

APPENDIX 6B Sample of Undertaking

THIS UNDERTAKING is made the day of [insert month and year] by [name of the company being substituted] whose registered office is at [] ("Company A") and [name of the substituting company] whose registered office is at [] ("Company B") to the Government of the Hong Kong Special Administrative Region ("the Government").

WHEREAS

(a)# Company A is included in the List of Approved Contractors for Public Works maintained by the Government under Group [] (Confirmed/Probationary) of the [] category(ies) and in the List of Approved Suppliers of Materials and Specialist Contractors for Public Works maintained by the Government under Group [] of the [] category.

(b)# Company A and Company B (hereinafter collectively called "the Companies") have applied to the Government to include Company B in the List of Approved Contractors for Public Works maintained by the Government under Group [] (Confirmed/Probationary) of the [] category(ies) and in the List of Approved Suppliers of Materials and Specialist Contractors for Public Works maintained by the Government under Group [] of the [] category in substitution for Company A ("the Substitution").

NOW THE TERMS OF THIS UNDERTAKING are as follows: -

1. In consideration of the Government agreeing to consider the Substitution application, the Companies hereby irrevocably and unconditionally give this Undertaking to the Government in the event of approval being given by the Government in respect of the Substitution.
2. In respect of any agreement made before the date of the Substitution between the Government and Company A and which agreement the Government requires novation, the Companies shall, upon request by the Government, duly execute as a deed with the Government a novation agreement in a form as shown at **Appendix 6C** to the Contractor Management Handbook (with only such amendments as may previously have been approved by the Government).
3. In respect of any agreement made before the date of the Substitution between the

Relevant details to be inserted.

Government and Company A together with other person or persons trading as an unincorporated joint venture and which agreement Government requires novation, the Companies shall, upon request by the Government, duly execute as a deed with the Government a novation agreement in a form as shown at **Appendix 6D** to the Contractor Management Handbook (with only such amendments as may previously have been approved by the Government) and procure that such other person or persons in the unincorporated joint venture shall duly execute as a deed the same novation agreement.

4. Where Company A has before the date of the Substitution submitted a tender for any contract put to tender by the Government and where such contract is awarded by the Government on or after the date of the Substitution to Company A, then in respect of such contract, the Companies shall, upon request by the Government, duly execute as a deed with the Government a novation agreement in a form as shown at **Appendix 6C** to the Contractor Management Handbook (with only such amendments as may previously have been approved by the Government).

5. Where Company A together with other person or persons trading as an unincorporated joint venture have before the date of the Substitution submitted a tender for any contract put to tender by the Government and where such contract is awarded by the Government on or after the date of the Substitution to the unincorporated joint venture, then in respect of such contract, the Companies shall, upon request by the Government, duly execute as a deed with the Government a novation agreement in a form as shown at **Appendix 6D** to the Contractor Management Handbook (with only such amendments as may previously have been approved by the Government) and procure that such other person or persons in the unincorporated joint venture shall duly execute as a deed the same novation agreement.

6. The Companies shall submit such documents as the Government may require to satisfy itself regarding due execution by the Companies of any novation agreement as referred to in this Undertaking and, where Clause 3 or Clause 5 of this Undertaking applies, shall procure submission by the other person or persons as referred to in Clause 3 or, as the case may be, Clause 5 of this Undertaking of such documents as the Government may require to satisfy itself regarding due execution by such other person or persons of any novation agreement as referred to in this Undertaking.

7. The Companies hereby irrevocably and unconditionally agree to indemnify the Government against all losses, damages, costs and expenses the Government may incur or suffer as a result of their failing to abide by this Undertaking.

8. The Companies hereby represent that, with respect to their obligations, liabilities or any other matter under or arising out of or in connection with this Undertaking, neither they nor any of their properties or assets have, in the Hong Kong Special Administrative Region, or in any other jurisdiction, any right of immunity on the grounds of sovereignty or otherwise from any legal action, suit or proceedings; from the giving of relief in any legal action, suit or proceedings; from set-off or counterclaim; from the jurisdiction of any court, in the Hong Kong Special

Administrative Region or in any other jurisdiction; from service of process upon them or any agent; from attachment prior to judgment in order to obtain satisfaction thereof; from attachment after judgment or from execution or any other process for the endorsement of any judgment or other legal process in any jurisdiction; and to the extent that the Companies are or become entitled to any immunity as aforesaid, in the Hong Kong Special Administrative Region or in any other jurisdiction with respect to their obligations, liabilities or any other matter under or arising out of or in connection with this Undertaking, the Companies do hereby and will irrevocably and unconditionally waive and agree not to plead or claim any such immunity. The Companies further consent to the giving of any relief in any legal action, suit or proceeding and to execution and or any other form of process for the enforcement of any judgment against them or their assets.

9. For the purposes of Clauses 2, 3, 4 and 5 of this Undertaking, the date of the Substitution shall be a date to be notified in writing by the Government to the Companies which date shall not be earlier than the date of this Undertaking.

10. Company A and Company B each agrees to be jointly and severally liable for the Companies' obligations under this Undertaking.

11. Words importing the singular only also include the plural and vice versa where the context requires.

12. The Appendices hereto shall form part of this Undertaking.

13. This Undertaking shall be governed by and construed in accordance with the laws for the time being in force in the Hong Kong Special Administrative Region and the Companies hereby submit to the non-exclusive jurisdiction of the courts of the Hong Kong Special Administrative Region.

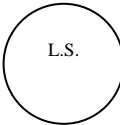
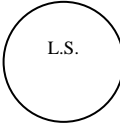
IN WITNESS whereof this Undertaking has been executed as a deed on the date first above written.

(a)* SIGNED, SEALED and DELIVERED)
 by [name of sole proprietor])
 trading as [name of Company A])
 in the presence of:)
)
)
)
 [Name])
 [Occupation])
 [Address])

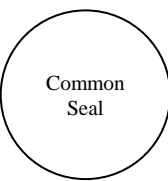
[Signature of the sole proprietor]¹

L.S.

Or

(b)* SIGNED, SEALED and DELIVERED by)
 [name of partner] and)
 [name of partner]³)
 being the partners of [name of Company A]) *[Signature of the*
 in the presence of:) *individual partner]¹* 
)
) *[Signature of the*
) *individual partner]¹* 
 [Name])
 [Occupation])
 [Address])

Or

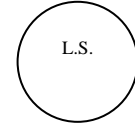
(c)* Executed and delivered)
 as a deed and the COMMON SEAL)
 of [name of Company A])
 was affixed in the presence of)
 [] its [director(s) or) *[Signature of the*
 director and secretary or person(s)) *director(s) etc]¹* 
 authorized to sign the contract by its)
 board of directors]²)
 in the presence of a witness:)
)
)
 [Name])
 [Occupation])
 [Address])

Or

(d)* Executed and delivered)
 as a deed)
 by [name of Company A])
 acting through)
 [] (its sole director)) *[Signature of the*
 or) *director(s) etc]¹*
 [] and [] (its directors))
 or)
 [] (its director) and)
 [] (its company secretary)²)
)
 in the presence of a witness:)
)
)
 [Name])
 [Occupation])
 [Address])
)

Or

(e)* SIGNED, SEALED and DELIVERED by)
 [name of Company A] by [])
 his/her/its² attorney under power of attorney)
 dated [])
)
 in the presence of:) *[Signature of the*
) *attorney]*¹
)
)
 [Name])
 [Occupation])
 [Address])



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

* Repeat the appropriate form for execution by Company B.

- (a) For use where Company A is a sole proprietor.
- (b) For use where Company A is a partnership.
- (c) For use where Company A is a company incorporated in Hong Kong and executes the deed with a Common Seal.
- (d) For use where Company A is a company incorporated in Hong Kong and executes the deed without a Common Seal.
- (e) For use where Company A executes the deed under a power of attorney.

1 The italic parts are not part of the execution clause. They are for guidance or information only.

2 Select the correct expression for use. If none is applicable, insert an appropriate expression.

3 The deed shall be executed by all the partners. Add more names if required.