

APPENDIX 6E 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 [];

(b) upon the Surety, at [] Hong Kong³.

- 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 deed on the date first above written.

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

OR

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

[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.