

# DUAL

## PROFESSIONAL INDEMNITY POLICY WORDING

PI Consultants  
Policy Wording

Insured by:





## **DUAL Asia Professional Indemnity Insurance**

### **Consultants Policy Wording**

#### **TABLE OF CONTENTS**

Section 1:	PREAMBLE .....	3
Section 2:	INSURING CLAUSES .....	3
Section 3:	EXTENSIONS .....	4
Section 4:	OPTIONAL EXTENSIONS:.....	9
Section 5:	EXCLUSIONS .....	10
Section 6:	DEFINITIONS.....	15
Section 7:	CLAIM CONDITIONS .....	19
Section 8:	GENERAL CONDITIONS .....	21

# DUAL Asia Professional Indemnity Insurance

## Policy Wording

### Section 1: PREAMBLE

- 1.1 **We** will provide the cover described in the **policy**, subject to its terms and conditions, for the **insurance period**.
- 1.2 The cover under the policy commences upon the payment of the premium unless otherwise agreed in writing.
- 1.3 Except as otherwise provided herein, this **policy** only covers **claims** first made against the **insured** and reported to **us** in the **insurance period**.

### Section 2: INSURING CLAUSES

#### 2.1 Civil Liability

**We** agree to pay to or on behalf of the **insured** all **loss** resulting from any **claim** for any **civil liability** in relation to the conduct of the **policyholder's professional business**.

#### 2.2 Defence Costs in Addition

**We** agree to pay to or on behalf of the **insured** any **defence costs** either incurred by **us** or by the **insured** with **our** prior written consent which are in addition to the **indemnity limit**.

In the event that the amount of **loss** exceeds 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 amount of a final judgment, award or settlement sum.

The maximum **we** will pay for any **defence costs** is an amount up to, but not exceeding, the **indemnity limit**.

If any Extension to this **policy** provides a sub-limit such a sub-limit is inclusive of **defence costs** unless otherwise stated expressly.

#### 2.3 Advancement of Defence Costs

**We** agree to pay for **defence costs** in respect of any **claim** covered under this **policy** as and when they are incurred prior to final resolution of the **claim**, and within 30 days of receipt by **us** of sufficiently detailed invoices for those costs.

The maximum amount of **defence costs** and other costs and expenses **we** will advance is the amount of any applicable sub-limit or the **indemnity limit**. Upon exhaustion of the applicable sub-limit or the **indemnity limit** **our** obligation to advance **defence costs** will cease.

However any **defence costs** that are paid will be repayable to **us** by the **insured** in the event and to the extent that it is determined under the **policy** that the **insured** was not entitled to the payment of the **defence costs**.

## 2.4 Retroactive Date

The **policy** will only provide cover in respect of **civil liability** arising from an act, error or omission of the **insured** after the **retroactive date**.

## Section 3: EXTENSIONS

These Extensions to coverage apply automatically and are subject to the Insuring Clauses and all other terms and conditions of this **policy**.

The maximum amount payable by **us** under the Extensions below is the applicable sub-limit of liability specified in Item 8 of the **schedule**. This sub-limit is part of and not in addition to the **indemnity limit**.

A separate **deductible** will apply under these Extensions as specified in Item 8 of the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

### 3.1 Attendance at Investigations

**We** agree to pay to or on behalf of the **insured** any **legal representation costs** resulting directly from the attendance by the **insured** at any **investigation**. This Extension applies only if:

- a) the **insured** is legally compelled to attend the **investigation**; or
- b) the **insured's** attendance is required because of the **insured's** conduct in the **policyholder's professional business**;

Provided that the **insured** notifies **us** during the **insurance period** that the notice or process requiring such attendance is first served during the **insurance period**; and

- i) **our** consent is obtained before the **legal representation costs** are incurred; or
- ii) at **our** option, **we** can nominate the legal advisers to represent the **insured**.

### 3.2 Breach of Confidentiality

**We** agree to pay to or on behalf of the **insured** all **loss** and **defence costs** resulting from any **claim** for **civil liability** made against the **insured** arising from a breach of confidentiality and misuse of information, provided that the **insured's civil liability** results from the conduct of the **policyholder's professional business**.

### 3.3 Civil Penalties

Notwithstanding Definition 6.24 (Loss), **we** agree to pay to or on behalf of the **insured** compensatory civil penalties imposed on the **insured** resulting from the conduct of the **policyholder's professional business**.

This Extension will not apply where:

- a) **we** are legally prohibited from indemnifying the **insured**; or
- b) it is based upon, attributable to or in consequence of any:
  - i) wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any legislation;
  - ii) recklessness; or

- iii) requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue.

### 3.4 Consultants, Subcontractors and Agents

**We** agree to pay to or on behalf of the **insured** all **loss** and **defence costs** resulting from any **claim** for **civil liability** arising from the conduct of any consultant, sub-contractor or agents of the **policyholder** in the conduct of the **policyholder's professional business** and for whose acts, errors or omissions the **policyholder** is liable.

Cover under this Extension is not available to consultants, sub-contractors or agents in respect of their own liability.

### 3.5 Continuous Cover

Notwithstanding Exclusion 5.17 (Prior Known Facts), **we** agree to provide cover in respect of any **claim** made against the **insured** in the **insurance period** where the **insured**:

- a) first became aware, prior to the **insurance period**, that a **claim** might or could arise from facts or circumstances known to it; and
- b) had not notified **us** of such facts or circumstances prior to the **insurance period**.

Provided that:

- i) **we** were the professional indemnity liability insurer of the **policyholder** when the **insured** first became aware of such facts or circumstances and have continued, without interruption, to be the **policyholder's** professional indemnity insurer until this **policy** came into effect;
- ii) there has not been any fraudulent non-disclosure or fraudulent misrepresentation by an **insured** in respect of such facts or circumstances;
- iii) if the fact or circumstance had been notified under the previous policy, the **insured** would have been entitled to indemnity under the previous policy;
- iv) if **we** had been notified of the facts or circumstances when the **insured** first became aware of such facts, the **insured** would have been indemnified under the policy in force at that time, however is now not entitled to be indemnified by that policy, and the **insured** would, but for Exclusion 5.17 (Prior Known Facts) otherwise be indemnified by this **policy**;
- v) **we** have the discretion to apply either the terms and conditions of the policy on foot when the **insured** first became aware of the facts and circumstances, including but not limited to the **indemnity limit** and **deductible**, or the terms and conditions of this **policy**; and
- vi) the **insured** all agree only to make a **claim** under one professional indemnity **policy** issued by **us**.

For the purpose of this Extension only the Definition of **we/us/our** (Definition 6.38) of this **policy** also includes the insurer(s) for which **we** were the agent on any previous policy issued by **us** as such insurer's agent to the **insured**. Subject to the terms of this Extension and the terms of the **policy**, the intention of this Extension is to provide continuous cover notwithstanding any change in the identity of the insurers for which **we** presently act, or have previously acted, as agent.

### 3.6 Court Attendance Costs

**We** agree to pay to or on behalf of the **policyholder** any **court attendance costs** of any **officer** or **employee** who is legally compelled to and does attend Court as a witness in a **claim** for **civil liability** covered by this **policy**.

### 3.7 Crime

We agree to pay on behalf of the **insured** any **crime loss** which is **discovered** during the **insurance period** and notified in writing to **us** within 30 days following such discovery.

### 3.8 Defamation

We agree to pay to or on behalf of the **insured** all **loss** and **defence costs** resulting from any **claim** for **civil liability** for defamation committed in the conduct of the **policyholder's professional business**, provided that the **insured** did not intend to defame.

### 3.9 Discovery Period

The **insured** may give written notice to **us** of any **claim** resulting from **civil liability** in relation to the conduct of the **policyholder's professional business** prior to the expiration of the **insurance period** and during a **discovery period** immediately following the **insurance period** of:

- a) 60 days granted automatically with no additional premium payable;
- b) 12 months, if the **policyholder** requests such period in writing within 30 days after the end of the **insurance period** and tenders an additional premium of 100% of the expiring annual premium, commencing immediately after the end of the **insurance period**, such premium is payable within 30 days of the receipt by **us** of such written request; or
- c) 84 months, if a **transaction** takes place and the **policyholder** requests such period in writing within 30 days following the end of the **insurance period**, on such terms and conditions, if any, and for such additional premium as **we** may reasonably require.

This Extension is not available if this **policy** is:

- i) renewed or replaced with any similar or like professional indemnity insurance; or
- ii) cancelled or avoided.

Any **discovery period** purchased under this Extension is non-cancellable and the premium paid for the **discovery period** is fully earned by **us** and is non-refundable.

### 3.10 Emergency Defence Costs

If **our** written consent cannot reasonably be obtained before **defence costs** are incurred by an **insured**, **we** will pay those **defence costs** if the **insured** obtains **our** consent within 30 days of the date that the first of those **defence costs** were incurred.

If **we** subsequently determine that there is no entitlement under the **policy** for any **defence costs** that **we** have paid under this clause, the **insured** must repay those amounts to **us** immediately.

### 3.11 Former Subsidiary

We agree to pay to or on behalf of the **insured** all **loss** and **defence costs** resulting from any **claim** for any **civil liability** in relation to the conduct of the **policyholder's professional business** by a **subsidiary** that ceased or ceases to be a **subsidiary** either before or during the **insurance period**.

### 3.12 Fraud and Dishonesty for Innocent Parties

Notwithstanding Exclusion 5.11 (Fraud and Dishonesty), but subject to all other terms and conditions of this **policy**, **we** agree to pay to or on behalf of the **insured** all **loss** and

**defence costs** resulting from any **claim** for **civil liability** made against the **insured**, provided that **we** will not provide cover to any **insured** committing or condoning any act, omission or breach.

### 3.13 Heirs, Estates and Legal Representatives

**We** agree to provide cover for any estate, heirs, legal representatives or assigns of any deceased or mentally incompetent **insured** in respect of any **claim** resulting from the conduct of that **insured** in the **policyholder's professional business**.

### 3.14 Intellectual Property

**We** agree to pay to or on behalf of the **insured** all **loss** and **defence costs** resulting from any **claim** for **civil liability** made against the **insured** arising from infringement or alleged infringement of any intellectual property right, provided that the **insured's civil liability** results from the conduct of the **policyholder's professional business**.

### 3.15 Joint Venture Liability

**We** agree to pay to or on behalf of the **policyholder** any **loss** and **defence costs** resulting from any **claim** for **civil liability** resulting from the conduct of the **policyholder's professional business** in any joint venture of which the **policyholder** forms part. **Our** liability will be proportionate to the lowest of:

- a) the percentage of the share capital of the joint venture owned or controlled by the **policyholder**; or
- b) the percentage of the voting control of the joint venture exercised by the **policyholder**.

This Extension will only provide cover to the **policyholder**. No other participant of the joint venture and no other third party will have any rights under this **policy**, and neither will **we** be liable to pay a contribution to any insurer of any other participant in the joint venture.

### 3.16 Lost Data

**We** agree to pay to or on behalf of the **insured** all **loss** and **defence costs** resulting from any **claim** for **civil liability** for the unintentional destruction, misplacement, damage, deletion, corruption or loss of **data** while in the physical custody or control of the **insured**, provided that the discovery of the loss of **data** occurred during the **insurance period** and resulting from the conduct of the **policyholder's professional business**.

### 3.17 Mitigation Costs

**We** agree to pay to or on behalf of the **insured** all reasonable costs and expenses incurred by the **insured** in taking appropriate and necessary action to rectify, or to mitigate the effects of any **civil liability** of the **insured** resulting from the conduct of the **policyholder's professional business**, which would otherwise result in a **claim** covered by the **policy**;

Provided that:

- a) the **civil liability** is discovered by the **insured** and notified to **us** as soon as practicable during the **insurance period**; and
- b) the **insured** notifies **us** of their intention to take such action and receive **our** written consent which will not be unreasonably withheld before incurring these costs and expenses.

This Extension will not cover:

- i) the **insured's** loss of opportunity, revenue, bonus or profits;

- ii) overheads, staff remuneration or management time of any **insured**; or
- iii) damages, compensation or other payments made, or consideration given to customers, clients or potential clients.

### 3.18 Newly Created or Acquired Entity or Subsidiary

**We** agree to provide coverage to any entity or **subsidiary** acquired or created by the **policyholder** during the **insurance period** from the date of such acquisition or creation provided that the **subsidiary**:

- a) undertakes the same **professional business** covered under this **policy**;
- b) does not have any revenue or assets in the United States of America or Canada; and
- c) has total gross revenues that are less than 20% of the total gross revenue of the **policyholder** covered under this **policy**.

**We** may, at **our** discretion, agree to provide coverage where the **subsidiary** fails to meet any one of the above conditions if:

- i) the **policyholder** has notified **us** of the acquisition or creation of the entity or **subsidiary** and has provided all information requested by **us**; and
- ii) any terms imposed by **us**, including the charging of any additional premium considered appropriate, have been agreed by the **policyholder**.

Provided always that any coverage provided under this Extension will only apply in respect of **civil liability** occurring subsequent to the date of acquisition or creation, unless otherwise agreed in writing by **us**.

### 3.19 Previous Business

**We** agree to provide cover to any **officer** of the **policyholder** for **loss** and **defence costs** resulting from any **claim** for **civil liability** in relation to **professional business** performed by them prior to joining the **insured** and the **claim** was first made and reported to **us** during the **insurance period**.

Cover under this Extension will only apply if:

- a) there were no more than 10 partners or directors in the previous business in which the **officer** practised; and
- b) the **officer** of the **policyholder** does not have the benefit of cover under any other insurance or indemnity.

The **retroactive date** for this Extension is limited to the commencement date of the previous business in which the **officer** practised.

### 3.20 Public Relations

**We** agree to pay to or on behalf of the **policyholder** all **public relations expenses** incurred by the **policyholder** with **our** prior written consent in connection with an **incident** in order to prevent or minimise the risk of a **claim** which would be covered under the **policy**, or in connection with an **incident** that results in a **claim** covered under the **policy**.

Cover under this Extension is conditional upon the **insured** providing **us** with full written details of the **incident** no later than 30 days after the **insured** first becomes aware of the **incident**. The **incident** must occur and be reported during the **insurance period**.

The **incident** must occur outside of the USA/Canada.

### 3.21 Reinstatement of Indemnity Limit

In the event that the **indemnity limit** under the **policy** has been exhausted during the **insurance period** by **claims** or **loss** for which **we** have agreed to indemnify, the **indemnity limit** will be reinstated in the same amount once only.

Cover for this Extension will be conditional upon the following:

- a) the exhaustion of 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;
- b) the reinstated **indemnity limit** will only apply to **claims** or **loss** which do not arise out of and do not have any connection with the originating cause of any **claim** or **loss** already paid or payable under the original **indemnity limit**;
- c) all other terms, conditions, Exclusions and limitations of the **policy** shall continue to apply in the same manner, in respect of any **claim** or **loss** to which the reinstated **indemnity limit** applies;
- d) there will be no reinstatement of sub-limits, except if the original **indemnity limit** is reinstated.

However no cover is provided under this Extension for any **claim** arising out of or in connection with proceedings brought in the United States of America or Canada or the enforcement of any judgment, award or regulatory order obtained within and determined pursuant to the laws of United States of America or Canada or their respective territories or protectorates.

The aggregate **indemnity limit** available under this **policy** is specified in Item 5 of the **schedule**.

### 3.22 Unfair Competition Legislation

**We** agree to pay to or on behalf of the **insured** all **loss** and **defence costs** resulting from any **claim** for **civil liability** made against the **insured** for unintentional contraventions of the *Competition Ordinance* or any or similar or equivalent legislation enacted by the Government of the Hong Kong Special Administrative Region and where all **loss** is insurable to the extent permissible under the laws of the Hong Kong Special Administrative Region.

## Section 4: OPTIONAL EXTENSIONS:

The Optional Extensions are subject to the Insuring Clauses and all other **policy** terms and conditions.

The maximum amount payable by **us** under the Optional Extensions below is the applicable sub-limit of liability as specified in Item 9 of the **schedule**. This sub-limit is part of and not in addition to the **indemnity limit**.

A separate **deductible** will apply under these Optional Extensions as specified in Item 9 of the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

### 4.1 Employment Practices Liability

Notwithstanding Exclusion 5.8 (Employment Practices Liability) **we** agree to pay to or on behalf of the **policyholder** all **loss** and **defence costs** in respect of any **employment claim** against the **policyholder** resulting from an **employment practice breach**.

For the purposes of this Extension only, the following additional terms apply:

- a) **Policyholder** does not include the **employee** making the **claim** in respect of an **employment practice breach**.
- b) Exclusion 5.14 (Liability to Employees) of the **policy** will not apply to any **claim** by an **employee** in respect of mental anguish or emotional distress or disturbance arising out of an **employment practice breach**.
- c) All **claims** which arise out of or are attributable to or are in any way connected with a single **employment practice breach** shall constitute a single **claim** for the purposes of this **policy**. A single **employment practice breach** means all respective **employment practice breaches** which are related or form part of a series of related conduct or form part of a course of conduct that is not entirely unconnected, different and/or unrelated.
- d) **We** will not cover the **policyholder** for **loss** and **defence costs** in respect of any **claim** for an **employment practice breach** for, arising from or directly or indirectly attributable to or in consequence of, any **benefits** or **employment-related benefits** or a breach of an express obligation of an **insured**:
  - i) to make payments (including the provision of non-cash benefits); or
  - ii) pursuant to any procedural or notification requirements in the event of termination of employment;

whether such obligation arises under statute, regulation, award, contract of employment (including any arrangement or agreement collateral to any contract of employment) or any industrial, workplace or enterprise agreement or otherwise.

- e) The cover provided by this Extension is specifically excess of any other applicable insurance. If any other insurance in respect of Employment Practices Liability is provided by **us** then the **indemnity limit** for any and all **claims** covered by this Extension will be reduced by the **indemnity limit** of such other insurance provided by **us**.

#### 4.2 USA and Canada Cover

**We** agree to pay to or on behalf of the **insured** all **loss** resulting from any **claim** which would otherwise be limited by General Condition 8.7 (Jurisdictional Limitation) for any **civil liability** made against the **insured** in relation to the conduct of the **policyholder's professional business** in the USA and Canada provided always that any **claim** is:

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

This Extension will apply to all provisions of the **policy** except for the following Extensions:

- i) Reinstatement of Indemnity Limit
- ii) Employment Practices Liability

### Section 5: EXCLUSIONS

**We** will not cover the **insured** for **loss, defence costs, legal representation costs** or other amounts, in respect of:

## 5.1 Amounts Paid or Restitution

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of any disgorgement of charges, fees or consideration owed or paid to any **insured** in connection with the **professional business**, including any restitution or return of such amount.

## 5.2 Asbestos

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of:

- a) asbestos; or
- b) any actual or alleged asbestos related injury or damage involving the use, presence, existence, detection, removal, elimination or avoidance of asbestos or exposure or potential exposure to asbestos.

## 5.3 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 **subsidiary**; or
- c) 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.

However, this Exclusion shall not apply to any **claim**:

- i) brought by an independent third party; or
- ii) brought by any party in the capacity as a client for such **professional business**.

## 5.4 Assumed Liability

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of 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 in respect of the treatment or use of confidential information.

## 5.5 Bodily Injury

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of the death of, or bodily injury or illness to, any person, unless it results directly from the **insured's** conduct of the **policyholder's professional business**.

## 5.6 Deliberate Acts

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of any act or failure to act:

- a) intended by the **insured**; or
- b) that would be expected from the standpoint of a reasonable person in the circumstances of the **insured**;

to cause injury or damage, even if the actual injury or damage is of a different degree or type than intended or expected.

#### 5.7 Directors and Officers

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of an actual or alleged breach by the **insured** acting in the capacity of a director, secretary or officer of a body corporate.

#### 5.8 Employment Practices Liability

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of any employment or prospective employment of any past, present, future or prospective **employee** of the **insured**, except to the extent that cover is provided under Optional Extension 4.1 (Employment Practices Liability).

#### 5.9 Excluded Activities

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of:

- a) finance and/or mortgage broking;
- b) corporate advisory services, including but not limited to advice or consulting in connection with mergers and acquisitions of entities or businesses or parts thereof;
- c) stockbroking, financial planning or funds management activities, whether or not it requires a Securities and Futures Commission (SFC) Licence or an authority under such a License;
- d) any valuation of property or premises made by or on behalf of the **insured**; or
- e) any act, error or omission in the conduct of any activity not part of the **policyholder's professional business**.

#### 5.10 Financial

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of:

- a) the insolvency, bankruptcy, receivership, administration or financial failure of any **insured** or the subcontractors or agents of the **policyholder**;
- 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.

#### 5.11 Fraud and Dishonesty

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of:

- a) any actual or alleged act or omission by an **insured** or any of their consultants, sub-contractors or agents which was reckless, fraudulent, dishonest, malicious or criminal.
- b) any wilful breach of any statute, regulation, contract or duty by an **insured** or any of their consultants, sub-contractors or agents.

This Exclusion will only apply where it is established by an admission of such **insured**, consultant, sub-contractor or agent or by a judgment, award, finding or other adjudication of a court, tribunal, commission, or arbitrator that such conduct did in fact occur.

## 5.12 Infrastructure & Manufacturing

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of:

- a) any errors in an estimate of probable construction cost or cost estimate, unless provided by the **insured** in the conduct of the **policyholder's professional business**;
- b) any construction, assembly, installation, erection or maintenance undertaken by or on behalf of the **insured**;
- c) any breach of any express or implied warranty arising out of the development of any property;
- d) any loss or damage which would normally be the responsibility of a contractor; or
- e) any loss of or damage to, including loss of use of or value in, any goods in the care, custody or control of the **insured**.

## 5.13 Investment Performance

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of:

- a) any actual or alleged dealings of any nature by which it is sought to affect the price of, or market in, any shares or debentures of any company or commodity or currency, or of any negotiable instrument, other than dealings carried out in accordance with the laws, rules and regulations applicable to such dealings;
- b) any financial or investment advice provided by the **insured**, including but not limited to any advice or recommendation as to the valuation, tax implications or performance of any investment; or
- c) a failure by the **insured** to warn of the risks of market fluctuation of any investment.

## 5.14 Liability to Employees

any **claim** or **investigation** 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.

## 5.15 Liability as Occupier

any **claim** or **investigation** 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**.

## 5.16 Pollution

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of the actual, alleged or threatened discharge of **pollutants**.

## 5.17 Prior Known Facts

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of:

- a) actual or alleged facts or circumstances that the **insured** knew, or ought reasonably to have known prior to the **insurance period**, might or could give rise to a **claim**;
- b) actual or alleged facts which could have been, or which can be notified under any previous insurance policy existing prior to the commencement of the **insurance period**;
- c) pending or prior litigation, or derived from the same or essentially the same facts as are or might be alleged in such pending or prior litigation, as at the commencement of the **insurance period**; or

- d) any fact or matter referred to in the **proposal** or notified under any previous like policy existing prior to the commencement of the **insurance period**.

#### 5.18 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**.

#### 5.19 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, unless it results directly from the **insured's** conduct of the **policyholder's professional business**.

#### 5.20 Radioactive Contamination, Chemical, Biological, Biochemical and Electromagnetic Weapons

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of any:

- a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The Exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes; or
- e) any chemical, biological, bio-chemical or electromagnetic weapon.

#### 5.21 Sanctions Limitation

any **claim** or **investigation** or provision of any benefit hereunder to the extent that the provision of such cover, payment of such **claim** or provision of such benefit would expose **us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

#### 5.22 Trading Debts

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of any trading debt or business liability of the **insured** or any guarantee given by the **insured** for a debt.

#### 5.23 War and Terrorism

death, disability, loss, damage, destruction, any legal liabilities, cost or expense including consequential loss of whatsoever nature, directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, or civil commotion assuming the proportions of or amounting to an uprising, military or usurped power;
- b) any act of terrorism including but not limited to:

- i) the use or threat of force, violence; and/or
- ii) harm or damage to life or to property (or the threat of such harm or damage) including, but not limited to, nuclear radiation and/or contamination by chemical and/or biological agents,

by any person(s) or group(s) of persons, committed for political, religious, ideological or similar purposes, express or otherwise, and/or to put the public or any section of the public in fear; or

- c) any action taken in controlling, preventing, suppressing or in any way relating to (a) or (b) above.

If **we** allege that by reason of this Exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the **insured**.

## Section 6: DEFINITIONS

In the **policy**:

**6.1 Benefits** means any amount payable to a beneficiary of a superannuation fund by the Trustee under the rules governing the fund.

**6.2 Civil liability** means a legally enforceable obligation to a third party.

**6.3 Claim** means:

- a) any civil proceeding brought by a third party against the **insured** for compensation;
- b) a written demand by a third party for monetary damages or non-monetary relief; or
- c) a verbal notice

first made against the **insured** during the **insurance period**.

**6.4 Court attendance costs** means the travel costs to and from a witness' usual place of residence to the location of a Court or Tribunal to give evidence.

**6.5 Crime loss** means:

- a) the **direct financial loss** of any money, negotiable instruments, bonds, coupons, currency, bank notes, stamps, cheques, bills of exchange, letters of credit and 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 belonging to the **insured**, or in the **insured's** care, custody or control or for which the **insured** is legally responsible; or
- b) the **direct financial loss** resulting from any actual or alleged fraudulent or dishonest instruction, direction or use of electronic equipment, including but not limited to telephony and the internet, resulting in the unauthorised transfer, delivery or payment of, or dealing with, money, land or any other property belonging to the **insured**, or in the **insured's** care, custody or control, or for which the **insured** is legally responsible.

**6.6 Data** means:

- a) information such as text, numbers, sounds and images that can be processed by any form of electronic device; or
- 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.

**6.7** **Deductible** means the amount specified in Item 6 of the **schedule** or otherwise specified in any Extension to this **policy**.

**6.8** **Defence costs** means all necessary and reasonable fees, expenses, costs and disbursements incurred in investigating or defending a **claim** covered by the **policy**.

**6.9** **Direct financial loss** means financial loss suffered directly by the **policyholder** which is covered under Extension 3.7 (Crime).

**Direct financial loss** does not include:

- a) **direct financial loss** which is indirect and consequential;
- b) **direct financial loss** resulting from the accessing of, any confidential information (including but not limited to trade secrets, customer information, patents, trademarks), except to the extent that any such confidential information is used to support or facilitate the commission of any act for which cover would otherwise be granted by this **policy**;
- c) **direct financial loss** resulting from any dishonest, fraudulent or malicious acts committed by an **employee** or **officer** who prepares cheque requisitions and also has cheque signing authority;
- d) **direct financial loss** resulting from cheques that are not countersigned; or
- e) **direct financial loss** resulting from the transfer of funds not authorised by two or more **officers** and/or **employees**.

**6.10** **Discovered** means when an **officer** first becomes aware of facts which would cause a reasonable person to believe that a **direct financial loss** of the kind covered by this **policy** has been or is likely to be incurred, even though the exact amount or detail of the **direct financial loss** may not then be known.

**6.11** **Discovery period** means the period of time specified in Extension 3.9 (Discovery Period) during which time written notice may be given to **us** of a **claim** which is first made against an **insured** for **civil liability** incurred prior to the end of the **insurance period** or prior to the **transaction**.

**6.12** **Employee** means any person employed by the **policyholder** under a contract of service or apprenticeship during or prior to the commencement of the **insurance period**.

**6.13** **Employment claim** means:

- a) a civil proceeding brought by a past, present or prospective **employee** for recovery of compensation or damages; or
- b) any suit, proceeding or written demand by a past, present or prospective **employee** for monetary damages.

**6.14** **Employment practice breach** means any breach of duty or breach of trust owed by the **insured** in relation to any of the following: employment-related actual or alleged unfair or wrongful dismissal from, termination or discharge of employment (either actual or constructive, including breach of an implied contract), misrepresentation, wrongful failure to employ or promote, failure to grant tenure, discrimination, harassment, retaliation (including lockouts), humiliation, defamation, invasion of privacy, wrongful deprivation of career opportunity, wrongful demotion or negligent employee evaluation (including the provision of negative or defamatory statements in connection with an employee reference) which relate solely to the **policyholder** and its past, present or prospective **employees**.

**6.15** **Employment related benefits** includes but is not limited to:

- a) non-monetary benefits including but not limited to the allocation of a company car, travel allowance, mobile or landline telephone, medical or life insurance expenses, education and training allowances, and equipment allowances;

- b) stock, shares, stock options, share options or any entitlement or right under any employee plan of any description;
- c) participation in any stock, share option or share option plan, or participation in any employee plan of any description;
- d) severance or redundancy payments or entitlements;
- e) any benefit, payment or entitlement of any kind in respect of paid or unpaid leave;
- f) bonus or incentive payments, or any entitlement or right under a bonus or incentive plan (which, for the avoidance of doubt, does not include any payments, entitlement or right under any commission scheme);
- g) payments or contributions in respect of any provident, benefit, superannuation, pension or retirement fund, or any other account, fund, scheme or plan intended to provide benefits, in whole or in part, at retirement or a particular age, or on the happening of a particular event; or
- h) any amount the **insured** pays or is ordered to pay pursuant to any determination or settlement in respect of an allegedly unfair contract, notwithstanding that it acted in accordance with the terms of the employment contract.

**6.16 Family member** means an **insured's**:

- a) legal or de facto spouse, domestic partner or companion;
- b) parent, or the parent of the **insured's** legal or de facto spouse, domestic partner or companion;
- c) children and children of (a) and (b) above; or
- d) siblings.

**6.17 Incident** means an event in the **insurance period** which causes the **insured's** reputation and skill in the conduct of the **professional business** to be brought into question.

**6.18 Indemnity limit** means the amounts specified in Item 5 of the **schedule**.

**6.19 Insurance period** means the period specified in Item 4 of the **schedule**.

**6.20 Insured** means:

- a) the **policyholder**;
- b) any **subsidiary** if the **policyholder** is incorporated; or
- c) any **insured person**.

**6.21 Insured person** means any **officer** or **employee** of the person, partnership, company, **subsidiary** or other entity specified as the **policyholder** in Item 2 of the **schedule**, but only while acting in the conduct of the **policyholder's professional business**.

**Insured person** shall also include an **insured person's** legal spouse (whether that status is derived by reason of statutory law, common law, or otherwise of any applicable jurisdiction in the world) or de facto spouse but only for any **claim** arising out of his or her status as the **insured's** spouse including any **claim** that seeks damages recoverable from marital community property or property jointly held by the **insured** and the **insured's** spouse; provided that no cover is afforded for any **claim** for any act, error or omission of the **insured's** spouse and that this cover shall only apply to the **insureds** acts, errors or omissions.

**6.22 Investigation** means any official investigation, examination, inquiry or other proceedings ordered or commissioned by any official body, quasi-judicial body or institution empowered by law to investigate the conduct of the **professional business** of the **insured**.

**6.23 Legal representation costs** means reasonable legal fees, costs and expenses incurred with **our** prior written consent (which will not be unreasonably withheld or delayed) by or on behalf of an **insured** or **insured person** in:

- a) preparing for, attending or producing documents to an **investigation**; or
- b) responding to a raid on, or on-site visit to, any **insured** by an **official body** that involves the actual or possible production, review copying or confiscation of files or interviews of any **insured**.

**Legal representation costs** does not include the remuneration of any **insured**, the cost of their time or overheads of any **insured**.

**6.24 Loss** means:

- a) damages or claimant's costs or both payable by the **insured** pursuant to an award or judgment entered against the **insured**;
- b) settlements negotiated by **us** and consented to by the **insured**; or
- c) settlements negotiated by the **insured** but only with **our** prior written consent.

**Loss** does not include any of the following:

- i) **defence costs**;
- ii) **legal representation costs**;
- iii) amounts uninsurable at law;
- iv) wages, salaries, allowances, fees, commissions, awards, bonuses, travel or accommodation costs incurred by the **insured** in assessing, investigating, dealing with or assisting others to deal with the **claim**;
- v) taxes, fines or penalties (except to the extent that cover is provided under Extension 3.3 (Civil Penalties)); or
- vi) punitive, aggravated, multiple, exemplary, liquidated or other non-compensatory damages or the consequences of non-payment.

All **loss** attributable to one source or originating cause will be deemed one **loss**.

**6.25 Lost data** means **data** that cannot be located following a diligent search, and **data** that has been destroyed or damaged.

**6.26 Officer** means any past, present or future:

- a) partner, principal, director or secretary of the **policyholder** or a **subsidiary**; or
- b) person who makes or participates in making decisions that affect the whole, or a substantial part, of the business of the **policyholder** or a **subsidiary**.

**6.27 Official body** means any regulator, government or administrative body or agency, official trade body or self-regulatory body legally empowered to investigate the affairs of the **policyholder** or the conduct of an **insured person** in their **insured** capacity.

**6.28 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**.

**6.29 Policyholder** means the organisation or natural person specified in Item 2 of the **schedule**, and any **subsidiary**.

**6.30 Pollutants** means any contaminant whether solid, liquid or gas including but not limited to chemicals, smoke, vapours and fumes.

**6.31 Professional business** means the professional activity(ies)/business description specified in Item 3 of the **schedule** only.

**6.32 Proposal** means the **proposal** form, submission and all other supporting documentation and attachments provided to **us** in the application for this **policy**.

- 6.33 Public relations expenses** means any reasonable fees, costs and expenses of a public relations consultant retained with **our** prior written consent (which shall not be unreasonably delayed or withheld). It does not include overheads, staff remuneration or management time of any **insured** or compensation or other payments made to customers, clients or potential **claims** or any fines and penalties.
- 6.34 Retroactive date** means the date specified in Item 7 of the **schedule** but no earlier than the commencement of the **policyholder's professional business** specified in the **schedule**.
- 6.35 Schedule** means the **schedule** attached to this **policy** or any **schedule** subsequently substituted for it during the **insurance period** and duly signed, stamped and dated by an authorised representative of **us**.
- 6.36 Subsidiary** means any entity which by virtue of any applicable legislation or law is deemed to be a **subsidiary** of the **policyholder** or in which the **policyholder** owns or controls, directly or indirectly greater than 50% of the issued voting shares of such entity.
- 6.37 Transaction** means any one of the following events:
- a) the **policyholder** consolidates with or merges into or sells all or a controlling interest in its assets to any other person or entity or group of persons and/or entities acting in concert;
  - b) any person or entity, whether individually or together with any other person or persons, entity or entities becomes entitled to exercise more than 50% of the rights to vote at general meetings of the **policyholder** or control the appointment of directors who are able to exercise a majority of votes at Board Meetings of the **policyholder**;
  - c) the insolvency of the **policyholder**; or
  - d) the appointment of an administrator, liquidator, receiver, receiver and manager or court appointed manager to the **policyholder**.
- 6.38 We/Us/Our** means DUAL Underwriting Agency (Hong Kong) Limited as agent of the insurer MSIG Insurance (Hong Kong) Limited.

## Section 7: CLAIM CONDITIONS

### 7.1 Notification

It is a condition precedent to cover under this **policy** that the **policyholder** and/or any **insured** must notify **us** in writing of any **claim** or **investigation**, or other relevant circumstance which may trigger this **policy** as soon as is reasonably practicable after they first become aware of such circumstance and within the **insurance period**.

The written notice should include, so far as is reasonably practicable and so far as the relevant **insured** is aware:

- a) the identity of the claimant if relevant;
- b) an outline of the factual matrix; and
- c) an estimate of the likely quantum of any **loss**.

The notice must be delivered to:

Claims Department  
DUAL Underwriting Agency (Hong Kong) Limited  
Suite 2103, 21/F  
Fu Fai Commercial Centre  
27 Hillier Street  
Sheung Wan, Hong Kong

Or by email to [claims@dualasia.com](mailto:claims@dualasia.com)

Any written notice will be considered effective from the date such notice is first received by **us**.

## 7.2 Co-operation

- a) The **insured** must, at the **insured's** own cost, frankly and honestly provide **us** with all information, documentation, evidence and assistance reasonably required by **us** and/or any lawyers, investigators or other professionals, who may be appointed by **us**.
- b) The **insured** must, at their own cost, do all things reasonably practicable to minimise any **loss**, including but not limited to the **insured's** liability in respect of any **claim**.
- c) Each **insured** must provide **us**, at their own cost, with all information, assistance and co-operation which **we** reasonably require, and in the event of a **claim** or potential **claim**, each **insured** agrees that they will not do anything that could potentially prejudice **our** position or **our** potential or actual rights of recovery.
- d) No **insured** may settle any **claim** or incur any **defence costs** or assume any contractual obligation or admit any liability with respect to any **claim** without **our** written consent.

## 7.3 Allocation

**Our** liability under this **policy** is limited to the proportion of **loss, defence costs and legal representation costs**, which is a fair and equitable allocation as between:

- a) covered and uncovered parties; and/or
- b) covered and uncovered matters;

having regard to the relative legal and financial exposures attributed to the covered and uncovered matters and/or parties. Only **loss, defence costs and legal representation costs** incurred by covered parties in relation to covered matters will be covered by this **policy**, and is subject always to the terms and conditions of this **policy**.

**We** will use **our** best endeavours to agree upon a fair and equitable allocation of the proportion covered under this **policy**, having regard to the relative legal and financial exposures attributable to covered and uncovered matters and/or parties.

If an allocation cannot be agreed then it will be determined by a suitably qualified Senior Counsel to be mutually agreed upon or, in default of agreement, to be nominated by the then President of the Bar Association of the jurisdiction in which the **policy** was underwritten. The Senior Counsel will make a determination as an expert based on the relative legal and financial exposures attributable to covered and uncovered matters and/or parties. Submissions made to the Senior Counsel will be in writing.

Pending Senior Counsel's determination **we** will meet the **loss, defence costs and legal representations costs** on an interim basis at the percentage at which **we** contend they should be fairly and equitably allocated. After the allocation has been determined or agreed, such allocation will be applied retrospectively. The parties agree to be bound by the Senior Counsel's determination. The costs of any referral for determination to a Senior Counsel under this clause will be borne by **us**.

## 7.4 Legal Representation and Settlement

Unless otherwise specified in a **policy**, it will be **our** duty and not the duty of the **insured** to defend **claims** and arrange for legal representation at **investigations**.

The **insured** will not admit liability, settle any **claim**, make any admission, offer any payment or assume any obligation in connection with any **claim** or investigation, incur any **defence**

**costs, legal representation costs** or other **loss** covered by this **policy**, without **our** prior written consent, which will not be unreasonably withheld or delayed.

**We** will not be liable for any settlement, **defence costs** or other form of **loss**, admission, offer, payment or assumed obligation to which **we** have not given **our** prior written consent.

**We** will have the right and will be given the opportunity to associate with each **insured** and participate in the defence of any **claim** or **investigation** including the negotiation and settlement of a covered **claim**.

With respect to any **claim** or **investigation** involving more than one **insured**, the **insureds** agree that **we** have the right to require such **insureds** to retain separate legal representation.

## 7.5 Order of Payments

If the payment of **loss, defence costs** and **legal representation costs** in respect of a covered **claim** under a **policy** where such **loss** in the aggregate exceeds the remaining available **indemnity limit**, **we** will:

- a) first pay such **loss** for which the **policyholder** does not indemnify an **insured person**; then
- b) to the extent of any remaining amount of the **indemnity limit** available after payment under 7.5(a) above, pay such **loss** for which coverage is provided under any other provision of this **policy**.

**We** will otherwise pay **loss** covered under this **policy** in the order in which such **loss** is presented to **us** for payment.

## 7.6 Subrogation & Recoveries

Where **we** have paid any amount of **loss, defence costs** and **legal representation costs** under the **policy**, **we** become entitled to assume any rights available to the **insured** against any party to the extent of **our** payment. On **our** request, the **insured** must assign all rights of recovery against any person or entity, but only to the extent that payment has been made under the **policy**.

The **insured** must, at its own cost, assist **us** and provide information as **we** may reasonably require, to exercise **our** rights of recovery and/or subrogation. This may include providing and signing statements and other documents and the giving of evidence.

Where a recovery is made, the proceeds of such a recovery will be applied as follows:

- a) firstly, to the satisfaction of all costs incurred in effecting the recovery;
- b) secondly, to the **insured** for the amount of **loss, defence costs** and **legal representation costs** in excess of the **indemnity limit** specified in the **schedule** which is also in excess of any excess insurance purchased over this **policy**;
- c) thirdly, to **us** and any excess insurers amounts paid under the **policy** and such excess policies;
- d) finally, to the **insured** for the amount paid in respect of the **deductible**.

## Section 8: GENERAL CONDITIONS

The following General Conditions apply to all **policies** purchased and shown as having been purchased in the **schedule**.

Each **policy** purchased is to be read and interpreted as a separate contract of insurance with its own separate **indemnity limit**, unless specified otherwise in the **schedule**.

## 8.1 Interpretation

Words and phrases appearing in bold text and where used in a **policy**, have the meaning defined in that **policy** or **policies** purchased by the **policyholder** as shown in the **schedule**.

To the extent that there are any inconsistencies between the **policy** and this General Conditions Section, the terms and conditions contained in the **policy** will prevail.

In the **policy**:

- a) the singular includes the plural and the masculine includes the feminine;
- b) the headings are for descriptive purposes only; and
- c) in the event that any portion of the **policy** is found to be invalid or unenforceable, the remainder will remain in full force and effect.

## 8.2 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, administration or liquidation;
- b) the **insured** failing to pay debts as and when those debts become due;
- 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 **professional 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.

If during the **insurance period** a **transaction** occurs then the cover under the **policy** will only apply to any act, error or omission committed prior to the effective date of the **transaction**.

If, during the **insurance period**, the **policyholder** decides to make a public offering of its securities in any jurisdiction the **policyholder** must provide **us** with any prospectus or offering statement for **our** review and assessment. **We** will be entitled to amend the terms and conditions of any **policy** and/or charge an additional premium reflecting any potential increase in exposure, which **we** deem reasonable.

## 8.3 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**.

## 8.4 Cancellation

The **policyholder** 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**.

If a **claim** and/or circumstance has been notified to **us** under this **policy**, **we** will be entitled to the entire premium and no refund of premium will be made. If the **policyholder** withdraws such **claim** and/or circumstance then the **policy** may be cancelled and **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 within 90 days.

#### 8.5 Several Liability

The subscribing insurers' obligations under Contracts of Insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

#### 8.6 Territorial Scope

Unless otherwise stated in the **schedule** and subject to General Condition 8.7 (Jurisdictional Limitation), cover provided under this **policy** extends to the conduct of the **policyholder's professional business** anywhere in the world.

#### 8.7 Jurisdictional Limitation

Unless otherwise stated in the **schedule**, cover provided under this **policy** extends to **loss** with respect to a **claim** or **investigation** brought and maintained anywhere in the world, except within the territorial limits of the United States of America or Canada or their respective territories or protectorates or to enforce any judgment, order or award obtained in or determined under the laws of the United States of America or the Canada or their territories or protectorates.

#### 8.8 Governing Law

The **policy** is governed by the laws of the Hong Kong Special Administrative Region where the **policy** was issued.

Any dispute or difference arising out of this **policy** shall first be referred to mediation at the Hong Kong International Arbitration Centre (HKIAC) and dealt with in accordance with HKIAC Mediation Rules. If the mediation is abandoned by the mediator or is otherwise concluded without the dispute or difference being resolved, then such dispute or difference shall be referred to arbitration at HKIAC and in accordance with HKIAC Domestic Arbitration Rules. Each party shall bear its own costs regardless of the outcome of the mediation. All other costs and expenses shall be borne equally by the parties and the parties shall be jointly and severally liable to pay to the mediator such costs.

Any dispute or difference arising out of this **policy** which is referred to arbitration at the HKIAC will be dealt with in accordance with HKIAC Domestic Arbitration Rules in force when the Notice of Arbitration is submitted. The parties shall jointly designate one arbitrator and the arbitration proceedings shall be conducted in English. All costs and expenses shall be borne equally by the parties and the parties shall be jointly and severally liable to pay to the arbitrator such costs.

#### 8.9 Indemnity Limit

- a) Subject to any Extension of coverage which states otherwise, **our** total liability under the **policy** in respect of any one **claim** or **investigation**, and in the aggregate for all **claims** and **investigations** for all **insureds**, will not exceed the **indemnity limit** inclusive of all **loss**.
- b) The **schedule** will indicate the **indemnity limit** applicable to each **policy**. If more than one **policy** has been purchased, the **schedule** will also indicate the aggregate **indemnity limit** for all policies which have been purchased by the **policyholder**.
- c) **We** will have no liability in excess of the sub-limits specified in the **schedule** in the aggregate for the applicable Extension of cover, irrespective of the number of **policy** sections, which respond to the **claim** or **investigation**. In such circumstances, **we** will apply the higher of the sub-limits or **indemnity limit** available.

- d) 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**.

#### 8.10 Deductible

- a) **Our** liability under this **policy** for **loss** will only apply to that part of each **loss**, **defence costs** and **legal representation costs** which is in excess of the **deductible** specified in the **schedule**. Such **deductible** will be borne by the **insured**, except where otherwise provided.
- b) Unless otherwise expressed in the **schedule**, all **deductibles** are inclusive of **defence costs** and/or **investigation costs** and/or **loss** to the amount of the **deductible**.
- c) Except as otherwise stated in the **policy**, costs and expenses incurred by **us** in determining whether we are liable to indemnify the **insured** under the **policy** will not erode the **indemnity limit** and will be met by **us**.
- d) For the purposes of determining the **deductible(s)** applicable to any **claim(s)** 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**.

#### 8.11 Severability, Non-Imputation and Non-Avoidance

No state of mind or knowledge possessed by any one **insured person** will be imputed to any other **insured person** for the purpose of determining whether any provision in this **policy** applies. However, any state of mind or knowledge possessed by any past or present chairman of the board, chief executive officer, chief operating officer or chief financial officer of the **policyholder** or any **subsidiary** will be imputed to the **policyholder**.

**We** agree not to rescind or avoid this **policy** in whole or in part, for any misrepresentation in the **proposal** or for any non-disclosure (whether such misrepresentation is innocent, negligent, fraudulent or otherwise).

In the event of fraudulent misrepresentation or fraudulent non-disclosure which would otherwise entitle **us** to avoid or rescind the **policy**, **we** will only reduce **our** liability under the **policy** in respect of such **insureds** who were involved in or were aware of the fraudulent non-disclosure or fraudulent misrepresentation.

#### 8.12 Preservation of Right to Indemnity

In the event and to the extent that the **policyholder** has not indemnified an **insured person** but is legally permitted or required to do so in respect of a **claim** or **investigation**, but for whatever reason, refuses to do so, then **we** will pay on behalf of the **insured person** any **loss** arising from the **claim**, **defence costs** or **legal representation costs** within the **deductible** and, the applicable **deductible** will be paid by the **policyholder** to **us**.

#### 8.13 Other Insurance

This **policy** will only cover **loss** to the extent that the amount of such **loss** is in excess of any indemnity or cover available to the **insured** in respect of that **loss** under any other insurance policy(ies). The **insured** must advise **us** of the other insurance policy(ies) at the time of making a **claim** under the **policy** and provide **us** with details of other insurance.

#### 8.14 Currency

Any reference to premium, **indemnity limits**, **deductibles**, **loss**, **defence costs**, **legal representation costs** or any other amounts payable by **us** under this **policy** are expressed and are payable in the currency as referenced in the **schedule** of the **policy**. Where any payment is to be made into an admitted foreign jurisdiction, such payment is to be made and denominated in the currency referenced in the **schedule** of the **policy** at the cash rate for the purchase of the currency referenced in the **schedule** of the **policy** set by the currency

conversion website, Oanda.com or if it has ceased to be current, a currency conversion website selected by **us** as at 4.00 pm on the date which the foreign payment becomes due.

#### **8.15 Rights of Third Parties**

Any person or entity who is not a party to this policy shall have no rights under the *Contracts (Rights of Third Parties) Ordinance (Cap. 623) (HK)* to enforce any of its terms.

## Appendix: Notice to customers relating to the Personal Data (Privacy) Ordinance ("the Ordinance")

MSIG Insurance (Hong Kong) Limited ("MSIG", "we" or "us") would ask that you take the time to read this privacy policy carefully. In case of discrepancies between the English and Chinese versions of this statement, the English version shall prevail.

### PRIVACY POLICY

MSIG takes your privacy very seriously. To ensure your personal information is secure, we communicate and enforce our privacy and security guidelines according to the relevant laws and regulations. MSIG takes precautions to safeguard your personal information against loss, theft, and misuse, as well as against unauthorised access, disclosure, alteration, and destruction. Furthermore, we will not sell your personal information to anyone for any purposes. MSIG imposes very strict sanction control and only authorised staff on a need-to-know basis are given access to or will handle your personal data, and we provide regular training to our staff to keep them abreast of any new developments in privacy laws and regulations.

We will only retain your personal data in our business records for as long as it is necessary for business and tax purposes as permitted by the laws. We will require our agent, contractor or third party who provides administrative or other services on our behalf to protect personal data they may receive in a manner consistent with this policy. We do not allow them to use such information for any other purposes. If you have any questions or inquiries regarding our privacy policy, please feel free to contact us.

We may amend this Privacy Policy at any time and for any reason. The updated version will be available by following the 'Privacy Policy' link on our website homepage at [www.msig.com.hk](http://www.msig.com.hk). You should check the Privacy Policy regularly for changes.

### Personal Information Collection Statement

Personal information is data that can be used to uniquely identify or contact a single person. As our customers, it is necessary from time to time for you to supply us with your personal data in relation to the general insurance services and products ("the Product") that we provide to you and in order for us to deliver and improve the customer service. This includes but not limited to the personal data contained in the proposal form or in any documents in relation to the Product or any claim made under the Product.

Your personal data may be used for **obligatory purpose** or **voluntary purpose**. If personal data are to be used for an obligatory purpose, you **MUST** provide your personal data to MSIG if you want MSIG to provide the Product. Failure to supply such data for obligatory purpose may result in MSIG being unable to provide the Product.

The **obligatory purposes** for which your personal data may be used are as follows:-

- processing and evaluating your insurance application and any future insurance application you may make;
- our daily operation and administration of the services and facilities in relation to the Product provided to you;
- variation, cancellation or renewal of the Product;
- invoicing and collecting premiums and outstanding amounts from you;
- assessing and processing claims in relation to the Product and any subsequent legal proceedings;
- exercising any right of subrogation by us;
- contacting you for any of the above purposes;
- other ancillary purposes which are directly related to the above purposes;
- complying with applicable laws, regulations or any industry codes or guidelines; and
- detecting and preventing fraud (whether or not relating to the policy issued in respect of this application).

The **voluntary purposes** for which your personal data may be used are any sales, marketing, promotion of other general insurance services and products provided by MSIG. The personal data we intend to use for voluntary purposes are your name, your address, your phone number and email address.

**If you do not wish MSIG to use your personal data for the voluntary purposes listed above, you should tick the box on the right and send us a copy of this Notice at the address listed below together with the required information which are necessary for us to process your opt-out request. You may also notify us by sending an email to '[dpo@hk.msig-asia.com](mailto:dpo@hk.msig-asia.com)'.**

In your notification, you must supply the same required information as listed below.

To enable us to process your opt-out request, please provide us below information and send to:	
<b>The Data Protection Officer at 9/F, Cityplaza One, 1111 King's Road, Taikoo Shing, Hong Kong.</b>	
<b>Full Name:</b>	
<b>Contact Number:</b>	
<b>HKID Number:</b>	<i>(for identification purpose)</i>
<b>Policy / Certificate / Acknowledgement Number (if you have one):</b>	
<b>NOTE: This instruction will override all previous instructions relating to direct marketing that have been given to MSIG.</b>	

In connection with any of the above purposes, the personal data that we have collected might be transferred to:

- third party agents, contractors and advisors who provide administrative, communications, computer, payment, security or other services which assist us to carry out the above purposes (including medical service providers, emergency assistance service providers, telemarketers, mailing houses, IT service providers and data processors);
- in the event of a claim, loss adjudicators, claims investigators and medical advisors;
- reinsurers and reinsurance brokers;
- your insurance broker;
- our legal and professional advisors;
- our related companies as defined in the Companies Ordinance;
- the Hong Kong Federation of Insurers (or any similar association of insurance companies) and its members;
- the Insurance Complaints Bureau and similar industry bodies; and
- government agencies and authorities as required or permitted by law;
- fraud prevention organizations;
- other insurance companies (whether directly or through fraud prevention organization or other persons named in this paragraph);
- the police; and
- databases or registers (and their operators) used by the insurance industry to analyse and check information provided against existing information.

In order to confirm the accuracy of your personal data, you agree to provide us with authorisation to access to and to verify any of your personal data with the information collected by any federation of insurance companies from the insurance industry.

Under the relevant laws and regulations, you have the right to request access to and to request correction of your personal data held by us. If you wish to exercise these rights, please write to our Data Protection Officer at 9/F Cityplaza One, 1111 King's Road, Taikoo Shing, Hong Kong.

If you have any enquiries or require assistance with this **Personal Information Collection Statement**, please call MSIG at (852) 3122 6922.