (ii). the failure of the Contractor to comply with or observe any terms or conditions of this Contract; or
 - (iii). any warranties or representations made by the Contractor in this Contract or from time to time to the Government during the continuance of this Contract being untrue or inaccurate; or
 - (iv). failure of the Contractor or any of its employees, agents or sub-contractors to comply with or observe any law and regulation in the performance of the Services; or
 - (v). any act or omission of the Contractor or any of its employees, agents or sub-contractors in the performance of the Services notwithstanding that the Contractor is authorised or obliged to do or commit any such act or omission under this Contract; or
 - (vi). any loss, damage, injury or death referred to in sub-Clause (a) above save and except injury or death caused by the Negligence of the Government or any of its employees or agents; or
 - (vii). any injury or death of any third party, or any loss of or damage to property sustained by any third party, in consequence of any act, omission, default or negligence of the Contractor or any of its employees, agents or sub-contractors; or
 - (viii). any allegation and/or claim that the provision of the Services by the Contractor or a permitted sub-contractor (if any) infringes any Intellectual Property Rights of any person, or the enjoyment or use by the Government of any such services infringes any Intellectual Property Rights of any person; or
 - (ix). the disclosure (whether or not intended) by the Contractor or any Staff of confidential information (as defined in Clause 21 of the Special Conditions of Contract) due to any act, omission, negligence or default on the part of the Contractor or any Staff.
- (c). For the purposes of sub-Clause (a) and sub-Clause (b)(vi) above, but not otherwise 'Negligence' shall have the same meaning given to it in Section 2(1) of the Control of Exemption Clauses Ordinance (Cap. 71 of the Laws of Hong Kong). Each of sub-Clauses (b)(i) to (b)(ix) above shall be construed independently and shall not be limited or restricted by reference to or inference from the terms of any other sub-Clauses.

11. Policy of Insurance and Compensation

- (a). The Contractor shall effect and keep in force during the Contract Period at his own expense a public liability insurance policy exclusively for this Contract in the joint names of the Government and the Contractor (with appropriate cross-indemnity clause as if a separate policy had been issued to each of them) subject to a limit of indemnity of not less than HK\$10 million for any one event but otherwise unlimited with a reputable insurance company authorized under the Insurance Companies Ordinance (Cap. 41) and on such terms and conditions as shall be approved by the Government Representative against liability to pay damages and compensation for injury to or death of any person and for loss or

damage to any properties whatsoever where such injury, death, loss or damage as the case may be caused or arose out of any act, omission, default or negligence of the Contractor or the Government Representative or their respective employees, agents or sub-contractors (notwithstanding any such act or omission was an act or omission which the Contractor may be authorised or obliged to do under this Contract) (“Public Liability Insurance Policy”). The Public Liability Insurance Policy shall provide that the insurance company will waive all claims of sub-rogation which it may otherwise have against the Government as a co-insured.

- (b). If the Public Liability Insurance Policy provides that the payment of a certain amount of compensation shall be borne by the insured parties, the Contractor shall be solely responsible for such payment and shall reimburse the Government Representative forthwith if the Government Representative shall be required to make such payment.
- (c). The Contractor shall keep the Public Liability Insurance Policy in force during the continuance of this Contract and shall submit to the Government Representative upon award of this Contract two copies of the said Policy together with the receipt for payment of the current premium.
- (d). The Contractor is responsible to lodge all claims with the said insurance company and shall deal with the said company upon receipt from the Government Representative or otherwise of a report on any injury, death, loss or damage.
- (e). If the Contractor fails to effect and keep in force the Public Liability Insurance Policy or any other insurance which it may be required to effect under the terms of the Contract then and in any such cases the Government may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by the Government as aforesaid from any monies due or which may become due to the Contractor or recover the same as a debt due from the Contractor.
- (f). The Contractor undertakes to maintain the employees’ compensation insurance policy in compliance with Section 40 of the Employees’ Compensation Ordinance (Cap. 282) of the Laws of Hong Kong throughout the continuance of the Contract.
- (g). The Contractor undertakes to maintain: (1) motor vehicle insurance in respect of all vehicles used in or in connection with the performance of the Services for their full reinstatement costs for the time being (if any); and (2) an insurance policy in full compliance with the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272) in respect of all such vehicles (if any).
- (h). In the occurrence of any event which gives rise to liability from which an insurer of any of the aforementioned insurance policy indemnifies the Contractor and/or the Government subject to the terms set out therein, and regardless of whether there be a claim against the Contractor for compensation or not, the Contractor shall within seven (7) clear working days give notice in writing of such event to the Government Representative.

12. Corrupt Gifts

- (a). The Contractor shall not, whether by himself or by any person employed by him to provide the Services, solicit or accept any gratuity, tip or any other form of money taking or reward, collection, or charge for any part of the Services other than charges properly approved in writing by the Government Representative under this Contract.
- (b). The Contractor shall provide a code of conduct in their Quality Assurance Plan in Schedule 3 to be issued to its staff, agents, or sub-contractors approved by the Government under Clause 9(c) of this General Conditions of Contract prohibiting them from soliciting or accepting any advantage defined under the Prevention of Bribery Ordinance in the carrying out of their duties.
- (c). If the Contractor or any employee or agent of the Contractor shall be found to have committed an offence under the Prevention of Bribery Ordinance (Cap. 201) or any subsidiary legislation made thereunder or under any law of a similar nature in relation to the Contract or any other Government contracts, the Government Representative may, on behalf of the Government, summarily terminate the Contract, without entitling the Contractor to any compensation therefore.

13. Release of Information

- (a). Without prejudice to Clauses 14 and 15 of the Terms of Tender and the provision of sub-Clause (b) of this clause, the Government may, as it deems fit, release the Contractor's bidding information contained in the Tender Document without further reference to or consent from the Contractor.
- (b). The Government shall have the right to disclose whenever it considers appropriate without seeking prior consent from the Contractor all information concerning or in relation to the Contract including without limitation information in relation to the employees' wages and maximum working hours, the number of employees engaged for the performance of the Contract or such other information of whatsoever nature where such disclosure is for the purpose of enforcement of the Contract.

14. Publicity

The Contractor shall submit to the Government Representative all advertising or other publicity material relating to the Contract or the products supplied or other work done in connection with the Contract wherein the Government's name is mentioned or language used from which a connection with the Government can reasonably be inferred or implied. The Contractor shall not publish or use any advertising or other publicity material without the prior written consent of the Government Representative.

15. Governing Law

The Contract shall be governed by and construed in accordance with the Laws of Hong Kong and the parties hereby agree to submit to the exclusive jurisdiction of the courts of Hong Kong in relation to any matters arising out of the Contract.

16. Time is of Essence

Time shall be of the essence in this Contract but no failure or delay on the part of either party to exercise or invoke any right, power or remedy under this Contract shall operate as a waiver thereof, nor shall any single or partial exercise or invocation by either party of any right, power or remedy hereunder preclude any other or further exercise or invocation thereof or the exercise or invocation of any other right, power or remedy. The rights, powers and remedies provided herein are cumulative and are not exclusive of any rights, powers or remedies provided by law.

17. Compliance with Laws and Regulations

- (a). The Contractor shall comply with and observe all applicable laws and regulations of Hong Kong, and all applicable rules and codes issued by public bodies, in the provision of the Services.
- (b). The Contractor shall at all times comply with the requirements of the Occupational Safety and Health Ordinance (Cap. 509) and its subsidiary legislation, and of any other legal provisions pertaining to the health and safety of his own staff, Government staff and others who may be affected by the performance of the Services.
- (c). In discharge of the Services, the Contractor shall operate all equipment and tools in compliance with all the provisions of the Contract, the manufacturer's instructions or guidelines, and all applicable laws and regulations of Hong Kong, and all applicable rules and codes issued by public bodies.
- (d). Licensing Requirements
 - (i). This Contract does not confer exemption from licensing requirement pertaining to the Services.
 - (ii). The Contractor should forthwith obtain, and on or before the due date for renewal, all licences, permits and certificates required by the laws of Hong Kong for the provision of the Services.

18. Notice to be Written in English and Chinese

All notices displayed or circulated by the Contractor requiring its employees or the public to comply with the rules and regulations of the Government or other competent authority shall be written in English and Chinese.

19. Services of Notices

- (a). Unless otherwise provided in this Contract, every notice, request, demand, direction or other communication under this Contract shall be made in writing, by post, by fax or by hand.
- (b). Every notice, request, demand, direction or other communication shall be sent, in the case of a letter to a party at its address given below, and in the case of a fax message, to the fax number stated below, or such other address or fax number a party may have notified the other party by no less than three (3) days' prior written notice:

	Address	Fax. No.
The Government:	Executive Director, Hong Kong Wetland Park, Agriculture, Fisheries & Conservation Department, 6/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon, Hong Kong	2314 2802
The Contractor:	As stated in the Schedules submitted by the Contractor.	As stated in the Schedules submitted by the Contractor

- (c). Any notice, demand or other communication so addressed to the relevant party shall be deemed to have been delivered (i). if delivered by hand, when actually delivered to the relevant address; or (ii). if delivered by post, forty-eight hours after the same has been posted; or (iii). if delivered by fax, when dispatched (with confirmed transmission report).

20. Severance

In the event that any provision contained in this Contract or any part thereof is declared or otherwise rendered invalid or unenforceable by any law, enactment or regulation promulgated in Hong Kong or a final judgment (by consent or otherwise) of a court of Hong Kong from whose decision no appeal is or can be taken, the illegal or unenforceable clause shall be deemed to be deleted from this Contract and no longer incorporated herein; but all other clauses or divisions thereof contained in this Contract shall remain in full force and effect and shall not be impaired or affected thereby from the terms of this Contract.

21. Amendments and Order for Variation

- (a). Notwithstanding anything herein to the contrary, and without prejudice to other provisions of the Contract enabling the Government to stipulate variations, the Contractor agrees and acknowledges that the Government Representative shall have the absolute power to unilaterally vary, without obtaining further consent from the Contractor, the form, quality or quantity of any labour (including the number of General Workers required), work or materials as well as any of the specifications or requirements set out in the Special Conditions of Contract or Schedules. A variation pursuant to this Clause shall not in any way vitiate or invalidate the Contract.
- (b). The Government Representative shall give the Contractor an advance notice of not less than fourteen (14) days to prepare for the execution of such order for variation from the Government.
- (c). Save and to the extent provided for in the Contract which enables the Government to on its own make such supplement or amendment to the terms of the Contract, no variation of the Contract shall be valid unless it is in writing and signed by or on behalf of each of the parties hereto.

22. Termination of Contract

The Government shall be entitled to forthwith terminate the Contract but without prejudice to any other rights and claims which the Government has or may have (under the Contract or otherwise at law) if –

- (a). without prejudice to other sub-Clauses below, the Contractor: (i) fails to carry out the whole or any part of the Services; or (ii) fails to carry out the whole or any part of the Services in accordance with the time limits specified in the Contract or in accordance with any of the requirements or specifications set out in the Contract; or (iii) fails to observe or perform any of the terms or conditions of the Contract; or (iv) fails to pay any of the sums payable by the Contractor under the Contract; or (v) any warranties or undertakings, representations made or deemed to have been made by the Contractor to the Government in the Contract or in its tender for the Contract or otherwise from time to time during the term of the Contract proves to be untrue, and (in the case of a breach capable of being remedied but not otherwise) has failed to remedy the breach to the satisfaction of the Government Representative within seven (7) days (or such longer period as the Government Representative may, in its sole discretion, allow) after the issuance by the Government Representative to the Contractor of a request in writing requiring it to do so; or
- (b). the Contractor persistently or flagrantly fails to carry out the whole or any part of the Services punctually or in accordance with the terms and conditions of the Contract; or
- (c). the Contractor becomes bankrupt or goes into liquidation or a petition has been filed for the bankruptcy or the winding up of the Contractor otherwise than for the purpose of a solvent reconstruction or amalgamation previously approved by the Government Representative in writing or the Contractor has become insolvent or make any composition or arrangement with creditors; or
- (d). the Contractor abandons the Contract in part or in whole; or
- (e). the Contractor is found to have provided or supplied any incomplete, false or incorrect statement or information or document during the tendering process or from time to time during the continuance of the Contract; or
- (f). any warranties or representations made or deemed to have been made by the Contractor to the Government in the Contract or in its tender for the Contract or otherwise from time to time during the term of the Contract is untrue; or
- (g). the Contractor is found to have employed illegal workers in the execution of this Contract; or
- (h). the Contractor is convicted of any offences created under the Employment Ordinance (Cap. 57), Mandatory Fund Schemes Ordinance (Cap. 485), Employee's Compensation Ordinance (Cap. 282), Immigration Ordinance (Cap. 115) or section 89 of the Criminal Procedure Ordinance (Cap. 221); or
- (i). the Contractor is found to have made a false declaration in the Tenderer's Declaration in the Tenderer's Declaration of Convictions at the tendering stage; or

- (j). pursuant to Clause 12 above; or
- (k). the Contractor or any sub-contractor of the Contractor appointed for performing the Services has received an aggregate of three (3) demerit points over a continuous period of three (3) years in respect of the same contract (whether this Contract or any other Government contract) all of which are not subject to an appeal or review by the court or the appeal panel of the department concerned, or if there is an appeal or review, that such appeal or review has been dismissed; or
- (l). there is allegation the Contractor has infringed the Intellectual Property Rights of other persons in performing the Contract.

23. Effect of Termination

Upon the Contract is terminated pursuant to Clause 22 above or upon expiry of the Contract:

- (a). the Contract shall be of no further force and effect but without prejudice to Government's rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor (including any breaches which entitle the Government to terminate the Contract);
- (b). the Government shall not be responsible for any loss and expenses suffered or incurred by the Contractor due to the termination or expiry of the Contract;
- (c). if the Contract is terminated pursuant to Clause 22 hereof, the Contractor shall be liable for all losses, costs and expenses actually suffered or incurred by the Government in, arising from or as a result of the termination of the Contract;
- (d). if the Contract is early terminated, the Government may assign the uncompleted Services to another contractor or contractors whereupon if the Contract is terminated pursuant to Clause 22, the Contractor shall be liable for the contract price payable to such other contractor(s) in excess of the contract price which would have been payable to the Contractor had the Contract not been terminated plus an administrative charge of 20% as and for liquidated damages and not as a penalty
- (e). the rights of the Government under this Clause 23 are in addition to and without prejudice to any other rights the Government may have under any guarantee or indemnity; and
- (f). any termination or expiry of the Contract howsoever occasioned shall not affect the obligations of the Contractor which remain to be fulfilled in accordance with the terms thereof, including without limitation Clauses 3.2 and 4 of Schedule 4, nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination including without limitation Clauses 7, 10 to 25 of these General Conditions of Contract and Clauses 3, 12 to 14, 16, 20 to 23, and 25 of the Special Conditions of Contract.

24. Entire Agreement

This Contract constitutes the entire Contract and understanding between Government and the Contractor concerning the subject matter hereof. Every schedule, annex or attachment to or table in this Contract and any notes to such schedule, annex, attachment or table shall be construed and have effect as part of this Contract.

25. Order of Precedence

In the event that there is any conflict, contradiction, or ambiguity amongst any respective parts of the Contract, the following order of precedence shall be applied in order to resolve any such conflict, contradiction or ambiguity:

- (a). the Special Conditions of Contract
- (b). the Schedules
- (c). the General Conditions of Contract
- (d). the Terms of Tender
- (e). the Interpretation
- (f). other documents which form part of the Contract

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