

DUAL Professional Indemnity

Design & Construct



DUAL

DUAL Australia

Design and Construct 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**.

About DUAL Australia Pty Ltd

DUAL Australia Pty Limited ABN 16 107 553 257 AFSL 280193 (**We/ Us/Our**) is an Underwriting Agency/Coverholder for certain Underwriters/Insurers named in the **schedule**. DUAL has the authority to bind this **policy** on behalf of the Underwriters/Insurers.

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:

- reduces the risk **we** insure **you** for;
- is common knowledge;
- we** know or should know as an insurance company; or
- 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 for **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 contain 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 (dualinsurance.com).

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.

The Underwriters/Insurers have 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 29, Angel Place, 123 Pitt Street, Sydney NSW 2000

Please refer to **your schedule** for further details.

Notification of Claims

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

The National Claims Manager

DUAL Australia Pty Limited

Level 29, Angel Place, 123 Pitt 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 **policy**.

Section 1: Preamble

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

In order to be sure that **you** are covered under this **policy** **you** should always contact **us** for approval before **you** incur costs **you** wish to claim. If **you** do not, **we** will pay for expenses incurred up to the amount **we** would have authorised had **you** asked **us** first.

Section 2: Insuring Clauses

2.1 Civil Liability

We agree to indemnify **you** against all civil liability for **damages** and awards of claimants' costs rising from any **claim** that:

- a. arises from the provision by **you** or failure by **you** to provide **professional services**; and
- b. is first made against **you** during the **insurance period**.

2.2 The civil liability referred to in Insuring Clause 2.1 includes, but is not restricted to, civil liability arising out of:

- a. any actual or alleged misleading or deceptive conduct at law or under the *Competition and Consumer Act 2010* (Cth), *Australian Securities and Investments Commission Act 2001* (Cth), *Corporations Act 2001* (Cth) or any equivalent provisions in the State Fair Trading Acts, or their respective successor legislation;
- b. defamation, slander or libel;
- c. any breach of intellectual or industrial property or trade secret whether registered or unregistered, including but not limited to trade marks, designs, patents and copyright;
- d. breach of privacy or duty of confidentiality;
- e. any act, conduct or matter in connection with data or computer systems, including but not limited to hardware, software and computer programs.

2.3 Defence Costs

a. General

We agree to pay any **defence costs**:

- i. that **we** incur; or
- ii. that **you** incur with **our** prior written consent.

b. Advancement of defence costs

- i. **We** will advance **defence costs** covered by this **policy** promptly after detailed invoices for those costs are received by **us**. However, any **defence costs** that are actually paid shall be repayable to **us** by **you** in the event and to the extent that it is determined under the **policy** that **you** were not entitled to a payment of **defence costs**.
- ii. Exclusion 5.5 (Fraud and Dishonesty) will not apply until the conduct is established by final adjudication of a judicial or arbitral tribunal or by a written admission by **you**.

2.4 Indemnity Limit

- a. **We** are only liable to indemnify **you** for an amount or amounts no greater than the **indemnity limit** for any one **claim** as stated in the **schedule**.
- b. **Defence costs** are payable in addition to the **indemnity limit**. However, the maximum amount payable by **us** under this **policy** in respect of **defence costs** is the equivalent of the **indemnity limit**.
- c. In the event that the amount paid by **you** or on **your** behalf to dispose of a **claim** exceeds the **indemnity limit** for any one **claim**, then this **policy** shall only cover the same proportion of **defence costs** as this **policy's indemnity limit** for any one **claim** bears to the total amount paid to dispose of the **claim** (exclusive of **defence costs**).

If **we** have paid or advanced **defence costs** in excess of this proportion, **you** must reimburse **us** for such **defence costs**.
- d. Where **we** consider that the **indemnity limit** is likely to be exhausted by the payment of amounts payable under this **policy** **we** may, in **our** absolute discretion, elect to pay **you** the amount which exhausts the **indemnity limit**. If **we** elect to do this, **we** shall have no further obligation to pay any further **defence costs**.
- e. Where a **claim** is made against more than one insured person or entity under this **policy**, this shall not operate to increase the total amount payable by **us** under this **policy**.
- f. Unless otherwise stated in the **policy**:
 - i. all amounts payable by **us** under this **policy** shall be inclusive of the **indemnity limit** any one **claim** and not in addition to the **indemnity limit** any one **claim**;
 - ii. all amounts paid by **us** under this **policy** shall erode the **indemnity limit** in the aggregate;
 - iii. all indemnity sub-limits, where provided in the **policy**, are inclusive of the **indemnity limit** any one **claim** and not in addition to the **indemnity limit** any one **claim**;
 - iv. if the **schedule** provides for an **indemnity limit** that is higher in the aggregate than for any one **claim**, then reference in this **policy** to the **indemnity limit** shall only be in respect of the **indemnity limit** for any one **claim**.

2.5 Deductible

Unless otherwise stated in the **policy**:

- a. **we** will be liable only for amounts payable under the **policy** which exceed the **deductible**;
- b. the **deductible** is not part of the **indemnity limit**;
- c. the **deductible** is to be borne by the **policyholder** and is to remain uninsured;
- d. the **deductible** applies to all amounts payable under the **policy**, except where the **deductible** is expressed in the **schedule** as 'exclusive of costs';
- e. if the **deductible** is expressed in the **schedule** as 'exclusive of costs' then:
 - i. **you** must bear all **defence costs** up to the limit of the **deductible** if the **claim** made against **you** is for an amount that is less than the **deductible**;
 - ii. otherwise the **deductible** shall not apply to **defence costs** payable under the **policy**;
- f. any costs and expense that **we** incur to determine whether **we** are liable to indemnify **you** under this **policy** are not subject to the **deductible**;
- g. a single **deductible** shall apply to each **claim** or each cover provided by an Extension.

2.6 Extent of Indemnity

a. Extensions

Our liability to indemnify **you** is extended by:

- i. the Automatic Extensions set out in Section 3 of this **policy** unless specifically excluded in the **schedule**;
- ii. any Optional Extensions in Section 4 of this **policy** that are specifically noted as included in the **schedule**; and
- iii. any extensions incorporated by endorsement to this **policy**.

b. Exclusions and Conditions

However, unless expressly provided otherwise, **our** liability to indemnify **you** under this **policy** and any endorsement is subject to:

- i. the **indemnity limit** and **deductible** set out in the **schedule**;
- ii. the Exclusions set out in Section 5 of this **policy**;
- iii. the Claims Conditions set out in Section 7 of this **policy**;
- iv. the General Conditions set out in Section 8 of this **policy**; and
- v. any exclusions, conditions or other provisions incorporated by endorsement to this **policy**.

c. Multiple claims

- i. All causally connected or interrelated acts, errors or omissions shall jointly constitute a single act, error or omission under this **policy**.
- ii. Where a single act, error or omission gives rise to more than one **claim**, all such **claims** shall jointly constitute one **claim** under this **policy**.

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.

3.1 Consultants, Subcontractors and Agents

We agree to indemnify **you** against civil liability for **damages** and awards of claimants' costs in respect of any **claim** first made against **you** during the **insurance period**, arising from the provision of or failure to provide **professional services** by any consultant, subcontractor or agent for which **you** are legally liable.

We will also indemnify such consultant, subcontractor or agent, provided that the provision of or failure to provide **professional services** giving rise to the **claim** occurred:

- a. in the course of the conduct by the consultant, subcontractor or agent of **your professional services** whilst acting for **you** or on **your** behalf; and
- b. at the time when the consultant, subcontractor or agent was under **your** direct control and supervision.

3.2 Continuous Cover

We agree to indemnify **you** against civil liability arising from any **claim** that arises out of facts which first became known to **you** prior to the **insurance period** where:

- a. **we** were **your** professional indemnity insurer at the time the facts first became known to **you** (the 'previous policy period') and have continued to be **your** professional indemnity insurer from then until the actual date of notification of **claim**; and

- b. but for **your** failure to notify **us** of the facts during the previous policy period, **you** would have been entitled to indemnity under a previous policy issued by **us**; and
- c. but for Exclusion 5.7 (Prior Claims/Circumstances) **you** would be entitled to indemnity under this **policy**; and
- d. **you** have not committed or attempted to commit fraudulent non-disclosure or fraudulent misrepresentation.

We are only liable to indemnify **you** to the extent that **we** are obliged to indemnify **you** under the terms and conditions of the policy in effect during the previous policy period, but in no circumstances shall the cover granted by this Extension be greater than the terms and conditions of the **policy** in effect during this **insurance period** (including the **indemnity limit** and **deductible**).

The definition of **we/us/our** in Definition 6.27 (We/us/our) 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 Automatic Extension and the terms of the **policy**, the intention of this Automatic Extension is to provide continuous cover notwithstanding any change in the identity of the Underwriter(s) for which **we** presently act, or have previously acted, as agent.

3.3 Insurance Preparation Costs

- a. **We** will pay up to the amount shown in the **schedule** in the aggregate during the **insurance period** for reasonable professional fees and such other external expenses incurred by **you** in connection with the preparation of any insurance information or similar material at **our** request concerning a matter **you** have notified to **us** under this **policy** but only where that matter is indemnified by **us** under this **policy**.
- b. The cover provided under this Extension 3.3 operates in addition to the **indemnity limit** any one **claim** and does not erode the aggregate **indemnity limit**.

3.4 Court attendance

We will pay the **policyholder** \$1,000 per person for each day that an **officer** or **employee** is legally compelled to and does attend court to give evidence in connection with a **claim**. The **deductible** does not apply to this Extension 3.4.

3.5 Domestic Partners

The definition of **you** is extended to include any spouse or civil partner of an **officer** or **employee** in respect of a **claim** arising from the conduct of such **officer** or **employee** only and in which the spouse or partner had no involvement and is due solely to the spouse or civil partner's status as such.

3.6 Extended Notification Period

- a. If this **policy** is neither renewed nor replaced with professional indemnity insurance at expiry of the **insurance period**, then **you** have until the earlier of:
 - i. such time that **you** effect another professional insurance policy; or
 - ii. a period of sixty (60) days commencing on the day immediately following expiry of the **insurance period**;
 during which to notify **us** in writing of any **claim** first made against **you**.
- b. The extension of cover under this clause 3.6(a) is subject to each of the following conditions being satisfied:
 - i. **we** will treat the **claim** as if it had been made against **you** and notified to **us** during the **insurance period**;
 - ii. coverage afforded hereunder does not reinstate or increase the **indemnity limit** or extend the **insurance period**;
 - iii. coverage afforded hereunder will only apply to acts, errors or omissions committed or alleged to have been committed by **you**;

- a. before the end of the **insurance period**; and
- b. after the retroactive date specified in the **schedule**.

3.7 Estates and Legal Representatives

The definition of **you** is extended to include **your** legal representatives, heirs, assigns or estates in the event of **your** death, incapacity, insolvency or bankruptcy but only to the extent that **we** would otherwise have been liable to indemnify **you**.

3.8 Former Subsidiary, Former Principals, etc

- a. The definition of **subsidiary** is extended to include any former **subsidiary**, but only in respect of the former **subsidiary's** conduct while it was still **your subsidiary**.
- b. The definition of **you** is extended to include any former principal, **officer** or **employee**, but only in respect of their conduct while they were still **your** principal, **officer** or **employee**.

3.9 Fraud and Dishonesty

- a. **We** agree to indemnify **you** against civil liability arising from any **claim** that is first made against **you** during the **insurance period**, in respect of any dishonest, fraudulent, malicious or reckless act or omission committed or alleged to have been committed by any other person or entity covered by this **policy** in the conduct of **your professional services**.
- b. **We** will not provide indemnity under this Extension 3.9:
 - i. to any insured person or entity committing or condoning the act, omission or breach that would otherwise have resulted in Exclusion 5.5 (Fraud and Dishonesty) applying;
 - ii. for any loss of **currency**.

3.10 Inquiry Costs

We agree to indemnify **you** for **inquiry costs** up to an amount shown in the **schedule** in the aggregate for the **insurance period** which shall be part of and not in addition to the **indemnity limit**.

3.11 Joint Ventures

We agree to indemnify **you** against civil liability for **damages** and awards of claimants' costs arising from any **claim** first made against **you** during the **insurance period**, in respect of the provision of or failure to provide **professional services** by any joint venture of which **you** are a part, provided however that:

- a. this Extension 3.11 shall indemnify **you** for **your** individual civil liability in respect of such joint venture, but not for **your** joint civil liability; and
- b. **we** shall not be liable to pay a contribution to any insurer of any other participant in such joint venture.

3.12 Loss of Documents

a. General

We agree to indemnify **you** against costs and expenses that **you** incur in replacing or restoring lost documents where **you** first discover the loss during the **insurance period**. However, **we** are only liable to indemnify **you** against those costs and expense for which **you** provide **us** with bills or accounts that are approved under sub clause 3.12(c).

b. Your obligation to notify us

You must notify **us** of the loss of documents as soon as reasonably practicable after **you** discovery the loss, and if **you** do not **we** may reduce **our** payment pursuant to this Extension to the extent **we** are prejudiced by **your** delay.

c. Approval of bills or accounts

Once **you** provide **us** with bills or accounts, **we** may either:

- i. indemnify **you**; or
 - ii. nominate a competent person to review the bills or accounts.
- If **we** nominate a competent person, **you** must notify **us** whether or not **you** approve of **our** nominee.

d. Deductible

Notwithstanding clause 2.5 of this **policy**, **you** do not have to bear the **deductible** in respect of costs and expenses covered by this Extension 3.12.

e. Meaning of 'lost documents'

For the purposes of this Extension 3.12, 'lost documents' means documents belonging to a third party that:

- i. **you** are legally responsible for and were under **your** care, custody or control as part of the provision of **your professional services**; and
- ii. have been destroyed, damaged or mislaid and cannot be found after diligent search.

3.13 Mitigation Costs

- a. **We** agree to indemnify **you** against **mitigation costs**.
- b. **We** are only liable to indemnify **you** under this Extension 3.13 if:
 - i. **you** were first aware during the **insurance period** of the facts, circumstances, acts or omissions which have given rise to the **mitigation costs** (and which would have given rise to a **claim** but for the **mitigation costs**); and
 - ii. **you** notify **us** before **you** incur **mitigation costs**; and
 - iii. **you** establish to **us** that there is a probability that:
 - A. a **claim** would have been made against **you** and that **you** would have been liable for that **claim** in the absence of **your** carrying out the mitigation or rectification the subject of the **mitigation costs**; and
 - B. the amount of **your** liability for the **claim** would have been greater than the **mitigation costs**.
- c. **Our** liability for **mitigation costs** under this Extension shall not exceed 10% of the **indemnity limit** any one **claim**.

3.14 Newly Acquired or Created Subsidiaries

- a. **We** agree to indemnify any **subsidiary** that **you** acquire or create during the **insurance period** against civil liability for **damages** and awards of claimants' costs arising from any **claim** first made against the **subsidiary** up to the earlier of:
 - i. sixty (60) days after such acquisition or creation; or
 - ii. the expiry of the **insurance period**;in respect of the provision of or failure to provide **professional services**.
- b. This Extension 3.14 will only apply in respect of **claims** against the **subsidiary** arising from an act, error or omission occurring subsequent to the date of **your** acquisition or creation of the **subsidiary**.
- c. For the purposes of this Extension 3.14, the definition of **subsidiary** is extended to mean any entity that for the first time during the **insurance period**, the **policyholder** either directly or indirectly:
 - i. controls the composition of the board of directors;
 - ii. controls more than half of the voting power; or
 - iii. holds more than half of the issued share capital.

- d. Should the **policyholder** require the **policy** to be extended to include cover for **subsidiaries** which is not automatically provided by this Extension 3.14, then the **policyholder** shall provide **us** with any additional information requested by **us** to permit **us** to evaluate the acceptability of the additional exposure. **We** shall have the right, but not the obligation, to offer cover for the acquired or created **subsidiary** on such additional terms, conditions, exclusions and additional premium as **we** may require.

3.15 Public Relations Expenses

- a. **We** will pay to **you** or on **your** behalf all **public relations expenses**.
- b. Cover under this Extension 3.15 shall not exceed the amount shown in the **schedule** in the aggregate for the **insurance period**.

3.16 Run-Off Cover Until Expiry of Insurance period

- a. **We** agree that in the event that **you** cease to exist or operate or become consolidated with, merged into or acquired by any other entity either before or during the **insurance period**, then the coverage provided under this **policy** with respect to such entity shall continue until the expiry date of the **insurance period**.
- b. This Extension 3.16 only applies in respect of **claims** arising from any act, error or omission occurring prior to the effective date that **you** ceased to exist or operate or were consolidated with, merged into or acquired by another entity.

3.17 Imputation

- a. Where more than one person or entity is insured under this **policy**:
 - i. failure by an insured person or entity to comply with the duty of disclosure under the *Insurance Contracts Act 1984* (Cth); or
 - ii. misrepresentation by an insured person or entity to **us** before the **policy** commences; or
 - iii. failure by an insured person or entity to comply with any terms or conditions of this **policy**,
does not prejudice the right of any other insured person or entity to indemnity under this **policy**.
- b. However, cover pursuant to this Extension 3.17 is only available if:
 - i. the other insured person or entity is innocent of, and has no knowledge of, such conduct; and
 - ii. as soon as practicable after becoming aware of the conduct, the other insured person notifies **us** of all facts relating to such conduct.

3.18 Principal's Indemnity

- a. **We** agree to indemnify any principal where **you** are obligated by virtue of a written contract for the provision of **professional services** to that principal to provide insurance as is afforded by this **policy**, for any **claim** first made during the **insurance period** against the principal for its civil liability arising vicariously from **your** performance of **professional services** for the **principal**.
- b. However, cover pursuant to this Extension 3.18 is only available if:
 - i. indemnity is provided only to the extent required by such contract and subject to the terms and conditions of this **policy**; and
 - ii. if the **claim** had been first made against **you**, **you** would have been entitled to indemnity under this **policy**; and
 - iii. **we** shall maintain the conduct and control of any **claim** for which the principal seeks indemnity under this **policy**; and
 - iv. the indemnity does not apply to the principal's own acts, errors or omissions.
- c. For the purposes of this Extension 3.18, 'principal' means the owner or proprietor of a construction project, provided that:

- i. the principal has no involvement in the design, construction, management or supervision of the project; and
- ii. **you** have entered into a written agreement to provide **professional services** to the principal.

3.19 Panel Counsel

You are 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**.

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**.

4.1 Breach of Privacy: Response Costs and Fines and Penalties

- a. **We** will pay the:
 - i. **privacy breach response costs** incurred as a result of any **privacy breach** first discovered by **you** and notified to **us** during the **insurance period** in relation to **personal information** collected during the provision of **professional services**, regardless of whether a claim has been made against **you**;
 - ii. fines and penalties payable by **you** arising from such **privacy breach**, provided that this indemnity does not extend to any such fine or penalty:
 - A. for which **we** are legally prohibited from indemnifying **you** under any law; or
 - B. based upon, attributable to or in consequence of any recklessness, or any wilful, intentional or deliberate failure to comply with any lawful notice or direction, enforcement action or proceeding under any legislation or regulation.
- b. Cover under this Extension 4.1 shall not exceed the amount stated in the **schedule** in the aggregate for the **insurance period**.

4.2 Fidelity Insurance

- a. **We** will indemnify the **policyholder** for **direct financial loss discovered** and notified to **us** during the **insurance period** resulting from any dishonest, fraudulent or malicious act of any **employee** or **officer**, whether committed alone or in collusion with others. However, cover pursuant to this Extension 4.2 is only available if:
 - i. **we** are not liable to indemnify **you** under this Extension 4.2 if **you** personally committed or condoned any act, omission or breach excluded by Exclusion 5.5 (Fraud and Dishonesty); and
 - ii. **you** must bear any costs or expenses that **you** incur in establishing or substantiating the existence of amount of such **direct financial loss**; and
 - iii. **you** must bear any **direct financial loss** that **you** incur as a consequence of any act or omission occurring after the date that **you discover**, or have reasonable suspicion of, the dishonest, fraudulent, malicious or reckless act or omission; and
 - iv. all interrelated individual dishonest, fraudulent or malicious acts shall be deemed to constitute a single loss under this Extension 4.2.
- b. Cover under this Extension 4.2 shall not exceed the sub-limit specified in the **schedule** in the aggregate during the **insurance period**.
- c. The **deductible** specified in the **schedule** shall apply to each **direct financial loss** covered under this Extension 4.2.

4.3 Subsidiaries – Pre-Acquisition Liability

We agree to indemnify a **subsidiary** against all civil liability for **damages** and awards of claimants' costs arising from any **claim** that is first made against the **subsidiary** during the **insurance period** and is notified to **us** during the **insurance period** in respect of any act, error or omission committed or alleged to have been committed by the **subsidiary** before the date that **you** acquired the **subsidiary** but after the retroactive date specified in the **schedule** in respect of its conduct of the same profession as **your professional services**.

4.4 Joint Ventures

Automatic Extension 3.11 (Joint Ventures) shall be extended to provide indemnity for **your** joint and individual civil liability for **damages** and awards of claimants' costs in respect of any **claim** first made against **you** during the **insurance period**, but only in respect of joint venture(s) named in the **schedule**.

4.5 Previous Business

We agree to extend indemnity for any **claim** first made during the **insurance period** against such person who is or becomes a principal or **officer** of **yours** in respect of civil liability for **damages** and awards of claimants' costs incurred or alleged to have been incurred on the part of such person in the conduct of the same profession as **your professional business** before that person became a principal or **officer** of **yours**.

4.6 Run-Off after Merger, Takeover or Sale

- a. In the event of the **policyholder** being subject to a merger, takeover or sale during the **insurance period**, then on application by the **policyholder** as soon as reasonably possible after the merger, takeover or sale is completed or becomes effective, **we** may extend cover to apply in respect of **claims** first made against **you**, or **inquiries** first commenced and involving **you**, for a period of up to 84 calendar months from the expiry **date** of the **insurance period**, but only for **claims** that arise from acts, errors or omissions or other conduct occurring prior to the date of such merger, takeover or sale.
- b. This Extension 4.6 is only available if the **policyholder** accepts the additional terms, conditions, exclusions or premiums as **we** may require.
- c. If cover is so extended, Automatic Extension 3.14 (Newly Acquired or Created Subsidiaries) and Automatic Extension 3.6 (Extended Notification Period) are deleted from this **policy** from the effective date of such merger, takeover or sale.

4.7 Incoming Continuous Cover

- a. We agree to indemnify **you** against civil liability for **damages** and awards of claimants' costs in respect of any **claim** first made against **you** during the **insurance period**, that arises out of facts which first became known to **you** prior to the **insurance period** where:
 - i. **you** held professional indemnity insurance (the 'previous policy') at the time the facts first became known to **you** (the 'previous policy period'); and
 - ii. but for **your** failure to notify **your** professional indemnity insurer in the previous policy period of the facts during the previous policy period, **you** would have been entitled to indemnity under the previous policy; and
 - iii. but for Exclusion 5.7 (Prior Claims/Circumstances), **you** would be entitled to indemnity under this **policy**; and
 - iv. **you** have not committed or attempted to commit fraudulent non-disclosure or fraudulent misrepresentation.
- b. We are only liable to indemnify **you** to the extent that **we** are obliged to indemnify **you** under the terms and conditions of this **policy**, but in no circumstances shall the cover granted by this Extension 4.7 be greater than the terms and conditions of the previous policy (including its applicable limit or sub-limit of indemnity and its applicable deductible).

- c. **We** may reduce **our** liability to **you** by the amount that fairly represents the extent to which **we** have been prejudiced as a result of the late notification. For the purposes of this Extension 4.7, prejudice will include lost opportunities to resolve the **claim** and difficulties or increased costs incurred in defending a **claim** due to the delay in notification.

4.8 Contractual Liability

Notwithstanding Exclusion 5.3 (Contractual Liability/Guarantee or Warranty) **we** agree to indemnify **you** against civil liability for **damages** and awards of claimants' costs in respect of any **claim** first made against **you** during the period of cover under an indemnity and/or hold harmless term of a contract to the extent such civil liability arises out of **your** performance of **professional services**.

4.9 Limitation of Liability

- a. Notwithstanding General Condition 8.8 (Subrogation), **we** recognise that **you** may enter into written contracts with other parties relating to the performance of **your professional services** that may exclude or limit the liability of such parties and **we** agree that such contracts will not prejudice **your** right to indemnity under this **policy**.
- b. The cover provided under this Extension 4.9 does not apply to contracts (whether or not they are written) entered into as a result of a dispute that involves **you** in any way.

4.10 Novated Contracts

- a. **We** agree that Exclusion 5.3 (Contractual Liability/ Guarantee or Warranty) does not apply to a duty or obligation assumed by **you** under a novated contract where:
 - i. **you** purchase or acquire another business or contract;
 - ii. **you** assume responsibility for **professional services** previously undertaken by another party; or
 - iii. **your** contract to provide **professional services** is novated to another party.
- b. **We** are not liable to indemnify **you** under this Extension 4.10 in respect of:
 - i. liabilities in the novated contract that were not otherwise covered by the **policy** prior to the contract being novated; or
 - ii. any additional liabilities **you** incur by virtue of the novation of a novated contract to **you**.
- c. For the purposes of this Extension 4.10, a 'novated contract' is any contract noted as such by way of endorsement to this **policy**.

4.11 Collateral Warranties

- a. Notwithstanding Exclusion 5.3 (Contractual Liability/Guarantee or Warranty), **we** agree to indemnify **you** against civil liability for **damages** and awards of claimants' costs in respect of any **claim** first made against **you** during the **insurance period** in respect of any collateral warranties or similar agreements provided to **us** by **you** and where **we** have specifically agreed in writing to indemnify **you** in respect of such collateral warranty or similar agreement.
- b. **We** are only liable to indemnify **you** pursuant to this Extension 4.11 to the extent that the benefits of such warranties or agreements are not greater or longer lasting than those given to the party with whom **you** originally contracted to provide **professional services**, and only to the extent that such liability would have attached to **you** in the absence of such contractual duty, term or agreement.
- c. For the purposes of this Extension 4.11, **we** are not liable to indemnify **you** in respect of any **claim** directly or indirectly based upon, attributable to, or in consequence of any:
 - i. liability arising from the provision by **you** of an express term guaranteeing or warranting the fitness for purpose or similar;
 - ii. liability arising under any express guarantee given by **you** that the works will satisfy any particular performance specification or any express guarantee relating to the period of the project; or

- iii. any express contractual penalty of a financial nature or liquidated damages.

4.12 Proportionate Liability Waiver

- a. **We** agree that Exclusion 5.3 (Contractual Liability/ Guarantee or Warranty) does not apply to liability assumed by **you** under a contract by reason of having contracted out of the operation of the Proportionate Liability Legislation.
- b. For the purposes of this Extension, 'Proportionate Liability Legislation' means *Civil Liability Act 2002* (NSW) Pt 4, *Wrongs Act 1958* (Vic) Pt IVAA, *Civil Liability Act 2002* (WA) Pt 1F, *Civil Liability Act 2003* (Qld) Ch 2 Pt 2, *Civil Law (Wrongs) Act 2002* (ACT) Ch 7A, *Proportionate Liability Act 2005* (NT), *Civil Liability Act 2002* (Tas) Part 9A, *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA) Pt 3, *Trade Practices Act* (Cth) s87C, *Competition and Consumer Act 2010* (Cth) Pt VIA, *Planning, Development and Infrastructure Act 2016* (SA) s158, *Building Act 2004* (ACT) s141, and any similar legislation as amended or enacted from time to time.

4.13 Workplace Statutory Liability Insurance

- a. Notwithstanding Exclusion 5.4 (Fines and Penalties) and Exclusion 5.6 (Obligation to Employees), **we** will pay on **your** behalf all **defence costs** and any fines and penalties incurred in connection with any **claim** first made against **you** during the **insurance period** for any act, error, omission or other conduct that gives rise to a notifiable incident under work health and safety legislation in Australia, provided that the conduct giving rise to the **claim** was not intentional, wilful, reckless or deliberate.
- b. **We** will not be liable to indemnify **you** for any fine or penalty for which **we** are legally prohibited from indemnifying **you** under any law.
- c. Cover under this Extension 4.13 shall not exceed the amount shown in the **schedule** in the aggregate for the **insurance period**.

4.14 Whistleblower Hotline

You and **your** internal and external stakeholders are hereby entitled to access the **DUAL Whistleblower Hotline** throughout the **insurance period**.

For the purposes of this Extension 3.20, **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 **you** can use the DUAL Whistleblower Hotline.

Section 5: Exclusions

We will not cover **you** or any entity or person in connection with any **claim**, cost, expense, indemnity, payment or loss arising out of, based upon, attributable to or in consequence of any:

5.1 Asbestos

- a. asbestos or any material(s) containing asbestos.

5.2 Associated persons or entities

claim made by or on behalf of:

- a. any insured person or entity; or
- b. any parent, successor or assign of any insured person or entity; or
- c. any entity in which any insured person or entity or the management of the **policyholder** or any **subsidiary** has an executive or controlling interest; or
- d. any **officer** or **employee** unless such claim is made by or on behalf of an **officer** or **employee** as a customer or a client of **yours**.

5.3 Contractual Liability/Guarantee or Waiver

- a. liability assumed under any contract or agreement; or
 - b. liability assumed under or imposed by any express or implied guarantee or warranty;
- except to the extent such liability would have attached to **you** in the absence of such contract, agreement or express or implied guarantee or warranty.

5.4 Fines and Penalties

punitive, aggravated, multiple or exemplary **damages** or fines or penalties imposed by law.

This Exclusion 5.4 shall not apply to compensatory civil penalties, provided that:

- a. **our** total liability for the payment of compensatory civil penalties during any one **insurance period** shall not exceed \$250,000 in the aggregate, which amount shall form part of and is not in addition to the **indemnity limit**;
- b. **we** will not be liable to indemnify **you** for any compensatory civil penalty for which **we** are legally prohibited from indemnifying **you** under any law;
- c. **we** will not be liable to indemnify **you** for any compensatory civil penalty based upon, attributable to or in consequence of any:
 - i. wilful, intentional or deliberate failure to comply with any lawful notice or direction, enforcement action or proceeding under any legislation;
 - ii. recklessness; or
 - iii. requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost.

5.5 Fraud and Dishonesty

- a. gaining of or intentional attempt to gain profit, remuneration or advantage to which **you** were not legally entitled; or
- b. dishonest, fraudulent, malicious, wilful or criminal act or omission by **you** or **your** consultants, subcontractors or agents;

in the event that any of the above is established by final adjudication of a judicial or arbitral tribunal or by **your** written admission.

5.6 Obligation to Employees

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, arising out of or in the course of their employment.

5.7 Prior Claims/Circumstances

- a. disclosure to **us** in the **proposal** of any **claim, inquiry**, investigation, conduct, fact or matter, regardless of how it is expressed; or
- b. fact(s) or conduct which have or has been notified under any earlier policy; or
- c. facts or conduct which **you** knew, or ought reasonably to have known, prior to the commencement of this **policy** might give rise to a **claim** or **inquiry**; or
- d. proceeding, inquiry or similar process which **you** knew prior to the commencement of this **policy**, or ought reasonably to have known, was on foot, or any proceeding, inquiry or similar process derived from essentially the same facts that gave rise to such prior proceeding, inquiry or process.

5.8 Radioactivity and Nuclear Risk

ionising radiation or the contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of any nuclear fuel.

5.9 Retroactive Date

civil liability, act, error or omission or other conduct which first occurs before the retroactive date specified in the **schedule**.

5.10 Trading debts

trading debt that **you** incur or any guarantee that **you** give for a debt.

5.11 USA Jurisdiction

unless otherwise specified on the **schedule**:

- a. any **claim** made in or determined pursuant to the law of the United States of America or any of its territories or protectorates, or any **inquiry** conducted in the United States of America or any of its territories or protectorates; or
- b. the enforcement of judgments, orders or awards obtained within or determined pursuant to the law of the United States of America or any of its territories or protectorates.

5.12 War and Terrorism

war (declared or otherwise), **terrorism**, warlike, military, terrorist or guerrilla activity, sabotage, force of arms, hostilities (declared or undeclared), rebellion, revolution, civil disorder, insurrection, usurped power, confiscation, nationalisation or destruction of or damage to property by or under the order of, any governmental, public or local authority or any other political or terrorist organisation.

5.13 Costs Estimates

estimate of construction cost or cost estimate being exceeded except where such estimates are compiled and documented by a registered quantity surveyor or other **properly qualified person**.

5.14 Insolvency

the insolvency, liquidation, administration or receivership of **you** or any party involved in any project or contract.

5.15 Insurance and Financial Advice

- a. failure to effect or maintain any insurance, surety or bond; or
- b. advice on insurance; or
- c. advice on investment, marketing, financial or tax matters; or
- d. provision of finance.

5.16 Manufacturing, Construction and Property Development

- a. defects or alleged defects in any product manufactured, supplied, installed, assembled, erected or maintained by **you** except to the extent that such defects are attributable to **your** faulty design or specification by **you** or on **your** behalf; or
- b. defects in construction, assembly, installation, erection or maintenance other than where a **claim** is attributable to faulty design or specification by **you** or on **your** behalf; or
- c. supervision of any construction, assembly, installation, erection or maintenance unless such supervision is provided as a specifically contracted construction manager or project manager (but not including supervision as would be undertaken in a capacity normally provided by a building or engineering contractor acting in such capacity alone); or

- d. activity conducted by **you** as a property developer.

5.17 Personal Injury and Property Damage

- a. bodily injury, sickness, disease, mental injury, mental anguish, nervous shock, emotional distress or death of any person; or
- b. physical loss of, damage to, or distribution of any tangible property including any loss of use of tangible property;

unless directly arising out of **your** provision of or failure to provide **professional services**.

5.18 Use of Property

the ownership, use, occupation or leasing of any property by **you**, to or on **your** behalf.

5.19 Communicable Disease

- a. Communicable Disease or fear or threat (whether actual or perceived) of a Communicable Disease or actual or alleged transmission of a Communicable Disease.
- b. for the purposes of this Exclusion 5.19, Communicable Disease means any:
 - i. disease infectious in humans forming part of the Listed Human Diseases under, or is the subject of a Human Biosecurity Emergency under, the *Biosecurity Act 2015* (Cth) and any of its subsequent amendments or any similar such listing or declarations of diseases under any subsequent statute that repeals and replaces the *Biosecurity Act 2015* (Cth) in whole or part, whether or not such declaration has taken place before or after inception of this **policy**; or
 - ii. any disease infectious in humans forming part of the Quarantinable Infectious Diseases as defined under the *Health Act 1956* (NZ) and any of its subsequent amendments or any similar such listing of diseases under any subsequent statute that repeals and replaces the *Health Act 1956* (NZ) in whole or part, whether or not such declaration has taken place before or after inception of this **policy**; or
 - iii. any pandemic or epidemic, as declared as such by the World Health Organisation.

Section 6: Definitions

In this **policy**, unless the context requires otherwise:

6.1 **claim** means:

- a. a written or verbal demand by a third party for compensation or **damages**; or
- b. a civil proceeding brought by a third party for recovery of compensation or **damages**, in respect of an actual or alleged breach of professional duty.

6.2 **currency** means any negotiable instrument(s), bearer bond(s), coupon(s), stamp(s), money, bank or currency note(s).

6.3 **damages** means any amount that **you** shall be legally liable to pay as monetary compensation in respect of judgments or arbitral awards rendered against **you**, or settlements entered into with **our** prior written consent.

6.4 **deductible** means the amount specified as such in the **schedule**.

6.5 **defence costs** means all reasonable legal fees, costs and expenses, including disbursements, incurred by **us** or for which **you** are legally liable and which **you** incurred after a **claim** is made, with **our** prior written consent (such consent not to be unreasonably delayed or withheld), in the investigation, defence, adjustment, settlement or appeal of any **claim**.

6.6 direct financial loss:

- a. means the physical loss of currency belonging to **you** or in your care, custody or control, sustained by **you** directly as a result of a dishonest, fraudulent or malicious act;
- b. does not mean:
 - i. costs, fees or expense of prosecuting or defending any demand, **claim** or legal proceeding resulting from a **direct financial loss** covered by this **policy**; or
 - ii. costs, fees or other expenses in establishing the existence or amount of any **direct financial loss**; or
 - iii. salary, wages, commissions, fees, bonuses, promotions, awards, profit-sharing, superannuation or any other remuneration of any **employee** or **officer**; or
 - iv. complete or partial non-payment under any credit arrangement; or
 - v. interest or other indirect or consequential loss being any not expressly described in the cover sections of this **policy** (for example loss of income and loss of profits); or
 - vi. any financial loss sustained whilst **currency** is in the care, custody or control of any financial institution or armoured security; or
 - vii. expenses incurred in replacing data or redesigning of software; or
 - viii. loss sustained by one insured person or entity to the advantage of another insured person or entity.

6.7 discovered means an **officer's** first awareness of facts which would cause a reasonable person to believe that a **direct financial loss** has been or is likely to be incurred, even though the exact amount or details of the **direct financial loss** are not known at the time of discovery.

6.8 employee means any natural person who is, has been or during the **insurance period** becomes expressly engaged under a contract of employment with any **policyholder** or **subsidiary**.

6.9 indemnity limit means the amount specified as such in the **schedule**.

6.10 inquiry means:

- a. an investigation, examination or inquiry by any professional body of which **you** are a member, or external official person or body having legal authority to conduct an investigation, including a Royal Commission, into **your professional services** and for which:
 - i. the notice or process requiring **you** to attend or to produce documents or answer questions is first served during the **insurance period**; or
 - ii. **you** are identified in writing during the **insurance period** by such authorised person or body as a target of the investigation, examination or inquiry; or
- b. a raid on, or on-site visit to, **you** which:
 - i. first takes place during the **insurance period** by a regulator, government body or any other external official person or body having legal authority to conduct an investigation into the provision of **your professional services**; and
 - ii. involves **you** in the production, review, copying or confiscation of documents or an interview; or
- c. a public announcement relating to the matters in (b) above made by the authority performing the raid or on-site visit.

It is not necessary that a **claim** is made against **you**.

However, **inquiry** does not include:

- d. any of (a), (b) or (c) above that relates to an industry event or practice and not specifically to **your** conduct providing **professional services**;
- e. routine regulatory supervision, inspection or compliance reviews.

- 6.11 inquiry costs** means all reasonable legal costs and expenses for which **you** are legally liable and which are incurred by **us**, or by **you** with **our** prior consent (such consent not to be unreasonably delayed or withheld), for legal representation in connection with preparation for, attendance at or compliance with an **inquiry**.
- 6.12 insurance period** means the period of time specified as such in the **schedule**.
- 6.13 mitigation costs** means all costs and expense necessarily incurred by **you** that are:
- directly, solely and exclusively attributable to; and
 - reasonably incurred;
- to mitigate or rectify an error or omission that could have resulted in a **claim** being made against **you** and for which the **policy** would respond if a **claim** had been made.
- However, **mitigation costs** does not mean or include:
- your** loss of opportunity, revenue or profits; or
 - amounts paid by **you** solely for the purpose of reducing or removing reputational risk to **your** business; or
 - damages**, compensation or other payments made, or consideration given, to customers, clients or potential claimants; or
 - any amount once a **claim** is made.
- 6.14 officer** means:
- a director or secretary of the **policyholder** or a **subsidiary**; or
 - a natural 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**; or
 - who has the capacity to affect significantly the **policyholder's** or a **subsidiary's** financial standing; or
 - in accordance with whose instructions or wishes the directors of the **policyholder** or **subsidiary** are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors of the **policyholder** or a **subsidiary**).
- 6.15 personal information** means information or an opinion about an identified individual, or an individual who is reasonably identifiable:
- whether the information or opinion is true or not; and
 - whether the information or opinion is recorded in a material form or not.
- 6.16 policy** means this policy wording, the **schedule**, the **proposal** and any endorsement attaching to and forming part of the **policy** either at commencement of or during the **insurance period**.
- 6.17 policyholder** means the organisation(s) or natural person(s) specified as such in the **schedule**.
- 6.18 privacy breach** means an actual, alleged or suspected breach, for which **you** are legally responsible, of applicable privacy and data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of personal information, including the *Privacy Act 1988* (Cth) (including the Australian Privacy Principles), *Spam Act 2003* (Cth), *Do Not Call Register Act 2006* (Cth) and any applicable state and territory laws, regulations or binding rules or guidelines of any applicable regulatory or statutory authority or government agency.
- 6.19 privacy breach response costs:**
- means the reasonable and necessary costs incurred by **you**, with **our** prior consent, to notify any client, third party or regulator in accordance with your legal or regulatory duties as a result of any actual, alleged or suspected **privacy breach**;

- b. does not mean or include:
 - i. **public relations expenses**; or
 - ii. **your** overheads, staff or **officer** remuneration or management time; or
 - iii. **damages** or other payments made or payable to any third party; or
 - iv. fines or penalties; or
 - v. the costs and expenses of complying with any order for, grant of, or agreement to provide injunctive or other non-monetary relief.

6.20 professional services, professional business means:

- a. professional work involving one or more of the following activities:
 - i. design, including pre-design and advice in relation to design;
 - ii. drafting, drawings and technical documentation;
 - iii. technical advice;
 - iv. technical specification;
 - v. technical information calculation;
 - vi. feasibility studies;
 - vii. surveying;
 - viii. provision of inspection services;
 - ix. programming and time flow management;
 - x. training in respect of any of the above activities;
 - xi. project management;
 - xii. construction management;

in respect of the **professional business** specified in the **schedule**, where such professional work is carried out by or under the control of a **properly qualified person**, whether **your employee** or a person acting under **your** control or under contract with **you**;
- b. does not mean or include:
 - i. performance or supervision of any construction, assembly, installation, erection or maintenance as would be undertaken in a capacity normally provided by a building or construction or maintenance contractor acting in such capacity alone;
 - ii. environmental protection, workplace health and safety or industrial relations matters which would normally be overseen by a building or construction or maintenance contractor.

6.21 properly qualified person means any person registered with the appropriate professional body as an architect, engineer, surveyor or quantity surveyor at the time of the **professional services** (where such registration is required) or having equivalent professional qualifications according to an established discipline appropriate to the professional services being performed or supervised.

6.22 proposal means each and every proposal form, the statements and representations therein, its attachments and all other material information submitted to **us** in respect of this **policy** or any policy submitted to **us** in respect of any earlier period of cover prior to the **insurance period** pursuant to this **policy**.

6.23 public relations expenses:

- a. means all reasonable payments incurred by **you** with **our** prior written consent (such consent not to be unreasonably delayed or withheld) for public relations, crisis management or legal services reasonably required to prevent or minimise adverse or negative publicity as a direct result of a **claim** or **inquiry** covered by this **policy**;

- b. does not mean or include:
- i. **privacy breach response costs**; or
 - ii. **your** overheads, staff or **officer** remuneration or management time; or
 - iii. compensation or other payments made to customers, clients or potential claimants; or
 - iv. fines or penalties; or
 - v. the costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief.

6.24 **schedule** means the **schedule** relating to and forming part of this **policy**, including any endorsements thereto.

6.25 **subsidiary** means any entity at the commencement of the **insurance period** of which the **policyholder** either directly or indirectly:

- a. controls the composition of the board of directors;
- b. controls more than half of the voting power; or
- c. holds more than half of the issued share capital.

6.26 **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.

6.27 **we, us, our** means DUAL Australia Pty Limited (ABN 16 107 553 257) for and on behalf of the Underwriters/ Insurers as noted in the **schedule**.

6.28 **you, your, insured** means:

- a. the **policyholder** and any **subsidiary**;
- b. any **officer** but only when acting within the scope of their duties in the performance of **professional services** (as distinguished from carrying out duties as an **officer** of the **policyholder** or any **subsidiary** in relation to the **policyholder's** or any **subsidiary's** own affairs);
- c. any **employee** but only when acting within the scope of their duties in the performance of **professional services**.

Section 7: Claim Conditions

7.1 Notification

You must notify **us** of any claim made against **you** during the period of cover as soon as practicable after the claim is made. **You** must give notice of any claim, loss or other matter in writing, and send it to:

The National Claims Manager

DUAL Australia Pty Limited

Level 29, Angel Place, 123 Pitt Street Sydney NSW 2000 Australia

Or by email to claims@dualaustralia.com.au

7.2 Co-operation

You must at **your** own cost:

- a. render all reasonable assistance to **us** and co-operate in the defence of any **claim** or **inquiry** and the assertion of indemnification and contribution rights;

- b. give such information and assistance to **us** as **we** may reasonably require to enable **us** to investigate any **claim** or **inquiry** or determine **our** liability under this **policy**.

7.3 Mitigation

You must use all due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any civil liability, **defence costs** or any other costs or loss in respect of which **we** are liable to indemnify **you** under this **policy**.

7.4 Our Consent

You shall not admit or assume any liability, enter into any settlement agreement or consent to any judgment in relation to any **claim** or **inquiry** without **our** prior written consent. If **you** do, **we** may reduce or refuse **your** claim under the **policy** to the extent **we** are prejudiced by **your** admission, assumption, agreement or consent.

7.5 Defence and Settlement

- a. **We** do not assume any duty to defend, and **you** shall defend and contest any **claim** made against **you** unless **we** elect in writing to take over and conduct the defence and settlement of any **claim**. If **we**:
 - i. do so elect, **we** will act reasonably and have regard to **your** interests; or
 - ii. do not so elect, **we** shall be entitled, but not required, to participate fully in such defence and the negotiation of any settlement.
- b. If there is any dispute between **us** and **you** about whether to agree to a proposed settlement or about whether a **claim** should continue to be defended, that dispute shall be dealt with in accordance with Claims Condition 7.6 (Disputes and Allocation).

7.6 Disputes and Allocation

a. Disputes

- i. Neither **we** nor **you** may require the other to contest any **claim** unless Senior Counsel advises that the **claim** should be contested.
- ii. In formulating their advice, Senior Counsel must take into consideration the **damages** and claimants' costs which may be recovered by the claimant, the likely **defence costs** and **your** prospects of successfully defending the **claim**.

b. Allocation

- i. In the event there are a number of causes which contribute to a **claim** made against **you**, **we** agree to indemnify **you** in respect of **your** liability for that part of the **claim**, including **defence costs**, which is covered under the **policy** irrespective of whether one or more of the other causes is excluded or not covered under this **policy**.
- ii. Both parties will use their best efforts to agree upon what is attributable to indemnified and un-indemnified or excluded causes.
- iii. In the event that an agreement cannot be reached pursuant to sub-clause 7.6(b)(ii), a Senior Counsel shall determine, as an expert but not as an arbitrator, the causes of the loss and the percentage of legal and financial exposures attributable to each cause.
- iv. Until such Senior Counsel has made their determination, **we** may, at **our** reasonable discretion, pay such amount insured under this Condition as **we** consider appropriate.

c. Appointment of Senior Counsel

- i. If settlement or allocation of a **claim** cannot be agreed, then **we** may nominate a Senior Counsel.
- ii. If **we** nominate a Senior Counsel, **you** must notify **us** whether or not **you** approve of **our** nominee as soon as practicable.

- iii. If **we** cannot agree with **you** upon Senior Counsel within a reasonable time, Senior Counsel will be such person as the President of the Bar Association of the jurisdiction in which the **policy** was underwritten appoints.

d. Costs of Senior Counsel's opinion

The cost of Senior Counsel's opinion is included in the **defence costs**.

e. Meaning of 'Senior Counsel'

For the purposes of this Claims Condition 7.6, 'Senior Counsel' means a practising barrister who is entitled to practice as a Kings Counsel or Senior Counsel in Australia or New Zealand.

7.7 Election to contest

If **we** recommend settlement of any **claim** and **you** do not agree to such settlement, **you** may elect to contest the **claim**. However, **our** liability in connection with the **claim** is then limited to the amount **we** recommend in settlement plus **defence costs** incurred by **us** or with **our** consent up to the date **we** recommend settlement to **you**.

Section 8: General Conditions

8.1 Assignment

- a. This **policy** and any rights under or in respect of it cannot be assigned by **you** without **our** prior written consent.
- b. **We** will not unreasonably withhold **our** consent.

8.2 Cancellation

- a. **You** may cancel this **policy** by giving notice in writing to **us**. If such notice is given, the cancellation will take effect on the day the notice is received by **us**.
- b. **We** may cancel this **policy** in any of the circumstances set out in the *Insurance Contracts Act 1984* (Cth). Such cancellation is to take effect 30 days from the time notification is received by **you**.
- c. Upon cancellation by **you** or **us**, **you** will receive a pro rata refund of net premium for the unexpired portion of the **insurance period**, less all or part of any applicable statutory charges, taxes, duties or levies, subject to no **claims** or **inquiries** having been made during the **insurance period**.
- d. When the premium is subject to adjustment, cancellation will not affect **your** obligation to supply to **us** such information as is necessary to permit the premium adjustment to be calculated and to pay the amount of the adjustment applicable up to the date of cancellation.

8.3 Change of Control

We shall not be liable to make any payment or to provide any services in connection with any **claim** or **inquiry** arising out of, based upon or attributable to any civil liability, act, error or omission or other conduct committed after the occurrence of a merger, takeover or sale, except to the extent that there is cover under Optional Extension 4.6 (Run-Off after Merger, Takeover or Sale), and such cover has been included under this **policy**.

8.4 Currency

- a. All monetary amounts under this **policy** are expressed and payable in Australian currency.
- b. If a judgment is rendered, settlement is denominated or other amount payable under this **policy** is stated in a currency other than Australian dollars, payment under this **policy** shall be made in Australian dollars at the cash rate of exchange for the purchase of Australian dollars determined by the free market rate of exchange as published in the currency conversion website www.oanda.com, or if no longer current, a currency conversion website selected by **us** on the date the final judgment is reached or the amount of the settlement is agreed upon.

8.5 GST

- a. The amount that **we** are liable to pay under this **policy** will be reduced by the amount of any input tax credit that **you** are or may be entitled to claim for the supply of goods or services covered by that payment.
- b. If **you** are entitled to an input tax credit for the premium, **you** must inform **us** of the extent of that entitlement at or before the time **you** make a **claim** under this **policy**. **We** will not indemnify **you** for any GST liability, fines or penalties that arise from or is attributable to **your** failure to notify **us** of **your** entitlement (or correct entitlement) to an input tax credit on the premium.
- c. If **you** are liable to pay a **deductible** under this **policy**, the amount payable will be calculated after deduction of any input tax credit that **you** are or may be entitled to claim on payment of the **deductible**.

8.6 Plurals, Headings and Titles, Interpretation

- a. Where a word or expression used in this **policy** is not specifically defined, it is agreed that the definition normally attributed to it by any applicable law or business practice shall apply.
- b. This **policy**, its **schedule** and any endorsements are one contract in which, unless the context otherwise requires:
 - i. headings are descriptive only, not an aid to construction;
 - ii. words and expressions in the singular include the plural, and vice versa;
 - iii. the male includes the female and neuter;
 - iv. all reference to specific legislation include amendments to and re-enactments of such legislation; and
 - v. references to positions, offices or titles shall include their equivalents in any jurisdiction in which a covered **claim** is made or covered **inquiry** conducted.

8.7 Scope and Governing Law

- a. Any issue relating to the construction, validity or operation of this **policy** shall be determined in accordance with the laws of the Commonwealth of Australia and the Australian State or Territory in which the **policy** is issued.
- b. Except as otherwise provided herein, the parties submit to the exclusive jurisdiction of the Australian courts.

8.8 Subrogation

- a. Unless otherwise stated in the **policy**, in the event of any payment under this **policy**, **we** shall be subrogated to all of **your** rights of recovery in respect of such payment.
- b. **You** shall take reasonable steps to execute all and any documentation and take reasonable steps to do any other things, at **your** own cost, as may be necessary to enable **us** to bring an action or suit for such recovery.
- c. Any recovery received shall first be applied against the costs of the recovery proceeding, then any payment made by **us** and then to any balance remaining thereafter being remitted to **you** up to the amount of any uninsured loss.
- d. **You** shall not do anything which shall prejudice **our** rights under this Condition.
- e. **We** agree not to exercise any such rights of recovery against any **officer** or **employee** unless it is established that Exclusion 5.5 (Fraud and Dishonesty) applies to the **claim** and the **officer** or **employee**.
- f. In **our** sole discretion, **we** may, in writing, waive any of **our** rights set forth in this General Condition 8.8.

8.9 Alteration to Risk

- a. **You** must notify **us** as soon as practicable of any material alteration to risk during the **insurance period** if **you** know or ought reasonably to have known, that the material alteration is relevant to **our** decision to insure **you** and the terms on which **we** will insure **you**, including:
 - i. if **you** submit to voluntary bankruptcy, receivership or liquidation; or
 - ii. if **you** fail to pay debts; or
 - iii. if **you** breach any other obligation giving rise to the appointment of a receiver, bankruptcy or winding up proceedings; or
 - iv. any material change in the nature of the **professional services**.
- b. Where such notice is given and/or where there is any material alteration to the risk, **we** reserve the right to cancel this **policy** if **we** cannot reach agreement with **you** on altered terms and conditions, or **we** are no longer **prepared** to insure **you** because of the material alteration to the risk and in accordance with the *Insurance Contracts Act 1984* (Cth).
- c. Notwithstanding sub-clause 8.9(b), in the event that **you** should become bankrupt or insolvent, **we** shall not be relieved thereby of the payment of any claim to indemnity under this **policy** solely due to such bankruptcy or insolvency.

8.10 Sanctions

Irrespective of any other provision of the **policy**, **we** shall not be deemed to provide cover or be liable to pay any claim to indemnity or provide any benefit (including a refund of premium) hereunder to the extent that the provision of such cover, payment of such claim to indemnity or provision of such benefit would contravene or otherwise expose **us** to any penalty, sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, New Zealand, the European Union, United Kingdom or United States of America.

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