

## **APPENDIX 4.12 STANDARD SPECIAL CONDITIONS OF EMPLOYMENT : PROJECTS IMPLEMENTED IN PHASES**

### **Scope**

1. Works Bureau Technical Circular No. 18/2002 introduces a set of Special Conditions of Employment clauses for use in consultancy assignments, and which cover more than one phase of a project but the implementation of some of these phases has not been decided upon at the time when submissions for the consultancy services are invited. WBTC No. 18/2002 has been archived and its requirements have generally been subsumed hereunder.

### **Background**

2. Many projects are delivered in phases such as investigation, design, tender and construction. Sometimes a single consultant may be awarded a consultancy agreement with more than one phase. However, the project may at a later stage have to be abandoned or temporarily withheld for some reasons, and in such event, the consultancy agreement has to be terminated or suspended after the completion of a certain phase. For instance, a design and construction assignment may have to be terminated after the completion of the design phase due to failure in securing the necessary financial resources for the tendering and construction phases.
3. In the current set of General Conditions of Employment, there are already provisions allowing the Employer to suspend or terminate a consultancy agreement at any time by the Director's Representative giving the consultants three months' notice in writing. These provisions may not be sufficient to satisfy the specific needs of some projects because the consultancy agreement will not be automatically suspended or terminated at the conclusion of a particular phase. The consultant may continue to provide services beyond the phase until he receives written notice of suspension or termination from the Director's Representative.

### **Policy**

4. Though there are provisions in the General Conditions of Employment for suspension and termination of a consultancy agreement, it is considered that provisions for Phases Subject to Incorporation should also be required in consultancy agreements to cater for projects under the circumstances as mentioned in paragraph 2 above.
5. A "Phase Subject to Incorporation" means a phase designated in the consultancy Brief, the details of which are known, but the implementation of which has not been decided upon by the Director's Representative at the time the documents inviting submissions for consultancy services are issued, which may be incorporated into the Project on a later date.
6. The Phase(s) Subject to Incorporation should be clearly identified and specified in the consultancy Brief. The consultant should not commence and would not be paid for the services comprised within a Phase Subject to Incorporation without a written instruction to do so from the Director's Representative.

7. The document containing the time for instruction, commencement and completion of the Phase Subject to Incorporation should be referred to in the Memorandum of Agreement so as to make it clear that such timing form part of the Agreement as defined in clause 1 of the General Conditions of Employment.
8. Payment shall be made in accordance with the Schedule of Fees. The Schedule of Fees should be designed in such a way that payment for each phase can truly reflect the cost of Services for that phase.

### **Implementation**

9. The standard Special Condition of Employment given at Annex A to this Appendix shall be included in documents for consultancy assignments covering more than one phase and the implementation of some of these phases has not been decided upon at the time the documents inviting submissions for consultancy services are issued.

**Standard Special Conditions of Employment**  
**Phases Subject to Incorporation Clause for Consultancy Agreement**

*Phases subject to S.C.E.1  
incorporation*

- (1) The provisions of this Special Condition of Employment shall apply to those Services identified in the Brief as Phases Subject to Incorporation.

- (2) The General Conditions of Employment are amended as follows:

- (a) by the addition of the following definition to Clause 1:

“Phase Subject to Incorporation” means a Phase designated in the Brief (the details of which are known, but the implementation of which has not been decided upon by the Director's Representative at the time the documents inviting submissions for consultancy services are issued) which may be incorporated into the Project pursuant to Subclause (3) of this Special Condition of Employment.

- (b) Clause 27 of the General Conditions of Employment is amended by the addition of the words “, and shall also include the total fees of the Phases Subject to Incorporation, which shall be inclusive of all labour, material and expenses incurred in the performance of the Services and which shall not be payable unless an instruction is issued in accordance with Subclause (3) of the Special Condition of Employment” at the end.

- (3) Without derogating from the generality of Clause 17 and 23 of the General Conditions of Employment, the Director's Representative may, within \_\_\_\_ days prior to/after the completion of the \_\_\_\_ Phase, instruct the Consultant in writing to proceed with the Services comprised within a Phase Subject to Incorporation.

*[Alternative (3):*

*Without derogating from the generality of Clause 17 and 23 of the General Conditions of Employment, the Director's Representative may, within the relevant time stated in the documents inviting submissions for consultancy services (commencing from and including the date for commencement of the Consultancy Agreement), instruct the Consultant in writing to proceed with the Services comprised within a Phase Subject to Incorporation.]*

- (4) In the event that the Director's Representative issues an instruction in accordance with Subclause (3) of the Special Condition of Employment:

- (a) the Consultant shall thereafter perform and complete the Services comprised within the relevant Phase Subject to Incorporation as part of the Project in accordance with the Agreement; the Consultant shall commence providing the Services for the Phase Subject to Incorporation upon receipt of the instruction and shall

complete that Phase within the time for completion of that Phase stated in the documents inviting submissions for consultancy services, or such extended time as may be approved by the Director's Representative. The time for completion commences from and includes the date for commencement of the Phase notified by the Director's Representative in accordance with Subclause (3) of this Special Condition of Employment.

- (b) the Agreement shall thereafter be construed in every way as if the relevant Phase Subject to Incorporation had at all times formed part of the Project; and
  - (c) the fees for the Phases Subject to Incorporation shall be payable in accordance with Clause 27 of the General Conditions of Employment.
- (5) In the event that the Director's Representative does not issue an instruction in accordance with Subclause (3) of this Special Condition of Employment:
- (a) without prejudice to the provisions of Clause 17 and 23 of the General Conditions of Employment, the Consultant shall not thereafter be obliged to execute and complete the Services comprised within the relevant Phase Subject to Incorporation;
  - (b) the Consultant shall not be entitled to any payment or other compensation or relief in respect of or attributable to the relevant Phase Subject to Incorporation;
  - (c) the Agreement shall thereafter be construed in every way as if the relevant Phase Subject to Incorporation had not at any time formed part of the Agreement and all references thereto shall be of no effect;
  - (d) the Consultant shall review the Programme submitted pursuant to Clause 26 of the General Conditions of Employment and, if appropriate, revise and submit an amended or varied version of the same to the Director's Representative for approval under Clause 26(B) of the General Conditions of Employment;
  - (e) the Consultant shall review all drawings and other documents relating to its Services which have been submitted to the Director's Representative and if appropriate, revise and submit an amended or varied version of the same to the Director's Representative in accordance with Clause 15 of the General Conditions of Employment.
- (6) The Consultant shall not commence the Services comprised within a Phase Subject to Incorporation without a written instruction to do so from the Director's Representative, pursuant to Subclause (3) of the Special Condition of Employment.

- (7) For the avoidance of doubt, Phases Subject to Incorporation do not fall within the provisions of Clauses 33, 34 and 41 of the General Conditions of Employment.

Ref. Subclause Alternative (3) of S.C.E. 1

**Sample Clause to be Included in Documents  
Inviting Submissions for Consultancy Services**

Phases Subject to Incorporation:

<u>Phase</u>	<u>Time for Ordering Phases Subject to Incorporation</u>	<u>Time for Completion of Phases Subject to Incorporation</u>
<i>XXX</i>	(commencing from and including the date for commencement of the Consultancy Agreement)	(calculated from and including the date of commencement in column (i))