

Allianz Professional Protect

Miscellaneous
Professional Indemnity Insurance

Policyholder

Xxx Company

Please read this policy carefully, hereunder the exclusions and duties of the Insured.

This insurance is underwritten by Allianz Insurance Lanka Ltd, "Levels 25-27, One Galle Face Tower, No 1 A, Centre Road, Galle Face, Colombo 02.

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Data Privacy & Protection

The Insurer is strongly committed to conducting its business in full compliance, and in accordance with applicable Data Privacy protection laws and regulations. All privacy related matters are governed by Allianz Privacy Notice which is available on the Insurer's official website <https://www.allianz.lk/data-privacy-notice.html> . The said privacy notice explains how and what type of personal data will be collected, why it is collected and to whom it is shared or disclosed. Further, the Insurer is committed to keep your Personal Data only so long as necessary to fulfill the purposes for which the data was collected for or to fulfill legal obligations.

Definition:

Personal Data - means any information relating to an individual

Version: SG 14-01-2016



Miscellaneous Professional Indemnity Insurance

Schedule

Wording **Allianz Global Corporate & Specialty Miscellaneous Professional Indemnity
(AGCSPIMISC110214)**

Policy Number

Item 1 ***Policyholder:***

Address:

Item 2 ***Policy Period:***

Inception Date:

Expiry Date:

Both days inclusive at address in Item 1

Item 3 ***Limit of Liability*** (all *Claims* in the aggregate, including *Defence Costs*)

SGD

Item 4 Sub Limits, which form part of and are not in addition to the ***Limit of Liability*** in Item 3

(i) SGD *Emergency Costs Advancement* in the aggregate

(ii) SGD *Legal Representation Costs* in the aggregate

(iii) SGD *Lost Documents* in the aggregate

Item 5 ***Retention*** (each and every *Claim*)

SGD

Item 6 ***Professional Services:***

Item 7 ***Retroactive Date:***

Item 8 ***Discovery Period:***

Item 9 **Premium:**

Item 10 **Address for Notification of Claims:**

Senior Claims Manager
Allianz Insurance Lanka Ltd,
Levels 25-27, One Galle Face Tower,
No 1 A, Centre Road, Galle Face, Colombo 02.

Item 11 **Insurer:** Allianz Insurance Lanka Limited

Item 12 **Policy Interpretation:** Sri Lanka

Signed and dated on behalf of Allianz Insurance Lanka Limited by:

Underwriter:

Date:

Miscellaneous Professional Indemnity Insurance

All cover under the Fraud/Dishonesty, Joint Venture, Professional Liability and Specialist Consultants clauses is afforded solely with respect to *Claims* first made against an *Insured* during the *Policy Period* and notified to the *Insurer* as required by this policy.

1.1 Professional Liability

The *Insurer* will pay on behalf of an *Insured* all *Loss* resulting from any *Claim* against an *Insured* for a civil liability arising from an *Insured's Professional Services*.

1.2 Automatic Acquisition

If during the *policy period* the *Policyholder* obtains, either directly or indirectly:

- (i) control of the composition of the board of directors;
- (ii) control of more than half of the voting power; or
- (iii) a holding of more than half of the issued share capital;

of another entity then the definition of *Subsidiary* shall be extended to include such entity provided that:

- (a) the entity has annual revenue for the last complete accounting period prior to the acquisition, of less than 10% of the total annual revenue of the *Policyholder* declared in the latest Annual Report and Accounts as at inception;
- (b) the entity is not incorporated, domiciled or providing *Professional Services* in the United States of America or Canada or any of their territories;
- (c) the entity is not aware of any claims (either paid or notified) or circumstances within the preceding five years of a type which may have been covered had they been notified under a professional liability policy similar in scope and breadth of coverage to the cover afforded hereunder; and
- (d) the business activities of the entity fall within the definition of Professional Services.

In all other circumstances, the *Policyholder* may request an extension of this policy for such entity. The *Insurer* shall have the right but not the duty to offer cover for such entity and the *Policyholder* shall give the *Insurer* sufficient details to permit the *Insurer* to assess and evaluate the potential increase in exposure. In the event that coverage is provided, the *Insurer* shall be entitled to amend the policy terms and conditions, during the *Policy Period*, including but not limited to, the charging of a reasonable additional premium.

1.3 Continuous Cover

Notwithstanding the Prior Claims/Circumstances Exclusion, cover is provided under this policy for any *Claim* arising from a *Wrongful Act*, fact or circumstance which could or should have been notified under any earlier policy with the *Insurer*, provided always that:

- (i) the *Insurer* has continuously and without interruption been the *Insurer* of the *Company* for Professional Indemnity since that date; and
- (ii) cover provided under this clause shall be subject to the *Insurer's* discretion to apply the terms, conditions, exclusions and limitations of the policy with the *Insurer* under which the relevant fact or circumstance could or should have been notified.

1.4 Emergency Costs Advancement

If the written consent of the *Insurer* cannot be reasonably obtained before *Defence Costs* or *Legal Representation Costs* are incurred by an *Insured*, the *Insurer* agrees to give retrospective approval for such amounts incurred by the *Insured* to the point in time when the *Insured* could reasonably have sought the *Insurer's* written consent. The sub-limit for this clause is the amount specified in Item 4(i) of the schedule in the aggregate for all *Defence Costs* and *Legal Representation Costs*.

Notwithstanding the above,

- (i) if it is established that there is no entitlement to indemnity under the policy for the specific *Defence Costs* or *Legal Representation Costs*, such amounts shall be repaid to the *Insurer* immediately, according to the several interests of the *Insured* and the *Company*; and
- (ii) the *Company* or the *Insured* shall give written notice to the *Insurer* of the *Claim* or *Inquiry* which was the subject of the emergency as soon as practicable, together with reasons why an emergency existed.

1.5 Fraud and Dishonesty

The *Insurer* will pay on behalf of any *Insured*, who is not the actual perpetrator, all *Loss* resulting from any *Claim* for *Fraud/Dishonesty* of any *Employee(s)* of the *Company* provided that the relevant fraudulent or dishonest conduct occurred before the date of discovery by any principal, partner or director of a *Company* of reasonable cause of suspicion of *Fraud/ Dishonesty* on the part of the *Employee(s)*, whether or not it is possible at that date to identify the *Employee(s)* involved in the *Fraud/Dishonesty*.

1.6 Joint Ventures

The *Insurer* will pay on behalf of any *Insured* all *Loss* resulting from any *Claim* where liability results directly from a *Wrongful Act* of an *Insured* arising out of the *Professional Services* carried out by an *Insured* for and in the name of any joint venture of which an *Insured* forms part, provided that an *Insured* has declared in the *submission* all fees/turnover received from any joint venture.

The liability of the *Insurer* shall be proportionate to the lowest of:

- (i) the percentage of the share capital of the joint venture owned by an *Insured*; or
- (ii) the percentage of the voting control of the joint venture exercised by an *Insured*;

unless the *Insurer's* written agreement has been first obtained to an alternative proportion and an endorsement made upon this policy.

This clause shall provide cover to an *Insured* only. No other participant in such joint venture, and no other *Third Party*, shall have any rights under this policy, and neither shall the *Insurer* be liable to pay a contribution to any insurer of any other participant in such joint venture.

1.7 Legal Representation Costs

In respect of any *Inquiry*, the *Insurer* will pay *Legal Representation Costs* to or on behalf of the *Insured*. This cover only applies when the notice of any *Inquiry* is first served and reported to the *Insured* during the *Policy Period* or *Discovery Period* if applicable.

This cover will be subject to a Sub-limit specified in Item 4(ii) the schedule in the aggregate during the *Policy Period*. No *Retention* shall apply to this clause.

1.8 Lost Documents

The *Insurer* shall indemnify an *Insured* for costs and expenses reasonably incurred with the *Insurer's* prior written consent in replacing or restoring any *Documents* which are the property of an *Insured* and which during the *Policy Period* have been destroyed, damaged, lost, distorted, erased or mislaid provided that:

- (i) such loss or damage is sustained while the *Documents* are either: (1) in transit; or (2) in the custody of an *Insured* or of any person to whom an *Insured* has entrusted them in the ordinary course of their *Professional Services*;
- (ii) the *Documents* have been the subject of a diligent search by or on behalf of an *Insured*;
- (iii) the amount of any *claim* for such costs and expenses shall be supported by evidence of expenditure that shall be subject to approval by a competent person to be nominated by the *Insurer* with the consent of the *Policyholder*; and
- (iv) the *Insurer* shall not be liable for any costs and expenses arising out of wear, tear and/or gradual deterioration, moth and vermin.

This cover will be subject to a Sub-limit specified in Item 4(iii) of the schedule in the aggregate during the *Policy Period*. A retention of SGD 1,000 each and every *claim* shall apply to this cover.

1.9 Management buyouts

If a *Subsidiary* ceases to be owned by the *Policyholder* due to a buy-out by existing management of the *Company*, the *Insurer* will extend the existing cover, subject to all terms, conditions and exclusions of the policy to the *Insured* in respect of such *Subsidiary* for a period of up to 30 days from the date of the buy-out for *Wrongful Acts* committed subsequent to the buy-out, such period not to extend beyond the expiry date of this policy. This clause shall not apply where there is other insurance in respect of such *Wrongful Acts*.

1.10 Mitigation

Where the *Insured* first makes a determination during the *Policy Period* that it has committed a *Wrongful Act* requiring remediation or mitigation, the *Insurer* will pay the reasonable and direct cost of any remediation or mitigation, provided that:

- (i) the *Insurer* shall during the *Policy Period* have been informed in writing of the *Wrongful Act* and the work that is required to rectify it or mitigate its consequences;
- (ii) the *Insurer* shall be reasonably satisfied that an *Insured* has committed a *Wrongful Act* requiring remediation or mitigation and that such costs are necessary to prevent or reduce the amount of a *Claim* covered under the Professional Liability Cover, and that the amount of *Damages* prevented or reduced would be greater than the cost of the work;
- (iii) such costs are supported by evidence of expenditure which shall be subject to approval by a competent person to be nominated by the *Policyholder* with the consent of the *Insurer*;
- (iv) such costs shall not include any element of profit or loss of profit, nor any element of overheads, staff remuneration, standing idle time or management time of an *Insured*; and
- (v) the *Insurer* has consented in writing to the payment of such costs before work is carried out, such consent not to be unreasonably withheld, however whilst awaiting the *Insurer's* consent, the *Insurer* will indemnify an *Insured* for such expense incurred over a period not exceeding 14 days beginning from the time mitigation was undertaken by an *Insured* subject to condition (ii) above, being satisfied otherwise all pre approval costs will be borne by an *Insured*.

1.11 Run off after Transaction

In the event of a *Transaction*, then on application by the *Policyholder*, no later than 30 days after the completion of the *Transaction*, the *Insurer* will extend cover to apply in respect of *Claims* first made against an *Insured* and properly notified within a period of 36 calendar months from the expiry date of the *Policy Period* but only for *Claims* that arise from *Wrongful Acts* occurring prior to the date of such *Transaction*. This cover is only available if the *Policyholder* accepts the additional terms, conditions, exclusions or premium as the *Insurer* may require.

If cover is so extended, the *Discovery Period* Extension and Automatic Acquisition Extension are deleted from this policy with effect from the date of such *Transaction*.

1.12 Specialist Consultants

The *Insurer* will pay on behalf of an *Insured* all *Loss* resulting from any *Claim* for any *Wrongful Act* of consultants or sub-contractors of an *Insured* who are engaged in the performance of an *Insured's* *Professional Services* and with whom the *Insured* has entered into an enforceable contract for the provision of those services.

The *Insurer* will only pay *Loss* to the extent that an *Insured* has not waived or otherwise impaired any rights of recourse against such consultants or sub-contractors.

2. Discovery Period

If this policy is neither renewed nor replaced with Professional Indemnity Insurance at or after the expiry of the *Policy Period*, the *Company* shall be entitled to a *Discovery Period* of:

- (i) 30 days, granted automatically with no additional premium payable; or
- (ii) 12 months, upon payment of an additional premium, as specified in Item 8 of the schedule as a percentage of the annual premium in effect immediately prior to the expiry of the *Policy Period*.

If the *Policyholder* elects to purchase a *Discovery Period*, per item (ii) above, then the *Policyholder* must make any request for a *Discovery Period* in writing, and pay any applicable additional premium, within 30 days after the expiry of the *Policy Period*. A *Discovery Period* is not cancellable by the *Policyholder* and any premium payable for a *Discovery Period* is non-refundable. No *Discovery Period* is available if this policy is cancelled or avoided, or there has been a *Transaction* prior to the expiry of the *Policy Period*.

3. Definitions

Bodily Injury means physical injury, sickness, disease or death of a natural person; and if arising out of the foregoing, nervous shock, emotional distress, mental anguish or mental injury.

Claim means any:

- (i) written demand for compensation in respect of a *Wrongful Act* of an *Insured*; or
- (ii) civil, regulatory or administrative proceedings whereby a *Wrongful Act* of an *Insured* is alleged.

Company means the *Policyholder* or any *Subsidiary* (including any predecessor business);

Damages means any amount that an *Insured* shall be legally liable to pay to a *Third Party* for a *Claim* in respect of judgments or arbitral awards rendered against an *Insured*, or for settlements negotiated by the *Insurer* with the consent of the *Policyholder*.

Defence Costs means reasonable fees, costs and expenses incurred by or on behalf of an *Insured*, with the prior written consent of the *Insurer*, in the investigation, defence, adjustment, settlement or appeal of any *Claim*. It shall not include any element of an *Insured's* own time costs or lost profits incurred in dealing with a *Claim*.

Discovery Period means the period immediately after expiry of the *Policy Period*, during which (subject to the provisions of *Discovery Period*) the *Insured* may notify *Claims* made, or *Inquiries* commenced, in that period in respect of *Wrongful Acts* or, in the case of *Inquiries*, conduct occurring before expiry of the *Policy Period*.

Documents means all documents of any nature whatsoever including computer records and electronic or digitised data; but does not include any currency, negotiable instruments or records thereof.

Employee means any natural person who is, has been or during the *policy period* becomes expressly engaged under a contract of employment with the *Company*.

Employee shall not include any principal, partner or director of any *Insured* in their capacity as such.

Fraud/Dishonesty means fraudulent or dishonest conduct:

- (i) not condoned, expressly or implicitly by any principal, partner or director of the *Company*; and
- (ii) that results in liability of the *Company* to any *Third Party*.

Inquiry means an official investigation, official examination or official inquiry, in relation to the performance of or failure to perform *Professional Services* by the *Insured* for which the notice or process compelling attendance or provision of information or documents by an *Insured* is first served during the *Policy Period*. It is not necessary that a *Wrongful Act* be alleged against the *Insured*.

Insured means the *Company* or any *Insured Person.s*

Insured Person means:

- (i) any natural person, who is or has been a principal, partner or director of the *Company* in their capacity as such;
- (ii) any *Employee*;
- (iii) any spouse, civil partner, estate or legal representative of any *Insured Person* for *Loss* arising from a *Claim* for a *Wrongful Act* of such an *Insured Person* listed in (i), (ii) above.
- (iv) the administrator, heirs, legal representatives or executor of a deceased, incompetent, insolvent or bankrupt *Insured Person's* estate for *Loss* arising from a *Claim* for a *Wrongful Act* of such *Insured Person* listed in (i), (ii) above.

Insurer means the Insurer stated in Item 11 of the schedule.

Legal Panel means the firms of solicitors appointed from time to time by the *Insurer* to provide representation on behalf of an *Insured* under this policy.

Legal Representation Costs means the reasonable legal costs and expenses for which an *Insured* is legally liable and which are incurred, with the prior consent of the *Insurer*, for legal representation in connection with any attendance at an *Inquiry*, including legal costs and expenses in providing information or documents related to a raid or on-site visit to a *Company* by any official Governmental body or authority, regulator, governmental or administrative agency or any self-regulatory body in respect of such *Inquiry*.

Limit of Liability means the amount specified as such in the Schedule.

Loss means *Damages*, *Defence Costs* or *Legal Representation Costs*, however *Loss* shall not include and this policy shall not cover any:

- (i) taxes;
- (ii) non-compensatory damages, including punitive, multiple, exemplary or liquidated damages;
- (iii) fines or penalties unless insurable by law;
- (iv) the costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief;
- (v) benefits or overheads of, or charges or expenses incurred by any *Insured* including but not limited to the cost of any *Insured's* time;
- (vi) fees or commissions, for any *Professional Services* rendered or required to be rendered by an *Insured* or that portion of any settlement or award in an amount equal to such fees, commissions, or other compensation; or
- (vii) any matters which may be deemed uninsurable under the law governing this policy or the jurisdiction in which a *Claim* is brought.

Policy Period means the period of time specified in the Schedule.

Policyholder means the entity specified as such in the Schedule.

Pollutants means any solid, liquid, gaseous, biological, radiological or thermal irritant, toxic or hazardous substance, or contaminant, including but not limited to, lead, smoke, vapour, dust, fibres, mould, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and waste. Such waste includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.

Professional Services means the professional services and/or activities of the *Policyholder* and any *Subsidiary* as specified in the Schedule.

Property Damage means damage to or loss of or destruction of tangible property or loss of use thereof.

Related Claim means any *Claims* alleging, arising out of, based upon or attributable to the same facts or alleged facts, or circumstances or the same *Wrongful Act*, or a continuous repeated or related *Wrongful Act*.

Retention means the amount specified as such in the Schedule.

Retroactive Date means the date specified as such in the Schedule.

Settlement Value means in respect of any *Claim* covered under this policy:

- (i) the full amount claimed; or
- (ii) any settlement offer from the claimant(s) which is capable of acceptance.

Where the claimant(s)' costs, if applicable, are not quantified by the claimant, the *Insurer* will also pay a reasonable sum to an *Insured* to represent these costs.

Submission means:

- (i) each and every signed proposal form, the statements, warranties, and representations therein, its attachments;
- (ii) the financial statements of any *Company*; and
- (iii) other documents of any *Company* filed with a regulator and all other material information;

submitted to the *Insurer* in connection with this policy.

Subsidiary means any entity in which the *Company*, either directly or indirectly through one or more entities:

- (i) controls the composition of the board of directors;
- (ii) controls more than half of the voting power; or
- (iii) holds more than half of the issued share capital;

on or before the inception date of this policy.

For any *Subsidiary* or any *Insured* thereof, cover under this policy shall only apply to *Wrongful Acts* committed while such entity is a *Subsidiary* of the *Company*.

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.

Third Party means any entity or natural person except (i) any *Insured*; or (ii) any other entity or natural person having a financial interest or executive role in the operation of the *Company*.

Trade Secrets means information that derives independent economic value, actual or potential, from not being generally known and not being readily ascertainable through proper means by other persons who can obtain economic advantage from its disclosure or use.

Transaction means any one of the following events:

- (i) the *Company* consolidates with or merges into any other entity; or
- (ii) the *Company* sells 90% or more of its assets to any other person or entity or group of persons and/or entities acting in concert; or
- (iii) any person or entity or group of persons and/or entities acting in concert acquire more than 50% of the issued share capital of the *Company*; or
- (iv) an administrator, liquidator or receiver is appointed to the *Company*.

Wrongful Act means any actual or alleged act, error or omission committed solely in the performance of or failure to perform *Professional Services*.

4. Exclusions

This policy shall not cover *Loss* in connection with any *Claim* or *Inquiry* commenced:

4.1 Asbestos

arising out of, based upon or attributable to the presence or release or possible release of asbestos or asbestos containing materials in whatever form or quantity.

4.2 Bodily Injury/ Property Damage

arising out of, based upon or attributable to *Bodily Injury* or *Property Damage* unless arising from an actual or alleged failure to achieve the legally required standard of care, diligence and expertise in performing *Professional Services*.

4.3 Conduct

arising out of, based upon or attributable to any actual or alleged dishonest, fraudulent or criminal conduct of an *Insured*.

This exclusion shall not apply to Fraud and Dishonesty cover.

4.4 Contractual Liability

arising out of, based upon or attributable to any:

- (i) liability assumed or accepted by an *Insured* under any contract or agreement; or
- (ii) guarantee or warranty;

except to the extent such liability would have attached to an *Insured* in the absence of such contractual duty, term or agreement.

4.5 Costs Assessment

arising out of, based upon or attributable to any failure by any *Insured* or other party acting for an *Insured* to make an accurate pre-assessment of the cost of performing *Professional Services*.

4.6 Directors' and Officers' Liability

arising out of, based upon or attributable to any *Claim* made against an *Insured* in their capacity as a director, officer, trustee or partner of the *Company* in respect of the performance or non-performance of their duties as a director, officer, trustee or partner of the *Company*.

4.7 Employers Liability

by any person for bodily injury, sickness, disease or death incurred, contracted or occurring whilst under a contract of service or apprenticeship with an *Insured* or for any breach of any obligation owed by an *Insured* as an employer.

4.8 Employment Practice Violation

arising out of, based upon or attributable to any act, error or omission with respect to any employment or prospective employment of any past, present, future or prospective *employee* or *Insured Person* of any *Company*.

4.9 Infrastructure

arising out of, based upon or attributable to:

- (i) software or mechanical failure;
- (ii) electrical failure, including any electrical power interruption, surge, brown out or black out; or
- (iii) telecommunications or satellite systems failure;

outside the direct control of an *Insured*.

4.10 Insolvency

arising out of, based upon or attributable to the insolvency, liquidation, administration or receivership of the *Company*.

4.11 Manufacturing Liability

arising out of, based upon or attributable to any manufacturing defect in any product.

4.12 Patent & Trade Secret

arising out of, based upon or attributable to the breach of licences concerning infringement of or misappropriation of patents or *Trade Secrets*.

4.13 Pollution

arising out of, based upon or attributable to any direction, request or effort to: (a) test for, monitor, clean up, remove, contain, treat, detoxify or neutralise *Pollutants*, or (b) respond to or assess the effects of *Pollutants*.

4.14 Prior Claims/ Circumstances

made prior to the inception of this policy including any *Related Claims* thereto, or arising out of, based upon or attributable to a circumstance which has been properly notified under any other policy or certificate of insurance attaching prior to the inception of this policy including any *Related Claims* thereto.

4.15 Prior Acts

arising out of based upon, attributable to or in any way involving any *Wrongful Act* which first takes place before the *Retroactive Date*.

4.16 Trade Debts

arising out of, based upon or attributable to any: (i) trading debt incurred by an *Insured* or (ii) guarantee given by an *Insured* for a debt.

4.17 U.S.A./Canada

made or pending within or to enforce a judgment obtained in the United States of America, Canada, or any of their territories or possessions.

4.18 War/Terrorism

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

5. Claims

5.1 Allocation

In the event that any *Claim* involves both covered matters and matters or persons not covered under this policy, a fair and proper allocation of any cost of defence, damages, judgments and/or settlements shall be made between each *Insured* and the *Insurer* taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this policy.

5.2 Circumstances

The *Policyholder* shall as soon as reasonably practicable during the *Policy Period* notify the *Insurer* at the address listed in the Claims Notifications Clause below of any circumstance of which any *Insured* becomes aware during the *Policy Period* which is reasonably expected to give rise to a *Claim*. The notice must include at least the following:

- (i) a statement that it is intended to serve as a notice of a circumstance of which an *Insured* has become aware which is reasonably expected to give rise to a *Claim*;
- (ii) the reasons for anticipating that *Claim* (including full particulars as to the nature and date(s) of the potential *Wrongful Act(s)*);
- (iii) the identity of any potential claimant(s);
- (iv) the identity of any *Insured* involved in such circumstance; and
- (v) the date on and manner in which an *Insured* first became aware of such circumstance.

Provided that notice has been given in accordance with the requirements of this clause, any later *Claim* arising out of such notified circumstance (and any *Related Claims*) shall be deemed to be made at the date when the circumstance was first notified to the *Insurer*.

5.3 Claim Notifications

The *Policyholder* shall give written notice to the *Insurer* of any *Claim* first made against an *Insured* as soon as practicable and during the *Policy Period*. All notifications must be in writing to the address stated in Item 10 of the schedule.

If posted, the date of posting shall constitute the date that notice was given, and proof of posting shall be sufficient proof of notice.

5.4 Cooperation

An *Insured* will at their own cost:

- (i) render all reasonable assistance to the *Insurer* and co-operate in the defence of any *Claim* and the assertion of indemnification and contribution rights;
- (ii) use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any *Loss* under this policy; and
- (iii) give such information and assistance to the *Insurer* as the *Insurer* may reasonably require to enable it to investigate any *Loss* or determine the *Insurer's* liability under this policy.

5.5 Defence

The *Insurer* does not assume any duty to defend, and an *Insured* shall defend and contest any *Claim* made against them unless the *Insurer*, in its sole and absolute discretion, elects in writing to take over and conduct the defence and settlement of any *Claim*. If the *Insurer* does not so elect, it shall be entitled, but not required, to participate fully in such defence and the negotiation of any settlement that involves or appears reasonably likely to involve the *Insurer*. In the event that the *Insurer* decides that representation by a solicitor is necessary (such decision to be at the sole discretion of the *Insurer*) then an *Insured* shall select one of the *Legal Panel* to provide such legal representation.

5.6 Insured's Consent

The *Insurer* may make any settlement it deems expedient of any *Claim* against any *Insured*, subject to such *Insured's* written consent. Where an *Insured* does not consent the *Insurer* may elect to pay to an *Insured* the *Settlement Value* less the applicable *Retention* that the *Insurer* wishes to accept. Upon such payment being made there is no further cover available under the policy for that *Claim*.

5.7 Insurer's Consent

No *Insured* shall admit or assume any liability, enter into any settlement agreement, or consent to any judgment without the prior written consent of the *Insurer*, other than where provided for under the terms of the Emergency Costs Advancement and Mitigation Cover.

5.8 Fraudulent Claims

If any *Insured* shall give any notice or *claim* cover for any *Loss* under this policy knowing such notice or *claim* to be false or fraudulent as regards amounts or otherwise, such *Loss* shall be excluded from cover under the policy, and the *Insurer* shall have the right, in its sole and absolute discretion, to avoid its obligations under or void this policy in its entirety, and in such case, all cover for *Loss* under the policy shall be forfeited, all premium shall be deemed fully earned and non-refundable and the *Policyholder* shall reimburse the *Insurer* for any payments made under this policy.

5.9 Advance Payment of Defence Costs

The *Insurer* shall pay *Defence Costs* covered by this policy within thirty (30) days after sufficiently detailed invoices for those costs are received by the *Insurer*. The *Policyholder* shall reimburse the *Insurer* for any payments which are ultimately determined not to be covered by this policy. This clause shall be applied in the same manner to *Legal Representation Costs* Extension in respect of any *Inquiry*.

5.10 Related Claims

If during the *Policy Period* a *Claim* is made or a circumstance is notified in accordance with the requirements of this policy any *Related Claim* made after expiry of the *Policy Period* will be accepted by the *Insurer* as having been:

- (i) made at the same time as the notified *Claim* was made or the relevant circumstance was notified; and
- (ii) notified at the same time as the notified *Claim* or circumstance.

All *Related Claims* shall be deemed to be one single *Claim* and deemed to be made at the date of the first *Claim* of the series or at the first circumstance notified, whichever is first.

5.11 Settlement

The *Insurer* shall be under no obligation (save where requested by the *Policyholder*) to make any payment to an *Insured* other than the *Policyholder* and shall unless otherwise requested by the *Policyholder* make payment of all losses insured hereunder to the *Policyholder* and such payment shall constitute a full and complete release and discharge of the *Insurer's* liabilities in respect of all and any such *loss* whether suffered directly by the *Policyholder* or not.

6. General Provisions

6.1 Assignment

This policy and any rights under or in respect of it cannot be assigned by an *Insured* without the prior written consent of the *Insurer*.

6.2 Cancellation

This policy may be cancelled:

- (i) by the *Insurer* pursuant to the Premium Payment clause for non-payment of premium; or
- (ii) if no notice of a *Claim* or circumstance which is reasonably expected to give rise to a *Claim* has been provided to the *Insurer* under this policy, by the *Policyholder* with effect immediately upon the *Insurer's* receipt of written notice of such cancellation; the *Insurer* shall retain the customary short rate proportion (unexpired portion of *Premium* less handling charges) of the *Premium*. If notice of a *Claim* or circumstance which is reasonably expected to give rise to a *Claim* has been provided to the *Insurer* under this policy, the *Premium* shall not be returnable and shall be deemed fully earned at cancellation;
- (iii) by mutual agreement between the *Insurer* and the *Policyholder*.

6.3 Change of Control

The *Insurer* shall not be liable to make any payment or to provide any services in connection with any *Claim* arising out of, based upon or attributable to a *Wrongful Act* committed after the occurrence of a *Transaction*.

If during the *policy period* an administrator, liquidator or receiver is appointed to a *Subsidiary*, then the cover provided under this policy with respect to such *Subsidiary* is amended to apply only to *Wrongful Acts* committed prior to the date of such appointment.

6.4 Contract Rights

Nothing in this policy is intended to confer an enforceable benefit on any *Third Party*, whether pursuant to legislation equivalent to Singapore Contract (Rights of Third Parties) Act 2002 or otherwise.

6.5 Dispute Resolution

Where, following receipt by the *Insurer* of all information reasonably required to provide such decision;

- (i) a final decision has been given by the *Insurer* regarding any aspect of this policy or any matter relating to cover thereunder;
- (ii) that decision is disputed between the *Insurer* and an *Insured*; and
- (iii) such dispute can not be resolved within 14 days of the date on which such decision is communicated to the *Policyholder* or its insurance broker,

the dispute shall be referred to arbitration in the manner set forth in the Arbitration Endorsement which is attached to and hereby made a part of this policy.

6.6 Plurals, Headings and Titles

The descriptions in the headings and titles of this policy are solely for reference and convenience and do not lend any meaning to this contract. Words and expressions in the singular shall include the plural and vice versa. In this policy, words in italic typeface have special meaning and are defined. Words that are not specifically defined in this policy have the meaning normally attributed to them.

6.7 Premium Payment

The *Policyholder* undertakes that the premium shall be paid to the *Insurer* within 60 days of inception of this policy (or, in respect of instalment premiums, when they are due). Where such premium has resulted from a mid-term amendment to the policy, the premium payment date shall be deemed to be 60 days from the point of the *Insurer's* acceptance of the amendment. The *Policyholder* shall have the burden of establishing that such payment has been made.

If the premium due under this policy has not been paid to the *Insurer* by the 60th day from inception of this policy (and, in respect of instalment premiums and mid-term amendment premiums, by the date they are due) the *Insurer* shall have the right to cancel this policy by notifying the *Policyholder* in writing direct or via the insurance broker as appropriate. In the event of cancellation by the *Insurer* pursuant to this clause, premium is due to the *Insurer* on a pro-rata basis for the period that the *Insurer* was on risk but the full premium is due to the *Insurer* in the event that prior to the date of termination a *Claim* is made, or a circumstance is notified in accordance with the requirements of this policy.

It is agreed that the *Insurer* shall give not more than 7 days prior notice of cancellation under this clause to the *Policyholder* in writing direct or via the insurance broker as appropriate. If the premium due is paid in full to the *Insurer* before the notice period expires, notice of cancellation shall automatically be revoked. If not, the policy shall automatically terminate and be of no effect at the end of the notice period.

6.8 Scope and Governing Law

Where legally permissible and subject to all terms and conditions of this policy, this policy shall apply to any *Claim* made against any *Insured* anywhere in the world. Any interpretation of this policy relating to its construction, validity or operation shall be made exclusively in accordance with the laws of the country as stated in Item 12 of the schedule and in accordance with the English text as it appears in this policy.

6.9 Subrogation

An *Insured* shall take all steps necessary or such steps as are required by the *Insurer* before or after any payment by the *Insurer* under this policy to preserve the rights and remedies which an *Insured* may have to recover the *Loss*. If any payment is to be made under this policy in respect of a *Claim*, the *Insurer* shall be subrogated to all rights of recovery of an *Insured* whether or not payment has in fact been made and whether or not an *Insured* has been fully compensated for its actual *Loss*. The *Insurer* shall be entitled to pursue and enforce such rights in the name of an *Insured*, who, both before and after payment under this policy, shall provide the *Insurer* with all reasonable assistance and co-operation in doing so, including the execution of any necessary instruments and papers. An *Insured* shall do nothing to prejudice the *Insurer's* rights under this subrogation clause.

The *Insurer* agrees not to exercise any such rights of recovery against any *Employee* unless the *Claim* is brought about or contributed to by the dishonest, fraudulent, intentional criminal or malicious act or omission of the *Employee*. In its sole discretion, the *Insurer* may, in writing, waive any of its rights set forth in this Subrogation Clause.

Any amounts recovered in accordance with this clause shall be applied in the following order:

- (i) to compensate the *Insurer* and an *Insured* for the costs incurred in making the recovery (such payment to be allocated between the *Insurer* and an *Insured* in the same proportions as they have borne the costs thereof); and
- (ii) to the *Insurer* up to the amount of the *Loss* paid by the *Insurer*; and
- (iii) to an *Insured* in respect of any uninsured element of the *Claim* (including the *Retention* under this policy).

7. Innocent Non-Disclosure

In granting cover to an *Insured*, the *Insurer* has relied upon the material statements and particulars in the *Submission* together with its attachments and other information supplied. These statements, attachments and information are the basis of cover and shall be considered incorporated into and constitute part of this policy.

The *Insurer* will not exercise its right to avoid this policy on the grounds of any alleged non-disclosure or misrepresentation of facts or alleged untrue statements in any information supplied to it, provided that an *Insured* shall establish to the *Insurer's* reasonable satisfaction that such alleged non-disclosure, misrepresentation or untrue statement was free of any fraudulent conduct or intent to deceive. Where such non-disclosure, misrepresentation or untrue statement has prejudiced the *Insurer's* consideration of terms under this policy, the *Insurer* shall be entitled to charge a reasonable additional premium and/or amend policy terms and conditions in light of such prejudice.

Should an *Insured* have failed to inform the *Insurer* before inception of this policy or increase in cover or other variation of its terms of any circumstance of which an *Insured* was aware which might give rise to a *Claim* or payment of *Loss* hereunder, and such failure is accepted by the *Insurer* as having been free of any fraudulent conduct or intent to deceive, the *Insurer's* liability under this policy shall not extend beyond that which would have been owed pursuant to the earliest such previous insurance under which the circumstance could have been notified or that which was available prior to any increase in cover or variation of terms. Furthermore, where such failure to notify a circumstance, as described above, results in prejudice to the handling or settlement of any *Claim* under this policy, the *Insurer* shall be entitled to reduce the indemnity afforded under this policy in respect of such *Claim* (including *Defence Costs*) to such sum as in the *Insurer's* reasonable opinion would have been payable by them in the absence of such prejudice.

8. Limit and Retention

8.1 Limit of Liability

- (i) The total amount payable by the *Insurer* under this policy for all *Claims* in the aggregate during the *Policy Period* shall not exceed the *Limit of Liability*.
- (ii) Sub-limits of liability, Extensions and *Defence Costs* are part of that amount and are not payable in addition to the *Limit of Liability*.
- (iii) Each sub-limit of liability specified in the policy is the most the *Insurer* will pay in the aggregate under this policy as *Loss* in respect of any insurance cover or extension to which it applies.
- (iv) The inclusion of more than one *Insured* under this policy does not operate to increase the total amount payable by the *Insurer* under this policy.
- (v) The *Limit of Liability* is the total sum payable by the *Insurer*. Any sum paid by the *Insurer* under this policy shall erode the *Limit of Liability*. In no circumstances shall the liability of the *Insurer* exceed the *Limit of Liability*.

8.2 Other Insurance / Indemnification

Unless otherwise required by law, cover under this policy is provided only as excess over any self-insurance or other valid and applicable insurance, unless such other insurance is written only as specific excess insurance over the *Limit of Liability*. This policy shall not cover *Defence Costs* of any *Claim* where another insurance policy imposes upon another insurer a duty to defend such *Claim*.

8.3 Retention

The *Insurer* shall only pay the amount of any *Loss* which is in excess of the *Retention*. For the avoidance of doubt, the *Retention* also applies to *Defence Costs*. The *Retention* is to be borne by the *Insured* and shall remain uninsured. A single *Retention* shall apply to *Loss* arising from *Related Claims*. The *Insurer* may, in its sole and absolute discretion, advance all or part of the *Retention*, and, in that event, such amounts shall be reimbursed to the *Insurer* by the *Insureds* forthwith. The *Lost Documents* Extension excess rather

than the *Retention* specified in the schedule shall apply to each and every *Claim* solely covered by that Extension.

9. Policy Administration

The *Policyholder* shall act on behalf of each and every *Insured* with respect to:

- (i) negotiating the terms and conditions of and binding cover; and
- (ii) the exercise of all rights of *Insured's* under this policy; and
- (iii) all notices; and
- (iv) premiums; and
- (v) endorsements to this policy; and
- (vi) the appointment of a member of the *Legal Panel* to defend a *Claim*; and
- (vii) dispute resolution; and
- (viii) the receipt of all amounts payable to an *Insured* by the *Insurer* under this policy.