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10. INSURANCES AND BOND 保險及履約保證

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10.1 Employees' Compensation Insurance 僱員賠償保險

10.1.1 The Client-Contractor shall, either by himself or cause others to, take out and maintain an employees' compensation insurance in compliance with the provisions of the Employees' Compensation Ordinance to cover the legal liabilities, costs and claims against the Sub-Contractor and his sub-sub-contractors of all tiers in respect of death or bodily injury by accident or disease sustained by any employees employed by any of them arising out of and in the course of their employment on the Sub-Contract Works or in connection with this Sub-Contract (whether on site or off-site), for the full period of construction, defects liability and/or maintenance.

10.1.1 上家承包商須自行或促使他人，按僱員補償條例之規定，投購及維持僱員補償保險，以承保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，在整個施工、保修及/或保養期內，因受僱於本分包工程或因涉及本分包合同（無論在工地內或外），在受僱期間，因意外或疾病而導致死亡或身體損傷，給他們造成的法律責任、費用及索償。

10.1.2 The insurance policy shall be especially endorsed to cover the death or bodily injury by accident or disease sustained by any self-employed persons or sole proprietors engaged by the Sub-Contractor or his sub-sub-contractors of all tiers upon the Sub-Contract Works or in connection with this Sub-Contract (whether on site or off-site) as if they were employees. Alternatively, the Client-Contractor shall ensure that separate personal accident insurance plans are taken out to provide cover commensurate with that enjoyed by an employee under the Employees' Compensation Ordinance to all self-employed persons or sole proprietors.

10.1.2 保險單須特別加簽，以承保分包商或其各層再分包商所任用之任何自僱人士或獨資經營者，因任用於本分包工程或涉及本分包合同（無論在工地內或外），在任用期間，因意外或疾病而導致死亡或身體損傷，猶如他們為僱員一樣。或者，上家承包商須確保另行投

購個人意外保險計劃，使所有自僱人士或獨資經營者享有與僱員根據僱員補償條例所享有的相同保障。

10.1.3 As soon as the Sub-Contractor becomes aware of any employees, self-employed persons or sole proprietors employed or engaged upon the Sub-Contract Works or in connection with this Sub-Contract sustaining death or bodily injury by accident or disease, he shall notify the Commissioner for Labour in the manner prescribed by the Ordinance, with a copy of the notice to the Client-Contractor and the insurers, irrespective of whether the death or bodily injury gives rise to any liability to pay compensation.

10.1.3 分包商一經知道所僱用或任用於本分包工程或涉及本分包合同之任何僱員、自僱人士或獨資經營者，因意外或疾病而導致死亡或身體損傷，則無論死亡或身體損傷會否構成賠償責任，均須按條例訂明的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。

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 and include the Sub-Contractor or his sub-sub-contractors of all tiers as one of the insured.

10.2.1 上家承包商須自行或致使他人，投購及維持一份工程一切險及第三者責任險，並加入分包商或其各層再分包商為被保險人之一。

10.2.2 The Material Damage section of the insurance shall comply with the following requirements:

10.2.2 保險之“物質損失保險”部份須符合下列要求：

- (a) The Insured Property shall include the Sub-Contract Works under this Sub-Contract and the materials supplied by the Client-Contractor for incorporation into the Sub-Contract Works and shall include temporary work and all unfixed materials delivered to, placed on or adjacent to the Insured Property and intended therefor (excluding construction plant and temporary buildings which are owned or hired by the Sub-Contractor).
- (a) 受保財產須包括本分包合同下之本分包工程及上家承包商提供以結合於本分包工程之物料，及須包括臨時工程及送抵、放置於或毗鄰受保財產準備供其用之所有未安裝物料（分包商擁有或租用之施工機械及臨時建築物除外）。
- (b) It shall cover physical loss of or damage to any part of the Insured Property during the period of construction until 14 days after substantial completion of that part notwithstanding any use or occupation by the principals or others prior to substantial completion, and also cover physical loss of or damage to such property arising during the period of defects liability and/or maintenance from a cause occurring during construction prior to completion or occasioned by any of the insured in the course of their carrying out of remedial work or outstanding work.
- (b) 它須承保受保財產任何部份於施工期間直至該部份充份竣工後14天止之物質損失或破壞(即使工程委託人或他人於充份竣工前有使用或佔用)，並承保受保財產於保修及/或保養期內，因竣工前施工期間產生的原因，或因任何被保險人在進行保修工作或未完工作的原故，導致之物質損失或破壞。
- (c) The sum insured shall be equal to the full reinstatement value of the Insured Property plus:
- (c) 受保金額須相等於受保財產完全重置時的費用，另加：
 - (i) the percentage of professional fees in case of reinstatement stated in the Particulars of Agreement to cover the costs and expenses in respect of architects, surveyors' and engineers' fees necessarily incurred in the reinstatement of the Insured Property consequent upon its loss or damage but not for preparing any claim; and

(i) 協議特定事項所規定的重置時顧問費的百分率，以承保重置受損失或破壞的受保財產時，必需的建築師、測量師及工程師之費用及開支，惟不包括擬備任何申索的費用；及

(ii) an amount not less than the amount for the removal of debris stated in the Particulars of Agreement to cover the costs and expenses necessarily incurred by the Insured with the consent of the Insurers in dismantling and removing debris of the portion or portions of the Insured Property destroyed or damaged by any peril thereby insured against.

(ii) 不低於協議特定事項所規定的殘廢清理保額之金額，以承保被保險人，獲承保人同意，對被任何受保危險毀滅或破壞的受保財產的一部分或多部份，進行殘廢拆卸及搬遷，導致之費用及開支。

(d) It shall contain an escalation clause to cover the possible increase in the reinstatement value of the Insured Property by the percentage stated in the Particulars of Agreement.

(d) 它須有一工程費上漲條款，以承保受保財產的重置費用可能的上漲，升幅按協議特定事項所規定的百分率。

10.2.3 The Third Party Liability section of the insurance shall comply with the following requirements:

10.2.3 保險之“第三者責任保險”部份須符合下列要求：

(a) It shall cover the legal liability, costs and claims against any or all of the joint-insured in respect of the following arising out of the performance of the works by the insured contractors:

(a) 此部分須承保任何或所有的共同被保險人，因受保的承包人執行工程而導致下列的情況，而蒙受之法律責任、費用及索償：

(i) accidental death, bodily injury, illness or disease suffered by any person, other than employees of the insured contractors;

(i) 任何人士遭受意外死亡、身體損傷、疾病或傳染病，但不包括受保的承包人之僱員；

(ii) accidental loss or damage to physical property, other than those insured under the Material Damage section until 14 days after substantial completion;

(ii) 物質財產遭受意外損失或破壞，但不包括受保於“物質損失保險”部份的物質財產直至充份竣工後14天；

(iii) loss of or damage to property real or personal including damage to property, land or buildings due to collapse, subsidence, vibration, weakening or removal of support or lowering of ground water;

(iii) 物業或個人財產遭受損失或破壞，包括由於倒塌、沉降、震動、支撐減弱或移除或地下水下降導致的財產、土地或建築物之損毀；

(iv) loss of or damage to any building, structure or property belonging to the principals in the care, custody or control of the insured contractors (alternatively, this paragraph (iv) may be covered by the Material Damage section of the insurance); and

(iv) 屬於工程委託人所有、但歸受保的承包人保護、保管或支配的任何建築物、構築物或財產遭受損失或破壞（或者，本段(iv)可受保於“物質損失保險”部份）；及

(v) accidental death, bodily injury, illness or disease suffered by any employee of the principals visiting the Site on occasional basis.

(v) 以偶然方式考察工地的工程委託人之任何僱員遭受意外死亡、身體損傷、疾病或傳染病。

(b) It shall remain in force for the full period of construction, defects liability and/or maintenance.

(b) 它須在施工、保修及/或保養期內維持完全有效。

(c) There shall be a "Cross-Liability" clause to cover any and all of the insured as separate and distinct parties with stipulation that the insurers agree to waive all subrogation rights which the insurers may have against any of the insured.

(c) 它須有一“交叉責任”條款，視任何或所有的被保險人爲分別及獨立的被保險人，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。

(d) The limit of indemnity shall not be less than the amounts stated in the Particulars of Agreement.

(d) 賠償限額不得低於協議特定事項所規定之金額。

10.2.4 The amount of excess in respect of each and every occurrence of loss or damage shall not be bigger than the respective amount or bigger in percentage term than the respective percentage of loss or damage stated in the Particulars of Agreement, whichever is greater in monetary value.

10.2.4 每次損失或破壞事故的免賠額，不可較協議特定事項所規定之相應金額爲高或以百分率計較所規定之相應百分率爲大，以金錢價值較大者爲準。

10.2.5 If the Sub-Contractor considers that the above-mentioned 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.

10.2.5 若分包商認爲，上述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。

10.2.6 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.

10.2.6 若發生保險之“物質損失保險”部份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本分包工程。

10.3 Taking out insurances 投保

10.3.1 The policies of the aforesaid insurances shall contain the usual industry standard terms and conditions and the terms and conditions required under this Sub-Contract, subject only to non-negotiable exclusions imposed by the insurance market.

10.3.1 上述保險之保單應包括行業通用的及本分包合同規定的條件及條款，除非是屬於保險市場所施加的無協商餘地的除外責任。

10.3.2 It shall be acceptable if the aforesaid insurances are not exclusively for the Sub-Contract Works, the Sub-Contractor and his sub-sub-contractors of all tiers, or if the aforesaid insurances are in the form of a company master policy or an annual policy, provided they have been stated or endorsed to specifically include the Sub-Contract Works, the Sub-Contractor and his sub-sub-contractors of all tiers, and they provide cover no less than those required under this Sub-Contract.

10.3.2 若上述的保險不純粹爲本分包工程、分包商及其各層再分包商而投購，或上述的保險乃採用公司總保單或全年保單之形式，是可以接受的，只要它們是特別說明或加簽註明包括本分包工程、分包商及其各層再分包商，而它們的承保範圍不少過本分包合同所規定的。

10.3.3 Evidence of insurance covers shall be provided to the Sub-Contractor before commencement of any physical work. Copies of the policies, endorsements and premium receipts shall be provided to the Sub-Contractor as soon as practicable afterwards.

10.3.3 投購有保險之證據，須在開始任何實物工作前，向分包商提供。保單、加簽及保費收據等的副本須隨後盡快向分包商提供。

10.4 Maintaining insurances 維持投保

10.4.1 The Client-Contractor shall, either by himself or cause others to, maintain and extend as necessary the insurances to be in full force for the required periods of insurance. Extension endorsement, renewal policy (in the case of annual policy) and premium receipt shall be produced to Sub-Contractor for inspection within 14 days after each extension or renewal date.

10.4.1 上家承包商須自行或促使他人，維持及按需要延續各項保險，使其在規定的保險期內仍有全效。延續加簽、續保保單（就全年保單而言）及保費收據須在每個延續或續保日後14天內，向分包商出示以供查核。

10.4.2 If the period of insurance is extended through default of the Sub-Contractor or parties for whom he is responsible, the Sub-Contractor shall be responsible for any additional premiums for the extension; otherwise, the Client-Contractor shall be responsible.

10.4.2 若保險期間由於分包商或其應負責的人士之過失而須延續，分包商須負責因延續而導致的任何額外保費；此外，上家承包商則須負責。

10.5 Remedy for failure to insure 未能投保的補救

If the Client-Contractor at any time fails upon request to produce any receipt showing that any of the insurances is in full force then, without prejudice to his other rights and remedies, the Sub-Contractor 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.

若上家承包商在任何時間，經要求下，未能出示收據，顯示任何一項保險仍有全效，則分包商，在不影響他的其他權利和補救方法的同時，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按協議特定事項所規定的百分率計算的行政費。此安排將被視為一項變更。

10.6 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。

10.7 Reporting incidents 通報事故

In the event of the occurrence of the perils covered by the aforesaid insurances, the Sub-Contractor shall notify the insurers and the Client-Contractor of the details of the incident immediately upon he becomes aware of it.

一旦發生上述保險所承保的危險，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。

10.8 Insurances not affecting liability 保險不解除的責任

10.8.1 The presence of the aforesaid insurances shall not prejudice or reduce the Sub-Contractor's liability or responsibility under this Sub-Contract.

10.8.1 上述保險的存在並不影響或減低分包商在本分包合同下的責任或職責。

10.8.2 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.

10.8.2 若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。

10.9 Insurances of materials prior to delivery 物料到工地前的保險

The taking out of insurances against risks of loss or damage to materials occurring prior to their delivery to the Site shall be the Sub-Contractor's own concern.

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。

10.10 Insurances of construction plant and temporary buildings 施工機械及臨時建築物的保險

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.

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。

10.11 Surety bond or cash security 履約保證或押金

10.11.1 The Sub-Contractor shall obtain the guarantee of an insurance company or bank to be jointly and severally bound with the Sub-Contractor to the Client-Contractor in the sum stated in the Particulars of Agreement for the due performance of this Sub-Contract under the terms of a Bond in the form as Appendix A hereto. The surety shall be to the approval of the Client-Contractor and the cost of obtaining the Bond shall be borne by the Sub-Contractor. The Bond shall be submitted to the Client-Contractor for custody following approval by the Client-Contractor.

10.11.1 分包商須獲得保險公司或銀行與分包商，按本分包合同附錄A式樣的履約保證書，及按協議特定事項所規定的金額，共同和分別有約束性地向發包方保證，分包商會完全履行本分包合同。擔保人須經上家承包商批准，而取得擔保的費用由分包商承擔。履約保證書須在上家承包商批准後提交給上家承包商保管。

10.11.2 If the Sub-Contractor so elects or if the Sub-Contractor fails to submit an approved Bond before the first payment under Clause 6.16 is due to be processed, a cash security equal to the amount of the Bond may be deposited to or withheld by the Client-Contractor to serve the purpose of the Bond. If the Sub-Contractor subsequently submits an approved Bond, the amount of the cash security is recoverable by the Sub-Contractor from the Client-Contractor.

10.11.2 若分包商如此選擇，或若分包商未能於處理第6.16條的首次付款前提交經批准之履約保證書，上家承包商可提取或扣起一筆相等於履約保證金額之押金以作履約保證之用。若分包商其後提交經批准的履約保證書，分包商可從上家承包商取回押金。

10.11.3 Upon the issue of a Substantial Completion Certificate of a Sub-Contract Works Section and the settlement of all claims (if any), the amount of the Bond or cash security shall be reduced

pro-rata to ratio of the value of that Sub-Contract Works Section to the final Sub-Contract Price both currently estimated. Upon the issue of the Substantial Completion Certificate of the last Sub-Contract Works Section and the settlement of all claims (if any), the Bond or the balance of the cash security shall be released to the Sub-Contractor without interests.

10.11.3 當某分包工程分部的充分竣工證書發出及索償(如有)獲得解決時，履約保證或押金的金額須按當時估計的分包工程分部價值對分包結算價之比率減少。當最後的分包工部份的充分竣工證書發出及索償（如有）獲得解決時，履約保證書或押金結餘須不附利息發還給分包商。

保險及履約保證 (last edited 2011-08-05 07:35:28 by KCTang)