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PROFESSIONAL INDEMNITY POLICY WORDING



Professional Indemnity
Insurance
Design & Engineering
Policy Wording



DUAL Australia Professional Indemnity Insurance
Design & Engineering Policy Wording

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DUAL Australia Professional Indemnity Insurance

Policy Wording

Section 1: PREAMBLE

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

Section 2: INSURING CLAUSES

2.1 Civil Liability

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

2.2 Defence Costs in Addition to Indemnity Limit

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

In the event that the amount of **loss** exceeds the **indemnity limit**, **our** liability in respect of **defence costs** is limited to that proportion of such **defence costs** as the **indemnity limit** bears to the total amount of a final judgment, award or settlement sum.

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

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

2.3 Advancement of Defence Costs

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

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

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

2.4 Retroactive Date

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

Section 3: EXTENSIONS

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

3.1 Attendance at Investigations

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

- a) the **insured** is legally compelled to attend the **investigation**, and
- b) the notice or process requiring the **insured** to attend or answer questions is first served during the **insurance period**, and
- c) the **insured's** attendance is required because of the **insured's** conduct in the **policyholder's professional business**, and
- d) the **insured** notifies **us** during the **insurance period** that the **insured** is legally compelled to attend the **investigation**, and
- e) the **investigation** is not being held outside Australia, and
- f) **our** consent is obtained before the **legal representation costs** are incurred, and
- g) at **our** option, **we** can nominate the legal advisers to represent the **insured**.

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

Each **investigation** will be subject to a separate **deductible** as specified in Item 6 of the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **Schedule**.

3.2 Consultants, Subcontractors and Agents

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

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

3.3 Consumer Protection Legislation

We agree to pay to or on behalf of the **insured** all **loss** resulting from any **claim** for **civil liability** made against the **insured** for unintentional contraventions of the *Competition and Consumer Act 2010*(Cth), the *Fair Trading Act 1987* (NSW), the *Fair Trading Act 1985* (Victoria) or similar or equivalent legislation enacted by the other states or territories of the Commonwealth of Australia or by New Zealand.

3.4 Continuous Cover

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

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

Provided that:

- i) **we** were the professional indemnity liability insurer of the **policyholder** when the **insured** first became aware of such facts or circumstances and have continued, without interruption, to be the **policyholder's** professional indemnity insurer until this policy came into effect; 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 excess, or the terms and conditions of this **policy**; and
- vi) the **insured** all agree only to make a **claim** under one professional indemnity **policy** issued by **us**.

For the purpose of this Extension only the definition of **we/us/our** in clause 6.41 of this **policy** also includes the Underwriter(s) for which **we** were the agent on any previous policy issued by **us** as such Underwriter's agent to the **insured**. Subject to the terms of this Extension and the terms of the **policy**, the intention of this Extension is to provide continuous cover notwithstanding any change in the identity of the Underwriters for which **we** presently act, or have previously acted, as agent.

3.5 Court Attendance Costs

We agree to pay to or on behalf of the **policyholder** any court attendance costs of any **officer** or **employee** who is legally compelled to and does attend Court as a witness in a **claim** for **civil liability** covered by this **policy**, to an amount of \$500 per day.

3.6 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 30 days following such discovery.

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

A separate **deductible** will apply to each **crime loss** under this Extension as specified in Item 6 of the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

3.7 Defamation

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

3.8 Discovery Period

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

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

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

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

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

3.9 Emergency Defence Costs

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

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

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

A separate **deductible** will apply under this Extension as specified in Item 6 of the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

3.10 Former Subsidiary

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

3.11 Fraud and dishonesty for innocent parties

Notwithstanding exclusion 5.11 (Fraud and Dishonesty), but subject to all other terms and conditions of this **policy**, **we** agree to pay to or on behalf of the **insured** all **loss** resulting from any **claim** for **civil liability** made against the **insured** provided that **we** will not provide cover to any **insured** committing or condoning any act, omission or breach.

3.12 Heirs, Estates and Legal Representatives

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

3.13 Intellectual Property

Notwithstanding Exclusion 5.13 (Intellectual Property), but subject to all other terms and conditions of this **policy**, **we** agree to pay to or on behalf of the **insured** all **loss** resulting 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**.

3.14 Joint Venture Liability

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

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

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

3.15 Lost Data

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

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

A separate **deductible** will apply under this Extension as specified in Item 6 of the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

3.16 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 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**.

3.17 Panel Counsel

The **insured** is entitled to one (1) hour free advice from any one firm listed on **our** panel of solicitors relating to a matter which **we** have accepted as notification of circumstances which may give rise to a **claim** under 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**.

3.18 Previous Business

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

Cover under this Extension will only apply if:

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

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

3.19 Public Relations

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

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

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

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

A separate **deductible** will apply to each **incident** under this Extension, as specified in Item 6 of the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

3.20 Reinstatement of Indemnity Limit

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

Cover for this Extension will be conditional upon the following:

- a) the exhaustion of limits of any policy which is in excess of the original **indemnity limit** under this **policy** other than any similar reinstatement provisions under such excess policies;

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

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

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

3.21 Statutory Liability

Notwithstanding the definition of **loss**, we agree that the **policy** covers **statutory liability**.

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.

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

A separate **deductible** will apply to each **claim** under this Extension, as specified in Item 6 of the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

Section 4: OPTIONAL EXTENSIONS

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

4.1 Employment Practices Liability

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

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

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

consequence of, any **benefits** or **employment-related benefits** or a breach of an express obligation of the **policyholder**:

- i) to make payments (including the provision of non cash benefits); or
- ii) pursuant to any procedural or notification requirements in the event of termination of employment;

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

- e) The maximum amount payable by **us** under this Extension is the applicable sub-limit of liability specified in Item 9 of the **schedule**. This sub-limit is part of and not in addition to the **indemnity limit**.
- f) A separate **deductible** will apply to each **claim** under this Extension as specified in Item 6 of the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.
- g) The cover provided by this Extension is specifically excess of any other applicable insurance. If any other insurance in respect of Employment Practices Liability is provided by **us** then the **indemnity limit** for any and all **claims** covered by this Extension will be reduced by the **indemnity limit** of such other insurance provided by **us**.

4.2 USA and Canada Cover

We agree to pay to or on behalf of the **insured** all **loss** resulting from any **claim** which would otherwise be limited by General Condition 8.9 (Jurisdictional Limitation) for any **civil liability** made against the **insured** in relation to the conduct of the **policyholder's professional business** in the USA and Canada provided always that any **claim**:

- 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.

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

The **deductible** applicable to this Extension is specified in Item 6 of the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

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

- a) Reinstatement of Indemnity Limit
- b) Public Relations Expenses
- c) Attendance at Investigations
- d) Employment Practices Liability
- e) Statutory Liability

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, in respect of:

5.1 Amounts Paid or Restitution

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

5.2 Asbestos 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 relating to Stachy Botrys, such action to including investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, mycotoxins relating to Stachy Botrys.

5.3 Associates

- a) Any **claim** by, on behalf of or for the benefit of any **insured**; or
- b) Any **claim** by, on behalf of or for the benefit of any **subsidiary**; or
- c) Any **claim** by, on behalf of or for the benefit of any **family member** of the **insured**, unless the **family member** is acting without any prior direct or indirect solicitation or co-operation from the **insured**,

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

5.4 Assumed Liability

Any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of any obligation assumed by the **insured** under any agreement, except that this Exclusion does not apply to:

- a) any liability which is, or would have been, implied by law in such agreement or would have arisen separately from it; or
- b) any liability which is in respect of the treatment or use of confidential information.

5.5 Bodily Injury

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

5.6 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 property inspection or provision of any pest and/or pre purchase property inspection report, whether oral or written; or
- b) any bodily injury or property 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** alleging a breach by an **insured** of a duty owed or any alleged wrongful conduct in the capacity of a director, secretary or **officer** of a body corporate.

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

- a) any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of any actual or alleged act or omission by an **insured** or any of their consultants, sub-contractors or agents which was reckless, fraudulent, dishonest, malicious or criminal; or
- b) any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of any wilful breach of any statute, regulation, contract or duty by an **insured** or any of their consultants, sub-contractors or agents.

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

5.12 Infrastructure 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 or 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** or liability arising from or incurred or alleged to have been incurred in connection with the use, occupation, ownership or lease of any real estate or personal property, by or on behalf of the **insured**.

5.16 Pollution and Radioactive Contamination

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

- a) actual or alleged facts or circumstances that the **insured** knew, or ought reasonably to have known prior to the **insurance period** might or could give rise to a **claim**; 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 or in consequence of the loss or destruction of, or damage to, any property, unless it results directly from the **insured's** conduct of the **policyholder's professional business**.

5.20 Sanctions Limitation

Any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of trade or economic sanctions or other laws or regulations prohibiting **us** from providing insurance.

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.

Section 6: DEFINITIONS

In the **policy**:

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

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

6.3 Claim means:

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

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

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

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

6.4 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** resulting from any actual or alleged fraudulent or dishonest instruction, direction or use of electronic equipment, including but not limited to telephony and the internet, resulting in the unauthorised transfer, delivery or payment of, or dealing with, money, land or any other property belonging to the **insured**, or in the **insured's** care, custody or control, or for which the **insured** is legally responsible.

Crime Loss does not include:

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

6.5 Data means:

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

- 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.

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

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

6.8 **Direct financial loss** means financial loss suffered directly by the **policyholder** which is covered under Extension 3.6 (Crime).

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

6.10 **Discovery period** means the period of time specified in Extension 3.8 (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.

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

6.13 **Employment claim** means:

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

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

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

- a) non-monetary benefits including but not limited to the allocation of a company car, travel allowance, mobile or landline telephone, medical or life insurance expenses, education and training allowances, and equipment allowances;
- b) stock, shares, stock options, share options or any entitlement or right under any employee plan of any description;
- c) participation in any stock, share option or share option plan, or participation in any employee plan of any description;
- d) severance or redundancy payments or entitlements;
- e) any benefit, payment or entitlement of any kind in respect of paid or unpaid leave;
- f) bonus or incentive payments, or any entitlement or right under a bonus or incentive plan (which, for the avoidance of doubt, does not include any payments, entitlement or right under any commission scheme);
- g) payments or contributions in respect of any provident, benefit, superannuation, pension or retirement fund, or any other account, fund, scheme or plan intended to provide benefits, in whole or in part, at retirement or a particular age, or on the happening of a particular event;
- 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 Item 5 of the **Schedule**.
- 6.19** **Insurance period** means the period specified in Item 4 of the **Schedule**.
- 6.20** **Insured** means:
- a) the **policyholder**;
 - b) any **subsidiary** if the **policyholder** is incorporated; 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 other proceedings ordered or commissioned by any **official body** or institution empowered by law to investigate the conduct of the **professional business** of the **insured**.
- 6.23** **Legal Representation Costs** means reasonable legal fees, costs and expenses incurred with **our** prior written consent (which will not be unreasonably withheld or delayed) by or on behalf of an **insured** or **insured person** in:
- a) preparing for, attending or producing documents to an **investigation**; or
 - b) responding to a raid on, or on-site visit to, any **insured** by an **official body** that involves the actual or possible production, review copying or confiscation of files or interviews of any **insured**.
- Legal Representation costs** do not include the remuneration of any **insured**, the cost of their time or overheads of any **insured**.
- 6.24** **Loss** means:
- a) damages or claimant's costs or both payable by the **insured** pursuant to an award or judgment entered against the **insured**;
 - b) settlements negotiated by **us** and consented to by the **insured**; or
 - c) settlements negotiated by the **insured** but only with **our** prior written consent.
- Loss** does not include any:
- a) **defence costs**;
 - b) **legal representation costs**;
 - c) amounts uninsurable at law;
 - d) 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;
 - e) taxes, fines or penalties;

- f) punitive, aggravated, multiple, exemplary, liquidated or other non-compensatory damages or the consequences of non-payment;
- g) 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.

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 **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 Item 2 of the **schedule**, and any **subsidiaries**.

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 Item 3 of 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 in that professional activity. 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 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 **Retroactive date** means the date specified in item 7 of the **schedule** but no earlier than the commencement of the **policyholder's professional business** specified in the **schedule**.

6.36 **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**.

6.37 **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 resulting from the conduct of the **policyholder's professional business** and only if **we** are not legally prohibited from paying the pecuniary penalties.

6.38 **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.

6.39 **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.

6.40 **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**.

6.41 **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**.

The notice must be 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

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

7.2 Co-operation

- a) The **insured** must, at the **insured's** own cost, frankly and honestly provide **us** with all information, documentation, evidence and assistance reasonably required by **us** and/or any lawyers, investigators or other professionals, who may be appointed by **us**.
- b) The **insured** must, at their own cost, do all things reasonably practicable to minimise any **loss**, including but not limited to the **insured's** liability in respect of any **claim**.

- c) Each **insured** must provide **us**, at their own cost, with all information, assistance and co-operation which **we** reasonably require, and in the event of a **claim** or potential **claim**, each **insured** agrees that they will not do anything that could potentially prejudice **our** position or **our** potential or actual rights of recovery.
- d) No **insured** may settle any **claim** or incur any **defence costs** or assume any contractual obligation or admit any liability with respect to any **claim** without **our** written consent.

7.3 Allocation

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

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

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

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

If an allocation cannot be agreed then it will be determined by a suitably qualified Senior Counsel to be mutually agreed upon or, in default of agreement, to be nominated by the then President of the Bar Association of the jurisdiction in which the **policy** was underwritten. The Senior Counsel will make a determination as an expert based on the relative legal and financial exposures attributable to covered and uncovered matters and/or parties. Submissions made to the Senior Counsel will be in writing. Pending Senior Counsel's determination **we** will meet the **loss, defence costs** and **legal representations costs** on an interim basis at the percentage at which **we** contend they should be fairly and equitably allocated. After the allocation has been determined or agreed, such allocation will be applied retrospectively. The parties agree to be bound by the Senior Counsel's determination. The costs of any referral for determination to a Senior Counsel under this clause will be borne by **us**.

7.4 Legal Representation and Settlement

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

The **insured** will not admit liability, settle any **claim**, make any admission, offer any payment or assume any obligation in connection with any **claim** or investigation, incur any **defence costs, legal representation costs** or other **loss** covered by this **policy**, without **our** prior written consent, which will not be unreasonably withheld or delayed.

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

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

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

7.5 Order of Payments

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

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

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

7.6 Subrogation & Recoveries

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

Section 8: GENERAL CONDITIONS

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

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

8.1 Interpretation

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

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

In the **policy**:

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

8.2 Goods & 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* (Commonwealth).

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 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 activity**.

We may not cover the **insured** for any **claim** if the **insured** does not notify **us** in writing as soon as practicable of any material alteration to risk.

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

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

8.4 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* (Commonwealth).

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 plus 15% of the full annual premium.

8.6 Several Liability of Underwriters

The obligations of **our** subscribing Underwriters, where there is more than one Underwriter named 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:

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

8.8 Territorial Scope

Unless otherwise stated in the **schedule** and subject to clause 8.9, 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 **investigation costs** and/or **loss** to the amount of the **deductible**.
- c) Except as otherwise stated in the **policy**, costs and expenses incurred by **us** in determining whether we are liable to indemnify the **insured** under the **policy** will not erode the **indemnity limit** and will be met by **us**.
- d) For the purposes of determining the **deductible(s)** applicable to any **claim(s)** covered by the **policy**, all **claims** arising from the same act, error or omission, or related acts, errors or omissions, shall be regarded as one **claim**.

8.13 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* (Commonwealth) 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* (Commonwealth) 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

As permitted by the *Insurance Contracts Act 1984* (Cth.), this **policy** will only cover **loss** to the extent that the amount of such **loss** is in excess of any indemnity or cover available to the **insured** in respect of that **loss** under the **other insurance policy/policies** listed in the **schedule**.

8.16 Currency

Any reference to premium, limits, **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 Complaints Procedures

Any inquiry or complaint relating to this Insurance should be referred to **us** in the first instance. If **we** are unable to resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

Lloyd's Underwriters' General Representative in Australia
Suite 2, Level 21 Angel Place 123 Pitt Street Sydney NSW 2000
Telephone Number: (02) 9223 1433
Facsimile Number: (02) 9223 1466

who will refer your dispute to Policyholder & Market Assistance at Lloyd's.

8.18 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
Suite 2, Level 21 Angel Place 123 Pitt Street Sydney NSW 2000
Telephone Number: (02) 9223 1433
Facsimile Number: (02) 9223 1466

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.

8.19 General Insurance Code of Practice

This **policy** is compliant with the Insurance Council of Australia's General Insurance Code of Practice. Underwriters at Lloyd's and DUAL Australia proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry.

A copy of the General Insurance Code of Practice is available by contacting DUAL Australia or is available for download from:

www.codeofpractice.com.au

Privacy Statement

At DUAL Australia Pty Ltd, we are committed to compliance with the *Privacy Act 1988* (Cth). We use your personal information to assess the risk of and provide insurance, and assess and manage claims. 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 don't provide us with full

information, 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 Hyperion Insurance 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.

Our Privacy Policy contains information about how you can access the information we hold about you, ask us to correct it, or make a privacy related complaint. You can obtain a copy from our Privacy Officer by telephone (+61 (0)2 9248 6300), email (reception@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.