

APPENDIX 9.1 NOVATION OF CONSULTANCY AGREEMENTS

1. This Appendix describes procedures promulgated originally in ETWB TC(W) No. 3/2005 for novation of consultancy agreements. The procedures apply to consultancy agreements under the jurisdiction of the Engineering and Associated Consultants Selection Board (EACSB). The relevant paragraphs from the original circular are basically subsumed hereunder.

Background

2. 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 3(ii) below. However, the consultant shall not be invited to bid for or be awarded any further consultancies.

Policy

3. 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.

4. 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.

5. 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.

6. 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.

7. Other than the circumstances mentioned in paragraph 3, 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.

8. 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

9. 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).

10. 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 **Annexes 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.

11. The Secretary will then circulate to all concerned departments for their agreement to the proposed novation.

12. If only one department is involved in the novation process, the department will follow up all issues related to the novation.

13. 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.

14. 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.

15. 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.

16. 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 **Annex C**.

17. 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 3(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.

18. The consultant shall be removed from 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.

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

Novation Agreement

20. 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 **Annexes 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

21. 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

22. With the exception of cases mentioned in paragraph 3(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.

Novation Agreement

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

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

of the first part, and

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

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

WHEREAS:-

- (a) The Employer and the Consultant have entered into (an) agreement(s) including supplementary agreement(s) thereto if any (hereinafter called the "Consultancy Agreement(s)") for the provision of certain services and the execution of certain works described and known as

[GIVE DETAILS OF EACH CONSULTANCY AGREEMENT TO BE NOVATED, GIVING CONSULTANCY AGREEMENT NUMBER, DATE AND TITLE] [, and as set out in the Schedule to this Agreement][#]

upon the terms, conditions and covenants therein specified.

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

[#] The details of the agreements may be presented in a separate schedule.

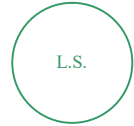
NOW IT IS HEREBY AGREED AS FOLLOWS: -

1. The Consultant hereby agrees to transfer absolutely to the New Consultant the Consultancy Agreement(s) and the full benefit thereof and all remedies for enforcing the same and the New Consultant undertakes to be bound by and observe and perform the terms, conditions and covenants of the Consultancy Agreement(s) on the part of the Consultant to be observed, performed and satisfied in every way as if the New Consultant were named a party to the Consultancy Agreement(s) in substitution for the Consultant and the New Consultant undertakes to assume all liabilities and to satisfy 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.

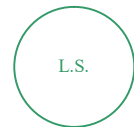
SIGNED, SEALED and DELIVERED by)
the Employer by)
[insert name and appointment of officer])
in the presence of:)
.....)
[Name])
[Occupation])
[Address])

*[Signature of the
officer] **



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

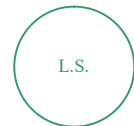
*[Signature of the sole
proprietor] **



Or

(b) SIGNED, SEALED and DELIVERED by)
[name of partner] and)
[name of partner]^)
being the partners of [name of the Consultant])
in the presence of:)
.....)
[Name])
[Occupation])
[Address])

*[Signature of the
individual partner] **



*[Signature of the
individual partner] **



Or

(c) Executed and delivered)
 as a deed and the COMMON SEAL)
 of [name of the Consultant])
 was affixed in the presence of)
 [] its [director(s) or)
 director and secretary or person(s))
 authorized to sign the Consultancy Agreement by its)
 board of directors]**)
 in the presence of a witness:)
)
)
 [Name])
 [Occupation])
 [Address])

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



Or

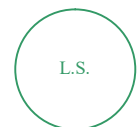
(d) Executed and delivered)
 as a deed)
 by [name of the Consultant])
 acting through)
 [] (its sole director))
 or)
 [] and [] (its directors))
 or)
 [] (its director) and)
 [] (its company secretary)**)
)
 in the presence of a witness:)
)
)
 [Name])
 [Occupation])
 [Address])

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

Or

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

*[Signature of the
 attorney]**



NOTES: (for preparation of but not inclusion in the engrossment of the Novation Agreement)

Case (a) is for use where the Consultant is a sole proprietor.

Case (b) is for use where the Consultant is a partnership.

Case (c) is for use where the Consultant is a company incorporated in Hong Kong and execute the deed with a Common Seal.

Case (d) is for use where the Consultant is a company incorporated in Hong Kong and execute the deed without a Common Seal.

Case (e) is for use where the Consultant executes the deed under a power of attorney

- * The italic parts are not part of the execution clause. They are for guidance or information only.
- ** Select the correct expression for use. If none is applicable, insert an appropriate expression.
- ^ The deed shall be executed by all the partners. Add more names if required.

Novation Agreement for Unincorporated Joint Venture

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

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

of the first part, and

[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 referred to collectively as the "Consultant") of the second part, and

[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 referred to collectively as the "New Consultant") of the third part.

WHEREAS:-

- (a) The Employer and the Consultant have entered into (an) agreement(s) including any supplementary agreement(s) thereto if any (hereinafter called the "Consultancy Agreement(s)") for the provision of certain services and the execution of certain works described and known as

[GIVE DETAILS OF EACH CONSULTANCY AGREEMENT TO BE NOVATED, GIVING CONSULTANCY AGREEMENT NUMBER, DATE AND TITLE] [, and as set out in the Schedule to this Agreement,][#]

[#] The details of the agreements may be presented in a separate schedule.

upon the terms, conditions and covenants therein specified.

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

NOW IT IS HEREBY AGREED AS FOLLOWS: -

1. The Consultant hereby agrees to transfer absolutely to the New Consultant the Consultancy Agreement(s) and the full benefit thereof and all remedies for enforcing the same and the New Consultant undertakes to be bound by and observe and perform the terms, conditions and covenants of the Consultancy Agreement(s) on the part of the Consultant to be observed, performed and satisfied in every way as if the New Consultant were named a party to the Consultancy Agreement(s) in substitution for the Consultant and the New Consultant undertakes to assume all liabilities and to satisfy 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).

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

⁺ Insert the names of the participants comprising the Consultant.

^Ω Insert the names of the participants comprising the new Consultant.

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:)

) *[Signature of the*
) *officer]**



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

(a) #SIGNED, SEALED and DELIVERED)
 by [name of participant] being a participant)
 of the [name of the unincorporated joint venture])
 in the presence of:)

) *[Signature of the*
) *participant]**



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

Or

(b) #SIGNED, SEALED and DELIVERED)
 By [name of partner] and [name of partner]^)
 being the partners of [name of participant])
 being a participant)
 of the [name of the unincorporated joint venture])
 in the presence of:)

) *[Signature of the*
) *individual partner]**



) *[Signature of the*
) *individual partner]**



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

Or

(c) #Executed and delivered)
 as a deed and the COMMON SEAL)
 of [name of participant] being a participant)
 of the [name of the unincorporated joint venture])
 was affixed in the presence of)
 [] its [director(s) or)
 director and secretary or person(s))
 authorized to sign the Consultancy Agreement by its)
 board of directors]**)
 in the presence of a witness:)
)
)
 [Name])
 [Occupation])
 [Address])

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

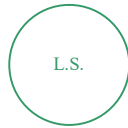


Or

(d) #Executed and delivered)
 as a deed)
 by [name of participant] being a participant)
 of the [name of the unincorporated joint venture])
 acting through)
 [] (its sole director))
 or)
 [] and [] (its directors))
 or)
 [] (its director) and)
 [] (its company secretary)**)
)
 in the presence of a witness:)
)
)
 [Name])
 [Occupation])
 [Address])

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

Or

(e) #SIGNED, SEALED and DELIVERED)
 by [name of participant] being a participant)
 of the [name of the unincorporated joint venture])
 by [])
 his/her/its** attorney under power of attorney) *[Signature of the*
 dated []) *attorney]** 
)
 in the presence of:)
)
)
 [Name])
 [Occupation])
 [Address])

NOTES: (for preparation of but not inclusion in the engrossment of the Novation Agreement)

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

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

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

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

Case (e) is for use where the joint venture participant executes the deed under a power of attorney.

Select the appropriate form or forms and REPEAT FOR EACH PARTICIPANT of the unincorporated joint venture.

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

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

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

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.

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

Or

(b) #SIGNED, SEALED and DELIVERED by)
 [name of partner] and)
 [name of partner]^) *[Signature of the*) 
 being the partners of [name of the Consultant]) *individual partner]**)
 in the presence of:)
) *[Signature of the*) 
) *individual partner]**)
)
 [Name])
 [Occupation])
 [Address])

Or

(c) #Executed and delivered)
 as a deed and the COMMON SEAL)
 of [name of the Consultant/Surety])
 was affixed in the presence of) *[Signature of the*) 
 [] its [director(s) or) *director(s) etc]**)
 director and secretary or person(s))
 authorized to sign the Consultancy Agreement by its)
 board of directors]**)
 in the presence of a witness:)
)
)
 [Name])
 [Occupation])
 [Address])

Or

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

Or

(e) #SIGNED, SEALED and DELIVERED by)
 [name of the Consultant/Surety] by [])
 his/her/their** attorney under power of attorney)
 dated []) *[Signature of the*
) *attorney]**
 in the presence of:)
)
)
 [Name])
 [Occupation])
 [Address])



Or

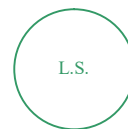
(f) #SIGNED, SEALED and DELIVERED)
 by [name of participant] being a participant)
 of the [name of the unincorporated joint venture])
 in the presence of:)
) *[Signature of the*
) *participant]**
)
)
 [Name])
 [Occupation])
 [Address])



Or

(g) #SIGNED, SEALED and DELIVERED)
 By [name of partner] and [name of partner]^)
 being the partners of [name of participant])
 being a participant)
 of the [name of the unincorporated joint venture])
 in the presence of:)
)
)
)
)
 [Name])
 [Occupation])
 [Address])

*[Signature of the individual partner]**



*[Signature of the individual partner]**



Or

(h) #Executed and delivered)
 as a deed and the COMMON SEAL)
 of [name of participant] being a participant)
 of the [name of the unincorporated joint venture])
 was affixed in the presence of)
 [] its [director(s) or)
 director and secretary or person(s))
 authorized to sign the Consultancy Agreement by its)
 board of directors]**)
 in the presence of a witness:)
)
)
)
 [Name])
 [Occupation])
 [Address])

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



Or

(i) #Executed and delivered)
 as a deed)
 by [name of participant] being a participant)
 of the [name of the unincorporated joint venture])
 acting through)
 [] (its sole director))
 or)
 [] and [] (its directors))
 or)
 [] (its director) and)
 [] (its company secretary)**)
)
 in the presence of a witness:)
)
)
)
 [Name])

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

[Occupation])
 [Address])

Or

(j) #SIGNED, SEALED and DELIVERED)
 by [name of participant] being a participant)
 of the [name of the unincorporated joint venture])
 by [])
 his/her/its** attorney under power of attorney)
 dated [])
)
 in the presence of:)
)
)
 [Name])
 [Occupation])
 [Address])

*[Signature of the attorney]**



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

Case (a) is for use where the Consultant is a sole proprietor.

Case (b) is for use where the Consultant is a partnership.

Case (c) is for use where the Consultant/Surety is a company incorporated in Hong Kong and execute the deed with a Common Seal

Case (d) is for use where the Consultant/Surety is a company incorporated in Hong Kong and execute the deed without a Common Seal.

Case (e) is for use where the Consultant/Surety executes the deed under a power of attorney

Case (f) is for use where the joint venture participant is a sole proprietor.

Case (g) is for use where the joint venture participant is a partnership.

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

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

Case (j) is for use where the joint venture participant executes the deed under a power of attorney.

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

- ** Select the correct expression for use. If none is applicable, insert an appropriate expression.
- ^ The deed shall be executed by all the partners. Add more names if required.
- # Select the appropriate form or forms and repeat for the Consultant, each participant of the unincorporated joint venture of the Consultant and Surety.