

Two sets of light gray, curved lines that intersect to form a stylized, abstract shape, resembling a leaf or a modern architectural element. One set is positioned above the main title, and the other is below it.

# Information Technology

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# DUAL Asia

## Information Technology Policy Wording

In consideration of the premium, WE agree to provide the cover set out in this POLICY to each INSURED:

### Section 1: INSURING CLAUSES

- 1.1 WE agree to indemnify the INSURED for any CLAIM for compensation first made against the INSURED and reported to US during the INSURANCE PERIOD for any act, error or omission by the INSURED in the provision of its INFORMATION TECHNOLOGY in the course of its BUSINESS.
- 1.2 WE also agree to pay, in addition to the INDEMNITY LIMIT, DEFENCE COSTS either incurred by US or incurred by the INSURED with OUR prior written consent. Provided that, if to dispose of or settle a CLAIM covered under this POLICY, compensation is payable in excess of the INDEMNITY LIMIT, OUR liability in respect of DEFENCE COSTS is limited to that proportion of such DEFENCE COSTS as the INDEMNITY LIMIT bears to the total compensation payable to dispose of or settle the CLAIM. Further WE will not pay any DEFENCE COSTS or other costs and expenses that are incurred after we have paid an amount or amounts equal to the INDEMNITY LIMIT.
- 1.3 The POLICY shall only provide cover in respect of acts, errors or omissions committed or alleged to have been committed after the RETROACTIVE DATE.

### Section 2: AUTOMATIC EXTENSIONS

The automatic extensions are subject to the Insuring Clauses and all other POLICY terms and conditions.

WE agree to provide cover in respect of any:

#### 2.1 Fraud and Dishonesty

CLAIM which would otherwise be excluded because of Fraud and Dishonesty in Exclusion 5.9 of the POLICY, provided that WE will not provide cover in respect of any:

- (a) person committing or condoning any act, omission or breach excluded by Exclusion 5.9 of the POLICY.
- (b) loss of money, negotiable instruments, bonds, coupons, currency, bank notes, stamps, cheques, bills of exchange, letters of credit or other instruments whether negotiable or not or whether matured or not or securities or documents evidencing title to or ownership of land or any other property.

#### 2.2 Former Principals

CLAIM against any former principal, partner, director or EMPLOYEE of the INSURED in respect of the provision of the INSURED's INFORMATION TECHNOLOGY.

#### 2.3 Consultants, Subcontractors and Agents

CLAIM against the INSURED resulting from the conduct of any consultant, subcontractor or agent in the provision of INFORMATION TECHNOLOGY for or on behalf of the INSURED in the course of the INSURED's BUSINESS and for whose acts, errors or omissions the INSURED is liable.

WE will not cover the consultant, subcontractor or agent under this Extension.

## 2.4 **Lost Data**

CLAIM made against the INSURED arising from the LOST DATA, which has been:

- (a) destroyed, erased, damaged or corrupted; or
- (b) lost or mislaid and, after diligent search, cannot be found,

provided always that the discovery of such loss of DATA occurred during the Period of Insurance and was notified in writing to US within 30 days after discovery.

## 2.5 **Run-off Cover Insured Entity or Subsidiary (Former Subsidiary)**

CLAIM against the INSURED in respect of the provision of INFORMATION TECHNOLOGY by an INSURED entity or SUBSIDIARY in the course of the INSURED's BUSINESS that ceased or ceases to be an INSURED entity or SUBSIDIARY either before or during the INSURANCE PERIOD.

## 2.6 **Joint Venture Liability**

CLAIM against the INSURED in respect of the provision of INFORMATION TECHNOLOGY in the course of the BUSINESS where the INSURED is engaged as a joint venturer.

WE will not cover any joint venture partner(s).

## 2.7 **Defamation**

CLAIM against the INSURED which results from the INSURED making any unintentional defamatory statement in the conduct of the BUSINESS.

## 2.8 **Intellectual Property**

CLAIM made against the INSURED for any infringement of copyright, trademarks, registered designs, circuit layout, rights, patents or any passing off, plagiarism or breach of confidentiality.

## 2.9 **Attendance at Inquiries**

Legal representation costs resulting directly from the attendance by the INSURED at any INQUIRY. We will only do this if:

- (a) the INQUIRY is ordered or commissioned during the INSURANCE PERIOD, and
- (b) OUR consent is obtained before such costs are incurred, and
- (c) the INSURED notifies US during the INSURANCE PERIOD that the INSURED is legally compelled to attend the INQUIRY, and
- (d) the INQUIRY is not being held in USA or Canada, and
- (e) the INSURED's attendance is required because of the provision of the INSURED's INFORMATION TECHNOLOGY , and
- (f) at our option, WE can nominate the legal advisers to represent the INSURED.

The cover provided under this extension is sub-limited to HK\$500,000 any one INQUIRY and in the aggregate for all INQUIRIES and a separate DEDUCTIBLE will apply to each INQUIRY under this extension. This sub-limit is part of and not in addition to the INDEMNITY LIMIT. For the application of the terms and conditions of this POLICY to this Extension, INQUIRY is deemed to be a CLAIM.

## 2.10 **Court Attendance Costs**

Court attendance costs of any partner, principal, director or EMPLOYEE of the INSURED who is legally

compelled to attend Court as a witness in a CLAIM covered by the POLICY, to an amount not exceeding HK\$2,500 per day for EMPLOYEES and HK\$5,000 per day for those other persons. No DEDUCTIBLE applies.

#### 2.11 Heirs, Estates and Legal Representatives

Estate, heirs, legal representatives or assigns of any deceased or mentally incompetent INSURED for claims resulting from the provision by such INSURED of INFORMATION TECHNOLOGY in the course of the BUSINESS.

#### 2.12 Defence Costs for Breach of Contract

Legal costs and expenses incurred with OUR consent for defending actions against the INSURED where the INSURED has contracted to indemnify a client due to an act, error or omission by the INSURED in the provision of the INFORMATION TECHNOLOGY in the course of the BUSINESS. The cover provided under this extension is sub-limited to HK\$500,000 any one INCIDENT and in the aggregate for all INCIDENTS. This sub-limit is part of and not in addition to the INDEMNITY LIMIT. This Extension is notwithstanding Exclusion 5.3 (Assumed Liability).

#### 2.13 Licensee Intellectual Property Rights

CLAIM which would otherwise be excluded by reason of Exclusion 5.3 (Assumed Liability) in respect of any CLAIM made against the INSURED by a Licensee of the INSURED under any warranty or indemnity given by the INSURED in respect of the INSURED'S ownership or ability to licence any intellectual property rights.

#### 2.14 New Subsidiaries

CLAIM(S) against any SUBSIDIARIES, which the INSURED acquires or creates after the inception date of this POLICY provided that the SUBSIDIARIES:

- (a) undertake the same PROFESSIONAL BUSINESS covered under this POLICY;
- (b) do not have any revenue from the United States of America or Canada; and
- (c) have total gross revenues that are less than 10% of the total gross revenue of the INSURED covered under this POLICY.

The INSURED can request US to extend this POLICY to cover any SUBSIDIARIES which fail to meet any one of the above conditions, our written acceptance is required and WE may amend POLICY terms or conditions.

### Section 3: OPTIONAL EXTENSIONS

Subject to the applicable terms and conditions of this POLICY, if shown in the Schedule or by endorsement as operative, WE agree to provide cover:

#### 3.1 USA and Canada Cover

Which would otherwise be limited by Conditions 7.7 or 7.8 in respect of any CLAIM made against the INSURED arising from any act, error or omission anywhere in the world provided always that for any CLAIM:

- (a) brought in a court of law within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates; or
- (b) relating to the enforcement of any judgement, order or award obtained within, or determined pursuant to the laws of, the United States of America or the Dominion of Canada or their territories or protectorates,

the respective INDEMNITY LIMIT in respect of this Optional Extension are inclusive of all DEFENCE COSTS and other expenses of any kind. The DEDUCTIBLE for the cover under this Extension ~~is~~ inclusive of DEFENCE COSTS and other covered costs and expenses.

This Optional Extension, if operative, shall apply notwithstanding any other provision of the POLICY to the contrary, other than Optional Extension 3.3 (if operative) and the terms of the covers for Attendance at Inquiries (clause 2.9) relating the United States of America and the Dominion of Canada and their respective territories or protectorates.

### 3.2 **Consultants, Subcontractors and Agents**

In accordance with clause 1.1 for any claim against any consultant, sub contractor or agent named in the Schedule involved in the provision of INFORMATION TECHNOLOGY for and on behalf of the INSURED in the course of the BUSINESS.

### 3.3 **Reinstatement of INDEMNITY LIMIT**

In accordance with clause 1.1 for any CLAIM(S) which require(s) reinstatement of the INDEMNITY LIMIT during the INSURANCE PERIOD because the INDEMNITY LIMIT is eroded (partially or totally) as a result of the payment of an earlier and separate CLAIM or CLAIMS. However the aggregate of all such reinstatements in connection with all CLAIMS will not exceed a total amount equal to the INDEMNITY LIMIT, inclusive of DEFENCE COSTS and any other costs and expenses, and such reinstatements are only available where the subsequent CLAIM(S) is/are based on facts and matters totally different from and unrelated to those which gave rise to the erosion or exhaustion of the INDEMNITY LIMIT. Further, this Optional Extension does not apply until the INSURED has exhausted the limits of any policy which is in excess of the original INDEMNITY LIMIT under this POLICY, other than any similar reinstatement provisions under such excess policies. This Extension does not apply to any cover available under this POLICY in respect of the United States of America or the Dominion of Canada or their respective territories or protectorates, whether under Optional Extension 3.1 or otherwise.

## **Section 4: DEFINITIONS**

In the POLICY:

4.1 BUSINESS means the INFORMATION TECHNOLOGY described in the Schedule.

4.2 CLAIM means:

- (a) any civil proceeding brought by a third party against the INSURED for compensation; or
- (b) written demand by a third party for monetary damages.

4.3 COMPUTER EQUIPMENT means but is not limited to any or any combination or part of data, computer hardware, operating system, application, software and computer chip, including microprocessor chip or embedded control logic.

4.4 DATA means:

- (a) information such as text, numbers, sounds and images that can be processed by any form of electronic device; and
- (b) deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method but will not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

4.5 DEFENCE COSTS means any necessary and reasonable fees, expenses, costs and disbursements incurred in investigating or defending a CLAIM covered by the POLICY.

4.6 DEDUCTIBLE means the amount specified in Item X of the Schedule. For Optional Extension 3.1 (if

operative) the DEDUCTIBLE shall be as described in that Extension.

- 4.7 EMPLOYEE means any person employed by the INSURED under a contract of service or apprenticeship during or prior to the commencement of the INSURED PERIOD.
- 4.8 FAMILY MEMBER means the INSURED's:
- (a) Legal or defacto spouse, domestic partner or companion;
  - (b) Parent, or the parent of the INSURED's legal or defacto spouse, domestic partner or companion;
  - (c) Children and children of (a) and (b) above
  - (d) Siblings.
- 4.9 INCIDENT means an event in the INSURANCE PERIOD which causes the INSURED's reputation and skill in the conduct of the BUSINESS to be brought into question.
- 4.10 INDEMNITY LIMIT means the amount specified in Item X of the Schedule.
- 4.11 INFORMATION TECHNOLOGY means:
- (a) any COMPUTER EQUIPMENT, software, hardware or firmware sold, manufactured, produced, installed, repaired, serviced, treated, supplied, distributed, licensed or shared by the INSURED and/or
  - (b) any service, advice or work provided by the INSURED in connection with 4.11 (a) and includes the provision of data processing, data warehousing, facilities management and outsourcing, telecommunication and data communication services provided by the INSURED in the conduct of the BUSINESS.
- 4.12 INQUIRY means any official investigation, examination, inquiry or other proceedings ordered or commissioned by any official body or institution empowered by law to investigate the conduct of the BUSINESS of the INSURED.
- 4.13 INSURANCE PERIOD means the period specified in Item X of the Schedule.
- 4.14 INSURED means
- (a) The person, partnership, company, SUBSIDIARY or other entity, specified as the INSURED in the Schedule; and
  - (b) Any person who is during the INSURANCE PERIOD a principal, partner, director or EMPLOYEE of the person, partnership, company, SUBSIDIARY or other entity specified as the INSURED in the Schedule, but only while acting in the conduct of the BUSINESS.
- 4.15 LICENSEE means any party who enters into a licence agreement with the INSURED.
- 4.16 LOST DATA means DATA that cannot be located following a diligent search, and DATA that has been destroyed or damaged.
- 4.17 POLICY means this POLICY wording, the Schedule, the PROPOSAL and any endorsement attaching to and forming part of the POLICY either at commencement or during the INSURANCE PERIOD.
- 4.18 POLLUTANTS means any contaminant whether solid, liquid or gas including but not limited to chemicals, smoke, vapours and fumes.
- 4.19 PROPOSAL means the written proposal made by the INSURED to US together with any attachments.

- 4.20 RETROACTIVE DATE means the date specified in Item 7 of the Schedule.
- 4.21 SUBSIDIARY means any entity which by virtue of any applicable legislation or law is deemed to be a SUBSIDIARY of the INSURED or in which the INSURED owns or controls, directly or indirectly greater than 50% of the issued voting shares of such entity.
- 4.22 WE/US/OUR means DUAL Asia, as agent of the Underwriters named in the Schedule under the heading "Underwriters".

## Section 5: EXCLUSIONS

WE will not cover the INSURED, including for compensation, DEFENCE COSTS or other costs, expenses or loss, in respect of:

### 5.1 Prior knowledge

- (a) Any CLAIM arising from or in connection with any fact or circumstance that the INSURED knew or ought reasonably to have known prior to the INSURANCE PERIOD might or could give rise to a CLAIM;
- (b) Any CLAIM arising from or in connection with any fact or circumstance of which notice has been or reasonably should have been given under any previous insurance.
- (c) Any CLAIM that was first made, threatened or intimated against the INSURED prior to the INSURANCE PERIOD.

### 5.2 Fines and Penalties and Non-Compensatory

- (a) Taxes, fines or penalties;
- (b) Punitive, aggravated, multiple, exemplary, liquidated or other non-compensatory damages or the consequences of non-payment.
- (c) Any demand for the repayment or refund by the INSURED to a third party of professional fees paid to the INSURED for the provision of professional or other services.

### 5.3 Assumed Liability

Any obligation assumed by the INSURED under any agreement, except that this Exclusion does not apply to:

- (a) any liability which is, or would have been, implied by law in such agreement or would have arisen separately from it; or
- (b) any liability which is under implied warranty as to fitness or quality as to the INSURED'S INFORMATION TECHNOLOGY; or
- (c) any liability which is in respect of the treatment or use of confidential information.

### 5.4 Liability to EMPLOYEES

Any CLAIM arising from or directly or indirectly attributable to or in consequence of bodily injury, mental injury, sickness, disease or death of any EMPLOYEE or damage to or destruction of any property of any EMPLOYEE, including loss of use.

### 5.5 Bodily Injury

Any CLAIM arising from or directly or indirectly attributable to or in consequence of the death of, or bodily injury or illness to, any person.

## 5.6 **Property Damage**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of the loss or destruction of, or damage to, any property.

## 5.7 **Liability As Occupier**

Any CLAIM or liability arising from or incurred or alleged to have been incurred in connection with the use, occupation, ownership or lease of any real estate or personal property, by or on behalf of the INSURED.

## 5.8 **Product Liability**

Any CLAIM or liability arising from or in connection with the manufacture, preparation, modification, repair, supply, maintenance or treatment of any goods or products sold, supplied or distributed by the INSURED.

## 5.9 **Pollution**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of the actual or alleged release or discharge of POLLUTANTS.

## 5.10 **War/Terrorism**

Any CLAIM or liability of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following, regardless of any cause or event contributing concurrently or in any other sequence:

- (a) War, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- (b) Any act of terrorism; or
- (c) Any action taken in controlling, preventing, suppressing or in any way relating to (a) and/or (b) above.

For the purposes of this exclusion, an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

## 5.11 **Nuclear**

Any CLAIM or liability arising from or directly or indirectly attributable to or in connection with:

- (a) Loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting from or arising therefrom or any consequential loss; or
- (b) Any legal liability of whatsoever nature

directly or indirectly caused by or contributed to by or arising from:

- (a) Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (b) The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

## 5.12 Trading Debts

Any CLAIM arising from or directly or indirectly attributable to any trading debt or business liability of the INSURED or any guarantee given by the INSURED for a debt.

## 5.13 Fraud and Dishonesty

- (a) Any CLAIM arising from or directly or indirectly attributable to or in consequence of any actual or alleged act or omission by the INSURED, its consultants, sub-contractors or agents which was reckless, fraudulent, dishonest, malicious or criminal.
- (b) Any CLAIM arising from or directly or indirectly attributable to or in consequence of any wilful breach of any law, statute, regulation, contract or duty by the INSURED, its consultants, sub-contractors or agents.

## 5.14 Associates

- (a) Any CLAIM by, on behalf of or for the benefit of any INSURED;
- (b) Any CLAIM by, on behalf of or for the benefit of any FAMILY MEMBER of the INSURED, unless the FAMILY MEMBER is acting without any prior direct or indirect solicitation or co-operation from the INSURED,

irrespective of the capacity in which the CLAIM is brought.

## 5.15 Directors & Officers

Any CLAIM alleging a breach by an INSURED of a duty owed or any alleged wrongful conduct in the capacity of a director, secretary or officer of a body corporate.

## 5.16 Asbestos

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of asbestos or other things that contain it.

## 5.17 Financial

Any CLAIM arising from or directly or indirectly attributable to or in consequence of:

- (a) the insolvency or financial failure of any person or entity involved in any project; or
- (b) the failure to provide, effect or maintain any bond or any form of insurance; or
- (c) actual or alleged advice in relation to finance, accounting or tax matters.

## Section 6: CLAIM CONDITIONS

### 6.1 Notification

- (a) The INSURED shall notify US in writing of any CLAIM or INQUIRY as soon as practicable after it is made against, or is commenced involving, any INSURED (this does not alter the requirement to notify during the Notification Period), whether or not the INSURED believes the amount of any such claim might fall below the applicable deductible.
- (b) Any Notice given to US shall be in writing, and delivered to:  
DUAL Asia  
9/F, Cityplaza One  
111 King's Road, Taikoo Shing  
Hong Kong

Or

DCS,  
11th Floor,  
Hong Kong Club Building,  
3A Chater Road,  
Central, Hong Kong

## 6.2 Co-operation

- (a) The INSURED shall, at the INSURED's own cost, provide US with all information and assistance required by US and/or the lawyers and investigators and others appointed by US in relation to any CLAIM or loss. Any unreasonable failure to comply with this obligation may entitle US to deny cover for the CLAIM or loss, in whole or part.
- (b) The INSURED shall, at its own cost, do all things reasonably practicable to minimise the INSURED's liability in respect of any CLAIM, liability or loss.

## 6.3 Legal Defence and Settlement

- (a) Unless otherwise agreed, WE shall have the right to assume, in the name of the INSURED, the legal defence of any CLAIM covered under this POLICY. WE shall have the right to appoint the lawyers that will defend and represent the INSURED in respect of any CLAIM or INQUIRY.
- (b) WE shall have full discretion in managing any negotiation or proceeding as to the resolution of such CLAIM. WE shall be entitled to settle a CLAIM if WE so choose.
- (c) The INSURED agrees not to admit liability for or settle any CLAIM, liability or loss, make any admission, offer any payment or assume any obligation in connection with any CLAIM, liability or loss, or incur any DEFENCE COSTS in connection with any CLAIM, without OUR written consent.
- (d) WE shall not be liable for any settlement, DEFENCE COSTS, costs and expenses, admission, offer, payment or assumed obligation made, incurred or entered into without OUR written consent.
- (e) If WE are of the opinion that a CLAIM will not exceed the DEDUCTIBLE, WE may require the INSURED to conduct the defence of the CLAIM. If the DEFENCE COSTS and/or any other payment exceed the DEDUCTIBLE then WE will pay the amount in excess of the DEDUCTIBLE.

## 6.4 INSURED's right to contest

In the event that WE recommend settlement of a CLAIM and the INSURED does not agree to the settlement of the CLAIM, and the INSURED decides to contest the CLAIM, OUR liability shall not exceed the amount for which the CLAIM could have been settled, and DEFENCE COSTS and any other costs and expenses covered under this POLICY incurred up to the date upon which the CLAIM could have been settled.

## 6.5 Senior Counsel

- (a) WE shall not require the INSURED to contest a CLAIM unless a Senior Counsel (agreed upon by the INSURED and US) advises that the CLAIM should be contested, taking into account all likely DEFENCE COSTS, prospects of successfully defending the CLAIM and the damages and costs likely to be recovered by the third party claimant.
- (b) The costs of Senior Counsel's advice shall be regarded as part of the DEFENCE COSTS.

## 6.6 Circumstances

If the INSURED during the INSURANCE PERIOD becomes aware of circumstances which may reasonably be expected to become a CLAIM, the INSURED may report this circumstance to US in writing. By doing so, any CLAIM, which is subsequently made against the INSURED, is related to or the same as this circumstance, should be considered as first made against the INSURED and reported to US

at the time of this circumstance reported, provided that this circumstance is accepted by US.

## 6.7 Extended Reporting Period

The INSURED shall have a right to report any CLAIM within 90 days after the date of expiry or cancellation of the POLICY. This extension is only operative if:

- (a) WE cancel or do not renew this POLICY, other than for non-payment of premium or any other breach of the terms of this POLICY by the INSURED; or
- (b) The INSURED cancels or does not renew the POLICY. The extended reporting period shall not apply if the policy cover has not been replaced.

This right of extension shall lapse unless written notice of such election is received by US within thirty (30) days following the expiry of the INSURANCE PERIOD.

## 6.8 Allocation

- (a) WE agree that, if a CLAIM is brought against the INSURED which involves matters that are covered and not covered under this POLICY, WE will negotiate in good faith with the INSURED to agree a basis for allocation, taking into consideration factors such as (but not limited to):
  - (i) the extent to which the CLAIM is directed to matters which are covered and matters which are not covered;
  - (ii) the relative legal and financial exposure of an INSURED compared to that of a person or persons who is, or are, not covered by this POLICY; and
  - (iii) the benefit to an INSURED of any settlement, compared to that of a person or persons who is, or are, not covered by this POLICY.
- (b) If WE cannot agree a basis for allocation with the INSURED by negotiation, the dispute or difference shall first be referred to mediation at the Hong Kong International Arbitration Centre (HKIAC) and dealt with in accordance with its Mediation Rules. If the mediation is abandoned by the mediator or otherwise ends without the dispute or difference having been resolved, the dispute or difference shall be referred to arbitration at the HKIAC under the HKIAC's Domestic Arbitration Rules. Each of the parties to the mediation or arbitration shall bear their own costs of the mediation or arbitration.

## Section 7: GENERAL CONDITIONS

### 7.1 Indemnity Limit

Subject to Clause 1.2 (DEFENCE COSTS in addition), Clause 3.1 (USA/Canada) (if operative) and Clause 3.3 (Reinstatement) (if operative), OUR total liability under the POLICY for any one CLAIM and in the aggregate for all CLAIMS shall not exceed the INDEMNITY LIMIT. For the purposes of determining the INDEMNITY LIMIT available for each CLAIM covered by the POLICY, all CLAIMS arising from the same act, error or omission, or related acts, errors or omissions, shall be regarded as one CLAIM.

OUR total liability for any CLAIM(S) falling within Optional Extension 3.1 (if operative) is the INDEMNITY LIMIT inclusive of all DEFENCE COSTS and any other costs and expenses, in respect of all CLAIMS in the aggregate.

### 7.2 Claim Mitigation and Fee Recovery

We agree to provide cover in respect of any payment of the INSURED's fee (or balance of the outstanding fee at the time the circumstances outlined within this clause 7.2 arise and are submitted to US for consideration) in circumstances where a client has expressed dissatisfaction with the work undertaken by the INSURED and demonstrates reasonable grounds for such dissatisfaction and subsequent refusal to pay such fees (including amounts you are legally obligated to pay subcontractors at the time of the refusal to pay such fees) and threatens to bring a CLAIM against the INSURED for a sum greater than the outstanding fee but agrees not to pursue such CLAIM if the INSURED agrees not to press for their outstanding fee. OUR payment of the outstanding fee to the INSURED shall only be

made if WE believe that this shall avoid a CLAIM for a greater amount and approval to settle the CLAIM in these circumstances has been received by the INSURED from US in writing.

The cover provided under this extension is sub-limited to HK\$300,000 any one INCIDENT and in the aggregate for all INCIDENTS. A separate DEDUCTIBLE will apply to each INCIDENT under this extension. This sub-limit is part of and not in addition to the INDEMNITY LIMIT.

If all attempts to avoid a CLAIM fail and a CLAIM is received it is agreed that the total amount payable by US (including any amount already paid) shall not exceed the INDEMNITY LIMIT as shown in Item 5 of the Schedule. The INSURED shall pay US any amount that is finally recovered from the client.

WE will only pay the part of any CLAIM that is covered by this POLICY.

### 7.3 Subrogation

- (a) Where WE have paid an amount under the POLICY WE become entitled to any rights of the INSURED against any party in relation to the CLAIM, costs and expenses or loss, to the extent of OUR payment.
- (b) The INSURED, at its own cost, must assist US and provide information as WE may reasonably require to exercise OUR rights of subrogation. This may include providing and signing statements and other documents and the giving of evidence, among other things.

### 7.4 Alteration to Risk

The INSURED must notify US in writing as soon as practicable of any material alteration to the risk during the INSURANCE PERIOD including:

- (a) The INSURED going into voluntary bankruptcy, receivership or liquidation; or
- (b) he INSURED failing to pay debts as and when those debts become due; or
- (c) The INSURED breaching any other obligation giving rise to the appointment of a receiver or the commencement of bankruptcy or winding up proceedings; or
- (d) Any material change in the nature of the BUSINESS.

WE may not cover the INSURED for any CLAIM if the INSURED does not notify US in writing as soon as practicable of any material alteration to risk.

### 7.5 Assignment

The INSURED must not assign the POLICY or any rights under the POLICY without OUR prior written consent by way of endorsement to the POLICY.

### 7.6 Cancellation

The INSURED has the right to cancel this POLICY at any time by giving US written notice to that effect. Upon cancellation, WE will refund that part of the premium which relates to the unexpired part of the INSURANCE PERIOD.

WE have the right to cancel the POLICY if the premium has not been paid.

### 7.7 Territorial Cover

Subject to its terms and conditions, the cover provided by the POLICY shall extend to the conduct of the BUSINESS by the INSURED anywhere in the world except within the territorial limits of the United States of America or the dominion of Canada or their respective territories or protectorates, other than in respect of the INSURED'S INFORMATION TECHNOLOGY which is not knowingly exported, sold, licensed or shared by the INSURED, or the INSURED'S agents or servants, to or in the United States of America or the Dominion of Canada or their respective territories or protectorates..

## 7.8

### Jurisdictional Cover

- (a) Subject to clause 3.1 (USA/Canada) (if operative), the coverage provided under this POLICY will extend to any CLAIMS brought in a court of law anywhere in the world except where such CLAIM:
- (i) is brought in a court of law within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates; or
  - (ii) arises out of the enforcement of any judgement, order or award obtained within, or determined pursuant to the laws of, the United States of America or the Dominion of Canada or their territories or protectorates; or
  - (iii) is determined by application of the laws of the United States of America or the Dominion of Canada or their territories or protectorates.

Provided always that the INDEMNITY LIMIT in respect of any coverage provided under this POLICY whatsoever (whether by Optional Extension 3.1 or otherwise) in connection with the United States of America or the Dominion of Canada or their respective territories or protectorates is inclusive of all DEFENCE COSTS and other costs and expenses covered by this POLICY, notwithstanding any other term or condition in this POLICY.

## 7.9

### Governing Law

This POLICY is to be interpreted in accordance with the laws of the Hong Kong Special Administrative Region.

Any dispute or difference arising from this POLICY which cannot be resolved by negotiation shall first be referred to mediation at the Hong Kong International Arbitration Centre (HKIAC) and dealt with in accordance with its Mediation Rules. If the mediation is abandoned by the mediator or otherwise ends without the dispute or difference having been resolved, the dispute or difference shall be referred to arbitration at the HKIAC under the HKIAC's Domestic Arbitration Rules. Each of the parties to the mediation or arbitration shall bear their own costs of the mediation or arbitration.

## 7.10

### Deductible

The INSURED is responsible for the DEDUCTIBLE in respect of each and every CLAIM. Subject to clause (b) below, WE are only liable to indemnify the INSURED for that part of the INSURED's liability in respect of each CLAIM, DEFENCE COSTS and other costs and expenses in excess of the DEDUCTIBLE.

- (a) Where WE have paid on the INSURED's behalf part or all of the DEDUCTIBLE, the INSURED shall reimburse US.
- (b) Unless otherwise expressed in the Schedule, all DEDUCTIBLES are exclusive of DEFENCE COSTS.
- (c) Costs and expenses incurred by US in determining whether WE are liable to indemnify the INSURED under the POLICY shall not be subject to the DEDUCTIBLE and will be met by US.
- (d) For the purposes of determining the DEDUCTIBLE(S) applicable to any CLAIM(S) of the POLICY, all CLAIMS arising from the same act, error or omission, or related acts, errors or omissions, shall be regarded as one CLAIM

## 7.11

### Titles

Titles used in this POLICY are descriptive and used for convenience only. They do not lend meaning to this POLICY. Words and expressions in the singular include the plural and vice versa.

## 7.12

### Interpretation

Person includes individuals, partnerships, bodies corporate and associations.

If any part of this POLICY is found to be invalid or unenforceable, the remainder of this POLICY shall remain in full force and effect.

All the documents making up this POLICY shall be read together as one contract and any word or expression to which a specific meaning has been attached shall bear the same meaning wherever it may appear.

**Section 8**      **AUTHORITY**

**8.1**              This is to certify that in accordance with the authorisation granted under Contract to the undersigned by the Underwriters as named in the Schedule.

**8.2**              In consideration of the premium paid the Underwriters are hereby bound, severally and not jointly, to insure in accordance with the terms and conditions contained herein or endorsed hereon.