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DUAL Australia Professional Indemnity Insurance

Design and Engineering Policy Wording

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Important Notices

You should read the entire **policy** carefully, including all definitions and, in particular, the exclusions to ensure that it meets your requirements. **We** recommend that you consult an insurance agent or broker to ensure a clear understanding of your rights and obligations under the **policy**.

Claims Made and Notified Policy

This is a claims made and notified policy. **We** shall only cover you for **claims** made against you during the **insurance period** and notified to **us** as soon as practicable during the **insurance period**.

If your **policy** does not have a continuity of cover provision or provide retrospective cover then your **policy** may not provide insurance cover in relation to events that occurred before the **policy** was entered into.

Your Duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell **us** anything that you know, or could reasonably be expected to know, that may affect **our** decision to insure you and on what terms.

You have this duty until **we** agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- a) reduces the risk **we** insure you for;
- b) is common knowledge;
- c) **we** know or should know as an insurance company; or
- d) **we** waive your duty to tell **us** about.

If you do not tell us something

If you do not tell **us** something you are required to, **we** may cancel your **policy** or reduce the amount **we** shall indemnify you if you make a claim, or both.

If your failure to tell **us** is fraudulent, **we** may refuse to pay a claim and treat the **policy** as if it never existed.

Notification of Facts that may give rise to a Claim

Section 40(3) of the *Insurance Contracts Act 1984* (Cth) provides that if you give notice in writing to **us** of facts that may give rise to a **claim** against you as soon as reasonably practicable after you became aware of such facts but before the **policy** expires, then **we** will continue to be liable under the **policy** for that claim, if made.

Privacy Statement

We are committed to compliance with the "Privacy Act 1988" (Cth) ("the Privacy Act.") **We** use your personal information to assess the risk of and provide insurance, assess and manage claims, to perform administrative functions and to comply with regulatory requirements. **We** may also use your contact details to send you information and offers about products and services that **we** believe will be of interest to you.

If you do not consent to provide **us** with the information which **we** request, **we** may not be able to provide insurance or assess a claim. If you provide **us** with information about someone else,

you must obtain their consent to do so.

We provide your information to the insurer **we** represent when **we** issue and administer your insurance. When providing a quotation or insurance terms, **we** will tell you if the insurer is overseas and if so, where they are. **We** are part of the Howden Group and may provide your information to UK Based Group entities who provide **us** with business support services. **We** may also provide your information to your broker and **our** contracted third party service providers (e.g. claims management companies) but will take all reasonable steps to ensure that they comply with the Privacy Act.

We understand that this information is often sensitive, and **we** shall treat it with the utmost care. **Our** Privacy Policy contains information about how you can access the information **we** hold about you, ask **us** to correct, or make a privacy related complaint. You can obtain a copy from **our** Privacy Officer by:

- telephone (+61 (0) 2 9248 6300)
- email (privacy@dualaustralia.com.au)
- or by visiting our website (www.dualaustralia.com.au).

By providing **us** with your personal information, you consent to its collection and use as outlined above and in **our** Privacy Policy.

General Insurance Code of Practice

We are compliant with the Insurance Council of Australia General Insurance Code of Practice.

The Insurance Council of Australia has developed the General Insurance Code of Practice ("the Code"), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd's has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit www.codeofpractice.com.au

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the Code Governance Committee (CGC) go to www.insurancecode.org.au.

Complaints and Disputes

If you have any concerns or wish to make a complaint in relation to this **policy**, **our** services or your insurance claim, please let **us** know and **we** will attempt to resolve your concerns in accordance with **our** Internal Dispute Resolution procedure.

Please contact **us** in the first instance:

General Counsel Team

DUAL Australia Pty Limited
Email: complaints@dualaustralia.com.au
Telephone: 02 9248 6300
Level 6, 160 Sussex Street
Sydney NSW 2000

We will acknowledge receipt of your complaint and do **our** utmost to resolve the complaint to your satisfaction within 10 business days.

If **we** cannot resolve your complaint to your satisfaction, **we** will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team.

Lloyd's contact details are:

[Lloyd's Australia Limited](#)

Email: ldraustralia@lloyds.com

Telephone: (02) 8298 0783

Level 16, Suite 1603

1 Macquarie Place

Sydney NSW 2000

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

[Australian Financial Complaints Authority Limited](#)

GPO Box 3

Melbourne VIC 3001

Australia

Telephone Number: 1800 93 678

Facsimile Number: (03) 9613 6399

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

Service of Suit and Legal Notices

The Underwriters accepting this Insurance agree that:

- (i) if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- (ii) any summons notice or process to be served upon the Underwriters may be served upon:

[Lloyd's Underwriters' General Representative in Australia](#)

Level 16, Suite 1603

1 Macquarie Place

Sydney NSW 2000

Australia

Telephone Number: (02) 8298 0700

Facsimile Number: (02) 8298 0788

Who has authority to accept service on the Underwriters' behalf;

- (iii) If a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

Notification of Claims

In the event of a claim arising under this Insurance, immediate notice should be given to:

[The National Claims Manager](#)

[DUAL Australia Pty Limited](#)

Level 6, 160 Sussex Street

Sydney NSW 2000

Australia

Or by email to: claims@dualaustralia.com.au

Please refer to the Claims Conditions section of this **policy** for further details regarding the notification of claims or loss subject to this Insurance.

About DUAL Australia Pty Ltd

DUAL Australia Pty Limited ABN 16 107 553 257 AFSL 280193

(**We/Us/Our**) is a Coverholder for certain Underwriters at Lloyd's of London. DUAL has the authority to bind this **policy** on behalf of Underwriters.

DUAL Australia Professional Indemnity Insurance

Design and Engineering Policy Wording

Section 1: Preamble

- 1.1** In consideration of payment of the premium and subject to all the terms and conditions of the **policy**, and, in reliance upon the disclosures made in the **proposal**, **we** agree to provide insurance on the terms set out in this **policy**.

Section 2: Insuring Clauses

2.1 Civil Liability

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

2.2 Defence Costs in Addition to Indemnity Limit

We also agree to pay to or on behalf of the **insured** any **defence costs** either incurred by **us** or the **insured** with **our** prior written consent which are in addition to the **indemnity limit**, but only up to an amount equal to the **indemnity limit**.

If the **loss** exceeds the **indemnity limit** **we** shall only pay such proportion of the **defence costs** as the available **indemnity limit** bears to the liability of the **insured**.

The maximum **we** will pay for any **defence costs** or other costs and expenses that are incurred by the **insured** 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 thirty (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.

Paid **defence costs** will be repayable to **us** by the **insured** in the event, and to the extent, that it is established that such **defence costs** are not insured under the **policy**.

2.4 Retroactive Date

The **policy** will only provide cover in respect of **civil liability** arising from conduct of the **insured** occurring after the **retroactive date**.

Section 3: Automatic Extensions

Subject to all the terms and conditions of the **policy** **we** further agree to extend cover under the **policy** as follows.

A sub-limit of indemnity may apply to an Automatic Extension. All applicable sub-limits are specified in the **schedule**. The sub-limit is the maximum amount payable by **us** under an Automatic Extension. A sub-limit is part of and not in addition to the **indemnity limit**.

A **deductible** may apply to an Automatic Extension. All applicable **deductibles** are specified in 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** arising from the attendance by the **insured** at any **investigation**. This Automatic Extension applies only if:

- a) the **investigation** is ordered or commissioned during the **insurance period**; and
- b) **our** consent is obtained before such costs are incurred; and
- c) the **insured** notified **us** during the **insurance period** that the **insured** is legally compelled to attend the **investigation**, or which **we** agree is reasonable for the **insured** to attend; and
- d) the **investigation** is not being held outside Australia; and
- e) the **insured's** attendance is required because of the **insured's** conduct in the **policyholder's professional business**; and
- f) at **our** option, **we** can nominate the legal advisers to represent the **insured**.

3.2 Compensatory Penalties

Notwithstanding the definition of **loss**, **we** agree to pay to or on behalf of the **insured** any compensatory civil penalty or order, other than an award of damages, imposed on the **insured** as a result of a **claim** or **investigation** arising from the conduct of the **policyholder's professional business**.

Cover under this Automatic Extension is not available in respect of **claims** or **investigations** arising from:

- a) intentional or wilful non-compliance with any legal notice, action or proceeding;
- b) gross negligence or recklessness; or
- c) taxes or duties, or non-compensatory amounts calculated by reference to taxes or duties.

3.3 Consultants, Subcontractors and Agents

We agree to pay to or on behalf of the **insured** all **loss** and **defence costs** arising 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**.

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

3.4 Consumer Protection Legislation

We agree to pay to or on behalf of the **insured** all **loss** and **defence costs** arising from any **claim** for **civil liability** for unintentional contraventions of the *Competition and Consumer Act 2010* (Cth), the Australian Consumer Law, or similar or equivalent legislation enacted by the other states or territories of the Commonwealth of Australia or New Zealand.

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** or the previous insurer 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; and

- ii) there has not been any fraudulent non-disclosure or fraudulent misrepresentation by an **insured** in respect of such facts or circumstances; and
- 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; and
- 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**; and
- 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 Automatic Extension only, the definition of **we/us/our** in clause 6.42 of this **policy** also includes the Underwriter(s) for which **we** were the agent on any previous policy issued by **us**. Subject to the terms of this Automatic 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 Underwriters for which **we** presently act, or have previously acted, as agent.

3.6 Contract Review Service

The **insured** is entitled to access four (4) **contract reviews** during the **insurance period**.

3.7 Court Attendance Costs

We agree to pay to or on behalf of the **policyholder** any court attendance costs of any **insured person** who is legally compelled to and does attend Court as a witness in a **claim** for **civil liability** covered by this **policy**, to an amount of \$1,000 per day.

3.8 Crime

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

3.9 Defamation

We agree to pay to or on behalf of the **insured** all **loss** and **defence costs** arising 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.

3.10 Discovery Period

The **insured** may give written notice to **us** of any **claim** arising 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) 90 days granted automatically with no additional premium payable; or
- b) 12 months, if the **policyholder** requests such period in writing within thirty (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**, which 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 thirty (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 Automatic Extension is not available if this **policy** is:

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

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

3.11 Emergency Costs

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

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

3.12 Former Subsidiary

We agree to pay to or on behalf of the **insured** all **loss** and **defence costs** arising 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**.

3.13 Fraud and Dishonesty for Innocent Parties

Notwithstanding Exclusion 5.11 (Fraud and Dishonesty), **we** agree to pay to or on behalf of the **insured** all **loss** and **defence costs** arising 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.

3.14 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** arising from the conduct of that **insured** in the **policyholder's professional business**.

3.15 Intellectual Property

Notwithstanding Exclusion 5.13 (Intellectual Property), **we** agree to pay to or on behalf of the **insured** all **loss** and **defence costs** arising from any **claim** for **civil liability** made against the **insured** arising from infringement or alleged infringement of any intellectual property right in the conduct of the **policyholder's professional business**.

3.16 Joint Venture Liability

We agree to pay to or on behalf of the **policyholder** any **loss** and **defence costs** arising from any **claim** for **civil liability** arising from the conduct of the **policyholder's professional business** in any joint venture of which the **policyholder** forms part. **Our** liability is limited to the extent of the **insured's** own liability as a joint venture partner.

This Automatic 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.

3.17 Lost Data

We agree to pay to or on behalf of the **insured** all **loss** and **defence costs** arising 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**.

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 for a period of up to sixty (60) days (but never beyond the expiry date of the **insurance period**) from the date of such acquisition or creation.

We may, at **our** discretion, agree to provide further coverage beyond a period of sixty (60) days (but never beyond the expiry date of the **insurance period**) where:

- a) the **policyholder** has notified **us** of the acquisition or creation of the entity or **subsidiary** and has provided all information requested by **us**; and
- b) 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 Automatic 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 **Panel Counsel**

The **insured** is entitled to one (1) hour of free advice per enquiry from any one firm listed on **our** panel of solicitors for each matter relevant to the risks insured by this **policy**. **We** consent to that firm listed on **our** panel of solicitors being retained, to act for an **insured** in respect of any **claim** covered by this **policy**.

3.20 **Previous Business**

We agree to provide cover to any **officer** of the **policyholder** for **loss** and **defence costs** arising 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 Automatic Extension will only apply if:

- a) there were no more than ten (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 Automatic Extension is limited to the commencement date of the previous business in which the **officer** practised.

3.21 **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 Automatic Extension is conditional upon the **insured** providing **us** with full written details of the **incident** no later than thirty (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 United States of America and Canada.

3.22 **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 Automatic 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 **losses** 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 Automatic 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 the **schedule**.

3.23 Reputational Protection Expenses

We agree to pay to or on behalf of the **policyholder** all **reputational protection expenses** incurred by the **policyholder** with **our** prior written consent.

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

The **incident** must occur outside of the United States of America and Canada.

3.24 Statutory Liability (Fines and Penalties)

Notwithstanding the definition of **loss**, **we** agree that the policy covers **statutory liability** arising from a **claim**, if **we** are not legally prohibited from doing so.

We agree that for any **claim** brought in the jurisdiction and under the laws of Australia or New Zealand against an **insured** in connection with the discharge, dispersal, release or escape of **pollutants**, Exclusion 5.16 (Pollution and Radioactive Contamination) of the **policy** does not apply, including in respect of **defence costs**.

We agree that for any **claim** brought in the jurisdiction and under the laws of Australia or New Zealand against an **insured** in connection with a breach of workplace health and safety law or regulation, Exclusion 5.14 (Liability to Employees) does not apply, including in respect of **defence costs**.

However, **we** are not liable to make payment under the **policy** in connection with any **statutory liability** directly or indirectly based on, arising out of or attributable to the reckless or grossly negligent conduct, or any knowing or intentional breach or violation of law, by the **insured** which is established through a judgment or other final adjudication adverse to the **insured**, or any admission by an **insured**, that such conduct did in fact occur.

Section 4: Optional Extensions

The following Optional Extensions are subject to all the terms and conditions of the **policy**, and shall apply only if they are specifically included in the **schedule**.

A sub-limit of indemnity may apply to an Optional Extension. All applicable sub-limits are specified in the **schedule**. The sub-limit is the maximum amount payable by **us** under an Optional Extension. A sub-limit is part of and not in addition to the **indemnity limit**.

A **deductible** may apply to an Optional Extension. All applicable **deductibles** are specified in the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

4.1 Employment Practices Liability

Notwithstanding Exclusion 5.9 (Employment Practices Liability) **we** agree to pay to or on behalf of the **insured** all **loss** and **defence costs** in respect of any **employment claim** against the **policyholder** arising from an **employment practice breach**.

For the purposes of this Optional 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 or unrelated.
- d) **We** will not cover the **policyholder**, for **loss** or **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) **benefits**; or
 - ii) **employment-related benefits**; or
 - iii) breach of an express obligation to make payments (including the provision of non-cash benefits); or
 - iv) breach of an express obligation 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 Optional 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 Optional 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** and **defence costs** arising from any **claim** which would otherwise be limited by General Condition 8.9 (Jurisdictional Limitation) for any **civil liability** made against the **insured** in relation to the conduct of the **policyholder's professional business** in the United States of America and Canada provided always that any **claim**:

- a) Is 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 Optional Extension will apply to all provisions of the **policy** except for the following Extensions:

- i) Reinstatement of Indemnity Limit
- ii) Reputational Protection Expenses
- iii) Public Relations Expenses
- iv) Attendance at Investigations
- v) Employment Practices Liability
- vi) Statutory Liability (Fines and Penalties)

4.3 Whistleblower Hotline Access

The **policyholder** and their internal and external stakeholders are entitled to access the **DUAL Whistleblower Hotline** throughout the **insurance period**.

Section 5: Exclusions

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

5.1 Amounts Paid or Restitution

any **claim** or **investigation** for or in connection with the disgorgement or refund of professional fees, or for any consideration owed by, or paid to, any **insured** in connection with the **professional business**.

5.2 Asbestos and Toxic Mould

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

- a) asbestos or other things that contain it; or
- b) the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, or mycotoxins; or
- c) action including investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, mycotoxins;

including the manufacture, distribution, or rectification of asbestos or asbestos products.

5.3 Associates

any **claim** brought by, on behalf of or for the benefit of any;

- a) **insured**; or
- b) **family member** of the **insured**, unless the **family member** is acting without any prior direct or indirect solicitation or co-operation from the **insured**;

irrespective of the capacity in which the **claim** is brought.

5.4 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 would have arisen in the absence of such agreement; 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 Building Inspection

any **claim** or **investigation** arising from or directly or indirectly caused by or in any way connected with:

- a) the carrying out of any pest and/or pre purchase inspection or provision of any pest and/or pre purchase property inspection report, whether oral or written; or
- b) any bodily injury or damage occurring in the course of a property inspection, testing or sampling.

5.7 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.

5.8 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 corporate body.

5.9 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).

5.10 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**; or
- b) the failure to provide, effect or maintain any bond or any form of insurance; or
- c) the insolvency or financial failure of any person or entity involved in any project; or
- d) 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:

- a) any actual or alleged conduct by an **insured** or any of their consultants, sub-contractors or agents which was reckless, fraudulent, dishonest, malicious or criminal; or
- b) any intentional violation or 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 through a final non-appealable determination adverse to the **insured**, or any admission by an **insured** that such conduct did in fact occur.

5.12 Infrastructure and 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**; or
- b) any construction, assembly, installation, erection or maintenance undertaken by or on behalf of the **insured**; or
- c) any breach of any express or implied warranty arising out of the development of any property; or
- 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 Intellectual Property

any **claim** or **investigation** directly or indirectly arising from attributable to or in consequence of any infringement or alleged infringement of any intellectual property right including but not limited to copyright, patent, trademark, privacy, plagiarism, design or confidentiality.

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 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 and Radioactive Contamination**

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

- a) ionizing radiation or contamination by radioactivity from a nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly; or
- c) 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:

- a) actual or alleged facts which were known to the **insured** or any **insured person** prior to the commencement of the **insurance period** and which the **insured** or the **insured person** knew or ought reasonably to have known might give rise to a **claim**, notwithstanding that such facts are disputed by the **insured**; or
- 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**; or
- 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 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 **Sanctions Limitation**

any **claim** or **investigation** arising from or in any way connected with any matters where the 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 Australia, the European Union, United Kingdom or United States of America. For the avoidance of doubt, **we** shall have no liability to the **insured** to the extent that this exclusion applies.

5.21 **Terrorism**

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

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 Civil War**

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of war, invasion, acts of foreign enemies, military hostilities (whether war be declared or not), civil war, rebellion, revolution, or insurrection.

5.24 **Retroactive Date**

any **claim** or **investigation** based upon, arising from or in connection with any act, error or omission which occurred in whole or in part, prior to the **retroactive date**.

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 arising from the **policyholder's** performance of their **professional business**.

6.3 Claim means:

- a) any civil or administrative proceeding brought by a third party against the **insured** for compensation; or
 - b) a written demand by a third party for monetary damages; or
 - c) a verbal demand by a third party for monetary damages or compensation;
- first made against the **insured** during the **insurance period**.

For the purpose of Automatic Extension 3.21 (Statutory Liability) **claim** means:

- i) a civil proceeding brought for recovery of pecuniary penalties; or
- ii) any written notice from an **official body** requiring the **insured** to pay pecuniary penalties.

6.4 Contract review means access to the DUAL Contract Review Service as described in the Contract Review Service Fact Sheet.

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; and/or
- b) the direct financial loss arising from any actual or alleged fraudulent or dishonest instruction, direction or use of electronic equipment, including but not limited to telephone 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.

Crime loss does not include any loss:

- i) which is indirect and consequential;
- ii) arising 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**;

- iii) arising from any dishonest, fraudulent or malicious acts committed by an **employee** or **officers** who prepares cheque requisitions and also has cheque signing authority;
- iv) arising from cheques that are not countersigned; and
- v) arising from the transfer of funds not authorised by two or more officers and/or employees.

6.6 **Data** means:

- a) information such as text, numbers, sounds and images that can be processed by any form of electronic device; and/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 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 **Discovered** means when an **officer** first becomes aware of facts which would cause a reasonable person to believe that a **crime 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 **crime loss** may not then be known.

6.10 **Discovery period** means the period of time specified in Automatic Extension 3.10 (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**.

6.11 **DUAL Whistleblower Hotline** means the use of a dedicated toll-free number to report suspected incidents and misconduct. The dedicated toll-free number will be provided when the **policy** is purchased, together with a fact sheet regarding how the **insured** can use the **DUAL Whistleblower Hotline**.

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:

- a) 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);
- b) misrepresentation;
- c) wrongful failure to employ or promote, or failure to grant tenure;
- d) discrimination, harassment, retaliation (including lockouts), humiliation, defamation or invasion of privacy;
- e) 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 **insured** 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;
 - 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;
 - d) siblings.
- 6.17** **Incident** means a matter in which the **insured's** reputation and skill in the conduct of the **professional business** is brought into question.
- 6.18** **Indemnity limit** means the amounts specified in the **schedule**.
- 6.19** **Insurance period** means the period specified in the **schedule**.
- 6.20** **Insured** means:
- a) the **policyholder**;
 - b) any **subsidiary** if the **policyholder** is incorporated; and
 - c) any **insured person**.
- 6.21** **Insured person** means any former, present or future principal, partner, director or **employee** of the person, partnership, company, **subsidiary** or other entity specified as the **policyholder** in the **schedule**, but only while acting in the conduct of the **policyholder's professional business**.
- 6.22** **Investigation** means any official investigation, examination, inquiry or regulatory proceeding by an **official body** or institution empowered by law to investigate the conduct of the **insured's professional business**.
- 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 do not include the remuneration of any **insured**, or the cost of 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:

- 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; or amounts, other than damages, calculated by reference to taxes, fines or penalties;
- vi) punitive, aggravated, multiple, exemplary, liquidated or other non-compensatory damages or the consequences of non-payment;
- vii) GST imposed or payable in respect of the premium or any payment of insured amounts made under the **policy**.

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 as such.

6.28 **Other insurance** means the other insurance policy or policies, if any are specified by Endorsement.

6.29 **Policy** means this policy wording, the **schedule**, the General Conditions Section, the **proposal** and any Endorsement attaching to and forming part of the **policy** either at commencement or during the **insurance period**.

6.30 **Policyholder** means the organisation or natural person specified in the **schedule**, and any **subsidiary**.

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

6.32 **Professional business** means the professional activity(ies)/business description set out in the **schedule** but will only include services of design, advice, specification, calculation and formula undertaken by or under the direct supervision of a properly qualified and appropriate professional. A person will be properly qualified if they possess appropriate professional qualifications from a recognised body relevant to that professional activity. For

the avoidance of doubt, **professional business** does not include manual labour or physical construction work, or supervision of such that is normally the responsibility of a builder.

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

6.34 **Public relations expenses** means any reasonable fees, costs and expenses of a public relations consultant, crisis management firm or law firm 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.

6.35 **Reputational protection expenses** means the reasonable costs and expenses of a public relations firm or consultant, crisis management firm or law firm retained with **our** prior written consent (which will not be unreasonably delayed or withheld) to disseminate the findings of a final adjudication in favour of the **insured** arising from a **claim** or **investigation** covered under the **policy**.

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.

6.36 **Retroactive date** means the date specified in the **schedule** but no earlier than the commencement of the **policyholder's professional business** specified in the **schedule**.

6.37 **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**.

6.38 **Statutory liability** means pecuniary penalties awarded in and under the laws of the jurisdictions of Australia and New Zealand, against:

- a) an **insured** for any civil offence;
- b) an **insured** for a strict liability offence in connection with the discharge, dispersal, release or escape of **pollutants**; and
- c) an **insured** for a strict liability offence in connection with a breach of workplace health and safety law or regulation

but solely arising from the performance of **professional business** and only if **we** are not legally prohibited from paying the pecuniary penalties.

6.39 **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 50% of the issued voting shares of such entity.

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

6.41 **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; or
- 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**; or
- c) the insolvency of the **policyholder**; or

- d) the appointment of an administrator, liquidator, receiver, receiver and manager and manager or court appointed manager to the **policyholder**.

6.42 **We/us/our** means DUAL Australia Pty Limited, ACN 107 553 257 as agent of the Underwriters referred to in the **schedule**.

Section 7: Claim Conditions

7.1 Notification

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**.
- d) Such notice to us must be given in writing and delivered to:

[The National Claims Manager](#)

DUAL Australia Pty Limited

Level 6, 160 Sussex Street

Sydney NSW 2000

Australia

Or by email to claims@dualaustralia.com.au

- e) any written notice will be considered effective from the date such notice is first received by **us**.

7.2 Notification of Crime Loss

The **policyholder** shall, as a condition precedent to **our** obligations under this **policy**, give written notice to **us** of any **crime loss** as soon as practicable within the **insurance period**, or within the **discovery period** if applicable, but in any event not later than sixty (60) days after any **crime loss** is first **discovered**. The **policyholder** may offer a comparison between its inventory records and actual physical counts of its inventory to prove the amount of **crime loss** only where the **policyholder** establishes that, wholly apart from such comparison, it has sustained a covered **crime loss** caused by an **employee**.

The **insured** must, at its own cost, also:

- a) Provide **us** with affirmative proof of the **crime loss** with full particulars within 6 months of the **crime loss** being first **discovered**, and
- b) Provide **us** with all requested information and documents and co-operate with **us** in all matters pertaining to the **crime loss**.

7.3 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.

7.4 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**.

7.5 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, legal representation 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.

7.6 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 7.6(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.

Section 8: General Conditions

8.1 Subrogation and Recoveries

Where **we** have paid any amount of **loss** 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** 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**.

8.2 Goods and Services Tax

We will charge an appropriate amount to the **policyholder** on account of GST.

It is the duty of the **policyholder** to inform **us** whether or not it is entitled to an Input Tax Credit in relation to any amounts claimed under this **policy**.

Our liability to pay **loss** under this **policy** will be calculated having regard the **policyholder** or any other **insured's** entitlement to **claim** an Input Tax Credit.

No payment will be made to the **policyholder**, for any GST liability on account of a covered **claim** or **investigation**.

GST, Goods & Services Tax and Input Tax Credit have the meanings attributed to them under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

8.3 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; or
- b) the **insured** failing to pay debts as and when those debts become due; or
- c) the **insured** breaching any other obligation giving rise to the appointment of a receiver or the commencement of bankruptcy or winding up proceedings; or
- d) any material change in the nature of the **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 conduct which occurred or was 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.

The **insured** will give **us** written notice of the above listed events as soon as reasonably practicable.

8.4 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**.

8.5 Cancellation

The **policyholder** may cancel any **policy** at any time by providing **us** with a minimum of 14 days written notice.

We may only cancel the **policy** for non-payment of premium and must do so in accordance with the provisions of the *Insurance Contracts Act 1984* (Cth).

Provided that there have been no **claims** or notifications made on or under the **policy**, **we** agree to allow a refund of premium calculated on a pro-rata basis, provided that **we** will always retain a minimum of 25% of the full annual premium.

8.6 Several Liability of Underwriters

The obligations of **our** subscribing Underwriters, where there is more than one Underwriter referred to in the **schedule** subscribing to the **policy**, are several and not joint and are limited solely to the extent of their individual subscriptions. No subscribing Underwriter is responsible for the subscription of any co-subscribing Underwriter who, for any reason, does not satisfy all or part of its obligations.

8.7 Confidentiality

The **insured** must not disclose, either personally or through any person or entity acting on the **insured's** behalf or at the **insured's** direction, to any third party:

- a) the existence of this **policy**;
- b) the nature of the indemnity provided;
- c) the **indemnity limit**; or
- d) the amount of premium paid.

However, the **insured** may disclose the above matters to the extent that:

- i) the **insured** is required to do so by law; or
- ii) **we** consent to the disclosure in writing; or
- iii) **we** provide a Certificate of Currency which can be provided to third parties.

8.8 Territorial Limitation

Unless otherwise stated in the **schedule** and subject to General Condition 8.9 (Jurisdictional Limitation), cover provided under this **policy** extends to the conduct of the **policyholder's professional business** anywhere in the world.

8.9 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.

8.10 Governing Law

This **policy** is governed by the laws of the Commonwealth of Australia and/or the State or Territory of Australia where the **policy** was issued. Any dispute relating to **policy** interpretation will be submitted to the exclusive jurisdiction of the Courts of the State or Territory where the **policy** was issued.

8.11 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**.

8.12 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 **legal representation 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** applicable to any **claim** covered by the **policy**, all **claims** arising from the same or related conduct shall be regarded as one **claim**.

8.13 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 reason.

We waive all rights under section 28(3) of the *Insurance Contracts Act 1984* (Cth) for non-fraudulent non-disclosure or non-fraudulent misrepresentation by an **insured**.

If **we** are entitled to reduce **our** liability pursuant to section 28(3) of the *Insurance Contracts Act 1984* (Cth) as a result of fraudulent non-disclosure or fraudulent misrepresentation, **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.

8.14 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**.

8.15 Other Insurance

This **policy** does not apply if any **claim** under this **policy** is also covered in whole or in part by another policy or would but for the existence of this **policy** be covered by another policy, except to the extent that the amount of any liability exceeds the amount payable under such other policy or policies, provided always that **we** shall not be liable to pay any amount in excess of any relevant amount specified in the **schedule**.

If **loss** or any other amount insured by the **policy** is also potentially insured under any other insurance policy or policies, then the **insured** must advise **us** within sixty days of making a claim under the **policy** and provide **us** with a copy of such other policy or policies.

8.16 Currency

Any reference to premium, indemnity limit, **deductibles, loss, defence costs, legal representation costs** or any other amounts payable by **us** under this **policy** are expressed and are payable in Australian Dollars. Where any payment is to be made into an admitted foreign jurisdiction, such payment is to be made and denominated in Australian Dollars at the cash rate for the purchase of Australian Dollars set by the Reserve Bank of Australia as at 4.00pm on the date which the foreign payment becomes due.

8.17 Service of Legal Notices

The Underwriters agree that any Summons, Writ or other like legal Notice or Process, which is to be served upon the Underwriters may be served upon Lloyd's General Representative at Lloyd's Australia:

[Lloyd's Underwriters' General Representative in Australia](#)

Level 16, Suite 1603

1 Macquarie Place

Sydney NSW 2000

Australia

Telephone Number: (02) 9298 0700

Facsimile Number: (02) 8298 0788

who has authority to accept service and to enter an appearance on Underwriters' behalf, and who is directed at the request of the **insured** (or reinsured) to give a written undertaking to the **insured** (or reinsured) that he will enter an appearance on Underwriters' behalf.

If a suit is instituted against any one of the Underwriters all Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.

8.18 Interpretation

Words and phrases appearing in bold text have the meaning defined in that **policy** or policies purchased by the **insured** and as shown as having been purchased in the **schedule**.

In this **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.

All **policy** documents will be read together as one contract of insurance.