



M E M O

<i>From</i>	Secretary for Development	<i>To</i>	Distribution
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<i>Fax No.</i>	2905 1181	<i>Dated</i>	<i>Fax No.</i>
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**WBTC No. 23/2000 -
Computer Facilities in Consultancy Agreements;**

**WBTC No. 17/2001 -
Electronic Dissemination of Invitation Documents for Consultancies;**

**WBTC No. 31/2001 -
Electronic Submission of Consultancy Proposals on Removable Media;**

**ETWB TC(W) No. 26/2003 -
Post-completion Review on Major Consultancy Agreements
and Major Works Contracts under Public Works Programme;**

**ETWB TC(W) No. 30/2004 -
Consultancy Agreements – Retention of Documents and Inspection;**

**ETWB TC(W) No. 34/2004 -
Retention of Money Payable to Non-resident Consultants
for Settlement of Profits Tax in Consultancy Agreements; and**

**ETWB TC(W) No. 3/2005 -
Novation of Consultancy Agreements**

Subsumption under AACSB and EACSB Handbooks

_____ We enclose the summary of minor updates for subsumption of the subject technical circulars under AACSB and EACSB Handbooks for your information please.

2. Part of ETWB TC(W) No. 42/2002 “Feedback and Debriefing to Unsuccessful Bidders for Consultancy Agreements and Works Contracts” related to consultant selection exercises have also been subsumed under AACSB and EACSB Handbooks.

3. This memo takes effect on AACSB/EACSB consultancy agreements with Technical and Fee Proposals to be invited on or after 11 February 2019.
4. Secretaries of AACSB and EACSB are requested to update the AACSB and EACSB Handbooks accordingly.
5. Please bring this memo to the attention of all project officers who are responsible for management of consultancy agreements.
6. If you have any enquiry on the subject issue, please contact our Mr. Benjamin K. H. CHAN (Tel: 3509 8381 or email: benjaminkhchan@devb.gov.hk).

(Hortensia CHAN)
for Secretary for Development

Distribution

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DArchS	2810 7341
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Review of Technical Circulars (Works) (TCWs) in relation to Consultancy Services
Summary of Minor Updates and Subsumption of Existing TCWs into AACSB/EACSB Handbook(s)

Index	TCW No.	TCW Title	TCW Updates Required	Recommendation / Remarks	Reason for TCW Update	Relevant Section of Original TCW to be Updated (Key updates highlighted in red in below column)	Relevant Section of AACSB/EACSB Handbook to be Updated for Subsumption of TCW
1	23/2000	Computer Facilities in Consultancy Agreements	Y	- Remove TCW from active list with subsumption of TCW into AACSB and EACSB Handbooks (together with some minor updates).	(i) Procurement of Agreement Computing Services (ACS) via consultancy agreements is not common and other practical ways to procure relevant computing services, e.g. through OGCI standing order agreement, are available. Therefore, procurement of ACS via consultancy agreements is no longer required. (ii) General computer items covered by lump sum in consultancy agreements should be updated.	Paragraph 18 to be amended as follow:- “Except to the extent otherwise provided for in consultancy agreements, consultants should be responsible for the cost of all computing facilities required by them for fulfilling the obligations under consultancy agreements. These facilities shall include : (a) office automation facilities commonly used by secretarial, clerical, administrative, technical or professional staff for the office functions; (b) technical computing facilities used by professional and technical staff for computer-aided drafting, computer-aided design and geographical information systems, or other professional systems (such as, but not limited to, Electronic Document Management System, Building Information Modelling, Project Management System) as the case may be; and (c) IT training for staff employed by consultants.”	AACSB Handbook Update: (i) Section 5.9 (a)(iv); (ii) Appendix 5.2; (iii) Appendix 9 Clause 20.1 (iv) Appendix 10 Clause 4 (A)(iv); and (v) Appendix 34 Annex 3 Attachment XIII Part II item 2. EACSB Handbook Update: (i) Section 4.12.; (ii) Appendix 4.3 amended and new Annex D to Appendix 4.3; and (iii) Non-staff charges items including computer facility removed in Appendix 3.13 Item D2.
2	17/2001	Electronic Dissemination of Invitation Documents for Consultancies	Y	- Remove TCW from active list with subsumption of TCW into AACSB and EACSB Handbooks (together with some minor updates).	(i) Update latest compatible file formats for electronic dissemination;	Paragraph 9 of Annex 1:- Amend table under paragraph 9 as follows: (i) Replace “Adobe Acrobat” by “Portable Documents Format (PDF)”; (ii) Delete “Rick Text Format”; (iii) Replace “Word 97” by “Word”; (iv) Replace “Excel 97” by “Excel”; (v) Add “Building Information Modeling (BIM)”; (vi) Replace editable file type of drawings to “Procurement Department to define and insert”; (vii) Add the following paragraph under the table: - “The data formats and associated versions of documents/files to be adopted in the EIP’s should adhere to the latest OGCI Interoperability Framework which	AACSB Handbook Update: (i) Annex E of Appendix 8.3. EACSB Handbook Update: (i) Section 4.18; (ii) New Appendix to Section 4.18

Index	TCW No.	TCW Title	TCW Updates Required	Recommendation / Remarks	Reason for TCW Update	Relevant Section of Original TCW to be Updated (Key updates highlighted in red in below column)	Relevant Section of AACSB/EACSB Handbook to be Updated for Subsumption of TCW
						can be downloaded from the OGCI O website: https://www.ogcio.gov.hk/en/our_work/infrastructure/e_government/if/interoperability_framework.html	
					(ii) Add DVD-ROM as a mean for dispatch of documents; and	Paragraphs 10, 12and 16(b) of Annex 1:- Add “/DVD-ROM” after “CD-ROM” and add “/DVD” after “CD”.	
					(iii) Rename ITSD to OGCI O.	Paragraphs 13(b) and 14 of Annex 1:- Replace “ITSD” by “OGCI O”.	
					(iv) Add reference for recognized digital signature certificate	Add new paragraph 15A as follows: “The list of recognized certificates is available at OGCI O’s website: www.ogcio.gov.hk/en/regulation/eto/ca/rec_certs ”	
3	31/2001	Electronic Submission of Consultancy Proposals on Removable Media	Y	- Remove TCW from active list with subsumption of TCW into AACSB and EACSB Handbooks (together with some minor updates).	(i) Update latest compatible file formats for electronic submission;	Paragraph 8(a) of Appendix 1:- Amend table under paragraph 8(a) as follows: (i) Replace “Adobe Acrobat” by “Portable Documents Format (PDF)”; (ii) Delete “Rick Text Format”; (iii) Replace “Word 97” by “Word”; (iv) Replace “Excel 97” by “Excel”; (v) Add “Building Information Modeling (BIM)”; (vi) Replace editable file type of drawings to “(Procurement Department to define and insert)” (vii) Add the following paragraph under the table: - “The data formats and associated versions of documents/files to be adopted in the EPP should adhere to the latest OGCI O Interoperability Framework which can be downloaded from the OGCI O website: https://www.ogcio.gov.hk/en/our_work/infrastructure/e_government/if/interoperability_framework.html	AACSB Handbook Update (i) Annex F of Appendix 8.3. EACSB Handbook Update: (i) Section 4.19; (ii) New Appendix to Section 4.19

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					(ii) Add DVD-ROM as a mean for submission of documents;	<p>(i) Paragraph 18 of main text; paragraphs 2 to 6 of Appendix 1:- Add “/DVD-ROM” after “CD-ROM” and add “/DVD” after “CD”.</p> <p>(ii) Paragraph 2 of Appendix 1:- First sentence is replaced by “EPP shall be submitted on CD-ROM media complying with ISO 9660:1988 or DVD-ROM media to ISO 13346:1995 standards.”</p>	
					(iii) Delete the requirement for EACSB to release the ORIGINAL set of EPP on technical proposal or EOI to the Managing Department (as the ORIGINAL set of the document is to be submitted to the Managing Department direct in common practice).	<p>Paragraph 16 of main text:- Delete first sentence: “The AACSB and EACSB will release the ORIGINAL set of EPP on technical proposal or EOI to the Managing Department for evaluation.”</p>	
					(iv) Add reference for recognized digital signature certificate and organizational e-cert	<p>Add new paragraph 7A in Appendix 1 as follows: “The list of recognized certificates is available at OGCIO’s website: www.ogcio.gov.hk/en/regulation/eto/ca/rec_certs”</p>	
					(v) README file of EPP submission change to doc format	Amend README.rtf to README.doc in paragraphs 2 and 13 of Appendix 1, and replace “Rich Text Format” to “Word Format” in sentence 3 of paragraph 2 in Appendix 1.	
4	42/2002	Feedback and Debriefing to Unsuccessful Bidders for	N	- Core parts of TCW have already been subsumed in AACSB and EACSB Handbooks.	N/A	N/A	N/A

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		Consultancy Agreements & Works Contracts		- Remove TCW from active list after clearance of relevant implication on administration of works contracts.			
5	26/2003	Post-completion Review on Major Consultancy Agreements and Major Works Contracts under Public Works Programme	N	- Core parts of TCW have already been subsumed in EACSB Handbook. - Remove TCW from active list with subsumption of TCW into AACSB and EACSB Handbooks.	N/A	N/A	AACSB Handbook Update (i) Section 11.5
6	30/2004	Consultancy Agreements - Retention of Documents and Inspection	N	- Core parts of TCW have already been subsumed in AACSB and EACSB Handbooks. - Remove TCW from active list with subsumption of TCW into AACSB and EACSB Handbooks.	N/A	N/A	N/A
7	34/2004	Retention of Money Payable to Non-resident Consultants for Settlement of Profits Tax in Consultancy Agreements	Y	- Core parts of TCW have already been subsumed in EACSB Handbook. - Remove TCW from active list with subsumption of TCW into AACSB and EACSB Handbooks (together with some minor updates).	Update the text in accordance with the latest tier of Profit Tax.	(i) Item (3) of Appendix A is replaced as follow: (3) Calculation of the amount to be withheld for tax payment The amount of tax withheld should be calculated on the gross fee payable (exclusive of any reimbursement of expenses, if any). Please refer to the website of the Inland Revenue Department (www.ird.gov.hk) for the details of latest profit tax rates. (ii) The first sentence of the first paragraph of Appendix B is replaced as follow:	AACSB Handbook Update: (i) Section 5.17 (ii) Annex K of Appendix 5.1 (iii) SCE 18 in Appendix 29 (iv) Annex 3 to Appendix 34 EACSB Handbook Update: (i) Appendix 4.15

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						<p>“Please note that where the Consultants are non-resident corporation or, where the Consultants are unincorporated joint venture or partnership or sole proprietorship, any one of the participants or partners or the sole proprietor is a non-resident, the Government shall withhold a percentage equivalent to the prevailing Hong Kong Special Administrative Region (hereinafter referred to as Hong Kong) profits tax rate applicable to unincorporated and incorporated business at the time the services are rendered (For the details of the current profits tax rates, please refer to the website of the Inland Revenue Department www.ird.gov.hk) of any fee payable to the Consultants, whether by way of lump sum, instalments or discounted payments, but exclusive of any reimbursement of expenses, if any, in respect of the Services performed/provided in Hong Kong for the settlement of Hong Kong profits tax chargeable on the fee. ...”</p>	
8	3/2005	Novation of Consultancy Agreement	Yes	- Remove TCW from active list with subsumption of TCW into AACSB and EACSB Handbooks (together with general update).	Revise signature format for execution of agreement in accordance with the latest Company Ordinance	Revise signature formats of Novation Agreement in Appendices A, B and C .	<p>AACSB Handbook update:</p> <p>(i) Revise Section 9.5</p> <p>(ii) New appendix 21.3</p> <p>EACSB Handbook update:</p> <p>(i) Revise Section 9.5</p> <p>(ii) New appendix to Section 9.5</p>

香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

政府總部
環境運輸及工務局
工務科
香港花園道美利大廈



Environment, Transport
and Works Bureau
Government Secretariat
Works Branch
Murray Building, Garden Road,
Hong Kong

Ref : ETWB(PS)106/11
Group : 6

12 January 2005

Environment, Transport and Works Bureau
Technical Circular (Works) No. 3/2005

Novation of Consultancy Agreements

Scope

This Circular applies to consultancy agreements under the jurisdiction of the Architectural and Associated Consultants Selection Board (AACSB) and the Engineering and Associated Consultants Selection Board (EACSB). Any novation should also cover consultancies undertaken by the Hospital Authority and other subvented bodies under Head 708.

Effective Date

2. The Circular takes immediate effect.

Effect on Existing Circulars

3. This Circular supersedes ETWB Technical Circular (Works) No. 10/2003 which is hereby cancelled.
4. This Circular should be read in conjunction with WBTC No. 16/95, WBTC No. 16/95A, and the AACSB/EACSB Handbooks. In case of discrepancies or inconsistencies between this Circular and the documents referred to, the provisions of this Circular shall prevail.

Background

5. The practice and procedures on dealing with requests for novation of consultancy agreements have been reviewed. To allow flexibility for a consultant intending to wind up his business to make an orderly and planned exit, it is decided that in such a situation novation of some but not all on-going consultancy agreements of the consultant should be permitted, subject to the condition set out in paragraph 6(ii) below. However, the consultant shall not be invited to bid for or be awarded any further consultancies.

Policy

6. Novation of consultancy agreements is allowed under one of the following circumstances:

- (i) A consultant is going to change or has changed from a partnership or sole-proprietorship to a limited liability company. The obligations, liabilities and benefits under the existing consultancy agreements will be transferred to the new company. Under this scenario, novation must cover all on-going consultancy agreements.
- (ii) A consultant is being wound up, will soon cease to carry on business or is intending to wind up his business and is thus unable to perform some or all of the consultancy agreements. The Government on balance agrees to a novation instead of terminating the consultancy agreements. In the case of a consultant intending to wind up his business and proposing novation of only some but not all of his consultancy agreements, the consultant shall provide an on-demand performance bond by a bank or an insurance company covering the remaining consultancy agreements. The amount of the performance bond shall be determined by the procuring department, taking account of the outgoing consultant's liabilities such as liabilities for breach of agreement or outstanding liabilities, and total value of outstanding fees for those consultancy agreements not to be novated.

7. It has to be satisfied that the new consultant(s) taking over the consultancy agreements has the capability (especially the consultant's experience and staffing aspects) to undertake the consultancy agreements and bear all the responsibilities under the consultancy agreements.

8. If the proposed new consultant is a limited liability company, the majority of directors who have the voting power in meetings of the company must be consulting engineers (or equivalent professionals of associated professions). The proposed new consultant shall be required to submit documentary proof.

9. The proposed new consultant shall be required to declare any involvement or interest which is in real or apparent conflict with the duties to be performed for the consultancy agreement(s), particularly any interest or association that the new consultant may have with any contractor, supplier, specialist contractor or sub-contractor.

10. For AACSB consultancies, the new consultant should be currently on the same category and band on the AACSB List of Consultants.

11. Other than the circumstances mentioned in paragraph 6, any transfer of a consultant's benefits and obligations under consultancy agreements with the Government to a third party, including a sister company, a holding company or a subsidiary company having a separate legal status, will not be permitted. This is to uphold the principle of open and fair competition as the selection of a consultant is based on the combined assessment of the technical and fee proposals submitted by the shortlisted consultants. The technical capability and quality of service provided by the third party may not be the same as the selected consultant. If the third party were to submit the technical and fee proposals in place for the selected consultant, the third party might not have been shortlisted or selected.

12. Novation of consultancy agreements is not required if only the company name of a consultant is changed. The change does not affect the legal status, or any of the rights or obligations of the consultant.

Procedures

13. Upon receipt of a request from the Consultant for novation of any existing consultancy agreements, the department should forward the request to the Secretary of the relevant Consultants Selection Board (the Secretary).

14. The Secretary will then obtain from the Consultant:

- (i) Details of the new consultant(s), including a copy of its Business Registration Certificate, the Certificate of Incorporation, Quality Management System Certificate and the Memorandum & Articles of Association (or similar documents in the case of overseas consultants).
- (ii) Details of the consultancy agreements to be novated.
- (iii) Any special features involved such as departures from the standard novation agreement forms shown at Appendices A and B. The department should ensure that any changes to the standard novation agreement form shall be agreed with the Legal Advisory Division (Works) of the Environment, Transport and Works Bureau.

15. The Secretary will then circulate to all concerned departments for their agreement to the proposed novation.
16. If only one department is involved in the novation process, the department will follow up all issues related to the novation.
17. In the event that two or more departments are involved in the novation process, the Secretary will facilitate as a coordinator between the concerned departments, and the outgoing and new consultants. The department which holds the greatest outstanding consultancy fee (including additional Services already ordered) for those consultancy agreements requiring novation will be responsible for the logistical arrangement for the novation procedures including the checking of documents on authorized signatories, preparation of standardized novation agreement forms, and where applicable arranging venue for signing of novation agreements.
18. Separate novation agreements should be drawn up to cover consultancy agreements for and signed by the individual departments. All novation agreements covering all consultancy agreements to be novated should be signed on the same date.
19. Sufficient copies of originally signed novation agreements should be prepared, one each to be retained by the concerned departments, the outgoing consultant and the new consultant. Certified true copies of the novation agreement should be sent to the Secretary and the Director of Audit within three working days from the date of execution.
20. In the case of a consultant intending to wind up his business and proposing novation of only some but not all of his consultancy agreements, the procuring department shall obtain from the consultant an on-demand performance bond as set out in paragraph 6(ii), using the form provided at **Appendix C**.
21. The Secretary will notify the concerned departments upon receiving request for novation from a consultant. A consultant who has requested for novation of consultancy agreements under paragraph 6(ii) shall not be invited to bid for or be awarded any further consultancies. Similarly, bids submitted by consultants who engage such a consultant as a sub-consultant should not be considered. Nevertheless, the consultants may propose a change of sub-consultants if the deadline for notification of change has not been lapsed. For clarity, such requirements should be set out in the invitation letters for consultancy proposals.
22. The consultant shall be removed from the AACSB List of Consultants, the EACSB Consultants' Service Directory and other relevant lists/directories maintained by the departments. Reinstatement to the lists/directories shall not be allowed even if the consultant decides afterwards not to wind up for whatever reasons.

23. Departments should also notify the concerned agencies (such as MTRC and KCRC) of the proposed novation if they have consultancies entrusted to these agencies, which have been awarded to the outgoing consultant.

Novation Agreement

24. A novation agreement is a tripartite agreement entered into by the Employer (Government), the Consultant (outgoing consultant) and a third party (new consultant), whereby the Consultant is released from and the third party assumes all the Consultant's obligations and rights under the stated consultancy agreement. The two standard forms of novation agreement are shown at **Appendices A and B**. More than one consultancy agreements may be included in a novation agreement. All three parties should normally execute the novation agreement for all these consultancy agreements on the same date.

Insurance and Other Checks

25. Where insurance is required for a consultancy agreement and if the consultancy agreement is to be novated then an insurance policy must be provided by the third party, in the contractually required form, prior to the execution of the novation agreement.

Effect on Consultants' Performance Record

26. With the exception of cases mentioned in paragraph 6(ii), the past performance records of the outgoing consultant will be regarded as the performance of the new consultant in the consideration of its future bids for Government consultancies and such past performance records will include, among others, the performance reports, performance index, and conviction records of offences under the Immigration Ordinance (CAP. 115), Employment Ordinance (CAP. 57), Water Pollution Control Ordinance (CAP. 358), Waste Disposal Ordinance (CAP. 354), Dumping at Sea Ordinance (CAP. 466), Air Pollution Control Ordinance (CAP. 311), Ozone Layer Protection Ordinance (CAP. 403), Noise Control Ordinance (CAP. 400), Environmental Impact Assessment Ordinance (CAP. 499), and other ordinances.

Updating of AACSB and EACSB Handbooks

27. The AACSB and EACSB Handbooks will be updated in due course to incorporate the requirements set out in paragraphs 21 and 22.

(C S Wai)
Deputy Secretary for the Environment,
Transport and Works (Works) 2

Subsumed

all claims and demands whatsoever arising out of or in respect of the Consultancy Agreement(s).

2. The Employer hereby releases and discharges the Consultant from the further performance of the Consultancy Agreement(s) and from all claims and demands whatsoever arising out of or in respect of the Consultancy Agreement(s) and accepts the liability of the New Consultant to perform the Consultancy Agreement(s) in lieu of the liability of the Consultant.
3. The New Consultant hereby covenants with the Employer to fulfil and discharge the terms, conditions and covenants of the Consultancy Agreement(s) in every way as if the New Consultant were named a party to the Consultancy Agreement(s) in substitution for the Consultant and the Employer hereby covenants with the New Consultant to be bound to the New Consultant to observe and perform the terms, conditions and covenants of the Consultancy Agreement(s) on the part of the Employer to be observed and performed and hereby acknowledges that the New Consultant is entitled to the full benefit of the Consultancy Agreement(s).

IN WITNESS whereof this Agreement has been executed as a deed on the date first above written.

SIGNED SEALED AND DELIVERED

for and on behalf of

THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

by (name and appointment of officer)

in the presence of : -

.....

*THE COMMON SEAL¹ of
[insert name of the Consultant]
was affixed hereto
in the presence of:-

.....

Director

.....

Director/Secretary

OR

*SIGNED, SEALED AND DELIVERED²)
 for and on behalf of and as lawful attorney)
 of [insert name of the Consultant])
 under power of attorney)
 dated [] by [])
 in the presence of :-)
)
)
)
)
)
)
)
)
 [Name]
 [Occupation]

OR

*SIGNED, SEALED AND DELIVERED³)
 by [insert name of the Consultant])
 in the presence of:-)
)
)
)
)
)
)
)
)
 [Name]
 [Occupation]

Notes (for the preparation of but not inclusion in the engrossment of this Agreement)

1. For use where the Consultant executes the agreement through its common seal.
 2. For use where the Consultant executes through an attorney.
 3. For use where the Consultant is a sole proprietorship or a partnership. In the case of a partnership, all partners thereof shall execute.
- * Repeat the appropriate form for execution by the New Consultant.

- IN WITNESS** whereof this Agreement has been executed as a deed on the date first above written.

^ΩInsert the names of the participants comprising the new Consultant.

*THE COMMON SEAL¹ of
[insert name of the participant]
of the [insert name of the Consultant]
was hereunto affixed
in the presence of:-

.....
Director

.....
Director/Secretary

*SIGNED, SEALED AND DELIVERED²
for and on behalf of and as lawful attorney
of [insert name of the participant]
of the [insert name of the Consultant]
under power of attorney
dated [] by []
in the presence of :-

.....
[Name]
[Occupation]

*SIGNED, SEALED AND DELIVERED³
by [insert name of the participant]
of the [insert name of the Consultant]
in the presence of:-

.....
[Name]
[Occupation]

Notes (for the preparation of but not inclusion in the engrossment of this Agreement)

1. For use where an individual joint venture participant which is an incorporated company executes under its common seal.

2. For use where an individual joint venture participant, whether a firm or an incorporated company, executes through an attorney.
3. For use where an individual joint venture participant of the Consultant is a sole proprietor or is a partnership itself. In the case of a partnership, all partners thereof shall execute.

* Repeat the appropriate form for execution by each participant of the New Consultant.

Subsumed

On-demand Performance Bond

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

BOND

BY THIS BOND dated the day of []

We [insert name of Consultant] whose registered office is at []
(the “Consultant”) and []
whose registered office or place of business is at]
(the “Surety”) are irrevocable and unconditionally bound to the Government of the Hong Kong
Special Administrative Region (together with its successors and assigns, the “Employer”) in the
sum of [] (the “Bonded Sum”) for payment of which sum the Consultant and Surety
bind themselves their successors and assigns jointly and severally in accordance with the
provisions of this Bond.

WHEREAS

- (A) The Employer and the Consultant have entered into a number of consultancy agreements (“Agreements”), namely, [details of the consultancy agreements].
- (B) The Consultant wishes to assign some of the Agreements, namely, [details of the consultancy agreements to be novated] by way of novation to another person but to continue to perform the other Agreements, namely, [details of the consultancy agreements to be performed by the Consultant].
- (C) The Employer agrees to the novation of some of the Agreements referred to in Recital B above subject to the terms of the novation agreement and to the condition that the Consultant obtaining the guarantee of a surety to be bound unto the Employer for the performance of the other Agreements referred to in Recital B above by the Consultant.

NOW THE TERMS AND CONDITIONS of this Bond are:-

1. Where applicable, words and expressions used in this Bond shall have the meaning assigned to them in the Agreements.
2. The Surety shall upon demand made by the Employer in writing from time to time or at any time and without proof or conditions or contestation of any conditions on the Employer pay to the Employer the sum or sums mentioned in the said demand up to the amount of the Bonded Sum. For all intent and purposes, the parties hereto acknowledge and agree that this bond is an on-demand bond and shall be construed accordingly.
3. The liability of the Surety under this Bond shall remain in full force and effect and shall not be affected or discharged in any way by and the Surety hereby waives notice of:-

- (a) any suspension of any of the consultancy, variation to or amendment of the Agreements (including without limitation extension of time for performance) or any concession or waiver by the Employer in respect of the Consultant's obligations under the Agreements;
 - (b) the termination of the Agreements or of the engagement of the Consultant under the Agreements resulting from default by the Consultant under the Agreements;
 - (c) any forbearance or waiver of any right of action or remedy the Employer may have against the Consultant or negligence by the Employer in enforcing any such right of action or remedy;
 - (d) any other bond, security or guarantee held or obtained by the Employer for any of the obligations of the Consultant under the Agreements or any release or waiver thereof;
 - (e) any act or omission of the Consultant pursuant to any other arrangements with the Surety;
 - (f) the issue of any certificate of completion in respect of part of the consultancy;
 - (g) the issue of any certificate of achievement of any stage, if any.
4. The liability of the Surety under this Bond shall cease on whichever of the following events first occurs:-
- (a) payment by the Surety of the Bonded Sum in full to the Employer; or
 - (b) acceptance by the Employer of all the works and deliverables to be carried out by the Consultant as specified in the Agreement as assigned.
5. The Employer shall be entitled to assign the benefit of this Bond at any time without the consent of the Surety or the Consultant being required.
6. All documents arising out of or in connection with this Bond shall be served:
- (a) upon the Employer at [], marked for the attention of [];
 - (b) upon the Surety at [] Hong Kong. [Note 1].
7. The Employer and the Surety may change their respective nominated addresses for service of documents to another address in Hong Kong but only by prior written notice to each other. All demands and notices must be in writing.
8. This Bond shall be governed by and construed according to the laws for the time being in force in Hong Kong and the Surety agrees to submit to the non-exclusive jurisdiction of the courts of Hong Kong.
9. In this Bond, "Hong Kong" means the Hong Kong Special Administrative Region.

IN WITNESS whereof this Bond has been executed as a Agreement on the date first above written.

THE COMMON SEAL OF)
[])
was affixed hereto in)
the presence of :-)

Director

Director/Secretary

OR

SIGNED, SEALED and DELIVERED [Note2] by)
The [Consultant/Surety] by [])
its lawful attorney under power of attorney)
dated [])
)
)
in the presence of:)

.....)
[Name])
[Occupation])
[Address])

NOTES: (for preparation of but not inclusion in the engrossment of this performance bond)

1. The address for service shall be in Hong Kong.
2. For use where the Consultant or the Surety, whether a firm or limited Consultant, executes the bond through an attorney.
3. The Consultant must execute the bond as well as the Surety.