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In consideration of the premium charged, the **Underwriters** and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

SECTION 1: INSURING AGREEMENT

1.1 The **Underwriters** will pay on behalf of any **Insured Person** the **Loss** arising from a **Claim** first made during the **Policy Period** (or **Extended Reporting Period** – if applicable) against such **Insured Person** for any **Wrongful Act** unless the **Named Insured** has indemnified the **Insured Person** for such Loss.

No **Excess** applies to Insuring Agreement 1.1.

1.2 The **Underwriters** will pay on behalf of any **Named Insured** the **Loss** arising from a **Claim** first made during the **Policy Period** (or **Extended Reporting Period** – if applicable) against any **Insured Person** for any **Wrongful Act** if the **Named Insured** has paid such **Loss** to or on behalf of the **Insured Person**.

1.3 The **Underwriters** will pay on behalf of any **Named Insured** the **Loss** arising from a **Claim** first made during the **Policy Period** (or **Extended Reporting Period** – if applicable) against the **Named Insured** for a **Breach of Professional Duty** – provided this Insuring Agreement is shown in the **Schedule** as “Included”.

SECTION 2: AUTOMATIC EXTENSIONS

1. Continuous Cover

This Extension affords cover for any **Claim** arising out of, based upon or attributable to a **Circumstance** which could have been, but was

not, notified by the **Insured** under any prior policy provided by the **Underwriters** and which is first notified to the **Underwriters** during the **Policy Period**, provided that:

- a the failure by the **Insured** to notify such **Circumstance** under any such prior policy was not fraudulent; and
- b the **Underwriters** have the discretion to apply either the terms and conditions of this **Policy** or the terms and conditions of the prior policy

in effect when the **Circumstance** first arose; and

- c the **Insured's** entitlement to indemnity will be reduced by the extent of any prejudice to the **Underwriters** as a result of the **Insured's** failure to notify such **Circumstance** under any such prior policy.

2. Estate Extension

This Extension affords cover for any **Claim** for a **Wrongful Act** if such claims are made against the estates, heirs, legal representatives or assigns of a deceased **Insured Person** or the legal representatives or assigns of an **Insured Person**.

3. Loss Mitigation

If the **Named Insured** reasonably determines during the **Policy Period** that urgent action is needed in order to avoid or minimise the risk of a **Claim** for which coverage under this **Policy** would apply, the **Insured** shall be entitled to retain a loss mitigation advisor to provide services in connection with avoiding or minimising such risk. The **Underwriters** shall pay the **Insured** for the reasonable fees, costs and expenses incurred by or on behalf of the **Insured**, with the **Underwriters'** prior written consent (such consent not to be unreasonably withheld or delayed), for such loss mitigation services.

This Automatic Extension does not extend to cover the **Insured's** own time spent in mitigating any such risk. This coverage is subject to a Sublimit of Liability as specified in Item 5 of the **Schedule**.

4. Defamation – Insuring Agreement 1.3 only

The **Underwriters** will indemnify the **Insured** for any **Claim** for defamation by the **Insured** which arises out of a **Breach of Professional Duty**.

5. Fair Trading Act – Insuring Agreement 1.3 only

The **Underwriters** will indemnify the **Insured** for any **Claim arising out of a Breach of Professional Duty** made under the terms of the Consumer Protection (Fair Trading) Act 2009 (Singapore).

or any similar fair trading legislation.

6. Dishonesty and Fraud – Insuring Agreement 1.3 only

The **Underwriters** will indemnify the **Insured** for any **Claim** made against the **Insured** arising from any dishonest or fraudulent act of omission committed by any **Employee**, provided that:

- a Such conduct has not been knowingly permitted or condoned by any other **Insured** who is un-connected with such **Claim**; and
- b there is no indemnity for the person(s) who carried out, or was alleged to have carried out, the conduct or condoned the conduct; and
- c this arises from a **Breach of a Professional Duty**.

7. Loss of Documents – Insuring Agreement 1.3 only

The **Underwriters** will indemnify the **Insured** for the reasonable and necessary costs and expenses incurred in replacing and restoring **Documents** that after a diligent search cannot be located or that have been destroyed, damaged or distorted beyond reasonable use, provided that such documents were:

- a in the physical custody or control of the **Insured**; and
- b this arises from a **Breach of a Professional Duty**.

8. Quasi Judicial – Insuring Agreement 1.3 only

The **Underwriters** will indemnify the **Insured** in relation to any complaint or investigation

against the **Insured** by a professional or statutory body which has jurisdiction to investigate and adjudicate in such a situation, provided that any such investigation or complaint has been notified to the **Underwriters** during the **Policy Period**, for:

- a all orders or determination of compensation against the **Insured**; and
- b any **Defence Costs**.

which arise by way of a **Breach of Professional Duty**.

This extension is subject to a **Sublimit of Liability** as shown in Item 5 of the **Schedule**, inclusive of **Defence Costs**.

SECTION 3: OPTIONAL EXTENSIONS

1. Extended Reporting Period

If this Extension is shown as Included in Item 5 of the Schedule and the **Policy** is not renewed by the **Underwriters**, the **Insured** shall have the right to (a) an automatic extended reporting period of sixty (60) days, commencing on the Expiration Date set forth in Item 2B of the Schedule; or (b) purchase an **Extended Reporting Period**.

The **Insured's** right to purchase an **Extended Reporting Period** as described in part (b) above shall lapse unless written notice of election to purchase such **Extended Reporting Period** and the applicable additional premium is received by the **Underwriters** within sixty (60) days after the Expiration Date set forth in Item 2B of the Schedule.

The additional premium for an **Extended Reporting Period** shall be determined by the **Underwriters** on application of the right to purchase by the **Insured** which must be made prior to the expiry of the **Policy**.

The **Insured** shall not have any right to an **Extended Reporting Period** in the event of any management and or **Organisational Change** or in the event of cancellation or non-renewal for non payment of premium.

Any **Extended Reporting Period** provided by this **Policy** shall not increase or reinstate any **Limit of Liability** or **Sublimit of Liability** of this **Policy** and is non-cancellable.

2. Outside Positions

If this Extension is shown as Included in Item 5 of the **Schedule**, the **Underwriters** agree to indemnify the **Insured** for any **Claims** for **Wrongful Act**, brought against an **Insured Person** who at the specific request or direction of a **Named Insured**, acts as an **Executive** or equivalent thereof of an **Outside Entity** but only whilst that person is acting in their capacity as such. Any such person shall be referred to herein as an **Outside Position Insured Person**.

The extent of indemnity afforded by **Underwriters** shall be in excess of any indemnification from an **Outside Entity** and any other insurance coverage provided to an **Outside Entity** or its executives, directors, officers, trustees, or equivalent.

SECTION 4: EXCLUSIONS

The Underwriters will not pay anything under this **Policy** in respect of any claim:

1. Asbestos

arising directly or indirectly out of, based upon or attributable to:

- a The actual, alleged or threatened presence, discharge, dispersal, release, migration or escape of asbestos; or
- b Any direction, request or effort to:
 - i Test for, monitor, clean up, remove, contain, treat, detoxify or neutralize asbestos; or
 - ii Respond to or assess the effects of asbestos.

2. Bodily Injury/Property Damage

arising out of or based upon bodily injury (other than emotional distress or mental anguish), sickness, disease, or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof.

This Exclusion shall not apply if such injury, sickness, disease, death, destruction or damage results from a **Breach of Professional Duty**.

3. Dishonesty and Fraud

arising directly or indirectly out of, based upon or attributable to any dishonest, criminal or

fraudulent act by any **Insured**, and only upon a final judgement or adjudication or any formal written admission by an **Insured** establishes that such act occurred.

4. Excluded Losses

For any:

- i fines or penalties imposed by statute, except for orders or determinations of compensation under Extension 8 Quasi Judicial Costs;
- ii taxes, except as provided by GST Condition;
- iii the multiple portion of any multiplied damage award; and
- iv amounts for which the Underwriters are prohibited from indemnifying the **Insured** under any law or statute.

5. Pre Retroactive Date

arising from any **Wrongful Act** and or **Breach of Professional Duty** committed or allegedly committed prior to the **Retroactive Date** shown in the **Schedule**.

6. Insured vs Insured

brought by or on behalf of any **Insured** against any other **Insured**; provided, however, that this Exclusion shall not apply to any **Claim** made under this **Policy** brought by an **Insured** that is in the form of a cross-claim or third party claim for contribution or indemnity which is part of, and results directly from, a **Claim** which is not otherwise excluded.

7. Pollution

arising directly or indirectly out of, based upon or attributable to:

- a The actual, alleged or threatened presence, discharge, dispersal, release or escape of **Pollutants**; or
- b The testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralising **Pollutants**, whether or not any of the foregoing are or should be performed by the **Insured** or by others.

8. Territorial Limits

- a arising out of, based upon or attributable to any legal proceeding brought outside of the **Territorial Limits**; or any legal proceeding brought to enforce a judgement obtained in any country or territory outside the **Territorial Limits** or any legal proceeding to which the proper law to be applied is that of a country outside of the **Territorial Limits**;
- b arising out of a Claim brought against the **Insured** outside the **Territorial Limits**.

9. Fee Refund

for a refund of professional and/or membership fee/s, by way of damages or otherwise.

10. Sale and or Supply of Goods

for any loss alleging or arising from the sale, supply, installation, efficacy or manufacture of goods by or on behalf of the **Insured**

11. Prior Knowledge

- a that was first threatened, made against, or intimated to, the **Insured** prior to the commencement of the **Policy period**; or
- b that was notified under any previous policy of insurance; or
- c arising out of or connected with any facts, **Circumstance** or circumstances that the **Insured** knew or ought reasonably to have known prior to commencement of the **Policy Period** might or could give rise to a **claim** under this **Policy**; or
- d arising out of, based upon or attributable to, as of the Continuity Date in Item 8 of the **Schedule**, any pending or prior: (a) litigation; or (b) civil, criminal, administrative or regulatory proceeding or investigation, of which any **Insured** had notice; or any **Claim** alleging or derived from the same or essentially the same facts the same or related **Wrongful Act(s)** and or **Breach of Professional Duty**, as alleged in such pending or prior litigation or civil, criminal, administrative or regulatory proceeding or investigation; or
- e arising out of, based upon or attributable to the same or essentially the same facts

alleged, or to the same or related **Wrongful Acts(s)** and or **Breach of Professional Duty**, alleged or contained, in any **Claim** which has been reported, or in any **Circumstances** of which notice has been given prior to the Inception Date in item 2A of the **Schedule**, under any policy, whether excess or underlying, of which this **Policy** is a direct renewal or replacement.

12. Terrorism

of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

This exclusion applies notwithstanding any provision to the contrary within this **Policy** or any endorsement thereto.

For the purpose 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.

This Exclusion also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing, or in any way relating to any act of terrorism.

If the **Underwriters** allege that by reason of this Exclusion, any loss, damage, cost or expense is not covered by this **Policy**, the burden of proving the contrary shall be upon the **Insured**.

In the event any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

13. War and Civil War

of whatsoever nature directly or indirectly caused by, resulting from or in connection with war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war,

rebellion, revolution, insurrection, military or usurped power or confiscation of nationalisation or requisition or destruction of, or damage to, property by or under the order of any government or public or local authority.

14. Radioactive Contamination and Explosive Nuclear Assemblies

- a for loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss; or
- b for 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.

15. Sanctions

and shall not:

- be required to provide any cover; or
- be liable to pay any claim or provide any benefit,

under this **Policy** to the extent that doing so would expose the **Underwriter** to, or render it liable under, any Sanction under the laws or regulations of Singapore, New Zealand, Australia, the United Kingdom, the European Union, the United States of America and/or the United Nations.

SECTION 5: CONDITIONS

1. Address for Service

Delta Underwriting Private Limited, as agent for and on behalf of certain Underwriters at Lloyd's, will accept notification of any **Claims** or **Circumstances** or other claims under this **Policy** upon presentation to the address shown in the **Schedule**.

2. Alteration of Risk

The **Insured** must notify the **Underwriters** in writing as soon as practicable of any material alteration to the risk covered by this **Policy** that occurs during the **Policy Period**. Following the receipt of such notice, the **Underwriters** shall have the right to either:

- a exclude coverage for this additional exposure by issuing an endorsement to this **Policy** specifically excluding such exposure; or
- b offer to provide coverage for this additional exposure by issuing a quote to the **Named Insured** for such coverage.

Coverage for any such additional exposure shall be provided by the **Underwriters** only if the **Named Insured**:

- a provides the **Underwriters** with full particulars of the event(s), as requested by the **Underwriters**, that materially alter the risk covered by this **Policy**;
- b accepts in writing the terms, conditions and additional premium required by the **Underwriters** for such coverage; and
- c pays such additional premium when due.

3. Assignment

This **Policy** and any and all rights hereunder are not assignable without the prior written consent of the **Underwriters**.

4. Authorisation

Except as otherwise specifically provided under any other provision of this **Policy**, the first entity named in Item 1A of the **Schedule** shall act on behalf of all **Insureds** with respect to all matters under this **Policy** including:

- a giving of notice of a **Claim** or **Circumstance** covered under this **Policy**,
- b defending or settling any **Claim** covered under this **Policy**,
- c giving and receiving all correspondence and information;
- d giving and receiving notice of cancellation;
- e paying any premium;

- f receiving any return premium;
- g receiving and accepting any endorsements issued to form a part of this **Policy**; and
- h exercising any right to an **Extended Reporting Period**.

5. Cancellation

The **Insured** may cancel this **Policy** at any time by giving the **Underwriters** written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. In such event, the **Underwriters** shall retain the short rate portion of the premium. The **Underwriters** will release any such premium following the receipt of a No Claims Declaration from the **Insured**.

The **Underwriters** may cancel this **Policy** at any time (including upon the insolvency, liquidation or administration of the **Named Insured**) by giving the **Named Insured** written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. In the event that prior to the effective date of such cancellation the **Insured** has not provided notice to the **Underwriters** of any **Claim** or **Circumstance**, or other claim/s the **Underwriters** shall return a pro rata portion of the premium to the **Insured**. However, if such notice has been provided, the premium shall be deemed fully earned as of the Inception Date specified in Item 2A of the **Schedule**.

The **Underwriters** shall have the right to cancel this **Policy** if the premium has not been paid by the **Insured** within sixty (60) days after the Inception Date specified in Item 2A of the **Schedule**. In the event of such non-payment, the **Underwriters** may cancel this **Policy** as if it had never been in existence and shall provide the **Named Insured** with not less than ten (10) days prior written notice of such cancellation. In the event of such cancellation, the **Policy** will be deemed terminated as of the date indicated in the **Underwriters'** written notice of cancellation to the **Named Insured**.

Any notice provided to the **Named Insured** under this Condition shall be delivered or posted to the **Named Insured** at the address specified in Item 1B of the **Schedule**. The posting of such notice as aforesaid shall be sufficient proof of notice.

6. Complaints and Disputes

Any enquiry or complaint relating to this **Policy** should be referred to Delta Underwriting Private Limited in the first instance. If this does not resolve the matter or the **Insured** is not satisfied with the way the complaint has been dealt with, the **Insured** should write to:

Lloyd's of London (Asia) Pte Ltd
138 Market Street
CapitaGreen
#05-01
Singapore 048946

7. Confidentiality

The **Insured** shall not disclose to any third party the terms, conditions, exclusions, or **Limits of Liability** of this **Policy** or the amount of the premium paid, except to the extent that they are required by law to do so or receive written consent from the **Underwriters** to make such disclosure.

8. Cooperation

As a condition precedent to the right to be indemnified under this **Policy**, the **Insured** must provide to the **Underwriters** (or their appointed agent) within fourteen (14) days of any request made by the **Underwriters** (or their appointed agent), full details of any **Claim**, claims under this **Policy** or **Circumstance** and any other information requested by the **Underwriter** regarding any claims for which the **Insured** has requested to be indemnified. The **Insured** must also provide such cooperation and assistance as the **Underwriters** (or their legal advisers or appointed agents) may require, including but not limited to providing:

- a all relevant documentation;
- b detailed comments on any claim document;
- c detailed signed statements of fact;
- d access to any and all information;
- e information, assistance and signed statements of fact in respect of any subrogation proceeding commenced by the **Underwriters**; and
- f all other information and assistance.

All **Insureds** and all persons, firms and companies acting for or on the **Insured's** behalf shall ensure that all documents that may be relevant to any **Claim, Circumstance** or other claim covered under this **Policy** shall not be intentionally destroyed or otherwise intentionally disposed of.

9. Defence, Settlement and Advancement of Costs

The **Underwriters** do not assume any duty to defend any **Claim** covered under this **Policy**. However, the

Underwriters shall have the right, but not the duty, to fully and effectively take conduct and control of the investigation, defence and settlement of any **Claim, Circumstance** or other claim that may give rise to a **Claim** covered under this **Policy**, including but not limited to the right to appoint legal defence counsel on behalf of the **Insured**, investigate, conduct settlement negotiations, and enter into the settlement of any **Claim** covered under this **Policy** that the **Underwriters** deem appropriate. In the event of a **Claim** covered under this **Policy** which involves covered and non-covered matters or covered and non-covered parties, the **Insured** and the **Underwriters** agree to use their best efforts to determine a proper allocation of any amount payable under this **Policy**.

In the event that a determination as to the amount of **Defence Costs** to be advanced cannot be agreed to, then the **Underwriters** shall advance **Defence Costs**, in excess of any applicable **Excess**, which the **Underwriters** consider to be proper until a different amount shall be agreed upon or determined pursuant to the provisions of this **Policy** and applicable law.

The **Insured** shall not, without the prior written consent of the **Underwriters** (such consent not to be unreasonably withheld or delayed):

- a admit or assume any liability;
- b incur any **Defence Costs**;
- c make any settlement offers, enter into any settlement agreement or stipulate to any judgments; or

However, the **Underwriters'** consent is not required for the **Insured** to settle a **Claim** covered under this **Policy** if the total settlement

amount (including **Defence Costs**) is within the applicable **Excess**, provided that such settlement fully resolves the claim with respect to any **Insured** and the **Underwriters**.

10. Excess

Where the **Policy** requires payment of an **Excess**:

- a The **Underwriters** shall only pay the amounts covered which exceed the applicable **Excess**. The **Excess** is to be borne by the **Insured** and remain uninsured;
- b The **Underwriters** shall only be liable for the amount covered by the **Policy** arising from a **Claim, Circumstance** or other claim, which exceeds the applicable **Excess**. Where a Coverage Section provides for **Related Claims**, a single **Excess** shall apply to all amounts covered by the **Policy** that arise from all **Related Claims**.

The application of the **Excess** to any amounts covered under one Insuring Agreement shall not reduce the **Excess** that applies to any amounts covered under any other Insuring Agreement. If different **Excess** amounts apply to different parts of a **Claim** covered under this **Policy**, the applicable **Excess** amount shall be applied separately to each part of the **Claim** covered under this **Policy**, and the sum of such **Excess** amounts shall not exceed the largest single **Excess** amount which applies to such **Claim** covered under this **Policy**.

If the **Named Insured** is legally required or permitted to indemnify an insured natural person for any amounts covered by this **Policy**, and does not do so for any reason, the **Underwriters** shall not require payment of the applicable **Excess** by an insured natural person. However, the **Named Insured** hereby agrees to reimburse the **Underwriters** for the full amount of such **Excess** immediately upon request, unless the **Named Insured** is unable to do so solely by reason of insolvency.

11. Exclusions

Nothing in any Exclusion in this **Policy** shall be construed to extend this **Policy** to any liability which would not have been covered in the absence of such Exclusion.

12. Fraudulent Claims

If the **Insured** gives notice, provides information, or makes any request in respect of any **Claim** or **Circumstance** or other claim covered under this **Policy**, knowing such notice, information or request to be false or fraudulent as regards amount or otherwise, this **Policy** shall become void and all entitlements to indemnity under this **Policy** shall be forfeited.

13. Governing Law and Exclusive Jurisdiction

This **Policy** shall be construed according to the laws of Singapore. Any issue and all disputes relating to this **Policy** shall be determined by the laws of Singapore, whose courts shall have exclusive jurisdiction to hear any dispute.

14. GST

Where the **Insured** is liable to pay tax under the Goods & Services Act 2005 (Singapore) (or any statutory amendment or re-enactment of the section or Act) upon receiving any indemnity payment under this **Policy**, the **Underwriters** will indemnify the **Insured** for the costs of that tax.

The indemnity under this Section 7.9 is payable by the **Underwriters** in addition to the Limit of Liability for each Coverage Section set forth in Item 3A of the Schedule.

Schedule. Where the **Policy** refers to any **Excess** it shall be inclusive of GST.

15. Headings

The descriptions in the headings and any subheading of this **Policy** (including any titles given to any Extension and or any endorsement attached hereto) are inserted solely for convenience and do not constitute any part of this **Policy's** terms or conditions.

16. Insured's Right to Contest a Claim

If the **Insured** does not agree with a decision by the **Underwriters** to settle a **Claim** covered under this **Policy**, the **Insured** can elect to contest the **Claim** at its own expense, but the liability of the **Underwriters** will not exceed the amount for which the **Claim** covered under this **Policy** could have been settled in the opinion of a senior legal counsel (to be mutually agreed upon by the **Insured** and the **Underwriters** or in

the absence of agreement by determination of the President of the New Zealand Law Society). The **Underwriters** shall pay all **Defence Costs** incurred up to the date the **Insured** notifies the **Underwriters** in writing of its election under this Condition and shall pay the **Insured** (subject to any **Excess**) the amount for which the **Claim** covered under this **Policy** could have been so settled. The **Insured** expressly agrees that the **Underwriters'** liability in respect of such **Claim** covered under this **Policy**, shall then be at an end.

17. Interpretation

Words and phrases appearing capitalised and in bold, where used in the **Policy**, except where they appear in headings, have the meaning defined for that word or phrase in the Definitions. To the extent that there are any inconsistencies between the Conditions or Exclusions and the individual Insuring Agreements, the terms and conditions of the individual Insuring Agreement will prevail.

In the **Policy**:

- a The singular includes the plural;
- b Reference to one gender includes reference to all other genders;
- c In the event that any portion of the **Policy** is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

18. Late Notice, Innocent Non-Disclosure and Material Non-Disclosure

The **Underwriters** shall not exercise their right to avoid this **Policy**, nor will the **Underwriters** reject a request for indemnity, solely on the grounds of non-disclosure in the **Proposal** or a breach of the notice provisions in the Notice Condition provided that:

- a the **Insured** shall establish to the **Underwriters'** reasonable satisfaction that such non-disclosure or breach was free of any fraudulent conduct or intent to deceive;
- b if the **Insured** was aware, prior to the Inception Date in Item 2A of the **Schedule**, of any **Claim** or **Circumstance** or matter for which cover is provided under this **Policy**, then if the

indemnity available under this **Policy** is greater or wider in scope than that which would have been available, if any, to the **Insured** prior to such Inception Date, the **Underwriters** shall only be liable to indemnify the **Insured** for such amount and on such terms as would have been available to the **Insured** prior to such Inception Date, except that nothing in this provision shall entitle the **Insured** to any indemnity wider or more extensive than is otherwise available under this **Policy**;

- c if such non-disclosure or breach has resulted in prejudice to the **Underwriters** in the handling or settlement of any **Claim** or request for indemnity, the indemnity afforded by this **Policy** in respect of such **Claim** or request for indemnity shall be reduced by such sum as would have been payable, in the **Underwriters'** reasonable opinion, by the **Underwriters** in the absence of such prejudice; and
- d no indemnity shall be available for any matter for which the **Insured** fails to provide notice of a **Claim, Circumstance** or claim covered under this **Policy**, within thirty (30) days after the Expiry Date of this **Policy**. In consideration of the **Underwriters** waiving their right to avoid this **Policy** and in the event of a material non-disclosure in the **Proposal**, the **Underwriters** shall be entitled in their sole discretion:
 - i to determine the amount of any additional premium to be paid by the **Insured**; and
 - ii to charge such additional premium to the **Insured**.

19. Limits of Liability

Unless otherwise specified in the **Schedule**:

The **Limit of Liability** is the maximum liability of the **Underwriters** as in Item 3A of the **Schedule**.

Defence Costs are not part of, and are in addition to, the Limits of Liability and Sublimits of Liability of this Policy and payment by the **Underwriters** of **Defence Costs** shall not reduce any such Limits of Liability and Sublimits of Liability.

20. Notification

The **Insured** shall, as a condition precedent to the obligations of the **Underwriters** under this

Policy, and irrespective of the quantum, give the **Underwriters** notice as soon as practicable of:

- a any **Claim** made against the **Insured**;
- b any **Circumstance**; or
- c or any other claim covered by this **Policy**.

Notice given by the **Insured** must:

relate to a **Claim, Circumstance** or other claim covered under this **Policy** that occurred during the **Policy Period**; and

In the event an **Insured** fails to provide notice as soon as practicable in accordance with this Condition, the **Underwriters** shall not be entitled to deny coverage for such **Claim**, and or **Circumstance** or other claim covered under this **Policy** based solely upon late notice, unless the **Underwriters** can establish that their interests were materially prejudiced by reason of such late notice. If during the **Policy Period (or Extended Reporting Period – if applicable)** an **Insured** gives written notice to the **Underwriters** of a **Circumstance**, with full particulars as to allegations anticipated, dates, persons and entities involved, then any **Claim** covered under this **Policy** that is subsequently made against an **Insured** alleging, arising out of, based upon or attributable to such **Circumstance**, shall be considered made at the time written notice of such **Circumstance** was given to the **Underwriters**. The **Insured** shall give written notice to the **Underwriters**:

- i via their insurance broker or;
- ii to the **Underwriter** at the address shown in the **Schedule**.

21. Organisational Change

If an **Organisational Change** occurs during the **Policy Period**, then this Policy shall continue in full force and effect as to any **Wrongful Act** occurring prior to the effective date of the **Organisational Change**; however, there shall be no coverage afforded by this Policy for any **Wrongful Act** occurring after the effective date of the **Organisational Change**.

The **Named Insured** shall give the **Underwriters** written notice of the **Organisational Change** as soon as practicable, but no later than thirty (30) days after the effective date of the **Organisational Change**.

22. Other Insurance

The insurance provided by this **Policy**, shall apply only as excess over any other valid and collectible insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically as excess insurance over the applicable **Limit of Liability** provided by this **Policy**.

This **Policy** shall not be subject to the terms and conditions of any other insurance policy.

Upon giving notice of any **Claim, Circumstance** or other claim covered under this **Policy**, the **Insured** agrees to provide to the **Underwriters** written details of any other insurance that may cover or partially cover such **Claim, Circumstance** or other claim covered under this **Policy**.

23. Order of payments

The **Underwriters** shall pay any amounts for a claim covered under this **Policy** in the order in which such amounts are presented to the **Underwriters** for payment. Should the **Underwriters** in their sole and absolute discretion, determine that the **Limit of Liability** in Item 3A of the **Schedule** will not be sufficient to cover the entire amount of the claim, the **Underwriters** shall pay the amounts claimed in accordance with the provisions of Section 9 of the Law Reform Act 1936.

The Insolvency of any **Named Insured** shall not relieve the **Underwriters** of any of their obligations to prioritise payment of covered **Loss** under this **Policy**.

24. Recovery

In the event the **Underwriters** recover amounts they have paid under this **Policy**, the **Underwriters** will reinstate the **Limit of Liability** as in Item 3A of the **Schedule** to the extent of such recovery, less costs incurred by the **Underwriters** in administering and obtaining such recovery. The **Underwriters**, in their sole and absolute discretion, shall determine the amounts to be credited, if any, toward a reinstatement of such **Limit of Liability**. The **Underwriters** assume no duty to seek a recovery of any amounts they have paid under this **Policy**.

25. Related Claims

All **Related Claims** shall be considered a single **Claim**. All such **Claims** shall be considered first made at the earliest time that any such **Claim** is first made against an **Insured**.

26. Representations and Severability

It is agreed between the **Insured** and the **Underwriters** that the **Proposal** shall be deemed to be incorporated into and form the basis of this **Policy** and the **Insured** warrants the truth of all statements made therein. All such statements and representations shall be deemed to be the basis of this **Policy** and are to be considered as incorporated into this **Policy**.

No statements or representations made by, information or knowledge possessed by an insured natural person or any conduct of any insured natural person shall be imputed to any other insured natural person for the purpose of determining whether coverage is available under this **Policy** for any **Claim** made against such insured natural person. However:

- a the knowledge possessed by any insured natural person who is a past or current chief executive officer, president or chief financial officer of the **Named Insured** shall be imputed to such **Named Insured** for the purpose of determining whether coverage is available under this **Policy** for any **Claim** made under this **Policy** made against the **Named Insured**; and
- b where the **Named Insured** is a company with a sole director the knowledge of the sole director shall be imputed to the **Named Insured**.

This **Policy** shall be construed as a separate **Policy** covering each **Insured Person** for his or her own individual interest.

27. Service of Suit

It is hereby agreed that:

1. This insurance shall be governed by the law of Singapore whose Courts shall have jurisdiction in any dispute arising hereunder; and
2. Any summons, notice or process to be served upon the **Underwriters** for the purpose of

instituting any legal proceedings against them in connection with this insurance may be served upon Bruce Ford (Senior Vice President) of Allied World Syndicate Services Pte Ltd, 138 Market Street, CapitaGreen, #05-02, Singapore 048946, who have authority to accept service on their behalf.

28. Several Liability

The liability of an Underwriter under this **Policy** is several and not joint with other Underwriters party to this **Policy**. An Underwriter is liable only for the proportion of liability it has underwritten. An Underwriter is not jointly liable for the proportion of liability underwritten by any other Underwriter; nor is an Underwriter otherwise responsible for any liability of any other Underwriter that may underwrite this **Policy**. The proportion of liability under this **Policy** underwritten by an Underwriter (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this **Policy**. In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an Underwriter. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion; nor is any member otherwise responsible for any liability of any other Underwriter that may underwrite this **Policy**.

The business address of each member is:

Lloyd's,
One Lime Street,
London EC3M 7HA.

The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address

29. Subsidiaries Acquired During the Policy Period

The term **Subsidiary** shall automatically include any entity of which the **Named Insured** first has **Management Control** ("Controlled Entity") during the **Policy Period**, either directly or indirectly through one or more other Controlled

Entities, as long as:

- a such acquired entity is not formed as a partnership; and
- b such acquired entity's total consolidated assets are less than thirty-five percent (35%) of the consolidated gross assets of the **Named Insured** at the Inception Date set forth in Item 2A of the Schedule; and
- c such acquired entity does not have any of its securities listed on any exchange or market anywhere in the world; provided, however, that the **Insured** gives written notice to the **Underwriters** of such acquired entity prior to the end of the **Policy Period**.

Any entity acquired during the **Policy Period** by the **Named Insured**, other than any entity described above, shall automatically be covered for a period of ninety (90) days from the effective date of the acquisition, but only in respect of **Wrongful Acts** which occur after such date. The **Underwriters** may extend such coverage beyond ninety (90) days if the **Named Insured** submits a written request to the **Underwriters** within ninety (90) days from the effective date of the acquisition with full details regarding such entity. This extension of coverage is conditioned upon the **Insured** paying when due any additional premium required by the **Underwriters** and accepting any amended terms and conditions of this Policy.

Coverage afforded under this Policy for a **Claim** made against any **Insured** relating to a **Wrongful Act** of a **Subsidiary**, or any **Insured Person** thereof, shall only apply to **Wrongful Acts** committed or allegedly committed during the time such entity is a **Subsidiary**.

30. Subrogation

Upon payment by **Underwriters** of any amounts covered under this **Policy**, the **Underwriters** shall be subrogated to the extent of such payment to all of the **Insured(s)**' rights of recovery, including but not limited to any of the insured natural person's rights of recovery against a **Named Insured** for indemnification.

The **Insured(s)** shall execute all papers required (including those documents necessary for the **Underwriters** to bring suit or other form of proceeding in their name) and do everything

that may be necessary to pursue and secure such rights.

All recoveries for payments made under this **Policy** whether made by the **Underwriters** or the **Insured**, shall be applied net of the expense of such recovery:

- a first, to the **Insured** in satisfaction of the **Insured's** covered loss in excess of the amount paid under the **Policy**;
- b second, to the **Underwriters** in satisfaction of amounts paid in settlement of the **Insured's** claim;
- c third, to the **Insured** in satisfaction of any **Excess**; and
- d fourth, to the **Insured** in satisfaction of any loss not covered by the **Policy**.

Recoveries do not include any recovery for insurance, suretyship, reinsurance, security or indemnity taken for the **Underwriters'** benefit.

The **Underwriters** shall not exercise their subrogation rights against an **Insured Person** unless and to the extent Exclusion 4.3 (Dishonesty and Fraud) applies to such **Insured Person**.

31. Third Parties

No person or entity other than the **Insured** shall have any rights under this **Policy** whether pursuant to statute or otherwise.

32. Underwriters Rights

In the event that the **Underwriters** are entitled to avoid or repudiate this **Policy** ab initio, the **Underwriters** may instead at their election give written notice to the **Insured** that they regard this **Policy** as of full force and effect, except that the **Policy** shall exclude coverage for any **Claim** covered under this **Policy** which has arisen or which may arise and which is related to the circumstances which entitle the **Underwriters** to avoid or repudiate this **Policy**. This **Policy** shall then continue in full force and effect and such applicable exclusion shall be added to this **Policy** by endorsement attached hereto.

33. Valuation and Currency

All amounts stated in this **Policy** are expressed in New Zealand dollars and all amounts payable

under this **Policy** are payable in New Zealand dollars, unless as otherwise stated in the **Schedule**. If a judgement rendered or settlement entered into under this **Policy** is stated in a currency other than New Zealand dollars, then payment under this **Policy** shall be made in New Zealand dollars at the rate of exchange published by the Reserve Bank of New Zealand at 3pm on the date the final judgement is rendered or the settlement payment is established.

34. Waiver of Privilege

If the **Underwriters** instruct any lawyer to investigate or defend any claim against any **Insured** and or **Insured Person**, the **Insured** and or **Insured Person** authorises the lawyer to provide to the **Underwriters** any documents, information or advice in respect of the **Claim**, including in relation to indemnity, and the **Insured** and or **Insured Person** waives any privilege to the extent necessary to give full effect to the **Underwriter's** entitlement in this respect.

SECTION 6: DEFINITIONS

1. **Breach of Professional Duty** in respect of Insuring Agreement 1.3 (if included) means, any act, error or omission by the **Named Insured** in the course of providing the professional services described in the **Schedule**.
2. **Circumstance** means an incident, fact, matter, act, error or omission which in the opinion of a reasonable **Insured** is likely to give rise to:
 - a a **Claim** against the **Insured**; or
 - b any other claim covered under this **Policy**.
3. **Claim** means any:
 - a written demand;
 - b judicial, administrative or regulatory proceeding, whether civil or criminal;
 - c arbitration or mediation proceeding commenced against an **Insured**;
 - d **Investigation**.
4. **Defence Costs** means reasonable, legal costs, disbursements, witnesses' costs, assessors' or adjusters' costs or experts' costs that relate directly to the **Claim**, **Investigation**, or claim arising from a **Breach of Professional Duty**

incurred by the **Underwriters**, or by the **Named Insured** with the **Underwriters'** prior written consent.

Defence Costs does not include the **Named Insured's** time assisting the **Underwriters** or appointed solicitors with the conduct of any **Claim, Investigation**, or a claim arising from a **Breach of Professional Duty**.

5. **Documents** means deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature, whether printed, written or reproduced by any method including computer records and electronically stored data.

6. **Employee** means any natural person who was, now is or shall be a full-time, part-time, seasonal or temporary employee of the **Named Insured**.

Employee shall not include any **Executive**, principal, partner or shareholder of the **Named Insured**.

7. **Excess** means the amount shown in Item 4 of the **Schedule**.

8. **Executive** means any past, present or future board or management member or any other person in a functionally equivalent or comparable position, but excluding externally appointed officers, manager and/or administrators.

9. **Extended Reporting Period** means a period of 12 months, commencing on the Expiry Date as shown as item 2B of the **Schedule**, which provides for notification (in accordance with the Notification Condition) and indemnity for **Claims** arising from **Wrongful Act/s** and or **Breach of Professional Services** (if applicable), committed or alleged to have been committed, prior to the date the policy has not been renewed only.

10. **Insured** means any **Named Insured, Subsidiary** and any **Insured Person**.

11. **Insured's Business** means the business and undertakings of the **Named Insured**.

12. **Insured Person** means any:

a **Executive**;

b **Employee**, but only during such time as the **Claim** against such **Employee** is also made against an **Executive**;

c natural person serving as a representative or a director of a **Named Insured**;

d **Outside Positions Insured Person** in accordance with Optional Extension 2 Outside Positions.

13. **Limit of Liability** means the Limit of Liability as shown in Item 3A of the **Schedule**.

14. **Investigation** means any formal civil, criminal, administrative or regulatory investigation into the conduct of an **Insured Person** in their capacity as an **Insured Person** of the **Named Insured**, which is commenced by the filing or issuance of a notice of charges, subpoena or formal investigative order. **Investigation** does not include any such enquiry or proceeding undertaken by any professional or statutory body as referred to in Automatic extension 8 Quasi Judicial.

15. **Loss** means any amount for which the **Insured** is legally liable for:

a compensatory damages

b pre-judgment or post-judgment interest;

c costs or fees awarded against the **Insured**;

d **Defence Costs** that relate to a **Claim** or **Investigation**; and

e any amounts for which cover is provided pursuant to:

• Section 2 Automatic Extensions

• Section 3 Optional Extensions (if included)

16. **Management Control** means:

a controlling the composition of the board of directors of an entity;

b controlling more than half of the shareholder or equity voting power of an entity; or

c holding more than half of the issued share or equity capital of an entity.

17. **Named Insured** means the entity/entities named in Item 1A of the **Schedule**

18. **Organisational Change** means

a the **Named Insured** consolidates with, merges into, or sells more than fifty percent (50%) of its assets to any other person or entity or group of persons or entities acting in

concert such that the **Named Insured** is not the surviving entity;

- b** any person or entity, or group of persons or entities, acting in concert acquire more than fifty percent (50%) of the assets or voting rights of the **Named Insured**; or
- c** the Insolvency of the **Named Insured**.

- 19. Outside Entity** means the entity the **Insured Person** who at the specific request or direction of a **Named Insured**, acts as an **Executive** or equivalent thereof.
- 20. Outside Positions Insured Person** means the **Insured Person** acting as **Executive** or equivalent thereof of an **Outside Entity**.
- 21. Policy** means this policy wording, the **Schedule**, the **Proposal** and any endorsement/s attaching to and forming part of the **Policy** either at commencement or during the **Policy Period**.
- 22. Policy Period** means the period of time from the Inception Date as shown in Item 2A of the **Schedule** to the Expiration Date as shown in Item 2B of the **Schedule** or the effective date of cancellation of this **Policy**.
- 23. Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fibres, mould, spores, fungus, fumes, acids, alkalis, chemicals and waste. Waste includes, but is not limited to, materials to be recycled, reconditioned or reclaimed.
- 24. Proposal** means the written proposal form submitted by the **Insured** to the **Underwriters**, including any related documents and statements that have been submitted or provided by the

Insured to the **Underwriters** in connection with the underwriting of this **Policy**.

- 25. Related Claims** means all **Claims** arising out of, based upon or attributable to:
- a** the same acts, errors or omissions;
 - b** a series of related acts, errors or omissions; or
 - c** the same matter or transaction.
- 26. Retroactive Date** means the date shown in Item 7 of the **Schedule**.
- 27. Subsidiary** means any entity of which, prior to the Inception Date set forth in Item 2A of the **Schedule**, the **Named Insured** has **Management Control**.
- 28. Schedule** means the schedule issued by the **Underwriters**.
- 29. Sublimit of Liability** means the applicable Sublimit of Liability as shown in Item 5 of the **Schedule**.
- 30. Territorial Limits** means the countries or territories as shown in Items 10 and 11 of the **Schedule**.
- 31. Underwriters** means the underwriter(s) named in Item 14 of the **Schedule**.
- 32. Wrongful Act** in respect of Insuring Agreements 1.1 and 1.2 means, any actual or alleged act, error or omission, neglect, breach of duty, breach of trust, misstatement, or misleading statement by an **Insured Person** in the course of their duties to or on behalf of the **Named Insured**.