

Draft STANDARD FORM OF DOMESTIC SUB-CONTRACT 標準自選分包合同稿

- General

[KCTang]: Comments received to-date on the original draft dated 24/1/2013 (shown in black) are shown in blue. Deletions are shown as ~~word~~. Additions are shown as **word**. Where desired, a response has been made by me against each comment made. Where no response is made, I would leave it to the Task Force to discuss. For clauses suggested to be deleted entirely, I suggest to retain.

[HKPSWTA]: We have reviewed this draft DSC following the guidelines issued by PCICB in 2005.

[HKPSWTA]: We consider any references to time should not be of time bar nature. If it is, it should be explicitly stated.

[HKPSWTA]: Only English version is reviewed.

- Parties

[HKCSA]: Change all references to "Client-Contractor" to "Main Contractor". Change all references to "Upper-tier Contractors" and "Ultimate Client" to "Employer".

[KCTang]: Not changed below yet to improve readability.

[KCTang]: The original draft is intended not only for 1st tier Sub-Contractors but also for 2nd tier Sub-Contractors.

- Site Portions and Works Sections

[HKCSA]: Delete provisions for different site portions for access and different works sections for commencement and completion.

[KCTang]: The original draft is intended to cater for partial handover of site and for sectional commencement and completion.

- Sub-Contract Works / Sub-Contract Works Section

[HA]: Article 3, Particulars of Agreement Items 36 (l) & (n), Clauses 4.3, 4.5.1, 4.5.4, 4.7.1, 4.7.2, 4.9.1, 4.10.1, 4.10.2, 6.13 (f), 6.16.2 (b) & (c), 7.7.1, 7.7.5, 7.8.3, 8.4, 8.5 and 9.4. - These clauses/items are drafted with a preset angle that there would be different Sections under the Sub-Contract. Suggest that the wordings are to be modified to also cater for Sub-Contracts of which the works are not divided into Sections by, for example, replacing "Sub-Contract Works Section" with "Sub-Contract Works, or any Section thereof".

[KCTang]: "Sub-Contract Works Section" is purposely used instead of "Sub-Contract Works, or any Section thereof" to reduce the number of words. Item 24 of the Particulars of Agreement allows the user to define "the Sub-Contract Works Section" as the whole of the Works.

- **Site safety**

[HA]: Along with the promotion of site safety by the CIC, there may be room for the Standard Form to introduce more coverage on site safety, like drawing a clearer demarcation of provision of site safety measures between the Client-Contractor and the Sub-Contractor, and requiring safety provisions and measures to be incorporated by the Sub-Contractor in his design submissions for the Sub-Contract Works including temporary works.

[KCTang]: The details may vary and would better be dealt with by the Specification. Clause 9.14, while not containing specific details, serves as a reminder for elaboration.

- **Protection of workers' wages**

[HA]: The CIC has issued a set of Guidelines on Measures for Protection of Workers' Wage (Version 2) in March 2013. The Task Force may explore if any relevant recommended measures ought to be incorporated into the Standard Form.

[KCTang]: Clause 9.8 serves some purposes.

- **Typing practice**

[HA]: Boldfacing of days, which appears throughout the conditions, does not seem necessary. Furthermore, the way of boldfacing is inconsistent between English version and Chinese version, e.g. "Within **21 days**" vs. "**21 天內**" in Clause 5.2.

[KCTang]: Will rectify the inconsistency.

- **Specified by / Stated by / Required by**

[KCTang]: Change all "stated by this Sub-Contract" and "required by this Sub-Contract" to "specified by this Sub-Contract" to be consistent. Not changed below yet to improve readability.

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1.3 Ultimate Client 最終委託方

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1.6 Clerk of Works 工程監督

1.7 Main Contractor 總承包商

1.8 Upper-tier Contractors 再上層承包商

1.9 Sub-sub-contractors 再分包商

1.10 Separate Contractors 其他承包商

1.11 Property Manager 物業管理人

1.12 Headings and clause references 標題及條款引用

1.13 Day and counting of periods 日及時期的計算

1.14 Site 工地

1.15 Materials 物料

1.16 Construction plant 施工機械

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1.23 Variation 工程變更

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1.29 Money recoverable from Client-Contractor 可從上家承包商取回的款項

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2. SITE 工地

- 2.1 Provision of Site 工地的提供
- 2.2 Site access 進入工地
- 2.3 House rules of Property Manager 物業管理人的管理守則
- 2.4 Protection of access routes 通道的保護
[HKCSA]: Delete Clause 2.4.
- 2.5 Off-site areas 工地外的場地
[HKCSA]: Delete Clause 2.5.
- 2.6 Site visit 視察工地
- 2.7 Site investigation and condition survey reports 工地勘察及現況勘察報告
- 2.8 Access during Defects Liability Period 保修期內的通行
- 2.9 Objects of antiquity 古物

3. WORKS 工程

- 3.1 Definitions 定義
[HKCSA]: Delete Clause 3.1.
- 3.2 Design of permanent works 永久工程的設計
[HKCSA]: Delete Clause 3.2.
- 3.3 Development of design 設計的深化
[HKCSA]: Delete Clause 3.3.
- 3.4 Design of temporary works 臨時工程的設計
[HKCSA]: Delete Clause 3.4.
- 3.5 Sub-Contractor's design to be approved 分包商的设计須獲批准
[HKCSA]: Delete Clause 3.5.
- 3.6 Testing and commissioning 測試及調試
- 3.7 General attendance 一般的配合服務

4.0 TIME 工期

- 4.1 Contract commencement 合同的開始
[HKCSA]: Delete Clause 4.1.
- 4.2 Consent to commencement 開始的許可
- 4.3 Commencement and completion of Works 工程的開始及完成
- 4.4 Working time 工作時間
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5. CONTRACT BASIS 合同基礎

- 5.1 Interpretation of Sub-Contract Documents 分包合同文件的釋義
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[HKCSA]: Delete Clause 5.2.
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- 6.10 Provisional sums 暫定款
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- 6.12 Variations 工程變更
- 6.13 Valuation Rules 計價規則
- 6.14 Invoices, receipts, etc. 發票、收據等
- 6.15 Payment timeline 付款時間表
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7. QUALITY 質量

- 7.1 Quality liability 質量責任
[\[HKCSA\]: Delete Clause 7.1.](#)
- 7.2 Materials, workmanship and methods to comply with this Sub-Contract 物料、工藝及方法須符合分包合同
- 7.3 Approval 批准
[\[HKCSA\]: Delete Clause 7.3.](#)
- 7.4 Material samples 物料樣品
[\[HKCSA\]: Delete Clause 7.4.](#)
- 7.5 Mock-up construction and performance testing 施工樣板及性能測試
[\[HKCSA\]: Delete Clause 7.5.](#)
- 7.6 Testing and inspection 測試及檢查
- 7.7 Defects liability 保修責任
- 7.8 Warranties and guarantees 保證及擔保

8. SUB-CONTRACTOR'S DOCUMENTS 分包商的文件

- 8.1 Shop drawings, calculations and method statements 製配圖、計算書及施工組織設計
- 8.2 Programmes 進度計劃表
- 8.3 Progress reports 進度報告
- 8.4 As-built drawings and records 竣工圖及記錄
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9. GENERAL OBLIGATIONS 一般責任

- 9.1 Statutory obligations 法定責任
- 9.2 Intellectual property 知識產權
[HKCSA]: Delete Clause 9.2.
- 9.3 Assignment 轉讓
- 9.4 Care of Works 工程的保護
- 9.5 Injury to persons and property and indemnity 人身財產的損傷和保障
- 9.6 Provision of all things necessary 提供一切必需的
[HKCSA]: Delete Clause 9.6.
- 9.7 Labour and site management team 人力及現場管理班子
- 9.8 Payment management to employees of all tiers 各層僱員的付款管理
- 9.9 Temporary site facilities 現場臨時設施
- 9.10 Checking of documents and site conditions 檢查文件及現場狀況
[HKCSA]: Delete Clause 9.10.
- 9.11 Setting out 開線定位
- 9.12 Cleanliness and tidiness 清潔及整齊
[HKCSA]: Delete Clause 9.12.
- 9.13 Protection 保護
[HKCSA]: Delete Clause 9.13.
- 9.14 Safety measures 安全措施
[HKCSA]: Delete Clause 9.14.
- 9.15 Environmental protection measures 環保措施
[HKCSA]: Delete Clause 9.15.

10. INSURANCES 保險

- 10.1 Employees' Compensation Insurance 僱員補償保險
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- 10.4 Compliance with insurance conditions 遵從保險條款
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- 11.4 Termination of Client-Contractor's Contract by Upper-tier Contractor 上家承包商的合同被再上層承包商終止
- 11.5 Consequences after determination or termination 終止後的後果
- 11.6 Computation of balance of payment 計算付款餘額
- 11.7 Final Account after determination or termination 終止後的結算
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- 12.1 Procedures 程序
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- 12.4 Reference to arbitration 提交仲裁解決
- 12.5 Arbitrator's powers 仲裁員的權力
- 12.6 Sub-Contractor to continue to proceed diligently 分判商仍須繼續不懈的工作
- 12.7 Governing law 規管法例

APPENDIX A - Contractors' All Risks and Third Party Liability Insurance Policy or Synopsis

附件 A - 工程一切險及第三者責任險保險單或保險擇要

SUB-CONTRACT AGREEMENT 分包合同協議

This Agreement 本協議

read in conjunction with the Particulars of Agreement hereto is made on the Sub-Contract Signing Date between the Client-Contractor of the one part and the Sub-Contractor of the other part.

須與後附的“協議特定事項”一併閱讀，乃由一方的“上家承包商”與另一方的“分包商”於“合同簽訂日”訂立。

[HKCSA]: "~~read in conjunction~~ **together** with the Particulars of Agreement hereto"

[KCTang]: "read in conjunction" is used because some of the terms first encountered in the Agreement are only defined later at the Particulars of Agreement.

Recitals 引言

Whereas: 鑒於:

Recital 1: The Client-Contractor has obtained a contract to execute the whole or part of the Project ("Client-Contract Works") invested by the Ultimate Client on the Project Site.

引言 1: 上家承包商取得合同執行“最終委託方”在“項目地址”投資的項目的全部或部分(“上家承包工程”)。

[HKCSA]: "has ~~obtained~~ **secured** a contract to execute the whole or part of the Project **on the Project Site** ("Client-Contract Works") ~~invested~~ **commissioned** by the Ultimate Client ~~on the Project Site~~."

[KCTang]: "secured" and "commissioned" agreed, but prefer to keep "on the Project Site" at the end.

Recital 2: The Client-Contractor wishes to sub-contract out part of the Client-Contract Works ("the Sub-Contract Works").

引言 2: 上家承包商希望將“上家承包工程”的一部分(“分包工程”)分包出去。

Recital 3: The Client-Contractor has provided the Sub-Contractor with the Tender Documents showing and describing the whole of the Sub-Contract Works to be done.

引言 3: 上家承包商已向分包商提供繪述及說明要造的整個分包工程的“招標文件”。

Recital 4: The Sub-Contractor has submitted a tender ("the Tender") based on the Tender Documents (as may be modified by any tender addenda issued by the Client-Contractor to the Sub-Contractor before the submission of the Tender).

引言 4: 分包商按照招標文件 (或經上家承包商在回標前發給分包商的任何“招標文件修改通知”修訂) 提交了投標 (“投標”)。

Recital 5: To the extent that the Client-Contractor and the Sub-Contractor (“the Contract Parties”) have after the submission of and before the acceptance of the Tender further clarified or adjusted the requirements of the Tender Documents and the proposals in the Tender, such clarifications or adjustments have been exchanged in writing.

引言 5: 上家承包商及分包商 (“合同雙方”) 於投標之後定標之前需要進一步澄清或調整招標文件的要求及投標內的建議的，該等澄清或調整已進行了書面交換。

[HKCA]: "~~collectively~~ “the Contract Parties”"

[KCTang]: Agreed.

[HKCSA]: “exchanged ~~between the Contract Parties~~ in writing”

[KCTang]: “exchanged ~~between them~~ in writing”

Now 現在

the Contract Parties hereby agree as follows:

合同雙方僅此同意如下:

Article 1: Object of this Sub-Contract 約章一: 分包合同的標的

[HKCA]: "分包合同的 ~~目標的~~"

[KCTang]: "標的" is used in forms of contract in the Mainland.

The Sub-Contractor will carry out and complete the Sub-Contract Works shown or described in the Sub-Contract Documents defined in Article 4.1 hereof for the consideration hereinafter provided.

分包商會以後述的代價進行及完成約章 4.1 所指的合同文件所繪述或說明的分包工程。

[HA]: “will” → “shall” for conveying a sense of contractual requirement rather than intention only.

[KCTang]: "will" signifies promises and commitments made by the Contract Parties in the context of the Agreement and "shall" signifies obligations and requirements upon the Contract Parties in the context of the Sub-Contract Conditions.

Article 2: Sub-Contract Price 約章二: 分包合同價

The Client-Contractor will pay to the Sub-Contractor the Sub-Contract Price stated in the Particulars of Agreement, or such other sum as shall become payable at the times and in the manner stated in this Sub-Contract.

上家承包商會付給分包商協議特定事項說明的“分包合同價”，或按分包合同說明的時間及方式而應支付的其他金額。

[HA]: “will” → “shall” for conveying a sense of contractual requirement rather than intention only.

[KCTang]: See Article 1.

Article 3: Sub-Contract Periods 約章三:分包合同工期

The Sub-Contractor will complete the Sub-Contract Works Sections within the respective Sub-Contract Period or Periods or such extended period or periods as may be authorized under this Sub-Contract.
分包商會在每個“分包工程分部”各自的“分包合同工期”內或按分包合同授權延長的工期內完成每個“分包工程分部”。

[HA]: “will” → “shall” for conveying a sense of contractual requirement rather than intention only.

[KCTang]: See Article 1.

[HKCSA]: “The Sub-Contractor will complete the Sub-Contract Works ~~Sections~~ within the ~~respective~~ Sub-Contract Period or ~~Periods~~ or such extended period or periods as may be authorized under this Sub-Contract.”

Article 4: Sub-Contract Documents 約章四:分包合同文件

4.1 The documents constituting this Sub-Contract (“the Sub-Contract Documents”) consist of the following:

構成分包合同的文件(“分包合同文件”)包括：

- (a) this Sub-Contract Agreement (including the Particulars of Agreement);
本分包合同協議(包括協議特定事項)；
- (b) the Tender Correspondence;
投標來往函件；
- (c) the Sub-Contract Conditions and Appendix A both annexed hereto as may be modified by the Special Sub-Contract Conditions included in the Tender Documents; and
後附的分包合同條款及附件 A(或經招標文件內的“分包合同特殊條款”修訂)；及
- (d) the Tender Documents as completed by the Sub-Contractor when submitting the Tender.
分包商提交投標時填妥的招標文件。

[HKCSA]: Delete reference no. “4.1”.

4.2 This Sub-Contract shall be deemed to have taken effect from the Sub-Contract Award Date.
分包合同視為已於“分包定標日”生效。

[HKCSA]: Delete Article 4.2.

[KCTang]: The Article is intended to be a clarification because formal Sub-Contract Agreement may be signed much later than the Sub-Contract Award Date. See Clause 4.1 also.

Attestation 簽認

Signed by both Contract Parties before witnesses:
合同雙方於見證人前簽署：

[HKCA]: "Signed by both *of the* Contract Parties"

[KCTang]: Agreed.

The Client-Contractor 上家承包商 _____

Company Chop (if company)公司印鑒(如果是公司) _____

Signature of legal or authorized representative 法定或獲授權代表簽署 _____

Name 名稱 _____ Position 職位 _____

Signature of witness 見證人簽署 _____

Name 名稱 _____ Position 職位 _____

The Sub-Contractor 分包商 _____

Company Chop (if company)公司印鑒(如果是公司) _____

Signature of legal or authorized representative 法定或獲授權代表簽署 _____

Name 名稱 _____ Position 職位 _____

Signature of witness 見證人簽署 _____

Name 名稱 _____ Position 職位 _____

Particulars of Agreement 協議特定事項

(Note: When completing the Particulars, text added shall be shown in italics, and text deleted shall be shown as struck through.)

(註：在填寫事項時，加入的文字須以斜體字顯示，取消的文字須以刪除線刪除。)

[HA]: Setting out of table - The spans in the title bar occupied by the fields of information, namely, "Entities or Defined Terms" and "Particulars or Definitions" do not tie in with the setting out of spaces below for filling in of requisite information. Please review the current setting out.

[KCTang]: Noted for improvement.

[HA]: In addition, if an Particulars of Agreement item spans across pages, suggest adding "[Item](Cont'd)" in the Item column on page(s) subsequent to the page where the item firstly appears.

[KCTang]: The user may need to re-type the Particulars of Agreement to contain more contents. Therefore, the positions of break pages and "Cont'd" may change. Better leave it to the user. For the printed form, page breaks would be made at appropriate locations.

[HKCSA]: "(Note: When completing the Particulars, text added shall be ~~shown~~ in italics, and text deleted shall be ~~shown as~~ struck through.)"

[KCTang]: "shown as" may seem superfluous, but is intended to tell the user to do so when he re-type the whole thing.

Item 項	Entities or Defined Terms 事項或定義名稱	Particulars or Definitions 特定內容或定義
	Project 項目	
1	Project Title 項目名稱	
2	Project Address 項目地址	
3	Ultimate Client 最終委託方	
4	Main Contractor 總承包商	[HKCSA]: [This is confusing when reading together with Recital 1] [KCTang]: "Client-Contractor" may not be "Main Contractor".
5	Client-Contract Works (Brief Description) 上家承包工程 (簡要說明)	
	Sub-Contract 分包合同	
6	Sub-Contract Signing Date 分包合同簽訂日	

Item 項	Entities or Defined Terms 事項或定義名稱	Particulars or Definitions 特定內容或定義
7	<p>Sub-Contract Award Date (being the date of the letter issued by or on behalf of the Client-Contractor awarding this Sub-Contract to the Sub-Contractor) 分包定標日 (即由或代表上家承包商發出的把分包合同給予分包商的函件的日期)</p> <p>[HA]: Shall “合同授予日” be a more accurate Chinese translation than “合同定標日” for Sub-Contract Award Date?</p> <p>[KCTang]: “定標” is used in contracts in the Mainland.</p> <p>[HKCSA]: Delete this item.</p> <p>[KCTang]: The Sub-Contract Award Date may be used as the starting date for other activities, such as counting the completion time, period for first submission, etc.</p>	
8	<p>Sub-Contract Title 分包合同名稱</p>	
9	<p>Sub-Contract Works (Brief Description) 分包工程 (簡要說明)</p>	
10	<p>Locations of Site (same as the Project Address if not stated) 工地的位置(如沒填寫，即項目地址)</p>	
	<p>Contract Parties 合同雙方</p>	<p>The Client-Contractor and the Sub-Contractor 上家承包商及分包商</p>
11	<p>Name of the Client-Contractor 上家承包商名稱</p>	
12	<p>Registered Address of the Client-Contractor 上家承包商註冊地址</p> <p>[HKCSA]: “Registered Address of the Client-Contractor”</p>	
13	<p>Name of the Sub-Contractor 分包商名稱</p>	
14	<p>Registered Address of the Sub-Contractor 分包商註冊地址</p> <p>[HKCSA]: “Registered Address of the Sub-Contractor”</p>	
	<p>Ultimate Client's Consultants 最終委託方的顧問</p>	

Item 項	Entities or Defined Terms 事項或定義名稱	Particulars or Definitions 特定內容或定義
15	Name of the Contract Administrator 合同監理名稱	
16	Name of the Quantity Surveyor 工料測量師名稱	
Contract Type and Price 合同類型及價款		
17	Contract Type (select only one "Yes" from the three choices below, delete the other choices) 合同類型 (下面三個選擇中選取一個“是”，刪掉其他的)	
	(a) Lump Sum Contract 總價承包合同	Yes 是
	(b) Remeasurement Contract 重新計量合同	Yes 是
	(c) Rates Only Contract 純單價承包合同	Yes 是
18	Sub-Contract Price (for Lump Sum Contract or Remeasurement Contract only, leave it blank for Rates Only Contract, Sub-Contract Price for Rates Only Contract to be determined from time to time according to the Sub-Contract Conditions) 分包合同價 (只適用於總價承包合同或重新計量合同，純單價承包合同則留空，純單價承包合同的分包合同價按分包合同條款不時予以確定)	(HK\$ _____)

Item 項	Entities or Defined Terms 事項或定義名稱	Particulars or Definitions 特定內容或定義
	<p>[HKPSWTA]: Add</p> <p>"Method of remeasurement for Remeasurement Contract or Rates Only Contract"</p> <p>[KCTang]: It desired, "Approach to remeasurement" instead of "Method of remeasurement".</p> <p>Possible options:</p> <ol style="list-style-type: none"> 1. By remeasuring the first set of working drawings issued by the Client-Contractor for construction and treating subsequent changes as Variations 2. By remeasuring the final set of working drawings issued by the Client-Contractor for construction 3. By remeasuring the as-built drawings 4. By actual site remeasurement <p>For authorized work properly carried out only, including abortive work caused by the Client-Contractor.</p>	<p>[HKPSWTA]: Approach to remeasure the final work done for a Remeasurement Contract or Rates Only Contract should be clarified to avoid dispute when settling Final Account.</p>
19	<p>Price treatment if, based on the final quantities, the value represented by all actual unit costs deviates from the value represented by all the prime cost rates beyond the extent stated here</p> <p>如果按最終數量，所有的實際成本單價的價值偏離所有的暫定物料單價的價值，超出了在此說明的程度時的價款處理方法</p> <p>[HA]: The price treatment is not touched upon in or in connection with any clauses in the conditions. Suggest mentioning the price treatment in, for example, Clause 6.17.1. Furthermore, it is not too clear as to what information, e.g. percentage or value, is to be filled in.</p> <p>[KCTang]: Mentioned by Clause 6.11.4. Up to the Contract Parties to state the treatment method.</p>	

Item 項	Entities or Defined Terms 事項或定義名稱	Particulars or Definitions 特定內容或定義
	<p>[HKPSWTA]: Add: “Daywork Rates a. Skilled labour b. Semi-skilled labour”</p> <p>[KCTang]: A daywork schedule should be included in the Sub-Contract to cover different grades of workers, normal and overtime rates, etc. Perhaps, add a footnote as a reminder.</p>	<p>[HKPSWTA]: Daywork rates for skilled and/or semi-skilled labour should be stated to avoid dispute in valuation. Daywork rates are referred to in Clause 6.13(e). Or should be linked to annual announcement by the relevant union or trade association.</p>
20	<p>Percentage mark-up on costs for profits and overheads when calculating fair rates or daywork rates based on actual costs (state separate percentages for materials, direct labour, construction plant, sub-sub-contract prices and daywork purposes where necessary - to be agreed if none stated) 按實際成本計算合理單價或點工單價時，按成本附加的利潤和管理費的百分率(物料、直屬工人、施工機械、再分包價及點工用的可按需要說明不同的百分率 - 如完全沒有說明則待同意)</p>	
21	<p>Percentage addition for administrative charge on payment on behalf of the defaulting party 按代違約方支付的費用而加收的行政費的百分率</p>	
	<p>Time 時間</p>	
22	<p>Date for Access to the Site 進入工地日期</p> <p>[HKPSWTA]: For P&D works, different access dates to different “Portions of the Site” is uncommon.</p> <p>[HKCSA]: Delete table for Portions of the Site.</p> <p>[KCTang]: Different dates can be essential for some cases.</p>	
	<p>Portions of the Site 工地的部分</p>	<p>Date 日期</p>
	(a)	
	(b)	
	(c)	
	(d)	
	(e)	

Item 項	Entities or Defined Terms 事項或定義名稱		Particulars or Definitions 特定內容或定義
23	Names of Sub-Contract Works Sections 分包工程分部的名稱		<p>[HKCSA]: Delete this item entirely.</p> <p>[KCTang]: Different Sections can be essential for some cases.</p>
	Phase / Section / Stage / Whole 期 / 分部 / 階段 / 全部	Description 說明	
	<p>[HA]: Delete “Phase” and “Stage” which are not talked about anywhere in the Sub-Contract Conditions. The term “Section” should have already served the purpose.</p> <p>[KCTang]: While “Section” is used in the Sub-Contract Conditions, “phase” or “stage” may be more appropriate for a particular project, but it would be too cumbersome to repeat “Section, Phase, Stage” all the time. Here, the user may define “Phase 1”, “Stage 1” or “Whole” as a Section.</p>		
(a)			
(b)			
(c)			
(d)			
(e)			
24	Periods of Sub-Contract Works Sections 分包工程分部的工期		<p>[HKCSA]: “Periods of Sub-Contract Works Sections”</p>

Item 項	Entities or Defined Terms 事項或定義名稱		Particulars or Definitions 特定內容或定義			
	Phase / Section / Stage / Whole 期 / 分部 / 階段 / 全部	Commencement Date (or a mechanism to determine the Commencement Date) 開工日 (或定開工 日的機制)	Date for Completion (or a mechanism to determine the Date for Completion) 應竣工日 (或定應 竣工日的機制) [HKCA]: Add "OR 或 <u>Durations in Calendar Days</u> <u>日曆天計的工期</u> [KCTang]: "mechanism to determine the Date for Completion" can be a duration commencing from a certain date.	Durations in Calendar Days 日曆天計的工期	Rate of Liquidated Damages for each Calendar Day's Delay to Completion (If none or "N/A" stated, general damages apply) 每誤期一日曆天 完工的預定賠償 率 (如沒說明或注 明"不適用" 或 "N/A", 則採用非 預定賠償額)	
	[HA]: Delete "Phase" and "Stage" which are not talked about anywhere in the Sub-Contract Conditions. The term "Section" should have already served the purpose. [HKCSA]: Delete this table entirely.					
(a)					HK\$	
(b)					HK\$	
(c)					HK\$	
(d)					HK\$	
(e)					HK\$	
	[HKCSA]: Add <u>"Rate of Liquidated and Ascertained Damages for each Calendar Day's Delay to Completion (If none or "N/A" stated, general damages apply)"</u>				<u>HK\$</u>	
	[HKPSWTA]: Add <u>"Maximum Cap on Liquidated Damages for Sub-Contract"</u> [KCTang]: In fact, the table is so flexible that each entry for Rate of LD can be qualified by a maximum. If desired, a separate line item can be added as suggested.				<u>HK\$</u>	

Item 項	Entities or Defined Terms 事項或定義名稱	Particulars or Definitions 特定內容或定義		
25	Normal daily working hours 正常每天工作時間			
26	Defects Liability Period 保修期	<p>Commencing on the day following the Substantial Completion of the relevant Sub-Contract Works Section (or the whole if not divided into sections) until : 有關的分包工程分部(如沒有分為分部，乃指全部)充份竣工後翌日起計直至：</p> <hr/> <p>[HKCSA]: “Commencing on the day following the Substantial Completion of the relevant Sub-Contract Works Section (or the whole if not divided into sections) until up to and including :”</p> <p>[KCTang]: If sectional completion is desired, then separate Defects Liability Period would also be desired. “until” appears to be the same as “up to and including”.</p>		
Documents 文件				
27	Tender Documents comprising (delete "Yes" if not applicable) 招標文件包含 (如不適用，刪掉“是”)	Attached hereto 附於此	Bound separately and signed 分開釘裝及已簽署	Not provided 沒提供
	(a) Conditions of Tendering 投標須知	Yes 是	Yes 是	Yes 是
	(b) Form of Tender 投標表格	Yes 是	Yes 是	Yes 是
	(c) Special Sub-Contract Conditions 分包合同特殊條款	Yes 是	Yes 是	Yes 是
	(d) Specification 規範	Yes 是	Yes 是	Yes 是
	(e) Pricing Schedules 價目表	Yes 是	Yes 是	Yes 是
	(f) Schedule of Tender Drawings 招標圖紙目錄	Yes 是	Yes 是	Yes 是
	(g) Tender Drawings 招標圖紙	Yes 是	Yes 是	Yes 是

Item 項	Entities or Defined Terms 事項或定義名稱				Particulars or Definitions 特定內容或定義			
	(h) Other documents (e.g. tender addenda) 其他文件 (例如招標文件修改通知) [HKCA]: " e.g. notice of tender addenda" [KCTang]: Presumably this is to tie in with the Chinese translation but may not be necessary.							
28	Tender Correspondence (being documents submitted by the Sub-Contractor with the Tender in addition to the Tender Documents and further written exchanges referred to in Recital 4, and accepted by the Contract Parties to form part of this Sub-Contract) 投標來往函件 (即引言 4 所指及經分包合同雙方接納為分包合同一部分的分包商投標時已提交的招標文件以外的文件及進一步的書面交換) [HA]: The wording in the bracket inadvertently excludes tender correspondence issued by the Client-Contractor from forming part of the Sub-Contract. Please review. [KCTang]: "further written exchanges" should cover tender correspondence issued by the Client-Contractor after tender return. Correspondence issued before the tender return should be part of the "Other documents" above.							
		Date 日期	Ref. 參考編號	Media 媒介 [HKCSA] : "Format" [KCTang]]: A4 size can also be a format!	From 發自	To 致	Title 標題	With Attachments 含附件
(a)								Yes 是 / No 否
(b)								Yes 是 / No 否
(c)								Yes 是 / No 否
(d)								Yes 是 / No 否
(e)								Yes 是 / No 否
	Abbreviations 簡稱 :							

Item 項	Entities or Defined Terms 事項或定義名稱	Particulars or Definitions 特定內容或定義
29	<p>Order of precedence for interpretation of Sub-Contract Documents (higher priority given first, original order followed if order number not stated) 分包合同文件釋義的先後次序(優者為先，如沒填寫序號，則按原次序)</p> <p>[HKCSA]: "Order of precedence for interpretation of Sub-Contract Documents (higher priority given first, original order followed, Order of preference shall be as below if order number not stated)"</p> <p>[KCTang]: The original draft appears to be simple and good enough.</p>	<p>Order number 序號</p>
	<p>[HA]: The order of precedence, unless specifically stated, is preset. Suggest assigning higher priority for (g) Sub-Contract Conditions over (e) Pricing Schedules and (f) Specification Preliminaries. Otherwise, a slip in drafting the project-specific Pricing Schedules or Specification Preliminaries may cause unintentional disruption to the Sub-Contract Conditions. Please review.</p>	
	<p>[HKCA]: Add</p> <p><i>"In accordance with the order of the Client-Contract (and the following order is therefore not applicable)"</i></p> <p>[KCTang]: The order used in the Client-Contract may not be very clear to the Sub-Contractor unless the full provisions are given to the Sub-Contractor when tendering. Yet, this may not deal with precedence between documents specific to the Sub-Contract and documents mentioned in the Client-Contract.</p>	<p>[HKCA]: Add <i>"Yes 是/ No 否"</i></p>
	<p>(a) Sub-Contract Agreement 分包合同協議</p>	
	<p>[HKCSA]: Add "<i>Form of Tender or the Tender</i>"</p> <p>[KCTang]: Form of Tender or the Tender would be submitted before the Tender Correspondence, which tends to modify the Tender Documents or the Tender. Therefore, it cannot take higher precedence.</p>	
	<p>(b) Tender Correspondence 投標來往函件</p>	
	<p>(c) Form of Tender or the Tender 投標表格或投標</p> <p>[HKCSA]: Move up.</p>	
	<p>(d) Special Sub-Contract Conditions 分包合同特殊條款</p>	
	<p>[HKCSA]: Add "<i>Sub-Contract Conditions</i>"</p>	
	<p>(e) Pricing Schedules 價目表</p>	
	<p>(f) the Preliminaries section of the Sub-Contract Specification 分包合同規範的開辦經營部分</p>	

Item 項	Entities or Defined Terms 事項或定義名稱	Particulars or Definitions 特定內容或定義
	(g) Sub-Contract Conditions 分包合同條款 [HKCSA]: Move up.	
	(h) Sub-Contract Drawings 分包合同圖紙	
	(i) Sections of the Sub-Contract Specification other than the Preliminaries section 分包合同規範開辦經營部分之外的其他部分	
	Payments 付款	
30	Retention Percentage 保修金的百分率	
31	Maximum Retention 保修金上限 [HKCSA]: "Maximum Retention (5% of original contract sum)" [KCTang]: If desired, "Maximum Retention (5% of the Sub-Contract Price if not stated)"	
32	Payment Application Due Date 請款到期日 [HKCA]: "申請撥款到期日" [KCTang]: The original draft appears to be simple and good enough.	[HKCSA]: " <u>[]th of every month until Substantial Completion and as from the amount due justified thereafter</u> " [KCTang]: Flexible enough for user to specify.
33	Payment Advice Due Date 批款到期日	
34	Payment Invoice Due Date 入發票到期日	
35	Payment Due Date 付款到期日	

Item 項	Entities or Defined Terms 事項或定義名稱	Particulars or Definitions 特定內容或定義	
	<p>(Regular dates for items 32 to 35 or, if falling on holidays, the next working day) (第 32 至 35 項為定期日期，或如果剛是假日則為下一個工作日)</p> <p>[HA]: It is unclear as to how the due dates are to be filled in. Please review.</p> <p>[KCTang]: e.g. 25th of each month, every alternate Friday, etc. Perhaps, examples can be given.</p> <p>[KCTang]: Use "Periodical" for "Regular" if this sounds better.</p> <p>[HKCSA]: "Regular <i>If any of the due</i> dates for items 32 to 35 <i>falls on a public holiday, the due date shall be</i> the next working day)</p> <p>[KCTang]: The original draft appears to be simple and good enough.</p>		
	<p>Excusable Events and Compensable Events 可延期事件及可賠償事件</p>		
36	<p>Delays or disruptions by reason of 由於下列原因引致有延誤或干擾</p> <p>[HKCA]: Add</p> <p><i>*Amend as appropriate</i></p>	<p>Excusable Events 可延期事 件</p>	<p>Compensable Events 可賠償事 件</p>
	<p>[HKCA]: Add</p> <p><i>"In accordance with the Client-Contract (and the following sub-clauses are therefore not applicable)"</i></p> <p>[KCTang]: Even if those in the Client-Contract are used, it is preferred to give a specific list. Situations solely between the Client-Contractor and Sub-Contractor would also need to be addressed.</p>	<p>[HKCA]: Add <i>"Yes 是/ No 否"</i></p>	<p>[HKCA]: Add <i>"Yes 是/ No 否"</i></p>
	<p>(a) force majeure 不可抗力</p>	<p>Yes 是</p>	<p>No 否</p>

Item 項	Entities or Defined Terms 事項或定義名稱	Particulars or Definitions 特定內容或定義	
	<p>(b) inclement weather conditions, being rainfall in excess of twenty millimetres in a twenty-four hour period (midnight to midnight) as recorded by the Hong Kong Observatory station nearest to the Site, and/or their adverse consequences 惡劣天氣情況，即香港天文臺最接近工地的監測站在 24 小時 (零時到零時)內錄得超過 20mm 的降雨量，及/或其惡劣後果</p> <p>[HKCA]: "inclement weather conditions, being rainfall in excess of twenty millimetres in a twenty-four hour period (midnight to midnight) as recorded by the Hong Kong Observatory station nearest to the Site, and/or their adverse consequences"</p> <p>[HKCSA]: "inclement weather conditions, being rainfall in excess of twenty millimetres in a twenty-four hour period (midnight to midnight) as recorded by the Hong Kong Observatory station nearest to the Site, and/or their adverse its consequences adversely affecting the progress of the Sub-Contract Works"</p> <p>[KCTang]: "adversely affecting the progress of the Sub-Contract Works" should not be necessary since all these events are preceding by a heading "Delays or disruptions by reason of".</p>	Yes 是	No 否
	<p>(c) the issuance of tropical cyclone warning signal No. 8 or above or of a Black Rainstorm Warning, and/or the adverse consequences of cyclone or rainstorm 8 號或以上的熱帶氣旋警告信號或黑色暴雨警告信號的發出，及/或氣旋或暴雨的惡劣後果</p> <p>[HKCSA]: "the issuance-hoisting of tropical cyclone warning signal No. 8 or above or the announcement of a Black Rainstorm Warning, and/or the adverse consequences of cyclone or rainstorm its consequences adversely affecting the progress of the Sub-Contract Works"</p> <p>[KCTang]: "issuance" is actually used by Hong Kong Observatory instead of "hoisting" and announcement" commonly used by us. See (b) also.</p>	Yes 是	No 否

Item 項	Entities or Defined Terms 事項或定義名稱	Particulars or Definitions 特定內容或定義	
	<p>(d) an Excepted Risk 免責風險</p> <p>[HA]: Review the appropriateness of including this as a Compensable Event.</p> <p>[KCTang]: An Excepted Risk means a risk not to be borne by the Sub-Contractor. As an analogy, if damage to the Works is caused by an excepted risk and repair needs to be done, the repair would be paid for by the Client-Contractor. It should be consistent to compensate the costs due to delays and disruptions.</p>	Yes 是	Yes 是
	<p>(e) fire, lightning, explosion, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped from them, not caused by the Sub-Contractor or people for whom the Sub-Contractor is responsible 非由分包商或他應負責的人士造成的火災、閃電、爆炸、洪水、水箱、儀器及水管爆破或溢出、地震、飛機及其他飛行物體或從它們墜下的物件</p> <p>[HA]: "people" → "person" for consistency with the use of "person" in other parts of the conditions.</p> <p>[KCTang]: Use "any person".</p>	Yes 是	No 否
	<p>(f) late provision by the Client-Contractor of instructions or information expressly required by this Sub-Contract to be provided by a specific time 上家承包商未能於分包合同明確要求的時間前提供所需的指示或資料</p> <p>[HKCA]: "expressly required <i>in writing</i> by this Sub-Contract to be provided"</p> <p>[KCTang]: "expressly required by this Sub-Contract" can only be in writing.</p> <p>[HKCSA]: "information <i>or late issue of the drawings</i> expressly required"</p> <p>[KCTang]: By reason of Clause 5.3, "information" is wide enough to include "drawings".</p>	Yes 是	Yes 是

Item 項	Entities or Defined Terms 事項或定義名稱	Particulars or Definitions 特定內容或定義	
	<p>(g) late provision by the Client-Contractor of instructions or information (including clarification of any contradictions, discrepancies, divergences or uncertainties in or between documents provided by the Client-Contractor, and including outstanding or new information) required for the progressing of the Sub-Contract Works, after taking into account any mitigating effect which could have been afforded if the Sub-Contractor had requested for such instructions or information reasonably in advance of the occurrence of the delays or disruptions</p> <p>上家承包商未能按時提供分包工程持續進行所需的指示或資料 (包括對上家承包商所提供的文件之內或之間的任何矛盾、差異、分歧或不清晰的地方作出澄清，並包括尚欠或新增的資料)，但可扣除如果分包商合理地提早要求該指示或資料時對延誤或干擾所造成的減輕影響</p> <p>[HKCSA]: “late provision by the Client-Contractor of instructions or information (...) and late issue of drawings required for the progressing of the Sub-Contract Works, after taking into account any mitigating effect which could have been afforded if the Sub-Contractor had requested for such instructions or information reasonably in advance of the occurrence of the delays or disruptions”</p> <p>[KCTang]: By reason of Clause 5.3, “information” is wide enough to include “drawings”. The phrase suggested to be deleted represents the established practice but in much similar words.</p> <p>[HKCSA]: “requested for such instructions or information in writing reasonably in advance”</p>	Yes 是	Yes 是
	<p>(h) such opening up for inspection of work covered up or such testing of materials or work and the consequential making good which are additional to the contract requirements, were instructed by the Client-Contractor, and proved that the materials and work are in accordance with this Sub-Contract</p> <p>原合同要求以外的、並經上家承包商指示的、並證明到物料或工作乃符合分包合同的，對已掩蔽的工作進行打開檢查或對物料或工作進行測試和其後的修復</p> <p>[HKCSA]: “materials, goods or work materials, goods and work”</p> <p>[KCTang]: By reason of Clause 1.15, “materials” includes “goods”.</p>	Yes 是	Yes 是
	<p>(i) the carrying out of a Variation or the happening of an event deemed to be a Variation</p> <p>工程變更的進行或視為工程變更的事件發生了</p>	Yes 是	Yes 是

Item 項	Entities or Defined Terms 事項或定義名稱	Particulars or Definitions 特定內容或定義	
	<p>(j) increase in the work to be carried out pursuant to provisional items in this Sub-Contract of sufficient magnitude that the increase could not have been apparent from this Sub-Contract 按分包合同內暫定款進行的工作大幅度增加而不可能從分包合同預見的</p> <p>[HA]: The word “apparent” and the Chinese translation “預見” do not mutually match.</p> <p>[KCTang]: “從分包合同明顯見到的”</p> <p>[HKCSA]: “of sufficient magnitude that the increase to cause delay, provided that the variance could not have been apparent from this Sub-Contract Drawings”</p> <p>[KCTang]: “to cause delay” should not be necessary since all these events are preceding by a heading “Delays or disruptions by reason of”. “that” may need to be changed to “and”. Should not be restricted to “Drawings”.</p>	Yes 是	Yes 是
	<p>(k) a postponement of the Date for Access to any portion of the Site unless this Sub-Contract has provided for such occurrence 進入工地任何部分的日期有延遲，除非分包合同對此已有規定</p> <p>[HKCSA]: “a postponement of the Commencement Date of the Sub-Contract Works Section unless this Sub-Contract has provided for such occurrence”</p>	Yes 是	Yes 是
	<p>(l) a postponement of the Commencement Date of a Sub-Contract Works Section unless this Sub-Contract has provided for such occurrence 分包工程分部的開工有延遲，除非分包合同對此已有規定</p>	Yes 是	Yes 是
	<p>(m) a suspension of the provision of the whole or a portion of the Site as instructed by the Client-Contractor beyond that anticipated in this Sub-Contract and not being due to a breach of contract or other default by the Sub-Contractor or any person for whom the Sub-Contractor is responsible 按上家承包商的要求，工地的全部或部分暫緩提供，超過分包合同預定的程度，而且不是分包商或他應負責的人士的違約行為或其他過失造成的</p> <p>[HKCSA]: “the Client-Contractor beyond that anticipated in this Sub-Contract and not being”</p> <p>[KCTang]: The Sub-Contract may have anticipated some possible but not definite suspension and required the Sub-Contractor to allow for such risk. Use “anticipated and specified in this Sub-Contract”</p>	Yes 是	Yes 是

Item 項	Entities or Defined Terms 事項或定義名稱	Particulars or Definitions 特定內容或定義	
	<p>(n) a suspension of the progress of the whole or a part of a Sub-Contract Works Section as instructed by the Client-Contractor beyond that anticipated in this Sub-Contract and not being due to a breach of contract or other default by the Sub-Contractor or any person for whom the Sub-Contractor is responsible 按上家承包商的要求，分包工程分部的全部或部分暫緩進行，超過分包合同預定的程度，而且不是分包商或他應負責的人士的違約行為或其他過失造成的</p> <p>[HKCSA]: "Sub-Contract Works Section as instructed by the Client-Contractor beyond that anticipated in this Sub-Contract and not being"</p> <p>[KCTang]: Use "anticipated and specified in this Sub-Contract"</p>	Yes 是	Yes 是
	<p>(o) a postponement or suspension of the Sub-Contractor's work on site due to a lack of effective Employees' Compensation Insurance or Contractors' All Risks and Third Party Liability Insurance to be maintained by the Client-Contractor to cover the Sub-Contractor's people or activities on site 因缺乏上家承包商應維持的有效的僱員補償保險或工程一切險及第三者責任險去保障分包商在工地上的人員或活動，而要推遲或暫停分包商在工地上的工作</p> <p>[HA]: "people" → "person" for consistency with the use of "person" in other parts of the conditions.</p> <p>[KCTang]: Use "any person".</p> <p>[HKCA]: "a postponement or suspension of the Sub-Contractor's work on site due to a lack of effective Employees' Compensation Insurance or Contractors' All Risks and Third Party Liability Insurance to be maintained by the Client-Contractor to cover the Sub-Contractor's people workers or activities on site"</p> <p>[KCTang]: Should the Sub-Contractor be obliged against his wish to carry work without a Third Party Liability Insurance, not to mention Contractors' All Risks?</p>	Yes 是	Yes 是
	<p>(p) a delay or disruption caused by a Separate Contractor 其他承包商造成的延誤或干擾</p>	Yes 是	Yes 是

Item 項	Entities or Defined Terms 事項或定義名稱	Particulars or Definitions 特定內容或定義	
	<p>(q) a delay caused by a statutory undertaker or utility company carrying out work in pursuance of its statutory obligations rather than a commercial contract, and failing to commence or to carry out its work in due time provided that the Sub-Contractor has taken all practicable measures to cause it to commence, carry out and complete its work on time 法定承辦機構或公用事業公司在非商業合同的情況下履行其法定工作，但未能按時開工或進行其工作，而分包商已採取使其能按時開始、進行及完成其工作的一切可行的措施</p> <p>[HA]: What is the purpose of inserting “rather than a commercial contract”?</p> <p>[KCTang]: The carrying out of the statutory obligations may be evidenced by some form of order or agreement, which may be viewed as a contract also. Therefore, “commercial contract” is intended to emphasize the distinction.</p>	Yes 是	No 否
	<p>(r) a failure of the Client-Contractor to supply or supply on time materials that he agreed to provide for the Sub-Contract Works 上家承包商未能供應或未能按時供應他同意供應給分包工程用的物料</p>	Yes 是	Yes 是
	<p>(s) a delay by a Government department in giving an approval or a consent which is not the Sub-Contractor’s responsibility to obtain 政府部門延誤發出不屬於分包商責任取得的批准或許可</p> <p>[HA]: Review the appropriateness of including this as a Compensable Event.</p> <p>[KCTang]: Note that this is about approval or consent which is not the Sub-Contractor’s responsibility to obtain.</p>	Yes 是	Yes 是
	<p>(t) an unreasonable delay by a Government department in giving an approval or a consent which is the Sub-Contractor’s responsibility to obtain, provided that any disallowance of approval or consent attributable to the Sub-Contractor’s lack of adequate submission shall not be considered as unreasonable 政府部門不合理地延誤發出屬於分包商責任取得的批准或許可，但如果因分包商不充份的報批資料造成批准或許可被拒絕則不能視為不合理</p>	Yes 是	No 否

Item 項	Entities or Defined Terms 事項或定義名稱	Particulars or Definitions 特定內容或定義		
	(u)	<p>a special circumstance considered by the Client-Contractor as sufficient grounds to fairly entitle the Sub-Contractor to an extension of time 上家承包商認為有充份的理由給予分包商合理地延長工期的特殊情況</p> <p>[KCTang]: By “a special circumstance”, it would generally refer to those borderline cases. Therefore, extension of time with no financial compensation appears to be in order.</p>	Yes 是	<p>No 否</p> <p>[HKCSA]: “Yes”</p>
	(v)	<p>an act of prevention, a breach of contract or other default by the Client-Contractor or any person for whom the Client-Contractor is responsible 上家承包商或任何他應負責的人士造成的妨礙行為、違約行為或其他過失</p>	Yes 是	Yes 是
	<p>[HKPSWTA]: Add “Party providing CAR and EC insurance policies”</p>	<p>[HKPSWTA]: Parties responsible for providing the EC and CAR insurances should be stated.</p> <p>[KCTang]: Clauses 10.1.1 and 10.2.1 already state that the Client-Contractor is to take out the policies.</p>		
	<p>[HKCSA]: Add “Insurance Requirements”</p>			
			<i>Who to take out?</i>	
			<i>Client-Contractor</i>	<i>Sub-Contractor</i>
	<i>(a) Employees' Compensation</i>			
	<i>(b) Public liability</i>			
	<i>(c) Works”</i>			
	<p>Other terms and conditions 其他條件及條款</p>			
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SUB-CONTRACT CONDITIONS 分包合同條款

1. INTERPRETATIONS 釋義

[HA]: 1.1-1.7, 1.10-1.11 - Revise the phrase "... means the person named in..." or similar to read as "... means the person, **company or firm** named in..." in order to carry a more accurate meaning.

[KCTang]: Consistent use of the word "person" alone would mean this refers to legal person, which would include natural person, company or firm.

1.1 Client-Contractor 上家承包商

"the Client-Contractor" means the person named in the Particulars of Agreement who has appointed the Sub-Contractor to carry out and complete the Sub-Contract Works required under this Sub-Contract and who has undertaken to pay the Sub-Contractor for executing the Sub-Contract Works.

"上家承包商"指協議特定事項點名的，委託分包商按分包合同進行及完成分包工程，及承諾會支付分包商執行分包工程的人士。

[HKCSA]: Merge with "Main Contractor".

[KCTang]: Not recommended.

1.2 Sub-Contractor 分包商

"the Sub-Contractor" means the person named in the Particulars of Agreement who has been appointed by the Client-Contractor to carry out and complete the Sub-Contract Works required under this Sub-Contract.

"分包商"指協議特定事項點名的，被上家承包商委託按分包合同進行及完成分包工程的人士。

1.3 Ultimate Client 最終委託方

[HKCSA]: Rename as "**Employer**".

[KCTang]: Not recommended.

"the Ultimate Client" means the person named in the Particulars of Agreement who invests and desires to have the Project carried out and completed on the Project Site.

"最終委託方"指協議特定事項點名的，投資希望在項目地址的項目獲得進行及完成的人士。

[HKCSA]: "who ~~invests~~ **commissioned** and desires"

[KCTang]: Agreed.

1.4 Contract Administrator 合同監理

"the Contract Administrator" means the person appointed by the Ultimate Client and named in the Particulars of Agreement, or if he ceases to have authority or capability to act, such other person as may be appointed by the Ultimate Client to administer, on behalf of the Ultimate Client, the execution of the Main Contract between the Main Contractor and the Ultimate Client.

“合同監理”指由最終委託方委託並在協議特定事項點名的，或在他不再有權利或能力辦事時最終委託方另行委託的，代表最終委託方監理最終委託方與總承包商之間的總包合同的執行的人士。

1.5 Quantity Surveyor 工料測量師

"the Quantity Surveyor" means the person appointed by the Ultimate Client and named in the Particulars of Agreement, or if he ceases to have authority or capability to act, such other person as may be appointed by the Ultimate Client to value the Main Contract Works.

“工料測量師”指由最終委託方委託並在協議特定事項點名的，或在他不再有權利或能力辦事時最終委託方另行委託的，為總承包工程估值的人士。

1.6 Clerk of Works 工程監督

"the Clerk of Works" means the person or persons appointed by the Ultimate Client or the Contract Administrator on site and acting under the direction of the Contract Administrator to watch, inspect, check, and record the Main Contract Works, any resources, facilities and activities on the Site.

“工程監督”指由最終委託方或合同監理委託，派駐在工地，在合同監理指導下，巡視、檢查、核對及記錄總承包工程及工地上任何資源、設施及活動的一位或多位人士。

1.7 Main Contractor 總承包商

"the Main Contractor" means the person named in the Particulars of Agreement who has been appointed directly by the Ultimate Client to carry out and complete the majority and main portion of the Project.

“總承包商”指協議特定事項點名的，被最終委託方直接委託，進行及完成項目的大部分及主要部分的人士。

1.8 Upper-tier Contractors 再上層承包商

"Upper-tier Contractors" means contractors at the various tiers of contracting above the Client-Contractor up to and including the Main Contractor.

“再上層承包商”指上家承包商之上直至及包括總承包商的多層承包的承包商。

[HKCSA]: Delete this party. Role assumed by “Employer”.

[KCTang]: Not recommended.

1.9 Sub-sub-contractors 再分包商

"sub-sub-contractors" means contractors at the various tiers of contracting below the Sub-Contractor.

“再分包商”指分包商之下的多層承包的再分包商。

1.10 Separate Contractors 其他承包商

"Separate Contractor" means persons appointed by the Ultimate Client or Upper-tier Contractors to carry out work, supply materials or provide services in connection with but not forming part of the Client-Contract Works, but excludes any statutory undertaker or utility company carrying out work in pursuance of its statutory obligations and not having a commercial contractual relationship with the Ultimate Client, Upper-tier Contractors or any person for whom they are responsible.

“其他承包商”指由最終委託方或再上層承包商委託，進行或提供與上家承包工程有關但不屬於上家承包工程一部分的工作、物料或服務的人士，但不包括按法定責任進行工作，並與最終委託方、再上層承包商或任何他們應負責的人士沒有商業合同關係的任何法定承辦機構或公用事業公司。

[DevB]: "provide services *within the Site* in connection with"

[KCTang]: Not necessarily within the Site.

1.11 Property Manager 物業管理人

"the Property Manager" means the person providing estate, property or facility management services to the premises where the Site is.

“物業管理人”指向工地所在的場所提供屋邨、物業或設施管理的人士。

1.12 Headings and clause references 標題及條款引用

1.12.1 Headings to articles in the Sub-Contract Agreement or headings to clauses in the Sub-Contract Conditions shall be for identification purposes only and shall not be read to restrict or enlarge the scope of application of the articles or clauses under the headings.

分包合同協議內約章的標題或分包合同條款內條款的標題，只給辨認用，而不能解讀為限制或擴大標題下有關的約章或條款的範圍。

[HKCSA]: Delete Clause No.

1.12.2 The method of referring to the clauses here is like this: Clause 1, Clause 1.1, Clause 1.1.1, Clause 1.1.1(a), Clause 1.1.1(a)(1), paragraph (a), item (1).

引用這裡的條款的方式乃：第 1 條，第 1.1 條，第 1.1.1 條，第 1.1.1(a)條，第 1.1.1(a)(1)條，(a)段，(1)項。

[HKCSA]: Delete Clause 1.12.2

1.13 Day and counting of periods 日及時期的計算

A day means a calendar day unless otherwise stated. When counting days, 1 day means 24 hours. Within 1 day means within 24 hours, not within the same day. "Commencing or starting from a certain day" means that certain day is day 1 for counting. "Commencing or starting after a certain day" means the day following that certain day is day 1 for counting.

除另有說明外，“天”或“日”指日曆天。在計算天數時，1 天指 24 小時。在 1 天內指 24 小時內，不是指在當天內。“由某天開始”指以該天為第 1 天起計。“由某天後開始”指以該天之後一天為第 1 天起計。

1.14 Site 工地

"the Site" means one or more areas or spaces, whether contiguous or not, on plan or on elevation as stated in the Particulars of Agreement to be made available by the Client-Contractor to the Sub-Contractor for the Sub-Contractor to carry out and complete the permanent portion of the Sub-Contract Works or for the Sub-Contractor to place his materials and temporary site facilities. "工地" 指在協議特定事項說明會由上家承包商提供，給分包商進行及完成分包工程永久部分，或給分包商放置他的物料及現場臨時設施的一個或多個地方或空間，無論是否連接的，在平面或在立面的。

[HA]: Add a comma between "on plan or on elevation" and "as stated in the Particulars of Agreement".

[KCTang]: Agreed.

[HKCSA]: "whether ~~contiguous~~ *continuous* or not"

1.15 Materials 物料

"materials" means materials and goods, and includes equipment or machinery for incorporation into the Sub-Contract Works.

"物料" 指材料及貨物，並包括結合入分包工程內的設備或機器。

1.16 Construction plant 施工機械

"construction plant" means construction plant, equipment or machinery used for carrying out the Sub-Contract Works.

"施工機械" 指為分包工程進行用的施工機械、設備或機器。

1.17 Temporary site facilities 現場臨時設施

"temporary site facilities" includes construction plant, tools, implements, safety belts, safety helmets, safety appliances, roads and footpaths, gangways, ladders, working platforms, scaffolding, catch fans, gondola, hoardings, covered walkways, screens, gates, gantries, enclosures, barriers, tarpaulins, safety nets, safety screens, site offices, workshops and stores, sanitary convenience, drainage, telephone, water and electricity supply, lighting, directory and warning signs, planking and strutting, shoring, props, falsework, formwork, refuse bins, etc. all provided on site temporarily.

"現場臨時設施"包括在工地臨時提供的，所有施工機械、工具、用品、安全帶、安全帽、安全器械、道路及行人路、跳板、爬梯、工作臺、棚架、挑篷、吊船、圍板、有蓋走道、圍網、閘口、龍門、封板、圍欄、油布、水平安全網、安全圍網，工地辦公室、工房及儲存間、衛生設施、排污、電話、水及電力供應、照明、指示及警告標誌、檔板及支撐、側撐、支柱、承托架、模板、垃圾箱、等。

[HKCA]: "formwork, refuse bins, etc. all *as may have been* provided *and installed* on site temporarily."

[HKCA]: "包括在工地臨時提供的~~一所有~~施工機械、工具"

[KCTang]: Changes would not appear to be necessary.

1.18 Sub-Contract Drawings 分包合同圖紙

"the Sub-Contract Drawings" means the Tender Drawings included in the Tender Documents, and any other drawings as may be prepared by the Sub-Contractor and submitted with his Tender and expressly accepted in the Tender Correspondence by the Client-Contractor to form part of this Sub-Contract.

“分包合同圖紙”指包括在招標文件內的招標圖紙，及由分包商製作、與投標一起提交及獲上家承包商在投標來往函件中明確接受為分包合同一部分的其他任何圖紙。

1.19 Sub-Contract Specification 分包合同規範

"the Sub-Contract Specification" means the Specification included in the Tender Documents, and any other specification as may be prepared by the Sub-Contractor and submitted with his Tender and expressly accepted in the Tender Correspondence by the Client-Contractor to form part of this Sub-Contract.

“分包合同規範”指包括在招標文件內的規範，及由分包商製作、與投標一起提交及獲上家承包商在投標來往函件中明確接受為分包合同一部分的其他任何規範。

1.20 Pricing Schedules 價目表

"the Pricing Schedules" means a document (whether it may be called schedule of works, bills of quantities, schedule of quantities and rates, schedule of rates, quotations or other names) included in the Sub-Contract Documents and showing the Sub-Contractor's rates and prices for the execution of the Sub-Contract.

“價目表”指包括在分包合同文件內，表示分包商執行分包合同的單價及價款的文件(不論它名叫工程項目清單、工程量清單、數量及單價表、單價表、報價單或是其他名稱)。

[HKCA]: "schedule of rates, quotations or other *similar names*"

[KCTang]: Agreed.

1.21 Sub-Contract Price Build-up 分包合同價組成

"the Sub-Contract Price Build-up" means the build-up of the Sub-Contract Price for Lump Sum Contract or Remeasurement Contract as given in the Pricing Schedules and/or the Tender Correspondence.

“分包合同價組成”指價目表及/或投標來往函件提供的總價承包合同或重新計量合同的分包合同價的組成。

1.22 Sub-Contract Rates 分包合同單價

1.22.1 "Sub-Contract Rates" means the rates inserted in the Pricing Schedules as may be modified by the Tender Correspondence.

“分包合同單價”指價目表填寫的或經投標來往函件修訂的單價。

1.22.2 A Sub-Contract Rate shall be deemed to include for all labour costs, material costs, construction plant and tool costs, indirect costs, overheads, profits, taxes, and costs of all ancillary work and liability indispensably necessary for the item of work to which the Sub-Contract Rate applies, and shall not be adjusted for error made by the Sub-Contractor in building up the Sub-Contract Rate. 分包合同單價視為包括所有人工費、物料費、施工機械及工具費、間接費、管理費、利潤、稅金及包括為完成分包合同單價適用項目不可或缺的所有附屬工作及責任的費用，並且不會因分包商計算組成分包合同單價有錯誤而調整。

1.23 Variation 工程變更

A "Variation" means a change (addition, omission, substitution, alteration, modification, etc.) as instructed by the Client-Contractor to the design, quality or quantity of the Sub-Contract Works or to the time or manner for carrying out the Sub-Contract Works from that provided for in this Sub-Contract, and includes other events deemed by the Sub-Contract Conditions to be a Variation. “工程變更”指上家承包商指示的，對分包合同原來規定的分包工程的設計、質量或數量或分包工程進行的時間或方式的變更(加人、減出、代替、修改、更改、等)，包括分包合同條款視為工程變更的其他事件。

1.24 Substantial Completion 充分竣工

"Substantial Completion" may be called "Practical Completion" depending on the term used in the Main Contract. In that case, the terms "Substantial Completion", "Substantial Completion Certificate" and "substantially completed" in this Sub-Contract shall be read as "Practical Completion", "Practical Completion Certificate" and "practically completed" respectively. 視乎總包合同的用詞，“充分竣工”可能稱為“實效竣工”或“大致竣工”。如果是這樣，分包合同內“充分竣工”及“充分竣工證書”等詞應分別讀作“實效竣工”或“大致竣工”及“實效竣工證書”或“大致竣工證書”。

1.25 Defects Liability Period and Maintenance Period 保修期及保養期

"Defects Liability Period" means the period after Substantial Completion during which defects arising are to be rectified. "Maintenance Period" means the period after Substantial Completion during which periodical service and maintenance beyond defects rectification are to be carried out. Some Main Contracts and insurance policies use the term "Maintenance Period" to mean "Defects Liability Period" used here. “保修期”指在充分竣工後需要修補期內出現的缺陷的時期。“保養期”指在充分竣工後需要進行修補缺陷以外的定期服務及保養的時期。某些總包合同及保險單用“保養期”一詞來指這裡所說的“保修期”。

1.26 Defects Rectification Certificate 保修完成證書

"Defects Rectification Certificate" may be called "Certificate of Completion of Making Good Defects" or "Maintenance Certificate" depending on the term used in the Main Contract. In that case, the term "Defects Rectification Certificate" in this Sub-Contract shall be read as "Certificate of Completion of Making Good Defects" or "Maintenance Certificate", as the case may be.
視乎總包合同的用詞，“保修完成證書”的中英文名稱可能有另外的叫法。如果是這樣，分包合同內“保修完成證書”一詞應讀作相應的叫法。

[HKCA]: This term is not used elsewhere in this document, but see HKCA's revised Clause 6.16.2(c).

[KCTang]: Worthwhile to keep even if HKCA's revised Clause 6.16.2(c) is not adopted because other parts of the Sub-Contract Documents may refer to the various terms mentioned here.

1.27 Excepted Risks 免責風險

"Excepted Risks" means:

“免責風險”指：

- (a) any consequence of war (whether war be declared or not) in which Hong Kong is actively engaged, the invasion of Hong Kong, acts of terrorists in Hong Kong, civil war, rebellion, revolution or military or usurped power in Hong Kong, riot, commotion or disorder in Hong Kong other than amongst the employees of the Sub-Contractor or any person for whom the Sub-Contractor is responsible;
香港積極投入戰爭(無論是否已宣戰)、香港被入侵、恐怖份子在香行動、香港發生內戰、叛亂、革命或軍事或奪權力量，香港發生暴動、騷亂或混亂(分包商或分包商應負責的任何人士的僱員之間的除外)的任何後果；
- (b) any direct consequence of the faulty design provided by the Contract Administrator or other designers engaged by the Ultimate Client or the Client-Contractor;
合同監理提供或最終委託方或上家承包商僱用的其他設計師提供的錯誤設計的任何直接後果；
- (c) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; and
來自任何核燃料或來自核燃料燃燒產生的核廢料或來自任何爆炸性核裝置或其核部件的放射性有毒爆炸或其他危險性質造成的電離輻射或放射性污染；及
- (d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.
飛機或其他飛行物體以音速或超音速飛行引致的壓力波。

[HA]: Add “, *and/or its direct adverse consequences*” to the end of (a) to (d) above.

[KCTang]: “any consequence” or “any direct consequence” at the beginning of (a) and (b) would appear to be adequate, but the inconsistent styles amongst (a) to (d) need to be reviewed against insurance policy wordings.

1.28 Excusable and Compensable Events 可延期及可賠償事件

1.28.1 "Excusable Events" listed in the Particulars of Agreement are events the occurrence of which are at the risk of the Client-Contractor in so far as the time to complete the Sub-Contract Works is concerned. "Compensable Events" listed in the Particulars of Agreement are events the occurrence of which are at the risks of the Client-Contractor in so far as the price of the Sub-Contract Works is concerned.

協議特定事項所列的“可延期事件”乃指就完成分包工程的時間而言，其發生的風險歸上家承包商的事件。協議特定事項所列的“可賠償事件”乃指就分包工程的價款而言，其發生的風險歸上家承包商的事件。

1.28.2 The scope of each of the event definitions is mutually exclusive. Any deletion or scope reduction of an event definition shall not expand the scope of the remaining unchanged event definitions.

每類事件定義的範圍乃互不重疊。每類事件定義的整個刪除或縮減範圍皆不會擴大其餘未經修改的事件定義的範圍。

1.29 Money recoverable from Client-Contractor 可從上家承包商取回的款項

When money is stated to be recoverable from the Client-Contractor by the Sub-Contractor, the amount shall be added to the Sub-Contract Price and added to the next payment issued after the amount is ascertained, unless the Client-Contractor requests to settle and settles the payment separately without adjustment to the Sub-Contract Price.

如果說明為分包商可從上家承包商取回的款項，該款項可加在分包合同價上，並在該款項確定後加入下期付款內，除非上家承包商要求不調整分包合同價，而分開辦理，並予以辦理。

[HKCA]: "by the Sub-Contractor under the Conditions of Sub-Contract, the amount shall be added"

[KCTang]: "stated herein" may serve the purpose but simpler.

1.30 Money recoverable from Sub-Contractor 可從分包商取回的款項

When money is stated to be recoverable from the Sub-Contractor by the Client-Contractor, the amount shall be deducted from the Sub-Contract Price and deducted from the next or further payments issued after the amount is ascertained until the amount is fully deducted. If the balance of the final Sub-Contract Price less retention fund is inadequate to cover the amount not yet deducted, the residue amount may be recovered from the Sub-Contractor by the Client-Contractor as a debt which may be set-off against any payment which the Client-Contractor is liable to pay to the Sub-Contractor under other contracts.

如果說明為上家承包商可從分包商取回的款項，該款項可在分包合同價扣除，並可在該款項確定後從下期或以後發出的付款中扣除直至扣除全額為止。如果分包結算價扣除保修金後的餘額不足以抵扣尚未扣除的款項，則未扣金額可作為分包商拖欠上家承包商的債項般從上家承包商在其他合同下應付給分包商的任何付款中扣除。

[HA]: "under other contracts" in the last line → "under **any** other contracts **between the Client-Contractor and the Sub-Contractor**" for clarity.

[KCTang]: The original draft appears to be simple and good enough.

[HKCA]: "by the Client-Contractor under the Conditions of Sub-Contract, the amount shall be"

[KCTang]: "stated herein" may serve the purpose but simpler.

[HKCSA]: "liable to pay to the Sub-Contractor ~~under other contracts~~"

2. SITE 工地

2.1 Provision of Site 工地的提供

2.1.1 The Client-Contractor shall provide such portions of the Site to the Sub-Contractor on such access dates stated in the Particulars of Agreement. Provision of the Site shall entail the sustained use (but not exclusive possession) of the portions of the Site by the Sub-Contractor for the carrying out and completion of the Sub-Contract Works. The Sub-Contractor shall allow and protect legitimate occupiers and users for the time being on the Site to have continued use of such portions of the Site not immediately required by the Sub-Contractor for carrying out the Sub-Contract Works.

上家承包商須按協議特定事項說明的進入日期提供相關的工地部分給分包商。工地提供乃指可讓分包商持續使用(但不是絕對佔有)工地部分來進行及完成分包工程。分包商須容許及保護工地上當時合法的佔用者及使用者持續地使用工地上分包商不是即時需要進行分包工程的地方。

[HKFEMC]: "allow ~~and protect~~ legitimate occupiers".

[HKFEMC]: "容許及保護工地上".

[HKCSA]: Delete Clause 2.1.1.

- 2.1.2 The Sub-Contractor shall not obstruct the lawful and continued use by anyone of the land and premises outside but in the vicinity of the Site.
分包商不能妨礙任何人士合法地及持續地使用工地以外鄰近的土地或物業。

[HKFEMC]: “premises ~~outside but in the vicinity of the Site~~”.

[HKFEMC]: “使用工地以外鄰近的土地或物業”。

[HKFEMC]: The Sub-Contractor does not have jurisdiction over or control of land or premises outside the site, in the vicinity or otherwise. Neither does the Client-Contractor.

[KCTang]: Obligations relating to “in the Site” are covered by Clause 2.1.1. The keyword here should be “not obstruct”. Not “provide”.

- 2.1.3 Where exclusive possession of any portion of the Site is stated in this Sub-Contract, the Sub-Contractor shall take over the relevant portion of the Site upon the respective access date and take responsibility for the care thereof.
如果分包合同說明工地的某部分是供絕對佔有的，分包商須在有關的進入日期開始接收該部分的工地並承擔對它保護的責任。

[HKFEMC]: “for ~~care~~ **reasonable care to such portion of the Site** thereof.”

[HKFEMC]: “對它 合理地 保護的責任。”

[HKFEMC]: Sub-Contractor should only need to care within reason.

[KCTang]: If desired, “for ~~care~~ **reasonable care** thereof.”

2.2 Site access 進入工地

[HKFEMC]: Site access should be provided by Client-Contractor and not by Sub-Contractor.

- 2.2.1 Where access to the Site is through land or premises which are not under the control of the Ultimate Client, the Sub-Contractor shall procure any necessary right of access.
如果進出工地需通過不受最終委託方控制的土地或物業，分包商須取得使用進出通道權。

[HKPSWTA]: “the ~~Sub-Contractor~~ **Client-Contractor** shall procure any necessary right of access **for the use of the Sub-Contractor**.”

[HKPSWTA]: The Sub-Contractor cannot be held to procure any necessary right of access. The Client-Contractor should at all time be responsible for it.

[HKFEMC]: Access to the Site shall be provided by the Client-Contractor until the completion of Sub-Contract.

- 2.2.2 Where access to the Site is through land or premises which are under the control of the Ultimate Client, the Client-Contractor shall procure such right of access for the Sub-Contractor's use at such time mutually agreed between the Client-Contractor and the Sub-Contractor.
如果進入工地乃需通過最終委託方控制的土地或物業，上家承包商須取得使用進出通道權，讓分包方在上家承包商和分包商雙方同意的時間使用。

[HKPSWTA]: The Sub-Contractor cannot be held to procure any necessary right of access. The Client-Contractor should at all time be responsible for it.

[HKFEMC]: Access to the Site shall be provided by the Client-Contractor until the completion of Sub-Contract.

- 2.2.3 Entry and exit points to the Site shall be at locations shown or described in this Sub-Contract or, when no specific locations are shown or described, at such locations to be determined by the Main Contractor, and such locations may be subject to subsequent re-location and re-sizing as directed by the Main Contractor from time to time to suit the sequence and progress of the Main Contract Works.

進入及離开工地的出入口須在分包合同繪述或說明的位置，如果沒有特別繪述或說明，則須在總承包商確定的位置，有關的位置隨後可能需為配合總承包工程的工序及進度而按總承包商的指示搬遷或更改大小。

- 2.2.4 The Sub-Contractor shall comply with all relevant regulations or restrictions of the Police, other Government authorities, and the Property Manager regarding access, usage of roads, parking of lorries and similar, and shall submit all necessary applications and pay any necessary fees and charges.

分包商須遵守警方、其他政府部門及物業管理人關於出入口、道路的使用、貨車的停泊、等的相關條例或限制，並須提交所有必需的申請和支付所有必須的費用。

[HKPSWTA]: "usage of roads, ~~parking of lorries~~ and similar, and **the Client-Contractor** shall submit all necessary applications and pay any necessary fees and charges, **unless otherwise specified in this Sub-Contract.**"

[HKCSA]: "all relevant **reasonable** regulations or restrictions"

[KCTang]: It is doubtful whether "reasonable" can apply to regulations or restrictions of the Police or other Government authorities.

2.3 House rules of Property Manager 物業管理人的管理守則

- 2.3.1 The Sub-Contractor shall comply with the house rules of the Property Manager in regard to the day to day operation and use of the premises in which the Site is situated and in regard to any special restrictions on works of any nature within the premises.

分包商須遵守物業管理人關於工地所在物業的日常操作及使用的管理守則及關於在物業內進行任何性質的工程的特別限制的管理守則。

[HKPSWTA]: Not every project involves a Property Manager, and if there is, the Sub-Contractor shall be provided with the House Rules during tender stage.

[HKFEMC]: House rules of Property Manager (if any) shall be provided by the Client-Contractor during tender stage and before award of Sub-Contract, otherwise, all additional expense incurred by the Sub-Contractor for the compliance of all House rules shall be deemed to be a variation to the Sub-Contract.

[HKCSA]: "the *reasonable* house rules"

[KCTang]: The House Rules should preferably be provided during tender stage. If not provided, the Sub-Contractor when tendering can obtain them directly from the Property Manager. The Sub-Contractor when tendering shall allow for harsh terms contained in the House Rules available at the time of tendering. Harsh rules imposed after the award of the Sub-Contract can be treated as a Variation in accordance with Clause 2.3.2.

- 2.3.2 Any restrictions on access or working hours more stringent than those announced by the Property Manager before the award of this Sub-Contract and affecting the Sub-Contract Works shall be deemed to be a Variation.

任何較物業管理人在分包定標前已頒佈的更嚴謹的進出方法及工作時間的限制，如果影響分包工程，則視為工程變更。

[HKFEMC]: "~~Any restrictions on access or working hours~~ changes to the House rules of Property Manager more stringent"

[HKPSWTA]: "~~Any~~ *changes to the House Rules, including but not limited to* restrictions"

[KCTang]: If desired, "~~Any restrictions on access or working hours~~ *If the House Rules become* more stringent"

- 2.3.3 The Client-Contractor shall pay any security deposit which may be demanded by the Property Manager to permit the carrying out of the Sub-Contract Works, and arrange by himself for the eventual release of the deposit.

上家承包商須支付物業管理人容許分包工程進行而要求徵收的押金，並自行安排往後取回該押金。

[HA]: Delete "by himself" which are considered superfluous.

[KCTang]: Agreed.

2.4 Protection of access routes 通道的保護

[HKCSA]: Delete Clause 2.4.

The Sub-Contractor shall protect all access routes throughout the period of the Sub-Contract, and shall remove any protection when no longer required and make good any disturbance.
分包商在分包合同期間保護所有通道，並在不需要時移走保護物及修復受影響的地方。

[HKFEMC]: Protection of access routes should be the obligation of the Main Contractor or Client-Contractor, not of the Sub-Contractor. Clause should be amended accordingly.

[HKPSWTA]: “The ~~Sub-Contractor~~ **Client-Contractor** shall protect”

[HKPSWTA]: It is impossible for the Sub-Contractor to comply and be responsible to protect all access routes which are common to many other contractors. The Client-Contractor shall be responsible instead.

[KCTang]: Include this Clause into Clause 9.13(f).

2.5 Off-site areas 工地外的場地

[HKCSA]: Delete Clause 2.5.

The Sub-Contractor shall arrange by himself any areas or spaces outside the Site that he requires to prepare for the carrying out of the Sub-Contract Works.
分包商須自行安排為進行分包工程所需準備工作的工地外的地方或空間。

[HKFEMC]: Delete the whole clause as off-site areas are outside the scope of the Sub-Contract.

[HKPSWTA]: This is normally the case, however there is also exception that the Client-Contractor will provide additional off site areas to the Sub-Contractor for workshop or storage purpose. With Clause 3.7.2 in place, we consider this clause can be removed and left to the parties to sort out.

[KCTang]: This Clause intends to specify that off-site areas are the Sub-Contractor's responsibility.

2.6 Site visit 視察工地

- 2.6.1 The Sub-Contractor is deemed to have visited the Site and thoroughly acquainted himself with the location, general site conditions, type of soil where underground work is required, accessibility, storage space, restrictions for loading and off-loading materials, and any other conditions which may affect his carrying out of the Sub-Contract Works before entering into this Sub-Contract and is deemed to have made due allowance for all such restrictions and factors in the Sub-Contract Price.

分包商視為在訂立分包合同前已到工地視察，使自己了解工地的位置、現場的一般情況、土壤類形(如果需要有地下工作)、出入限制、儲存空間、裝卸物料的限制、及其他可能影響他進行分包工程的情況，並視為在分包合同價內充份考慮了所有該等限制及因素。

[HKPSWTA]: "general site conditions, ~~type of soil where underground work is required,~~ accessibility,"

[HKPSWTA]: The Site Visit shall not cover "type of soil" for underground work which may include underground drainage work. Not possible to ascertain for a P&D subcontractor. It shall limit to assessment of the site location, materials off loading and accessibility.

[HKFEMC]: "general site conditions, ~~type of soil~~ where underground work is required".

[HKFEMC]: Acquainting with the 'type of soil' is not the responsibility of the Sub-Contractor.

[KCTang]: It should be reasonable where underground work is required, the Sub-Contractor must assess the type of soil which may be encountered. Perhaps, use "soil conditions" instead of "type of soil".

- 2.6.2 Any claim for extra payment or extension of the completion times shall not be allowed on the grounds of ignorance or misinterpretation of the site conditions.

任何因為對工地情況漠視或誤解而引致的增加付款或延長工期的索償皆不會獲得接納。

2.7 Site investigation and condition survey reports 工地勘察及現況勘察報告

Any site investigation or condition survey reports or other information which may be made available to the Sub-Contractor before the award of this Sub-Contract shall be the whole record of such investigation or survey as has been carried out. Other than this, any such reports are given without any warranty on the part of the Client-Contractor as to their accuracy or completeness, and they shall be deemed to be supplied for the Sub-Contractor's information only.

在分包定標前可能提供給分包商的任何工地勘察或現況勘察報告須為全套報告。除此之外，有關報告的提供不代表上家承包商就該報告的準確性或全面性給予任何承諾，而該報告只視為純供分包商參考。

[HKGSA]: "any such reports are given *in good faith* without any warranty"

[KCTang]: Agreed, though "good faith" qualifies "without any warranty".

2.8 Access during Defects Liability Period 保修期內的通行

2.8.1 The Client-Contractor shall provide the Sub-Contractor with a right of access to specific locations on the Site for the specific purpose of rectifying defects arising during the Defects Liability Period at those locations. The Sub-Contractor shall restrict himself to the specific locations and shall leave the Site as soon as the defects have been rectified.

上家承包商須給予分包商為修補在保修期內發現的缺陷需通往工地上特定地方的權利。分包商須局限自己在特定的地方並在該修補工作完成後離開工地。

2.8.2 When existing facilities such as gondolas or lifting platforms are available for day to day use by the Ultimate Client or the Property Manager, and such existing facilities are useful for rectifying defects, the Client-Contractor shall assist to apply for the use of such existing facilities by the Sub-Contractor subject to payment by the Sub-Contractor of reasonable amounts for consumables. In other cases, the Sub-Contractor shall provide his own temporary facilities required for rectifying defects.

如果有例如吊船或升降工作台的現存設施可供最終委託方或物業管理人的日常使用，而該現存設施對保修工作有幫助，則上家承包商須協助申請容許分包商使用該現存設施，但分包商須支付使用耗料的合理費用。除此之外，分包商須自行提供保修所需的臨時設施。

[HKCA]: "reasonable amounts for consumables or other cost due to the use of the facilities. In other cases"

[KCTang]: "consumables" only used originally in fear of excessive "other costs and charges".

2.9 Objects of antiquity 古物

Any object of antiquity found on the Site shall be deemed to be the property of the Ultimate Client. Upon discovery, the Sub-Contractor shall immediately report to the Client-Contractor who shall issue instructions to deal with the issue. The Sub-Contractor shall permit others appointed by the Ultimate Client to carry out examination, excavation or removal of the object of antiquity. Compliance with the Client-Contractor's instructions in this regard shall be deemed to be a Variation.

在工地上發現任何古物視為最終委託方的財產。在發現後，分包商須立刻通知上家承包商，請他發出處理的指示。分包商須容許最終委託方委派的其他人士進行檢查、挖掘及移走古物的工作。遵守上家承包商相關指示的行為視為工程變更。

3. WORKS 工程

3.1 Definitions 定義

[HKPSWTA]: Clauses 3.1.1 and 3.1.2. These two clauses can be removed as they seem to be saying the obvious but in fact they are not always the case in Sub-Contract works. As such, we consider it is more appropriate to cover the Sub-Contractor's detail scope of works in other areas of the Sub-Contract.

[HKPSWTA]: For example, Clause 3.1.1(b), P&D temporary works (such as openings, pipe trenches) are often done by the MC.

[HKPSWTA]: And Clause 3.1.1(f), maintenance such as a schedule of routine maintenance work after Substantial Completion is not always required from the Sub-Contractor.

[HKFEMC]: There is concern that this section, which spells out the Sub-Contract Works to be included and to be excluded, would conflict with the 'scope of work'. In case there are discrepancies between this section and the 'scope of work', it should be clear which would take priority, as there would be corresponding cost implications.

[HKFEMC]: If the section is to stay, we suggest that clauses 3.1.1 (f) and (g) be qualified as indicated.

[HKCSA]: Delete Clause 3.1.

[KCTang]: There are several reasons to give such definitions. The term "the Sub-Contract Works" has been used extensively throughout the Sub-Contract Conditions. It should be in order to state the general and framework scope of the Sub-Contract Works. The exact and specific scope of the Sub-Contract Works would obviously be described in the Specification. Traditionally, a construction contract will be interpreted as for "build only" with no design responsibilities if there are no specific provisions in the contract conditions to include design obligations. Inclusion of provisions for design obligations in other parts of the contract documents can be regarded as invalid especially if the contract itself says that the contract conditions take the highest precedence. Service and maintenance "after completion of the Works" can arguably be regarded as not forming part of the Works.

3.1.1 The Sub-Contract Works include: “分包工程”乃包括：

- (a) permanent works required to be carried out and completed by the Sub-Contractor under this Sub-Contract;
分包商按分包合同需進行及完成的永久工程；
- (b) temporary works required for the carrying out and completion of the permanent works;
進行及完成永久工程所需的臨時工程；

[KCTang]: "temporary works required for the carrying out and completion of the permanent works, ~~excluding those temporary works excluded from this Sub-Contract;~~"

- (c) services required to be carried out and completed by the Sub-Contractor under this Sub-Contract;
分包商按分包合同需進行及完成的服務；

- (d) materials supplied by the Client-Contractor for incorporation by the Sub-Contractor into the Sub-Contract Works after they are handed over to the Sub-Contractor;
已移交給分包商的由上家承包商供應給分包商納入分包工程內的物料；

[HA]: Pursuant to this clause, the Sub-Contract Works include materials supplied by the Client-Contractor for incorporation into the Sub-contract Works after they are handed over to the Sub-Contractor. Such inclusion will induce contractual complication as to the operation of Sub-Contract Price and payment valuation which do not include the value of the said materials, and will lead to possible controversy over defects liability of the materials so supplied. Suggest deleting this clause.

[KCTang]: Materials incorporated into the Sub-Contract Works are deemed legally to be part of the Sub-Contract Works. Materials supplied by the Client-Contractor are excluded by Clause 6.16.1(a) from payment valuation.

- (e) design of any part of the permanent works if this is specified to be part of the Sub-Contract Works;
永久工程任何部分的設計，如果此設計按規定為分包工程的一部分；
- (f) service and maintenance required to be carried out after Substantial Completion of the Sub-Contract Works; and
在分包工程充份竣工後需進行的服務及保養；及

[HA]: "the Sub-Contract Works under this Sub-Contract".

[HKFEMC]: "the Sub-Contract Works (where specifically required in the Sub-Contract)".

[KCTang]: "~~required~~ specified by this Sub-Contract to be carried out"

- (g) provision of warranties and guarantees.
保證及擔保的提供。

[HKFEMC]: "provision of warranties and guarantees (where specifically required in the Sub-Contract)".

[KCTang]: "guarantees specified by this Sub-Contract"

3.1.2 The Sub-Contract Works exclude:
“分包工程”不包括:

[HA]: Delete this exclusion clause in view that Clause 3.1.1 has already spelt out what the Sub-Contract Works shall include.

- (a) materials supplied by the Client-Contractor for incorporation by the Sub-Contractor into the Sub-Contract Works before they are handed over to the Sub-Contractor;
上家承包商供應給分包商納入分包工程的但尚未移交給分包商的物料；
- (b) materials or workmanship or method or work which is not in accordance with this Sub-Contract; and
不符合分包合同的物料或工藝或方法或工作；
- (c) work or services carried out by the Sub-Contractor without authority under this Sub-Contract.
分包商沒有分包合同授權而進行的工作或服務；及
- (d) work or services stated in this Sub-Contract to be carried out, provided, procured, given, issued, etc. by the Client-Contractor, which shall be deemed to be free of charge.
分包合同說明由上家承包商進行、提供、取得、給予、發出等的工作或服務，它們視為免費的。

[HKFEMC]: There is an ambiguity area when there is work which is not included in scope of work nor excluded from the sub-contract scope. Then, who will bear the cost of the work?

[KCTang]: If an item of work is not included nor excluded, then it is excluded.

3.2 Design of permanent works 永久工程的設計

[HKCSA]: Delete Clause 3.2.

Unless otherwise specified in this Sub-Contract or unless the Sub-Contractor has provided the design for whatever reasons, and subject to Clause 3.3 below, the design of permanent works required for the Sub-Contract Works shall be the responsibility of the Client-Contractor who shall obtain the design from the Contract Administrator or engage other designers to carry out the design work. The Client-Contractor shall be responsible for issuing and explaining the design to the Sub-Contractor.

除非分包合同另有規定或除非分包商不論甚麼原因而提供了設計，在不違反第 3.3 條的前提下，分包工程所需的永久工程的設計責任歸上家承包商，他須從合同監理取得設計或聘用其他設計師進行設計工作。上家承包商須向分包商發出及解釋該設計。

[HKCA]: "~~issuing and explaining the design to the Sub-Contractor~~"

3.3 Development of design 設計的深化

[HKFEMC] / [HKPSWTA]: “**Development of ~~design~~ working drawings**”

[HKFEMC]: In most cases the Sub-Contractor is doing supply-and-install work, whereby the design is done by the Architect, Consultant, or Client-Contractor in design-build contracts. There is no design element in the Sub-Contractor's work. The Sub-Contractor is only involved in the selection of components, equipment, and material, and in compiling working drawings. These types of work are not design and should not be mentioned as such.

[HKCSA]: Delete Clause 3.3.

[KCTang]: It is an increasing trend that Sub-Contractors are taking up more and more design development work based on the design intent drawings included in the Sub-Contract Drawings. Therefore, it is necessary to include a provision for development of design. Preparation of shop drawings can also include an element of design though supposedly not to the extent of changing the original design intent. Shop drawings are covered by Clause 8.1 but in reality it is almost impossible to draw a line between design, development of design and preparation of shop drawings.

- 3.3.1 Where any Sub-Contract Drawings or further drawings issued by the Client-Contractor after the award of this Sub-Contract are described as “design intent drawings”, such drawings shall be understood as indicating only the performance requirements, materials of the major components, layout, positions, configurations, controlling dimensions, and size limitations required for the finished work. The Sub-Contractor shall be responsible for the detailed design of the components making up the complete system, installation or fitting, and the selection of materials in compliance with the Sub-Contract Drawings and the further drawings.

如果分包合同圖紙或上家承包商在分包定標後發出的附加圖紙註明為“設計意念圖”，則有關圖紙須理解為只表示最後完成的工程所需的功能要求、主要構件的物料、佈置、位置、形狀、控制尺寸、及大小限制。分包商須按分包合同圖紙及附加圖紙負責構成整個系統、裝置或配件的構件的詳細設計及物料的選用。

[HKFEMC]: “responsible for the ~~detailed design~~ **selection** of the components”.

[HKPSWTA]: Add “***Except as may be provided for in this Sub-Contract, such requirement in design responsibility shall deem to be a Variation and the Client Contractor shall issue proper instruction order to cover this additional work.***” to the end.

[HKPSWTA]: Clause 3.2 states that unless otherwise specified, design work should be the responsibility of the Client-Contractor, but subject to Clause 3.3. This is contradictory and we consider if the Sub-Contractor does not have to be responsible for design at the onset, any design work required after award of contract should be a variation.

[KCTang]: Design intent drawings included in the Sub-Contract Drawings would not constitute a Variation. New or revised design intent drawings issued after the award of this Sub-Contract would constitute a Variation.

- 3.3.2 The Sub-Contract Drawings or further drawings issued by the Client-Contractor after the award of this Sub-Contract for the building services installations (deemed to include also plumbing and drainage) shall be understood as schematic and layout design drawings indicating only the performance requirements, materials of the major components, layout, positions, configurations, controlling dimensions and sizes required for the finished work. The Sub-Contractor shall be responsible for the selection and fixing details of the system components, and the exact and co-ordinated routing of pipework, ducting, cable and wiring in compliance with the Sub-Contract Drawings and the further drawings.

機電工程 (視為包括給排水工程)的分包合同圖紙或上家承包商在分包定標後發出的附加圖紙須理解為示意及佈置設計圖，只表示了最後完成的工程所需的功能要求、主要部件的物料、佈置、位置、形狀、控制尺寸、及大小。分包商須按分包合同圖紙及附加圖紙負責系統構件的選用及安裝細節，以及管道、風管、電纜、電線的確切及協調的路線。

[HKPSWTA]: The content of this clause is in order as in P&D, we are normally responsible for developing the contract drawings into working drawings. However, such should not be regarded or misled as design work, or a "Development of Design". As such, we consider this should be an independent clause itself and not be included as part of Clause 3.3, and can be titled as "Development of Working Drawings".

[DevB]: "機電工程 (視為包括給排水工程)" - Chinese translation to be reviewed.

[KCTang]: "機電工程 (視為亦包括給排水工程)"

3.4 Design of temporary works 臨時工程的設計

[HKCSA]: Delete Clause 3.4.

Unless otherwise specified in this Sub-Contract, the design of temporary works required for the Sub-Contract Works (no matter whether it has been shown on the Sub-Contract Drawings or not) shall be the responsibility of the Sub-Contractor.

除非分包合同另有規定，分包工程所需的臨時工程(不論分包合同圖紙是否已有繪述)的設計責任歸分包商。

3.5 Sub-Contractor's design to be approved 分包商的設計須獲批准

[HKFEMC]: Inclusion of 'the Contract Administrator' blurs the reporting chain. The Sub-Contractor should be responsible to the Client-Contractor only. The Client-Contractor can always instruct the Contract Administrator and/or the Sub-Contractor if he wants to.

[HKCSA]: Delete Clause 3.5.

- 3.5.1 Any design for which the Sub-Contractor is responsible under this Sub-Contract shall be submitted to the Client-Contractor and the Contract Administrator for comment and approval before implementation.

分包商按分包合同應負責的任何設計皆須在實施前提交給上家承包商及合同監理審核及批准。

[HKFEMC]: "the Client-Contractor ~~and the Contract Administrator~~ for comment".

[HKFEMC]: "上家承包商及合同監理審核"。

[KCTang]: Agreed conceptually, though in reality the Contract Administrator's comment and approval would be necessary.

- 3.5.2 The Sub-Contractor's design shall be fit for the purpose for which it is intended. Approval by the Client-Contractor and the Contract Administrator shall not be taken as acceptance that the design is so fit for the purpose.
分包商的設計須適合意圖達到的目的。上家承包商及合同監理的任何批准皆不能視為有關設計已適合目的。

[HKFEMC]: "~~the Client-Contractor and the Contract Administrator shall not~~".

[HKFEMC]: "上家承包商及合同監理的任何批准"。

[KCTang]: Agreed.

3.6 Testing and commissioning 測試及調試

Before they may be certified as substantially completed, all mechanically, hydraulically, electrically or electronically operated parts of the Sub-Contract Works and any parts of the Sub-Contract Works connected by and including pipes, ducts, conduits, trunking, wiring or cables shall be tested and commissioned in accordance with the requirements of this Sub-Contract.

分包工程內所有機械、水壓、電力或電子操作的部分及分包工程內管道、風管、線管、線槽、電線或電纜及經它們連接的部分皆須在簽証已充份竣工前按分包合同要求測試及調試。

[HA]: Does the 2nd word "they" mean the E&M works listed thereafter? If yes, it is not noted according to Clause 4.10 that specific Substantial Completion Certificate(s) will be issued for E&M works if these works do not form the whole of the Works or the whole of a Works Section. Suggest replacing "they" with "the Sub-Contract Works, or any Section thereof,".

[HA]: Moreover, if testing and commissioning of E&M works are prerequisite for certifying Substantial Completion, would it be better to place such proviso under Clause 4.10?

[HKFEMC]: "~~Before they may be certified as substantially completed,~~ all mechanically".

[HKFEMC]: This clause should not be linked to 'substantial completion', which has substantial implications regarding payment.

[KCTang]: "they" refers to the parts only. Presumably, testing and commissioning are prerequisite but not the full conditions for certifying Substantial Completion. It is preferred to put the more specific work under "the Works" section.

3.7 General attendance 一般的配合服務

3.7.1 Unless otherwise specified in this Sub-Contract, the Client-Contractor shall procure for the Sub-Contractor's use in a proper manner of all temporary site facilities which may be established on the Site by the Client-Contractor or the Upper-tier Contractors for shared use of various trades, such as construction plant (including cranes, materials hoists, workmen lifts, gondolas), access routes, roads, footpaths, gangways, ladders, working platforms, scaffolding, catch fans, hoardings, covered walkways, screens, gates, gantries, enclosures, barriers, safety nets, safety screens, site offices, mess rooms, welfare facilities, sanitary convenience, drainage, telephone, water and electricity supply, lighting, directory and warning signs, refuse bins, etc.

除非分包合同另有規定，上家承包商須為分包方取得可以適當地使用上家承包商或再上層承包商可能在工地設置給各工種共同使用的現場臨時設施，例如施工機械(包括起重機、物料升降機、工人升降機、吊船)、通道、道路、行人路、跳板、爬梯、工作臺、棚架、挑篷、圍板、有蓋走道、圍網、圍口、龍門、封板、圍欄、水平安全網、安全圍網、工地辦公室、食堂、福利設施、衛生設施、排污、電話、水及電力供應、照明、指示及警告標誌、垃圾箱、等。

[HKPSWTA]: "procure for the Sub-Contractor's use in a proper manner **and free of charge** of all temporary site facilities refuse bins, etc. **Provision of any particular site facilities for the Sub-Contractor's use shall be stated in the Sub-Contract Specification to form part of this Sub-Contract.**"

[KCTang]: Clause 3.1.2(d) already deals with "free of charge".

[KCTang]: Compare the implications of "unless otherwise specified in this Sub-Contract" and "shall be stated in the Sub-Contract Specification".

[HKPSWTA]: "Free of charge" should be added to the clause for providing these facilities. From the Sub-Contractor's point of view: we must be informed during tender stage of what common facilities are available, for P&D it is especially relevant regarding platform for high level works and bamboo scaffolding on external face of building and in light wells. As the content refers to "may be established", we consider the type of common facilities to be provided by the Client-Contractor in that particular project (either trade specific or in general) should be stated as conditions of contract to that DSC.

[KCTang]: The project specifics should be dealt with by the Specification.

[HKFEMC]: "procure for the Sub-Contractor's use **free of charge and** in a proper manner ... refuse bins **in designated location within the Site, removal of refuse off site, site cleansing, site security,** etc.".

[HKCA]: "such as construction plant (including cranes, materials hoists, workmen lifts, gondolas), access routes, roads, footpaths, gangways, ladders, working platforms, scaffolding, catch fans, hoardings, covered walkways, screens, gates, gantries, enclosures, barriers, safety nets, safety screens, site offices, mess rooms, welfare facilities, sanitary convenience, drainage, telephone, water and electricity supply, lighting, directory and warning signs, refuse bins, etc." included in Clause 1.17?

[KCTang]: Clause 1.17 refers to temporary site facilities.

[HKCSA]: "procure **free of charge** for the Sub-Contractor's use in a proper manner of all temporary site facilities ~~which may be established on the Site by the Client-Contractor or the Upper-tier Contractors~~ for shared use of various trades, such as working platforms, **all kinds of scaffolding, catch fans**"

- 3.7.2 The Client-Contractor shall also provide spaces on the Site for the erection of the Sub-Contractor's offices, workshops and stores.
上家承包商亦須在工地提供地方給分包方設置辦公室、工房及儲存間。

[HKFEMC]: “and stores *free of charge. In addition, adequate provision of electricity, water, site security, etc. shall also be provided by the Client-Contractor free of charge for completion of Sub-Contractor's obligation under the Sub-Contract.*” - Amended for better clarity.

[KCTang]: Clause 3.1.2(d) already deals with "free of charge". Electricity and water already covered by Clause 3.7.1.

[HKCA]: "The Client-Contractor shall also ~~provide~~ *allocate available* spaces on the Site"

4. TIME 工期

4.1 Contract commencement 合同的開始

[HKCSA]: Delete Clause 4.1.

This Sub-Contract shall be deemed to take effect and commence on the date of a letter issued by or on behalf of the Client-Contractor awarding this Sub-Contract to the Sub-Contractor, irrespective of when the Sub-Contract Agreement is signed.

分包合同視為由上家承包商或代表上家承包商發出通知分包商他獲得分包工程中標之函件之日起生效及開始，不論分包合同協議是否已經簽署。

[HA]: The whole clause → “*This Sub-Contract shall commence on the date as notified by the Client-Contractor to the Sub-Contractor, which shall be within the period of time from the date of a letter issued by or on behalf of the Client-Contractor awarding this Sub-Contract to the Sub-Contractor stated in the Particulars of Agreement.*” in order to give the Client-Contractor flexibility in the time for awarding the Sub-Contract and to allow the Sub-Contractor reasonable mobilization period before commencement of the Sub-Contract Works. Please also be reminded that a corresponding item is required to be added in the Particulars of Agreement to suit this suggestion.

[KCTang]: The suggestion deals with commencement of works which is covered by Clause 4.3. This Clause 4.1 is specially intended to distinguish between commencement of contract and commencement of works.

4.2 Consent to commencement 開始的許可

The Sub-Contractor shall submit all applications required by law to be submitted by him and shall pay all associated charges before the commencement of work on site or as and when the same fall due, as the case may be.

在工地開始工作前或有關責任到期前，按情況而定，分包商須提交按法例規定應由他提交的所有申請及繳交有關費用。

4.3 Commencement and completion of Works 工程的開始及完成

The Sub-Contractor shall commence each Sub-Contract Works Section on its Commencement Date stated in the Particulars of Agreement, and shall substantially complete each Sub-Contract Works Section on or before its Date for Completion stated in the Particulars of Agreement.

分包商須在協議特定事項說明的有關開工日開始每個分包工程分部，並在協議特定事項說明的有關應竣工日或之前充分完成每個分包工程分部。

[HKFEMC]: "before its Date for Completion stated in the Particulars of Agreement or before the extended Date for Completion of each Sub-Contract Works Section (if any)." for better clarity.

[KCTang]: "before its Date for Completion stated in the Particulars of Agreement or before its current Date for Completion fixed under this Sub-Contract."

4.4 Working time 工作時間

- 4.4.1 The Sub-Contractor shall observe the normal daily working hours as stated in the Particulars of Agreement, and any working days and working hours restrictions which may be imposed under this Sub-Contract or at law.

分包商須遵守協議特定事項說明的正常每天工作時間，和分包合同或法例規定的工作日及時間的限制。

[HKCSA]: "which may be reasonably imposed under this Sub-Contract or at law"

[KCTang]: Whether reasonable or not, restrictions imposed under the Sub-Contract shall be observed. This also applies to restrictions at law.

- 4.4.2 When requested by the Sub-Contractor, the Client-Contractor shall at the Sub-Contractor's expense but without extra charge apply to the relevant Government authority for working outside the legally restricted time.

分包商要求時，上家承包商須向政府有關部門申請在法例限制的時間外施工，而費用則由分包商承擔，但不收附加費。

[DevB]: "legally restricted time" - restriction on working time could also be imposed by the Employer as contractual requirements under the main contract.

[KCTang]: Application to "the Employer" should be regarded as a routine management activity of the Client-Contractor not requiring the Sub-Contractor to bear the expense, and is therefore not specifically mentioned here.

- 4.4.2 When requested by the Sub-Contractor, the Client-Contractor shall at the Sub-Contractor's expense but without extra charge apply to the relevant Government authority for working outside the legally restricted time.

4.5 Notices and claims 通知及索賠

- 4.5.1 As soon as practicable after the commencement of an event causing or likely to cause delay or disruption to the regular progress of the Sub-Contract Works or delay to the completion of any Sub-Contract Works Section beyond its current Date for Completion becoming apparent, the Sub-Contractor shall give notice to the Client-Contractor of such a delay or disruption.
引致或可能會引致分包工程的正常進度受到延誤或干擾或任何分包工程分部的完成受到延誤超過其現應竣工日的事件開始後的盡可能快的時間內，分包商須把有關的延誤或干擾通知上家承包商。

[HKCA]: "As soon as practicable within 14 days after the commencement of an event"

[DevB]: "As soon as practicable" - for early settlement of difference in opinions, better certainty and understanding of the Contract Parties' positions, consideration should be given to specify a time limit for notification of claims.

- 4.5.2 The notice shall state in full detail (illustrated with diagrammatic programmes as necessary) the event and material circumstances causing or likely to cause the delay or disruption, the estimated extent of the delay or disruption to the progress, the estimated length of the delay to the completion, and whether the Sub-Contractor considers that he is or may become entitled to an extension of time due to the event being an Excusable Event listed in the Particulars of Agreement and to reimbursement for direct loss and/or expense due to the event being an Compensable Event listed in the Particulars of Agreement. If direct loss and/or expense is expected to be incurred, the notice shall give an estimate of the likely amount. If the delay or disruption is of continuing or repetitive nature, the Sub-Contractor shall submit updated notices at **monthly** intervals.

該通知須詳細說明(按需要，以進度示意圖圖解)引致或可能會引致延誤或干擾的事件及實質情況、估計對進度延誤或干擾的程度、估計對竣工延誤的長度、及分包商是否認為該事件屬於協議特定事項所列的可延期事件而他有权或可能得到延長工期或認為該事件屬於協議特定事項所列的可賠償事件而他有权或可能得到直接損失及/或費用的賠償。如果預計會產生直接損失及/或費用，該通知須說明估計的可能的金額。如果延誤或干擾是持續或重覆性質的，分包商須按月提交更新的通知。

[HA]: Referring to the sentence in lines 6-7 that "If direct loss and/or expense is expected to be incurred, the notice shall give an estimate of the likely amount.", the time for giving such an estimate appears to be unreasonably short. Please review.

[KCTang]: This requires an estimate only.

[HKFEMC]: "The notice shall state in ~~full detail (illustrated with diagrammatic programmes as necessary)~~ the event and ~~material~~ **relevant** circumstances".

[HKFEMC]: The purpose of 'notice' is to report the case with main details in a timely manner. Full details with supporting information could always be supplied after the notice, otherwise the process would be unnecessarily delayed. The clause is amended to reflect this.

[HKFEMC]: We suggest that a standard form of "Notice" shall be inserted in this Sub-Contract for Sub-Contractors' use, but the form shall not be too exhaustive.

- 4.5.3 The Sub-Contractor shall submit his monetary claim for reimbursement for direct loss and/or expense with evidence of the amounts claimed as soon as the amounts are fully known and reasonably calculable.

在索償金額已完全知道及可合理地計算時，分包商須盡快提交要求賠償直接損失及/或費用的經濟索償及索償金額的證據。

- 4.5.4 In any case, the notice under Clause 4.5.1 and the updated notices under Clause 4.5.2 shall not be submitted later than the current Date for Completion of the relevant Sub-Contract Works Section or its extended Date for Completion previously claimed by the Sub-Contractor, and the Sub-Contractor's monetary claim under Clause 4.5.3 shall not be submitted later than **3 months** after the direct loss and/or expense having been incurred, progressive submission permitted.

在任何情況下，第 4.5.1 條所要求的通知及 4.5.2 條所要求的更新通知不能遲過有關的分包工程分部的應竣工日或分包商之前申請延遲的竣工日提交，而按第 4.5.3 條提交的經濟索償不能遲過直接損失及/或費用發生後 3 個月提交，漸進式提交是可以的。

[DevB]: "not be submitted later than **3 months** after the direct loss and/or expense having been incurred" - this appears to be inconsistent with 4.5.1 that notice should be submitted as soon as practicable.

[KCTang]: It should be read as "As soon as possible" (Clause 4.5.1) but "in any case" (Clause 4.5.4).

- 4.5.5 The Client-Contractor is entitled not to form his opinion as to the extent of delays or disruptions before the Sub-Contractor has submitted a notice of delay or disruption or in respect of a notice submitted later than the time specified in Clause 4.5.4. The Client-Contractor is entitled not to certify payment for reimbursement of direct loss and/or expense if the monetary claim is submitted later than the time specified in Clause 4.5.4. When considering the time or cost effect, the Client-Contractor is entitled to take into account only of the information currently submitted by the Sub-Contractor without an obligation to demand for further information from the Sub-Contractor. The Sub-Contractor shall bear the consequence of his own non-submission, late submission or insufficient submission of notices or information, and shall be deemed to waive his corresponding right against the Client-Contractor in respect of extension of time, immunity from damages for delay and monetary compensation.

在分包商提交延誤或干擾的通知之前，或通知是遲過第 4.5.4 條規定的時間提交，上家承包商有權不就延誤或干擾的程度達成他的意見。如果經濟索償是遲過第 4.5.4 條規定的時間提交，上家承包商有權不就有關的直接損失及/或費用的補償予以簽証。在考慮時間或費用的影響時，上家承包商有權只按分包商當時已提交了資料考慮，而沒有責任向承包商要求更多的資料。分包商須負責他自己的未能提交、延誤提交或不充分提交通知或資料的後果，並視為放棄他就相關的延長工期、免除誤工賠償及經濟索償向上家承包商追討的權利。

[HKPSWTA]: An example of whether the current drafting (line 4 "The Client-Contractor is entitled not to certify payment for reimbursement of direct loss and/or expense if the monetary claim is submitted later than the time specified in Clause 4.5.4.") in effect put the late submission of monetary claim by a Sub-Contractor a time bar event and forfeit his entitlement for compensation?

[HKCSA]: "The Sub-Contractor shall bear the consequence of his own non-submission, late submission or insufficient submission of notices or information, ~~and shall be deemed to waive his corresponding right against the Client-Contractor in respect of extension of time, immunity from damages for delay and monetary compensation.~~"

[DevB]: It is unclear whether the Main Contractor's entitlement not to form his opinion has the effect of time bar. Further, if timely submission of notices of claim is intended to be a condition precedent to entitlement to claim, Clause 4.5.5 may need to be modified to give such effect.

4.5.3 – 4.5.5

[HKFEMC]: These three clauses are not fair to the Sub-Contractor. They are also not fully in accordance with the spirit under which the details are to be set out, as agreed in the Task Force meeting of 5 December 2010.

[HKFEMC]: Please refer to Meeting minutes SBC/SCDC/R/006/10, page 5 regarding section 4.5, Notices and Claims. The minutes noted that members agreed in principle that there will be reasonable time for submissions, responses and dialogue, and that the reasonable time specified will not be enforced as time-bar.

[HKFEMC]: These three clauses should be redrafted taking into consideration of the principles agreed.

[KCTang]: Clauses 4.5.1 to 4.5.4 are intended to operate as a soft time-bar. One cannot ignore the fact that strict time-bar is pre-dominant in Main Contracts. By Clause 4.5.4, the Client-Contractor is entitled not to do something if the time-bar is not met but he can still do so if he so wishes.

4.6 Mitigation of delay or disruption 延誤或干擾的減輕

The Sub-Contractor shall continuously use his best endeavours to prevent or mitigate delay or disruption to the progress of the Sub-Contract Works however caused, and to prevent the completion of the Sub-Contract Works from being delayed or further delayed. The use of best endeavours by the Sub-Contractor shall not require the Sub-Contractor to accelerate the carrying out of the Sub-Contract Works to recover delay caused by an Excusable Event. The Sub-Contractor shall however do all that may reasonably be required to proceed with the Sub-Contract Works expeditiously.

分包商須持續地用他最大的努力去避免或減輕分包工程的進度受到延誤或干擾(不論如何發生), 及避免分包工程的竣工受到延誤或再延誤。分包商用最大的努力並不意味需要分包商加快分包工程的進行以追回可延期事件所引致的延誤。但是, 分包商仍須做一切合理需要的, 使分包工程可迅速的進行。

[HKFEMC]: How to justify/measure SC's effort on mitigation of delay or disruption? Arguable.

[HKFEMC]: While the intention of the clause is understandable it is one that is difficult to execute as the Sub-Contractor's efforts are hard to measure.

[KCTang]: Agreed. It is difficult to distinguish and measure. At least, this Clause clarifies that the Sub-Contractor shall not be required to accelerate to recover delay caused by an Excusable Event.

4.7 Determining time effect 確定工期的影響

- 4.7.1 Within **14 days** after receipt of the Sub-Contractor's notice of delay or disruption under Clause 4.5 and subject to Clause 4.5.5, the Client-Contractor shall notify the Sub-Contractor his opinion on the extent of delay or disruption to progress or delay to completion that the Excusable Event or Compensable Event specified by the Sub-Contractor in his notice has caused or is likely to cause to the relevant Sub-Contract Works Section. If there is a delay to completion due to an Excusable Event, the Client-Contractor shall grant an extension of time by fixing a later Date for Completion for the relevant Sub-Contract Works Section to compensate the working time lost.

在收到分包商按第 4.5 條的延誤或受阻通知書之 **14 天**內並在符合第 4.5.5 條下，上家承包商須通知分包商，他對於分包商在通知書指出的可延期事件或可賠償事件，對相關分包工程分部已引致或可能引致的，進度延誤或干擾或竣工延誤的程度之意見。如果由於可延期事件使竣工延誤，上家承包商須准予延期竣工，就相關分包工程分部定出較後的應竣工日，以彌補損失的工作時間。

[HKCA]: "Within ~~14~~ **56 days** after receipt of the Sub-Contractor's notice of delay or disruption"

- 4.7.2 Extension of time shall be granted for any Excusable Event that occurs in the period of delay after the relevant current Date for Completion but before the Substantial Completion of a Sub-Contract Works Section. If the Excusable Event commences after the relevant current Date for Completion, the extension of time so granted shall be added to the total of extensions of time previously granted when fixing a new Date for Completion, even though the date so fixed may still be earlier than the end of the Excusable Event.

在分包工程分部充分竣工前相關的應竣工日之後的延誤期內發生的可延期事件，須准予延期竣工。如果可延期事件在相關的應竣工日之後才開始，須把此項延期加到之前准予延期的總時間上，來定出新的應竣工日，縱使該日可能仍較可延期事件的完結時間為早。

[HKPSWTA]: Need clarification or can this be redrafted in a simpler version.

[KCTang]: Attempt has been made to simplify it as such.

[HKCA]: "before the Substantial Completion of a Sub-Contract Works Section under Clause 4.7.1. If the Excusable Event"

[KCTang]: Suggested change does not appear necessary.

[HKCSA]: Delete Clause 4.7.2.

- 4.7.3 The Client-Contractor may review his opinion on the time effect under Clause 4.7.1 and adjust any extension of time previously granted in light of further evidence at any time before settling the Final Account, but shall not reduce the extension of time previously granted unless any previous extension has been based upon incorrect information provided by the Sub-Contractor.

上家承包商可於結算前任何時間，因為有進一步的證據，而檢討他按第 4.7.1 條作出的關於時間影響的意見及調整之前准予的任何延期，但不能縮短之前准予的延期，除非之前准予的延期是基於分包商提供的不實資料。

4.8 Valuing cost effect 費用影響的估值

- 4.8.1 Within **14 days** after the receipt of the Sub-Contractor's monetary claim, and taking into account his own opinion on the time effect under Clause 4.7.1, the Client-Contractor shall assess and certify the amount of any direct loss and/or expense compensable to the Sub-Contractor. Any such amount which may be assessed from time to time shall be added to the Sub-Contract Price and included in the next payment.

收到分包商索賠後 **14** 天內，以及考慮了自己按第 4.7.1 條對時間影響的意見，上家承包商須評估及簽證可賠償給分包商的任何直接損失及/或費用的金額。任何不時評估到的金額須加於分包合同價內及計入下次付款內。

[HKFEMC]: "in the next payment or within 30 days from the date of Client-Contractor's assessment whichever is earlier." - 30 days limit inserted to avoid unreasonable delays in assessment.

[HKGSA]: "Within ~~14~~ **56** days after the receipt of the Sub-Contractor's monetary claim"

[KCTang]: All the payment related dates to be inserted in the Particulars of Agreement are supposed to be regular/periodical dates, which will automatically set a time limit.

[HKGSA]: "included in the next payment to the Sub-Contractor pursuant to Clause 6.16"

[KCTang]: Is this really necessary?

- 4.8.2 The Client-Contractor may review and adjust his valuation of the cost effect under Clause 4.8.1 in light of further evidence at any time before settling the Final Account. Any adjustment so resulted shall be accounted for in the next payment.

上家承包商可於結算前任何時間，因為有進一步的證據，而檢討及調整他按第 4.8.1 條作出的關於費用影響的估值意見。因此而作出的調整須在下次付款時反映。

[HA]: Add "under Clause 6.17" after "Final Account" in line 2.

[KCTang]: Is this really necessary?

[HKFEMC]: "in the next payment or within 30 days from the date of Client-Contractor's assessment whichever is earlier."

[KCTang]: All the payment related dates to be inserted in the Particulars of Agreement are supposed to be regular/periodical dates, which will automatically set a time limit.

[HKGSA]: "accounted for in the next payment to the Sub-Contractor pursuant to Clause 6.16".

[KCTang]: Is this really necessary?

4.9 Damages for delayed completion 延誤竣工的賠償

4.9.1 If a Sub-Contract Works Section is not completed by its current Date for Completion, the Client-Contractor may recover from the Sub-Contractor liquidated damages calculated at the respective Rate of Liquidated Damages for delayed completion stated in the Particulars of Agreement for the period during which the Sub-Contract Works Section remains incomplete. Where no rate is specifically stated, the Client-Contractor may claim for general damages for delayed completion. The damages calculated and already recovered shall be reviewed and adjusted, if there is any adjustment to the period remaining incomplete pursuant to Clause 4.7.

如果分包工程分部不能於它現應竣工日或之前竣工，則上家承包商可就分包工程分部的仍未竣工時間，向分包商追討按協議特定事項說明的相關的延誤竣工預定賠償率計算的預定賠償額。如果並無特別說明賠償率，則上家承包商可就延誤竣工追討非預定賠償額。如果仍未竣工時間因應第 4.7 條而調整，計算到及已追討的賠償額須檢討及調整。

[HKFEMC]: "If a Sub-Contract Works Section is not completed by its current Date for Completion due to Sub-contractor's own fault, the Client-Contractor may recover from the Sub-Contractor liquidated damages calculated at the respective Rate of Liquidated Damages for delayed completion stated in the Particulars of Agreement for the period during which the Sub-Contract Works Section remains incomplete. Where no rate is specifically stated, the Client-Contractor may claim for ~~general~~ damages in respect of cost, loss or expense suffered during the period of delay for delayed completion. Proof of the damages shall be provided by the Client-Contractor to the Sub-contractor for justification of Client-Contractor's damages. The damages calculated and already recovered shall be reviewed and adjusted, if there is any adjustment to the period remaining incomplete pursuant to Clause 4.7."

[HKFEMC]: Damages more clearly specified.

[KCTang]: "suffered during the period of delay" and "suffered due to delayed completion" have different meanings. "general damages" requires proof.

[HKCSA]: "liquidated damages limit to []% per day calculated at"

[KCTang]: User to specify it in the Particulars of Agreement.

[DevB]: "by its current Date for Completion or the extended Date for Completion as the case may be, the Client-Contractor may"

[KCTang]: "current Date" is a simplified term meaning the original Date or extended Date as the case may be.

4.9.2 If it is stated in this Sub-Contract that the Sub-Contractor shall compensate, by way of liquidated damages or general damages, the damages payable by the Client-Contractor for delayed completion of the Client-Contract Works due to delays of the Sub-Contractor, and if the Client-Contractor is relieved from paying the damages partly or wholly, the Sub-Contractor shall correspondingly be relieved.

如果分包合同規定，分包商須(不論是以預定賠償或是非預定賠償形式)賠償上家承包商，因分包商的延誤引致上家承包工程延誤所應支付的賠償，又如果上家承包商得到部分或全部免除支付賠償，則分包商須相應地得到免除。

[HKFEMC]: "by way of liquidated damages ~~or general damages~~".

[HKCA]: Delete Clause 4.9.2.

[HKCSA]: "the damages payable to the Ultimate Client or Upper Tier Contractors by the Client-Contractor for delayed completion"

[KCTang]: Is this really necessary?

[HKCSA]: Add

"4.9.3 Notwithstanding anything contained in this Sub-Contract, the liability of the Sub-Contractor under this Sub-Contract for delayed completion of the Sub-Contract Works shall not exceed 10% of the original Price of the Sub-Contract or if it is a Rates Only Contract, it shall not exceed 10% of the payment received by the Sub-Contractor under this Sub-Contract at the time of the Client-Contractor seeking to recover liquidated or general damages from the Sub-Contractor."

[KCTang]: User to specify it in the Particulars of Agreement.

4.10 Substantial Completion 充份竣工

4.10.1 A Sub-Contract Works Section shall be considered as substantially completed, when all the work within it have been completed, its places are clean and tidy with the Sub-Contractor's temporary site facilities demobilized from the places to the satisfaction of the Client-Contractor, and it is ready for handover to the Client-Contractor, excluding only work or services specifically required by this Sub-Contract to be carried out after Substantial Completion, and minor work which is not essential for the occupation, use or functioning of the Sub-Contract Works.

當分包工程分部內全部工作已完成，它的地方已清潔整齊而分包商的臨時工地設施已從該處撤走致上家承包商滿意的程度，及它隨時可交付給上家承包商時(分包合同特別規定要於充份竣工後才進行的工作或服務，及對分包工程的佔用、使用或運作並非必要的零星工作除外)，則分包工程分部即被視為已充份竣工。

[HKCSA]: "~~A~~ The Sub-Contract Works Section shall be considered"

- 4.10.2 If the Sub-Contractor considers that Substantial Completion of a Sub-Contract Works Section is imminent, he shall invite by giving reasonable advance notice to the Client-Contractor to carry out a completion inspection. The Client-Contractor shall carry out the inspection and notify the Sub-Contractor whether there is any outstanding work essential to Substantial Completion. The Sub-Contractor shall complete the outstanding work, invite the Client-Contractor to re-inspect as appropriate, demobilize from the locations of the Sub-Contract Works Section (subject to Clause 4.10.3), and make the place clean, tidy and ready for handover to the Client-Contractor.

如果分包商認為分包工程分部即將充份竣工，則分包商須合理地提前通知上家承包商，邀請進行竣工驗收。上家承包商須進行驗收及通知分包商是否有充份竣工必需的但未完成的工作。分包商須完成未完成的工作，適當時邀請上家承包商再驗收，從分包工程分部的位置撤走(須符合第 4.10.3 條)，及令地方清潔整齊並可隨時交付給上家承包商。

[HKCSA]: "~~a~~ the Sub-Contract Works Section is imminent essential to Substantial Completion within 7 days of the completion inspection. The Sub-Contractor"

[HKCSA]: "by reasonable advance written notice to the Client-Contractor"

- 4.10.3 If the Client-Contractor is satisfied that the state of Substantial Completion has been achieved, he shall issue a Substantial Completion Certificate to the Sub-Contractor to confirm the fact and the date.

如果上家承包商滿意充份竣工的狀態已達到，他須向分包商發出充份竣工證明書以確認有關事實和日期。

[HA]: Relocate this clause forward as Clause 4.10.1 and re-number the other relevant clauses to suit. Add "for the Sub-Contract Woks, or any Section thereof," between "the state of Substantial Completion" and "has been achieved".

[KCTang]: The present order follows the time sequence rather than stating the principle first.

- 4.10.4 If the Contract Administrator certifies Substantial Completion of any part of the Client-Contract Works without specifically excluding the Sub-Contract Works, any part of the Sub-Contract Works included in that part of the Client-Contract Works shall be deemed to have been substantial completed on the date certified.

如果合同監理就上家承包工程任何部分簽證了充份竣工而沒有特別聲明不包括分包工程，則任何包含在該上家承包工程部分的分包工程部分視為已在證明的日期達到充份竣工。

[HA]: To cater for the Substantial Completion of any part of the Sub-Contract Works deemed under this clause, corresponding proviso should be added under Clause 4.9 or elsewhere to the effect that the Rate of Liquidated Damages should be equitably reduced in proportion to the value of the part so certified complete bears to the value of the Sub-Contract Works or the relevant Section.

[KCTang]: Agreed.

[HA]: "substantial" in line 3 → "substantially".

[KCTang]: Agreed.

[HKCA]: "without specifically excluding any part of the Sub-Contract Works"

[KCTang]: This could be interpreted in such a way that once a part of a Sub-Contract Works section is excluded, the rest of the Sub-Contract Works not so excluded would not enjoy the benefit given here.

- 4.10.5 The Client-Contractor shall take over the relevant Section or part of the Sub-Contract Works after the state of Substantial Completion is reached and be responsible for the custody of the relevant Section or part thereafter.

上家承包商須於達到充份竣工後接收分包工程相關分部或部分，並負責該分部或部分其後的看管工作。

[HKCSA]: "for the *care and* custody of the relevant"

[KCTang]: "the Sub-Contract Works *not later than 14 days* after the state of Substantial Completion is reached and be responsible for the *care and* custody of" to match with Clause 9.4.

- 4.10.6 The Sub-Contractor may stay after Substantial Completion at such portion of the Site which has been designated for his placement of temporary site facilities and which are not immediately required for the occupation or use by others for a longer time until **7 days** after the Client-Contractor's instruction to demobilize from such portion of the Site.

於充份竣工後，分包商可在工地內某些指定讓他放置臨時工地設施並且其他人不需立即佔用或使用的地方，逗留較長時間，直到上家承包商發出從該地方撤走的指示後滿 **7** 天。

[HKCA]: "The Sub-Contractor may *request in writing to* stay after Substantial Completion at such portion of the Site which has been designated for his placement of temporary site facilities and which are not immediately required for the occupation or use by others for a longer time *and if such request is approved by the Client-Contractor, the Sub-Contractor shall demobilize from such portion of the Site within 7 2 days* after the Client-Contractor's instruction to demobilize from such portion of the Site."

[KCTang]: The latter part does not read smoothly, and the suggested change does not deal with the situation of the request being denied.

5. CONTRACT BASIS 合同基礎

5.1 Interpretation of Sub-Contract Documents 分包合同文件的釋義

- 5.1.1 The various parts of the Sub-Contract Documents are mutually explanatory to each other and shall be interpreted as a whole as far as possible.

分包合同文件的各個部分乃互為解釋的，並須盡可能整體地釋義。

- 5.1.2 In case of any contradiction between the various parts of the Sub-Contract Documents, the order of precedence for interpretation shall follow that stated in the Particulars of Agreement.

分包合同文件的各個部分如有矛盾，它們釋義的先後次序須按照協議特定事項所說明的。

- 5.1.3 Subject to Clause 5.1.2, documents issued later in time shall take precedence, particular specification shall take precedence over general specification, detailed drawings shall take precedence over general drawings, specification and drawings specially prepared for the Sub-Contract Works shall take precedence over standard specification and drawings.

不違反第 5.1.2 條的規定下，較後時間發出的文件為優先，特殊規範較一般規範優先，詳細圖紙較大範圍圖紙優先，特別為分包工程製作的規範及圖紙較標準的規範及圖紙優先。

- 5.1.4 No other documents exchanged before the award of this Sub-Contract shall form part of this Sub-Contract, or affect the meaning and interpretation of the Sub-Contract Documents, unless otherwise agreed in writing by both the Contract Parties.

分包定標前所交換的其他文件不能作為分包合同的一部分，或影響分包合同文件的含意及釋義，除非獲得合同雙方書面同意。

[HKCA]: "~~both of the~~ Contract Parties"

[KCTang]: Simply delete "both".

- 5.1.5 The Sub-Contract Documents shall be prepared by the Client-Contractor for signing by both parties. The original set shall be kept by the Client-Contractor. The Sub-Contractor shall be entitled to one signed duplicate.

分包合同文件須由上家承包商製作給雙方簽署。正本由上家承包商保存。分包商有權獲提供一份已簽副本。

[HA]: "~~by both parties~~" → "~~by the Contract Parties~~".

[KCTang]: Agreed.

[HKCSA]: Delete Clause 5.1.5.

5.2 Checking of Sub-Contract Documents 分包合同文件的檢查

[HKCSA]: Delete Clause 5.2.

Within **21 days** after the award of this Sub-Contract, and even though the Sub-Contract Documents may not have been prepared for signing, the Sub-Contractor shall complete a comprehensive check of those parts of the Sub-Contract Documents available upon the award of this Sub-Contract to identify any contradictions, discrepancies, divergences or uncertainties in or between the various parts of the documents, and report in writing to the Client-Contractor immediately after discovery of any problem.

在分包定標後 **21** 天內，雖然分包合同文件可能尚未製作好給簽署，分包商須對分包定標時已有的合同文件組成部分完成檢查，以找出文件之內或之間的任何矛盾、差異、分歧或不清晰的地方，並在發現有問題後立即書面通知上家承包商。

5.3 Supplementary information 補充資料

The Client-Contractor shall if so requested by the Sub-Contractor, or may on his own initiative, issue supplementary drawings or specifications to clarify or amplify the Sub-Contract Documents but not changing the Sub-Contract Works. This shall have no price or time implications, otherwise, the Sub-Contractor shall notify the Client-Contractor in writing within **3 working days** after receipt, and the Client-Contractor shall issue the supplementary information under an instruction.

上家承包商須在分包商提出時，或可自行主動，發出補充圖紙或規範以澄清或詳述分包合同文件但不改變分包合同工程。這應沒有造價或時間的影響，否則，分包商須在收到後**3**個工作天內書面通知上家承包商，而上家承包商須以指示發出有關的補充資料。

[HKCSA]: "~~but not changing the Sub-Contract Works. This shall have no price or time implications, otherwise, the Sub-Contractor shall notify the Client-Contractor in writing within 3 working days after receipt, and the Client-Contractor shall issue the supplementary information under an instruction.~~"

[KCTang]: What if the Sub-Contractor considers that the supplementary information constitutes a Variation?

5.4 Instructions 指示

5.4.1 The Client-Contractor may issue instructions in regard to any matter in connection with the Sub-Contract Works to the Sub-Contractor before the completion of defects rectification. The Sub-Contractor shall forthwith comply with all instructions issued to him by the Client-Contractor.

上家承包商可就分包工程之任何事宜，在修補缺陷工作完成前，向分包商發出指示。分包商須立即遵從由上家承包商向其發出的所有指示。

[HA]: The Clause stipulates that "the Client-Contractor may issue instructions before the completion of defects rectification." The period of time within which instructions could be issued is vague. The way rates are to be assessed for and applied to the instructed works are not obvious from the Clause. Please review and give specific details.

[KCTang]: The time to issue instructions would be any time before the completion of defects rectification. Clause 6.13(f) provides that work instructed to be carried out after Substantial Completion shall be valued at fair rates.

- 5.4.2 If an instruction states that it should have no price or time implications, but the Sub-Contractor disagrees, then he shall notify the Client-Contractor his disagreement in writing within **3 working days** after receipt so that the Client-Contractor may revise or withdraw the instruction. If the instruction is not revised or withdrawn, it shall still be valid but the price and time implications shall be determined according to this Sub-Contract.

如果指示說明它不應有價款或時間的影響，但分包商不同意，則他須在收到後**3**個工作天內書面通知上家承包商，讓上家承包商可以修改或撤回指示。如果指示沒有被修改或撤回，則它仍然有效，但價款及時間的影響則按分包合同確定。

[HA]: Please state how "the price and time implications shall be determined according to this Sub-Contract" when the instruction is issued within the Defects Liability Period. Should the cost concerned be assessed on a fair valuation basis in order to be fair to the Sub-Contractor?

[KCTang]: If an instruction has price or time implications, it will be classified into one type or another, such as, an instruction for Variations or for expenditure of provisional sums or other matters, which will then be handled according to the relevant clauses. It should not be necessary to state the specific clauses here for determining price and time implications. Clause 6.13 should have provided most of the answers.

[HKCA]: "but the price and time implications, *if any*, shall be determined according to this Sub-Contract"

[KCTang]: Whether there is "any" would need to be determined first.

[HKCSA]: Delete Clause 5.4.2.

- 5.4.3 If the Sub-Contractor fails to comply with an instruction of the Client-Contractor, then the Client-Contractor may issue a notice in writing requiring the Sub-Contractor to comply with the instruction. If the Sub-Contractor does not comply with the instruction within **3 working days** after receipt of the said notice, then the Client-Contractor may without further notice employ and pay other persons to carry out any work whatsoever to give effect to such instruction, and all costs incurred in connection with such employment shall be recoverable from the Sub-Contractor by the Client-Contractor.

如果分包商未能遵從上家承包商的指示，則上家承包商可發出書面通知，要求分包商遵從指示。如果分包商未能在收到該通知後**3**個工作天內遵從有關指示，則上家承包商可不作進一步通知，便僱用及支付其他人士進行落實有關指示內容之任何工作，而上家承包商可向分包商追回該僱用所招致的所有費用。

[HKCA]: "all costs incurred in connection with such employment *together with all direct consequences so arising from such non-compliance* shall be recoverable from the Sub-Contractor by the Client-Contractor"

[KCTang]: Really necessary? Presumably all consequences will need to be converted to "costs before recovery."

[DevB]: "comply with an instruction of the Client-Contractor *within a reasonable time (to cater for different circumstances in different cases)*, then the Client-Contractor"

[KCTang]: Yes and no. "3 working days" is the result of discussions.

- 5.4.4 All instructions issued by the Client-Contractor shall be issued in writing. Any instruction issued orally shall be confirmed in writing by the Client-Contractor within **2 working days**, otherwise the oral instruction shall have no effect.
上家承包商發出的所有指示，均須以書面發出。任何口頭發出的指示，均須由上家承包商在 **2** 個工作天內以書面確認，否則有關的口頭指示將不具效力。

[HKCA]: "within ~~2~~ **7** working days, otherwise"

[HKCSA]: "~~within 2 working days, otherwise the oral instruction shall have no effect. The Sub-Contractor is not obliged to comply with any oral instructions issued by the Client-Contractor before receiving the aforesaid confirmation in writing.~~"

[KCTang]: Does it mean that the oral instruction can still be valid if the Sub-Contractor chooses to comply.

6. PRICES 價款

6.1 Lump Sum Contract 總價承包合同

- 6.1.1 Where the Contract Type stated in the Particulars of Agreement is a "Lump Sum Contract": The Sub-Contract Price stated in the Particulars of Agreement shall be deemed to be inclusive of all costs, profits and overheads necessary for the completion of the Sub-Contract Works originally described in this Sub-Contract. The Sub-Contract Price shall not be adjusted except for Variations or adjustments of provisional quantities or provisional sums and other adjustments permitted under or required by this Sub-Contract.

協議特定事項所說明的合同類別為“總價承包合同”時：協議特定事項所說明的分包合同價視為已包括了要完成分包合同原本所描述的分包工程所必需的所有成本、利潤及管理費。此分包合同價將不進行調整，除非是因為工程變更或暫定數量或暫定款的調整或分包合同容許或規定的其他調整。

[HA]: “: The Sub-Contract Price” in line 1 → “~~the~~ Sub-Contract Price”.

- 6.1.2 Any arithmetical errors made by the Sub-Contractor when calculating the Sub-Contract Price stated in the Particulars of Agreement shall be corrected to give an aggregate error which shall be deemed to have been accepted by the Contract Parties with no adjustment to the Sub-Contract Price.

分包商計算協議特定事項所說明的分包合同價時所犯的任何算術錯誤，須予以更正以得出一總誤差，但它視為已獲合同雙方接納，而分包合同價將不作調整。

[HA]: It is more common to place provision in connection with arithmetical errors under Conditions of Tender instead of Conditions of Contract.

[KCTang]: This can also deal with the case where no arithmetical check has been done before entering into the Sub-Contract.

6.2 Remeasurement Contract 重新計量合同

- 6.2.1 Where the Contract Type stated in the Particulars of Agreement is a "Remeasurement Contract": The Sub-Contract Price stated in the Sub-Contract Agreement and the quantities building up the Sub-Contract Price shall be deemed to be provisional and shall finally be recalculated by remeasuring the authorized work properly carried out and valuing the same at the Sub-Contract Rates, subject only to other adjustments permitted under or required by this Sub-Contract.
協議特定事項所說明的合同類別為“重新計量合同”時：協議特定事項所說明的分包合同價及組成它的數量視為暫定，最終須按妥善進行的認可工作重新計量及按分包合同單價計價來重新計算，並只能作分包合同允許或規定的其他調整。

[HA]: “: The Sub-Contract Price” in line 1 → “~~the~~ the Sub-Contract Price”.

[HKFEMC]: “subject ~~only~~ to”.

[KCTang]: “only” is essential.

[HKPSWTA]: In a remeasurement contract, different sub-contract packages may have a different approach to remeasure the final work done. Some may be by actual on site remeasurement, some by remeasuring the as-fitted drawings, or by remeasuring the tender drawings with build up from subsequent contract drawings. The approach of remeasuring the work done in a remeasurement contract should be clarified in the Particulars of Agreement for that particular Sub-Contract to avoid potential dispute.

[HKCSA]: “remeasuring the ~~authorized~~ work properly carried out and valuing the same at the Sub-Contract Rates, subject ~~only~~ to other adjustments permitted under or required by this Sub-Contract **and in accordance with the principles of the Hong Kong Standard Method of Measurement of Building Works current at the time the Tender Documents were issued.**”

[KCTang]: Words deleted are essential. The method of measurement is not necessarily HKSMM. By Clause 6.9.1, the method of measurement is to be defined in other parts of the Sub-Contract Documents.

- 6.2.2 Unless otherwise specified in this Sub-Contract, any arithmetical errors made by the Sub-Contractor when calculating the Sub-Contract Price stated in the Particulars of Agreement shall be disregarded when finally calculated.
除非分包合同另有規定，分包商計算協議特定事項所說明的分包合同價時所犯的任何算術錯誤，在最終重新計算時將不予理會。

[HA]: It is more common to place provision in connection with arithmetical errors under Conditions of Tender instead of Conditions of Contract.

[KCTang]: This can also deal with the case where no arithmetical check has been done before entering into the Sub-Contract.

6.3 Rates Only Contract 純單價承包合同

Where the Contract Type stated in the Particulars of Agreement is a "Rates Only Contract": The Sub-Contract Price shall finally be calculated by measuring the authorized work properly carried out and valuing the same at the Sub-Contract Rates, subject only to other adjustments permitted under or required by this Sub-Contract.

協議特定事項所說明的合同類別為“純單價承包合同”時：分包合同價最終須按妥善進行的認可工作重新計量及按分包合同單價計價來計算，並只能作分包合同允許或規定的其他調整。

[HA]: Revise “: The Sub-Contract Price” in line 1 → “the Sub-Contract Price”.

[HKFEMC]: “subject ~~only~~ to”.

[KCTang]: “only” is essential.

[HKPSWTA]: Same as Clause 6.2.1.

6.4 Adjustment for rises or falls in costs of labour and materials 因人工及物價升降的調整

Unless otherwise specified in this Sub-Contract, the Sub-Contract Price shall not be adjusted for rises or falls in the costs of labour and materials or exchange rates of currencies.

除非分包合同另有規定，分包合同價不會因工資及物價或貨幣匯率的升降而調整。

[HKCSA]: "Unless otherwise specified in this Sub-Contract, the Sub-Contract Price shall not be adjusted for rises or falls in the costs of labour and materials or exchange rates of currencies provided that the Client-Contractor is entitled to such adjustments under the Main Contract [need a definition], the Sub-Contractor shall also be entitled to the corresponding adjustments under this Sub-Contract."

[KCTang]: Changes not necessary. Details of the entitlement would need to be “specified in this Sub-Contract” if the case applies.

6.5 Firm quantities 確定數量

6.5.1 Quantities set out by the Client-Contractor in the Sub-Contract Price Build-up shall be taken as firm quantities unless otherwise described as provisional or for reference only.

上家承包商於分包合同價組成所列出的工程量須視為確定數量，除非另行說明是暫定或參考的。

[HA]: Add “in Lump Sum Contract” after “in the Sub-Contract Price Build-up” for clarity.

[KCTang]: Not really necessary.

- 6.5.2 For work represented by firm quantities, the quantities included in the Sub-Contract Price shall be the firm quantities, notwithstanding any discrepancies between such quantities and the Sub-Contract Drawings or the Sub-Contract Specification.

就確定數量所代表的工作而言，分包合同價所包括的工程量乃該確定數量，儘管該數量可能與分包合同圖紙或分包合同規範有差異。

[HA]: Replace the whole clause with "*Any discrepancies between the firm quantities included in the Pricing Schedule and the Sub-Contract Drawings or the Sub-Contract Specification shall not vitiate the Sub-Contract nor release the Sub-Contractor from the execution of the whole or any part of the Sub-Contract Works according to the Sub-Contract Drawings and the Sub-Contract Specification.*"

[KCTang]: This Clause only serves to define the coverage of the Sub-Contract Price. Discrepancy from the Sub-Contract Drawings or the Sub-Contract Specification is dealt with by Clause 6.5.4, which should be sufficient for the purpose.

[HKCSA]: Delete Clause 6.5.2.

- 6.5.3 Firm quantities are not subject to remeasurement when settling the Final Account, and are only varied by Variations.

結算時，確定數量不會重新計算，而只按工程變更而更改。

- 6.5.4 If a firm quantity and its description do not, in accordance with the specified method of measurement, match the Sub-Contract Drawings or the Sub-Contract Specification and the Client-Contractor confirms that correction of the same is necessary for the actual carrying out of the work, the correction shall be deemed to be a Variation.

如果某確定數量和它的說明，按規定的量度方法，並不吻合分包合同圖紙或分包合同規範，而上家承包商確認實際施工時必須予以修正，則該修正視為工程變更。

[HA]: "and" in line 1 → "and/or".

[HA]: Any quantity must be read with its description. Therefore, not "or".

[HA]: "and the Client-Contractor confirms that correction of the same is necessary for the actual carrying out of the work, the correction shall be deemed to be a Variation." → "*the Client-Contractor shall issue to the Sub-Contractor instruction clarifying such mismatch. If the quantity and/or description is to be corrected accordingly, it shall be deemed to be a Variation.*"

[KCTang]: The original draft appears to be simple and good enough.

[HKCSA]: "If a firm quantity and its description do not, in accordance with the specified method of measurement, match the Sub-Contract Drawings or the Sub-Contract Specification ~~and the Client-Contractor confirms that correction of the same is necessary for the actual carrying out of the work,~~ *it shall be corrected and* deemed to be a Variation."

[KCTang]: It is possible that the firm quantity and its description are more correct than the Sub-Contract Drawings or the Sub-Contract Specification such that no correction is required.

6.6 Reference quantities 參考數量

- 6.6.1 Quantities estimated by the Sub-Contractor in the Sub-Contract Price Build-up shall be taken as for reference only unless otherwise described as firm or provisional.
分包商於分包合同價組成所估計的工程量須視為參考數量，除非另行說明是確實或暫定的。

[HA]: "unless otherwise ~~described~~ **agreed by the Contract Parties** as firm or provisional"

[KCTang]: The agreement would need to be described.

- 6.6.2 Where quantities set out by the Client-Contractor in the Sub-Contract Price Build-up are described as for reference only, the Sub-Contractor shall be deemed to have verified the accuracy of the quantities and make necessary correction of the quantities when submitting the Tender.
當上家承包商於分包合同價組成所列出的數量說明是只作參考時，分包商視為在投標時已核實數量的準確性及對數量作出必要的修正。

- 6.6.3 The Sub-Contractor shall be deemed to have estimated all reference quantities based on the Sub-Contract Drawings and the Sub-Contract Specification when submitting the Tender.
分包商視為在投標時按分包合同圖紙及分包合同規範估計所有參考數量。

- 6.6.4 For work represented by reference quantities, the quantities as included in the Sub-Contract Price shall be those based on the Sub-Contract Drawings and the Sub-Contract Specification, notwithstanding any discrepancies between the reference quantities and the Sub-Contract Drawings or the Sub-Contract Specification and notwithstanding any deviations from the specified method of measurement.
就參考數量所代表的工作而言，分包合同價所包括的工程量乃按分包合同圖紙及分包合同規範的，儘管該參考數量可能與分包合同圖紙或分包合同規範有差異及儘管該參考數量不符合規定的量度方法。

6.7 Provisional quantities 暫定數量

- 6.7.1 Quantities described as "provisional" in the Sub-Contract Price Build-up shall be remeasured on completion of the relevant work based on the as-built records or, if mutually agreed, site measurement (excluding work done without authority) and shall be valued at the Sub-Contract Rates.

於分包合同價組成說明為“暫定”的數量，須於相關的工作完成後，按竣工紀錄或(如雙方同意)在現場重新量度(不包括未經授權而施工的工作)及須以分包合同單價計價。

[HA]: "'provisional" **as agreed by the Contract Parties** in the Sub-Contract Price Build-up"

[KCTang]: Not really necessary.

- 6.7.2 Provisional quantities shall be considered as estimates only, and the Client-Contractor shall not bear any responsibility for their accuracy. The Sub-Contract Rates shall not be adjusted because the final quantities differ from the provisional quantities.
暫定數量只會被視為估計量，而上家承包商不會就它們的準確性承擔任何責任。分包合同單價不能因為最終數量與暫定數量有差異而調整。

[HA]: "~~because~~ **by reason of any differences between** the final quantities ~~differ from~~ **and** the provisional quantities"

[KCTang]: The original draft appears to be simple and good enough.

[HKCSA]: "~~the final quantities differ from the provisional quantities~~ **to the extent that the final quantities do not differ from the provisional quantities by more than 30%. In the event and prior to commencement of the relevant work, it is anticipated that the quantities shall exceed the provisional quantities by more than 30%. the Client-Contractor and the Sub-Contractor shall agree on the price of the relevant work before the Sub-Contractor proceeds to carry out the same.**"

6.8 Lump sum priced items 一筆過價款項目

In the case of preliminaries items or measured items whose units are "Item" or "Sum" or "Lot" or the like, i.e. items where the prices against them are lump sum prices, if there is no change to the scope of work as given in the item description after execution, the whole lump sum price shall be included in the final price. If the work is not executed, the lump sum price shall not be included in the final price. Unless otherwise specified in this Sub-Contract, if there is a significant change to the scope of work as given in the item description, the lump sum price shall be adjusted in proportion to the change in scope.

屬於開辦經營項目的或單位為“項”或“一筆”或“一批”或類似的計量項目的，即項目的價款乃一筆過的，如果在執行後項目說明所說的工作範圍沒有改變，該一筆過價款須加入最後價款內。如果項目沒有執行，該一筆價款將不能加入最後價款內。除非分包合同另有規定，如果項目說明所說的工作範圍有大幅改變，該一筆價款須按範圍改變的比例而調整。

[HA]: "~~the whole lump sum price shall be included in the final price~~ **shall not be adjusted.**" to accord with Clause 6.17.1(d).

[KCTang]: The lump sum price should first be included in the final price pursuant to Clause 6.17.1(a) and (b) before making adjustment pursuant to Clause 6.17.1(d).

[HKCSA]: "adjusted in proportion to the change in scope **on a fair and reasonable basis.**"

[KCTang]: Agreed.

6.9 Method of measurement 工程量計算規則

[HKFEMC]: The clauses in this section cannot be fully understood. Further clarification is requested.

6.9.1 The quantities in the Sub-Contract Price Build-up shall be deemed to have been measured in accordance with the method of measurement referred to or stated in the Sub-Contract Documents. The same method of measurement shall be used in the settlement of the Final Account.
分包合同價組成內的數量視為已按分包合同文件所參照或說明的工程量計算規則計算。在結算時須沿用同樣的工程量計算規則。

6.9.2 In case of discrepancies between different methods stated in various parts of the Sub-Contract Documents, the order of precedence for interpretation shall be: the method described in the item descriptions, special method, and standard method.
如果分包合同文件內不同部分說明的不同工程量計算規則有差異，釋義的優先次序為：項目說明內的規則，特殊規則，及標準規則。

[HA]: "methods" in line 1 → "methods **of measurement**" for greater clarity and consistency in writing style with other parts of Clause 6.9.

[KCTang]: Agreed.

[HKCSA]: "special method, and ~~standard method~~ **the Standard Method of Measurement**."

[KCTang]: The original draft is more suitable.

6.9.3 If more (but not duplicating) items than those specifically required by the method of measurement have been measured for the same work, the same method as was adopted shall be used in the settlement of the Final Account.
如果對某工作已計算的項目較工程量計算規則所要求的為多(但不重複)，在結算時須沿用已採用的同樣規則。

[HKCA]: Delete Clause 6.9.3.

[HKCSA]: "If more (but not duplicating) items" needs clarification as to the meaning.

[KCTang]: More number of items.

6.9.4 If fewer items than those specifically required by the method of measurement have been measured for the work represented by firm or provisional quantities, the missing measurement shall be corrected and the correction shall be deemed to be a Variation.
如果對以確定或暫定數量代表的某工作已計算的項目較工程量計算規則所要求的為少，該遺漏須予以更正及該更正視為工程變更。

[HKCA]: "If **more or** fewer items"

[KCTang]: If more items have been measured, there would not be missing measurement to be corrected.

[HKCSA]: "If fewer items" needs clarification as to the meaning.

[KCTang]: Fewer number of items.

- 6.9.5 If fewer items than those specifically required by the method of measurement have been measured for the work represented by reference quantities, the cost of the items not measured shall be deemed to have been allowed for in the other Sub-Contract Rates, the missing measurement shall be deemed to be a modification of the method of measurement and such modified method of measurement shall be used in the settlement of the Final Account.
如果對以參考數量代表的某工作已計算的項目較工程量計算規則所要求的為少，沒有計算的項目的費用視為已包含在其他的分包合同單價內，該遺漏計算視為工程量計算規則的修訂，在結算時須沿用因此而修訂的工程量計算規則。

[HKPSWTA]: Clauses 6.9.3 to 6.9.5. Need further clarification in these clauses, or can this be redrafted in a simpler version.

[HKCA]: "If ~~more or~~ fewer items than those specifically required by the method of measurement have been measured for the work represented by reference quantities, the cost of the items ~~over measured or~~ not measured shall be deemed to have been allowed for in the other Sub-Contract Rates, ~~the missing measurement shall be deemed to be a modification of the method of measurement and such modified method of measurement shall be used in the settlement of the Final Account.~~"

[KCTang]: "more items" and "over measured" do not fit into the clause. Deleted words are essential.

[HKCSA]: "If fewer items" needs clarification as to the meaning.

[KCTang]: Fewer number of items.

- 6.9.6 If the Sub-Contract Documents are silent as to the method of measurement used, the method of measurement which is reasonably apparent from the Sub-Contract Documents shall be used in the settlement of the Final Account, subject to the conditions that:
如果分包合同文件沒有明確所採用的工程量計算規則，則在結算時須沿用分包合同文件內頗為明顯見到的規則，但須符合下列條件：

- (a) all quantities shall be measured the net quantities as fixed in position with no allowance for wastage and, for work measured superficially, for laps; and
所有數量須以固定在位的淨工程量來計算，不計算損耗及按面積計算的工作的搭接；及
- (b) ancillary items shown on the Sub-Contract Drawings or described in the Sub-Contract Specification but not measured separately in the Sub-Contract Price Build-up shall not be measured separately when valuing Variations, unless the proportion of the ancillary items to the principal items have been significantly varied by Variations.
分包合同圖紙有繪述或分包合同規範有說明，但沒有在分包合同價組成內分開計算的輔助項目，在計算工程變更時不能分開計算，除非工程變更令到輔助項目與主體項目的比例大幅改變了。

[HKCSA]: Delete Clause 6.9.6.

6.10 Provisional sums 暫定款

The Client-Contractor may issue instructions with regard to the expenditure of any sum described as "provisional sum" in the Sub-Contract Price Build-up. The relevant work shall be valued based on the Valuation Rules stated in Clause 6.13. In the settlement of the Final Account, the provisional sum shall be deducted from and the said value shall be added to the Sub-Contract Price.

上家承包商可以就分包合同價組成內說明為“暫定款”的款項的使用發出指示。有關工作須按第 6.13 條的計價規則進行估值。在結算時，分包合同價須扣除暫定款而加入該估值。

6.11 Prime cost rates 暫定物料單價

- 6.11.1 Where a prime cost rate ("PC Rate") is included in the description of an item in the Pricing Schedules or the Sub-Contract Price Build-up for materials delivered to site, the prime cost rate is a provisional allowance for the unit supply cost of the principal material of that item delivered to site only, and the Sub-Contract Rate for the item shall be deemed to have allowed in addition for all waste, all ancillary materials required for fixing, delivery to fixing locations, fixing, profits and overheads.

如果價目表或分包合同價組成內的某項目的說明包含有送抵工地的“暫定物料單價”，則該暫定物料單價乃該項目的主體物料送抵工地的暫時預估的供應單價而已，而該項目的分包合同單價視為已附加包括所有的損耗、安裝所需的所有輔助材料、送到安裝點、安裝、利潤及管理費。

[HKPSWTA]: "the unit supply cost of ~~the principal material of~~ that item delivered to site only, in addition for all ~~waste~~ **wastage**, all ancillary materials"

[HKPSWTA]: "waste" in fifth line should be "wastage"? The PC Rate for an item should be for the item in whole, suggest delete "the principal material of" to avoid misinterpretation.

[KCTang]: "waste" is OK.

[HKCSA]: "the unit supply cost ~~of the principal material of~~ that item delivered to site only"

[KCTang]: In an item containing a PC Rate, not all the materials for the item are the subject of the PC Rate. Usually the PC Rate refers to the principal material only, and not the ancillary materials. Which are principal material and which are ancillary materials would depend on the way the description is written. Perhaps, a bit of improvement would be to use "principal materials" in plural.

- 6.11.2 Where the prime cost rate is described as for supply and fix / install / apply, the provisional allowance is for the unit supply and fixing cost charged by a sub-sub-contractor for the item, and the Sub-Contract Rate for the item shall be deemed to have allowed in addition for the Sub-Contractor's other costs, profits and overheads.

如果暫定物料單價說明為給供應及固定/安裝/應用時，則該暫時預估乃該項目的再分包商的供應及安裝的單價，而該項目的分包合同單價視為已附加包括分包方的其他成本、利潤及管理費。

[HKPSWTA]: In the event that the supplier/sub-subcontractor of the P.C. rate items is specified, which is normally the case, the Sub-Contractor shall not be obliged to enter into a contract with the supplier/sub-subcontractor if he so objects and which the Client-Contractor considers reasonable. Such grounds may be due to unreasonable payment terms demanded by the supplier/sub-subcontractor, proven poor credit record or poor performance issues of the supplier/sub-subcontractor.

[HKPSWTA]: Add a clause

~~"The Sub-Contractor shall not be obliged to enter into a sub-contract with a nominated supplier or sub-sub-contractor against whom the Sub-Contractor may raise any objection which the Client-Contractor considers reasonable. Unless such objection shall be notified in writing to the Client-Contractor within 14 days of the Client-Contractor's instruction to enter into a sub-contract, the Sub-Contractor shall be obliged to enter into such sub-contract. If, pursuant to this clause, the Sub-Contractor does not enter into a sub-contract, the Client-Contractor shall either:~~

~~(a) Nominate an alternative supplier or sub-sub-contractor; or~~

~~(b) Enter into a direct contract with the supplier or sub-sub-contractor."~~

[KCTang]: Supplier or sub-sub-contractor pursuant to the expenditure of PC Rate is not supposed to be a nominated supplier or sub-sub-contractor. The Sub-Contractor should have a greater say over who is to be chosen and the payment terms. However, it may still be possible that a supplier / sub-sub-contractor is imposed upon the Sub-Contractor. A simpler clause could be:

~~"The Sub-Contractor shall not be obliged to enter into a contract with a supplier or sub-sub-contractor selected by the Client-Contractor for the purposes of supplying materials or carrying out work covered by a PC Rate if the supplier or sub-sub-contractor requires unreasonable payment terms, or has poor financial standing or poor track records."~~

- 6.11.3 In the settlement of the Final Account, the Sub-Contract Rate shall be adjusted by the net difference between the prime cost rate and the actual unit cost and shall be applied to the net quantity of the item measured as fixed, installed or applied in position, exclusive of wastage.
在結算時，分包合同單價須按暫定物料單價與實際的成本單價的淨差額來作出調整，並須套用於該項目以及固定、安裝或應用在位的淨工程量上，不包括損耗。

[HKCSA]: ~~"**Subject to Clause 6.11.4 below, in**~~ the settlement of the Final Account"

[KCTang]: Is this really necessary?

- 6.11.4 If, based on the final quantities, the value represented by all actual unit costs deviates from the value represented by all the prime cost rates beyond the extent pre-agreed by the Contract Parties, a reasonable adjustment shall be made for the corresponding increase or decrease in costs, profits and overheads so caused beyond the said extent.
如果按最終數量，所有的實際成本單價的價值偏離所有的暫定物料單價的價值，超出了雙方預先同意的程度，超出的程度所引致的成本、利潤及管理費的增加或減少須給予合理的調整。

[HKCA]: "beyond the extent ~~pre-agreed by the Contract Parties~~ **stated in the Particulars of Agreement**, a reasonable adjustment"

[KCTang]: Agreed.

[HKCSA]: "If, ~~based on the final quantities,~~ the value represented by ~~all the~~ actual unit costs deviates from the value represented by ~~all the~~ prime cost rates ~~beyond the extent pre-agreed by the Contract Parties~~ **substantially by 20% which renders the unit rate containing a PC rate unreasonable or inapplicable**, a reasonable adjustment shall be made for the ~~corresponding~~ increase or decrease in ~~fixing, installation costs, wastage~~ costs, profits and overheads so caused ~~beyond the said extent~~ **by such deviation.**"

[KCTang]: All the PC rates are to be reviewed in aggregate when this Clause is invoked.

6.12 Variations 工程變更

The Client-Contractor may issue instructions from time to time requiring a Variation. All instructed or deemed Variations shall be valued based on the Valuation Rules stated in Clause 6.13, and the Sub-Contract Price shall be adjusted accordingly. Valuation of work is not a condition precedent to its execution by the Sub-Contractor.

上家承包商可不時發出指示，要求進行工程變更。所有被指示的或視為的工程變更須按第 6.13 條的計價規則進行估值，而分包合同價須相應調整。工作的估價並非分包商執行工作的先決條件。

[HKPSWTA]: All instructed or deemed Variations, completed or in progress, shall be valued and agreed and certified for payment within a reasonable time frame, or shall be valued and certified for on-account payment to Sub-Contractor. (9.3 of PCICB guideline)

[KCTang]: Agreed, but payment is to be dealt with by Clause 6.16.

[HA]: Delete "instructed or deemed" in lines 1-2 which is considered superfluous since variations as defined under Clause 1.23 have already covered both instructed variations and deemed variations.

[KCTang]: Agreed, but since the first sentence refers to instructions, then the second sentence uses instructed or deemed Variations to avoid possible limitation by context to instructed Variations only.

[HKFEMC]: "issue instructions ~~from time to time~~ **during Sub-Contract period** requiring a Variation" for better clarity.

[KCTang]: See Clause 5.4.1 for instruction until completion of defects rectification.

[HKGSA]: "condition precedent to its execution by the Sub-Contractor ***but shall in any event be valued not later than 14 days after the said instructions requiring a Variation or deemed Variation.***"

[KCTang]: Not very practicable.

6.13 Valuation Rules 計價規則

The "Valuation Rules" are:
"計價規則"乃如下：

- (a) The Sub-Contract Rates shall be used for valuing work added to or omitted from the Sub-Contract and of the same or similar character to and carried out under the same or similar conditions to the work to which the Sub-Contract Rates apply.
分包合同單價須用於與它們所適用工作的性質相同或相似及在相同或相似條件下進行的加入或減出分包合同的工作之計價。

- (b) If the work is not of the same or similar character to or not carried out under the same or similar conditions to the work to which the Sub-Contract Rates apply, the Sub-Contract Rates for comparable work shall be used as the base with adjustment for the net difference in costs due to the difference in character or conditions plus the same percentage for profits and overheads as used in the relevant Sub-Contract Rates.
如果工作與分包合同單價適用的工作的性質不相同或不相似或不在相同或相似條件下進行，須以可相比的工作的分包合同單價為基礎，按性質或條件的相差構成的成本差異調整，另加上相關分包合同單價所採用的利潤及管理費的百分率。

[HA]: It is stated that where Sub-Contract Rates of comparable work are applied in the valuation of variations, adjustment shall be made on the net difference in costs. This undesirably limits alternative valuation approaches such as adjustment by interpolation of Sub-Contract Rates.

[KCTang]: The base can be formed from more than one unit rate for interpolation.

[HA]: As to another requirement of applying the same percentage for profits and overheads used in the relevant Sub-Contract Rates, it is questionable as to how to find out, or direct the Sub-Contractor to disclose, the percentages for profits and overheads since such information is not noted to be required for submission by the Sub-Contractor in tender stage.

[KCTang]: This situation is routinely encountered and dealt with. Pro-rata is one of the solutions.

- (c) If the work is an omission which substantially varies the character of or the conditions under which any remaining items of work are carried out, then such remaining items of work shall be valued in accordance with paragraph (b) above.
如果工作是減出而大幅度地改變了餘下的工作的性質或進行的條件，則餘下的工作須按(b)段計價。

[HKCA]: "any remaining items of work are carried out, **such that the corresponding Sub-Contract Rates are no longer reasonable**, then such remaining items"

[KCTang]: Agreed.

- (d) If there are no Sub-Contract Rates which can reasonably form a basis for valuing the work, fair rates shall be used. Fair rates shall be derived from market rates, including rates used on other comparable projects, fairly adjusted to take into consideration the nature and conditions under which the work is carried out under this Sub-Contract or, in the absence of market rates, based on actual costs plus the percentage for profits and overheads as stated in the Particulars of Agreement.
如果沒有可作為合理基礎去計價的分包合同單價，則須採用合理單價。合理單價乃參照市場價，包括其他可相比的工程的單價，考慮了工作在分包合同下進行的特性和條件而合理地調整。如果沒有市場價，則按實際成本加上協議特定事項所說明的利潤及管理費的百分率。

- (e) If it is foreseen that the work to be carried out cannot be properly measured and valued to reflect the costs, the Contract Parties may pre-agree that the work shall be valued on a daywork basis. The time of labour and construction plant engaged or properly left idling and the quantities of materials used or properly wasted shall be recorded by the Sub-Contractor and endorsed by the Clerk of Works or an authorized representative of the Client-Contractor. The materials, labour and construction plant involved shall be valued at daywork rates stated in this Sub-Contract or, in the absence of such rates, based on actual costs plus the percentage for profits and overheads as stated in the Particulars of Agreement.

如果預見將會進行的工作不可能正常的計量及計價去反映成本，合同雙方可預先同意工作按點工計價。工人及施工機械的使用時間或正常的等待時間及物料的使用量或正常的損耗量須由分包商記錄並由工程監督或上家承包商的授權代表加簽。所涉及的物料、工人及施工機械須按分包合同說明的點工單價計算，如沒有時，則按實際成本加上協議特定事項所說明的利潤及管理費的百分率。

[HA]: Delete "to reflect the costs" in lines 1-2.

[KCTang]: This should be the underlying reason.

[HKCA]: "in the absence of such rates, based on ~~market rates, or in the absence of market rates, based on~~ actual costs"

[HKCSA]: "valued on a daywork basis ~~at the rates set out in the Particulars of Agreement.~~ The time".

- (f) If the work is instructed to be carried out after Substantial Completion of the relevant Sub-Contract Works Section through no fault of the Sub-Contractor, fair rates shall be used, with appropriate allowance for extra preliminaries not recovered elsewhere.

如果不是因為分包方的過失而在有關的分包工程分部充分竣工後才進行的工作，則須採用合理單價，並給予不能在他處彌補的增加的開辦經營費合理的補貼。

[HKCA]: "with appropriate ~~allowance~~ ~~reimbursement~~ for extra preliminaries not recovered elsewhere"

[KCTang]: Any significant difference?

[HKCSA]: "with appropriate allowance for extra ~~cost to be incurred by the Sub-Contractor such as~~ preliminaries not recovered elsewhere."

[KCTang]: Fair rates plus preliminaries should be wide enough.

6.14 Invoices, receipts, etc. 發票、收據等

When the Sub-Contract Rates are not applicable and when called upon to do so by the Client-Contractor, the Sub-Contractor shall submit the originals and a photocopy of all invoices, vouchers and receipts for substantiation of actual costs incurred. The originals shall be returned to the Sub-Contractor after verifying the photocopies.

當分包合同單價不適用及上家承包商要求時，分包商須提交證明實際成本的發票、憑證、收據的正本及一份副本。正本須在驗證副本後交回分包商。

[HKPSWTA]: According to Clause 6.13, this requirement should only apply to VO items where fair rates (star rates) have to apply.

[HKPSWTA]: "When the Sub-Contract Rates are not applicable and ***Fair Rates have to be applied***, when called upon to do so by the Client-Contractor"

[HKCSA]: When the ~~Sub-Contract~~ ***star/fair*** Rates are not applicable"

[KCTang]: This Clause is also useful when pro-rata rates are to be worked out.

[HA]: "when called upon to do so" in line 1 → "***when requested***".

[KCTang]: Agreed.

6.15 Payment timeline 付款時間表

6.15.1 On or before each Payment Application Due Date stated in the Particulars of Agreement until the release of final payment, the Sub-Contractor shall submit to the Client-Contractor applications for payment with supporting computation and documents.

在協議特定事項所說明的每個請款到期日或之前，直至最終付款為止，分包商須向上家承包商提交付款申請及依據的計算及文件。

[HKPSWTA]: "On or before each Payment Application Due Date stated in the Particulars of Agreement until ~~the release of final payment~~ ***Substantial Completion of the Sub-Contract***, the Sub-Contractor shall submit to the Client-Contractor applications for payment with supporting computation and documents. ***Thereafter, the Sub-Contractor can submit applications for payment at his discretion but in any event as according to the Payment Application Due Date.***"

[HKPSWTA]: Monthly application until final payment (which could be a long time after completion) in most cases should not be necessary. Suggest only until Substantial Completion, and at the discretion of the Sub-Contractor afterwards.

[KCTang]: The original draft is simple yet flexible enough. The Sub-Contractor is entirely free to skip Payment Application if he does not want payment. There is no penalty. The words "the Sub-Contractor shall submit" are essential only to invoke the following clauses.

- 6.15.2 On or before the next Payment Advice Due Date stated in the Particulars of Agreement, the Client-Contractor may check and amend the payment application, may make appropriate deductions for work or materials not in accordance with this Sub-Contract, and shall issue a Payment Advice to the Sub-Contractor to notify him the net amount payable and the details of its computation.

在協議特定事項所說明的下一個批款到期日或之前，上家承包商可檢查或修改付款申請、可就不符合分包合同的工作或物料作出適當扣減，及須向分包商發出批款通知書，說明應予支付的淨額和它的計算詳情。

[HA]: "next" in line 1 → "**corresponding**".

[KCTang]: The next one is the corresponding one.

[HKCSA]: "not in accordance with this Sub-Contract **subject to the Client-Contractor complying with Clause 6.16.5 below**, and shall issue"

- 6.15.3 On or before the next Payment Invoice Date stated in the Particulars of Agreement, the Contract Parties shall discuss and agree any adjustments to the Payment Advice as may reasonably be requested by the Sub-Contractor, and the Sub-Contractor shall submit an invoice to the Client-Contractor for the net amount payable as stated in the Payment Advice subject to any agreed adjustments.

在協議特定事項所說明的下一個入發票到期日或之前，合同雙方須商議及同意分包商合理提出的對批款通知書的調整，而分包方須按批款通知書說明應予支付的淨額及同意的調整，向上家承包商提交發票。

[HKPSWTA]: "next Payment Invoice **Due** Date" to be consistent with Particulars of Agreement.

[KCTang]: Agreed.

[HA]: "next" in line 1 → "**corresponding**".

[KCTang]: The next one is the corresponding one.

- 6.15.4 On or before the next Payment Date stated in the Particulars of Agreement, the Client-Contractor shall pay to the Sub-Contractor the amount payable as stated in the Payment Advice subject to any agreed adjustments.

在協議特定事項所說明的下一個付款到期日或之前，上家承包商須向分包商支付批款通知書說明應予支付的淨額及同意的調整。

[HKPSWTA]: "next Payment Invoice **Due** Date" to be consistent with Particulars of Agreement.

[KCTang]: Agreed.

[HA]: "next" in line 1 → "**corresponding**".

[KCTang]: The next one is the corresponding one.

[HKCSA]: Add

~~"6.15.5 If the Client-Contractor does not pay the amount payable as stated in Clause 6.15.4 on or before the next Payment Due Date, the Sub-Contractor shall, and without prejudice to his other rights and remedies, be entitled to, in addition to the amount payable, interest at 1% below the judgment debt rate prescribed from time to time by the Rules of the High Court from the Next Payment Due Date until full payment of the amount payable.~~

~~"6.15.6 (1) In addition to being entitled to interest for late payment by the Client-Contractor under Clause 6.15.4, the Sub-Contractor, and without prejudice to his other rights and remedies, may suspend the carrying out of the Sub-Contract Works, if:~~

~~(a) the Client-Contractor does not pay the Sub-Contractor the amount payable after the latest date by which the amount is required to be paid to the Sub-Contractor as specified in Clause 6.15.4;~~

~~(b) the Sub-Contractor gives written notice to the Client-Contractor of the Client-Contractor's failure to pay the amount to the Sub-Contractor stating his intention to suspend the carrying out of the Sub-Contract Works pending payment of the amount payable; and~~

~~(c) the Client-Contractor fails to pay the amount to the Sub-Contractor within 14 days of the receipt of the Sub-Contractor's notice.~~

~~(2) The Sub-Contractor shall re-commence the carrying out of the Sub-Contract Works as soon as practicable but in any case within 14 days of the receipt of the amount from the Client-Contractor."~~

[KCTang]: Agreed in principle.

6.16 Payment valuation 付款估值

[HKPSWTA]: Completed or partially completed VO shall be valued and certified for payment as soon as practicable and on account payment for VO shall be allowed. (9.3 of PCICB guideline)

[KCTang]: Already covered.

[HKPSWTA]: The Sub-Contractor shall be entitled to interest on overdue payment. (15.g of PCICB guideline)

[HKPSWTA]: Retention should be limited to a maximum of 10% of each payment; and total retention should be capped at maximum of 5% of original Sub-Contract Sum. Retention cap should apply only to the Sub-Contract sum and do not apply to V.O.

[KCTang]: User to specify in the Particulars of Agreement.

[HKPSWTA]: The interim shall include a value of Preliminary items, if any, for which a separate sum is provided or priced in the BQ or SoR.

[KCTang]: Already covered.

[HKPSWTA]: Off site MOS is not uncommon and there should be provision to cover this aspect.

[HKPSWTA]: There should be provision of Right to Suspension of work due to non-payment by Client-Contractor (15.h of PCICB guideline).

- 6.16.1 The net amount payable to the Sub-Contractor under each payment shall be computed by calculating the gross valuation at paragraph (a) below and then making the deductions or additions at paragraphs (b) to (g) below:
每份付款應予支付的淨額，須通過先計出下列(a)段的累計估值，然後按下列(b)至(g)段作出扣減或添加而計算：

[HKPSWTA]: "paragraphs (b) to ~~(g)~~ (d)"

[KCTang]: Agreed.

[HA]: The word "gross" in line 2 and the corresponding Chinese translation "累計" do not mutually match.

- (a) the gross valuation of the Sub-Contract Works, being the estimated total value of materials delivered to site and work partly or fully completed up to the relevant Payment Application Due Date, excluding those materials supplied by the Client-Contractor and those materials or work which are not in accordance with this Sub-Contract, but taking into account the effect of the items stated in Clause 6.17.1;
分包工程的累計估值，即截至有關的請款到期日為止，送抵工地的物料和部分或全部完成的工作的總估值，不包括上家承包商供應的物料及不符合分包合同的物料或工作，但要考慮第 6.17.1 條所列項目的影響；

[HKPSWTA]: The interim shall include a value of Preliminary items, if any, for which a separate sum is provided or priced in the BQ or SoR.

[HKPSWTA]: Off-site MOS is not uncommon and there should be provision to cover interim payment in this aspect, subject to agreement between the parties.

[HKPSWTA]: Add

~~*"The value of any additional work or obligation instructed as a Variation to the extent that this additional work or obligation has been completed or fulfilled in whole or in part;*~~

~~*The proportion of the value of a preliminary item properly provided or carried out by the Sub-Contractor where its value is included as a separate sum in the Sub-Contract;*~~

~~*The value of materials to be incorporated into the permanent works before they are delivered to the Site and to be included as an interim payment in accordance with Clause 6.16.2.1."*~~

[HKGSA]: Add

~~*"adjustments for Variations in accordance with Clause 6.12;"*~~

[HA]: The word "gross" and the corresponding Chinese translation "累計" do not mutually match.

[HKCA]: "value of materials not pre-maturely delivered to site"

[KCTang]: "taking into account the effect of the items stated in Clause 6.17.1" in the original draft is wide enough to cover payment for Variations. Preliminary items are also a kind of work, and are therefore eligible for payment. To accommodate payment for off-site materials:

"total value of (1) materials not pre-maturely delivered to site, (2) off-site materials which are specified by this Sub-Contract or agreed by the Client-Contractor to be paid for, which are properly stored, protected and insured against loss or damage, and properly labelled as for the Sub-Contract Works, and (3) work partly or fully completed"

- (b) deduction for retention fund as Clause 6.16.2;
扣減第 6.16.2 條所說的保修金；
- (c) deduction for any other sums including damages for delayed completion due from the Sub-Contractor to the Client-Contractor under this Sub-Contract or otherwise; and
扣減任何分包商按分包合同或其他依據應予支付給上家承包商的其他款項，包括延誤竣工的賠償；及

[HKCSA]: "subject to the Client-Contractor complying with Clause 6.16.5 below, deduction for any other sums"

- (d) deduction for the total amount previously paid to the Sub-Contractor under this Sub-Contract.
扣減之前按分包合同已支付給分包商的總額。

6.16.2 The retention fund mentioned in Clause 6.16.1(b) above shall be dealt with in the following manner:

上述第 6.16.1(b)條所指的保修金須按下列方式處理：

- (a) The retention fund shall be calculated by applying the Retention Percentage stated in the Particulars of Agreement on the gross valuation mentioned in Clause 6.16.1(a), subject to a maximum equal to the Maximum Retention stated in the Particulars of Agreement.
保修金須按第 6.16.1(a)條所指的分包工程累計估值乘以協議特定事項所說明的保修金百分率計算，以協議特定事項所說明的保修金上限為上限。

[HKPSWTA]: Add

"Retention Percentage shall be limited to a maximum of 10% and Maximum Retention shall be limited to a maximum of 5% of the Sub-Contract Sum only, and shall not apply to Variations."

[KCTang]: User to specify in the Particulars of Agreement.

[HA]: The word "gross" and the corresponding Chinese translation "累計" do not mutually match.

[HKCSA]: "the gross valuation mentioned in Clause 6.16.1(a) excluding value of variation work, subject to a maximum"

[KCTang]: Variations should not be excluded. Even if the suggestion is adopted, it can be complicated to really separate Variations from original works when the gross valuation has not exceeded the original Sub-Contract Price yet.

- (b) Upon the Substantial Completion of a Sub-Contract Works Section and the submission of any warranties and guarantees required under this Sub-Contract for that Sub-Contract Works Section, one half of the retention fund held in respect of the Sub-Contract Works Section shall be released to the Sub-Contractor without interest in the next regular payment.

某分包工程分部已充份竣工，而按分包合同規定就該分包工程分部應予提交的保證和擔保已提交後，須在下次定期付款向分包商發方該分包工程分部相應的保修金的一半，不附帶利息。

[HA]: The phrase "next regular payment" fails to cater for the periods after Substantial Completion or the expiry of the Defects Liability Period during which payments would usually not be on a regular basis. Suggest revising to "next ~~regular~~ payment".

[KCTang]: The regular payment timeline only ends with the last payment, but it is up to the Sub-Contractor to skip payment application, which is essential to the subsequent processes.

[HKCSA]: "~~a the Sub-Contract Works Section~~ and the submission of any warranties and guarantees required under this Sub-Contract for ~~that the Sub-Contract Works Section~~, one half of the retention fund held in respect of the Sub-Contract Works ~~Section~~ shall be released to the Sub-Contractor without interest in the next ~~regular~~ payment."

- (c) After **14 days** after the expiry of the Defects Liability Period of a Sub-Contract Works Section, the balance of the retention fund held in respect of the Sub-Contract Works Section shall be released to the Sub-Contractor in the next regular payment. A sum may be retained for the estimated cost of rectification of defects listed by the Client-Contractor but not yet rectified, and the sum shall be released progressively based on the progress of the rectification of defects.

某分包工程分部的保修期屆滿 **14** 天後，須在下次定期付款向分包商發放該分包工程分部相應的餘下保修金，不附帶利息。可按上家承包方列出但未修補的缺陷的估計修補費扣起一筆款項，按修補的進度而發放。

[HA]: The phrase "next regular payment" fails to cater for the periods after Substantial Completion or the expiry of the Defects Liability Period during which payments would usually not be on a regular basis. Suggest revising to "next payment".

[KCTang]: See (b).

[HKCA]: "After ~~14 30 days~~ after the expiry of the Defects Liability Period of a Sub-Contract Works Section ~~receipt of the Defects Rectification Certificate under the Main Contract~~, the balance of the retention fund held in respect of the Sub-Contract Works shall be released to the Sub-Contractor in the next regular payment. ~~The Contract Parties may agree to release the balance of the retention fund held in respect of the Sub-Contract Works Section after 14 days after the expiry of the Defects Liability Period of a Sub-Contract Works Section provided that a~~ sum may be retained for/ the estimated cost of rectification of defects listed by the Client-Contractor but not yet rectified, and the sum shall be released progressively based on the progress of the rectification of defects."

[KCTang]: The expiry of the Defects Liability Period of a Sub-Contract Works Section can be independent of the Defects Rectification Certificate under the Main Contract, but the Particulars of Agreement is flexible enough for the user to specify such linkage if so desired. Would a two-stage release after 14 days and 30 days make a big difference?

[HKCSA]: "After ~~After~~ **Within 14 days** after the expiry of the Defects Liability Period of ~~a the~~ Sub-Contract Works ~~Section~~, the balance of the retention fund held in respect of the Sub-Contract Works ~~Section~~ shall be released to the Sub-Contractor in the next ~~regular~~ payment. A sum"

- (d) Provided always that the Client-Contractor may have recourse to the retention fund otherwise due to the Sub-Contractor to recover sums due to the Client-Contractor from the Sub-Contractor.

任何情況下，上家承包商可從本應發放給分包商的保修金取回分包商欠上家承包商的款項。

[HKPSWTA]: Retention should be limited to a maximum of 10% of each payment; and total retention should be capped at maximum of 5% or less of original contract sum.

[HKPSWTA]: Retention cap should apply only to the contract sum and do not apply to V.O.

[KCTang]: User to specify in the Particulars of Agreement.

[HKCSA]: Add

~~“(e) the Client-Contractor’s interest in the retention fund shall be fiduciary as trustee for the Sub-Contractor (but without obligation to invest), and the Client-Contractor’s beneficial interest therein shall be subject only to the right of the Client-Contractor to have recourse thereto from time to time for payment of any amount which he is entitled under this Sub-Contract to deduct from any sum due or to become due to the Sub-Contractor.”~~

[KCTang]: Agreed.

[HKPSWTA]: Add

"6.16.2.1 Off Site Materials

The Client-Contractor may, at his discretion or as agreed with the Sub-Contractor or where expressly provided in this Sub-Contract, include the value of Materials intended for inclusion in the Works in an Interim Certificate before the Materials are delivered to the Site."

- 6.16.3 The inclusion of materials or work in any payment valuation shall not be regarded as evidence that the materials and work are in accordance with the requirements of this Sub-Contract.
在付款估值計入了物料或工作，不能作為有關的物料及工作已符合分包合同規定的證據。
- 6.16.4 A payment valuation shall be an estimate only, based every time on the latest information available at the time of the valuation with corrections permissible for errors made in previous payment valuations.
付款估值只是約數，每次按估值時所取得的最新資料計算，可以修改以往付款估值的錯誤。

[HKPSWTA]: Add

"6.16.5 In the event of failure by the Client-Contractor to pay the Sub-Contractor in compliance with the provisions of Clause 6.16.2, the Client-Contractor shall pay to the Sub-Contractor interest at one percent below the judgment debt rate prescribed from time to time by the Rules of the High Court (Chapter 4 of the Laws of Hong Kong) upon any overdue payment from but not including the date on which the same should have been made,

"6.16.6 "Right of Sub Contractor to Suspension of Work due to non-payment by the Client Contractor.""

[HKCSA]: Add

"6.16.5 As a condition precedent for the Client-Contractor exercising its right to make any deduction against payment due to the Sub-Contractor under Clause 6.15.2 or 6.16.1(c) above, the Client-Contractor shall issue to the Sub-Contractor a notice of intention to deduct which shall state that:

- (1) it is a notice issued under this clause;**
(2) the factual and contractual basis for the intended deduction; and
(3) the amount for the intended deduction with detailed breakdown."

[KCTang]: Distinction should be made between downward adjustments of over-applied amounts and contra-charges.

6.17 Settlement of Final Account 結算

6.17.1 The "Final Account" is a statement of the computation of the final Sub-Contract Price payable to the Sub-Contractor taking into account the following:

"結算"乃應付給分包商的分包結算價的計算匯總，其中須考慮了下列各項：

- (a) using the Sub-Contract Price stated in the Particulars of Agreement in the case of a Lump Sum Contract or Remeasurement Contract as the base figure for further adjustments as described in paragraphs (c) to (n) below;
如果是總價承包合同或重新計量合同時，採用協議特定事項所說明的分包合同價為基數，再做以下(c)到(n)段所說的調整；
- (b) measurement and valuation of final quantities as Clause 6.3 in the case of a Rate Only Contract to obtain the base figure for further adjustments as described in paragraphs (c) to (n) below;
如果是純單價合同時，按第 6.3 條所說為最終數量計量及計價，取得基數，再做以下(c)到(n)段所說的調整；
- (c) adjustment of provisional quantities as Clause 6.7 in the case of a Lump Sum Contract or Remeasurement Contract;
如果是總價承包合同或重新計量合同時，按第 6.7 條的暫定數量調整；
- (d) adjustment of lump sum priced items as Clause 6.8;
按第 6.8 條的一筆過價款項目調整；
- (e) adjustment of provisional sums as Clause 6.10;
按第 6.10 條的暫定款調整；
- (f) adjustment of prime cost rates as Clause 6.11;
按第 6.11 條的暫定物料單價調整；
- (g) adjustment for Variations as Clause 6.12;
按第 6.12 條的工程變更引致的調整；
- (h) addition for the value of any direct loss and/or expense as Clause 4.8;
按第 4.8 條的直接損失及/或費用的金額之加入；
- (i) deduction for failure to rectify defects as Clauses 7.7.3 and 7.7.4;
按第 7.7.3 及第 7.7.4 條的因未能修補缺陷之扣減；
- (j) adjustment due to either Contract Party's failure to pay statutory fees, charges or taxes as Clause 9.1.2;
按第 9.1.2 條的因合同一方未能支付法定費用、收費或稅款之調整；
- (k) addition due to the Client-Contractor's failure to insure as Clause 10.3.2;
按第 10.3.2 條的因上家承包商未有投保之增加；

- (l) adjustment for rises or falls in costs of labour and materials if so stated in this Sub-Contract;
人工及物價升降引致的調整，如果分包合同有此規定；

[HKCSA]: "~~adjustment for rises or falls in costs of labour and materials if so stated in this Sub-Contract~~ **in accordance with Clause 6.4.**"

- (m) deduction for damages for delayed completion as Clause 4.9; and
按第 4.9 條的延誤竣工的賠償之扣減；及
- (n) other additions to or deductions from the Sub-Contract Price required by this Sub-Contract.
分包合同規定的對分包合同價的其他增加或扣減。

[HKCSA]: "as Clause" → "in accordance with Clause" in (d), (e), (f), (g), (h), (i), (j), (k) and (m).

- 6.17.2 Within **3 months** after the completion of the whole of the Sub-Contract Works, the Sub-Contractor shall submit his proposed Final Account calculated in accordance with this Sub-Contract with all factual evidence and relevant calculation details to the Client-Contractor for checking. The Client-Contractor shall send his draft Final Account to the Sub-Contractor for agreement as soon as practicable.

在整個分包工程竣工後 **3** 個月內，分包商須把他按分包合同計算的建議的結算，連同所有事實證據及相關的計算細節，提交給上家承包商核對。上家承包商須盡可能快地把他的草擬結算向分包商發出以取得同意。

- 6.17.3 In the absence of a submission by the Sub-Contractor, the Client-Contractor may compute the Final Account based on the information available to him and send it to the Sub-Contractor for agreement.

在分包商沒有提交的情況下，上家承包商可基於他可得到的資料計算結算，並向分包商發出以取得同意。

- 6.17.4 The Sub-Contractor and the Client-Contractor shall discuss and agree the details of the Final Account from time to time and shall agree the whole Final Account as soon as possible not later than **1 month** after the expiry of the Defects Liability Period.

分包商及上家承包商須不時就結算細節進行討論及達成協議，並須不遲於發出保修期屆滿後 **1** 個月，盡快同意整份結算。

[HKPSWTA]: DLP in some contracts could be set at unreasonably long period of 16 or 24 months, be it justified or not. To avoid delay in settling Final Account, both parties should agree the FA as soon as possible not later than 12 months after Substantial Completion.

[HA]: "agree the whole Final Account" in line 2 → "**settle the Final Account**".

[HKCA]: "agree the whole Final Account as soon as possible ~~not later than 1 month after the expiry of the Defects Liability Period.~~", alternatively 3 months instead of 1 month.

[HKCSA]: "as soon as possible **and shall** not later than **1 month** after the expiry of the Defects Liability Period."

- 6.17.5 If the Client-Contractor considers that he has taken into account all the representation of the Sub-Contractor but still fails to obtain the Sub-Contractor's agreement, he may issue a unilateral Final Account to the Sub-Contractor and declare it as such.

如果上家承包商認為他已考慮了分包商的所有申述，惟仍未能取得分包商之同意，他可向分包商發出單方結算並作此聲明。

[HKCSA]: "declare it in writing when issuing it as such."

[KCTang]: If desired, "declare it as such in writing."

- 6.17.6 If within **3 months** after receipt of the unilateral Final Account, the Sub-Contractor makes no objection to the unilateral Final Account or does not invoke the dispute resolution procedures, the unilateral Final Account shall be deemed to have been agreed by the Sub-Contractor. The receipt shall be evidenced by registered post or recorded delivery to the Sub-Contractor's registered address. If the Sub-Contractor raises objection within the said **3-month** period, the unilateral Final Account shall become void. Any further unilateral Final Account shall still be governed by this clause.

如果分包商在收到單方結算後 **3** 個月內，沒有提出反對意見或沒有啟動解決爭議的程序，單方結算視為已獲分包商同意。收件須以掛號郵件或有記錄的傳遞送到分包方的登記地址為證。如果分包商在該 **3** 個月內提出反對意見，單方結算須失效。再出的單方結算仍受本條管轄。

[HA]: Relocate the delivery methods mentioned in Clause 6.17.6 to Clause 6.17.5 to better present the link between the action and the way the action is to be executed.

[HKCA]: "the Sub-Contractor makes no written objection to the unilateral Final Account ~~or does not invoke the dispute resolution procedures~~, the unilateral Final Account shall be deemed to have been agreed by the Sub-Contractor. The receipt and the written objection shall be evidenced by registered post or recorded delivery to the ~~Sub-Contractor's~~ Contract Parties' registered address. If the Sub-Contractor raises written objection"

[KCTang]: Agreed.

- 6.17.7 The agreed or deemed agreed Final Account shall be deemed to have taken into account all factors affecting the computation of the Final Account and known at the time of agreement, but shall not prejudice the Sub-Contractor's liability for rectifying defects not considered in Clause 6.17.1(i) and the Sub-Contractor's responsibility to complete work valued in the Final Account but not yet done at the time of Final Account, and shall not release the liabilities of the Contract Parties in respect of matters affected by any bribery offence, fraud, dishonesty or fraudulent concealment.

經同意的結算視為已把影響結算的計算及達成協議時已知的所有因素納入考慮範圍，惟不會影響分包商對第 6.17.1(i) 條未有考慮的缺陷修補的責任及分包商要完成結算已包括但於當時仍未完成的工作之義務，及不免除合同雙方就任何賄賂行為、欺詐、不誠實或欺詐性隱瞞的事宜的責任。

- 6.17.8 The cost incurred by the Sub-Contractor in preparing the Final Account shall be deemed to have been included in the Sub-Contract Price.

分包商製作結算所引致的費用視為已計入分包合同價內。

6.18 Final payment 最終付款

Within **14 days** after the completion of all defects rectification or **14 days** after the agreement or deemed agreement of the Final Account, whichever is the later, the balance of the final Sub-Contract Price after deducting the amount previously paid to the Sub-Contractor shall be paid to the Sub-Contractor or, in the case of a negative balance, refunded to the Client-Contractor, subject only to appropriate adjustments for all further factors affecting the computation of the Final Account and arising or known after the agreement of the Final Account.

在所有的缺陷修補完成後 **14** 天內，或在所有的結算已同意或視為同意後 **14** 天內，以較後時間為準，分包結算價扣減了之前已支付給分包商的總額之餘額，須支付給分包商，或如果是負數時，則須退回給分包商，但可就所有影響到結算的計算的、在同意結算後才出現或知道的進一步因素作適當的調整。

[HKPSWTA]: "~~Within 14 days after the completion of all defects rectification~~ **expiry of Defects Liability Period**"

[HKPSWTA]: Line 1, we consider "expiry of DLP" is more appropriate than "completion of all defects rectification".

[HKCA]: "Within ~~14 30 days~~ after the completion of all defects rectification or ~~14 30 days~~ after the agreement or deemed agreement"

[HKCSA]: "~~the completion of all defects rectification~~ **set out in the defects list issued by the Client-Contractor** or **14 days** after"

[KCTang]: "defects list" is not yet a defined term.

7. QUALITY 質量

7.1 Quality liability 質量責任

[HKCSA]: Delete Clause 7.1.

The Sub-Contractor shall be fully liable for the site operations, construction methods and the stability, safety and quality of all work, whether completed or not, except for loss or damage arising from the Excepted Risks.

分包商須對工地運作、施工方法及所有工作(不論完成與否)的穩定性、安全性及質量負全責，但免責風險導致的損失或破壞則除外。

[HKPSWTA] / [HA]: "~~all work~~ **the Sub-Contract Works**".

[KCTang]: "all **of his** work"

7.2 Materials, workmanship and methods to comply with this Sub-Contract 物料、工藝及方法須符合分包合同

7.2.1 The Sub-Contract Works shall be carried out, tested and inspected using the materials, workmanship and methods shown on the Drawings or described in the Specification or the Pricing Schedules, in conformity with the whole of this Sub-Contract.
分包工程須符合整個分包合同，使用圖紙所繪述或規範或價目表所說明的物料、工藝及方法進行、測試或檢查。

[HKCSA]: Delete Clause 7.2.1.

7.2.2 If any of the specified materials (other than those custom made for this Sub-Contract) is no longer available from the market due to cessation of production, then the Sub-Contractor shall propose alternatives of equivalent standard for the approval by the Client-Contractor. This shall be deemed to be a Variation only if the cessation of production occurs after the award of this Sub-Contract. No adjustment to any Date for Completion shall be made.

如果任何規定的物料(特別為分包工程定做的除外)因停止生產而不能在市場採購得到，分包商須提交達到同樣標準的另選建議，給上家承包商批准。停止生產是在分包定標後才發生的，這才視為工程變更。任何的應竣工日不變。

[HA]: What is the purpose of adding the phrase "(other than those custom made for this Sub-Contract)"?

[KCTang]: "materials" means materials, goods, equipment or machinery, some of which could be custom made.

[HKCA]: "This shall ~~not be deemed to be~~ a Variation ~~only even~~ if the cessation of production occurs after the award of this Sub-Contract unless the no-longer-available specified materials are forming substantial part of the Sub-Contract then in such case the Contract Parties may agree to terminate the Sub-Contract. No adjustment to any Date for Completion shall be made."

[HKCSA]:

~~"7.2.2 7.1~~ If any of the specified materials (other than those custom made for this Sub-Contract) is no longer available from the market due to cessation of production, then the Sub-Contractor shall propose alternatives of equivalent standard for the approval by the Client-Contractor. This shall be deemed to be a Variation ~~only if the cessation of production occurs after the award of this Sub-Contract.~~ No adjustment to any Date for Completion shall be made.

~~"7.2~~ Where the terms of the supplier of the specified materials are not in accordance with the terms acceptable in the market, the Main Contractor shall provide the specified materials."

[KCTang]: Suggested Clause 7.2 does not deal the case when the materials are specified in the Sub-Contract, which is the Sub-Contractor's obligation to supply.

- 7.2.3 Alternatives not due to cessation of production shall not be used unless otherwise approved by the Client-Contractor with the price and time implications agreed.
未得上家承包商批准，並同意了對價款及時間的影響，不能使用不是因為停止生產而提出的另選建議。

[HKCA]: "~~Alternatives not due to cessation of production~~ shall not be used"

[HKCSA]: Delete Clause 7.2.3.

7.3 Approval 批准

[HKCSA]: Delete Clause 7.3.

All items stated in this Sub-Contract to require the checking or approval by the Client-Contractor shall be submitted by the Sub-Contractor in good time before they are required for use to the Client-Contractor for such checking or approval, and shall not be used in the Sub-Contract Works before the checking or approval by the Client-Contractor, which is to be confirmed in writing. No approval, disapproval or amendment proposal made by the Client-Contractor shall in any way reduce the Sub-Contractor's liability under this Sub-Contract.

分包合同注明必須由上家承包商審核或批准的所有項目，須由分包商在它們需要使用前的洽當時間，提交給上家承包商審核或批准，而在上家承包商審核或批准並以書面確認前，不得用於分包工程。上家承建商作出的批准、不批准或修訂建議，在任何方面均不會減低分包商在分包合同的責任。

[HKPSWTA]: Propose a simpler draft for consideration:

"All items stated in this Sub-Contract ~~to require the~~ **requiring** checking or approval by the Client-Contractor, **which is to be in writing**, shall be submitted by the Sub-Contractor in good time before they are required for use ~~to the Client-Contractor for such checking or approval, and shall not be used in the Sub-Contract Works before the checking or approval by the Client-Contractor, which is to be confirmed in writing~~. No approval, disapproval or amendment proposal made by the Client-Contractor shall in any way reduce the Sub-Contractor's liability under this Sub-Contract."

[KCTang]:

"All items ~~stated in~~ **specified by** this Sub-Contract to ~~require the checking or approval~~ **be checked and approved** by the Client-Contractor shall be submitted by the Sub-Contractor in good time ~~before they are required for use to the Client-Contractor for such checking or approval~~ **in writing before use**, and shall not be used in the Sub-Contract Works ~~before the checking or approval by the Client-Contractor, which is to be confirmed in writing~~. No approval, disapproval or amendment proposal made by the Client-Contractor shall in any way ~~relieve or~~ reduce the Sub-Contractor's ~~liability~~ **obligations and liabilities** under this Sub-Contract."

Clause 8.1.2 incorporated.

7.4 Material samples 物料樣品

[HKCSA]: Delete Clause 7.4.

7.4.1 If at the time of the award of this Sub-Contract, material samples submitted by the Sub-Contractor have been approved by the Client-Contractor, those material samples shall be kept on site to serve as the standard for subsequent acceptance of the materials or workmanship.
如果在分包定標時，分包商提交的物料樣品已獲上家承包商批准，該等物料樣品須存放於工地作為其後驗收物料或工藝的標準。

7.4.2 If material samples have not been approved at the time of the award of this Sub-Contract, the Sub-Contractor shall submit material samples and/or catalogues for approval purposes before ordering materials or commencing work. Approved material samples shall be kept on site to serve as the standard for subsequent acceptance of the materials or workmanship.
如果在分包定標時，物料樣品未獲批准，分包商須在訂購物料或展開工作前，提交物料樣品及/或產品說明書，以供批准。獲批准的物料樣品必須存放於工地，作為其後驗收物料或工藝的標準。

[HA]: It does not seem necessary to differentiate, by Clauses 7.4.1 and 7.4.2 respectively, the two situations where material samples submitted by the Sub-Contractor have been or have not been approved at the time of the award of the Sub-Contract. A generalized clause "*The Sub-Contractor shall submit material samples and/or catalogues for approval before ordering materials or commencing work. Approved material samples shall be kept on site to serve as the standard for subsequent acceptance of the materials or workmanship.*" should suffice.

[KCTang]: Agreed.

7.5 Mock-up construction and performance testing 施工樣板及性能測試

[HKCSA]: Delete Clause 7.5.

7.5.1 The type and number of mock-up construction and performance testing, and the extent and number of re-modelling of the mock-ups included in the Sub-Contract Price and the Sub-Contract Period(s) shall be as those specified in this Sub-Contract. Any deviation shall be deemed to be a Variation.
分包合同價及分包合同工期所包含的施工樣板及性能測試的種類及數量及樣板修改的範圍及數量，須如分包合同所規定。任何偏離視為工程變更。

[HA]: Delete "included in the Sub-Contract Price and the Sub-Contract Period(s)" in lines 2-3 which is considered superfluous.

[KCTang]: Agreed.

7.6 Testing and inspection 測試及檢查

7.6.1 The Sub-Contractor shall carry out all tests and inspections specified by this Sub-Contract to be carried out or, if so specified, arrange for them to be carried out by independent parties approved by the Client-Contractor, all at the Sub-Contractor's expense unless the tests and inspections are covered by provisional quantities or provisional sums. The testing and inspection report shall be completed as soon as possible after the tests and inspections, and submitted to the Client-Contractor immediately after the completion of the report.

分包商須進行分包合同規定的所有測試及檢查，或(如有規定)安排由上家承包商批准的獨立人士進行，並承擔費用，除非已為有關的測試及檢查有預留暫定數量或暫定款。測試及檢查報告須在測試及檢查後盡快完成，並在完成後立刻向上家承包商提交。

[HKCSA]: Delete Clause 7.6.1.

7.6.2 The Client-Contractor may issue instructions requiring the Sub-Contractor to carry out tests and inspections additional to those required by this Sub-Contract on work already carried out, and the relevant costs (including the cost of subsequent making good) shall be borne by the Client-Contractor. Provided that if the additional testing or inspection shows that the work is not in accordance with the requirements of this Sub-Contract, then the relevant costs (including the cost of subsequent making good and cost of rectification of other work) shall be borne by the Sub-Contractor. Where provisional quantities or provisional sums are included for such testing or inspection, the first and essential round of testing or inspection shall not be considered as additional for the purposes of this clause but shall be included in the adjustments of provisional quantities or provisional sums.

上家承包商可發出指示，要求分包商就已完成工作進行分包合同規定以外的額外測試及檢查，而所需費用(包括事後修復費用)須由上家承包商承擔。但是，如果額外測試或檢查顯示工作不符合分包合同的規定，則有關的費用(包括事後修復費用及修補其他工作的費用)由分包商承擔。如果已為有關的測試或檢查預留有暫定數量或暫定款，則就本條而言，第一輪測試或檢查不視為額外測試或檢查，而須包括在暫定數量或暫定款的調整內。

[HA]: The words "the first and essential round" in line 8 and the corresponding Chinese translation "第一輪" do not mutually match.

[KCTang]: "第一輪 必須的"

[HKFEMC]: "Where provisional quantities or provisional sums are ~~included~~ *allowed* for such testing or inspection, ~~the first and essential round of all testing or inspection shall not be considered as additional for the purposes of this clause but~~ *executed* shall be included in the adjustments of provisional quantities or provisional sums, *unless the test and inspection shows the work is not in accordance with the Sub-Contract.*"

[HKFEMC]: 'The first and essential round' is not specific and would be subject to interpretations.

[KCTang]: The original draft is intended to permit payment even if the first and essential round of testing or inspection is failed.

- 7.6.3 The Sub-Contractor shall inform the Client-Contractor in writing at such mutually pre-agreed time before work is to be covered up to allow the Client-Contractor to inspect such work. If the Client-Contractor fails to inspect, the Sub-Contractor may carry out his own inspection and cover up. If the Client-Contractor requires work to be uncovered for inspection after it has been covered up, the Sub-Contractor shall so uncover the work. All costs of such an inspection and subsequent making good shall be borne by the Client-Contractor, unless the inspection reveals that the work is not in accordance with this Sub-Contract, in which case the costs shall be borne by the Sub-Contractor.

分包商須在工作掩蔽前按雙方預先同意的時間以書面形式通知上家承包商，讓上家承包商檢查有關工作。如果上家承包商沒有檢查，分包商可自行檢查及掩蔽。如果上家承包商要求工程在掩蔽後揭開檢查，分包商須揭開，檢查及事後修復的所有費用由上家承包商承擔，除非檢查後發現工作不符合分包合同，則費用由分包商承擔。

- 7.6.4 If the Sub-Contractor fails to give the notice required by Clause 7.6.3, then the Client-Contractor may nevertheless require the inspection of any relevant work, and the costs of such an inspection and subsequent making good shall be borne by the Sub-Contractor.

如果分包商未能按第 7.6.3 條發出通知，上家承包商仍可檢查相關的工作，而檢查及事後修復的所有費用由分包商承擔。

7.7 Defects liability 保修責任

- 7.7.1 The Sub-Contractor shall replace or rectify any item of materials or work which is found, at any time before the expiry of the Defects Liability Period stated in the Particulars of Agreement of the Sub-Contract Works Section it belongs to, to be not in accordance with this Sub-Contract at his own cost on his own initiative or as and when instructed by the Client-Contractor to do so.

如果某項物料或工作，在它所屬的分包工程分部的協議特定事項所說明的保修期屆滿前的任何時間，被發現不符合分包合同，分包商須主動或在上家承包商指示時，自費予以更換或修補。

- 7.7.2 At any time not later than **14 days** after the expiry of the Defects Liability Period, the Client-Contractor may issue one or more lists of defects to the Sub-Contractor for the Sub-Contractor to rectify. The Sub-Contractor shall rectify all defects on the lists of defects within such reasonable times as directed by the Client-Contractor or, if not so directed, within a reasonable time of receipt of a list.

在不遲於保修期屆滿後 14 日的任何時間，上家承包商可向分包商發出一張或多張缺陷清單，讓分包商跟進修補。分包商須按上家承包商指示的各個合理時間內(如無指示，則在接獲清單的合理時間內)，修補缺陷清單內的所有缺陷。

- 7.7.3 If the Sub-Contractor fails to rectify defects within the aforesaid reasonable time, then the Client-Contractor may issue a written notice to the Sub-Contractor informing him of the Client-Contractor's intention to employ others to rectify the defects specified in the notice at the expense of the Sub-Contractor. If the Sub-Contractor continues to fail to proceed to rectify the defects for a further period of **7 days** or if the Sub-Contractor fails to carry on diligently thereafter, then the Client-Contractor shall be entitled to employ others to rectify the defects, and to recover the extra cost of so doing from the Sub-Contractor.

如果分包商未能在上述的合理時間內修補缺陷，上家承包商可向分包商發出書面通知，表示上家承包商有意聘用他人修補通知內所指明的缺陷，而費用由分包商承擔。如果分包商在 7 日內仍沒有展開修補缺陷的工作，或分包商其後未能持續不懈地進行，則上家承包商有權聘用他人修補缺陷，並從分包商取回因此而蒙受的額外費用。

- 7.7.4 The Contract Parties may agree payment in lieu of rectification.
合同雙方可以商議以付款代替修補缺陷。

- 7.7.5 The expiry of the Defects Liability Period of any Sub-Contract Works Section shall discharge the Sub-Contractor from any further obligation to carry out the work of rectifying defects in that Sub-Contract Works Section which reasonable inspection could have found before the expiry, but it shall not prejudice the Sub-Contractor's obligations under a warranty or guarantee or the Client-Contractor's other rights and remedies either under this Sub-Contract or at law regarding defective work or latent defects or other breaches of contract.

分包工程分部的保修期的屆滿，可解除分包商對屆滿前合理檢查可以發現的該分包工程分部的缺陷的修補責任，但這並不影響分包商在保證及擔保項下的責任，或影響上家承包商按分包合同或法律應有的關於缺陷工作或隱蔽性缺陷或其他違約事宜的權利和補救。

7.8 Warranties and guarantees 保證及擔保

- 7.8.1 Within **28 days** after the award of this Sub-Contract or within such other time as may be agreed by the Contract Parties, the Sub-Contractor shall submit such warranties or guarantees as may be specified by this Sub-Contract in the form as specified.

在分包定標後 **28** 天內或在合同雙方同意的其他時間內，分包商須按規定的式樣提交分包合同規定的保證或擔保。

[HKCSA]: Delete Clause 7.8.1.

- 7.8.2 The Sub-Contractor shall (so far as he is lawfully able to do so) assign to the Client-Contractor the benefits of all suppliers' and sub-sub-contractors' warranties or guarantees for materials or work insofar as they are standard sales ancillary benefits of the suppliers or sub-sub-contractors or they are required by this Sub-Contract.

分包商須(在法律容許的範圍內)向上家分包商轉讓所有供應商及再分包商有關物料或工作的保證或擔保的所有權益，只要有關權益為供應商或再分包商的標準銷售附帶權益或為分包合同所規定的。

[HKCA]: "the benefits of all manufacturers, suppliers' and sub-sub-contractors' warranties or guarantees"

[KCTang]: Agreed.

- 7.8.3 The submission of the aforesaid warranties and guarantees satisfactorily in full compliance with this Sub-Contract shall be a pre-requisite to the release of the retention fund releasable upon Substantial Completion of the relevant Sub-Contract Works Section.

上述保證及擔保滿意地完全符合分包合同地提交，乃有關的分包工程分部充份竣工時應予發放的保修金的發放先決條件。

[HKCSA]: "~~the relevant~~ Sub-Contract Works Section"

8. SUB-CONTRACTOR'S DOCUMENTS 分包商的文件

8.1 Shop drawings, calculations and method statements 製配圖、計算書及施工組織設計

- 8.1.1 The Sub-Contractor shall submit all such shop drawings and other drawings, calculations and method statements as he is required to prepare under this Sub-Contract to the Client-Contractor for approval in sufficient time as to ensure that no delay to the Sub-Contract Works will be caused. 分包商須提交他根據分包合同需製作的所有製配圖及其他圖紙、計算書及施工組織設計，讓上家承包商有充足時間批准，確保不會導致分包工程延誤。

- 8.1.2 The submission to and approval by the Client-Contractor of the aforesaid documents shall not relieve the Sub-Contractor of any of his duties or responsibilities under this Sub-Contract.
上述文件向上家承包商的提交及獲批准，不會免除分包商在分包合同的任何職責或責任。

[HA]: Consider beefing up the content of Clause 8.1.2 with reference to that of Clause 7.3 for better coverage.

[KCTang]: Agreed. Delete Clause 8.1.2.

- 8.1.3 If a written notice of approval of the aforesaid documents is given by the Contract Administrator to the Client-Contractor with a copy to the Sub-Contractor at the same time and the Client-Contractor does not declare the notice inapplicable within **3 working days** after receipt, of if the notice is forwarded by the Client-Contractor to the Sub-Contractor without reservation, the approval shall be deemed to be an approval by the Client-Contractor.

如果合同監理對上述文件的任何批准的書面通知發給上家承包商時也抄送給分包商而上家承包商沒有在收到後 **3** 個工作天內宣稱該通知不適用，或如果上家承包商把通知轉發給分包商而沒有保留意見，則該批准視為上家承包商的批准。

[HKPSWTA] / [HA] / [HKCSA]: "~~of or if the~~" in line 3.

[KCTang]: Agreed.

[HKCSA]: "at the same time ~~and or~~ the Client-Contractor does not declare"

[KCTang]: "and" is essential.

- 8.1.4 The approval shall not constitute Variations, but if the Sub-Contractor considers that Variations have been introduced during the approval process, he shall request for an instruction from the Client-Contractor before proceeding with the approved documents.
批准不構成工程變更，但如果分包商認為批准過程引入了工程變更，他須要求上家承包商發出指示才接獲批准的文件進行。

[HKCA]: "he ~~shall~~ **may** request for an instruction from the Client-Contractor ~~before~~ **but shall** proceeding with the approved documents"

8.2 Programmes 進度計劃表

- 8.2.1 The Client-Contractor shall provide the Sub-Contractor with his current master programme immediately after the award of this Sub-Contract, and as and when the programme is revised.
在分包定標後及每當有修改時，上家承包商須向分包商提供現行的總進度計劃。

[HA]: "programme" in line 2 → "**master** programme".

[HKCA]: "current master programme ~~immediately~~ **as soon as possible** after the award of this Sub-Contract"

[KCTang]: Agreed.

- 8.2.2 Within **7 days** after the receipt of any of the Client-Contractor's current master programmes or after the Client-Contractor's request, the Sub-Contractor shall submit his programme, updated as necessary, to show his intended tasks, sequence and time for proceeding with the Sub-Contract Works to suit so far as practicable the master programme or the Client-Contractor's request for the Client-Contractor's reference and comments as necessary, and proceed in accordance with the programme, unless otherwise commented by the Client-Contractor.

在收到上家承包商的任何的現行總進度計劃或要求後 **7** 天內，分包商須提交盡可能配合總進度計劃或上家承包商要求的，並適當地更新的進度計劃表，說明進行分包工程的預定任務、次序及時間，以供上家承包商參考及按需要提出意見，並按進度計劃表進行，除非上家承包商有意見。

[HKPSWTA]: "~~Within 7 14 days~~ after the receipt of any of the Client-Contractor's current master programmes ~~or after the Client-Contractor's request~~, the Sub-Contractor shall submit his programme, updated as necessary, to show his intended tasks, sequence and time for proceeding with the Sub-Contract Works to suit so far as practicable the master programme ~~or the Client-Contractor's request~~ for the Client-Contractor's reference and comments as necessary, and proceed in accordance with the programme, unless otherwise commented by the Client-Contractor.

[HKPSWTA]: 7 days is in many cases not enough time to prepare a revised program, especially for the first issuance of sub-contract program. A meaningful revised program may involve further input from sub-sub-contractors, suppliers and change of work-sequence. Suggest 14 days. Further, we consider it is not necessary to include the "Client-Contractor's request".

[HKCSA]: "~~Within 7 days a~~ After the receipt of any of the Client-Contractor's current master programmes ~~or after the Client-Contractor's request~~ **and if the Client-Contractor requests**, the Sub-Contractor shall"

8.3 Progress reports 進度報告

- 8.3.1 The Sub-Contractor shall submit the following progress reports in reasonable number of copies in the pre-approved format to the Client-Contractor regularly until **14 days** after Substantial Completion of the whole of the Sub-Contract Works and as and when work is carried out during the Defects Liability Period:

直至整個分包工程充份竣工後 **14** 天，或在保修期內有工作時，分包商須以合理的套數，按預先批准的格式，定期向上家承包商提交以下的進度報告：

[HKPSWTA]: Add "~~**Unless otherwise specified in this Sub-Contract,**~~" to the beginning.

[HKPSWTA]: Progress reports as stated may not be necessary for all types of Sub-Contract packages. Allowance shall be made for both parties to work on a lesser demand progress reporting. Suggest to add "Unless otherwise specified in this Sub Contract," in the beginning to allow for some flexibility.

[HKCSA]: "submit the ~~following~~ progress reports ~~as and when required for the Sub-Contract Works~~ in reasonable number of copies"

[HKCSA]: Delete paragraphs (a) to (d).

- (a) daily reports to be submitted on the working day following the day recorded and showing a record of the number, names and locations of labour employed on site under each trade, and the weather throughout the day, and other information as may be instructed by the Client-Contractor;
每日報告，於記錄當日之下一個工作天提交，載列每個工種在工地聘用的工人的人數、姓名及位置、當天整日的天氣、以及上家承包商指示的其他資料；

[HA]: "a record of the number" in line 2 → "a record of *the major site activities*, number"

[HKCA]: "the number, names, *activities* and locations of labour employed"

- (b) weekly reports to be submitted on the first working day following the week recorded and describing in detail the progress of the Sub-Contract Works, any deviations from programme, reasons for actual or expected delays or disruptions, proposed actions to overcome the delays or disruptions, any claim for extension of time, testing and inspection carried out, list of Client-Contractor's instructions received, list of confirmations of oral instructions issued, outstanding information required, and other information as may be instructed by the Client-Contractor;
每周報告，於所記錄的星期後第一個工作日提交，詳細說明分包工程的進度、是否偏離進度計劃表、實際或預期延誤或干擾的理由、克服延誤或干擾的建議行動、延長時間的申請、進行了的測試及檢查、上家承包商發出的指示的清單、口頭指示確認的清單、所需的欠缺資料、以及上家承包商指示的其他資料；
- (c) progress photographs attached to the weekly reports; and
進度照片，附於每周報告後；及
- (d) records of delivery of construction plant and materials to site and removal from site upon delivery or removal (with advance notice to be given).
施工機械及物料運送到及離開工地的記錄(送到或離開前要預先通知)。

- 8.3.2 If a Clerk of Works or other authorized representative of the Client-Contractor is employed on site, the progress reports shall be submitted for checking and signing by the Clerk of Works or the said representative of the Client-Contractor.
如果工地上有工程監督或上家承包商的其他獲授權代表，進度報告須提交予工程監督或該上家承包商代表核對及簽署。

[HKCA]: "signing by the Clerk of Works ~~or~~ *and* the said representative of the Client-Contractor"

[HKCSA]: Delete Clause 8.3.2.

8.4 As-built drawings and records 竣工圖及記錄

Within **14 days** after the Substantial Completion of a Sub-Contract Works Section, the Sub-Contractor shall submit as-built drawings and records for the relevant Sub-Contract Works Section in the specified number of copies of prints (minimum 2) and electronic files stored on suitable media to the Client-Contractor for future use by others, and shall additionally submit as-built records in accordance with any relevant statutory or other requirements.

任何分包工程分部充份竣工後 **14** 天內，分包商須按規定份數提交該分包工程分部的竣工圖及記錄的印件(最少 2 份)及儲在適當媒體的電子檔案，給上家承包商，供其他人將來使用，並須根據相關法例或其他規定提交額外的竣工記錄。

[HKPSWTA]: "Within ~~14~~ **30 days** after the Substantial Completion any relevant statutory ~~or other~~ requirements."

[HKPSWTA]: 14 days from substantial completion is not enough for many sub-contract packages to submit As-fit drawings. As-fit drawings, which can be of considerable quantity, may need to be commented or approved before submission and the process will take time, depending on the quantity and complexity. Suggest 30-60 days. "or other" in last sentence should be clarified or otherwise, should be deleted.

[KCTang]: Agree to delete "or other".

[HA]: Delete "for future use by others" in the 2nd last line which is considered superfluous.

[HKCSA]: "~~Within 14 days after the Substantial Completion of a Sub-Contract Works Section~~ **If required in the Sub-Contract, as soon as practical**, the Sub-Contractor shall submit"

8.5 Operating instructions and maintenance manuals 操作指示及維修手冊

Within **14 days** after the Substantial Completion of a Sub-Contract Works Section, the Sub-Contractor shall submit operating instructions and maintenance manuals for the relevant Sub-Contract Works Section in the specified number of copies of prints (minimum 2) and electronic files stored on suitable media to the Client-Contractor for future use by others. The drafts shall be submitted for comments well before Substantial Completion.

任何分包工程分部充份竣工後 **14** 天內，分包商須按規定份數提交該分包工程分部的操作指示及維修手冊的印件(最少 2 份)及儲在適當媒體的電子檔案，給上家承包商，供其他人將來使用。草稿須在充份竣工前一早提交給提意見。

[HKPSWTA]: "Within **14 30 days** after the Substantial Completion fur future use by others. ~~The drafts shall be submitted for comments well before Substantial Completion.~~"

[HKPSWTA]: 14 days from Substantial Completion is not enough for many sub-contract packages to submit Operation and Maintenance Manual. O&M need to be commented or approved before submission and the process will take time, depending on the complexity. Suggest 30-60 days. Submission for comments well before Substantial Completion may not be feasible or practical for some packages, suggest this requirement be deleted.

[HA]: Delete "for future use by others" in the 2nd last line which is considered superfluous.

[HKCSA]: "~~Within 14 days after the Substantial Completion of a Sub-Contract Works Section~~ **If required in the Sub-Contract, as soon as practical**, the Sub-Contractor shall submit"

9. GENERAL OBLIGATIONS 一般責任

9.1 Statutory obligations 法定責任

- 9.1.1 The Sub-Contractor shall comply with, give all notices and make all applications required by, any ordinance, regulation, rule or order of the Government or statutory undertakers or utility companies (not falling within the meaning of Specialist Sub-Contractors) applicable to the Sub-Contract Works and shall pay any fees, charges or taxes legally demandable upon the Sub-Contractor, except that fees, charges or taxes in connection with submissions to the Government or statutory undertakers or utility companies specifically for the Sub-Contract Works shall be restricted to those listed in this Sub-Contract.

分包商必須遵從政府、法定承辦機構或公用事業公司(不歸入“其他承包商”的定義者)的、適用於分包工程的任何條例、規例、規則或命令，及提交所需的所有通知和申請，並繳交法定要求分包商應予繳交的任何費用、收費或稅款，但是特別為分包工程而向政府、法定承辦機構或公用事業公司的提交所涉及的費用、收費或稅款則限於分包合同所列的。

[HA]: Whether fees, charges or taxes are to be paid by the Sub-Contractor depends, according to this clause, on whether they are (i) legally demandable upon the Sub-Contractor, or (ii) specifically for the Sub-Contract Works but not listed in the Sub-Contract. The former is to be paid by the Sub-Contractor and the latter not. It seems there are occasions where overlaps or conflicts between (i) and (ii) above would exist. Demarcation between (i) and (ii) tends to be blurred. Please review.

[KCTang]: (ii) should in fact be "specifically for the Sub-Contract Works and restricted to those listed".

[HKCA]: "any fees, charges, **levies** or taxes"

[KCTang]: Perhaps, but is a levy not a kind of charge?

[HKCSA]: "~~applicable to the Sub-Contract Works and shall pay any fees, charges or taxes legally demandable upon the Sub-Contractor, except that fees, charges or taxes in connection with submissions to the Government or statutory undertakers or utility companies specifically for the Sub-Contract Works shall be restricted to those listed in this Sub-Contract.~~ Unless otherwise stated, all fees, charges or taxes in connection with the Sub-Contract Works shall be paid by the Client-Contractor."

[KCTang]: This would be too wide, e.g. to include profits tax.

- 9.1.2 If either of the Contract Parties pay fees, charges or taxes on behalf of the other party, then the paying party may recover from the liable party the amount paid plus administrative charges at the percentage stated in the Particulars of Agreement, without further adjustment to the prices allowed in this Sub-Contract for the like liability.

如果合同一方代另一方繳交了費用、收費或稅款，付款方可從責任方討回有關款項另加協議特定事項說明的百份率作為行政費，而分包合同內履行有關責任的價款不變。

[HA]: Please explain the meaning of "for the like liability".

[KCTang]: Change to "for the original liability not fulfilled"

[HKCA]: "any fees, charges, **levies** or taxes"

- 9.1.3 If the Sub-Contractor considers that a change to the Sub-Contract Works is necessary to comply with any statutory requirement, he shall give a written notice specifying the change to the Client-Contractor, and wait for the Client-Contractor's instruction before proceeding further with the affected work.
如果分包商認為有需要改動分包工程以符合任何法例規定，則須書面說明改動的地方，通知上家承包商，等待上家承包商有指示後才繼續受影響的工作。

9.2 Intellectual property 知識產權

[HKCSA]: Delete Clause 9.2.

- 9.2.1 The prices for all work shall be deemed to include for all royalties, license fees or other sums legally demandable for the use of intellectual property in respect of the design or design development for which the Sub-Contractor is responsible, materials, construction plant, methods or anything whatsoever used in carrying out the Sub-Contract Works.
所有工作的價款視為已包括進行分包工程需要的設計或深化設計 (分包商負責的)、物料、施工機械、方法或任何其他事物而使用到的知識產權所涉及的合法要求的專利權使用費、特許費用或其他款項。
- 9.2.2 The Sub-Contractor shall indemnify the Client-Contractor against any claim involving an infringement or alleged infringement of intellectual property rights.
分包商須保障上家承包商免受侵犯或涉嫌侵犯知識產權的任何申索。

9.3 Assignment 轉讓

[HKPSWTA]: "**Assignment and Subletting**"

The Sub-Contractor shall not assign this Sub-Contract without the written consent of the Client-Contractor.

未得上家承包商書面同意，分包商不可轉讓分包合同。

[HKFEMC]: Further clarification is required together with Clause 11.1.1(b).

[HKFEMC]: As it stands Assignment can mean the complete transfer of the Sub-Contract to another party who will be actually executing the Sub-contract. Or it can mean the assignment to a bank for financing purposes. While the former practice is not to be allowed the latter practice is quite common in the industry.

[HKFEMC]: This ambiguity of the meaning of Assignment should be examined in conjunction with Clause 11.1.1(b), as one meaning would constitute the reason for determination of contract but the other should not.

[HKPSWTA]: "The Sub-Contractor shall not assign this Sub-Contract without the written consent of the Client-Contractor, **unless the assignment is for the sole purpose of obtaining financing to carry out this Sub-Contract Work.**"

[HKPSWTA]: Add "**The Sub-Contractor shall not sublet in whole or substantially in whole the Sub-Contract Works to one single person.**"

[HKPSWTA]: Exception for "without written consent" should be allowed if the assignment is to a financial institution obtaining financing for carrying out of the works.

[HKPSWTA]: Provision on Subletting. This DSC shall restrict the Sub-Contractor not to sublet in whole or substantially in whole the Works to one single party.

[HKCA]: "The Sub-Contractor shall not assign this Sub-Contract ~~, or sublet the whole or substantially the whole of this Sub-Contract to the same person,~~ without the written consent of the Client-Contractor."

[HKCSA]: ~~The Sub-Contractor~~ **Either party** shall not assign this Sub-Contract **except for financing proposes** without the written consent of the ~~Client-Contractor~~ **other party**.

[KCTang]: The above is generally agreed. Assignment of benefits for financing and assignment of obligations may need to be distinguished.

9.4 Care of Works 工程的保護

- 9.4.1 The Sub-Contractor shall take responsibility for the care of the work included in any Sub-Contract Works Section, materials supplied by him or persons for whom he is responsible for incorporation into the work, and materials supplied by the Client-Contractor and handed over to the Sub-Contractor or persons for whom his is responsible for incorporation into the work, except for loss or damage arising from the Excepted Risks, from commencement of the Sub-Contract Works Section until the acceptance of the work by the Client-Contractor, or until **14 days** after the Substantial Completion of the Sub-Contract Works Section, or until the determination of the employment of the Sub-Contractor or termination of the Sub-Contract (once invoked, whether validly or not), whichever is the earlier.

除了免責風險所引致的損失或破壞外，任何分包工程分部開始後，直至工作獲上家承包商收貨，或直至該分包工程分部充分竣工已滿 **14** 天，或直至分包商的僱用或分包合同終止時（一經啟動，不管是否有效），以較早者為準，分包商須就該分包工程分部所包括的工作、由分包商或他負責的人士供應予以結合於工作的物料、及上家承包商供應並交付給分包商或他負責的人士予以結合於工作的物料，承擔保護責任。

[HA]: Under this clause, the Sub-Contractor's responsibility to take care of the work would cease, subject also to other relevant conditions, upon the acceptance of the work by the Client-Contractor. In practice however, say mockup flats for example, it seems too early to relieve the Sub-Contractor's responsibility in taking care of his work in the mockup flats upon the Client-Contractor's acceptance of the materials and workmanship of the mockup flats. Please review.

[KCTang]: Under the Standard Form of Nominated Sub-Contract, 2005 Edition, the Main Contractor should be responsible for the care of the Sub-Contract Works!

[HKCSA]: "included in ~~any the~~ Sub-Contract Works ~~Section~~, materials supplied for whom ~~his~~ **he** is responsible for incorporation into the work, except for **vandalism**, loss or damage arising from the Excepted Risks, from commencement of the Sub-Contract Works ~~Section~~ until the acceptance of the work"

- 9.4.2 The Client-Contractor shall carry out acceptance inspections at appropriate times agreed with the Sub-Contractor.

上家承包商須在與分包商協商好的時間進行驗收。

9.5 Injury to persons and property and indemnity 人身財產的損傷和保障

Without prejudice to Clause 9.4, the Sub-Contractor shall be liable for and shall indemnify the Ultimate Client, Upper-tier Contractors, Client-Contractor and their respective sub-contractors against any damage, expense, liability or loss in respect of any claims or proceedings for:
在不影響第 9.4 條的同時，分包商須負責及保障最終項目委托方、再上層承包商、上家承包商及其各自分包商免受與下列事宜有關的任何申索或法律程序引起的任何破壞、支出、責任或損失：

- (a) bodily injury to, disease contracted by or the death of any person arising out of, or in the course of, or by reason of the carrying out of the Sub-Contract Works and whether arising on or off the Site, except for those due to any act or neglect of the Client-Contractor or any person for whom the Client-Contractor is responsible; and
因進行分包工程而引起、或期間發生、或導致的任何人身損傷、疾病或死亡，不論發生於工地內或外，但上家承包商或他負責的任何人的行為或疏忽所引致的除外；及

[HKFEMC]: “any act or neglect of the ~~Ultimate Client, Upper-tier Contractors,~~ Client-Contractor or any person for whom the Client-Contractor is responsible” for better clarity.

[HKPSWTA]: “the ~~Client-Contractor, Ultimate Client, Upper-tier Contractors, Client-Contractor and their respective sub-contractors~~ or any person for whom ~~the Client-Contractor is~~ **these parties are** responsible; and” - to be consistent with the parties which the Sub-Contractor has to indemnify in the opening paragraph.

[KCTang]: Agreed.

- (b) loss or damage to real or personal property arising out of, or in the course of, or by reason of the carrying out of the Sub-Contract Works and whether arising on or off the Site, due to a breach of contract or other default of the Sub-Contractor or any person for whom the Sub-Contractor is responsible.
因進行分包工程而引起、或期間發生、或導致的任何物業或個人財產損失或破壞，不論發生於工地內或外，只要是分包商或他負責的任何人的違約或其他過失所引致的。

9.6 Provision of all things necessary 提供一切必需的

[HKCSA]: Delete Clause 9.6.

Unless otherwise specified in this Sub-Contract, the Sub-Contractor shall provide all labour, materials, temporary site facilities, site and head office management necessary for the completion of the Sub-Contract Works.

除非分包合同另有規定，分包商須提供完成分包工程所需的所有人力、物料、現場臨時設施及工地和公司的管理服務。

[HKPSWTA]: Not necessary? Seem repeating and stating the obvious.

9.7 Labour and site management team 人力及現場管理班子

- 9.7.1 The labour provided by the Sub-Contractor shall be adequate in number, of the appropriate trades, skillful and competent in their respective callings.

分包商提供的人力須有足夠數量、從事適當工種、熟練和勝任各自的職務。

[HKPSWTA]: "skillful ~~and~~ or competent"

[HKPSWTA]: Labour provided do not need to be always "skillful".

[HKCSA]: "~~trades, skillful~~ and competent"

[KCTang]: Agreed.

- 9.7.2 The Sub-Contractor shall provide a site management team consisting of foremen / supervisors / co-ordinators / safety officers, etc. as appropriate and headed by a site manager on site authorized and able to communicate and attend meetings with and take instructions from the Client-Contractor and capable of managing the Sub-Contract Works and making decisions. The personnel of the site management team shall be approved by the Client-Contractor, be available on site as required, and not be replaced without the consent of the Client-Contractor.

分包商須提供適當地包括有管工/監工/統籌員/安全主任等人士的現場管理班子，並由派駐現場、獲授權及能夠與上家承包商溝通、開會、接受指示、及有能力管理分包工程和做決定的工地經理所領導。現場管理班子的人員須得上家承包商批准，按需要派駐現場，未得上家承包商同意不能更換。

[HKFEMC]: "without ~~the consent of~~ notifying the Client-Contractor" is more practical than waiting for consent.

[KCTang]: Agreed.

- 9.7.3 The Sub-Contractor shall employ upon the Sub-Contract Works only those persons legally employable in Hong Kong. Illegal immigrants shall not be allowed to enter the Site. If the Sub-Contractor employs in whatever manner illegal immigrants, he shall be liable for any consequences of such offence at law so caused to himself, the Client-Contractor, the Upper-tier Contractors, the Ultimate Client and his consultants.

分包商只可聘用可合法在香港工作的人士於分包工程。不可容許非法入境人士進入工地。如果分包商用任何形式聘用非法勞工，他須承擔因此觸犯法例而對他自己、上家承包商、再上層承包商、最終委託方及其顧問所引起的一切後果。

[HKPSWTA]: "the Ultimate Client ~~and his consultants~~"

[HKPSWTA]: The need to include "his consultants" in last sentence shall be clarified.

- 9.7.4 The persons employed upon the Sub-Contract Works shall be properly equipped with tools, safety belts, safety helmets, safety appliances, shall wear proper attire and bear identification cards, and shall not live on the Site. 受僱於分包工程的人士須獲得妥善配備各項工具、安全帶、安全帽、安全用具，並須穿著合適服飾和配戴證件，不可在工地居住。

- 9.7.5 The Client-Contractor may require the replacement of any person employed upon the Sub-Contract Works who in the opinion of the Client-Contractor misconducts himself or is incompetent or negligent in the proper performance of his duties with a suitable substitute at no extra price and time to this Sub-Contract.

上家承包商可要求以合適的替補人士取代他認為行為失當、不勝任或疏於職守的受僱於分包工程的任何人士，而無需對分包合同給予額外價款及時間。

9.8 Payment management to employees of all tiers 各層僱員的付款管理

9.8.1 The Sub-Contractor shall himself and ensure his sub-sub-contractors of all tiers pay to the employees all wages, subsidies and reimbursable according to the employment contracts, and require both parties to the employment contracts to contribute to mandatory provident funds. If the Sub-Contractor fails to comply with these requirements, the Client-Contractor is entitled to pay on his behalf the amounts in arrear and recover the same from the Sub-Contractor, plus administrative charges at the percentage stated in the Particulars of Agreement.

分包商須自己及確保他各層再分包商按僱傭合同按時支付工人工資、補貼及墊支費用，並要求僱傭合同雙方按法例按時繳交強積金供款。如果分包商未能完全遵從這些要求，上家承包商有權代為支付拖欠的金額，並向分包商討回，另加協議特定事項說明的百分率作為行政費。

9.8.2 The Sub-Contractor shall comply with the requirements of the Client-Contractor in connection with the keeping and submission of daily labour records, wage payment records, mandatory provident fund contribution records, etc.

分包商須遵從上家承包商關於保存及提交每天的工人出勤記錄、發薪記錄、繳交強積金供款記錄的規定。

9.9 Temporary site facilities 現場臨時設施

The temporary site facilities provided by the Sub-Contractor shall be adequate and appropriate for the intended purposes, safe and secured, causing minimum nuisance, placed at positions approved by the Client-Contractor, up-kept and maintained regularly in good conditions with minimum downtime, relocated as necessary to suit the progress and need of the Sub-Contract Works, and removed from the Site when no longer required.

分包商提供的現場臨時設施必須充足和合乎意向用途、安全穩固、構成最小滋擾、放置於上家承包商批准的位置、以最少停工時間進行定期保養及維修至良好狀態、配合分包工程進度和要求而作需要的遷移、及在不再需要時移離工地。

[HKCA]: "~~relocated as necessary to suit the progress and need of the Sub-Contract Works, and removed from the Site when no longer required~~"

[HKCSA]: "and removed ~~the same~~ from the Site when no longer required"

[KCTang]: Does not read correctly.

9.10 Checking of documents and site conditions 檢查文件及現場狀況

[HKCSA]: Delete Clause 9.10.

9.10.1 Before ordering a material or carrying out an item of work, the Sub-Contractor shall check the latest set of documents and, if available for access, the latest site dimensions and conditions to identify any documentary or physical contradictions, discrepancies, divergences, uncertainties, conflict between various trades, non-buildability, and obvious non-compliance with statutory requirements, co-ordinate and resolve those resolvable by himself, and notify those to be resolved by the Client-Contractor or amounting to a Variation for his resolution or instruction.

在訂購某項材料或進行某項工作前，分包商須檢查最新的一套文件及(如已可進入)最新的現場的尺寸及狀況，以找出任何文件上或實體的矛盾、差異、分歧、不清晰、各工種之間的衝突、不可建的地方，及明顯不符合法規的地方，協調及解決他能解決的，把需由上家分包商解決的或構成工程變更的通知他讓他解決或發出指示。

9.10.2 Drawings to be used shall be those drawings issued by the Client-Contractor for construction or the shop drawings prepared by the Sub-Contractor and approved by the Client-Contractor for construction, whichever is the latest at the time of use.
使用的圖紙須為上家承包商發出給施工的圖紙或分包商製作獲上家承包商批准施工的圖紙(以使用時最新的圖紙為準)。

9.10.3 Figured dimensions on drawings shall be taken in preference to scaled in all cases.
於所有情況下，均須採用圖紙上數字標示的尺寸，而非按比例尺所得的尺寸。

[HA]: Revise the Chinese translation to “於所有情況下，圖紙上數字標示的尺寸將較按比例尺所得的尺寸被優先採納。” to tally with the purport of “taken in preference to” in the English version.

[KCTang]: Yes, or “~~而非~~優先於按比例尺所得的尺寸”

9.10.4 The Sub-Contractor shall counter-check the scale of any drawing transmitted electronically for the accuracy of the stated scale and make appropriate adjustments when scaling.
分包商須覆核以電子傳送的任何圖紙以確定所標的比例是準確的，並在用比例尺時作適當的調整。

9.11 Setting out 開線定位

9.11.1 The Sub-Contractor shall ensure that the Sub-Contract Works are constructed at the correct positions.
分包商須確保分包工程建於正確的位置上。

9.11.2 The Client-Contractor shall provide adequate and accurate principal setting out points and levels to the Sub-Contractor such that the Sub-Contractor can properly set out his own lines and levels for the Sub-Contract Works.
上家承包商須向分包商提供足夠及準確的主要定位基準點和平水，讓分包商能為分包工程正確地定出墨綫及平水。

9.11.3 The Client-Contractor or the Sub-Contractor shall respectively be responsible for all the consequences of inaccurate setting out and as-constructed positions caused by himself notwithstanding any verification by the other party.
不論對方有沒有進行覆核，上家承包商或分包商須對各自造成的不準確開線定位及竣工位置所引起的所有後果負責。

9.12 Cleanliness and tidiness 清潔及整齊

[HKCSA]: Delete Clause 9.12.

The Sub-Contractor shall keep his working areas and the Sub-Contract Works clean and tidy at all times, and free from accumulation of rubbish.
分包商須時刻保持他的施工區域及分包工程清潔和整齊，及不積存垃圾。

9.13 Protection 保護

[HKCSA]: Delete Clause 9.13.

Without prejudice to Clauses 9.4 and 9.5, the Sub-Contractor shall take every care and safety precaution necessary to protect all persons and properties, including but not limited to the following, from injury, disease, death, loss, damage, nuisance, fire hazard, etc. caused by or arising out of the carrying out of the Sub-Contract Works:

在不影響第 9.4 及 9.5 條的同時，分包商須採取每一謹慎及安全的防範措施，去保護(包括但不限於下列之)所有人士及財產，免因進行分包工程，而引致損傷、疾病、死亡、損失、破壞、滋擾、火災危險、等：

- (a) all workers or other persons on the Site;
工地內所有工人或其他人士；
- (b) all occupiers or users in the vicinity of the Site;
工地鄰近所有佔用人或使用人；
- (c) the public;
公眾人士；
- (d) the Sub-Contract Works, materials for incorporation into the Sub-Contract Works, construction plant or temporary buildings used for the Sub-Contract Works;
分包工程、準備結合於分包工程之物料、用於分包工程之施工機械或臨時建築物；
- (e) existing building construction, finishes, fittings, services within the Site which are not to be modified under this Sub-Contract;
工地內不受分包合同改動之原有建築物、裝飾、裝置、機電系統；
- (f) roads, loading and unloading points, temporary parking spaces, footpaths, corridors, staircases and lifts;
道路、裝卸地點、臨時泊車位、行人路、走廊、樓梯及升降機；
- (g) the premises where the Site is situated;
工地座落之處所；
- (h) adjoining properties;
毗鄰財產；
- (i) public properties, public roads and footpaths;
公眾財產、公用道路及行人路；
- (j) properties of statutory undertakers and utility companies; and
法定承辦機構及公用事業公司之財產；及
- (k) existing trees and shrubs.
原有樹木及灌木。

9.14 Safety measures 安全措施

[HKCSA]: Delete Clause 9.14.

The Sub-Contractor shall implement safety measures in compliance with statutory requirements and any other requirements as may be specified in this Sub-Contract.
分包商須實施法定要求的及分包合同另有規定的安全措施。

9.15 Environmental protection measures 環保措施

[HKCSA]: Delete Clause 9.15.

The Sub-Contractor shall implement environmental protection measures in compliance with statutory requirements and any other requirements as may be specified in this Sub-Contract.
分包商須實施法定要求的及分包合同另有規定的環保措施。

10. INSURANCES 保險

10.1 Employees' Compensation Insurance 僱員補償保險

10.1.1 The Client-Contractor shall, either by himself or cause others to, take out and maintain an employees' compensation insurance to indemnify the Sub-Contractor and his sub-sub-contractors of all tiers against their legal liabilities under and independent of the Employees' Compensation Ordinance to pay compensation, damages and claimant's costs and expenses and also indemnify them against their own costs and claims in that connection, all in respect of bodily injury or death sustained by any employees employed by any of them by accident occurring or occupational disease contracted during the period of insurance and arising out of and in the course of the employees' employment on the Sub-Contract Works or in connection with this Sub-Contract.

上家承包商須自行或促使他人，投購及維持僱員補償保險，以補償分包商及其各層再分包商，由於他們任何一位所僱用之任何僱員，在保險期內因分包工程或涉及分包合同而工作期間，因工遭遇意外或患上職業病而引致身體損傷或死亡，他們在僱員補償條例之下或獨立其外的須支付補償、損害賠償及索賠人費用和支出的法律責任，並補償他們自己因此而招致的費用和支出。

[HKCSA]: Add "*For the avoidance of doubt, such employees' compensation insurance shall also include the Sub-Contractor or his Sub-Sub-Contractor of all tiers who is self-employed.*"

[KCTang]: This is desirable but not quite possible for the time being.

10.1.2 The period of insurance shall be for the full period of construction, defects liability and/or maintenance.

保險期須包括整個施工、保修及/或保養期。

10.1.3 Without lowering the limit of indemnity, and at the discretion of the Client-Contractor, the insurance may also cover other parties like the Ultimate Client, Upper-tier Contractors, the Client-Contractor, their respective other contractors or sub-contractors, etc. as the joint-insured.

在不降低補償水平的情況下，上家承包商可自行決定把其他人士，例如最終委託方、再上層承包方、上家承包商、各自的其他承包商或分包商等，加入為共同被保險人。

- 10.1.4 As soon as the Sub-Contractor becomes aware of any employees employed by him or his sub-sub-contractors of all tiers sustaining death or total or partial incapacity by accident or occupational disease arising out of and in the course of the employees' employment on the Sub-Contract Works or in connection with this Sub-Contract, he shall notify the Commissioner for Labour in the time and manner prescribed by the Ordinance, with a copy of the notice to the Client-Contractor and the insurers, irrespective of whether the accident or disease gives rise to any liability to pay compensation. Alternatively, the Sub-Contractor may notify the Client-Contractor within **3 days** after his awareness for the Client-Contractor to serve the said notice on his behalf. In any cases, fatal accidents shall be reported to the Client-Contractor immediately. 分包商一經知道他或其各層再分包商所僱用之任何僱員，因分包工程或涉及分包合同而工作期間，因工遭遇意外或患上職業病以致死亡或完全或部分喪失工作能力，則不論該工傷意外或職業病是否引起任何支付補償的責任，須按條例訂明的時間及方式通知勞工處處長，並給予上家承包商及承保人有關通知之副本。或者，分包商可在知道後**3**天內通知上家承包商讓上家承包商代為提交有關的通知。不論任何情況，致命意外須即時向上家承包商報告。

[HKCA]: "As soon as the Sub-Contractor becomes aware of any employees employed by him or his sub-sub-contractors of all tiers sustaining death or total or partial incapacity by accident or occupational disease arising out of and in the course of the employees' employment on the Sub-Contract Works or in connection with this Sub-Contract, he shall notify ~~the Commissioner for Labour in the time and manner prescribed by the Ordinance, with copy of the notice to the Client-Contractor and the insurers, irrespective of whether the accident or disease gives rise to any liability to pay compensation.~~ Alternatively, the Sub-Contractor may notify the Client-Contractor within ~~3 days~~ **24 hours** after his awareness for the Client-Contractor to serve ~~the said notice to~~ **the Commissioner for Labour** on his behalf. In any cases, fatal accidents shall be reported to the Client-Contractor immediately."

[KCTang]: Agreed.

10.2 Contractors' All Risks and Third Party Liability Insurance 工程一切險及第三者責任險

- 10.2.1 The Client-Contractor shall, either by himself or cause others to, take out and maintain a Contractors' All Risks and Third Party Liability Insurance in accordance with the insurance policy or synopsis in Appendix A hereto (containing terms not inferior to those made known in writing to the Sub-Contractor before the award of this Sub-Contract), include the Sub-Contractor and his sub-sub-contractors of all tiers (whether or not they are self-employed persons or sole proprietors or partners) as one of the insured, and include the Sub-Contract Works, relevant temporary works and unfixed materials as part of the insured properties to enjoy the same coverage. 上家承包商須自行或致使他人，按後附的附件 A 所附的保險單或保險擇要(其條款不差過分包定標前書面知會了分包商的條款)，投購及維持一份工程一切險及第三者責任險，加入分包商及其各層再分包商(不論他們是否自僱人士或獨資經營人或合夥人)為被保險人之一，並加入分包工程、有關的臨時工程及未安裝物料為受保財產之一，享有同樣的保障。

[HKCSA]: "The Client-Contractor shall, ~~either by himself or cause others to, take out and~~ maintain a Contractors' All Risks and Third Party Liability Insurance"

[KCTang]: The insurance may not be taken out by the Client-Contractor himself.

- 10.2.2 The period of insurance shall be for the full period of construction, defects liability and/or maintenance. It is permissible that the insured properties are in certain cases covered for a shorter period until some limited time after Substantial Completion.
保險期須包括整個施工、保修及/或保養期。受保財產在某些情況下保險期較短，只是到充分竣工後的有限時間，是可以接受的。
- [HKFEMC]: Explanation of the rationale behind allowing insurance for 'a shorter period of time' instead of up to expiry of defects liability/maintenance period is requested.
- [HKPSWTA]: Need to clarify why in certain cases the CAR insurance can be effected for a shorter period until some limited time after Substantial Completion.
- [KCTang]: Revised as "the insured properties under the Materials Damage section of the insurance policy are" - which would usually be 14 days or 28 days after Substantial Completion.
- 10.2.3 The Third Party Liability section of the insurance shall have a clause to cover any and all of the insured as separate and distinct parties as if a separate policy had been issued to each of them to cover their mutual claims with stipulation that the insurers agree to waive all subrogation rights which the insurers may have against any of the insured.
保險之"第三者責任險"部分須有一條款，視任何或所有的被保險人為分別及獨立的被保險人，如同每人都有一份獨立的保單可保障互相之間的索償，並說明承保人同意放棄承保人可能有的代位追討任何受保人的權利。
- 10.2.4 If the Sub-Contractor considers that the insurance coverage is inadequate to cover his contractual or legal liabilities and requires that the coverage be increased or the amounts of excesses be reduced then the additional premium so payable shall be solely for the account of the Sub-Contractor.
如果分包商認為，保險的承保範圍不足以承保其合同或法律責任，並要求增加承保範圍或減低免賠額，則因而需繳付的額外保費須由分包商單獨承擔。
- 10.2.5 In the event of the occurrence of the perils covered by the insurance, the Sub-Contractor shall notify the insurers and the Client-Contractor of the details of the incident immediately upon he becomes aware of it.
一旦發生保險所承保的危險，分包商於知道後，須立即通知承保人及上家承包商有關事故的詳情。
- 10.2.6 In the event of loss or damage covered by the Material Damage section of the insurance, the Sub-Contractor shall, immediately after any inspection required by the insurers has been carried out, remove and dispose of any debris, repair or replace any materials damaged, destroyed, lost or stolen, restore work damaged, destroyed or lost, and continue with the carrying out and completion of the Sub-Contract Works with due diligence.
如果發生保險之"物質損失保險"部分所承保的損失或破壞，在進行了承保人所要求的任何查核工作後，分包商須立即清走及處置任何殘礫，維修或更換任何被損壞、毀滅、損失或盜竊之物料，回復被破壞、毀滅或損失之工程，及努力繼續進行和完成分包工程。

10.3 Maintaining insurances 維持投保

10.3.1 The Client-Contractor shall, either by himself or cause others to, maintain and extend as necessary the aforesaid insurances to be in full force for the required periods of insurance. Copies of the cover notes, policies and their schedules and endorsements of the aforesaid insurances shall be made available for inspection by the Sub-Contractor upon request.

上家承包商須自行或促使他人，維持及按需要延續上述各項保險，使它們在規定的保險期內仍有全效。上述保險之臨時保單、正式保單及其附表及加簽單須在要求時出示給分包商查閱。

[HKCSA]: "The Client-Contractor shall, ~~either by himself or cause others to,~~ maintain and extend as necessary the aforesaid insurances"

[KCTang]: The insurance may not be taken out by the Client-Contractor himself.

10.3.2 If the Client-Contractor at any time fails upon request to produce evidence showing that any of the aforesaid insurances is effectively maintained then, without prejudice to his other rights and remedies, the Sub-Contractor may postpone or suspend his work on site until the insurance policy is effective and may in the joint name and on behalf of both parties insure against any risk, loss or damage with respect to which the default shall have occurred, and shall be entitled to recover from the Client-Contractor the premium paid plus administrative charges at the percentage stated in the Particulars of Agreement. This shall be deemed to be a Variation.

如果上家承包商在任何時間，經要求下，未能出示證據顯示上述任何一項保險是有效的，則分包商，在不影響他的其他權利和補救方法的同時，可以推遲或暫停工地上的工作直至該保險有效為止，及可以聯名方式並代表雙方對未有投保的任何風險、損失或破壞投保，並有權從上家承包商取回已付保費另加協議特定事項說明的百分率作為行政費。此安排視為工程變更。

[HA]: "may postpone" in line 3 → "~~shall postpone~~" in view of the adverse effect due to carrying out of work without proper insurance.

[HKCA]: "the Sub-Contractor may ~~postpone or suspend his work on site until the insurance policy is effective and may~~ in the joint name and on behalf of both parties insure"

[HA]: "both parties" in line 4 → "the Contract Parties".

[KCTang]: Agreed.

[HA]: Delete the last sentence "This shall be deemed to be a Variation." noting that the remedy to the Sub-Contractor for the Client-Contractor's failure to insure has been covered in this clause and Clause 6.17.1(k).

[KCTang]: Agreed.

10.4 Compliance with insurance conditions 遵從保險條款

The Sub-Contractor shall, with all due diligence and at his own cost, conform to the terms and conditions of the aforesaid insurances and all reasonable requirements of the insurers in connection with the prevention of accidents, the submission and settlement of claims, the recovery of losses, and shall bear at his own cost the consequences of any failure to do so.

分包商須，盡一切努力和自行承擔費用，遵從上述各項保險之條件及條款和承保人關於防止意外、遞交及理賠和追討損失之所有合理要求，並須自行承擔未能遵從所引致的費用。

10.5 Insurances not affecting liability 保險不解除責任

10.5.1 The presence of the aforesaid insurances shall not prejudice or reduce the Sub-Contractor's liability or responsibility under this Sub-Contract.

上述各項保險的存在並不影響或減低分包商在分包合同下的責任或職責。

10.5.2 The party who would have been liable in the absence of the insurance cover shall be responsible for the amounts of excesses, losses, damage, fees, costs and expenses not compensated by the insurances.

如果沒有保險保障之情況下，原應負責之人士，須負責有關保險不作賠償之免賠額、損失、破壞、費用、成本及支出。

10.5.3 Administrative charges incurred by a Contract Party in connection with handling insurance claims shall be charged against the insurers rather than the other Contract Party.

合同一方因處理保險索賠而產生行政費只能向保險方而不是對方追討。

[HA]: The Chinese translation for "insurers" in this clause is "保險方" which is inconsistent with the translation "承保人" used in other clauses such as Clauses 10.1.4, 10.2.3, 10.2.5, 10.2.6 and 10.4. Please unify.

[KCTang]: Agreed.

[HKCA]: "handling insurance claims under Contractors' All Risks and Third Party Liability Insurance shall be charged"

[KCTang]: Employees' Compensation insurance claims excluded?

10.6 Insurances of materials before delivery 物料到工地前的保險

Unless covered by the insurance in Appendix A hereto, the taking out of insurances against risks of loss or damage to materials occurring before their delivery to the Site shall be the Sub-Contractor's own concern.

除非受到後附的附件 A 的保險所保障，為物料送抵工地前之損失或破壞的風險投購保險，乃分包商自己的事宜。

10.7 Insurances of construction plant and temporary buildings 施工機械及臨時建築物的保險

Unless covered by the insurance in Appendix A hereto, the taking out of insurances against risks of loss or damage to construction plant and temporary buildings owned or hired by the Sub-Contractor or persons for whom he is responsible shall be the Sub-Contractor's own concern.

除非受到後附的附件 A 的保險所保障，對分包商或其應負責的人士所擁有或租用的施工機械及臨時建築物之損失或破壞的風險投購保險，乃分包商自己的事宜。

11. TERMINATION 終止

11.1 Determination by Client-Contractor 上家承包商終止僱用

11.1.1 In any one of more of the following events, without prejudice to any other rights or remedies which the Client-Contractor may possess, the Client-Contractor may by notice by registered post or recorded delivery to the Sub-Contractor forthwith determine the employment of the Sub-Contractor under this Sub-Contract:

在下列一種或多種情況下，在不影響上家承包商可能擁有的任何其他權利或補救措施的同時，上家承包商可以，以掛號郵件或有記錄的派遞，向分包商發出通知，立即終止分包商按分包合同的僱用：

[HA] / [HKFEMC] / [HKCA]: “one ~~of~~ or more”.

[KCTang]: Agreed.

[HKFEMC]: “may by notice ~~by~~ or registered post”.

[KCTang]: "by" is correct.

[HKFEMC]: “上家承包商可以以掛號郵件或有記錄的派遞向分包商發出通知，~~立即~~終止分包商按分包合同的僱用”。

- (a) the Sub-Contractor, unless due to an Excusable Event, fails to proceed regularly and diligently with the Sub-Contract Works (including rectifying defects) or completely or substantially suspends the carrying out of the Sub-Contract Works (including rectifying defects) before Substantial Completion of the whole of the Sub-Contract Works;
在整個分包工程充份竣工前，分包商，除因可延期事件外，未能有規律和勤奮地進行分包工程(包括修補缺陷)或完全或大規模地暫停進行分包工程(包括修補缺陷)；

[HA]: The Client-Contractor has the right to determine the employment of the Sub-Contractor if the Sub-Contractor fails to proceed regularly and diligently with the Sub-Contract Works but with excepted situations where the failure is due to an Excusable Event. Are all Excusable Events intended to be excepted situations? Noting that “Variation” is one of the Excusable Events, it would be contractually imbalanced if the Client-Contractor, having ordered additional works, is left with no recourse to the Sub-Contractor’s failure to proceed regularly and diligently with the Sub-Contract Works including the additional works ordered.

[KCTang]: Perhaps, "having considering the effects of Excusable Events" instead of "unless due to an Excusable Event" can be a solution.

[HKFEMC]: "the Sub-Contractor, unless due to an Excusable Event,
i fails to proceed regularly and diligently with the Sub-Contract Works (including rectifying defects) or completely or
ii substantially suspends the carrying out of the Sub-Contract Works (including rectifying defects)
before Substantial Completion of the whole of the Sub-Contract Works;"

[HKFEMC]: "~~除因可延期事件外~~ 在整個分包工程充份竣工前，分包商~~除因可延期事件外~~

- i.* 未能有規律和勤奮地進行分包工程(包括修補缺陷)或
- ii* 完全或大規模地暫停進行分包工程(包括修補缺陷)；”

[KCTang]: Agreed.

[HKPSWTA]: "the Sub-Contractor, ~~unless due to an Excusable Event~~ **without reasonable cause**, fails to"

[HKPSWTA]: Is there any material difference between "without reasonable cause" or "unless due to an Excusable Event"?

[HKCSA]: "the Sub-Contractor, unless ~~due to an Excusable Event~~ **with reasonable cause**, fails to"

- (b) the Sub-Contractor without the written consent of the Client-Contractor assigns this Sub-Contract or sublet the whole or substantially the whole of the Sub-Contract Works to the same person; or
分包商未得上家承包商書面同意，轉讓分包合同，或把整個或差不多整個分包工程再分包給同一人；或

[HKFEMC]: Clarification is required for the term "assign" together with Clause 9.3.

[HKPSWTA]: "the Sub-Contractor without the written consent of the Client-Contractor assigns this Sub-Contract **unless the assignment is for the sole purpose of obtaining financing to carry out the Works**; or sublet the whole or substantially the whole of the Sub-Contract Works to the same person; or"

[HKPSWTA]: There is situation where the Sub-Contractor needs to assign the contract to a financial institution to obtain financing. It should state this as an exception, refer to similar provision in other standard contract document.

[HKCSA]: "**except for the purposes of obtaining finance by the Sub-Contractor for the Sub-Contract Works and at the request of the financier**, the Sub-Contractor without the written consent"

[KCTang]: To revise in conjunction with Clause 9.3.

- (c) the Sub-Contractor becomes bankrupt or makes a composition or arrangement with his creditors or has a petition for compulsory winding-up presented against him or enters into compulsory or voluntary liquidation (except for the purpose of reconstruction) or has a provisional liquidator or receiver appointed, unless the Client-Contractor, the Sub-Contractor and his trustee in bankruptcy, liquidator or receiver, as the case may be, agree in writing before or after the notice of determination to the continuation or reinstatement of the Sub-Contractor's employment.

分包商破產、或與其債權人作出債務重整協議或安排、或已有提交強制清盤呈請、或已進入強制或自動清盤(為重組而清盤則除外)、或已有委任臨時清盤人或破產管理人，除非上家承包商、分包商和他相關的破產受託人或清盤人或破產管理人，在終止通知書發出之前或之後，書面同意繼續或恢復分包商的僱用。

[HKFEMC]: "makes a composition or has an arrangement ... enters into a compulsory or voluntary liquidation".

[KCTang]: If "has an" is added, "with his creditors" would need to be repeated for "composition". "a" after "into" seems not necessary.

Provided that in the case of Clause 11.1.1(a) or (b), the Client-Contractor has previously issued two warning notices of determination specifying the event by registered post or recorded delivery to the Sub-Contractor, the second warning notice was issued later than **7 days** but not later than **2 months** after receipt of the first notice when the event had been continued or repeated, and the event has continued for not less than **7 days** after receipt of the second warning notice up to the time when the notice of determination is issued.

就第 11.1.1(a)或(b)條而言，上家承包商須曾在之前，以掛號郵件或有記錄的派遞，向分包商發出說明有關情況的警告會終止僱用的通知書二次，而第二次警告乃在第一次警告發出後超過 7 天但不超過 2 個月內有關的或同類的情況持續或重複時才發出，及有關情況於收到第二次警告後仍持續不少於 7 天直至終止通知發出時。

[HKFEMC]: "the second warning notice ~~was~~ shall be issued ~~later than~~ after 7 days but not later than **2 months** ~~after~~ upon receipt of the first notice ~~by the Sub-Contractor~~ when the event had been continued or repeated, and the event has continued for not less than **7 days** after receipt of the second warning notice ~~by the Sub-Contractor~~ up to the time when the notice of determination is issued."

[KCTang]: The original draft appears good enough. "was" is correct.

[HKFEMC]: "上家承包商須曾在發出終止通知之前，以掛號郵件或有記錄的派遞，向分包商發出說明有關情況的警告會終止僱用的通知書二次，而第二次警告乃在第一次警告發出後超過7天但不超過 2 個月內有關的或同類的情況持續或重複時才發出，~~且~~有關情況於收到第二次警告後仍持續不少於 7 天及直至終止通知發出時仍然持續。"

[HKCA]: "Provided that in the case of Clause 11.1.1(a) ~~or (b)~~, the Client-Contractor has previously issued ~~two warning a~~ notices of ~~determination~~ default specifying the event ~~by registered post or recorded delivery~~ to the Sub-Contractor, the second ~~and then a~~ warning notice of determination was issued by registered post or recorded delivery later than **7 days** but not later than **2 months** after ~~receipt of the first~~ of default when the event had been continued or repeated, and the event has continued for not less than **7 days** after receipt of the ~~second~~ warning notice of determination up to the time when the notice of determination is issued."

[KCTang]: To review whether (b) is to be excluded. The notice of default should be strong enough to mention the possibility of determination, and should not be an ordinary notice of complaints.

- 11.1.2 The Sub-Contractor shall reimburse the Client-Contractor all direct loss and/or expense caused to the Client-Contractor by the determination.
分包商須補償上家承包商因終止僱用而引致的所有直接損失及/或支出。

11.2 Determination by Sub-Contractor 分包商終止受僱

- 11.2.1 In any one of more of the following events, without prejudice to any other rights or remedies which the Sub-Contractor may possess, the Sub-Contractor may by notice by registered post or recorded delivery to the Client-Contractor forthwith determine the employment of the Sub-Contractor under this Sub-Contract:

在下列一種或多種情況下，在不影響分包商可能擁有的任何其他權利或補救措施的同時，分包商可以，以掛號郵件或有記錄的派遞，向上家承包商發出通知，立即終止分包商按分包合同的受僱：

[HA] / [HKFEMC] / [HKCA]: "one ~~of~~ ~~or~~ more".

[KCTang]: Agreed.

[HKFEMC]: "may by notice ~~by~~ ~~of~~ registered post".

[KCTang]: "by" is correct.

[HKFEMC]: "分包商可以~~以~~掛號郵件或有記錄的派遞~~向~~上家承包商發出通知"。

[HKCSA]: Add

"(a) ~~the Client-Contractor without the written consent of the Sub-Contractor assigns the Sub-Contract.~~"

[KCTang]: To revise in conjunction with Clause 9.3.

- (a) the Client-Contractor fails to issue a payment advice by the Payment Advice Due Date in respect of a payment application received from the Sub-Contractor before the relevant Payment Application Due Date, and fails to issue any payment to the Sub-Contractor by the following Payment Due Date; or the Client-Contractor fails to make the payment stated as due under the Payment Advice by the relevant Payment Due Date;
上家承包商未能，就相關的請款到期日或之前已收到的付款申請，於批款到期日或之前發出批款通知，並未能於隨著的付款到期日或之前支付任何款項給分包商；或者，上家承包商未能，於付款到期日或之前，支付批款通知已批核應予支付的款項；

[HKFEMC]: "~~上家承包商未能~~就相關的請款到期日或之前已收到的付款申請，~~上家承包商未能~~於批款到期日或之前發出批款通知，並未能於隨著的付款到期日或之前支付任何款項給分包商；或者，上家承包商未能~~於~~付款到期日或之前~~支付~~批款通知已批核應予支付的款項；”。

[HKPSWTA]: “the Client-Contractor fails to issue a payment advice by the Payment Advice Due Date in respect of a payment application received from the Sub-Contractor before the relevant Payment Application Due Date, ~~and fails to issue any payment to the Sub-Contractor by the following Payment Due Date~~; or the Client-Contractor fails to make the payment stated as due under the Payment Advice by the relevant Payment Due Date;”

[HKPSWTA]: “and fails to issue any payment to the Sub-Contractor by the following Payment Due Date” should be deleted. The logic of default in this draft is fail to issue Payment Advice AND fail to pay. Implied that Client-Contractor can fail to issue an advice but just pay any amount to the Sub-Contractor and will be safe guarded from being terminated.

[KCTang]: Implied meaning is incorrect. The original draft requires both conditions to be met by “and”.

- (b) the commencement or carrying out of the whole or substantially the whole of the Sub-Contract Works has been postponed or suspended as instructed by the Client-Contractor due to no breach or default of the Sub-Contractor or postponed or suspended due to any combination of the Compensable Events, for a continuous period of more than **3 months** beyond any anticipated periods of postponement or suspension in this Sub-Contract; or 整個或差不多整個分包工程的開始或進行，按上家承包商不是因為分包商違約或過失而發出的指示而延遲或暫停，或因任何組合的可賠償事件而延遲或暫停，連續超過分包合同已預定延遲或暫停的時間達 **3** 個月；或

[HKFEMC]: “~~在非因為分包商違約或過失下，按上家承包商發出的指示而連續延遲或暫停~~整個或差不多整個分包工程的開始~~展~~或進行~~施工~~達**3**個月，按上家承包商不是因為分包商違約或過失而發出的指示而延遲或暫停，或因任何組合的可賠償事件或~~其組合~~而延遲或暫停~~施工~~，連續超過分包合同已預定~~按可賠償事件預期給予的~~延遲或暫停的時間達 **3** 個月；或”。

[KCTang]: “分包合同已預定” and “分包合同按可賠償事件預期給予” have different meanings.

[HKPSWTA] / [HKCSA]: “for a continuous period of more than **3 months** ~~beyond any anticipated periods of postponement or suspension in this Sub-Contract~~; or”

[HKPSWTA]: What is implication of “beyond any anticipated periods of postponement or suspension in this subcontract” and why would there be an anticipated period of suspension?

[KCTang]: Change “anticipated ... in this Sub-Contract” to “anticipated and specified in this Sub-Contract”.

- (c) the Client-Contractor becomes bankrupt or makes a composition or arrangement with his creditors or has a petition for compulsory winding-up presented or made against him or enters into compulsory or voluntary liquidation except for the purpose of reconstruction or has a provisional liquidator or receiver appointed, unless the Sub-Contractor, the Client-Contractor and his trustee in bankruptcy, liquidator or receiver, as the case may be, agree in writing before or after the notice of determination to the continuation or reinstatement of the Sub-Contractor's employment.

上家承包商破產、或與其債權人作出債務重整協議或安排、或已有強制清盤呈請、或已進入強制或自動清盤(為重組而清盤則除外)、或已有委任臨時清盤人或破產管理人，除非上家承包商、分包商和他相關的破產受託人或清盤人或破產管理人，在終止通知書之前或之後，書面同意繼續或恢復分包商的僱用。

[HKFEMC]: "makes a composition or *has an* arrangement ... enters into *a* compulsory or voluntary liquidation".

[KCTang]: If "has an" is added, "with his creditors" would need to be repeated for "composition". "a" after "into" seems not necessary.

Provided that in the case of Clause 11.2.1(a) or (b), the Sub-Contractor has previously issued two warning notices of determination specifying the event by registered post or recorded delivery to the Client-Contractor, the second warning notice was issued later than **7 days** but not later than **2 months** after receipt of the first notice when the event or similar kind of event had been continued or repeated, and the event has continued for not less than **7 days** after receipt of the second warning notice up to the time when the notice of determination is issued.

就第 11.2.1(a)或(b)條而言，分包商須曾在之前，以掛號郵件或有記錄的派遞，向上家承包商發出說明有關情況的警告會終止僱用的通知書二次，而第二次警告乃在第一次警告發出後超過 **7** 天但不超過 **2** 個月內有關的或同類的情況持續或重複時才發出，及有關情況於收到第二次警告後仍持續不少於 **7** 天直至終止通知發出時。

[HKFEMC]: Shall be amended similar to Clause 11.1.1 above.

[KCTang]: See comments there.

- 11.2.2 The Client-Contractor shall reimburse Sub-Contractor the all direct loss and/or expense caused to the Sub-Contractor by the determination.

上家承包商須補償分包商因終止僱用而引致的所有直接損失及/或支出。

[HKCSA]: "reimburse *the* Sub-Contractor ~~the~~ all *the* direct loss and/or expense"

[KCTang]: Agreed.

11.3 Termination of Client-Contractor's Contract by himself 上家承包商的合同被自己終止

- 11.3.1 If for any reason the Client-Contractor's contract for the Client-Contract Works is terminated by himself or his employment under the contract is determined by himself, then the employment of the Sub-Contractor under this Sub-Contract shall also determine at the same time. This shall be without prejudice to any other rights or remedies which the Contract Parties may possess.
無論如何，如果上家承包商的的上家承包工程的合同被自己終止，或他按該合同的的僱用被自己終止，分包商按分包合同的僱用亦同時終止。這不影響合同雙方可能擁有的任何其他權利或補救措施。

[HKFEMC]: “無論如何因任何原因，如果上家承包商的的上家承包工程的合同被他自己終止，或他按該合同的的僱用被他自己終止，分包商按分包合同的僱用亦於同時終止。這不影響合同雙方按本合同行使所可能擁有的任何其他權利或補救措施。”

[KCTang]: Agreed.

[HKPSWTA]: Is there any material difference in the legal meaning between “terminated by himself” and “his employment under the contract is determined by himself”? Need further clarification.

[KCTang]: Possibly.

11.4 Termination of Client-Contractor's Contract by Upper-tier Contractor 上家承包商的合同被再上層承包商終止

- 11.4.1 If for any reason the Client-Contractor's contract for the Client-Contract Works is terminated by the Upper-tier Contractor or his employment under the contract is determined by the Upper-tier Contractor, then the employment of the Sub-Contractor under this Sub-Contract shall also determine at the same time. This shall be without prejudice to any other rights or remedies which the Contract Parties may possess.
無論如何，如果上家承包商的的上家承包工程的合同被再上層承包商終止，或他按該合同的的僱用被上家承包商終止，分包商按分包合同的僱用亦同時終止。這不影響合同雙方可能擁有的任何其他權利或補救措施。

[HKFEMC]: “無論因任何原因如何，如果上家承包商的的上家承包工程的合同被再上層承包商終止，或他按該合同的的僱用被上家承包商終止，分包商按分包合同的僱用亦於同時終止。這不影響合同雙方按本合同行使所可能擁有的任何其他權利或補救措施。”

[KCTang]: Agreed.

[HKPSWTA]: Is there any material difference in the legal meaning between “terminated by himself” and “his employment under the contract is determined by himself”? Need further clarification.

[KCTang]: Possibly.

11.5 Consequences after determination or termination 終止後的後果

[HKFEMC]:The section on Termination is probably more suited to the trade Sub-contractors, rather than Specialist Sub-Contractors. Specialist Sub-Contractors, such as electrical and mechanical Sub-Contractors, usually handle Sub-contracts of a more complex nature, and sometimes of a more substantial value. The termination of electrical and mechanical Sub-Contracts is thus a more complicated process and thus more time consuming.

[HKFEMC]: HKFEMC is of the view that should the Standard Form be used for electrical and mechanical Sub-Contracts, section 11 on 'Termination' has to be readdressed. One area of particular concern would be the time for either party to respond, which are currently covered by Clauses 11.1.1 and 11.2.1.

11.5.1 Clauses 11.5 to 11.8 shall apply, only when Clause 11.1, 11.2, 11.3 or 11.4 is invoked.
只在動用到第 11.1、11.2、11.3 或 11.4 條時，第 11.5 至 11.8 條才適用。

11.5.2 The Sub-Contractor shall immediately give up any possession of the Site and demobilize his people (and hand tools normally carried by the workers without transportation aid) from the Site except those necessary to attend to site security, site survey and handover but only for the time specified by the Client-Contractor as being reasonably required for that purpose.
分包商須立即放棄對工地的任何佔用及從工地撤走他的人員(以及工人通常攜帶而不必運輸協助的手工具)，惟需處理工地保安、現場盤點及交接工作的人員除外，但僅限於上家承包商規定的因此而合理需要的時間。

[HKFEMC]: Suggest 'his people' be more specifically defined.

[HKFEMC]:“他的人員(以及手工具(工人通常攜帶而不必運輸協助的手工具)，惟需處理工地保安、現場盤點及交接工作的人員除外，但僅限於上家承包商規定的因此而合理需要的時間。”

[KCTang]: The latter part does not read correctly.

11.5.3A If Clause 11.1 or 11.4 is invoked, all materials or the Sub-Contractor's self-owned temporary site facilities (except hand tools as aforesaid) shall not be removed from the Site (unless instructed or agreed by the Client-Contractor), may be used by others for the completion of the Sub-Contract Works, and may be sold or disposed of when no longer required. Temporary site facilities not owned by the Sub-Contractor shall not be removed from the Site until **7 days** after the date of determination so as to provide an opportunity for agreeing arrangements for their continued use on the Site, shall be removed from the Site by their owners or the Sub-Contractor after this period after giving advance notice (unless agreements have been reached), may be used by others for the completion of the Sub-Contract Works before their removal from the Site, and may be sold or disposed of by others when their owners or the Sub-Contractor fail to remove them from the Site within **7 days** after being instructed to do so.

如果動用了第 11.1 或 11.4 條，任何物料或分包商自己擁有的現場臨時設施(前述的手工具除外)，不得從工地移走(除非得到上家承包商指示或同意)，可供他人使用以完成分包工程，可在不再需要時被他人出售或棄置。非分包商自己擁有的現場臨時設施，在終止僱用日後 7 天內不得從工地移走，以便能有機會就它們的繼續使用達成協議；在此期間後須由它們的物主或分包商在給予預先通知後從工地移走(除非已達成協議)；在移走前可供他人使用以完成分包工程；在被要求移走後 7 天內還沒被物主或分包商移走的，可被他人出售或棄置。

[HKCSA]: "If Clause 11.1 ~~or 11.4~~ is invoked"

11.5.3B If Clause 11.2 or 11.3 is invoked, all materials and temporary site facilities (except hand tools as aforesaid) provided by the Sub-Contractor shall remain un-used (except for safety or stability purposes) on the Site until **7 days** after the date of determination so as to provide an opportunity for agreeing arrangements for their continued use on the Site, and shall be removed from the Site by their owners or the Sub-Contractor after this period after giving advance notice (unless agreements for their use have been reached), and may be sold or disposed of when their owners or the Sub-Contractor fail to remove them from the Site within **7 days** after being instructed to do so.

如果動用了第 11.2 或 11.3 條，分包商提供的任何物料或現場臨時設施(前述的手工具除外)，在終止僱用日後 **7** 天內要留在工地上但(除安全或穩固用途外)不能使用，以便能有機會就它們的繼續使用達成協議；在此期間後須由它們的物主或分包商在給予預先通知後從工地移走(除非已達成協議)；在被要求移走後 **7** 天內還沒被物主或分包商移走的，可被他人出售或棄置。

[HKCSA]: "If Clause 11.2 ~~or~~, 11.3 ~~or~~ 11.4 is invoked, all materials and temporary site facilities (except hand tools as aforesaid) provided by the Sub-Contractor shall ~~remain unused~~ **not be used by any person** (except for safety or stability purposes) on the Site until **7 days**"

11.5.4 When removing materials or temporary site facilities, the Sub-Contractor and aforesaid owners shall exercise due care and provide suitable safety provisions so as not to affect the safety and stability of work and other objects remaining on site or endanger personal safety.

分包商及前述物主在移走任何物料或現場臨時設施時，須小心謹慎及提供適當的安全設施，從而不會影響留在工地的工作及其他物件的安全和穩定性或危及人身安全。

11.5.5 The Client-Contractor or the Ultimate Client or any Upper-tier Contractors may provide site security to prevent improper removal and unauthorised access and provide safety measures to protect the Sub-Contract Works, people and adjoining properties.

上家承包商或最終委託方或任何再上層承包商可提供工地保安以防止不當的移走和未經授權的進入，及提供安全措施以保護分包工程、人員和毗鄰物業。

[HKCSA]: "~~may~~ **shall** provide"

11.5.6 The Client-Contractor and the Sub-Contractor shall as soon as practicable jointly take records of the status and quantities of the work done and materials and temporary site facilities on site.

上家承包商及分包商須就已施工工作和工地上的物料及現場臨時設施的狀況及數量，盡可能快地共同予以紀錄。

11.5.7 Mutual agreements shall be made as far as possible to assign the contracts with the Sub-Contractor's suppliers and sub-sub-contractors to enable them to be employed and paid to continue to provide their service, warranties, guarantees on similar terms to their existing contracts.

盡可能達成協議，轉讓分包商與供應商及再分包商的合同，使他們可受僱及獲得支付繼續按現有合同相約條款提供他們的服務、保證、擔保。

11.5.8 The additional costs incurred in implementing the above procedures and measures shall be part of the direct loss and/or expense due to determination.

實施上述程序及措施所招致的額外費用，應屬於終止僱用的直接損失及/或支出的一部分。

11.5.9A If Clause 11.1 is invoked, the Client-Contractor shall as soon as practicable employ and pay other persons or his own workers (collectively called "others" under this Clause 11) to carry out and complete the Sub-Contract Works. If the Client-Contractor does not employ others within **6 months** after determination to carry out the Sub-Contract Works left outstanding, the employment shall be deemed to have been effected by the end of the said **6 months**.

如果動用了第 11.1 條，上家承包商須盡快地聘用及支付其他人士或自己的工人(在本第 11 條內統稱為“他人”)進行和完成分包工程。如果上家承包商在終止僱用後 6 個月內，仍未僱用他人進行遺下尚未完成的分包工程，則有關的聘用視為於該 6 個月期屆滿時生效。

[HKFEMC]: Which employment is deemed to be effected?

[HKFEMC]: 何謂有關的聘用?

[HKFEMC]: 'the employment' and its Chinese translation should be more clearly stated to avoid any misunderstanding.

[KCTang]: "employment *of others*"

[KCTang]: "仍未僱用" → "仍未聘用"

11.5.9B If Clause 11.2 or 11.3 or 11.4 is invoked, the Sub-Contract Works may be carried out by others. 如果動用了第 11.2 或 11.3 條或 11.4 條，可由他人進行分包工程。

[HKCSA]: What does this mean?

[KCTang]: Revise as "the *outstanding* Sub-Contract Works". This clause is to avoid argument over whether others are not entitled to do so.

11.6 Computation of balance of payment 計算付款餘額

[HKPSWTA]: Clauses 11.6.1 A B C. We prefer the computation in all three cases to have a consistent layout in terms of the "add" and "subtract" items. And that in all three cases, the Sub-Contractor will recover from the Client-Contractor a positive balance and liable for a negative balance.

For example:

Clause 11.6.1 A. Determination by Client-Contractor

Compute first

a 4. The total amount that would have been payable ...has not occurred.

Then LESS:

- a 1. the total amount previously paid to the Sub-Contractor.
- a 2. expenses incurred by the Client-Contractor in completingafter determination.
- a 3. direct loss and expenses caused to....completion of subcontract

Clause 11.6.1 B. Determination by Sub-Contractor or Client-Contractor terminate by himself

Compute first

- a 1. Gross valuation of the Sub-Contract works.
- a 3. Direct loss or expense caused to the Sub-Contractor

Then LESS:

- a 2. Damages for delayed completion...which may accrue...termination.
- a 4. the total amount previously paid to the Sub-Contractor.

Clause 11.6.1 C. Termination of Client-Contractor by Upper Tier contractor

Compute first

- a 1. Gross valuation of the Sub-Contract works.
- a 3. Direct loss or expense caused to the Sub-Contractor

Then LESS:

- a 2. Damages for delayed completion...termination.
- a 4. Direct loss caused to the Client-Contractor by termination.
- a 5. the total amount previously paid to the Sub-Contractor.

[KCTang]: Agreed in principle.

11.6.1A In case Clause 11.1 is invoked:

如果動用了第 11.1 條:

- (a) The balance of the expenses at item (1) below after making the deductions or additions at items (2) to (4) below shall be computed, and the Sub-Contractor shall be liable for a positive balance and be entitled to recover a negative balance:
須先計算下列(1)項的支出，再按下列(2)至(4)項作出扣減或增加而取得餘額，而分包方商負責支付正餘額，有權取回負餘額：

- (1) the expenses incurred by the Client-Contractor in completing the Sub-Contract Works, excluding the costs of Variations instructed after determination;
上家承包商為完成分包工程所招致的開支，惟於終止僱用後指示的工程變更費用除外；

[HKCSA]: "the Sub-Contract Works, ~~excluding the costs of Variations instructed after determination~~"

[KCTang]: Why delete?

- (2) addition for the total amount previously paid to the Sub-Contractor;
加入已經支付給分包商的總金額；
- (3) addition for the direct loss and/or expense caused to the Client-Contractor by the determination, including damages for delayed completion of the Sub-Contract Works calculated up to the original completion date of the completion sub-contract; and
加入因終止僱用而對上家承包商構成的直接損失及/或支出，包括分包工程延誤竣工之損失賠償(計算到善後的分包工程的原定竣工日為止)；及

- (4) deduction for the total amount that would have been payable for completing the Sub-Contract Works calculated in accordance with this Sub-Contract if the determination had not occurred.

減去如果沒有終止僱用而完成分包工程，按照分包合同計算本應支付的總金額。

[HKCSA]: "payable ~~to the Sub-Contractor~~ for completing"

[KCTang]: Agreed.

[DevB]: "deduction for the total amount that would have been payable for ~~completing~~ **carrying out** the Sub-Contract Works calculated in accordance with this Sub-Contract if the determination had not occurred.", completing in this context conveys the meaning of completing the remaining works.

[KCTang]: "completing" is better.

[HKPSWTA]:

- "(a) The balance of the ~~expenses at item (1) below~~ **amount payable to the Sub-Contractor** after making the deductions ~~or additions at items (2) to (4) below~~ shall be computed, and the Sub-Contractor shall be ~~able to~~ entitled to recover a positive balance and be ~~entitled to recover~~ **liable for** a negative balance:

Amount payable to the Sub Contractor:

- ~~(4 1)~~ the total amount that would have been payable for completing the Sub-Contract Works calculated in accordance with this Sub-Contract if the determination had not occurred.

Less deductions:

- ~~(+ 2)~~ the expenses incurred by the Client-Contractor in completing the Sub-Contract Works, excluding the costs of Variations instructed after determination;
- ~~(2 3)~~ ~~addition for~~ the total amount previously paid to the Sub-Contractor; **and**
- ~~(3 4)~~ ~~addition for~~ the direct loss and/or expense caused to the Client-Contractor by the determination, including damages for delayed completion of the Sub-Contract Works calculated up to the original completion date of the completion sub-contract; ~~and.~~"

[KCTang]: Agreed subject to final touch-up.

- (b) The Client-Contractor and the Sub-Contractor shall exchange their computations of the balance of payment with supporting documentation as soon as practicable within **2 months** after the Client-Contractor employs other person to carry out the Sub-Contract Works.
上家承包商及分包商，須在上家承包商聘用他人進行分包工程後 **2** 個月內，盡可能快地交換他們的付款餘額計算及證明文件。

11.6.1B In case Clause 11.2 or 11.3 is invoked:

如果動用了第 11.2 或 11.3 條：

- (a) The balance of the gross valuation at item (1) below after making the deductions or additions at items (2) to (4) below shall be computed, and the Client-Contractor shall be liable for a positive balance and be entitled to recover a negative balance:
須計算下列(1)項的累計估值，再按下列(2)至(4)項作出扣減或增加而取得餘額，上家承包商負責支付正餘額，有權取回負餘額：

- (1) the gross valuation of the Sub-Contract Works in accordance with Clause 6.16.1(a), excluding materials removed by the Sub-Contractor after determination or termination, but including materials that the Sub-Contractor has paid for, or is legally bound to pay for, and has transferred or will transfer the ownership title to these materials to the Client-Contractor;
根據第 6.16.1(a) 條計算的分包工程累計估值，不包括受僱或合同被終止後由分包商移走的物料，但包括分包商已支付、或受法律約束須予支付、及已經或將會向上家承包商轉移產權的物料；

[HKCSA]: "the gross valuation of the Sub-Contract Works *(including variations thereto)* in accordance with"

[KCTang]: Not necessary. Variations are to be part of the gross valuation under Clause 6.16.1(a).

- (2) deduction for damages for delayed completion of the Sub-Contract Works which may accrue up to the date of determination or termination;
減去截至受僱或合同被終止日為止所累計的分包工程延誤竣工之損失賠償；

[HKCSA]: "the Sub-Contract Works *payable to the Client-Contractor pursuant to Clause 4.9* which may accrue"

[KCTang]: Really necessary?

- (3) addition for the direct loss and/or expense caused to the Sub-Contractor by the determination or termination; and
加入因受僱或合同被終止而對分包商構成的直接損失及/或支出；及

[HKCSA]: " the Sub-Contractor by *delay to the Sub-Contract Works pursuant to Clause 4.8 and* the determination or termination"

[KCTang]: Not necessary. Direct loss and/or expense caused by delay pursuant to Clause 4.8 is to be part of the gross valuation under Clause 6.16.1(a).

- (4) deduction for the total amount previously paid to the Sub-Contractor.
減去已經支付給分包商的總金額。

[HKPSWTA]:

- “(a) The balance of the ~~gross valuation at item (1) below~~ **amount payable to the Sub-Contractor** after making the deductions or additions at items (2) to (4) below shall be computed, and the ~~Client-Contractor~~ **Sub-Contractor** shall be ~~liable for~~ entitled to recover a positive balance and be ~~entitled to recover~~ **liable for** a negative balance:

Amount payable to the Sub-Contractor:

- (1) the gross valuation of the Sub-Contract Works in accordance with Clause 6.16.1(a), excluding materials removed by the Sub-Contractor after determination or termination, but including materials that the Sub-Contractor has paid for, or is legally bound to pay for, and has transferred or will transfer the ownership title to these materials to the Client-Contractor;
- ~~(2)~~ **(2)** ~~addition for~~ the direct loss and/or expense caused to the Sub-Contractor by the determination or termination; ~~and~~

Less deductions:

- ~~(2)~~ **(3)** ~~deduction for~~ damages for delayed completion of the Sub-Contract Works which may accrue up to the date of determination or termination; **and**
- (4) ~~deduction for~~ the total amount previously paid to the Sub-Contractor.”

[KCTang]: Agreed subject to final touch-up.

- (b) The Client-Contractor and the Sub-Contractor shall exchange their computations of the balance of payment with supporting documentation as soon as practicable within **2 months** after the determination or termination.
上家承包商及分包商，須在受僱或合同被終止後**2**個月內，盡可能快地交換他們的付款餘額計算及證明文件。

11.6.1C In case Clause 11.4 is invoked:
如果動用了第 11.4 條：

- (a) The balance of the gross valuation at item (1) below after making the deductions or additions at items (2) to (5) below shall be computed, and the Client-Contractor shall be liable for a positive balance and be entitled to recover a negative balance:
須先計算下列(1)項的累計估值，再按下列(2)至(5)項作出扣減或增加而取得餘額，上家承包商負責支付正餘額，有權取回負餘額：

- (1) the gross valuation of the Sub-Contract Works in accordance with Clause 6.16.1(a), excluding materials removed by the Sub-Contractor after termination, but including materials that the Sub-Contractor has paid for, or is legally bound to pay for, and has transferred or will transfer the ownership title to these materials to the Client-Contractor;
根據第 6.16.1(a)條計算的分包工程累計估值，不包括終止合同後由分包商移走的物料，但包括分包商已支付、或受法律約束須予支付、及已經或將會向上家承包商轉移產權的物料；
- [HKCSA]: "the Sub-Contract Works (including variations thereto) in accordance with"
- [KCTang]: See comments above.
- (2) deduction for damages for delayed completion of the Sub-Contract Works which may accrue up to the date of termination;
減去截至終止合同日為止所累計的分包工程延誤竣工之損失賠償；
- [HKCSA]: "the Sub-Contract Works payable to the Client-Contractor pursuant to Clause 4.9 which may accrue up to the date of termination"
- [KCTang]: See comments above.
- [HKCSA]: Add
- "addition for the direct loss and/or expense caused to the Sub-Contractor delay to the Sub-Contract Works pursuant to Clause 4.8;"
- [KCTang]: See comments above.
- (3) addition for the direct loss and/or expense caused to the Sub-Contractor by the termination, if Clause 11.4 is invoked not principally due to some breach of contract or other default by the Sub-Contractor;
加入因終止合同而對分包商構成的直接損失及/或支出(如果非主要因分包商的違約行為或其他過失而動用了第 11.4)；
- [HKCA]: "invoked not ~~principally~~ due to some breach of contract"
- (4) deduction for the direct loss and/or expense caused to the Client-Contractor by the termination, if Clause 11.4 is invoked principally due to some breach of contract or other default by the Sub-Contractor; and
減去因終止合同而對上家承包商構成的直接損失及/或支出(如果主要因分包商的違約行為或其他過失而動用了第 11.4)；及
- (5) deduction for the total amount previously paid to the Sub-Contractor.
減去已經支付給分包商的總金額。

[HKPSWTA]:

- “(a) The balance of the ~~gross valuation at item (1) below~~ **amount payable to the Sub-Contractor** after making the deductions or additions at items (2) to (4) below shall be computed, and the ~~Client-Contractor~~ **Sub-Contractor** shall be ~~liable for~~ entitled to recover a positive balance and be ~~entitled to recover~~ **liable for** a negative balance:

Amount payable to the Sub-Contractor:

- (1) the gross valuation of the Sub-Contract Works in accordance with Clause 6.16.1(a), excluding materials removed by the Sub-Contractor after termination, but including materials that the Sub-Contractor has paid for, or is legally bound to pay for, and has transferred or will transfer the ownership title to these materials to the Client-Contractor;
- ~~(2)~~ **(3)** ~~addition for~~ the direct loss and/or expense caused to the Sub-Contractor by the termination, if Clause 11.4 is invoked not principally due to some breach of contract or other default by the Sub-Contractor;

Less deductions:

- ~~(2)~~ **(3)** ~~deduction for~~ damages for delayed completion of the Sub-Contract Works which may accrue up to the date of termination;
- (4) ~~deduction for~~ the direct loss and/or expense caused to the Client-Contractor by the termination, if Clause 11.4 is invoked principally due to some breach of contract or other default by the Sub-Contractor; and
- (5) ~~deduction for~~ the total amount previously paid to the Sub-Contractor.”

[KCTang]: Agreed subject to final touch-up.

- (b) The Client-Contractor and the Sub-Contractor shall exchange their computations of the balance of payment with supporting documentation as soon as practicable within **2 months** after the termination, except that the deduction for direct loss and/or expense caused to the Client-Contractor may be raised later but within **1 month** after the receipt of direct loss and/or expense claim from the Upper-tier Contractor.
上家承包商及分包商，須在合同被終止後 **2** 個月內，盡可能快地交換他們的付款餘額計算及證明文件，但上家承包商的直接損失及/或支出的扣減可等到收到再上層承包商的直接損失及/或支出的扣減索賠後 **1** 個月內才提出。

11.7 Final Account after determination or termination 終止後的結算

- 11.7.1 In lieu of Clauses 6.17 and 6.18, the Client-Contractor and the Sub-Contractor shall discuss and agree the balance of payment as soon as practicable. Response with agreement or counter-offer to the other party's submission shall be made within **1 month** after receipt. Upon agreement, the Client-Contractor shall issue a Final Account showing a summary computation of the balance of payment for signing by both Contract Parties.
取代了第 6.17 及 6.18 條，上家承包商及分包商須盡可能快地就付款餘額進行討論及取得同意。在收到對方的提交文件後 **1** 個月內須作出同意或反建議的回應。取得同意後，上家承包商須發出結算，表明付款餘額的計算概要供合同雙方簽署。

[KCTang]: "both Contract Parties" → "the Contract Parties".

- 17.7.2 If the Client-Contractor considers that he has taken into account all the representation of the Sub-Contractor but still fails to obtain the Sub-Contractor's agreement, he may issue a unilateral Final Account to the Sub-Contractor and declare it as such.

如果上家承包商認為他已考慮了分包商的所有申述，惟仍未能取得分包商之同意，他可向分包商發出單方結算並作此聲明。

[HA]: Clause number → "11.7.2".

[KCTang]: Agreed.

[HKCSA]: "he ~~may~~ **shall** issue a unilateral Final Account"

[KCTang]: What if he does not comply?

- 17.7.3 If within **3 months** after receipt of the unilateral Final Account, the Sub-Contractor makes no objection to the unilateral Final Account or does not invoke the dispute resolution procedures, the unilateral Final Account shall be deemed to have been agreed by the Sub-Contractor. The receipt shall be evidenced by registered post or recorded delivery to the Sub-Contractor's registered address. If the Sub-Contractor raises objection within the said **3-month** period, the unilateral Final Account shall become void. Any further unilateral Final Account shall still be governed by this clause.

如果分包商在收到單方結算後**3**個月內，沒有提出反對意見或沒有啟動解決爭議的程序，單方結算視為已獲分包商同意。收件須以掛號郵件或有記錄的傳遞送到分包方的登記地址為證。如果分包商在該**3**個月內提出反對意見，單方結算須失效。再出的單方結算仍受本條管轄。

[HKPSWTA]: "If within ~~3~~ **1** months after receipt"

[HKPSWTA]: 3 months should be 1 month as discussed during first round.

[HA]: Clause number → "11.7.3".

[KCTang]: Agreed.

[HA]: Relocate the delivery methods mentioned in Clause 11.7.3 to Clause 11.7.2 to better present the link between the action and the way the action is to be executed.

[HKCA]: "makes no **written** objection to the unilateral Final Account or does not invoke the dispute resolution procedures, the unilateral Final Account shall be deemed to have been agreed by the Sub-Contractor. The receipt **and written objection** shall be evidenced by registered post or recorded delivery to the ~~Sub-Contractor's~~ **Contract Parties'** registered address. If the Sub-Contractor raises **written** objection"

[KCTang]: Agreed.

[HKCSA]: Strange provision.

- 17.7.4 The agreed or deemed agreed Final Account shall be deemed to have taken into account all factors affecting the computation of the Final Account and known at the time of agreement, but shall not prejudice the Sub-Contractor's liability for latent defects, and shall not release the liabilities of the Contract Parties in respect of matters affected by any bribery offence, fraud, dishonesty or fraudulent concealment.
經同意的結算視為已把影響結算的計算及達成協議時已知的所有因素納入考慮範圍，惟不會影響分包商對隱蔽性缺陷的責任，及不免除合同雙方就任何賄賂行為、欺詐、不誠實或欺詐性隱瞞的事宜的責任。

[HA]: Clause number → "11.7.4".

[KCTang]: Agreed.

[HKCSA]: Strange provision.

11.8 Payments after determination or termination 終止後的付款

[HKCSA]: This is too complicated for Sub-Contractor.

- 11.8.1 Before the agreement of the Final Account, the Contract Party liable for payment shall pay the other party once every **2 months** any outstanding balance of payment calculated by him at that time.
在結算取得同意前，有責任付款的合同一方須每**2**個月支付一次當時他自己計算到的尚未支付的付款餘額。
- 11.8.2 The final balance of payment due from one Contract Party to the other shall be paid within **14 days** after the signing of the Final Account or after the deemed agreement of the unilateral Final Account.
合同一方欠另一方的付款餘額須在結算書簽署或單方結算書視為已獲同意後**14**天內支付。

12. DISPUTE RESOLUTION 爭議解決

[HKPSWTA]: This entire Clause not yet reviewed.

[HKFEMC]: It is understood that use is to be made of the report from the Task Force on Dispute Resolution Documentation, and that the review of this section is to be carried out in detail during the next round of reviews. As such comments on this section are withheld.

12.1 Procedures 程序

- 12.1.1 The Contract Parties agree to follow the dispute resolution procedures outlined in this Clause 12 to resolve any disputes or differences between them that may arise under or in connection with this Sub-Contract, including disagreement between them over any act or omission of the types stated in Clause 12.5.1(d) of the Client-Contractor. This clause does not preclude the Contract Parties from using other dispute resolution methods mutually agreed between themselves.
合同雙方同意，按本第12條所概述的爭議解決程序，解決他們之間分包工程所引致或與它有關的爭議或分歧，包括他們之間對上家承包方的第12.5.1(d)條所說明類型的行為或缺漏的異議。本條不排除合同雙方可以採用他們同意的其他的爭議解決方法。
- 12.1.2 The dispute resolution procedures shall be deemed to commence when either Contract Party notifies the other in writing to resolve disputes in accordance with this Clause 12.
爭議解決程序視為於合同一方書面通知對方按本第12條解決爭議時開始。

12.2 Reference to Designated Representatives 提交指派的代表解決

- 12.2.1 Each of the Contract Parties shall designate one of his own senior executives as his representative (called "the Designated Representative") within **14 days** after the Sub-Contract Award Date.

合同各方須同意在分包定標日後 **14** 天內指派他的一個高層管理人作為他的代表(稱為"指派代表")。

[HKCA]: "senior executives *not involved in daily operations of the Project* as his representative"

[KCTang]: Agreed.

- 12.2.2 The dispute shall first be referred to the Designated Representatives who shall forthwith meet, discuss and endeavour to settle the dispute.

爭議須先提交給雙方的指派代表讓他們會面、討論及盡力平息爭議。

12.3 Reference to third-party neutral 提交中立第三者解決

- 12.3.1 If the dispute is not resolved by the Designated Representatives within **28 days** after the dispute being referred to them, before resorting to arbitration or litigation, they shall resolve the dispute using a mutually agreed more expedient and less costly method whereby a mutually agreed and appointed third-party neutral, being an expert in conducting the process or an expert in the matter in dispute, will, depending on the method selected, impartially advise, mediate, conciliate, adjudicate, certify, determine, adopt a shorter form of arbitrator, or use other means to resolve the dispute such that the share of liabilities and costs between the Contract Parties can be established.

如果指派代表未能在爭議提交給他們後 **28** 天內解決，在尋求仲裁或訴訟解決前，他們須採用一個雙方都同意的較為快捷及省錢的方法去解決，而該方法乃通過一位雙方都同意並共同委任的、對進行有關程序或對爭議事情是專家的中立第三者，按照所選的方法，不偏不倚地建議、調解、調停、簽證、確定、採用一較短的仲裁、或使用其他方法去解決爭議，讓雙方的責任和費用的分攤得以確立。

[HA]: There are only two terms in the Chinese translation, namely "調解" and "調停", corresponding to three terms in the English version, namely "mediate", "conciliate" and "adjudicate". Please review.

[KCTang]: "審裁" for "adjudication" in accordance with Hong Kong International Arbitration Centre.

[HA]: "a shorter form of arbitrator" in line 6 → "a shorter form of *arbitration*".

[KCTang]: Agreed.

[HKCA]: "before resorting to arbitration or litigation, ~~they~~ *the Contract Parties* shall resolve"

[KCTang]: Agreed.

[HKCSA]: "before resorting to arbitration ~~or litigation~~, they shall resolve adopt a shorter form of ~~arbitrator~~ *arbitration*, or use other means"

[KCTang]: Right to litigation cannot absolutely be waived.

12.3.2 The Contract Parties shall equally share the payment to the third-party neutral.
合同雙方須平分向中立第三者的付款。

12.3.3 When proposing and agreeing on the dispute resolution method, the Contract Parties shall state whether the method resorts to a settlement agreement mutually agreed between the Contract Parties or a decision of the third-party neutral and, in the latter case, whether the decision is for reference only, or temporarily binding unless otherwise overruled by arbitration or litigation, or final and binding.
當建議及同意爭議解決方法時，合同雙方須規定該方法乃尋求合同雙方同意的解決協議還是中立第三者的決定，而如屬於後者，該決定是參考用的、或是在被仲裁或訴訟推翻前臨時有約束力的、或是有終局約束力的。

[HKCSA]: "overruled by arbitration or litigation". Litigation?

12.3.4 Within **5 days** (excluding Saturdays, Sundays and public holidays) after either Contract Party notifies the other in writing to resolve disputes in accordance with this Clause 12.3, the Contract Parties shall exchange their own proposed lists of dispute resolution methods. Within the next **5 days** (excluding Saturdays, Sundays and public holidays), they shall select one method from the combined list by progressive elimination of those having the greater difference in preferences. If no agreement is reached within the latter **5 days**, facilitative mediation resorting to a settlement agreement mutually agreed between the Contract Parties shall be used.
在合同一方書面通知對方按本第 12.3 條解決爭議後 **5** 天內(不包括星期六、星期日及公眾假期)，合同雙方須交換他們建議的爭議解決方法的名單。在隨後的 **5** 天內(不包括星期六、星期日及公眾假期)，他們須從合併的名單中續步排除雙方偏愛相差較大的來選出一個方法。如果該後 **5** 天內仍未能同意，須採用的方法為尋求合同雙方同意的解決協議的促進性調解。

[HKCSA]: Too complicated.

12.3.5 Within **5 days** (excluding Saturdays, Sundays and public holidays) after the selection of the dispute resolution method, the Contract Parties shall propose and exchange their own lists of persons to be appointed as the third-party neutral. Within the next **5 days** (excluding Saturdays, Sundays and public holidays), they shall select one person from the combined list by progressive elimination of those having the greater difference in preferences. If no agreement is reached after the latter **5 days**, the person shall be the one nominated by the Hong Kong International Arbitration Centre upon the request of either Contract Party. The appointment shall be concluded within **5 days** (excluding Saturdays, Sundays and public holidays) after agreement or nomination.
在選出爭議解決方法後 **5** 天內(不包括星期六、星期日及公眾假期)，合同雙方須交換他們建議的中立第三者的名單。在隨後的 **5** 天內(不包括星期六、星期日及公眾假期)，他們須從合併的名單中續步排除雙方偏愛相差較大的來選出一位人士。如果該後 **5** 天內仍未能同意，須委任香港國際仲裁中心獲合同一方邀請而提名的人士。委任須在同意或提名後 **5** 天內(不包括星期六、星期日及公眾假期)完成。

[HKCSA]: Too complicated.

12.3.6 Before or upon the appointment of the third-party neutral, the following shall be stated in writing by the Contract Parties, preferably with the assistance of the third-party neutral:
在委任中立第三者時或之前，合同雙方須就下列各點作出書面規定，最好有中立第三者協助：

- (a) The scope of the dispute to be resolved and the terms of reference of the third-party neutral.
要解決的爭議的範圍及中立第三者的職權範圍。
- (b) The rules to be followed for conducting the process.
進行過程所須遵守的規則。
- (c) The extent to which the information exchanged during the process is confidential, privileged and not be disclosed by the recipients of the information outside the process.
過程中所交換的資料的保密、受特權保護及不能被接收資料方在過程以外披露的程度。

12.4 Reference to arbitration 提交仲裁解決

12.4.1 If the dispute is not settled in accordance with Clause 12.3 within **2 months** after the appointment of the third-party neutral or within such other time as agreed between the Contract Parties, either Contract Party may notify the other in writing to refer the dispute to arbitration.
如果爭議未能在委任中立第三者後 **2** 個月內或雙方同意的時間內，按第 12.3 條解決，合同一方可以書面通知對方要提交給仲裁解決。

[HKCSA]: This is inconsistent with Clause 12.3 if the decision of the third-party neutral is binding.

[KCTang]: Note "If the dispute is not settled ..."

12.4.2 The person to act as the arbitrator shall be agreed between the Contract Parties. If the Contract Parties are unable to agree on the person to act as the arbitrator within **14 days** after a written request by either Contract Party to do so, the arbitrator shall be the one appointed by the Hong Kong International Arbitration Centre upon the request of either Contract Party.
出任為仲裁員的人士須由雙方同意。如果合同雙方未能在合同一方提出要同意仲裁人選後 **14** 天內達成協議，須委任香港國際仲裁中心獲合同一方邀請而提名的人士。

12.4.3 The arbitration shall be a domestic arbitration conducted in accordance with the Arbitration Ordinance (Chapter 609, Laws of Hong Kong) and, unless otherwise agreed by the Contract Parties, with the Domestic Arbitration Rules of the Hong Kong International Arbitration Centre.
仲裁須作為本地仲裁按香港法例第 609 章《仲裁條例》及，除非合同雙方另有協議，香港國際仲裁中心的本地仲裁規則進行。

[HKCSA]: "unless otherwise agreed by the Contract Parties, *in accordance* with the Domestic Arbitration Rules"

[KCTang]: The original draft appears to be simple and good enough.

[DevB]: It should be noted that making reference to "domestic arbitration" in the contract will have the effect that all the opt-in provisions in Schedule 2, which are features of domestic arbitration in the previous dual system imposing different rules for "international" and "domestic" arbitrations, will be AUTOMATICALLY APPLIED if the arbitration agreement is entered into before or during a period of 6 years after the commencement of the amended Arbitration Ordinance (Cap 609). Further, all the opt-in provisions will be DEEMED TO APPLY in subcontracts of that contract.

[KCTang]: Noted.

12.5 Arbitrator's powers 仲裁員的權力

12.5.1 The arbitrator's powers include:

仲裁員的權力包括：

- (a) rectifying this Sub-Contract to accurately reflect the true agreement made by the Contract Parties;
更正分包合同以準確地反映合同雙方真實的協議;

[HKCA]: Delete paragraph (a).

[KCTang]: This is what a judge would do in case of ambiguity of matters agreed. How about arbitrator?

- (b) directing measurements or valuations to determine the rights of the Contract Parties;
指示計量或計價以確定合同雙方的權利;
- (c) assessing and awarding any sum which ought to have been the subject of or included in a payment; and
評估和裁定本應支付的款項;
- (d) opening up, reviewing and revising, without limitation, the giving, submitting or issuing of any agreement, approval, assessment, authorisation, certificate, confirmation, consent, decision, delegation, direction, dissent, determination, endorsement, instruction, notice, notification, opinion, request, requirement, statement, termination or valuation.
不受限制地啟封、審查及修訂任何協議、批准、評估、授權、證書、確認、同意、決定、委託、指導、異議、斷定、支持、指示、通知、通告、意見、要求、規定、聲明、終止或估值的給予、提交或發出。

12.5.2 The place of arbitration shall be Hong Kong.

仲裁地點須是香港。

12.6 Sub-Contractor to continue to proceed diligently 分判商仍須繼續不懈的工作

The Sub-Contractor shall continue to proceed regularly and diligently with the Sub-Contract Works despite a dispute having arisen, and shall continue to give effect to all instructions from the Client-Contractor unless and until they are revised by dispute resolution under this Clause 12.

儘管發生爭議，分判商須繼續有規律及努力不懈地定期地進行分包合同工程，及須繼續落實上家承包商的指示，除非及直至他們被本第 12 條的爭議解決修訂。

12.7 Governing law 規管法例

This Sub-Contract shall be governed by and construed according to the laws for the time being in force in Hong Kong.

本分包合同須受現行的香港法律管轄和解釋。

APPENDIX A - Contractors' All Risks and Third Party Liability Insurance Policy or Synopsis
附件 A - 工程一切險及第三者責任險保險單或保險擇要

(Note: When completing the particulars, text added shall be shown in italics, and text deleted shall be shown as struck through.)

(註：在填寫事項時，加入的文字須以斜體字顯示，取消的文字須以刪除線刪除。)

[HKCA]: Delete the Note.

[KCTang]: Insert as a footnote?

		(delete "Yes" if not applicable) (如不適用，刪掉“是”) [HKCA]: "(delete YES if not applicable)"
1	The policy or synopsis is attached hereto 保險單或保險擇要後附於此	Yes 是
2	The policy or synopsis is the same at those described in the following part and clause of the Tender Documents or Tender Correspondence 保險單或保險擇要等同招標文件或投標來往函件下列部分及條款所所述的： _____ [HKCA]: "the same as <i>as</i> those described" [KCTang]: Agreed.	Yes 是
3	The synopsis is as described below 保險擇要如下所述	Yes 是
(a)	Percentage of professional fees in case of reinstatement 重建時顧問費的百份率	Not less than 不低於 _____ %
(b)	Amount for the removal of debris 殘礫清理保額	Not less than 不低於 \$ _____
(c)	Percentage for escalation clause 工程費上漲百份率	Not less than 不低於 _____ %
(d)	Material damage insurance excess in respect of each and every occurrence of loss or damage 物質損害保險的每次損失和/或破壞事故的免賠額	Amount or % of loss or damage not more than 金額或損失或破壞的%不高於

			(delete "Yes" if not applicable) (如不適用，刪掉“是”) [HKCA]: "(delete YES if not applicable)"
	(1)	Generally 一般	\$ _____ [HKCA]: See note below.
	(2)	Loss of or damage to scaffolding, shuttering, formwork, timbering, screens, fencing and hoardings 棚架(腳手架)、模板、圍幕、圍欄及圍街板的損失或破壞	_____ % [HKCA]: See note below.
	(3)	Loss of or damage to the Insured Property caused by water 因水被保險財產受到損失或破壞	_____ % [HKCA]: See note below.
	(e)	Third party liability insurance's limit of indemnity for any one occurrence (but unlimited in the aggregate amount for the period of insurance) 第三者責任險的每次事故的賠償限額(但保險期內無限)	Amount not less than 金額不低於
	(1)	Generally 一般	\$ _____ [HKCA]: See note below.
	(2)	Loss or damage arising from subsidence, collapse, vibration, or the weakening or removal of support to any property, land or building 因沉降、倒塌、震動或任何財產或建築物的支撐減弱或移除所引致的損失或破壞	\$ _____ [HKCA]: See note below.
	(3)	Loss or damage to Principals' properties which are not covered by the Materials Damage section of the insurance 保險單內物質損害保險不保的工程委託方的財產的損失或破壞	\$ _____ [HKCA]: See note below.
	(f)	Third party liability insurance excess in respect of each and every occurrence of loss or damage 第三者責任保險的每次損失或破壞事故的免賠額	Amount or % of loss or damage not more than 金額或損失或破壞的%不高於
	(1)	Generally 一般	\$ _____ [HKCA]: See note below.
	(2)	Loss or damage arising from subsidence, collapse, vibration, or the weakening or removal of support to any property, land or building 因沉降、倒塌、震動或任何財產或建築物的支撐減弱或移除所引致的損失或破壞	_____ % [HKCA]: See note below.

			(delete "Yes" if not applicable) (如不適用，刪掉“是”) [HKCA]: "(delete YES if not applicable)"
	(3)	Loss or damage to Principals' properties which are not covered by the Materials Damage section of the insurance 保險單內物質損害保險不保的工程委託方的財產的損失或破壞	_____% [HKCA]: See note below.
	(4)	Loss of or damage caused by water 因水被保險財產受到損失或破壞	_____% [HKCA]: See note below.
	(5)	Loss of or damage to existing underground services 現存地下管線的損失或破壞	_____% [HKCA]: See note below.
	(6)	Loss of or damage to oil filled cable, fibre-optic cable or telephone cable of 4,000 pairs or more 充油電纜、光纖纜或損失或破壞或 4000 雙或以上的電話幹綫	_____% [HKCA]: See note below.

[HKCA]: Replace with

"Excess _____% or \$ _____ *whichever is the greater*"

[KCTang]: Agreed, but "Excess" can be omitted.