

**Hong Kong Institution of Engineers
Seminar Presentation
Resolving and Avoiding Construction Disputes
3 May 2011**

The Supplemental Agreement Approach
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THIS SUPPLEMENTAL AGREEMENT is made

BETWEEN:

- (1) [insert full name & Registered Address of the Employer],
..... (..... “the Employer”); and
- (2) [insert full name of the Contractor], [insert registered
address of the contractor], (“the Contractor”).

RECITALS:

- (A) By a contract under seal between the Employer and the Contractor dated XX Month 20XX known as Contract, the Contractor agreed to execute the Works set out therein in accordance with the terms and conditions of the Contract.
- (B) Supplemental Agreement No.1 was executed to settle certain contractual issues relating to the ZZZ Works.
- (C) Additional work was instructed by the Engineer, and the Contractor has notified certain claims under or pursuant to the Contract for both additional payment and extensions of time.
- (D) The Employer and the Contractor have agreed upon a settlement "Additional Works" "Outstanding Claims", hereinafter defined.
- (E) The Contractor and the Employer now wish to enter into this Supplemental Agreement No.2 to formalise their agreement upon the final value of the Additional Works and the Outstanding Claims.

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OPERATIVE PART:

..... agreed between the Employer and the Contractor:-

1. DEFINITIONS AND INTERPRETATION

- 1.1 Words and expressions defined in the Contract same meaning in this Supplemental Agreement No. 2.
- 1.2 Save as expressly amended by this Supplemental Agreement No. 2, all the terms and conditions of the Contract shall remain in full force
- 1.3 Notwithstanding any provision to the contrary elsewhere in the Contract, any ambiguity or discrepancy between this Supplemental Agreement and the other documents forming the Contract, Supplemental Agreement No. 2 shall prevail.
- 1.4 "Additional Works" shall mean
- 1.5 "Outstanding Claims" shall mean

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2. AGREED VALUES

- 2.1 The Employer and the Contractor have agreed upon a lump sum price of **HK\$XX.xx million**, provisions of this Supplemental Agreement No.2, in full and final settlement for for the Additional Works.
- 2.2 The Employer and the Contractor have agreed upon a lump sum payment of **HK\$X.xx million**, provisions of this Supplemental Agreement No.2, in full and final payment for the Outstanding Claims.

3. PAYMENT

- 3.1 The lump sum price be split into two tranches of **HK\$XX.xx million**, identified as the total Cost Centre Values for two new Cost Centres N and P, to be incorporated into the Contract. These two Cost Centre Values shall be certified in accordance with the Interim Payment Schedule and Milestone Schedule Annexes A and B to this Supplemental Agreement No.2, to Clause 66 of the General Conditions.
- 3.2 The lump sum payment of **HK\$X.xx million** for settlement of the Outstanding Claims shall be certified in the interim payment certificates, not subject to retention, upon the achievement of Key Date 8 of the revised Key Date Schedule contained in this Supplemental Agreement No. 2.

4. KEY DATES AND LIQUIDATED DAMAGES

- 4.1 The Contractor shall complete the Works in accordance with the revised Key Date Schedule contained in Annex C to this Supplemental Agreement No.2.
- 4.2 The rates of liquidated damages stipulated in Item 6 of Appendix 1 to the Form of Tender shall be revised in accordance with the revised rates of liquidated damages contained in Annex D to this Supplemental Agreement No. 2.

5. INTERIM PAYMENT SCHEDULE AND MILESTONE SCHEDULE

- 5.1 The Interim Payment Schedule shall be revised in accordance with the revised Interim Payment Schedule contained in Annex A to this Supplemental Agreement No. 2,
- 5.2 The Milestone Schedule shall be revised in accordance with the revised Milestone Schedule contained in Annex B to this Supplemental Agreement No. 2

6. WITHDRAWAL OF CLAIMS

6.1 Unless otherwise provided for in this Supplemental Agreement No. 2, the Contractor hereby withdraws the Outstanding Claims and any and all claims and entitlements to claim for the Additional Works.

6.2 No claim or claim notification withdrawn or waived or settled under this Paragraph 6 shall be re-submitted or pursued in any form whatsoever whether under the Contract or otherwise.

7. CONFIDENTIALITY

7.1 provisions of this Supplement Agreement No. 2 shall be kept confidential