



ZURICH®

# Professional Indemnity Insurance Policy

Please read this Policy carefully upon receipt and promptly request for any necessary amendments. If you would like a copy of this Policy in large print, please contact our Customer Care Centre at 2968 2288.

This is a Claims-Made and Reported Policy. **Claims** must first be made against the **Insured** and reported in writing to the insurer during the **Policy Period** unless an extended reporting period applies. The payment of **Claim Expenses** reduces the limits of insurance.

## Professional Indemnity Insurance

The written **Proposal** made by the **Insured** to **Zurich** containing particulars and statements, together with other information provided by the **Insured**, is the basis of and is incorporated into this contract.

### 1. Insurance Cover

This Policy covers **Claims** made against the **Insured**, by a **Third Party**, for Loss arising due to civil liability provided that the **Claim**

- 1.1 arises out of an actual or alleged act, error or omission in the provision of the **Professional Services** by the **Insured** within the Geographical Limit specified in Item 7 of the Schedule; and
- 1.2 is made during the **Policy Period** and reported to **Zurich** in writing during the **Policy Period** and the act, error or omission first takes place on or after the Retroactive Date but before the expiration of the Policy; and

**Zurich** shall not be liable under this Policy in respect of any **Claims** or **Circumstances** known to the **Insured** prior to inception of this Policy or that in **Zurich's** opinion ought to have been known to the **Insured** or notified by the **Insured** under any other insurance prior to inception of this Policy or disclosed in the latest **Proposal** made to **Zurich**.

### 2. Extensions

#### 2.1 Loss of Documents

If during the **Policy Period** the **Insured** shall discover and advise **Zurich** that any **Document** for which the **Insured** is legally responsible, which may be supposed or believed to be in the custody of the **Insured** or in custody of any other person to or with whom such **Documents** have been entrusted, lodged or deposited by the **Insured** in the performance of the **Insured's Professional Services**, has been destroyed, damaged, lost, distorted, erased or mislaid, **Zurich** will indemnify the **Insured** in respect of all costs and expenses reasonably incurred by the **Insured** in replacing or restoring such **Documents** during the **Policy Period** as shown in the Schedule.

Provided that

- 2.1.1 such damage is sustained while the **Documents** are either in transit or in the custody of the **Insured** or of any person to whom the **Insured** has entrusted them in the ordinary course of their business and where lost or mislaid have been subject of a diligent search by the **Insured**.
- 2.1.2 the amount of any **Claim** for such costs and expenses shall be supported by bills and accounts which shall be subject to approval by a competent person to be nominated by **Zurich**.

It is further understood and agreed that the maximum limit of **Zurich's** liability for all **Claims** under this extension shall be sub-limited to HKD1,000,000 each and every **Claim** and in the maximum for the **Policy Period**. This sub-limit shall be part of and not in addition to the **Limit of Liability** as stated in the Schedule of this Policy.

#### 2.2 Intentional/Dishonest Acts

Notwithstanding Exclusion 5.7 **Zurich** will indemnify the **Insured** for any **Claim** made against the **Insured** and notified during the **Policy Period** which the **Insured** becomes legally liable to pay arising out of **Professional Services** brought about, or contributed to, by any dishonest, fraudulent, criminal or malicious act of any **Employee** of the **Insured** other than any partner or director, past or present.

#### 2.3 Consultants, Subcontractors and Agents

**Zurich** agrees to indemnify the **Insured** in respect of Loss arising from any **Claim** made against the **Insured** arising out of the conduct of any consultants, **Sub-contractors** or agents of the **Insured**, in the conduct of the **Professional**

**Services**, for whose conduct the **Insured** is legally liable.

#### 2.4 **Estates and Legal Representatives**

**Zurich** agrees to indemnify the estate, heirs, legal representatives or assignees of any **Insured** who are incapable of managing their own affairs by reason of mental disorder or other incapacity or who are deceased, insolvent or bankrupt, in the same manner and to the same extent that the relevant **Insureds** would be entitled to be indemnified in respect of **Claims** made against them.

#### 2.5 **Libel and Slander**

**Zurich** agrees to indemnify the **Insured** in respect of any **Claim** for unintentional libel, unintentional slander or other unintentional defamation by an **Insured** in the conduct of the **Professional Services**.

#### 2.6 **Joint Ventures**

**Zurich** agrees to indemnify the **Insured** in respect of that proportion of loss attaching directly to the **Insured**, in respect of a **Claim** made against the **Insured** arising out of any activities in which the **Insured** is engaged in the conduct of the **Professional Services** as a partner in a joint venture.

#### 2.7 **Merger/Takeover/Winding Up of Insured – Run Off Coverage**

If during the **Policy Period** the **Insured** is subject to a merger, takeover, sale or winding up, then coverage shall continue through to the expiry of this Policy, but shall apply only to **Claims** in respect of Loss arising from conduct which has taken place or is alleged to have taken place prior to the effective date of the merger, takeover, sale or winding up.

#### 2.8 **Newly Created/Acquired Subsidiary Company**

**Zurich** agrees to indemnify any new Subsidiary Company or other entity created or acquired by the **Insured** during the **Policy Period**, in respect of **Claims** which are made against it during the **Policy Period** and which are made within 30 days from the date of creation or acquisition.

Cover afforded by this feature only applies to **Claims** arising from any conduct which occurred or is alleged to have occurred subsequent to the date of acquisition or creation of the Subsidiary Company, unless otherwise specified in an endorsement to this Policy. Upon application by the **Insured** and written agreement by **Zurich**, as well as payment of any additional premium requested by **Zurich**, the cover afforded by this feature may be extended for an additional **Policy Period**.

### 3. **Limit of Liability**

**Zurich's** liability for **Damages** and **Claim Expenses** combined for each **Claim** and in the aggregate for all **Claims** shall not exceed the amount stated in Item 4 of the Schedule.

### 4. **Deductible**

**Zurich's** obligation to pay **Damages** and **Claim Expenses** in connection with any **Claim** shall only be in excess of the **Deductible** as stated in Item 6 of the Schedule.

The **Deductible** shall be paid by the **Insured**. The **Deductible** shall be applicable to each **Claim** and shall include **Damages** and **Claim Expenses**.

**Zurich** will have no obligation whatsoever, either to the **Insured** or to any other person or entity, to pay any portion of the **Deductible** on behalf of the **Insured**.

### 5. **Exclusions**

This Policy will not indemnify the **Insured** in respect of any of the following:

- 5.1 any **Claim** directly or indirectly arising out of, based upon, attributable to or as a consequence of, any **Personal Injury** or **Property Damages**, unless derived from **Professional Services** performed by the **Insured**.
- 5.2 any **Claim** where the **Insured's** liability or loss results from a failure by the **Insured** or any other party acting for the **Insured** to make an accurate preassessment of the cost of performing their **Professional Services**.
- 5.3 any **Claim** arising out of, based upon, attributable to or as a consequence of a delay in the performance of, and/or non-completion of any contractual obligation to any **Third Party**, unless such a delay and/or non-completion of any contractual obligation arises from an actual or alleged act, error or omission committed by the **Insured** in the execution of such contract. It is understood and agreed that any actual or alleged late delivery or delay shall not in itself constitute an actual

or alleged act, error or omission.

- 5.4 any **Claim**
  - 5.4.1 brought against a **Director or Officer** of the **Insured**, in their capacity as such.
  - 5.4.2 arising from any obligation owed by the **Insured** as an employer or potential employer to any **Employee**, including **Claims** for wrongful dismissal, unfair dismissal or under any contract of employment or under any retainer with any consultant or under any training contract.
  - 5.4.3 whether from any **Employee** or not, alleging sexual, racial or other harassment and/or sexual molestation and/or sexual and/or racial and/or disability and/or sexual orientation and/or religious and/or age discrimination or victimisation, or discrimination or victimisation of any other kind.
- 5.5 any **Claim** arising out of, based upon, attributable to or as a consequence of:
  - 5.5.1 fines, taxes, penalties, treble or other multiple compensatory **Damages**; or punitive or exemplary **Damages**; or
  - 5.5.2 the return, restitution, or offset of fees, expenses or costs paid to the **Insured**; or any other **Damages** deemed uninsurable in law.
- 5.6 any **Claim** arising from, based upon, attributable to or as a consequence of any **Professional Financial Services** rendered by the **Insured**.
- 5.7 any **Claim** arising out of, based upon, attributable to or as a consequence of any intentional, dishonest, fraudulent or criminal act committed by the **Insured**.
- 5.8 any **Claim** made against the **Insured**, where all or part of such **Claim** is directly or indirectly based upon or attributable to the insolvency of the **Insured** or the suppliers and/or **Sub-contractors** of the **Insured**.
- 5.9 any **Claim** arising out of directly or indirectly, based upon, attributable to or in any way connected with a **Claim** for any actual or alleged misappropriation, infringement or violation of any confidential information, copyright, patent, trademark, trade name, trade secret, customer information, database rights or any other intellectual property rights.
- 5.10 any **Claim** brought in the courts of the United States and/or Canada.
- 5.11 any **Claim** arising under any warranty or under any contractual obligation to the extent that the obligation gives rise to a **Claim** to which the **Insured** would not have been subject and/or to loss for which the **Insured** would not have been liable in the absence of the warranty or contract.
- 5.12 any **Claim** arising out of actual or alleged blasphemy or obscenity or that arises in any way from pornography or its production or use.
- 5.13 any **Claim** arises out of
  - 5.13.1 any computer viruses, worms or similar damaging or malicious electronically transmitted material or code, whether or not created or transmitted (directly or indirectly) by the **Insured** or
  - 5.13.2 hacking denial of service attack or other computer misuse intended to cause damage to the **Insured** or anyone else, whoever the perpetrator.
- 5.14 any **Claim**
  - 5.14.1 arising out of, based upon, attributable to or in any way involving, directly or indirectly, the loss, damage, theft, misappropriation or fraudulent use of any securities or negotiable instruments, bank or currency notes, stamps including but not limited to, any bill of lading or any other shipping document.
  - 5.14.2 arising out of wear and gradual deterioration, moth and vermin.
  - 5.14.3 caused by riot or civil tumult.
- 5.15 any **Claim** resulting from or relating to goods or products sold, supplied, repaired, altered, manufactured, constructed, installed or maintained by the **Insured** or any person, firm or company acting for or on the **Insured's** behalf.
- 5.16 any **Claim**
  - 5.16.1 directly or indirectly, arising out of, or resulting from, asbestos or any actual or alleged asbestos related loss injury or damage involving the use, presence, existence, detection, removal, elimination or avoidance of asbestos or exposure to asbestos.
  - 5.16.2 arising from, based upon, attributable to or as a consequence of, whether direct or indirect, or in any way involving,

- ionising radiation or contamination by radioactivity or from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

5.16.3 arising out of, based upon, attributable to, as a consequence or in any way involving, directly or indirectly the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**.

5.16.4 arising out of, based upon, attributable to, as a consequence of or in any way involving war (whether declared or not), civil war, acts of terrorism, sabotage, force of arms, armed international action, civil disorder or terrorist actions.

## 6. Conditions

### 6.1 Notice of Claim

The **Insured** as a condition precedent to payment under this Policy shall provide written notice to **Zurich** of any **Claim** made against an **Insured** as soon as practicable and in any case during the **Policy Period**.

### 6.2 Notice of Circumstances

Written notice shall include but not be limited to a description of the **Circumstances** with full particulars as to dates and persons involved, the date and manner in which the **Insured** first became aware of a **Circumstance** and the reasons for anticipating a **Claim**.

### 6.3 Settlement of Claims and Deductible

**Zurich** will only handle a **Claim** if it exceeds the agreed **Deductible**.

Within one month of a **Claim** being settled, the **Policyholder** undertakes to refund **Zurich** for all **Claim Expenses** that **Zurich** shall have incurred within the amount of the agreed **Deductible**.

### 6.4 Settlement of Claims and Negotiated Settlements

**Zurich** undertakes on behalf of the **Insured** the handling and settlement of a **Claim** made against the **Insured** if the amount of **Damages** to be paid is expected to exceed the applicable **Deductible**.

The amount of **Damages** to be paid by **Zurich** shall be based on a final decision of a court, a judicial authority or an arbitration court wherein an **Insured** is required to pay compensatory damages. Settlements made under court approval or out of court shall be deemed equivalent if **Zurich** has consented thereto in writing.

The **Insured** shall neither admit nor settle any liability in whole or in part, nor incur charges and expenses without the prior written consent of **Zurich**. An **Insured** are obliged to support **Zurich** beyond the investigation of the facts and **Circumstances** and not to omit or do anything, which reduces or may reduce the rights of **Zurich**. On culpable breach of these obligations by the **Insured**, **Zurich** shall not be liable for any consequences attributable thereto. It is a condition of the **Insured's** right to be indemnified under this Policy that the **Insured** shall give to **Zurich** such information and co-operation as **Zurich** reasonably requires at the **Insured's** expense.

If **Zurich** wishes to settle a **Claim** and the **Insured** opposes to such settlement, **Zurich's** total aggregate payments for **Damages** and **Claim Expenses** under this Policy shall be limited to the amount by which the **Claim** could have been settled.

Attorney's fees and costs awarded to the **Insured** in court shall pass to **Zurich** to the extent of its payments under this Policy.

The choice of legal counsel will be left to the **Insured** subject to written approval from **Zurich**, such approval not to be unreasonably withheld.

### 6.5 Lawsuit

If a civil lawsuit is brought against the **Insured**, the latter will issue the necessary power of attorney to the lawyer appointed by **Zurich** and the **Insured** by mutual agreement. **Zurich** will bear the costs of the lawyer appointed.

Payments awarded to the **Insured** in legal proceedings will be due to **Zurich** up to the amount of the payment made towards the defence of any **Claim**. The **Insured** have to remit this amount to **Zurich**.

### 6.6 Multiple Claims

All **Claims** which directly or indirectly arise out of or are attributable to one originating source or cause shall be treated

as a single **Claim** and shall be subject to one **Limit of Liability** and one **Deductible**.

#### 6.7 **Audit and Inspection**

**Zurich** may audit or inspect and have copies of any of the **Insured's** books, records, information and operations at any time upon reasonable notice to the **Insured** as far as such books, records, information and operations relate to any **Claim** or **Circumstance**.

#### 6.8 **Other insurance**

This Policy does not cover any **Claim** in respect of which the **Insured** is entitled to indemnity under any other insurance.

#### 6.9 **Termination of contract**

This contract is concluded for one year unless specifically endorsed hereto and will terminate on expiry.

#### 6.10 **Subrogation**

**Zurich** shall be subrogated to all the **Insured's** rights of recovery against any person or organisation before or after any payment or indemnity under this Policy. The **Insured** will give all such assistance in the exercise of rights of recovery as **Zurich** may reasonably require. Such subrogated rights will first benefit **Zurich** and then the **Insured**.

**Zurich** agree not to exercise any such right against any of the **Insured's** directors or **Employees** unless the **Claim** is brought about or contributed to by the dishonest, fraudulent, reckless, criminal or malicious act or omission of the director or the **Employee**.

#### 6.11 **Changes to the Policy**

The terms and conditions of this Policy may only be altered by an endorsement issued by **Zurich**.

#### 6.12 **Change in Risk**

If during the **Policy Period** any of the below occurs, the **Insured** must give written notice to **Zurich**:

6.12.1 a major change in the **Professional Services** provided.

6.12.2 a change in the **Professional Services** provided geographically.

6.12.3 if the **Insured** is a subject of a merger or acquisition.

**Zurich** is then entitled to impose additional premium, terms and conditions that they deem necessary.

#### 6.13 **Fraudulent Claims**

If the **Insured** make any request for payment or indemnity knowing the same to be false or fraudulent as regards amount, or otherwise, this Policy will be void and all payment and indemnity under this Policy shall be forfeited.

#### 6.14 **Avoidance**

Without prejudice to the general law **Zurich** shall be entitled to avoid this Policy immediately in the event of any material non-disclosure or misrepresentation by the **Insured** before its inception.

#### 6.15 **Jurisdiction and Governing Law**

The exclusive place of jurisdiction shall be the Hong Kong Special Administrative Region.

This contract shall be governed exclusively by the laws of the Hong Kong Special Administrative Region.

#### 6.16 **Arbitration**

All disputes and differences arising under or in connection with this contract among **Zurich** and/or the **Insured** shall be solely and exclusively determined and resolved by final and binding arbitration held in the Hong Kong Special Administrative Region, in accordance with the international arbitration provisions of the Hong Kong Arbitration Ordinance (Cap.341) and the United Nations Commission on International Trade Law arbitration rules. Arbitrations shall be initiated by a written notice of demand for arbitration being sent registered mail, return receipt requested by one party to the other(s).

The Arbitration Tribunal shall consist of three arbitrators, one to be appointed by the claimant, one to be appointed by the respondent and the third to be appointed by the two party-appointed arbitrators. The third member of the Tribunal shall be appointed as soon as practicable (and no later than 30 days) after the appointment of the two party-appointed arbitrators. The Tribunal shall be constituted upon the appointment of the third arbitrator. The arbitrators shall be persons (including those who have retired) with not less than 10 years' experience of insurance or reinsurance within the industry or as lawyers or other professional advisers serving the industry.

Where a party fails to appoint an arbitrator within 14 days of being called upon to do so or where the two-party appointed arbitrators fail to appoint a third within 30 days of their appointment, then the Hong Kong International Arbitration Centre will appoint an arbitrator to fill the vacancy. At any time prior to their appointment by the Hong Kong International Arbitration Centre the party or arbitrator in default may make such appointment. The Arbitration Tribunal may in its sole discretion make such orders and directions, as it considers necessary for the final determination of the matters in dispute. The Arbitration Tribunal shall have the widest discretion permitted under the law governing the arbitral procedure when making such orders or directions.

#### 6.17 Cancellation

This Policy will not be cancelled by **Zurich**, except for non-payment of premium. If the **Insured** cancels this Policy **Zurich** shall be entitled to a short rate return of the premium calculated as 10% of the total unearned premium.

#### 6.18 Headings

The headings to the paragraphs in this Policy are for convenience only and do not have any special meaning. Words in bold type in this Policy have a special meaning and are defined.

### 7. Definitions

For the purposes of this Policy:

7.1 **Circumstances** shall mean an incident, occurrence, fact, matter, act or omission, which may give rise to a **Claim**.

7.2 **Claim** shall mean any oral or written demand received by the **Insured** for **Damages**, including but not limited to, a civil proceeding commenced by the service of a complaint or similar pleading, or an arbitration or other alternative dispute resolution proceeding, alleging an act, error or omission in the provision of the **Professional Services** by the **Insured**.

7.3 **Claim Expenses** shall mean all legal costs and expenses reasonably incurred in the investigation, defence and settlement of any **Claim**, except any internal or overhead expenses or costs incurred by the **Insured** and any salaries of **Employees** of the **Insured** or **Zurich**.

All **Claim Expenses** shall be included in the **Limit of Liability** and **Deductible**, and shall not be considered as sums payable in addition thereto.

7.4 **Damages** shall mean a monetary judgment or award the **Insured** are legally obligated to pay, or a settlement negotiated with the **Insured** and with **Zurich**'s prior written consent, but does not include **Claim Expenses**.

7.5 **Deductible** shall mean the amount stated in Item 6 of the Schedule, which shall be the responsibility of the **Insured**, as applicable, in respect of each **Claim** under the Policy.

7.6 **Director or Officer** shall mean any natural person who was or now is a director or officer of the **Policyholder** or any named Subsidiary of the **Policyholder** (or the equivalent position in any jurisdiction) or who becomes a director or officer of the **Policyholder** or any named Subsidiary of the **Policyholder** (or the equivalent position in any jurisdiction) during the **Policy Period**, including de jure, de facto and shadow directors.

7.7 **Document** includes all documents whether in soft or hard copy form (including stamps, currency coins, bank notes and bullion, traveller's cheques, cheques, postal orders, money orders, securities and the like) belonging to the **Insured** or for which the **Insured** is legally responsible, whilst in custody of the **Insured**, or in the custody of any person to or with whom they have been entrusted, lodged or deposited by the **Insured** in the ordinary course of the **Professional Services** performed by the **Insured**.

7.8 **Employee** means any person, other than a director or partner of the **Insured**, who is or has been under a contract of employment or apprenticeship or any work experience or similar scheme with the **Insured**, in connection with the **Professional Services** provided by the **Insured**. This definition does not include **Sub-contractors**.

7.9 **Insured** shall mean the following:

7.9.1 the **Policyholder** and any Subsidiary of the **Policyholder** as stated in Item 1 of the Schedule; or

7.9.2 any current or former **Employee**, but only whilst providing **Professional Services** on behalf of the **Policyholder** or any Subsidiary of the **Insured** named in Item 1 of the Schedule, or

7.9.3 any current or former principal, partner or director of the **Insured** (in respect of the work performed for and on behalf of the **Insured**).

- 7.10 **Limit of Liability** shall mean the maximum total amount specified in Item 4 of the Schedule, which **Zurich** may be liable to pay to the **Insured** under this Policy.
- 7.11 **Personal Injury** means bodily injury, mental injury, mental anguish, shock, sickness, disease or death.
- 7.12 **Policyholder** shall mean the legal entity designated as such in Item 1 of the Schedule.
- 7.13 **Policy Period** shall mean the period from the inception date of this Policy to the expiration date as set forth in Item 3 of the Schedule or its earlier termination or cancellation, if any.
- 7.14 **Pollutants** shall mean any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 7.15 **Professional Financial Services** shall mean any of the financial services provided in the ordinary course of business by, but not limited to, banks, financial institutions, stockbrokers, fund managers and venture capitalists.
- 7.16 **Professional Services** shall mean those activities specified in Item 2 of the Schedule performed by the **Insured** to others for a fee or based on a written contract.
- 7.17 **Property Damage** shall mean any damage to or destruction of any tangible property including loss of use thereof and any consequential loss directly resulting therefrom.
- 7.18 **Proposal** shall mean any information and/or statements or materials supplied to **Zurich** including any application form completed and signed by the **Policyholder** and any attachments thereto.
- 7.19 **Sub-contractors** mean independent consultants or sub-contractors who provide services to the **Insured**. This definition does not include any **Employee**.
- 7.20 **Third Party** shall mean any natural person or persons, firm or firms, individual, partnership, organisation or corporation, other than the **Insured**, and shall not include any associated, parent or Subsidiary of the **Insured**, or any other person or entity having a financial or executive interest in the **Insured**.
- 7.21 **Zurich** means Zurich Insurance Company Ltd.