APPENDIX 6D Novation Agreement For Unincorporated Joint Venture

THIS AGREEMENT is made on the day of (month and year)

BETWEEN

(1) THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINSTRATIVE REGION (hereinafter called the "Employer")

of the first part, and

(2) [Insert name of Company A] whose registered office is at [ ] and

[Repeat the names and registered offices of the other participants of the unincorporated joint venture] (together trading as [insert the name of the unincorporated joint venture] and hereinafter called the "Contractor") of the second part, and

(3) [Insert name of Company B] whose registered office is at [ ] and

[Repeat the names and registered offices of the other participants of the new unincorporated joint venture] (together trading as [insert name of the new unincorporated joint venture] and hereinafter called the "New Contractor") of the third part.

WHEREAS: -

(a) The Employer and the Contractor have entered into (an) agreement(s) including any supplementary agreement(s) thereto if any (hereinafter called the "Contract(s)") for the execution of certain works described and known as

[GIVE DETAILS OF EACH CONTRACT TO BE NOVATED, GIVING CONTRACT NUMBER, DATE AND TITLE]

upon the terms, conditions and covenants therein specified.

(b) The Contractor wishes to be released and discharged from the Contract(s) and the Employer has agreed to release and discharge the Contractor upon the terms of the New Contractor's agreement to perform the Contract(s) and to be bound by the terms of the Contract(s) in place of the Contractor.

NOW IT IS HEREBY AGREED AS FOLLOWS: -

1. The Contractor hereby agrees to transfer absolutely to the New Contractor the Contract(s) and the full benefit thereof and all remedies for enforcing the same and the New Contractor hereby accepts the transfer and undertakes to be bound by and observe and perform the terms, conditions and covenants of the Contract(s) on the part of the Contractor to be observed, performed and satisfied in every way as if the New Contractor were named a party to the Contract(s) in substitution for the Contractor and the New Contractor expressly undertakes to assume all liabilities of the Contractor and to satisfy all claims and demands whatsoever arising out of or in respect of the Contract(s) past, present and future.

2. The Employer hereby releases and discharges the Contractor, and the Contractor hereby releases and discharges the Employer, from the Contract(s) and from all claims and demands whatsoever arising out of or in respect of the Contract(s) past, present and future. The Employer accepts the liability of the New Contractor to perform the Contract(s) in lieu of the liability of the Contractor.

3. The New Contractor hereby covenants with the Employer to fulfil and discharge the terms, conditions and covenants of the Contract(s) on the part of the Contractor in every way as if the New Contractor were named a party to the Contract(s) in substitution for the Contractor and to assume all liabilities of the Contractor and to satisfy all claims and demands whatsoever arising out of or in respect of the Contract(s) past, present and future and the Employer hereby covenants with the New Contractor to be bound to the New Contractor to observe and perform the terms, conditions and covenants of the Contract(s) on the part of the Employer to be observed and performed and hereby acknowledges that the New Contractor is entitled to the full benefit of the Contract(s).

4. Each of [_____, _____ and _____]+ agrees to be jointly and severally bound by the terms of this Agreement.

5. Each of [_____, _____ and _____]++ agrees to be jointly and severally bound by the terms of this Agreement and by the terms of the Contract(s) as novated by this Agreement.

6.^ The Contractor and the New Contractor shall, and each participant of the Contractor and the New Contractor as the case may be, jointly and severally, indemnify and keep indemnified the Employer against all losses, damages, costs, expenses, claims or liabilities etc. and any legal or other professional costs (on a full indemnity basis) incurred or suffered (whether direct or indirect) arising out of or in connection with any challenge or meeting any challenge to this novation transaction, in particular under [section 266 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)] [section(s) 49 and/or 50 of the Bankruptcy Ordinance Cap. 6] [section 266 of the Companies (Winding UP and Miscellaneous Provisions) Ordinance (Cap. 32) and section(s) 49 and/or 50 of the Bankruptcy Ordinance Cap. 6 as appropriate]#.

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

SIGNED, SEALED and DELIVERED by)
the Employer by)
[insert name and appointment of officer])
in the presence of:)
)
)
)
.....)
[Name])
[Occupation])
[Address])

[Signature of the officer][1] L.S.

(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])
in the presence of:)
)
)
.....)
[Name])
[Occupation])
[Address])

[Signature of the individual partner][1] L.S.

[Signature of the individual partner][1] L.S.

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)
director and secretary or person(s))
authorized to sign the contract by its)
board of directors][2])
in the presence of a witness:)
)
.....)
[Name])
[Occupation])
[Address])

[Signature of the director(s) etc][1]

Common Seal

Or

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

[Signature of the director(s) etc][1]

Or

(e)* SIGNED, SEALED and DELIVERED by)
[name of Company A] by [ ])
his/her/its[2] attorney under power of attorney)
dated [ ])
)
in the presence of:)
)
.....)
[Name])
[Occupation])
[Address])

[Signature of the attorney][1] L.S.

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

+ Insert the names of the participants comprising the Contractor.

++ Insert the names of the participants comprising the New Contractor

^ The department concerned should consider the need for this indemnity clause in cases of novation where there is doubt on the financial position of the outgoing contractor but winding up has yet to commence. The Government normally does not have much details or knowledge of the deal between the outgoing contractor and the new contractor behind the novation transaction, and there is a possibility of avoidance of transaction under section 266 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) if the novation is made within 6 months before the commencement of the outgoing contractor's winding up or under section(s) 49 and/or 50 of the Bankruptcy Ordinance.

Choose the appropriate one, depending on whether the Contractor and the New Contractor are individuals or companies.

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

(a) For use where the joint venture participant is a sole proprietor.

(b) For use where the joint venture participant is a partnership.

(c) For use where the joint venture participant is a company incorporated in Hong Kong and executes the deed with a Common Seal.

(d) For use where the joint venture participant is a company incorporated in Hong Kong and executes the deed without a Common Seal.

(e) For use where the joint venture participant 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.