

CATLIN HONG KONG LTD

ERRORS AND OMISSIONS INSURANCE

AGGREGATE

(DEFENCE COSTS INCLUSIVE)

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SPECIMEN

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SPECIMEN

The **Insured** has submitted to the **Insurer** the **Proposal** and declarations which it is agreed shall be the basis of, and be incorporated into, this policy and in consideration of the **Premium** paid or to be paid by the **Insured**, the **Insurer** will indemnify the **Insured**, subject to the terms, conditions, exclusions, exceptions and limitations of this policy.

1 **SCHEDULE**

Policy Number:

1) **Insured:**

2) **Insured's Address:**

3) **Insured's Business:**

4) **Period of Insurance:** From:
To:
both days inclusive

5) **Limit of Indemnity:** USD
each and every **Claim** and in the aggregate (including defence costs and expenses) which limit includes the following aggregate sub-limits:
(a) USD in the aggregate under Clause 2.2 (Loss of **Documents**)

6) **Deductible:** USD
each and every **Claim**, except for:
(a) Clause 2.2 – Loss of **Documents** USD
all each and every **Claim**

Applicable to defence costs and expenses

7) **Premium:**

Total:

- 8) (a) Jurisdiction:
(b) Territorial Limits:
- 9) Retroactive Date:
- 10) Date of Proposal:
- 11) Endorsements:

Signed:

On behalf of Catlin Hong Kong Ltd

Intl:

Date:

2 INSURING CLAUSES

2.1 Civil Liability

2.1.1 The **Insurer** shall indemnify the **Insured** in respect of any civil liability whatsoever (including claimant's costs) arising from any **Claim** first made against the **Insured** and **Notified** during the **Period of Insurance** and which arises out of the conduct of the **Insured's Business** carried on by or on behalf of the **Insured**.

2.1.2 The indemnity herein shall apply in respect of civil liability arising out of the conduct of the **Insured's Business** whilst a member of a joint venture or consortium but PROVIDED ALWAYS THAT:

- (a) the existence of any such activity and relevant fees or turnover have been declared to the **Insurer**,
- (b) the **Insured** has not, unless with the prior consent of the **Insurer**, waived either by original agreement or subsequently any right of recovery or entitlement to contribution they would otherwise have against any other party to the joint venture or consortium,
- (c) the **Insurer** remains at all times entitled to exercise its rights of subrogation,
- (d) no liability shall arise under this policy in respect of any **Claim** by any other party to the joint venture or consortium, unless such **Claim** emanates from a completely independent third party, and
- (e) the indemnity under this policy shall be limited to such proportion of the joint venture or consortium's liability as the **Insured** may have agreed to accept in the joint venture or consortium agreement or in the absence of any such provision to such proportion as the **Value** of the **Insured's** contribution to the joint venture or consortium in money and/or services bears to the total **Value** of such contributions by all the participating parties in the joint venture or consortium.

"**Value**" in this clause shall mean the actual money contributed or the financial cost to the participating parties of the services provided. Where such cost is unknown a reasonable estimate shall be made.

2.2 Loss of Documents

The **Insurer** also shall indemnify the **Insured** for reasonable and necessary costs, incurred with the **Insurer's** prior written consent, of repair, replacement or reconstitution of any **Document** which has been unintentionally destroyed, damaged, lost or mislaid during the **Period of Insurance** (and which after diligent search cannot be found) the occurrence of which has been **Notified** during the **Period of Insurance**.

2.3 Defence Costs and Expenses

The **Insurer** shall indemnify the **Insured** for all defence costs and expenses in:

- (a) the defence, investigation or settlement of any **Claim** which falls to be dealt with under insuring clauses 2.1 and 2.2, or
- (b) the investigation of any circumstance **Notified** to the **Insurer** under condition 7.2 which may give rise to a **Claim**,

incurred by or on behalf of the **Insured** with the prior written and continuing consent of the **Insurer** (such consent not to be unreasonably withheld) but not including the **Insured's** own costs and expenses or any value attributable to the time spent by the **Insured** or any **Employee** in dealing with a **Claim** or a circumstance.

3 DEFINITIONS

- 3.1 "**Claim**" means any demand made of, or assertion of a right against, the **Insured** which is communicated to the **Insured** in writing, or costs under clauses 2.2.
- 3.2 "**Document**" means all and any records arising from the **Insured's Business**, whether kept in paper (excluding stamps, currency, bank notes and instruments, travellers cheques, cheques, postal orders, money orders, securities and the like), magnetic or electronic form, for which the **Insured** is legally responsible, whilst in the custody of the **Insured**, or in the custody of any person other than the owner to or with whom they have been entrusted, lodged or deposited by the **Insured** in the ordinary course of the **Insured's Business**.
- 3.3 "**Employee**" means any person, other than a partner, principal, director or member of the **Insured**, who has been, is or shall be under a contract of service or apprenticeship, supplied to, hired, or borrowed by the **Insured**, or under any work experience or similar scheme, whilst employed or engaged by and under the control of the **Insured** in connection with the **Insured's Business**.
- 3.4 "**Insured**" means any firm, company or limited liability partnership named in part 1 of the **Schedule** and any **Employee**, including any of their predecessors in business; its principals, partners, directors or members (including any former partner, director or member) and their legal representatives, estate or heirs in the event of their bankruptcy, incapacity or death.
- 3.5 "**Insured's Business**" means the professional services performed or the advice given by the **Insured** in relation to those activities declared in the **Proposal**, and as described in the **Schedule**.
- 3.6 "**Insurer**" means Catlin Hong Kong Ltd.
- 3.7 "**Notified**" means that notice is sent in writing by the **Insured** (or its insurance agent) to, and received by, the **Insurer**. For the avoidance of doubt, notice is not valid if given by any third party (other than the **Insured's** insurance agent).
- 3.8 "**Period of Insurance**" means the period stated in part 4 of the **Schedule**.
- 3.9 "**Premium**" means the amount stated in part 7 of the **Schedule**.
- 3.10 "**Proposal**" means the written information bearing the date stated in part 10 of the **Schedule** and containing particulars and statements together with any other information and documents supplied to the **Insurer** by or on behalf of the **Insured**. This does not

include any information contained within or linked to the **Insured's** website unless such information is specifically supplied to the **Insurer** by or on behalf of the **Insured** in written form.

3.11 **"Schedule"** means the document entitled **"Schedule"** that relates to and forms part of this policy.

3.12 **"Terrorist Action"** means the actual or threatened:

- (a) use of force or violence against persons or property, or
- (b) commission of an act dangerous to human life or property, or
- (c) commission of an act that interferes with or disrupts an electronic or communications system

undertaken by any person or group, whether or not acting on behalf of or in connection with any organisation, government, power, authority, or military force, when any of the following applies:

- (i) the apparent intent or effect is to intimidate or coerce a government or business, or to disrupt any segment of the economy; or
- (ii) the apparent intent or effect is to cause alarm, fright, fear of danger, or apprehension of public safety in one or more distinct segments of the general public, or to intimidate or coerce one or more such segments; or
- (iii) the reasonably apparent intent or effect is to further political, ideological, religious, ethnic, racial or cultural objectives, or to express support for (or opposition to) a philosophy, ideology, religion, ethnic or racial group, or culture.

4 **LIMIT OF INDEMNITY**

4.1 The limit of indemnity of this policy is the maximum amount the **Insurer** shall be called upon to pay irrespective of the number of **Claims**, claimants, losses or number of **Insureds**, under all insuring clauses 2.1, 2.2 and 2.3.

4.2 The limit of indemnity shall be the amount stated in part 5 of the **Schedule**. In respect of clause 2.2 an aggregate sub-limit of indemnity in the amount stated in part 5 (a) of the **Schedule** shall apply.

4.3 All payments made by the **Insurer** in respect of clauses 2.1, 2.2 and 2.3, or any endorsement or otherwise shall erode the limit of indemnity for all **Claims** in the aggregate under this policy.

4.4 All **Claims** (including costs sought under insuring clause 2.2) whether made against or sought by one or more **Insureds**, wholly or substantially arising from or having any connection with or relation to:

- (a) the same event, occurrence, act, error, omission or breach of duty or having the same originating or underlying cause, or
- (b) a series of events, occurrences, acts, errors, omissions or breaches of duty having the same originating or underlying cause, or
- (c) the acts, errors, omissions or breaches of a single person or persons acting together or in which such person or persons is or are concerned or implicated,

shall be deemed to be one **Claim** or single application for costs under insuring clause 2.2 for the purposes of deciding the applicable limit of indemnity and the application of the deductible under this policy. The **Insurer** shall be the sole judge as to whether the provisions of this sub-clause shall operate in relation to any **Claim** or application for costs.

5 DEDUCTIBLE

- 5.1 A separate deductible being the first part of any **Claim** which is payable by the **Insured** before the **Insurer** shall have any liability to indemnify under this policy shall apply to each and every **Claim**. Payment of the deductible by the **Insured** is a condition precedent to the **Insured** being indemnified by the **Insurer**.
- 5.2 The deductible in respect of any **Claim** shall be in the amount stated in part 6 of the **Schedule**, and shall be applicable to defence costs and expenses.

6 EXCLUSIONS

The **Insurer** shall not have any liability under this policy for, or directly or indirectly arising out of, or in any way connected with:

6.1 Known Claim or Circumstance

any **Claim** or circumstance which may give rise to a **Claim** which was or ought to have been known to the **Insured** prior to the **Period of Insurance**;

6.2 Death or Bodily Injury

for bodily injury, sickness, disease, emotional distress (other than emotional distress arising from any libel or slander), mental anguish, mental stress or the death of any person;

6.3 Property Damage

for any damage to or destruction or loss of any property (except as provided under insuring clause 2.2) including loss of use;

6.4 Fines and Penalties

any regulatory or disciplinary investigations or proceedings or any fines, penalties or penal, punitive, exemplary, restitutionary, non-compensatory or aggravated damages, or the additional award of damages consequent upon or by reason of any multiplication of compensatory damages;

6.5 Fraud and Dishonesty

any **Claim** or circumstance arising from or connected with the dishonest or fraudulent act or omission of any former or present partner, principal, director, member, consultant or sub-contractor of the **Insured**:

- (a) in respect of any person committing or condoning such dishonest or fraudulent act or omission, or
- (b) the amounts recoverable from the dishonest or fraudulent person or persons or their estates or legal representatives, or

- (c) arising after the discovery of reasonable cause for suspicion of dishonesty or fraud by the dishonest or fraudulent person or persons, or
- (d) an amount equivalent to:
 - (i) any monies owed by the **Insured** to any person committing, condoning or contributing to the dishonest or fraudulent act or omission, and
 - (ii) any monies held by the **Insured** and belonging to such person, and
 - (iii) any monies recovered in accordance with condition 7.5 of this policy;

6.6 Director and Officer

any liability of the **Insured** as a director, officer and/or trustee in their respective capacities as a director, officer and/or trustee;

6.7 Nuclear and War

any of the following:

- (a) war (whether declared or not), invasion, acts of a foreign enemy, hostilities, or any similar act, condition or warlike operation, warlike action by a regular or irregular military force or other authority to hinder or defend against an actual or expected attack;
- (b) insurrection, rebellion, revolution, riot, attempt to usurp power, popular uprising, or any action taken by any governmental or martial authority in hindering or defending against any of these;
- (c) discharge, explosion, or use of a weapon of mass destruction (whether or not employing nuclear fission or fusion), or chemical, biological, radioactive or similar agents, by any party at any time for any reason;

6.8 Terrorist Action

any **Terrorist Action** (regardless of any other cause or event contributing concurrently or in any other sequence to the liability) or any action taken in controlling, preventing or suppressing **Terrorist Action**. If the **Insurer** alleges that by reason of this exclusion any **Claim** or circumstance is not covered by this policy the burden of proving the contrary shall be upon the **Insured**;

6.9 Pollution and Contamination

any pollution, seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, asbestos, including, but not limited to, smoke, vapours, soot, dust, fibres, fungi, mould, fumes, acids, alkalis, chemicals and waste (including but not limited to material to be recycled, reconditioned or reclaimed) or contamination of any kind;

6.10 Land and Vehicles

the ownership, possession or use of any aircraft, watercraft, hovercraft, motor vehicle, trailer, or other means of transport, or any buildings, structures, premises or land or any property (mobile or immobile) or that part of any building leased, occupied or rented by the **Insured**;

6.11 Jurisdiction and Territorial Limits

any:

- (a) legal proceedings brought in a court of law outside the jurisdictions stated in part 8 (a) of the **Schedule** or brought in a court of law within the stated jurisdictions to enforce a judgement or order made in any court of law outside those jurisdictions; or
- (b) liability arising from the **Insured's Business** undertaken outside the territorial limits shown in part 8 (b) of the **Schedule**;

6.12 Warranties and Guarantees

any contractual liability incurred by the **Insured** in the course of the **Insured's Business** arising from:

- (a) the **Insured's** acceptance or guarantee of, in any express contractual term, of fitness for purpose, or
- (b) any express guarantee given by the **Insured** including as to the period of any project, or
- (c) any express contractual penalty made between the **Insured** and a third party, or
- (d) the **Insured's** acceptance of liability for liquidated damages

except where the liability of the **Insured** in respect of any of the above would have existed to the same extent in the absence of any such contractual term, or the **Insurer** has given its prior express approval to the contractual term out of which the liability arises.

6.13 Related Companies

any circumstance concerning, or **Claim** brought by or on behalf of, the **Insured** or any parent or subsidiary company of the **Insured**, or any person having a financial, executive or controlling interest in the **Insured** (unless the financial interest is less than 5%), or by or on behalf of any entity controlled or managed by the **Insured** or where the **Insured** has greater than a 5% financial interest, or where the **Insured** has accepted a financial interest, irrespective of the amount, in any entity in exchange for fees incurred; except where such **Claim** originates from an independent third party claimant.

6.14 Other Insurance

any matter in respect of which the **Insured** is (or but for the existence of this policy would be) entitled to indemnity under any other contract of insurance, except where such other insurance is written as specific excess insurance to this policy; in any event this policy shall only apply to the extent of such part of the limit of indemnity as exceeds the limit of the other policy;

6.15 Employers Liability

any breach of any obligation owed by the **Insured** as an employer to any **Employee** or former **Employee** or applicant for employment;

6.16 Products

any goods or products sold, supplied, made, constructed, installed, maintained, repaired,

altered or treated by or on behalf of the **Insured**, unless such **Claim** or circumstance is a direct result of the negligent design and/or negligent specification of the **Insured** or any **Employee** or any other person firm or company directly appointed by and acting for or on behalf of the **Insured**;

6.17 **Retroactive Date**

any act error or omission committed, or any loss suffered, or costs incurred, or any liability arising prior to the Retroactive Date specified in part 9 of the **Schedule**;

6.18 **Insolvency**

the insolvency or bankruptcy of the **Insured**;

6.19 **Documents**

any repair, replacement or reconstruction cost of any **Document** directly or indirectly occasioned by any government or local authority action or order, or resulting from wear or tear, the action of vermin, gradual deterioration, or magnetic flux or loss of magnetism (except where caused by lightning);

7 **CONDITIONS**

7.1 **Third Party Rights**

A person who is not a party to this policy has no rights to enforce any terms of this policy.

7.2 **Notification**

As a condition precedent to the right to be indemnified under this policy the **Insurer** must be **Notified** in writing to the Notification Address set out below as soon as practicable during the **Period of Insurance**:

- (a) of any **Claim** (or within fourteen working days of receipt, whichever is the earlier);
- (b) regardless of any previous notice, of receipt of any Claim Form, Particulars of Claim, Arbitration Notice or any other formal document commencing legal proceedings, copies of all such documents being provided with such notification;
- (c) of any circumstance of which the **Insured** shall become aware which may give rise to a **Claim** and in any event before the expiry of the **Period of Insurance**;
- (d) of any circumstance of which the **Insured** shall become aware which may give rise to an entitlement to be indemnified under this policy and in any event before the expiry of the **Period of Insurance**;
- (e) of an occurrence that may require representation at a properly constituted tribunal or proceeding, which might give rise to a **Claim** under this policy and in any event before the expiry of the **Period of Insurance**.

In the event that the **Insurer** is **Notified** during the **Period of Insurance** of any circumstance which in the **Insurer's** reasonable opinion may give rise to a **Claim** then any subsequent **Claim** which arises directly from the circumstance so **Notified** shall be deemed to have been made during the **Period of Insurance**.

Notification Address: Claims Department
Catlin Hong Kong Ltd
Unit 1701, 17/F, Nexxus Building
41 Connaught Road Central
Hong Kong

7.3 Duty to Cooperate

As a condition precedent to the right to be indemnified under this policy the **Insured** must promptly provide to the **Insurer** full details concerning any **Claim** and any circumstance which may give rise to a **Claim** and any circumstance where the **Insured** has requested to be indemnified under this policy and provide such co-operation and assistance as the **Insurer** and its representatives, legal advisers or agents may reasonably require. It is a condition precedent to the right to be indemnified under this policy that the **Insured** and any **Employee** (or any person, firm or company acting for or on behalf of the **Insured**) shall ensure that all documents relevant to any **Claim** and any circumstance which may give rise to a **Claim** shall not be destroyed or otherwise disposed of.

7.4 No Admission of Liability

As a condition precedent to the right to be indemnified under this policy the **Insured** (or any **Employee** or any person, firm or company acting for or on behalf of the **Insured**) shall not, without the prior written approval of the **Insurer**, admit liability for, compromise, settle, or make any offer or payment in respect of any **Claim** or any circumstance likely to give rise to a **Claim** or any circumstance where the **Insured** has requested to be indemnified under this policy.

7.5 Adjudication and Decisions

7.5.1 The **Insured** agrees that it will not in any circumstances, except with the prior consent (such consent not to be unreasonably withheld) of the **Insurer**, accept the decision of any Adjudicator as being final in the determination of the dispute under adjudication.

7.5.2 The **Insured** will permit the **Insurer** to pursue legal, arbitration or other proceedings in the name of and on behalf of the **Insured** to challenge, appeal, open up or amend any decision, direction, award or the exercise of any power of an adjudicator or to stay the enforcement of any decision, direction, award or exercise of any power of the Adjudicator. The **Insured** agrees it will give all assistance requested of them by the **Insurer** in relation to any such actions. For the avoidance of doubt this clause does not in any way limit the **Insurer's** rights of subrogation.

7.5.3 In respect of a contract containing an adjudication clause or rules, if the **Insured** and the **Insurer** cannot agree on a common course of action with regard to the pursuit of any legal proceedings (whether defence or prosecution) the dispute will be resolved by reference to Counsel, for the time being, to be mutually agreed between the **Insurer** and the **Insured** whose decision shall be binding. In the event of disagreement on the choice of Counsel the appointment shall be made by the Chairman for the time being of the President of the Law Society. The costs of the dispute reference shall be allocated by the agreed or appointed Counsel on a fair and equitable basis.

7.6 Dishonest or Fraudulent Claim Recovery

Where a **Claim** or circumstance against the **Insured** involves the dishonest or fraudulent act or omission of any **Employee** of the **Insured**:

- (a) the **Insured** shall at the request and expense of the **Insurer** take all reasonable steps to obtain reimbursement from such person;
- (b) any monies which but for the dishonest or fraudulent act or omission would be due to such persons from the **Insured** or any monies of such persons held by the **Insured** shall not be repaid;
- (c) nothing in this policy shall preclude the **Insurer** from exercising any right of subrogation against any person committing or condoning such dishonest or fraudulent act or omission;

7.7 Discharge of Policy Liability

The **Insurer** may in its absolute discretion, at any time, after deduction of such sums as they may already have paid, agreed to pay or be responsible for, in respect of any settlement, damages, interest and claimant's costs or costs for which the **Insured** is liable in respect of any **Claim** or circumstance, tender to the **Insured**:

- (a) the remaining amount of the limit of indemnity available under this policy, or
- (b) such lesser amount for which the **Insurer** believes the **Claim** or circumstance can be settled (to include claimants' costs and interest)

and thereafter the **Insurer** will cease to have any further liability under this policy.

7.8 Conduct of Claim

The **Insurer** shall be entitled, but not obliged, to take over the investigation, defence and settlement of any **Claim** and any circumstance likely to give rise to a **Claim** and any circumstance where the **Insured** has requested to be indemnified under this policy. The **Insurer** shall have full discretion in the handling thereof (notwithstanding that a dispute may have arisen between the **Insurer** and the **Insured**) provided always that the **Insured** shall not be obliged to defend any legal proceedings unless a Counsel (to be mutually decided upon by the **Insurer** and the **Insured**) shall advise that such proceedings can be contested with a reasonable prospect of success.

7.9 Subrogation

Upon operation of this policy in relation to any **Claim** or circumstance, the **Insurer** shall be subrogated to all the rights of recovery of the **Insured** against any third party provided always that the **Insurer** shall not exercise any such rights against any **Employee** or former **Employee** unless the loss in respect of which indemnity is provided under this policy was caused or contributed to by a fraudulent, dishonest or malicious act or omission by the **Employee** or former **Employee**. The **Insured** shall, without charge, provide such assistance as the **Insurer** may reasonably require in any subrogation and shall at all times protect and preserve any rights of recovery to which the **Insurer** would become subrogated under this policy. The **Insured** agrees that at the option of the **Insurer**, the **Insurer** may have the conduct of any proceedings to recover monies paid or payable by the **Insurer**, whether or not the **Insured** has an interest in such proceedings by reason of any uninsured losses.

7.10 Dishonest and Fraudulent Policy Claims

If the **Insured** shall make any **Claim** or report any circumstance knowing it to be in whole or in part false or fraudulent, then the policy shall immediately become void from inception and all policy rights shall be forfeit and any payments already made under the policy shall be immediately repayable. Alternatively, and at its sole option, the

Insurer may choose to reinstate the policy but refuse indemnity for the false or fraudulent **Claim** or circumstance.

7.11 Avoidance by Insurer

If the **Insurer** is entitled, for any reason, to avoid this policy from inception, the **Insurer** may at its absolute discretion elect instead to give notice to the **Insured** that it regards this policy as being in full force and effect, except that no indemnity will be given under this policy that arises from or is related to the grounds that entitled the **Insurer** to avoid this policy.

8 INTERPRETATION

In this policy:

- (a) reference to any Act, statute or statutory provision shall include a reference to that provision as amended, re-enacted or replaced from time to time whether before or after the date of the inception of this policy;
- (b) if any term, condition, exclusion or endorsement or part thereof is found to be invalid or unenforceable the remainder shall be in full force and effect;
- (c) the headings in this policy are for general reference only and shall not be considered when determining the meaning of this policy.

9 GOVERNING LAW AND DISPUTES

- 9.1 This policy shall be governed by and construed in accordance with Hong Kong laws.
- 9.2 Any dispute or difference arising under or in respect of this policy shall be subject to the exclusive jurisdiction of the courts of Hong Kong.

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