

# DUAL

making relationships count

## PROFESSIONAL INDEMNITY POLICY WORDING



**Steadfast**

STRENGTH WHEN YOU NEED IT

Professional Indemnity  
Insurance  
Policy Wording

## About this booklet

This booklet contains 2 separate parts:

General Information and the Policy Terms and Conditions.

## General Information

This part of the booklet contains information you need to know before you take out a Policy. Please read it carefully before taking out this insurance.

## Policy Terms and Conditions

The Policy part of this booklet contains the Policy Terms and Conditions, which detail all the terms, conditions and exclusions relating to the Policy. It forms part of your legal contract with us.

If we issue you with an insurance policy, you will be given a Policy Schedule. The Policy Schedule sets out the specific terms applicable to your cover and should be read together with the Policy Terms and Conditions.

The Policy Terms and Conditions and the Policy Schedule we send to you form your legal contract with us so please keep them in a safe place for future reference.

If you require further information about this product, please contact your Steadfast broker.

## About Dual Australia

Dual Australia is one of Australia's leading professional indemnity insurers. DUAL derives great strength from its association with Lloyd's of London. DUAL Australia underwrites exclusively on behalf of certain Underwriters at Lloyd's. Lloyd's of London is an APRA regulated insurer and since the late seventeenth century, the name Lloyd's has been synonymous with insurance. Many of the world's leading underwriters are based at Lloyd's. The market is internationally renowned and has an impeccable claims record. In Australia, Lloyd's is proud to be a member of the Insurance Council of Australia, and strives to comply with the agreement we have made under the General Insurance Code of Practice.

Lloyd's syndicates Arch Insurance Company (Europe) Ltd and Hiscox Underwriting Limited act as DUAL's major security providers. DUAL is part of the Hyperion Insurance Group.

## About Steadfast

Steadfast is an unlisted public company comprising over 270 shareholders. Each shareholder is an independent insurance brokerage. This policy is available exclusively to you through shareholders of Steadfast Group Limited. Steadfast Group Limited does not issue, guarantee or underwrite this policy

## Important information about Steadfast's advice

Any advice Steadfast gives about the policy does not take into account any of your particular objectives, financial situation or needs. For this reason, before you act on Steadfast's advice, you should consider the appropriateness of the advice taking into account your own objectives, financial situation and needs. Before you make any decisions about whether to acquire this policy we recommend you should read this Insurance policy.

## GENERAL INFORMATION FOR PROFESSIONAL INDEMNITY POLICY

The information contained in this part is general information only and does not form part of your contract with us. The Policy Terms and Conditions in the rest of this booklet contain details of your contract.

### Claims made

The proposed insurance is issued on a 'claims made' basis.

This means that the policy responds to:-

1. claims first made against the insured during the policy period and notified to Dual Australia during that policy period, providing that the insured was not aware, at any time prior to the policy inception, of circumstances which would have alerted a reasonable person in the insured's position that a claim may be made against the insured; and
2. claims circumstances' notified pursuant to Section 40 (3) of the Insurance Contracts Act 1984 (Commonwealth) which states:  
  
where the insured gave notice in writing to the insurer of facts that might give rise to a claim against the insured as soon as was reasonably practicable after the insured became aware of those facts but before the insurance cover provided by the contract expired, the insurer is not relieved of liability under the contract in respect of the claim, when made, by reason only that it was made after the expiration of the policy period provided by the contract'.

After policy expiry, no new claims can be made on the expired policy even though the event giving rise to the claim may have occurred during the policy period.

If during the policy period you become aware of circumstances which a reasonable person in your position would consider may give rise to a claim, and which you fail to notify to us during the policy period, we may not cover you under a subsequent policy for any claim which arises from these circumstances.

It is important that you make proper disclosure (see Duty of Disclosure, below) so that your cover under any new policy with us is not compromised.

Pursuant to the Insurance Contracts Act 1984 (Commonwealth) your duty to disclose all relevant information is set out below.

### Duty of Disclosure

Before entering into a contract of general insurance, you have a duty, under the Insurance Contracts Act 1984 (Commonwealth), to disclose to us every matter that you are aware of, or could reasonably be expected to be aware of, that is relevant to our decision about insuring you and if so, on what terms. You have the same duty to disclose these matters to us before you renew, extend, vary or reinstate a contract of general insurance.

Your duty however does not require disclosure of matter -

- that diminishes the risk to be undertaken by us;
- that is of common knowledge;
- that we know or, in the ordinary course of our business, ought to know;
- as to which compliance with your duty is waived by us.

### Non-disclosure

If you fail to comply with your duty of disclosure, we may be entitled to reduce our liability under the policy in respect of a claim or may cancel the policy. If your non-disclosure is fraudulent, we may also have the option of avoiding the contract from its beginning.

## Privacy

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](mailto:reception@dualaustralia.com.au)) or by visiting our website ([www.dualaustralia.com.au](http://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.

## The General Insurance Code of Practice

Dual Australia proudly supports the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry.

The objectives of the Code are:

- to promote better, more informed relations between insurers and their customers;
- to improve consumer confidence in the general insurance industry;
- to provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; and
- to commit insurers and the professionals they rely upon to higher standards of customer service.

## Our service commitment

Dual Australia is proud of its service standards and supports the General Insurance Code of Practice. In an unlikely event that you are not satisfied with the way in which we have dealt with you, as part of our commitment to customer service, we have an internal dispute resolution process in place to deal with any complaint you may have.

Please contact your nearest Dual Australia office if you have a complaint, including if you are not satisfied with any of the following:

- one of our products;
- our service;
- the service of our authorised representatives, loss adjusters or investigators; or
- our decision on your claim.

Our staff will help you in any way they can. If they are unable to satisfy your concerns, they will refer the matter to their supervisor or manager. If the manager cannot resolve the matter, the manager will escalate the matter to our Internal Dispute Resolution Department.

**Brochures outlining our internal dispute resolution process are available from your nearest Dual Australia office.**

## Intermediary Remuneration

Dual Australia pays remuneration to insurance intermediaries when we issue, renew or vary a policy the intermediary has arranged or referred to us. The type and amount of remuneration varies and may include commission and other payments. If you require more information about remuneration we may pay your intermediary you should ask your intermediary.

# **POLICY TERMS AND CONDITIONS**

## **FOR PROFESSIONAL INDEMNITY POLICY**

### **Preamble**

In consideration of payment of the Premium, We will provide indemnity in accordance with, and subject to, the terms of this Policy.

### **Insurer**

The Policy is underwritten by DUAL Australia Pty Ltd, ACN 107 553 257, AFS Licence No. 280193 as agent of certain Underwriters at Lloyd's as referred to in your Policy Schedule,

### **Our agreement with you**

This Policy is a legal contract between Us and the Insured. The Insured pays Us the premium, and We provide the Insured with the cover the Insured has chosen as set out in the Policy, occurring during the Insurance Period shown on your Policy Schedule.

The amount of any Deductible that applies to the Policy will be shown on the Policy Schedule.

### **Your Policy**

The Professional Indemnity Policy consists of the Policy Terms and Conditions in this booklet and the Policy Schedule We give the Insured.

The Insured should read the Policy carefully, and satisfy itself that it provides the cover required.

If the Insured wants more information about any part of the Policy, please ask Us, or your Steadfast broker.

The Insured should keep the policy booklet and Policy Schedule together in a safe and convenient place for future reference.

### **Preventing our right of recovery**

If the Insured has agreed not to seek compensation from another person who is liable to compensate the Insured for any loss, damage or liability which is covered by this Policy, We will not cover the Insured under this Policy for that loss, damage or liability.

### **How Goods and Services Tax affects any payments we make**

We will reduce the GST amount We pay for by the amount of any input tax credits to which the Insured is or would be entitled if it made a relevant acquisition. In these circumstances, the Input Tax Credit may be claimable through the Insured's Business Activity Statement (BAS).

The Insured must advise Us of its correct Australian Business Number & Taxable Percentage.



## Section 1: Insuring Clauses

### Insuring Clause A

#### 1.1 Civil Liability Insuring Clause

We agree to indemnify the Insured against civil liability for compensation (including claimants' costs, fees and expenses awarded against or recoverable from the Insured) arising from any Claim first made against the Insured during the Insurance Period and notified to Us during the Insurance Period in respect of civil liability incurred or alleged to have been incurred in the conduct of the professional activities and duties of the Professional Business.

### Insuring Clause B

#### 1.2 Costs and Expenses Insuring Clause

We agree to pay Costs and Expenses in respect of any Claim indemnified by this Policy.

If We elect not to take over and conduct, in the name of the Insured, the defence or settlement of a Claim, We agree to pay Costs and Expenses within a reasonable time frame following Our receipt of invoices specifying such Costs and Expenses and prior to determining the Insured's entitlement to indemnity for the Claim.

In determining the Insured's entitlement to indemnity under this Policy in respect of a Claim, We agree that We will not rely on Exclusion 5.6 (Fraud, Dishonesty or Intentional Acts) unless and until:

- a) the Insured makes an admission in writing of any conduct described in Exclusion 5.6 (Fraud, Dishonesty or Intentional Acts), or
- b) it has been established through a judicial process that the Insured has committed any conduct described in Exclusion 5.6 (Fraud, Dishonesty or Intentional Acts).

The payment of any Costs and Expenses is subject to the following conditions:-

- i) the payment of any Costs and Expenses to the Insured by Us does not constitute an acceptance by Us of the Insured's right to indemnity for any Claim.
- ii) if either (a) or (b) above applies or for any other reason it is determined that a Claim is not covered by this Policy, We may cease to pay Costs and Expenses to the Insured, unless We, at Our sole discretion, decide to continue to pay Costs and Expenses resulting from such Claim.
- iii) where either (a) or (b) above applies or for any other reason it is determined that a Claim is not covered by this Policy, the Insured will refund Costs and Expenses paid by Us, unless We agree in writing to waive recovery of such Costs and Expenses.

### Insuring Clause Clarification

For the avoidance of doubt, the indemnity provided by Insuring Clauses A and B (clauses 1.1 and 1.2) includes, but is not limited to any civil liability incurred or alleged to have been incurred by the Insured in the conduct of the professional activities and duties of the Professional Business:

- 1.3 for breach of a contract for the provision of professional services.
- 1.4 for breach of fiduciary duty.
- 1.5 for breach of warranty of authority committed, by or on behalf of the Insured, in good faith and in the belief that appropriate authority was held.
- 1.6 for any unintentional infringement of copyright, moral right (under the Copyright Act 1968 Commonwealth), trademarks, service marks, registered design or patent, or any plagiarism or breach of confidentiality.
- 1.7 for defamation.
- 1.8 under the terms of the Competition and Consumer Act 2010 (Commonwealth), the Fair Trading Act 1987 (NSW), the Fair Trading Act 1985 (Victoria) or similar legislation enacted by the other states or territories of the Commonwealth of Australia or the Dominion of New Zealand.

## Section 2: Retroactive Date

- 2.1** “Unlimited Retroactive Cover” – if no Retroactive date is specified in the Schedule or if the Retroactive date is specified in the Schedule as “Unlimited”, this Policy shall provide indemnity in respect of Claim(s) arising from acts, errors or omissions committed or alleged to have been committed irrespective of when such acts, errors or omissions were committed (or were alleged to have been committed).
- 2.2** “Limited Retroactive Cover” – where a Retroactive date is specified in the Schedule, then this Policy shall only provide indemnity in respect of Claim(s) arising from acts, errors or omissions committed or alleged to have been committed on or after the Retroactive date.

## Section 3: Automatic Policy Extensions

### Preamble

We shall provide indemnity as is available under this Section, for no additional premium, PROVIDED ALWAYS THAT:

- a) the indemnity provided by each Policy Extension is subject to the Schedule, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this Policy (unless otherwise expressly stated herein);
- b) the inclusion of any Policy Extension shall not increase the Indemnity Limit.

### 3.1 Additional benefit – Claims preparation costs

We will pay up to \$25,000 in the aggregate during the Insurance Period for reasonable professional fees and such other expenses incurred by the Insured for the preparation of any Claim that is covered under this Policy.

The cover provided under this Policy Extension operates in addition to the Indemnity Limit. PROVIDED ALWAYS THAT such cover shall not include any Costs and Expenses (as defined in Clause 8.3 - Costs and Expenses).

### 3.2 Consultants, Sub-contractors and Agents

The conduct of the professional activities and duties of the Professional Business shall be deemed to include, acts, errors or omissions of consultants, sub-contractors or agents of the Named Insured, while undertaking work in connection with the conduct of the professional activities and duties of the Professional Business and for which the Named Insured is liable.

We will also indemnify any consultant, sub-contractor or agent themselves, PROVIDED ALWAYS THAT:

- a) this cover shall only apply in respect of services provided for and on behalf of the Named Insured; and
- b) the consultant, sub-contractor or agent earns more than ninety per cent (90%) of its total income, during the Insurance Period, from fees received from the Named Insured.

### 3.3 Continuous Cover

We agree to indemnify the Insured for any Claim, otherwise covered by this Policy, arising from any Known Circumstance (notwithstanding Exclusion 5.12 - Known Claims and Known Circumstances) if:

- a) We were the professional liability insurer of the Insured when the Insured first knew of such Known Circumstance, and
- b) We continued without interruption to be the Insured’s professional liability insurer up until this Policy came into effect; and
- c) had We been notified by the Insured of the Known Circumstance when the Insured first knew of it, the Insured would have been covered under the policy in force at that time but is not now entitled to be covered by that policy.

The Insured agrees that it will not seek indemnity from Us in respect of the Claim or any Claim arising out of the Known Circumstance under any other policy issued by Us.

We may reduce the amount We pay out under this provision by the amount of any prejudice We may suffer in consequence of any delayed notification to Us.

The limit of Our liability provided under this Policy Extension is the lesser of the limit of Our liability under the terms of the policy in force at the earlier time referred to in paragraph (c) above, or the Indemnity Limit under this Policy. The terms of this Policy otherwise apply.



### 3.4 Court Attendance Costs

For any person described in (a) or (b) below who actually attends court as a witness in connection with a Claim notified under and covered by this Policy, it is agreed that Costs and Expenses will include the following rates per day on which attendance in court has been required:-

- a) for any person who was or is a principal, partner or director of the Named Insured: \$500.
- b) for any person who was or is an Employee of the Named Insured: \$250.

No Deductible shall apply to this Policy Extension.

### 3.5 Estates and Legal Representatives

We agree to include in the definition of the Insured (clause 8.11) the estate, heirs, legal representatives or assigns of any Insured in the event of the death, mental disorder and/or other incapacity or insolvency or bankruptcy of such Insured in respect of any civil liability of the Insured that would have been covered by Insuring Clause A and/or B if the Insured was alive, had capacity or was not insolvent or bankrupt. PROVIDED ALWAYS THAT such persons shall observe and be subject to all the terms of this Policy insofar as they can apply.

### 3.6 Extended Notification Period

In the event that this insurance is not renewed or is cancelled for any reason other than non-payment of premium then the Insured has until such time that the Insured effects another professional indemnity insurance policy either with Us or any other insurer or a period of sixty (60) days commencing on the day immediately following expiry of this Policy whichever is the lesser period, during which to notify Us of any Claim first made against the Insured in writing within such sixty (60) day or lesser period (as the case may be). PROVIDED ALWAYS THAT it is understood and agreed that:

- a) We will treat that Claim as if it had been made against the Insured and notified to Us during the immediately preceding Insurance Period, and
- b) coverage afforded hereunder does not reinstate or increase the Indemnity Limit or extend the Insurance Period.
- c) coverage afforded hereunder will only apply to acts, errors or omissions committed or alleged to have been committed by the Insured before the end of the Insurance Period or the cancellation date of this Policy where this Policy has been cancelled and not before the retroactive date.

### 3.7 Fraud, Dishonesty or Intentional Acts

We agree to indemnify the Insured against civil liability for compensation (including claimants' costs, fees and expenses awarded against or recoverable from the Insured) arising from any Claim made against that Insured, which would otherwise be excluded by reason of Exclusion 5.6 (Fraud, Dishonesty or Intentional Acts). PROVIDED ALWAYS THAT:

- a) such indemnity shall not be provided to any Insured who committed or condoned any act, error or omission excluded by reason of Exclusion 5.6 (Fraud, Dishonesty or Intentional Acts);
- b) such indemnity shall not apply to any Claim against any Insured directly or indirectly based upon, attributable to, or in consequence of:
  - i) the loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes;
  - ii) the loss of an electronic record which represents a current and transferable obligation of a person to pay the holder of the electronic record an amount or amounts of money described in the electronic record in exchange for delivery, adjustment or cancellation of the electronic record; or
  - iii) a transaction, direction or dealing involving or in any way relating to a right to be paid money or to have any of the items referred to in subparagraph (i) or (ii) of this paragraph (b) delivered, negotiated or assigned or an electronic record of such a right.

### 3.8 Joint Venture

If the name of a Joint Venture is included in the Schedule under 'Joint Ventures', then, We will indemnify the Insured for the Insured's joint and individual civil liability, arising out of the conduct of the professional activities and duties of such Joint Venture.

If the name of the Joint Venture is not included in the Schedule under 'Joint Ventures', then, We will indemnify the Insured only for the Insured's individual civil liability and not for the Insured's joint civil liability arising out of the conduct of the professional activities and duties of such Joint Venture. PROVIDED ALWAYS THAT the business of such Joint Venture is the same as the Professional Business (as defined in clause 8.19 Professional Business).

### 3.9 Loss of Documents

We agree to indemnify the Insured in respect of certain loss described in this clause arising from the loss of any Documents (including but not limited to Documents which are the property of the Insured) which have been destroyed, damaged, lost or mislaid and, after diligent search and attempt to recover, cannot be found. PROVIDED ALWAYS THAT:

- a) such loss of Documents was first discovered by the Insured during the Insurance Period and was notified in writing to Us as soon as reasonably practicable after the date of such discovery (but never beyond the expiry date of the Insurance Period); and
- b) such indemnity shall be limited to the costs, charges and expenses of whatsoever nature incurred by the Insured in replacing and/or restoring such Documents and any claim for such costs, charges and expenses shall be supported by bills and/or accounts which shall be subject to approval by a competent person nominated by Us and agreed to by the Insured; and
- c) such indemnity shall be limited to the loss of any Documents:
  - i) which were in the physical custody or control of the Insured or any person to whom the Insured entrusted, lodged or deposited such Documents in the ordinary course of business; or
  - ii) which occurred whilst such Documents were in transit.

### 3.10 Newly created or acquired Subsidiary

We agree to include in the definition of Insured (clause 8.11) any Subsidiary created or acquired by the Named Insured during the Insurance Period for a period of up to thirty (30) days (but never beyond the expiry date of the Insurance Period) from the date of such creation or acquisition.

PROVIDED ALWAYS THAT:

- a) this Policy Extension will only apply in respect of Claim(s) against the Subsidiary arising from an act, error or omission occurring subsequent to the date of creation or acquisition of the Subsidiary; and
- b) the business of such Subsidiary is the same as or substantially similar to the professional activities and duties of the Professional Business (as defined in clause 8.19 Professional Business).

The Insured may apply to Us, within such thirty (30) day period, to vary this Policy to continue the cover provided by this Policy Extension until the expiry date of the Insurance Period. The Insured shall supply Us with such additional information relating to the new Subsidiary and pay any reasonable additional premium as may be required by Us.

### 3.11 Official Investigations and Enquiries – costs and expenses

We agree to pay Investigation Costs and Expenses.

PROVIDED ALWAYS THAT:

- a) We shall be entitled, at Our discretion, to appoint legal representation to represent the Insured in the investigation, examination or enquiry;
- b) the notice of intended investigation, examination or enquiry is served upon the Insured during the Insurance Period and is notified to Us during the same Insurance Period;
- c) in the event that a claim for payment of Investigation Costs and Expenses is withdrawn or indemnity under this Policy Extension is subsequently withdrawn or denied, We shall cease to advance Investigation Costs and Expenses and the Insured shall refund any Investigation Costs and Expenses advanced by Us to the extent that the Insured was not entitled to such Investigation Costs and Expenses, unless We agree in writing to waive recovery of such Investigation Costs and Expenses; and
- d) Our total liability in respect of Investigation Costs and Expenses for all claims made under this Policy Extension shall not exceed \$250,000.

For the purpose of this Policy Extension, an official investigation, examination or enquiry includes but is not limited to:

- i) any investigation, examination or enquiry by way of a Royal Commission or Coronial Enquiry, or conducted by a regulatory authority such as the Australian Securities and Investments Commission.
- ii) any investigation, examination or enquiry conducted by any disciplinary committee of any association, industry or professional body of which the Insured is a member.

### 3.12 Public Relations Expenses

Where the Insured retains the services of a public relations consultant for the sole purpose of protecting the Insured's reputation that has been brought into question as a direct result of a Claim covered by this Policy, We agree to pay any reasonable fees, costs and expenses of such public relations consultant. PROVIDED ALWAYS THAT:

- a) the Insured notifies Us within twenty-eight (28) days of first becoming aware of the Insured's reputation being brought into question, and provide full written details outlining the circumstances surrounding the event, and
- b) We have given prior written consent (which consent shall not unreasonably be withheld) to retain the services of such public relations consultant; and
- c) Our total aggregate liability during any one Insurance Period for all public relations expenses shall not exceed \$50,000.

### 3.13 Run off cover until expiry of the Period of Cover

We agree that in the event that an Insured entity ceased or ceases to exist or operate or be a Subsidiary or became or becomes 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 Insured entity shall continue until the expiry date of the Insurance Period.

PROVIDED ALWAYS THAT such coverage shall only apply in respect of Claim(s) arising from any act, error or omission occurring prior to the effective date that such Insured entity ceased to exist or operate or was consolidated with, merged into or acquired by another entity.

### 3.14 Severability

We agree that where any Insured:

- a) failed to comply with the duty of disclosure contained in the Insurance Contracts Act 1984 (Commonwealth); or
- b) made a misrepresentation to Us before this contract of insurance was entered into; or
- c) fails to comply with any conditions of this Policy,

the right of any other Insured to indemnity under this Policy shall not be prejudiced thereby. PROVIDED ALWAYS THAT this Policy Extension shall only apply when:

- i) such other Insured shall be entirely innocent of and has no prior knowledge of any such conduct; and
- ii) such other Insured shall, as soon as is reasonably practicable upon becoming aware of any such conduct, advise Us in writing of all known facts in relation to such conduct.

NOTWITHSTANDING the above, any fact or knowledge possessed by any past or present partner, principal, director, chairman, chief executive officer, chief operating officer, chief financial officer, company secretary, chief legal officer or the holder of any similar or equivalent positions shall be imputed to the Named Insured.

### 3.15 Previous Business

We agree to indemnify any principal, partner or director of the Insured for Claims resulting from professional services they performed prior to joining the Insured.

This extension will only apply if:

- a) the professional services were performed in the same profession as the Professional Business of the Insured; and
- b) there were no more than 10 partners or directors in the past business in which the principal, partner or director practised; and
- c) the principal, partner or director of the Insured does not have the benefit of cover under any other insurance or indemnity.

Notwithstanding Clauses 2.1 and 2.2, the retroactive date for this Extension is limited to the commencement date of the past business in which the principal, partner or director practised.

### 3.16 Emergency Costs and Expenses

We agree to pay Costs and Expenses incurred by the Insured prior to obtaining Our consent, provided Our consent is obtained within 30 days of the first of such Costs and Expenses being incurred, and provided that for the purposes of this Extension only:

- a) We are only liable to indemnify the Insured for that part of the Insured's liability in respect of each Claim and Costs and Expenses in excess of the Deductible, and
- b) If We subsequently refuse to pay under the Policy, the Insured must reimburse Us for any Costs and Expenses that We have paid in advance, according to their respective rights and interests.

The sub limit of liability for all such payments under this Extension is \$100,000. This sub limit forms part of, and is not payable in addition to, the Indemnity Limit.

### 3.17 Reinstatement of Indemnity Limit

We agree to indemnify the Insured in respect of any Claim(s) which require(s) reinstatement of the Indemnity Limit during the Insurance Period because the Indemnity Limit is eroded (partially or totally) as a result of the payment of an earlier and separate Claim, Claims or Costs and Expenses. However the aggregate of all such reinstatements in connection with all such subsequent Claims will not exceed a total amount equal to the Indemnity Limit, inclusive of Costs and Expenses, and such reinstatements are only available where the subsequent Claim(s) is/are based on facts and matters totally different from and unrelated to those which gave rise to the erosion or exhaustion of the Indemnity Limit. Further, this Extension does not apply until the Insured has exhausted the 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.

### 3.18 Costs and Expenses In Addition

We agree to provide cover for any Costs and Expenses in addition to the Indemnity Limit, in an amount not exceeding the Indemnity Limit. We will only pay these, however, if:

- a) We incur them; or
- b) The Insured incurs them after first obtaining Our agreement in writing and the Costs and Expenses are in Our view reasonable and necessary.

We will not be obliged to defend, or to continue to defend, any Claims or pay, or continue to pay, any Costs and Expenses associated with such defence, once the Indemnity Limit has been exhausted.

Costs and Expenses does not include any internal or overhead expenses of the Insured or the cost of the Insured's time. This Extension does not operate if Extension 3.17 is operative.

## Section 4: Optional Extensions

### Preamble

It is agreed that:

- a) the indemnity provided by each Optional Extension is subject to the Schedule, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this Policy (unless otherwise expressly stated herein);
- b) the inclusion of any Optional Extension shall not increase the Indemnity Limit;
- c) the inclusion of any Optional Extension shall be at Our absolute discretion; and
- d) where an Optional Extension is not specified as included in the Schedule then this Policy shall not provide any indemnity in relation to coverage specified under such Optional Extension.

### 4.1 Fidelity

Notwithstanding Exclusion 5.6 (Fraud, Dishonesty or Intentional Acts) We agree to provide indemnity to the Insured against loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to the Insured or for which the Insured is legally liable where any such loss is sustained in consequence of any dishonest or fraudulent act or omission of any Insured. PROVIDED ALWAYS THAT:

- a) such loss is first discovered by the Insured during the Insurance Period and is notified in writing to Us as soon as reasonably practicable after the date of such discovery (but never beyond the expiry date of the Insurance Period);
- b) We shall not be liable for any loss sustained in consequence of any act or omission occurring after the date of the discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the Insured concerned;

- c) We shall not be liable to indemnify any Insured who committed or condoned any dishonest or fraudulent conduct in consequence of which the loss occurred;
- d) the Insured shall bear the burden of adducing satisfactory proof to substantiate any loss hereunder (including any legal, investigative, accounting or other costs incurred in such process) and We will be under no obligation to provide indemnity to the Insured until such time as We are satisfied that such loss has, in fact, been sustained;
- e) all interrelated individual dishonest or fraudulent acts or omissions shall be deemed to constitute a single loss and a single Deductible shall apply to such loss; and
- f) Our liability for each loss under this Optional Extension and Our aggregate liability for all losses under this Optional Extension shall not exceed \$250,000.

#### 4.2 Multi-year run-off after merger, takeover, sale, winding up of Named Insured

If the Named Insured is subject to a merger, takeover, sale or winding up, then, We agree to extend the Insurance Period up to seven (7) years immediately following the expiry of the Period of Cover.

PROVIDED ALWAYS THAT:

- a) this Policy Extension will only apply with respect to any Claim(s) arising from any act, error or omission occurring prior to the effective date of such merger, takeover, sale or winding up, and
- b) on such terms and Conditions, and for such additional premium as We may reasonably require.

## Section 5: Exclusions

We shall not be liable under this Policy to provide indemnity in respect of any:

### 5.1 Aircraft, motor vehicles and watercraft

Claim based upon, attributable to, or in consequence of the ownership, lease, operation or use of any aircraft, motor vehicle or watercraft by an Insured.

### 5.2 Contractual Liability

Claim based upon, attributable to, or in consequence of any duty or obligation assumed by an Insured by way of any contractual undertaking, warranty, guarantee or indemnity, to the extent that such liability exceeds the liability the Insured would have incurred in the absence of such contractual undertaking, warranty, guarantee or indemnity.

### 5.3 Asbestos

Claim which would not have arisen but for the existence of asbestos.

### 5.4 Directors and Officers Liability or Trustees Liability

Claim based upon, attributable to, or in consequence of any activities as a trustee, director, secretary or officer unless that liability would have arisen if the Insured had not held that position as a trustee, director, secretary or officer.

### 5.5 Fines and Penalties

Claim for punitive, aggravated, multiple or exemplary damages, or fines or penalties imposed by law, PROVIDED ALWAYS THAT this exclusion shall not apply to compensatory civil penalties. 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 not increase the Indemnity Limit.

PROVIDED FURTHER THAT We will not be liable to indemnify the Insured for any compensatory civil penalty:

- a) for which We are legally prohibited from indemnifying the Insured under Australian law.
- b) based upon, attributable to or in consequence of any:

- i) wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any legislation.
- ii) recklessness.
- iii) requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost.

## 5.6 Fraud, Dishonesty or Intentional Acts

Claim based upon, attributable to, or in consequence of:

- a) any dishonest, fraudulent, criminal, or malicious act or omission of an Insured or their consultants, sub-contractors or agents; or
- b) any act or omission of an Insured or their consultants, sub-contractors, or agents with the intention of causing a third party loss, damage or injury or committed with a reckless disregard for the consequences thereof; or
- c) any wilful breach of any statute, contract or duty by an Insured or their consultants, sub-contractors or agents.

PROVIDED ALWAYS THAT this exclusion shall not apply unless and until:

- i) the Insured makes an admission in writing of any conduct described in clauses (a), (b) and/or (c) above, or
- ii) it has been established through a judicial process that the Insured has committed any conduct described in clauses (a), (b) and/or (c) above.

## 5.7 Jurisdictional Limits

Claim:

- a) brought in a court of law within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates; or
- b) arising out of the enforcement of any judgment, order or award obtained within, or determined pursuant to, the laws of the United States of America or the Dominion of Canada or their territories or protectorates.

## 5.8 Radioactivity and Nuclear Hazards

Claim or liability arising from or directly or indirectly attributable to or in connection with:

- a) Loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting from or arising therefrom or any consequential loss; or
- b) Any legal liability of whatsoever nature

directly or indirectly caused by or contributed to by or arising from:

- i) Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- ii) The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

## 5.9 Obligations to Workers

Claim based upon, attributable to, or in consequence of:

- a) Bodily Injury of any Worker of an Insured or damage to or destruction of any property of any Worker of an Insured, including loss of use of property, arising out of, or in the course of, their employment.
- b) any actual or alleged Employment Practice Breach (as defined in clause 8.8).

For the purpose of Exclusions 5.9(a) and 5.9(b) only, the term "Worker" means any person employed by, or is deemed to be employed by, the Insured pursuant to any Workers' Compensation Law.



#### **5.10 Occupier's liability**

Claim based upon, attributable to, or in consequence of any liability incurred or alleged to have been incurred as a result of occupation, control, management or ownership of any real property by an Insured.

#### **5.11 Pollution**

Claim arising from or directly or indirectly attributable to or in consequence of the actual or alleged release or discharge of Pollutants.

#### **5.12 Known Claims and Known Circumstances**

- a) known Claims (or losses or claims) as at the inception date of this Policy, or
- b) Claims (or losses or claims) arising from any Known Circumstance(s); or
- c) Claims (or losses or claims) disclosed in the Proposal form.

#### **5.13 Product Liability**

Claim based upon, attributable to, or in consequence of the manufacture, preparation, modification, repair, supply, maintenance or treatment of any goods or products sold, supplied or distributed by the Insured, except where such Claim arises solely and directly from any advice, design or specification prepared by the Insured in the conduct of the professional activities and duties of the Professional Business.

#### **5.14 Related or associated entities**

Claim brought or maintained by or on behalf of an Insured or any Subsidiary or parent of an Insured.

#### **5.15 Territorial limits**

Claim based upon, attributable to, or in consequence of an act, error or omission occurring within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates.

#### **5.16 War/Terrorism**

Claim or liability of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following, regardless of any cause or event contributing concurrently or in any other sequence:

- a) War, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- b) Any act of terrorism; or
- c) Any action taken in controlling, preventing, suppressing or in any way relating to (a) and/or (b) above.

For the purposes of this exclusion, an act of 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.

#### **5.17 Trading debts**

Claim directly or indirectly based upon, attributable to, or in consequence of:

- a) any trading debt incurred by an Insured or any guarantee given by an Insured for a debt; or
- b) the refund of the Insured's professional fees or charges (by way of damages or otherwise).

#### **5.18 Restrictive Trade Practices**

Claim directly or indirectly based upon, attributable to, or in consequence of any actual or alleged restrictive trade practices, restraint of trade or unfair competition.

### 5.19 Investment Performance

Claim or liability directly or indirectly arising from attributable to or in consequence of:

- a) any actual or alleged dealings of any nature by which it is sought to affect the price of, or market in, any shares or debentures of any company or commodity or currency, or of any negotiable instrument, other than dealings carried out in accordance with the laws, rules and regulations applicable to such dealings;
- b) any financial or investment advice provided by the Insured, including but not limited to any advice or recommendation as to the valuation, tax implications or performance of any investment;
- c) a failure by the Insured to warn of the risks of market fluctuation of any investment.

### 5.20 Excluded Activities

Claim arising from or directly or indirectly attributable to or in consequence of:

- a) finance and or mortgage broking;
- b) corporate advisory;
- c) stockbroking;
- d) financial planning, insurance-related or funds management activities, whether or not it requires an Australian Financial Services Licence or an authority under such a License;
- e) advice or consulting in connection with mergers and acquisitions of entities or businesses or parts thereof;
- f) actual or alleged advice in relation to finance, accounting or tax matters;
- g) any valuation of property or premises made by or on behalf of the Insured;
- h) work undertaken in connection with any railway signalling;
- i) work undertaken in connection with swimming pool contracts;
- j) work undertaken in connection with building certification;
- k) work undertaken in connection with cooling towers.

## Section 6: Claims Conditions

### 6.1 Claims mitigation and co-operation

- a) If the Insured, either prior to or during the Insurance Period becomes aware of a situation which could, if not rectified, lead to a Claim or increase the quantum of a Claim, the Insured shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability hereunder. Costs and expenses incurred by the Insured in compliance with this clause 6.1(a) shall be at the Insured's cost, unless otherwise agreed in writing by Us.
- b) The Insured shall frankly and honestly disclose to Us all relevant information and, in addition shall provide assistance to Us, as We may require to enable Us to investigate and to defend any Claim under this Policy and/or to enable Us to determine Our liability under this Policy. Costs and expenses incurred by the Insured in compliance with this clause 6.1(b) shall be paid by Us in accordance with Policy Extension 3.1 - Claims Preparation Costs
- c) Costs and expenses incurred by Us to enable Us to determine Our liability under this Policy shall be at Our own cost.

### 6.2 Defence and settlement

- a) The Insured shall not settle any Claim, incur any Costs and Expenses or Investigation Costs and Expenses, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any Claim or loss without Our written consent, such consent not to be unreasonably withheld. We shall not be liable for any settlement, Costs and Expenses, Investigation Costs and Expenses, admission, offer or payment, or assumed obligation to which We have not consented in writing.

- b) We shall be entitled if We so desire, to take over and conduct, in the name of the Insured, the defence or settlement of any Claim at any time. In the event that this occurs, We will then have sole control of the Claim.
- c) If We retain lawyers to conduct, in the name of the Insured, the investigation, defence or settlement of any Claim, those lawyers will only act on behalf of Us in relation to any issue regarding the Insured's entitlement to indemnity from Us and they will not act on the Insured's behalf in respect of any such issue. Any information that is received by lawyers retained by Us in the course of investigating, defending or settling any Claim against the Insured can be provided to Us and relied upon by Us in relation to any issue that may arise regarding Our liability to indemnify the Insured. In relation to any such information, the Insured waives any claim that it may have for legal professional privilege as between the Insured, the lawyers We retained and Us.
- d) The lawyers retained by Us to conduct the investigation, defence or settlement of any Claim, may provide advice to Us on any issue regarding Our liability to indemnify the Insured and, whilst doing so, may continue to act in the investigation, defence or settlement of the Claim on behalf of both Us and the Insured.
- e) The Insured agrees that all communications between Us and lawyers retained by Us to act in the conduct of the investigation, defence or settlement of any Claim which relate to the Insured's entitlement to indemnity from Us are privileged as between Us and the lawyers and the Insured agrees that it is not entitled, under any circumstances, to access or obtain any such communications.
- f) If any actual or apparent conflict arises between Our interests and the Insured's interests, the lawyers retained by Us to conduct the investigation, defence or settlement of any Claim may cease acting on behalf of the Insured and may continue to act on behalf of Us in relation to any dispute between Us and the Insured with respect to the Insured's entitlement to indemnity from Us.

### 6.3 Insured's right to contest

In the event that We recommend a settlement in respect of any Claim and the Insured does not agree that such Claim should be settled, then the Insured may elect to contest such Claim. PROVIDED ALWAYS THAT Our liability in connection with such Claim shall not exceed the amount for which the Claim could have been so settled plus the Costs and Expenses incurred with Our written consent up to the date of such election, less the Deductible.

### 6.4 Reporting and notice

- a) The Insured shall give to Us written notice as soon as practicable of any Claim made against an Insured PROVIDED ALWAYS THAT such written notice is given to Us during the Insurance Period in which the Claim is made.
- b) Notice of any Claim shall be given in writing to DUAL Australia Pty Ltd, and delivered to:

DUAL Australia Pty Limited  
Level 6, 160 Sussex Street  
Sydney NSW 2000  
Australia

### 6.5 Senior Counsel clause

- a) We shall not require the Insured to contest any Claim unless a Senior Counsel (to be mutually agreed upon by the Insured and Us) shall advise that such Claim should be contested.
- b) In formulating such advice, Senior Counsel shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely Costs and Expenses and the prospects of the Insured successfully defending the Claim.
- c) The cost of such Senior Counsel's opinion shall be paid by Us in addition to the Indemnity Limit.

### 6.6 Subrogation and Allocation of the Proceeds of Recoveries

In respect of any Claim covered by this Policy, and without limiting Our rights at law, We shall be subrogated to all the Insured's rights of recovery, and the Insured shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of documents necessary to enable Us effectively to bring suit in the name of the Insured.

The Insured shall not, without first obtaining Our written consent, do anything or fail to do anything which excludes, limits or prejudices Our rights of subrogation. In particular, without limiting the operation of this provision, the Insured shall not enter into any contract or agreement which excludes, limits or prejudices a right of recovery which the Insured may have in respect of any Claim covered by this Policy.

Should the Insured incur any legal liability which is not covered by this insurance:

- a) due to the application of any Deductible, and/or

- b) where the amount(s) of any judgment(s) or settlement(s) exceed(s) the Indemnity Limit or any applicable sub-limit;

the Insured will be entitled to the first call on the proceeds of all recoveries made, by either the Insured or Us, on account of such legal liability until fully reimbursed for such uninsured amount or amounts (less the actual costs of making such recoveries where those costs are incurred by Us) and any remaining amount(s) will be applied to Our reimbursement.

## 6.7 Foreign Currency

All amounts referred to in this Policy are in Australian Dollars.

If the Insured incurs liability to settle any Claim for an amount stated in the local currency of any country or territory outside the Commonwealth of Australia, where an award is made or a settlement is agreed upon, then, the amount payable by Us shall be the value of such award or settlement together with costs awarded or payable to any claimant converted to Australian Dollars at the free rate of exchange published in the Australian Financial Review on the date on which We pay to the Insured (or some other person at the Insured's direction) the indemnity in respect of such award or settlement; subject always to the Indemnity Limit.

## Section 7: General Conditions

### 7.1 Alteration to risk

The Insured shall give to Us written notice as soon as practicable of any material alteration to the risk during the Insurance Period including but not limited to:

- a. an Insured going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or an Insured failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;
- b. any material change in the nature of the professional services offered by an Insured.

Where such notice is given and/or where there is any material alteration to the risk We shall be entitled to cancel this Policy in accordance with the Insurance Contracts Act 1984 (Commonwealth). Provided always that in the event that the Insured should become bankrupt or insolvent, We shall not be relieved thereby of the payment of any Claim hereunder because of such bankruptcy or insolvency.

### 7.2 Assignment of interest

No change in, or modification of, or assignment of interest under this Policy shall be effective except when made by written endorsement to this Policy and signed by an authorised employee of Us.

### 7.3 Cancellation

- a. The Insured may cancel this Policy at any time by notifying Us in writing.
- b. We may cancel this Policy in accordance with the relevant provisions of the Insurance Contracts Act 1984 (Commonwealth). Such cancellation shall take effect thirty (30) days from the time of receipt of notification by the Insured or the Insured's insurance broker.
- c. In the event of cancellation by the Insured or by Us, We will allow a pro-rata refund of Premium for the unexpired Insurance Period.

### 7.4 Deductible

- a. In respect of each Claim made against the Insured (or each loss or claim incurred by the Insured in respect of Policy Extensions 3.1 Claims Preparation Costs, 3.9 Loss of Documents and 3.11 Official Investigations and Enquiries - costs and expenses) the amount of the Deductible shall be borne by the Insured at their own risk and We shall only be liable to indemnify the Insured for that part of any Claim (or any loss or claim) which is in excess of the Deductible.
- b. In the event of a Claim by the Insured under this Policy, the Insured shall, if directed by Us, pay to Us (or as is directed by Us) the Deductible within fourteen (14) working days. Any delay, failure or refusal by the Insured to pay the Deductible will entitle Us to deduct such amount from any amount(s) required to settle any Claim or judgment, order, or any other payment to be made by Us under this Policy. In the event that a failure or refusal to grant access to monies for any Deductible results in a failure of a settlement or an increase in Costs and Expenses, Our liability in connection with such Claim shall not exceed the amount for which the Claim could have been so settled plus the Costs and Expenses incurred with Our written consent up to the date of such failure, less the Deductible.

- c. Where We have elected to pay all or part of the Deductible in respect of any Claim (or any loss or claim), the Insured shall, within fourteen (14) working days from the date of such payment, reimburse Us for such payment.
- d. In respect of any Claim (or any loss or claim) where the amount of the Claim (or any loss or claim) is less than the amount of the Deductible, the Insured shall bear all Costs and Expenses associated therewith unless We shall have agreed to meet such Costs and Expenses pursuant to Insuring Clause B.
- e. Where the Deductible is expressed in the Schedule to be inclusive of Costs and Expenses then the Insured will pay all Costs and Expenses, up to the amount of the Deductible, incurred by Us pursuant to the engagement of advisers considered necessary by Us to determine the liability of the Insured and to resolve the Claim (or loss or claim).
- f. Any Costs and Expenses incurred by Us to determine whether We have a liability to indemnify the Insured under this Policy shall not be subject to the Deductible but shall be borne by Us.

#### 7.5 Indemnity Limit

Subject to Clauses 3.1, 3.17 and 3.18, Our total liability under the Policy for any one Claim including Costs and Expenses and in the aggregate for all Claims including Costs and Expenses shall not exceed the Indemnity Limit.

#### 7.6 Multiple claims

- a. All causally connected or interrelated acts, errors or omissions shall jointly constitute a single act, error or omission under this Policy.
- b. Where a single act, error, or omission gives rise to more than one Claim, all such Claim(s) shall jointly constitute one Claim under this Policy.

#### 7.7 Policy construction and interpretation

- a. The construction, interpretation and meaning of the provisions of this Policy shall be determined in accordance with the laws of Australia and the States and Territories thereof. Each party agrees to submit to the jurisdiction of any Court of competent jurisdiction in a State or Territory of Australia and to comply with all requirements necessary to give such Court jurisdiction. All disputes arising under this Policy shall be determined in accordance with the law and practice of such Court.
- b. The marginal notes and titles of paragraphs in this Policy are included for descriptive purposes only and do not form part of this Policy for the purpose of its construction or interpretation.
- c. Under this Policy, the masculine includes the feminine and the singular includes the plural and vice versa and reference to a person includes a body corporate, an authority, an association or a Joint Venture (whether incorporated or unincorporated), a partnership and a trust.

#### 7.8 Complaints Procedures

Any enquiry or complaint relating to this Insurance should be referred to Us in the first instance. If this does not 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.

Complaints that cannot be resolved by Policyholder & Market Assistance may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

For the purpose of this Clause only, "this Insurance" means the Policy, "you/your" means the Insured.

#### 7.9 Service Of Suit (Australia)

The Underwriters hereon agree that:-

- a. In the event of a dispute arising under this Policy, Underwriters at the request of the Insured (or reinsured) will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.
- b. Any summons notice or process to be served upon the Underwriters may be served upon Lloyd's General Representative at Lloyd's Australia:

Lloyd's Australia Limited  
Suite 2, Level 21 Angel Place  
123 Pitt Street  
Sydney NSW 2000

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.

- c. 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.

#### 7.10 **General Insurance Code of Practice**

This Policy is Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any claims adjusted outside Australia. 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 this Code is available by contacting DUAL Australia or from the Insurance Council of Australia's Website at [www.ica.com.au](http://www.ica.com.au) or from the Code's dedicated Website at [www.codeofpractice.com.au](http://www.codeofpractice.com.au)

## Section 8: Definitions

### 8.1 **Bodily Injury**

"Bodily Injury" shall mean physical injury, sickness, disease, death, mental injury, mental anguish, nervous shock or emotional distress of any person.

### 8.2 **Claim**

"Claim" shall mean:

- a) The receipt by the Insured of any written or oral demand for compensation made by a third party against the Insured.
- b) Any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon the Insured which seeks compensatory relief made by a third party against the Insured.
- c) for the purpose of Policy Extension 3.9 only, any losses described in that clause arising from loss of any Documents.
- d) for the purpose of Policy Extension 3.11 only, any attendance by the Insured at an investigation, examination or enquiry.

### 8.3 **Costs and Expenses**

"Costs and Expenses" shall mean the reasonable legal costs and other expenses (including but not limited to legal counsels' fees and experts' fees) incurred by or on behalf of the Insured with Our prior written consent (which shall not be unreasonably withheld) or by Us in the investigation, defence or settlement of a Claim, or in bringing or defending appeals in connection with a Claim.

### 8.4 **Deductible**

"Deductible" shall mean the amount shown as the Deductible in the Schedule.

### 8.5 **Documents**

"Documents" shall mean deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material but shall not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.



## 8.6 Employee

“Employee” shall mean any person employed under a contract of service or apprenticeship.

## 8.7 Employment Practice Breach

“Employment Practice Breach” shall mean any employment practices liability, including but not limited to:

- a) employment related discrimination against any Worker or applicant for employment whether because of race, colour, age, sex, disability, pregnancy, marital status, sexual orientation, sexual preference or otherwise,
- b) wrongful dismissal of any Worker;
- c) workplace harassment whether sexual or otherwise, including bullying, of any Worker;
- d) breach of any oral or written employment contract;
- e) wrongful demotion, failure to promote, wrongful deprivation of career opportunity, wrongful discipline, negligent evaluation or failure to grant tenure of employment to any Worker;
- f) failure to provide or adhere to adequate employment policies or procedures;
- g) defamation arising from employment related matters;
- h) employment related invasion of privacy;
- i) false or misleading advertising or representation involving terms and conditions of employment;
- j) violation of any Federal, State or local statute or regulation governing employment practices; and/or
- k) denial of natural justice to any Worker concerning employment.

## 8.8 Indemnity Limit

“Indemnity Limit” shall mean the limit of Our liability under this Policy as specified in the Schedule.

## 8.9 Insurance Period

“Insurance Period” shall mean the period specified in the Schedule.

## 8.10 Insured

“Insured” shall mean:

- a) the Named Insured;
- b) any predecessor in business of the Named Insured;
- c) any person who is, during the Insurance Period, a principal, partner or director of the Named Insured but only in respect of work performed while a principal, partner or director of the Named Insured;
- d) any person who is, during the Insurance Period, an Employee of the Named Insured but only in respect of work performed while an Employee of the Named Insured; or
- e) any former principal, partner, director or Employee of the Named Insured, but only in respect of work performed while such person was a principal, partner, director or Employee of the Named Insured.
- f) any consultant, sub-contractor or agent but only to the extent that they are indemnified under Policy Extension 3.2

## 8.11 Investigation Costs and Expenses

“Investigation Costs and Expenses” shall mean reasonable legal costs and other expenses incurred by or on behalf of the Insured with Our prior written consent (such consent not to be unreasonably withheld) or by Us arising out of any attendance by an Insured at any official investigation, examination or enquiry where such attendance relates to the conduct of the professional activities and duties of the Professional Business and such investigation, examination or enquiry may lead to a recommendation or finding which might give rise to a Claim.

“Investigation Costs and Expenses” does not include any fine, penalty or order for the payment of monetary compensation.

#### **8.12 Joint Venture**

“Joint Venture” shall mean the entering into of a venture (by whatever name called) which the Named Insured carries on together with any other person, company, corporation, partnership or other entity not otherwise deemed to be an Insured under this Policy.

#### **8.13 Known Circumstance**

“Known Circumstance” shall mean any fact, situation or circumstance which:

- a) an Insured knew at any time before this Policy began or before this Policy was amended/endorsed; or
  - b) a reasonable person in the Insured’s professional position would have thought, at any time before this Policy began or before this Policy was amended/endorsed;
- might result in someone making a Claim against the Insured.

For the purposes of this Definition 8.11, ‘Insured’ does not include ‘Employee’ (as defined in clause 8.7) or any consultant, sub-contractor or agent (as referred to in sub clause (f) of Definition 8.11 Insured).

#### **8.14 Named Insured**

“Named Insured” shall mean the person, persons, partnership, company, corporation or other entity specified as the Named Insured in the Schedule.

#### **8.15 Policy**

“Policy” shall mean:

- a) the Schedule, Insuring Clauses, Extensions, Conditions, Definitions, Exclusions and other terms contained herein;
- b) any endorsement attaching to and forming part of this Policy either at inception or during the Insurance Period; and
- c) the Proposal.

#### **8.16 Pollutants**

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

#### **8.17 Premium**

“Premium” shall mean the premium specified in the Schedule or in any endorsement to the Schedule.

#### **8.18 Professional Business**

“Professional Business” shall mean the business which is conducted by the Named Insured:

- a) as specified in the Schedule, and/or
- b) as described in the nature of business/activities/professional services question in the Proposal.

If the Named Insured should change its name and there is no other change which materially alters the risk, the Professional Business will continue to be covered by this Policy.

#### **8.19 Proposal**

“Proposal” shall mean the written proposal made by the Insured to Us containing particulars and statements which, together with other information provided by the Insured, are considered as incorporated herein.

#### **8.20 Schedule**

“Schedule” shall mean the schedule to this Policy.

#### **8.21 Senior Counsel**

“Senior Counsel” shall mean a barrister in active practice who is entitled to use the post-nominals QC or SC in any one or more superior court in the Commonwealth of Australia or the Dominion of New Zealand.

#### **8.22 Subsidiary**

“Subsidiary” shall mean:

- a) any entity which by virtue of any applicable legislation or law is deemed to be a subsidiary of the Named Insured specified in the Schedule; or
- b) any entity over which a Named Insured is in a position to exercise effective direction or control.

#### **8.23 Taxable Percentage**

“Taxable Percentage” is the Insured’s entitlement to an Input Tax Credit on the Premium as a percentage of the total GST on that premium.

#### **8.24 We or Our or Us**

“We or Us or Our or Insurers” shall mean DUAL Australia Pty Limited, ACN 107 553 257 as agent of the Underwriters named in the Schedule Item 11 under the heading “Underwriters” subscribing to this insurance.