

Contractor Management Handbook

Development Bureau

**Revision B-1~~10~~
~~March~~ September 2013**

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B-10	25/3/2013		Promulgation of the establishment of the category of “Plumbing Installation”, and revision of the scope and the “minimum technical and management criteria for admission, confirmation and promotion” of the category of “Landscaping: Class I – General Landscape Work” as promulgated by letter to all contractors on the List of Approved Contractors for Public Works and the List of Approved Suppliers of Materials and Specialist Contractors for Public Works ref: (02J7J-01-5) in DEVB(PS) 108/34 dated 25 March 2013.
<u>B-11</u>	<u>1/9/2013</u>		<p><u>Revision of the procedures for substitution of listing status in Sections 2 and 6 as promulgated by letter to all contractors on the List of Approved Contractors for Public Works and the List of Approved Suppliers of Materials and Specialist Contractors for Public Works ref: (02J81-01-3) in DEVB(PS) 108/34 dated 23 August 2013.</u></p> <p><u>Rectification of the typographic errors on items 6.8, 7.5 and 7.6 of the Report on Contractor Performance, Part II, Appendix 4A</u></p>

classified as substitution under Sub-section 6.5 below, ~~which is no longer allowed after 18 September 2003~~ are not allowed unless as allowed under Section 6.

2.15.3 Changes from sole-proprietorship to partnership are normally allowed, provided that the sole-proprietor becomes one of the partners in the partnership, holding a majority percentage of share after the change and the newly-formed partnership meets the minimum financial and personnel requirements as set out in **Appendices 2A** and **2C**. When the Development Bureau is informed of the change, the contractor shall confirm in writing whether there are any changes to the full time management and technical personnel of the contractor and, if so, specify the details of the change. Changes from sole-proprietorship to a limited company are not allowed unless as allowed under Section 6.

2.15.4 Changes in partnership involving mere addition of partner(s) are normally allowed, provided that the existing partners before the addition remain as partners in the newly constituted partnership and the newly constituted partnership meets the minimum financial and personnel requirements as set out in **Appendices 2A** and **2C**. Financial assessment will be conducted to ascertain if the new composition of partnership still meets the retention requirements in the List. When the Development Bureau is informed of the change, the contractor shall confirm in writing whether there are any changes to the full time management and technical personnel of the contractor and, if so, specify the details of the change.

2.15.5 For changes in partnership involving the death or retirement or replacement of an existing partner, a full vetting on the firm's financial, management, technical and personnel capabilities shall be conducted afresh in accordance with the criteria specified in **Appendices 2A** to **2C**. For the purpose of assessing the technical and management capabilities under **Appendix 2B**, the experience of each partner will be apportioned according to his percentage of share in the partnership. Any experience or qualification claimed by a partner by virtue of being a shareholder, director, agent or employee of a limited company will not be counted as the experience or qualification of the partner. Under normal circumstances, only the experience or qualification obtained by a partner in the capacity of a proprietor or a partner of a partnership will be counted. The partnership must collectively meet the stipulated requirements. Changes from partnership to a limited company are not allowed unless as allowed under Section 6.

2.15.6 Any contractor who fails to comply with the retention requirements set out in this Sub-section or fails to obtain the approval of the Development Bureau for the changes shall be liable to be removed from all categories of the List.

SECTION 6 CHANGE OF COMPANY NAME, SUBSTITUTION AND TRANSFER OF BENEFITS AND OBLIGATIONS OF CONTRACTS

6.1 Notification of Change of Name

6.1.1 When the company name of a contractor has been changed, the contractor shall notify the Secretary for ~~the Environment, Transport and Works~~Development in writing of the change in name and submit :

- (a) a copy of the Business Registration Certificate in the new name;
- (b)
 - (i) in the case of a company incorporated in Hong Kong, a copy of the Certificate of Incorporation on Change of Name issued under Section 22 of the Companies Ordinance (Cap. 32); or
 - (ii) in the case of an overseas company, a copy of the Certificate of Registration of Oversea Company in the new name issued by the Registrar of Companies, Hong Kong under Section 333(3) of Part XI of the Companies Ordinance (Cap. 32), and a legal opinion (original copy) from a lawyer practising in the country in which the company was incorporated confirming that under the law of that country a change of name by a company does not affect any rights or obligations of the company, or render defective any legal proceedings by or against it, and any legal proceedings that could have been commenced or continued against it by its former name may be commenced or continued against it by its new name. The authenticity of the lawyer's professional qualifications also needs to be certified correct by a government or related establishment;
- (c) a list of all current contracts with any and all of the works group of departments; and
- (d) change of bank accounts, if any.

6.2 Actions to be Taken by ~~the Environment, Transport and Works~~Development Bureau

6.2.1 Subject to the receipt of the above documents from the contractor, ~~Environment, Transport and Works~~the Development Bureau will :

- (a) register the change of name in the List and/or the Specialist List and category in which the contractor was previously listed under the former company name; and notify the Managing Department(s) of the change.

6.2.2 Contractors are required to: -

- (a) submit the original or certified true copy of their latest audited accounts after the aforesaid change; and
- (b) answer all reasonable enquiries from the Environment, Transport and Works Development Bureau

to ascertain that the financial criteria and requirements for both retention and tendering purposes are met. Alternatively, a contractor's audited accounts immediately before the change and his most up-to-date management accounts after the change would be accepted in lieu of the latest audited accounts after the change if the contractor's auditors can confirm to the Environment, Transport and Works Development Bureau that there is no impact on the contractor's financial position arising from the change.

6.3 Actions to be Taken by the Managing Departments

6.3.1 Upon the notification of the Environment, Transport and Works Development Bureau, the corresponding Managing Department for the category or categories in which the contractor is listed shall consider whether the changes will affect the ability of the contractor to perform satisfactorily and collect from the contractor all the necessary documents in relation to his technical ability in the new name such as copy of Quality Management System certificate and the Certificate of Registration of General/Specialist Contractor. The Managing Departments shall investigate if necessary and recommend to the Environment, Transport and Works Development Bureau whether there should be any change in the contractor's status within one calendar month from the date of referral by the Environment, Transport and Works Development Bureau. The procedures of submitting a recommendation are the same as those given in paragraph 2.4.3 above. Regardless of the outcome of the action taken, existing contracts with the contractor will remain unaffected. The contractor will continue to be allowed to tender for contracts under the appropriate category or categories in which the contractor is listed unless the Managing Department recommends to the Environment, Transport and Works Development Bureau that the contractor should be suspended from tendering.

6.3.2 The Managing Departments should note that a change of name only does not affect the legal status, or any of the rights or obligations of the company. It is therefore not necessary to initiate procedures such as the issue of questionnaires, as if it were a request by a new contractor for admission to the List and/or the Specialist List. The contractor should simply be addressed by the new name in the administration of all current contracts.

6.4 Notification to Departments

6.4.1 Environment, Transport and WorksThe Development Bureau will inform all relevant departments of the change of name and any consequential changes in the contractor's status under the List and/or the Specialist List.

6.5 Substitution

~~6.5.1 No application for substitution will be considered/allowed after 18 September 2003. Please refer to ETWB TC(W) No. 18/2003 for details.~~

6.5.1 The structure of a contractor may change, for example, from a partnership or sole-proprietorship to a limited company or a company may wish to transfer its listing status to its holding or subsidiary company. All these cases are regarded as applications for substitution.

6.5.2 Application for substitution will be considered/allowed to cater for genuine organizational restructuring to suit the business needs of contractors whilst upholding government procurement principles of open and fair competition. Subject to the conditions and procedural requirements as set out in paragraphs 6.5.3 to 6.5.6 below, a contractor may submit an application for substitution which, if approved, will permit another company (the “new company”) to inherit the company listing status, records of company experience, past performance, convictions, accidents and –regulating actions of the company being substituted (the “outgoing company”).

6.5.3 The “Notes for Application for Substitution” at **Appendix 6A** describes the pre-requisites and essential information for the completion of the substitution process. A sample of undertaking, which should be signed by both the outgoing company} and the new company is shown at **Appendix 6B**. The date of approval for substitution will be the day executing novation agreements of all outstanding contracts, if any, among the outgoing company, the new company and the Government.

6.5.4 Upon receipt of an application for substitution, SEO(PS) of the Development Bureau will refer the application to the Managing Departments concerned for the vetting of the technical and management capability of the new company. These cases will be handled in the same manner as application for admission. In addition, all Works Departments will be required to check whether the outgoing company has any outstanding contracts with them and confirm to SEO(PS) of the Development Bureau within 3 working days the full list of contracts requiring novation. The basic principle is to **novate all contracts where final payment certificates have not yet been issued and those contracts where final payment certificates have been unilaterally issued by the Engineers/Architects but disputed by the contractor**. Works Departments should however be reminded to check cautiously all contracts still undertaken by the outgoing company (such as those in Maintenance Periods) and bring to the attention of the Development Bureau if exceptional contracts have to be included in or excluded from the novation list. Upon confirmation by the Works Departments the full list of contracts to be novated, SEO(PS) will forward the lists together with the application to the Finance Section of Development Bureau for financial vetting. The new company will be assessed financially on whether it is eligible for admission and for taking up the outstanding contracts surrendered by the outgoing company.

6.5.5 If the Managing Departments recommend the substitution, they should submit an updated list of outstanding contracts requiring novation and a list of outstanding issues

that have to be cleared by the outgoing company before novation and substitution can be proceeded. If discrepancies are found between this list of outstanding contracts and the one collected previously for financial vetting, SEO(PS) will draw the attention of the Finance Section of Development Bureau, who may conduct a re-assessment on the new company's financial capability if required. Separately, SEO(PS) will coordinate the returns from Works Departments on outstanding issues and request the outgoing company to furnish the required documents. Having collected the required documents from the outgoing company, SEO(PS) will send the documents to the relevant Works Departments for vetting. If only one department is involved in the novation process, that department should follow up all issues related to the novation and advise SEO(PS) of the date fixed for the execution of novation agreement(s). The Secretary for Development will issue a letter to the new company approving its inclusion in substitution of the outgoing company on the date of executing novation agreement(s). If the novation agreement(s) is subsequently not executed on the specified day, the approval for substitution will become void and invalid. In the event that more than one Works Departments are involved in the novation process, SEO(PS) will facilitate as a central coordinator between the relevant Works Departments and the outgoing and new companies. The Works Department which holds the greatest contract value for those outstanding contracts requiring novation will be responsible for the logistical arrangement for the novation procedures such as checking of documents on authorized signatories, preparation of standardized novation agreement forms and arranging venue for signing novation agreements.

6.5.6 In processing an application for substitution, the Secretary for Development will take into account all relevant information and has the sole discretion to withhold the approval if there are reasonable grounds to believe that there is a breach of professional integrity in relation to the application, such as false declarations, leading to violation of the government procurement principles of open and fair competition.

6.6 Transfer of Benefits and Obligations of Contracts

6.6.1 Apart from the substitution process as mentioned in Sub-section 6.5 above, A contractor may apply to transfer his benefits and obligations under a contract with the Government to a third party only if he is winding being wound up, will no longer be in existence, or is unable to complete the contract. Under such circumstances, the Government may, on balance and in the interest of the Government and public fund, agree to a novation instead of terminating the contract. In that event, the contractor will normally be removed from the List and/or the Specialist List in accordance with Section 5 above. In all the aforementioned cases, a novation agreement is required. One of the basic requirements is that the third party must be an approved contractor under the relevant category/categories of works in the List and/or the Specialist List. Approval to the novation is subject to and conditional upon the Government's agreement to the terms of the novation agreement.

~~6.6.2 Other than the cases mentioned above, the transfer of a contractor's benefits and obligations under a contract with the Government to a third party, including a sister company, 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 award of a contract to a contractor is based on the combined assessment of his tender price and technical score or performance rating. If the third party were to submit a tender in place for the~~

~~contractor, the third party might not have been awarded the contract.~~

6.7 A Novation Agreement

6.7.1 For public works contracts, a novation agreement is a tripartite agreement entered into by the Employer (Government), the contractor and a third party, whereby the contractor is released from and the third party assumes all the Contractor's obligations and rights under the stated contract(s). The two standard forms of novation agreement are shown at **Appendices ~~6A&B~~6C & 6D**. More than one contract may be included in a novation agreement.

6.7.2 For all novation, advice from the Legal Advisory Division (Works) of ~~Environment, Transport and Works~~Development Bureau must be sought on any proposed change to the standard forms of novation agreement.

6.7.3 The departments concerned must check to ensure that the third party taking over the contract has the technical, management and financial capability and is a fit substitute for the outgoing contractor. ~~One of the basic requirements is that the party must be an approved contractor under the relevant category/categories of works in the List and/or the Specialist List~~In the event that the contractor has assigned the financial benefit of his contract with the Government to a financial institution, the contractor is required to resolve matters relating to the financial assignment to the satisfaction of the Government before the Government considers agreeing to the proposed novation (see also Sub-section 6.8 herein below).

6.7.4 Before a novation agreement is executed, departments concerned should first confirm the financial capability of the third party with the Finance Section of ~~Environment, Transport and Works~~Development Bureau. They should ~~then~~ apply to the Secretary for ~~the Environment, Transport and Works~~Development (Attn: PAS(W)4), with a copy of confirmation memo from the Finance Section of ~~Environment, Transport and Works~~Development Bureau, for approval in principle before the execution of the novation agreement. In the application, the details of the contract, the parties involved in the novation agreement and the expected time required for the completion of the novation agreement should be indicated. ~~The Environment, Transport and Works~~Development Bureau will monitor the progress of the arrangement.

6.7.5 All three parties shall execute the agreement on the same date. In the case where the contract to be novated is made between the Government and the contractor together with other person or persons trading as an unincorporated joint venture, such other person or persons shall also join in the execution of the agreement. Copies of the executed novation agreement shall be sent to the Secretary for ~~the Environment, Transport and Works~~Development (Attn: PAS(W)4) and the Secretary for Financial Services and the Treasury within 3 working days from the date of execution.

6.8 Performance Bond, Joint Venture Guarantee and/or Insurance

6.8.1 Where any performance bond, any guarantee and/or any insurance is required

for a contract and if the contract is to be novated then a substituting performance bond, guarantee and/or insurance policy must be provided by the third party, in the contractually required form, prior to the execution of the novation agreement. The outgoing company shall be required to clear the following outstanding issues for each contract with the Government which requires novation, if applicable, at least 2 weeks before execution of novation agreement:

- (a) The outgoing company must provide documentary proof that any insurance policy required under the contract also covers the new company to the same extent as that for the outgoing company. If the original insurance policy(ies) includes other parties in joint names, the new policy(ies) should cover these parties as well.
- (b) In the event that an existing contract involves a Nominated Sub-contract, the outgoing company, the new company and the relevant Nominated Sub-contractor should novate the Nominated Sub-contract. The original and a copy of the novated Nominated Sub-contract should be produced to the relevant Works Department for inspection and, if found acceptable to the Works Department, the original novated Nominated Sub-contract will be returned to the applicant and the copy thereof shall be retained for record. The novated Nominated Sub-contract should have a clause to the effect that the novated Nominated Sub-contract shall take effect only on the date when the novation agreement in respect of main contract is executed.
- (c) The outgoing company must provide documentary proof that any Professional Indemnity Insurance required for the contract also covers the new company to the same extent as that for the outgoing company. If the original insurance policy(ies) includes other parties in joint names, the new policy(ies) should cover these parties as well.
- (d) The outgoing company must provide documentary proof that any bond(s) and surety(ies) required for the contract also covers the new company to the same extent as that for the outgoing company. Alternatively, new bonds and surety(ies) acceptable to the Government may be furnished. In the event that a substituting bond and/or surety(ies) cannot be made available at the date of the novation agreement, a supplementary agreement in the format of **Appendix 6C-6E** should be executed immediately after the execution of the novation agreement for that particular contract.
- (e) The outgoing company must provide documentary proof that he has resolved matters relating to the financial assignment if he has assigned the financial benefit of his contract with the Government to a financial institution.
- (f) The outgoing company must provide other documents as specified and required by the Secretary for ~~the Environment, Transport and Works~~Development.

6.8.2 Where the third party is a limited liability joint venture company, each shareholder of the company will be required to execute a Joint Venture Guarantee prior to the

execution of the novation agreement.

RESTRICTED

ITEM	ASPECTS OF PERFORMANCE	Very Good	Good	Satisfactory	Poor	Very Poor	Not Applicable
Section 6	General obligations						
6.1	Cleanliness of site						
6.2	Care of works						
6.3	Compliance with insurance requirements						
6.4	Coordination of utilities and other authorised contractors						
6.5	Compliance with conditions on road openings						
6.6	Care of utilities						
6.7	Compliance with enactments other than environmental						
6.8	Adequacy/submission of operational and maintenance <u>manuals</u>						
6.9	Training of employer's personnel						
6.10	Adequacy of notice for inspection of works						
6.11	Payment of nominated sub-contractors						
6.12	Compliance with particulars related to sub-contracting						
6.13	Attention to site security						
6.14	Attention to records						
6.15	Attention to submission of accounts/valuations						
6.16	Control of materials supplied by Government						
6.17	Preservation and protection of trees						
	Overall rating						
Section 7	Industry awareness						
7.1	Employment of technician apprentices and building & civil engineering graduates						
7.2	Training of technician apprentices and building & civil engineering graduates						
7.3	Care and welfare of workers						
7.4	Care of the general public						
7.5	Employment of qualified tradesmen and intermediate <u>tradesmen</u>						
7.6	Employment of sub-contractors registered from the Voluntary Sub-contractor Registration Scheme						
7.7	Anti-mosquito breeding						
7.8	Compliance with site uniform requirements						
	Overall rating						
Section 8	Resources						
8.1	Adequacy of plant resources						
8.2	Adequacy of labour resources						
8.3	Adequacy of material resources						
	Overall rating						
Section 9	Design						
9.1	Collection & appreciation of information (e.g. design codes, design parameters)						
9.2	Adequacy and quality of design solutions						
9.3	Environmental friendliness, health & safety, innovation, energy efficiency and life cycle costs						
9.4	Consultation with relevant government departments and utility undertakers						
9.5	Quality and promptness of design submissions						
9.6	Quality and timely submission of as-built drawings, maintenance manuals and warranties						
	Overall rating						
Section 10	Attendance to emergency (term contracts)						
10.1	Response to call						
10.2	Attendance to on-call emergency repairs						
10.3	Speed of emergency repairs						
	Overall rating						

Note

Mark appropriate box of performance for each item with "X".

APPENDIX 6A Notes for Application for Substitution

Substitution involves a company, firm or joint venture (the new company) which is normally not on the List of Approved Contractors for Public Works (the List) or the List of Approved Suppliers of Materials and Specialist Contractors for Public Works (the Specialist List) substituting for an approved contractor (the outgoing company) on the List and/or the Specialist List. The following requirements must be complied with for any application for substitution:

- (1) The conditions and pre-requisites set out in Sub-section 6.5 and this **Appendix 6A** must be complied with for any application for substitution.
- (2) All contractors on the List and/or the Specialist List including those who are currently under suspension are eligible to apply for substitution. Approval on substitution will only be given if the outgoing company is cleared of all suspension.
- (3) Applications involving a contractor on the List for substituting contractor on the Specialist List, or vice versa, are not permitted unless the contractors involved are within the same company group¹ for at least three years prior to the date of application for substitution. Applications involving a contractor not on any of the List or the Specialist List for substituting contractor on either the List or the Specialist List are also not permitted, if the businesses of the new company do not cover the categories in the List or the Specialist List to which the businesses of the outgoing company belong, unless the contractors involved are within the same company group for at least three years prior to the date of application for substitution. The Secretary for Development shall have the absolute discretion to determine whether the businesses of the new company are covered by the categories in the List or the Specialist List to which the businesses of the outgoing company belong.

¹ Two Contractors are regarded as within the same company group if they are companies, or undertakings within either of the following, with valid documentary proof:

- companies within the same 'group of companies' within the meaning of the Companies Ordinance (Cap. 32),
- undertakings where one is a 'parent undertaking' in relation to the other, within the meaning of the Companies Ordinance (Cap. 32), or
- undertakings where both are 'subsidiary undertakings' in relation to the same 'parent undertaking', within the meaning of the Companies Ordinance (Cap. 32).

- (4) The outgoing company must surrender to the new company and the new company must assume from the outgoing company all relevant managerial and technical staff and other resources previously vested with the outgoing company.
- (5) If the new company meets the admission criteria, the substitution will be approved subject to the outgoing company being still on the company register kept by the Registrar of Companies (for a limited company) or the unincorporated body or partnership has not yet been dissolved as at the date of the approval.
- (6) Normally, all novation agreements of outstanding contracts, if any, the Government has previously entered into with the outgoing company are to be executed among the new company, the outgoing company and the Government on the day of substitution unless otherwise recommended by the Managing Departments. Here, outstanding contracts refer to contracts where final payment certificates have not yet been issued and contracts where final payment certificates have been issued unilaterally by the Engineers/Architects but disputed by the contractor.
- (7) The outgoing and the new companies have to submit a duly executed undertaking to the Government as shown at **Appendix 6B** jointly prior to substitution. If the substitution involves execution of novation agreements, the undertaking may be signed on the day of substitution together with but prior to the signing of novation agreements.
- (8) Once the new company has been included in the List and/or the Specialist List, the following listing status and records of the outgoing company are deemed to have been transferred to the new company and will be regarded as the listing status and records of the new company in the consideration of its future bids for Government works :-
 - (a) company experience in undertaking public works contracts, and private sector contracts including the Housing Authority contracts in and outside Hong Kong;
 - (b) performance reports and performance ratings kept by the Development Bureau;
 - (c) conviction records of offences committed under Land (Miscellaneous Provisions) Ordinance (Cap. 28), Immigration Ordinance (Cap. 115), Employment Ordinance (Cap. 57), Factories and Industrial Undertakings Ordinance (Cap. 59), the Public Health and Municipal Services Ordinance (Cap. 132), the Occupational Safety and Health Ordinance (Cap. 509), Shipping and Port Control Ordinance (Cap. 313), Anti-pollution Control Ordinance (Cap.311), Noise Control Ordinance (Cap. 400), Waste Disposal Ordinance (Cap.354), Water Pollution Control Ordinance (Cap. 358), Dumping

at Sea Ordinance (Cap.466), Ozone Layer Protection Ordinance (Cap.403) and Environmental Impact Assessment Ordinance (Cap.499), the Merchant Shipping (Local Vessels) Ordinance (Cap. 548), Hazardous Chemicals Control Ordinance (Cap. 595), and other ordinances and related subsidiary legislations;

- (d) regulating actions taken against the outgoing company; and
- (e) accident records under the public works contracts kept by the Development Bureau

(9) In an application for substitution, the following documents must be furnished:

- (a) a legal opinion from an independent legal firm certifying that subject to the novation agreements for outstanding public works contracts, there has been full transfer of the relevant liabilities, assets, staff and resources from the outgoing company to the new company upon completion of organizational restructuring. Under exceptional circumstances subject to the Secretary for Development's absolute discretion, the transfer, after the substitution, of those liabilities, assets, staff and resources that are relevant to

- (1) the private sector contracts to be novated; or
 - (2) the public works contracts and are shared with the outgoing company;

may be considered and allowed if justified with proof demonstrated by the outgoing and the new companies. The Secretary for Development shall have the absolute discretion to decide whether to allow this post-substitution transfer and impose conditions this transfer has to comply with. If such conditions cannot be compiled with, the new company will be subject to removal from the List or the Specialist List;

- (b) a deed under seal provided by the new company to undertake continual employment of personnel and staff that are relevant to the listing requirements as specified in Appendix 2C and/or Appendix 3C, whichever appropriate, for a period of three years, if the application is not based on a change of structure of the outgoing contractor from a partnership (comprising individuals only) or sole proprietorship to a limited company. Any replacement of personnel and staff that are relevant to the above-mentioned listing requirements shall only be allowed on the basis of equal or better quality;
- (c) a deed under seal provided by the outgoing company to undertake

not to make any reference to any of its company experience and past performance records;

- (d) a certified copy of the Application by Firm or by other Body Unincorporate for Registration of Business Carried On by such Body in Hong Kong [i.e. Form 1(c) issued by the Inland Revenue Department] of the outgoing company, if the application is based on change of structure of the outgoing contractor from a partnership (comprising individuals only) or sole proprietorship to a limited company.
- (e) a full list of the new company's directors and shareholders filed in the Companies Registry;
- (f) a certified true copy of Business Registration Certificate, the Certificate of Incorporation and the Memorandum & Articles of Association of the new company, if applicable;
- (g) the original or a certified true copy of the latest 3 years' unconsolidated audited accounts, if any, of the new company;
- (h) a certified statement of outstanding contracts of the new company (including contracts held with the private sector including the Housing Authority); and
- (i) a certified statement of all contracts to be novated in respect of the outgoing company.

- (10) Both the outgoing company and the new company shall follow the rules set out in Environment, Transport and Works Bureau Technical Circular (Works) No. 54/2002 and prepare the necessary documents for the signing of an Undertaking to the Government as shown at **Appendix 6B**, and the execution of the novation agreements which will be held on the date of approval of the proposed substitution.

WHEREAS

NOW THE TERMS OF THIS UNDERTAKING are as follows: -

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.

*THE COMMON SEAL¹ of)
 [insert name of Company A])
 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 Company A]
under power of attorney
dated [] by []
in the presence of :-

[Name]

[Occupation]

OR

***SIGNED, SEALED AND DELIVERED³**)
by [insert name of Company A])
in the presence of:-)

[Name]

[Occupation]

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

1. For use where Company A executes the agreement through its common seal.
2. For use where Company A executes through an attorney.
3. For use where Company A 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 Company B.

APPENDIX 6A6C Novation Agreement

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

BETWEEN

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

of the first part, and

(2) [Insert name of Company A] whose registered office is at [] (hereinafter called the "Contractor") of the second part and

(3) [Insert name of Company B] whose registered office is at [] (hereinafter called the "New Contractor") of the third part.

WHEREAS: -

- (a) The Employer and the Contractor have entered into (an) agreement(s) including 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 further performance of~~ 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 ~~and~~ 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 Contractor releases and discharges the Employer~~, 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.^ The Contractor and the New Contractor shall jointly and severally, indemnify and keep indemnified the ~~Government-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 Ordinance Cap. 32] [section(s) 49 and/or 50 of the Bankruptcy Ordinance Cap. 6] [section 266 of the Companies 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
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 Contractor])
 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 Contractor])
 under power of attorney)
 dated [] by [])
 in the presence of : -)
)
)
)
)
 [Name]
 [Occupation]

OR

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

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

- ^ 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 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 the New Contractor.
- 1. For use where the Contractor executes the agreement through its common seal.
- 2. For use where the Contractor executes through an attorney.
- 3. For use where the Contractor is an individual or a sole proprietorship.

APPENDIX 6B6D 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 ADMINISTRATIVE 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 further performance of~~ 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 and 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 Government-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 Ordinance Cap. 32] [section(s) 49 and/or 50 of the Bankruptcy Ordinance Cap. 6] [section 266 of the Companies 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)
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 participant]
of the [insert name of the Contractor]
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 Contractor]
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 Contractor])
 in the presence of: -)
)
)
)
)
)
)
)
 [Name]
 [Occupation]

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 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 New Contractor.
- 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 Contractor is a sole proprietor or is a partnership itself. In the case of a partnership, all partners thereof shall execute.

APPENDIX 6C6E Supplementary Agreement

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

[Contract Title and Number]

SUPPLEMENTARY AGREEMENT NO. []

THIS AGREEMENT is made and entered into this _____ day of _____ (month & year)

BETWEEN THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION (hereinafter referred to as “the Employer”)

of the one part, and

[insert name of new contractor] whose registered office is at []
(hereinafter referred to as “the Contractor”) of the other part

and is supplemental to a contract known as [contract title and number] (hereinafter referred to as “the Main Contract”) made on [] between the Government of the Hong Kong Special Administrative Region and [insert name of original contractor] (hereinafter referred to as “the Original Contractor”).

WHEREAS

- (A) By a novation agreement made on [] (hereinafter referred to as “the Novation Agreement”) among the Employer, the Contractor and the Original Contractor, the Original Contractor’s rights and obligations under the Main Contract have been novated from the Original Contractor to the Contractor.
- (B) The Employer and the Contractor are desirous of clarifying the parties’ rights and obligations under the Main Contract (as novated in accordance with the Novation Agreement) as regards provision of the requisite duly executed [insert guarantee, performance bond etc where appropriate] in accordance with General Conditions of Contract Clause 12 and Special Conditions of Contract Clause [] for the due performance of the Main Contract by the Contractor.

NOW IT IS HEREBY AGREED BETWEEN THE EMPLOYER AND THE CONTRACTOR AS FOLLOWS:-

1. This Agreement is supplemental to the Main Contract and the provisions of the Main Contract shall apply to this Agreement except as provided to the contrary herein. Except as otherwise altered by this Agreement, the terms of the Main Contract shall remain unchanged in every respect. In the event of any inconsistency between the terms of the Main Contract and the terms of this Agreement, the latter shall take precedence. Subject to Clause 2 below, words and phrases appearing in this Agreement and defined in the Main Contract shall have the same meaning for the purposes of this Agreement as they have for the purposes of the Main Contract.
2. All references to “Contract” in the Main Contract and this Agreement shall mean the Main Contract and this Supplementary Agreement No. [].
3. The Contractor acknowledges and accepts that it has an obligation to provide to the Employer a duly executed [insert guarantee, performance bond etc where appropriate] in the form set out in the Appendix hereto and that it has not provided to the Employer the requisite duly executed [insert guarantee, performance bond etc where appropriate] as at the date of the Novation Agreement.
4. It is hereby agreed that submission by the Contractor of the requisite duly executed [insert guarantee, performance bond etc where appropriate] as referred to in Clause 3 above is a condition precedent to the Contractor’s entitlement to any payment or any further payment as the case may be under the Contract and the Employer shall forthwith be entitled to withhold any payment or any further payment as the case may be to the Contractor under the Contract up to the amount of [specify the amount of the Bonded Sum] until the Contractor shall have provided to the Employer the requisite duly executed [insert guarantee, performance bond etc where appropriate] as referred to in Clause 3 above.
5. It is hereby further agreed that failure by the Contractor to provide the requisite duly executed [insert guarantee, performance bond etc where appropriate] as referred to in Clause 3 above within 45 days of this Agreement shall entitle the Employer either to suspend the Works or to terminate the Contract forthwith by notice in writing to that effect, notwithstanding that the Contractor may have been permitted to proceed with the Works, and the Contractor shall not be entitled to any compensation as a consequence of such suspension or termination.
6. Within 30 days of the provision by the Contractor to the Employer of the requisite duly executed [insert guarantee, performance bond etc where appropriate] as referred to in Clause 3 above, the Employer shall pay the Contractor the sum withheld in accordance with Clause 4 above.
- 7¹. Sub-clauses [], [] and [] of Clause [] of the Special Conditions of Contract are hereby deleted.

IN WITNESS whereof this Agreement has been executed as a deed on the day and year 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 the officer))
in the presence of : -)

THE COMMON SEAL² of)
[insert name of the Contractor])
was hereunto affixed in the presence of : -)
)
)
)

Director

Director/Secretary

OR
SIGNED, SEALED AND DELIVERED³)
for and on behalf of and as lawful attorney)
of [insert name of the Contractor])
under power of attorney)
dated [] by [])
in the presence of : -)
)
)
)

[Name]
[Occupation]

OR

SIGNED, SEALED AND DELIVERED⁴)
by [insert name of the Contractor])
in the presence of: -)
)
)
)

[Name]
[Occupation]

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

1. Delete this Clause if not applicable.
2. For use where the Contractor executes the agreement through its common seal.
3. For use where the Contractor executes through an attorney.
4. For use where the Contractor is a sole proprietorship or a partnership. In the case of a partnership, all partners thereof shall execute.

APPENDIX**FORM OF [GUARANTEE, PERFORMANCE BOND etc]¹**

CONTRACT NO. _____

BY THIS BOND dated the _____ day of [_____]

We [Insert name of Contractor] whose registered office is at [_____] (“the Contractor”) and [_____] whose registered office/principal business is at [_____] (“the Surety”) are held and firmly 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 Contractor and Surety bind themselves their successors and assigns jointly and severally in accordance with the provisions of this Bond.

WHEREAS

- (A) By a contract dated [_____] and known as Contract No. [_____] (“the Contract”) made between the Employer and [Insert name of original contractor] (“the Original Contractor”), the Original Contractor has agreed to execute and complete certain works as defined in the Contract (“the Works”) upon the terms and conditions contained in the Contract.
- (B) By a novation agreement made on [_____] (“the Novation Agreement”) among the Employer, the Contractor and the Original Contractor, the Original Contractor's rights and obligations under the Contract were novated from the Original Contractor to the Contractor.
- (C) By Supplementary Agreement No. [_____] to the Contract made on [_____] between the Employer and the Contractor, the Employer and the Contractor clarified the parties' rights and obligations under the Contract (as novated in accordance with the Novation Agreement) as regards the provision the [insert guarantee, performance bond etc where appropriate] referred to in recital (D) below.
- (D) Pursuant to the terms of the Contract (as amended by the Supplementary Agreement No. [_____] referred to in recital (C) above), the Contractor agreed to obtain the [insert guarantee, performance bond etc where appropriate] of a surety to be bound unto the Employer for the due performance of the Contract by the Contractor.

NOW THE TERMS AND CONDITIONS of this Bond are as follows: -

1. Where applicable, words and expressions used in this Bond shall have the meaning assigned to them in the Contract.
2. In the event of default by the Contractor in respect of any of its obligations under the Contract the Surety shall satisfy and discharge any damages, losses, charges, costs or expenses sustained by the Employer thereby up to the amount of the Bonded Sum.
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 the Works, variation to or amendment of the Contract (including without limitation extension of time for performance) or any concession or waiver by the Employer in respect of the Contractor's obligations under the Contract;
 - (b) the termination of the Contract or of the employment of the Contractor under the Contract solely as a result of default by the Contractor under the Contract;
 - (c) any forbearance or waiver of any right of action or remedy the Employer may have against the Contractor 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 Contractor under the Contract or any release or waiver thereof;
 - (e) any act or omission of the Contractor pursuant to any other arrangement with the Surety;
 - (f) the issue of any certificate of completion in respect of part of the Works;
 - (g)² the issue of any certificate of achievement of any Stage.
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) expiry of the Maintenance Period or, where there is more than one Maintenance Period, expiry of the last Maintenance Period.
5. The Employer shall be entitled to assign the benefit of this Bond at any time without the consent of the Surety or the Contractor 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 [];

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.

THE COMMON SEAL⁴ of
[insert name of the Contractor]
was hereunto affixed in the presence of : -

Director

Director/Secretary

SIGNED, SEALED AND DELIVERED⁵
for and on behalf of and as lawful attorney
of []
under power of attorney
dated [] by []
in the presence of : -

[Name]
[Occupation]

Notes: (for preparation of but not inclusion in the engrossment of this [guarantee, performance bond etc where appropriate])

1. The Contractor must execute the bond as well as the Surety.
2. Delete if not applicable. Amend ";" at end of Clause 3(f) to "." accordingly if there is a deletion.
3. The address for service shall be in Hong Kong.
4. For use where the Contractor executes the agreement through its common seal.
5. For use where the Contractor or the Surety, whether a firm or limited company, executes through an attorney.