

世界通商保險經紀人股份有限公司 函**受文者：○○○○股份有限公司**

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密件及解密條件或保密期限及速別或頁數：速件、共 6 頁

附件：

主旨：The Insurance Issues of Third Party Supplier Agreement (TPSA)**說明：**

- 一、依保險法第 9 條、第 54 條、第 54 條之 1、民法 528 條、民法 531 條、民法 167 條、民法 103 條，按民法委任及代理權授與之規定及行政院金融監督管理委員會金管保三字第 09602551731 號命令，貴公司得委任本公司為專屬保險經紀人，本公司基於貴公司之最大利益，有為委任授權事務之處理權，並依法建議承保公司及承保內容；爰保險契約為繼續性契約，依行政院金融監督管理委員會金管保三字第 09602551731 號命令規定保險經紀人之義務，貴公司於委任授權期間有權利向本公司詢問任何相關問題，本公司負有隨時報告及處理義務。**
- 二、為提醒貴公司與 Dell 簽署之 TPSA 重點，後揭文字將以中英文並列，請仔細閱讀。本函釋將 TPSA 內容分二部份，第一部份商業契約條款（除條款 7.5 外之其他條款）為貴公司與 Dell 間之商業契約，規範雙方之權利義務關係，為第二部份保險條款（條款 7.5）規定因侵權行為 TORTS 須投保 CGL 保單及契約責任 CONTRACTUAL LIABILITY 衍生之 E&O 保單之原因；第一部份須注意『與保險有關之風險事務』以釐清第二部份『保險事務』之投保範圍，合先說明。**
- 三、因第一部份商業契約條款（除條款 7.5 外之其他條款）規範貴公司與 Dell 間之商業契約，本公司將與貴公司正式討論後再函復貴公司以確定第二部份『保險事務』之投保範圍是否與本公司審核 TPSA 保險條款相符。請先閱讀說明四。**

四、『保險事務』之投保範圍—TPSA 之第二部份（條款 7.5）

TPSA 條款原文	依據英美法律之法律效果	中文摘要	保險安排方式
Products Liability Insurance - Commercial General Liability (CGL)			
Commercial General Liability	Provides for separate limits of coverage for general liability, fire legal liability, products and completed operations liability, advertising and personal liability, and medical payments. An Aggregate Limit of liability is in force for the general liability, fire legal liability, advertising and personal liability, and medical payments claims. When total claims for all of these areas exceed a given annual aggregate limit of liability, the policy limits are said to be exhausted and no more claims for that year will be paid under the policy. There is also	CGL 保單為承保被保險人及附加被保險人因侵權行為 torts 致第三人體傷財損的商業保單，投保項目可依實際需要選擇；請注意一般 CGL 保單並未包含 E&O liability 的損失，因為 E&O 是 breach of contract 違反契約的	目前國內外保險公司已普遍採用 CGL 保單，本公司將依貴公司實際需要安排妥適承保範圍，按 TPSA 要求必須投保。

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	an aggregate limit of liability in force for products and completed operations liability claims. This form has replaced the Comprehensive General Liability Insurance (CGL) form.	債務不履行責任，非侵權行為 torts 責任。	
Inclusive of umbrella liability insurance if necessary	Excess liability coverage above the limits of a basic business liability insurance policy such as Products / Completed Operations Insurance, Premises and Operations Liability Insurance Policy. For example, if a basic policy has a limit of \$20,000,000, and it is exhausted by claims, the umbrella will pay the excess above \$2,000,000 up to the limit of the umbrella policy, which may be as high as \$10,000,000, \$25,000,000 or more. The umbrella policy also fills gaps in coverage under basic liability policies.	umbrella liability insurance 傘覆式保單，為 Excess 保單，承保所有超過基層保險且在 umbrella liability insurance 保額內的損失；被保險人及附加被保險人因侵權行為 torts 致第三人體傷財損的損失如果超過已投保的 CGL 商業保單的承保項目，如被保險人另投保 umbrella liability insurance 即可獲得補償。	TPSA 中的條款內容是 Inclusive of umbrella liability insurance 『if necessary』，目前貴公司可在本公司建議下，視情形自行決定是否投保。
Not less than \$2M each occurrence for bodily injury and property damage liability, \$2M general aggregate and \$2M products/completed operations aggregate.	Coverage for an insured manufacturer for claims after a manufactured product has been sold and/or a claim results from an operation which the manufacturer has completed. Coverage for a contractor's liability for injuries or property damage suffered by third parties as the result of the contractor completing an operation. The contractor must take reasonable care in rendering a project safe and free from all reasonable hazards.	產品完工瑕疵責任保險條款，承保因被保險人及附加被保險人設計、製造、警告、說明等有瑕疵之產品，造成消費者、使用人或任何第三人體傷財損的損失。	用 CGL 保單安排產品責任保險，按 TPSA 要求必須投保。
Premises/operations liability	Part of a business liability policy that covers an insured for bodily injury or property damage liability to members of the public while they are on his premises. This coverage is available in basic business policies.	公共意外責任險條款，承保被保險人及附加被保險人在營業處所因經營被保險標的業務，任何第三人進入被保險人及附加被保險人營業處所為購買被保險標的，因被保險人及附加被保險人之過失致任何第三人體傷財損的損失，在法律上被保險人及附加被保險人須負締約上的過失侵權行為 torts 。	用 CGL 保單安排公共意外責任險，按 TPSA 要求必須投保。
independent contractors liability	An independent contractor is a natural person, business, or corporation which provides goods or services to another entity under terms specified in a contract or within a verbal agreement. Unlike an employee, an independent contractor does not work regularly for an employer but works as and when required, during which time she or he may be subject to the Law of Agency.	獨立的承攬人責任條款，因其責任與僱用關係之受僱人責任不同，如發生過失侵權行為 torts 時，受害人只能向獨立的承攬人求償。Hiring party 的責任將大幅	用 CGL 保單按 TPSA 要求投保前述相關責任險即可符合 TPSA 要求。independent contractors liability 係明確定義貴公司與 Dell 之供貨契約雙方

	<p>Independent contractors are usually paid on a freelance basis. Contractors often work through a limited company which they themselves own, or may work through an umbrella company. The common-law doctrine of respondeat superior holds an employer liable for the negligent acts of its employee. Generally, under common law, the hiring party is not responsible for the negligence of an independent contractor. The Restatement (Second) of Torts identifies a few exceptions to this rule. The hiring party may be liable when, owing to its failure to exercise reasonable care to retain a competent and careful contractor, a third party is physically harmed. Also, when an independent contractor acts pursuant to orders or directions negligently given by the hiring party, the latter may be held liable. Notwithstanding the exceptions, the hiring party's risk of liability is greatly reduced by hiring independent contractors rather than employees.</p>	<p>降低。</p>	<p>當事人係獨立履行義務，貴公司並非 Dell 之受僱人，以避免因貴公司過失行為致任何第三人體傷財損時 Dell 可能須負連帶賠償責任。</p>
<p>broad form and blanket contractual liability specifically in support of the indemnity provisions set forth in this agreement.</p>	<p>Coverage applying to all liability assumed by the insured in contracts, whether reported to the insurer or not. Note that the term "blanket contractual liability insurance" does not address the extent of the transferred liability the policy covers, only that it is not necessary to report contracts to the insurer for listing in the policy. It is possible to have blanket broad form contractual liability insurance or blanket limited form contractual liability insurance. Contractual liability coverage was added to 1973 and earlier edition CGL policies by endorsement. Blanket broad form contractual liability coverage is incorporated into the basic provisions of the 1986 and subsequent CGL forms.</p>	<p>如未履行 TPSA 全部內容將產生違反契約之債務不履行責任之風險，此部份之責任即後述之 Professional liability, Technology E&O or other applicable form of Errors & omissions insurance 須承保之內容。</p>	<p>用 CGL 保單按 TPSA 要求投保前述相關責任險再附加 E&O 保險或另安排 E&O 保單即可符合 TPSA 要求，按 TPSA 要求必須投保。</p>
<p>This insurance shall be primary and non-contributory to any insurance or self-insurance ,maintained by Dell with regard to the products and services.</p>	<p>liability coverage that provides benefits (usually after a deductible has been paid by an insured) up to the limits of a policy, regardless of other insurance policies in effect.</p>	<p>除另外多加安排的 umbrella liability insurance 外，上述所有保險之承保範圍及保額皆須為基層保險。</p>	<p>CGL 保單的承保項目除特別要約為 excess 保險外，一般多為 primary and non-contributory to any insurance or self-insurance maintained by other existing insurance policy.</p>
<p>It shall add Dell as an Additional Insured</p>	<p>liability insurance to issue an endorsement for another person, firm, or other entity enjoying the same protection as the named insured.</p>	<p>Dell 要求 CGL 保單簽發 insurance certificate 將 Dell 列為 Additional Insured，依保單規定可獲得與貴公司完全相同的保障。</p>	<p>用 CGL 保單簽發 insurance certificate 將 Dell 列為 Additional Insured，按 TPSA 要求必須提供 certificate。</p>
<p>This policy shall include a waiver of subrogation provision in favor of Dell</p>	<p>The purpose of subrogation is to compel the ultimate payment of a debt by the party who, in equity and good conscience, should pay it. This subrogation is an equitable</p>	<p>Dell 要求 CGL 保單須載明放棄對 Dell 代位求償條款，當保險公司依保險契約補償</p>	<p>如 CGL 保單簽發 insurance certificate 將 Dell 列為 Additional Insured，Dell 在保單</p>

	<p>device used to avoid injustice.</p> <p>Legal subrogation takes place as a matter of equity, with or without an agreement. The right of legal subrogation can be either modified or extinguished through a contractual agreement. It cannot be used to displace a contract agreed upon by the parties.</p>	<p>貴公司因侵權行為 torts 致第三人體傷財損的損失後，依普通法律規定，貴公司與 Dell 原本負連帶賠償責任，保險公司有可能補償貴公司損失後，依法向 Dell 代位追償。因此 Dell 要求 CGL 保單須載明放棄對 Dell 行使代位求償權。</p>	<p>上即屬附加被保險人，依代位求償權條款規定，被代位的對象為第三人，列名被保險人或附加被保險人之過失行為造成第三人體傷財損的損失本屬承保範圍，對 Dell 無代位求償權。但為避免因後述之『cross liability』造成混淆，Dell 要求 CGL 保單須載明放棄對 Dell 代位求償。</p>
a cross Liability clause	<p>Cross Liability clause : Liability incurred by one Insured as the result of his or her damaging another insured when both insureds are covered under the same Liability Insurance policy. Each insured must be treated as a separate entity under a cross-liability clause in a liability insurance policy.</p>	<p>因 TPSA 要求貴公司與 Dell 皆列為被保險人，如沒有附加 Cross Liability clause，貴公司與 Dell 間的相互侵權行為 torts 會被排除在 CGL 保單外。</p>	<p>本公司將要求 CGL 保單須附加 Cross Liability clause，以符合 TPSA 要求。</p>
severability of interest clause	<p>Also known as a "severability clause" or a "savings clause". A clause in a contract that allows for the terms of the contract to be independent of one another, so that if a term in the contract is deemed unenforceable by a court, the contract as a whole will not be deemed unenforceable. If there were no severability clause in a contract, a whole contract could be deemed unenforceable because of one unenforceable term.</p>	<p>獨立存在條款的目的是避免契約中一部份條款無效時會影響整份契約發生無效情形。獨立存在條款是讓所有條款都個別地、單獨地存在，彼此互不影響。</p>	

Technology Errors & Omissions Insurance (E&O)

<p>professional liability, technology E&O or other applicable form of Errors & Omissions insurance. Limit of not less than \$10M each occurrence and \$10M general aggregate.</p>	<p>Professional Liability Insurance : Coverage for specialists in various professional fields. Since basic liability policies do not protect against situations arising out of business or professional pursuits, professional liability insurance is purchased by individuals who hold themselves out to the general public as having greater than average expertise in particular areas. Errors and Omissions Liability Insurance : Policies generally available to the various professions that require protection for negligent acts and/or omissions resulting in breach of contract to a client, resulting in the client suffering a loss of indemnification. If sustained, the contractor would have to make good the claim of the client.</p> <p>Technology E&O professional liability protects your company from claims if your client holds you responsible for programming errors, software performance, or the failure of your work to perform as promised in your contract.</p> <p>Coverage includes legal defense costs - no matter how baseless the allegations. E&O</p>	<p>TPSA 規定的 professional liability, technology E&O or other applicable form of Errors & Omissions insurance 實質上統稱為 INT E&O，即資訊網路科技錯誤疏漏保險，承保所有因違反供貨、採購、服務等契約衍生的民事損害賠償責任，包括但不限於遲延交貨（含提供服務等，以下同）、不能交貨、交貨後產品有瑕疵、產品規格不符、產品功能不符、違反保證項目、違反廣告內容等，統稱為違約責任保險。TPSA 規定每一事故及保單</p>	<p>本公司將安排 CGL 保單附加 E&O 條款或另外設計 E&O 保單，按 TPSA 要求必須投保。</p>
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	<p>insurance will pay for any resulting judgments against you, including court costs, up to the coverage limits on your policy.</p> <p>Technology Errors & Omissions can be defined as coverage for claims alleging negligence in the provision of your technology products and services. From time to time these products may be endorsed to cover intellectual property, media liability and/or Internet services. Coverage availability varies and the scope of exposure differs in each organization. As technology companies continue to emerge, generalizing trends in Technology E&O coverage has become more difficult, and elements of E&O coverage have become more complex and specialized. E&O programs now range from coverage for negligence in the provision of technology services, to protection for the design, manufacture, development, distribution, licensing or sale of technology products. While organizations increasingly depend on technological systems and efficiencies to protect and leverage information, the value of assets continues to grow. It is critical to protect against technological systems' errors or omissions that can create widespread damage or disruption to information assets and severely harm balance sheets.</p>	<p>責任保額至少須 \$10M。</p>	
<p>Claim made policy shall include a retroactive date on or before the date of this agreement and shall be maintained by the supplier throughout the term of agreement and for at least three years thereafter.</p>	<p>If the event causing the claim occurred and a claim is made during the time period when a liability policy is in effect, an insurance company is responsible for its payment, up to the limits of the policy. The retroactive date sets how long before the inception of the policy that you are covered for negligent acts, error or omissions that you report during that policy.</p>	<p>TPSA 規定須採用賠償請求權基礎(索賠基礎)保單，即貴公司 E&O 行為發生在追溯日 (a retroactive date) 之後且 Dell 提出告訴的時間須在保險期間內的保單。按 TPSA 要求只是合約存在，前述保單必須是有效保單且將來 TPSA 終止時，保單仍須繼續有效至少三年。</p>	<p>本公司將安排 CGL 保單附加 E&O 條款或另外設計 E&O 保單，按 TPSA 要求必須投保。</p>

正本：○○股份有限公司

副本：

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