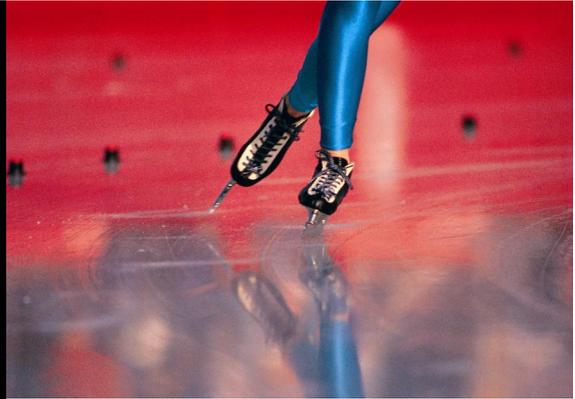


The
DUAL
Approach



**MANAGEMENT
LIABILITY**



DUAL

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DUAL Australia Management Liability Insurance

Policy Wording

Section 1: PREAMBLE

- 1.1 WE shall provide the cover described in the POLICY, subject to its terms and conditions.
- 1.2 The cover under the POLICY commences upon the payment of the Premium unless otherwise agreed in writing.

Section 2: INSURING CLAUSES

2.1 Cover for YOU

WE agree to pay on behalf of each INSURED PERSON all LOSS on account of any CLAIM first made against such INSURED PERSON and reported to US during the INSURANCE PERIOD in respect of any:

- a. WRONGFUL ACT; or
- b. EMPLOYMENT PRACTICE BREACH; or
- c. TRUSTEE BREACH

for which the COMPANY is not permitted or required to indemnify the INSURED PERSON.

2.2 Cover for the COMPANY

WE agree to pay on behalf of the COMPANY all LOSS:

- a. D&O / Company Reimbursement - on account of any CLAIM first made against any INSURED PERSON and reported to US during the INSURANCE PERIOD in respect of a WRONGFUL ACT for which the COMPANY is permitted or required to indemnify the INSURED PERSON;
- b. Entity - on account of any CLAIM made against the COMPANY for a WRONGFUL ACT

The total amount payable by US under this Insuring Clause 2.2 (b) for all such LOSS in the INSURANCE PERIOD including DEFENCE COSTS shall not exceed the Sub-Limit specified in Item 4 in the Schedule. This Sub-Limit forms part of, and is not payable in addition to, the INDEMNITY LIMIT;

- c. Employment Practices - on account of any CLAIM made against the COMPANY for an EMPLOYMENT PRACTICE BREACH, up to the sub limit shown in Item 4 of the Schedule in respect of all such CLAIMS (which Sub-Limit shall be part of and not in addition to the INDEMNITY LIMIT);
- d. Trustee - on account of any CLAIM made against the COMPANY for a TRUSTEE BREACH;
- e. Crime - sustained by the COMPANY, in excess of the DEDUCTIBLE, which is first DISCOVERED during the INSURANCE PERIOD and caused by DISHONEST ACTS.

The total amount payable by US under this Insuring Clause 2.2 (e) for all such LOSS DISCOVERED in the INSURANCE PERIOD shall not exceed the Sub-Limit specified in the Schedule for this Insuring Clause. This Sub-Limit forms part of, and is not payable in addition to, the INDEMNITY LIMIT.

- f. Taxation Investigation – where the INSURED has received a TAX AUDIT NOTICE, and has reported it to US, during the INSURANCE PERIOD, WE will provide cover to the INSURED for necessary and reasonable TAX AUDIT COSTS incurred by the INSURED up to the completion of the audit or investigation.

The total amount payable by US under this Insuring Clause 2.2 (f) in respect of all TAX AUDIT NOTICES in the INSURANCE PERIOD shall not exceed the Sub-Limit shown in Item 4 of the Schedule. This Sub-Limit forms part of, and is not payable in addition to, the INDEMNITY LIMIT. A separate DEDUCTIBLE of \$1,000 inclusive of costs will apply to each audit or investigation under this extension

2.3 **Defence Costs for Claims**

Except where WE deny liability, WE agree to pay DEFENCE COSTS either incurred by US or incurred by the INSURED with OUR prior written consent. The DEFENCE COSTS must be reasonably incurred.

WE also agree to advance DEFENCE COSTS before final disposition of a CLAIM.

For clarity, WE will not rely on Exclusion 6.8 (Fraudulent, Dishonest and Wilful Conduct) until there is a relevant judgment, final adjudication or admission.

If WE subsequently refuse to pay the INSURED's LOSS under the POLICY, the INSURED must reimburse US for any DEFENCE COSTS that WE have paid in advance, according to the respective interests of the INSURED.

For the purpose of this clause and the terms, conditions and exclusions of the POLICY, CLAIM also means an official investigation, examination or inquiry under Extension 3.1.

2.4 **Retroactive Date**

The POLICY shall only provide cover with respect to WRONGFUL ACTS, EMPLOYMENT PRACTICE BREACHES, TRUSTEE BREACHES and DISHONEST ACTS committed after the RETROACTIVE DATE.

Section 3: AUTOMATIC EXTENSIONS

The Automatic Extensions are subject to the Insuring Clauses and all other POLICY terms, conditions and exclusions, except as expressly stated to the contrary in these Automatic Extensions.

3.1 **Official Investigations and Inquiries**

Cover for YOU

- a. WE agree to pay DEFENCE COSTS incurred with OUR prior written consent for any attendance by an INSURED PERSON for examination at any official investigation, examination or inquiry in relation to the affairs of the COMPANY or any other examination of the INSURED PERSON by virtue of his/her position as an INSURED PERSON provided that notice of the official investigation, examination or inquiry is first received by the INSURED PERSON and notified to US during the INSURANCE PERIOD.

The total amount payable by US under this extension shall not exceed the Sub-Limit shown in Item 4 of the Schedule in respect of all such investigations. This Sub-Limit forms part of, and is not payable in addition to the INDEMNITY LIMIT.

Cover for the COMPANY

- b. WE agree to pay DEFENCE COSTS incurred with OUR prior written consent for any attendance by the COMPANY at any official investigation, examination or inquiry in relation to the affairs of the COMPANY provided that notice of the official investigation,

examination or inquiry is first received by the COMPANY and notified to US during the INSURANCE PERIOD.

The total amount payable by US under this extension shall not exceed the Sub-Limit shown in the Schedule in respect of all such investigations. This Sub-Limit forms part of, and is not payable in addition to the INDEMNITY LIMIT.

For clarity, this Extension 3.1 includes any investigation by an official body in respect of any potential breach of any Commonwealth, State or Territory occupational or workplace health and safety legislation.

3.2 **Occupational Health and Safety Defence Costs**

Notwithstanding the Bodily Injury / Property Damage Exclusion 6.4, WE agree to pay DEFENCE COSTS in respect of any CLAIM made against an INSURED where such CLAIM arises from a breach or alleged breach of any Commonwealth, State or Territory occupational or workplace health and safety legislation.

The total amount payable by US under this Extension shall not exceed the Sub-Limit shown in the Schedule in respect of all such CLAIMS. This Sub-Limit forms part of, and is not payable in addition to the INDEMNITY LIMIT. However, if such CLAIM follows an investigation to which Extension 3.1 responds, then the Sub-Limit under this Extension 3.2 shall be in addition to the Sub-Limit for Extension 3.1, subject always to the INDEMNITY LIMIT.

3.3 **Statutory Liability**

Notwithstanding the reference in clauses 5.27(a) LOSS and 6.1(d) of the POLICY to fines and penalties, WE agree that, for the purposes of Insuring Clauses 2.1 and 2.2(a) – (d) only, the definition of LOSS includes STATUTORY LIABILITY.

STATUTORY LIABILITY means pecuniary penalties awarded in and under the laws of the jurisdictions of Australia and New Zealand, against:

- a. an INSURED for any civil offence; and
- b. an INSURED for a strict liability offence in connection with a breach of occupational health and safety law or regulation (“OH&S”) notwithstanding Exclusion 6.4 Bodily Injury / Property Damage; and
- c. an INSURED for a strict liability offence in connection with the discharge, dispersal, release or escape of POLLUTANTS, notwithstanding Exclusion 6.4 Bodily Injury / Property Damage and Exclusion 7.5 POLLUTION,

if WE are not legally prohibited from paying the pecuniary penalties.

WE are not liable to make any payment under the POLICY in connection with any:

- i. alleged violation of any law in relation to vehicle, air or marine traffic;
- ii. actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, intellectual property rights, trade secret, unfair trade practices or business competition or any Consumer Protection Act, including but not limited to any Fair Trading Acts, Part V Trade Practices Act, and Competition and Consumer Act and any similar law of any state or territory and any amendment, consolidation or re-enactment of any of those Acts;
- iii. contract of service, or any intended contract of service, with any current, former or prospective EMPLOYEE;

The total payable for all cover under this STATUTORY LIABILITY Extension shall not exceed the Sub-Limit shown in the Schedule for all claims inclusive of all LOSS and DEFENCE COSTS. However, if any claim by an INSURED under this Extension 3.3 is in respect of a CLAIM to which Extension 3.2 OH&S DEFENCE COSTS or Extension 3.4 POLLUTION Defence Costs responds, then the cover under this Extension 3.3 in respect of such CLAIM

shall be limited solely to STATUTORY LIABILITY and shall not include DEFENCE COSTS. This Sub-Limit forms part of, and is not payable in addition to, the INDEMNITY LIMIT.

3.4 **Pollution Defence Costs**

Notwithstanding Exclusion 7.4 Bodily Injury / Property Damage and Exclusion 6.5 POLLUTION, WE agree to pay DEFENCE COSTS incurred with OUR prior written consent in respect of any CLAIM made against an INSURED in connection with POLLUTANTS. Such consent will not be unreasonably withheld.

The total amount payable by US under this extension shall not exceed the Sub-Limit shown in the Schedule in respect of all CLAIMS. This Sub-Limit forms part of, and is not payable in addition to the INDEMNITY LIMIT.

3.5 **Continuous Cover**

Subject to the terms and conditions of this POLICY, WE agree to provide cover in respect of any CLAIM first made in the INSURANCE PERIOD where the INSURED:

- a. first became aware, prior to the INSURANCE PERIOD, that a CLAIM might or could arise from facts or circumstances known to it; and
- b. had not notified its insurer of such facts or circumstances prior to the INSURANCE PERIOD.

The Prior Knowledge Clause 6.1(a) will not apply to any notification to US during the INSURANCE PERIOD of any such CLAIM, provided that:

- i. WE were the management liability insurer of the INSURED when the INSURED first became aware of such facts and circumstances; and
- ii. WE have continued, without interruption, to be the INSURED's management liability insurer up until this POLICY came into effect;
- iii. There has not been any fraudulent non-disclosure or fraudulent misrepresentation by the INSURED in respect of such facts or circumstances; and
- iv. WE have the discretion to apply either the terms and conditions of the policy on foot when the INSURED first became aware of the facts and circumstances, including but not limited to its indemnity limit and deductible or excess, or the terms and conditions of this POLICY.

For the purpose of clause (i) of this Extension only, the definition of WE/US/OUR in clause 5.45 of this POLICY also includes the Underwriter(s) for which WE were the agent on any previous policy issued by US as such Underwriter's agent to the INSURED. Subject to the terms of this Extension and the terms of the POLICY, the intention of this Extension is to provide continuous cover to the INSURED notwithstanding any change in the identity of the Underwriters for which WE presently act, or have previously acted, as agent.

3.6 **Discovery Period**

The INSURED may give written notice to US of any CLAIM in respect of a WRONGFUL ACT occurring prior to the end of the INSURANCE PERIOD, during a DISCOVERY PERIOD immediately following the INSURANCE PERIOD of:

- a. 30 days, granted automatically with no additional premium payable; or
- b. 12 months, if the INSURED requests such period in writing within 15 days after the end of the INSURANCE PERIOD and tenders an additional premium of 50% of the annual premium level in effect immediately prior to the end of the INSURANCE PERIOD within 30 days after the end of the INSURANCE PERIOD; or
- c. 84 months, if a TRANSACTION takes place and the INSURED requests such period in writing within 30 days following the end of the INSURANCE PERIOD, on such terms and conditions, if any, and for such additional premium as WE may reasonably decide.

This Extension is not available if this POLICY is:

- i. renewed or replaced with any other directors and officers or management liability policy; or
- ii. cancelled or avoided.

Any DISCOVERY PERIOD purchased under this Extension is non-cancellable, and the premium paid for the DISCOVERY PERIOD is non-refundable.

3.7 **Emergency Defence Costs**

Notwithstanding any provision in the POLICY to the contrary, if it is not possible for the INSURED to obtain OUR consent prior to incurring DEFENCE COSTS, WE will waive prior consent so long as OUR consent is obtained within 30 days of the first of such DEFENCE COSTS being incurred.

The total amount payable by US under this extension shall not exceed the Sub-Limit shown in the Schedule in respect of all CLAIMS. This Sub-Limit forms part of, and is not payable in addition to, the INDEMNITY LIMIT.

3.8 **Crisis Containment**

WE shall reimburse the COMPANY for the CRISIS LOSS in excess of the DEDUCTIBLE which the COMPANY incurs by reason of a CRISIS EVENT which first occurs and is notified to US during the INSURANCE PERIOD.

The total amount payable by US under this extension in respect of the COMPANY for all CRISIS LOSSES shall not exceed the Sub-Limit shown in the Schedule. This Sub-Limit forms part of, and is not payable in addition to the INDEMNITY LIMIT.

3.9 **Public Relations Cover**

WE agree that the definition of LOSS under this POLICY shall include, at the election of the INSURED, the PUBLIC RELATIONS EXPENSES of an INSURED PERSON:

- a. in connection with a CLAIM for extradition of such INSURED PERSON; or
- b. in connection with an INCIDENT in order to prevent or minimise the risk of a CLAIM which would be covered under the POLICY, or in connection with an INCIDENT that may result in a CLAIM covered under the POLICY.

The INSURED's entitlement to this cover is conditional upon the INSURED PERSON providing US with full written details of the INCIDENT no later than 30 days after the INSURED PERSON first becomes aware of the INCIDENT. The INCIDENT must occur and be reported during the INSURANCE PERIOD.

For the purpose of this Extension only, PUBLIC RELATIONS EXPENSES means any reasonable fees, costs and expenses of a public relations consultant retained with OUR prior written consent (which shall not be unreasonably delayed or withheld). INCIDENT means a matter in which the INSURED PERSON's reputation and or conduct in the capacity as an INSURED PERSON is brought into question.

The total amount payable under this Extension in respect of all INSURED PERSONS for all CLAIMS and all INCIDENTS shall not exceed the Sub-Limit shown in Item 4 of the Schedule. This Sub-Limit forms part of, and is not payable in addition to, the INDEMNITY LIMIT.

3.10 **Retirement Cover**

Any INSURED PERSON will be automatically entitled to a 72 month DISCOVERY PERIOD at no additional premium after the expiry of the INSURANCE PERIOD provided that the INSURED PERSON retired from all employment or office prior to the expiry of the INSURANCE PERIOD.

This extension shall be available only if;

- a. the COMPANY does not renew this POLICY or replace it with any other insurance providing directors and officers liability coverage; and/or
- b. none of the DISCOVERY PERIOD Options detailed in Extension 3.7 of this POLICY has been purchased by any INSURED.

3.11 **Outside Directorship Cover**

WE agree to provide cover for all LOSS on account of any CLAIM made against any INSURED PERSON who was, is or may become, with the written consent of the COMPANY, a director, officer, trustee, governor or equivalent position, in any OUTSIDE ENTITY for any WRONGFUL ACT, EMPLOYMENT PRACTICE BREACH or TRUSTEE BREACH in such INSURED PERSON's capacity as a director, officer, trustee, governor or equivalent position, in the OUTSIDE ENTITY.

This cover shall only apply:

- a. in excess of any insurance in force in respect of the OUTSIDE ENTITY as well as any indemnification provided by the OUTSIDE ENTITY, and;
- b. in connection with any CLAIM made against any INSURED PERSON by any shareholder of the OUTSIDE ENTITY holding less than 20% of the issued and outstanding voting share capital of the OUTSIDE ENTITY.

WE are not liable to make any payment for LOSS in respect of any CLAIM arising out of, based upon, attributable to or in any way connected with the actual or alleged insolvency of any OUTSIDE ENTITY or any actual or alleged inability of any OUTSIDE ENTITY to pay its debts as and when they fall due.

3.12 **New Subsidiary Cover**

WE agree to provide cover in respect of any SUBSIDIARY which is created or acquired by the COMPANY during the INSURANCE PERIOD, provided that the SUBSIDIARY has:

- a. total gross assets which are less than 20% of the total gross assets of the COMPANY; or
- b. gross annual turnover of less than 20% of the total gross annual turnover of the COMPANY; or
- c. total gross assets which are less than 10% of the total gross assets of the COMPANY in the USA or Canada.

The cover provided shall only apply in respect of a WRONGFUL ACT, EMPLOYMENT PRACTICE BREACH, TRUSTEE BREACH or DISHONEST ACTS occurring after the date of creation or acquisition.

3.13 **Former Subsidiary Cover**

WE agree to provide cover in respect of any company that ceases to be a SUBSIDIARY during the INSURANCE PERIOD or prior to commencement of the INSURANCE PERIOD, provided that the cover provided shall only apply in respect of a WRONGFUL ACT, EMPLOYMENT PRACTICE BREACH or TRUSTEE BREACH that occurred whilst the entity was a SUBSIDIARY of the COMPANY.

3.14 **Heirs Estates and Legal Representatives**

WE agree to provide cover to the estate, heirs, legal representatives or assigns of any deceased or mentally incompetent, bankrupt or insolvent INSURED PERSON in respect of LOSS arising from a WRONGFUL ACT, EMPLOYMENT PRACTICE BREACH or TRUSTEE BREACH committed by an INSURED PERSON.

3.15 **Spousal Liability Cover**

WE agree to provide cover for any CLAIM against an INSURED PERSON's legal or de facto spouse, domestic partner or companion in respect of LOSS arising from a WRONGFUL ACT, EMPLOYMENT PRACTICE BREACH or TRUSTEE BREACH committed by an INSURED PERSON.

Section 4: INTERPRETATION

In the POLICY:

- 4.1 Person includes individuals, partnerships, bodies corporate and associations.
- a. The singular includes the plural and the masculine includes the feminine.
 - b. The headings are for descriptive purposes only.
- 4.2 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.
- 4.3 All POLICY documents shall be read together as one contract and any word or expression to which a specific meaning has been attached shall bear the same meaning wherever it may appear.

Section 5: DEFINITIONS

In the POLICY:

- 5.1 ACCOUNTANT or REGISTERED TAX AGENT means a person who is not an INSURED and is recognised by the Institute of Chartered Accountants or the Australian Society of Accountants, or any other person registered by the Australian Taxation Office as a tax agent, engaged by the INSURED.
- 5.2 ASSOCIATED COMPANY means any company named in the PROPOSAL and in which the COMPANY owns on or before the inception of the INSURANCE PERIOD more than or equal to 25% of the issued and outstanding voting shares, either directly or indirectly through one or more of its SUBSIDIARIES.
- 5.3 BENEFITS means any amount payable to a beneficiary of a FUND by the TRUSTEE under the rules governing the FUND.
- 5.4 CLAIM means:
- a. any suit, proceeding or written demand by a third party for monetary compensation or damages; or
 - b. any formal administrative or regulatory proceeding including any arbitration, mediation, conciliation or alternative dispute resolution

alleging an EMPLOYMENT PRACTICE BREACH, TRUSTEE BREACH or WRONGFUL ACT.

All CLAIMS which arise out of or are attributable to or are in any way connected with a single WRONGFUL ACT, EMPLOYMENT PRACTICE BREACH or TRUSTEE BREACH shall constitute a single CLAIM for the purposes of this POLICY. A single WRONGFUL ACT, EMPLOYMENT PRACTICE BREACH OR TRUSTEE BREACH means all respective WRONGFUL ACTS, EMPLOYMENT PRACTICE BREACHES or TRUSTEE BREACHES which are related or form part of a series of related conduct or form part of a course of conduct that is not entirely unconnected, different and/or unrelated.

- 5.5 COMPANY means:
- a. the entity or entities specified in Item 2 of the schedule which are MEMBERS; and
 - b. any SUBSIDIARY in existence at the commencement of the INSURANCE PERIOD.
- 5.6 CREDIT ARRANGEMENT means any credit agreement, extension of credit, loan or transaction in the nature of a loan, lease or rental agreement, invoice, account, agreement or other evidence of debt.
- 5.7 CRISIS EVENT means any of the following unforeseen events where, in the reasonable opinion of the chief executive officer (or equivalent) of the COMPANY, the event has the potential to cause an imminent decrease of greater than 30% of the total consolidated annual revenues of the COMPANY if left unmanaged:
- a. the sudden, unexpected death or disability of any Executive;
 - b. loss of a major customer, contract or credit facility;
 - c. workplace violence;
 - d. the first apparent unauthorized intrusion into any COMPANY'S computer facilities;
 - e. a recall or boycott of any product;
 - f. a man-made disaster;
 - g. any criminal or fraud investigation.
- CRISIS EVENT does not include an event that affects a COMPANY'S industry in general; rather than a COMPANY, specifically.
- 5.8 CRISIS LOSS means the reasonable and necessary fees, costs and expenses paid by the COMPANY for external crisis management services provided in response to a CRISIS EVENT within the first thirty (30) days after the event
- 5.9 DEDUCTIBLE means the amounts specified in Item 5 of the Schedule in respect of each Insuring Clause.
- 5.10 DEFENCE COSTS means that part of a covered LOSS consisting of reasonable costs, charges, fees (including but not limited to legal counsels' fees) and expenses reasonably incurred by YOU or the COMPANY, as applicable, with OUR prior written consent in investigating or defending a CLAIM for LOSS covered by this POLICY.
- In respect of Extension 3.1 it means the costs of the INSURED's reasonable legal representation reasonably required for the attendance at any official investigation, examination or inquiry with OUR prior written consent.
- DEFENCE COSTS does not include regular or overtime wages, salaries or fees of the directors, OFFICERS or EMPLOYEES of the COMPANY incurred in attending, defending, investigating or monitoring CLAIMS.
- 5.11 DIRECT FINANCIAL LOSS means direct financial loss to the COMPANY directly caused by the loss of MONEY, SECURITIES or other tangible property:
- a. owned by the COMPANY; or
 - b. in the care, custody or control of the COMPANY and for which the COMPANY is legally liable.
- DIRECT FINANCIAL LOSS does not include wages, salaries or other remuneration or benefits paid by the COMPANY to its directors, OFFICERS and EMPLOYEES.

All DIRECT FINANCIAL LOSS caused by multiple DISHONEST ACTS that are related, or are part of a series of such conduct that is not entirely unconnected and entirely different, shall be a single LOSS for the purpose of cover under Insuring Clause 2.2(e).

- 5.12 DISCLOSURE DOCUMENT means any prospectus, information memorandum, registration statement or similar document regardless of whether or not it has been, or is required to be, filed or registered with the Australian Securities and Investments Commission or any other similar authority in any other jurisdiction.
- 5.13 DISCOVERED or DISCOVERY means when any director or OFFICER (who is not in collusion with an EMPLOYEE or THIRD PARTY who has committed or is attempting to commit a DISHONEST ACT) becomes aware of any facts which would cause a reasonable person to assume that a DIRECT FINANCIAL LOSS which may be covered by this POLICY has been or may be incurred, even though the exact amount or details of the DIRECT FINANCIAL LOSS are not known at the time of DISCOVERY. Such DISCOVERY constitutes DISCOVERY by every INSURED.
- 5.14 DISCOVERY PERIOD means the period of time specified in Extension 3.7 during which time written notice may be given to US of any
- a. CLAIM which is first made against the INSURED for a WRONGFUL ACT committed or allegedly committed;
 - b. DIRECT FINANCIAL LOSS which is first DISCOVERED and results from DISHONEST ACTS committed
- prior to the end of the INSURANCE PERIOD.
- 5.15 DISHONEST ACTS means any fraudulent or dishonest acts committed by an EMPLOYEE or THIRD PARTY (acting alone or in collusion with others) with the principal intent to cause the COMPANY to sustain a DIRECT FINANCIAL LOSS and results in the EMPLOYEE or THIRD PARTY making an improper financial gain for themselves or for any other individual or organisation intended by the EMPLOYEE or THIRD PARTY to receive such gain.
- 5.16 EMPLOYEE means
- a. any natural person who is a past, present or prospective employee of the COMPANY;
 - b. in respect of Insuring Clause 2.2(e) only, any natural person who is a present employee of the COMPANY
- including any full-time, part-time, casual employee, volunteer, seasonal or temporary worker of the COMPANY, or any natural person seconded to the COMPANY provided such individual is under the direct supervision and direction of the COMPANY.
- EMPLOYEE does not include consultants or agents of the COMPANY or their respective employees (including the employees of labour-hire agencies).
- 5.17 EMPLOYMENT PRACTICE BREACH means any WRONGFUL ACT in relation to any of the following employment-related actual or alleged unfair or wrongful dismissal from, termination or discharge of employment (either actual or constructive, including breach of an implied contract), misrepresentation, wrongful failure to employ or promote, failure to grant tenure, discrimination, harassment, retaliation (including lockouts), humiliation, defamation, invasion of privacy, wrongful deprivation of career opportunity, wrongful demotion or negligent employee evaluation (including the provision of negative or defamatory statements in connection with an employee reference) which relate solely to the COMPANY and its past, present or prospective EMPLOYEES.
- 5.18 EMPLOYMENT-RELATED BENEFITS includes but is not limited to:
- a. non-monetary benefits including but not limited to the allocation of a company car, travel allowance, mobile or landline telephone, medical or life insurance expenses, education and training allowances, and equipment allowances;
 - b. stock, shares, stock options, share options or any entitlement or right under any employee plan of any description;

- c. participation in any stock, share option or share option plan, or participation in any employee plan of any description;
- d. severance or redundancy payments or entitlements including but not limited to payment in lieu of notice required by law to be paid;
- e. any benefit, payment or entitlement of any kind in respect of paid or unpaid leave;
- f. bonus or incentive payments, or any entitlement or right under a bonus or incentive plan;
- g. payments or contributions in respect of any provident, benefit, superannuation, pension or retirement fund, or any other account, fund, scheme or plan intended to provide benefits, in whole or in part, at retirement or a particular age, or on the happening of a particular event.
- h. any amount the COMPANY pays or is ordered to pay pursuant to any determination or settlement in respect of an allegedly unfair contract, notwithstanding that it acted in accordance with the terms of the employment contract.

5.19 FRAUDULENT FUNDS TRANSFER means fraudulent telephonic, facsimile, cable, teletype, electronic, telegraphic or written instructions issued to a financial institution directing the financial institution to pay, deliver or transfer MONEY or SECURITIES from any account maintained by the COMPANY at such financial institution, without the knowledge or consent of the COMPANY.

5.20 FUND means any single employer superannuation fund established for the benefit of EMPLOYEES. FUND does not include any industry or master superannuation funds.

5.21 INDEMNITY LIMIT means the amounts specified in Item 4 of the Schedule. No MEMBER can be indemnified under this POLICY for more than \$250,000 inclusive of all payments in the INSURANCE PERIOD. The aggregate INDEMNITY LIMIT for all MEMBERS for all payments shall not exceed \$5,000,000.

5.22 INDUSTRIAL INSTRUMENT means

- a. an award, collective or individual agreement, minimum wage order or any other instrument made or authorised under statute or regulation;
- b. any other collective agreement;

which regulates the terms and conditions of employment.

5.23 INSURANCE PERIOD means the period specified in Item 3 of the Schedule.

5.24 INSURED means each INSURED PERSON, the COMPANY or both.

5.25 INSURED PERSON means any past, present or future director, secretary, or OFFICER of the COMPANY or any TRUSTEE, or any natural person who by virtue of any applicable legislation or law is deemed to be a director or OFFICER of the COMPANY.

INSURED PERSON does not include:

- a. a receiver, receiver and manager, official manager, liquidator, administrator, trustee or other person administering a compromise or scheme of arrangement made between the COMPANY and any other person or persons;
- b. any company, organisation or other body corporate.

5.26 LITIGATION includes, but is not limited to, any civil, criminal, administrative or regulatory proceeding as well as any official investigation, examination, inquiry, arbitration or adjudication.

5.27 LOSS means, for the purpose of insuring Clauses 2.1 and 2.2(a) – (d), the total amount which a person or entity becomes legally obliged to pay on account of a CLAIM. LOSS includes, but is not limited to damages, judgments, settlements, costs and DEFENCE COSTS. However, LOSS does not include:

- a. fines or penalties (whether civil or criminal) imposed by law, punitive, aggravated, exemplary or multiple damages, or matters uninsurable under the laws governing this POLICY;
- b. taxes;
- c. DEFENCE COSTS or any other cost or expense where there is no other covered LOSS.
- d. front pay, future loss, future damages, future compensation or future economic relief (in all cases, considered from the point in time that reinstatement was to occur) where the COMPANY is ordered by the relevant court or tribunal to reinstate the claimant as an EMPLOYEE but refuses or fails to do so for whatever reason;
- e. any EMPLOYMENT-RELATED BENEFITS or amounts calculated by reference to any EMPLOYMENT-RELATED BENEFITS;
- f. costs incurred by the COMPANY to modify any building or property, or to provide any service, in order to make such building or property, or make any service more accessible or accommodating to any disabled person;
- g. costs incurred by the COMPANY in connection with any educational, corrective, sensitivity or other programme, policy or seminar relating to any EMPLOYMENT PRACTICE BREACH;
- h. BENEFITS; or
- i. Amounts ordered to be paid pursuant to a determination by a Court, Commission or other tribunal in relation to an unfair contract.

For the purpose of insuring Clause 2.2(e), LOSS means only DIRECT FINANCIAL LOSS.

For the purposes of Insuring Clause 2.2(f), LOSS means only TAX AUDIT COSTS.

For the purposes of Extension 3.3, LOSS means STATUTORY LIABILITY.

- 5.28 MEMBER means any listed Australia Post Office whose name is contained on a monthly bordereau maintained by GWS Genco Insurance Brokers Pty Ltd and agreed by US, and where consideration has been made to DUAL.
- 5.29 MONEY means only local or foreign currency, coins, bank notes, cheques, travellers cheques, registered cheques, postal orders, money orders and bullion.
- 5.30 NOT-FOR-PROFIT ENTITY means any entity which has a written constitution which prohibits the distribution of profits or assets amongst its members during the lifetime of the entity or upon its winding up.
- 5.31 OFFICER means any COMPANY secretary, and any EMPLOYEE who is concerned in, or takes part in, the management of the COMPANY regardless of the name that is given to their position.
- 5.32 OUTSIDE ENTITY means any ASSOCIATED COMPANY or any NOT-FOR-PROFIT ENTITY named in the PROPOSAL. OUTSIDE ENTITY also means any other corporation, partnership, joint venture or the organisation which has been listed by endorsement to this POLICY.
- 5.33 POLICY means this policy wording, the Schedule, the PROPOSAL and any endorsement attaching to and forming part of the POLICY either at commencement or during the INSURANCE PERIOD.
- 5.34 POLLUTANTS means any substance, solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste materials. Waste materials include, but are not limited to, recycled, reconditioned or reclaimed materials.
- 5.35 PROPOSAL means the INSURED's written proposal specified in Item 8 of the Schedule made to US together with any attachments and material referred to therein.

- 5.36 PUBLIC RELATIONS EXPENSES means any reasonable fees, costs and expenses of a public relations consultant retained with OUR prior written consent (which shall not be unreasonably delayed or withheld).
- 5.37 RETROACTIVE DATE means the date specified in Item 6 of the Schedule.
- 5.38 SECURITIES for the purposes of the cover in, and terms of this POLICY applicable to, Insuring Clause 2.2(e) means any negotiable or non-negotiable instruments or contracts representing money or other property, but excluding MONEY. For the purposes of the other terms, conditions and exclusions of this POLICY, SECURITIES means any shares, preference shares, stocks, debentures, warrants, options, bonds, promissory notes or other equity or debt security.
- 5.39 SUBSIDIARY means any entity in which the COMPANY owns or controls, directly or indirectly, in any combination, more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors; or any entity which is deemed to be the COMPANY's subsidiary under any applicable legislation, law or Australian Accounting Standard. SUBSIDIARY shall include any incorporated joint venture over which the INSURED exercises effective management and control.
- 5.40 TAX AUDIT COSTS means any reasonable fees, charges or disbursements of an ACCOUNTANT or REGISTERED TAX AGENT or any other consultant who is engaged by the INSURED for work undertaken in response to a TAX AUDIT NOTICE.
- 5.41 TAX AUDIT NOTICE means any notification from the Australian Taxation Office relating to the INSURED's liability to pay income tax, fringe benefits tax, capital gains tax, A New Tax System (Goods and Services) Tax, superannuation payments tax, termination payments tax or sales tax (including the amount of any such tax) only.
- 5.42 THIRD PARTY means any natural person who is a customer, vendor, service provider, business invitee of an INSURED other than an INSURED, or a person acting in collusion with an INSURED.
- 5.43 TRANSACTION means any one of the following events:
- a. the COMPANY consolidates with or merges into or sells all or substantially all of its assets to any other person or entity or group of persons and/or entities acting in concert; or
 - b. any person or entity, whether individually or together with any other person or persons, entity or entities becomes entitled to exercise more than 50% of the rights to vote at general meetings of the COMPANY or control the appointment of directors who are able to exercise a majority of votes at Board meetings of the COMPANY.
- 5.44 TRUSTEE means any INSURED PERSON or the COMPANY if validly appointed to act, and while acting in the capacity, as a trustee of a FUND.
- 5.45 TRUSTEE BREACH means any WRONGFUL ACT committed or allegedly committed:
- a. by an INSURED PERSON in their capacity as a TRUSTEE, or as a director or OFFICER of the COMPANY acting as corporate TRUSTEE;
 - b. by the COMPANY acting in its capacity as corporate TRUSTEE;
 - c. by any other person for which an INSURED PERSON referred to in (a) or the COMPANY referred to in (b) is legally liable;
 - c. but only in respect of the administration of a FUND.
- 5.46 WE/US/OUR means DUAL Australia Pty Limited, ACN 107 553 257 as agent of the Underwriters named in the Schedule Item 11 under the heading "Underwriters".
- 5.47 WRONGFUL ACT shall mean any breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, or other act committed or attempted by:

- a. any INSURED PERSON, individually or otherwise, solely because of their status as a director, officer or employee in the course of his or her duties to the COMPANY or OUTSIDE ENTITY, or
- b. the COMPANY.

5.48 YOU/YOUR means any INSURED PERSON(S)

Section 6: GENERAL EXCLUSIONS OTHER THAN FOR INSURING CLAUSE 2.2(e) Crime

WE will not cover the INSURED for or in connection with:

6.1 Prior Known Facts

any CLAIM(s) arising out of or in any way connected with any:

- a. actual or alleged facts which were known to the COMPANY or any INSURED PERSON prior to the commencement of the INSURANCE PERIOD and which the COMPANY or the INSURED PERSON knew or ought reasonably to have known might give rise to a CLAIM;
- b. actual or alleged facts which were, which could have been or which can be notified under any policy existing prior to the commencement of the INSURANCE PERIOD;
- c. pending or prior LITIGATION, or LITIGATION derived from the same or essentially the same facts as are or might be alleged in such pending or prior LITIGATION, as at the commencement of the INSURANCE PERIOD;
- d. any fact or matter referred to in the PROPOSAL, no matter how it is recorded or expressed therein; or

6.2 Breach of Professional Duty

any CLAIM based upon, attributable to, or in consequence of any breach of professional duty or any CLAIM based upon, directly attributable to or in consequence of the provision of any professional services and/or advice, or the failure to provide such services or advice.

For the sake of clarity, this exclusion does not apply to WRONGFUL ACTS by any INSURED PERSON in their capacity as an INSURED PERSON other than in the provision of professional services to a third party. This Exclusion does not apply to the extent that cover may be provided under Insuring Clause 2.1 (c) or 2.2(d).

6.3 Consensual Claim

any CLAIM which is a CONSENSUAL CLAIM.

For the purpose of this Exclusion CONSENSUAL CLAIM means any CLAIM which is brought with the solicitation, intervention, participation or assistance of an INSURED against whom it is brought, other than where the INSURED is compelled by law to assist or participate in a CLAIM.

6.4 Bodily Injury / Property Damage

any CLAIM for bodily injury, sickness, mental anguish or emotional distress or disturbance, disease or death of any person howsoever caused or damage to or destruction of any tangible property, including loss of use thereof. However, this exclusion shall not apply to any CLAIM in respect of mental anguish or emotional distress or disturbance alleging an EMPLOYMENT PRACTICE BREACH.

6.5 Pollution

any CLAIM arising from or in any way connected with:

- a. the actual, alleged or threatened discharge, dispersal, release or escape of POLLUTANTS into or upon land, the atmosphere or any water course or body of water, whether such discharge, dispersal, release or escape is intentional or accidental; or
- b. any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise POLLUTANTS.

It is agreed, however, that this exclusion shall not apply to CLAIMS made by any shareholder of the COMPANY either directly or derivatively alleging damage to the COMPANY or its shareholders.

6.6 **Radioactivity**

any CLAIM arising from or in any way connected with:

- a. loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting from or arising there from or any consequential loss; or
- b. any legal liability of whatsoever nature

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

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

6.7 **War/Terrorism**

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

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

For the purposes of this exclusion, an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

6.8 **Fraudulent, Dishonest and Wilful Conduct**

any CLAIM arising from or in any way connected with any INSURED:

- a. gaining any personal profit or advantage to which the INSURED was not legally entitled;
- b. having improperly benefited from any SECURITIES transaction as a result of information that is/was not available to other sellers or purchasers of such SECURITIES;
- c. committing any dishonest, fraudulent, criminal or malicious act;
- d. committing any wilful violation or wilful breach of any statute or regulation; or
- e. committing any breach of either Section 182 or Section 183 of the Corporations Act 2001(Cth).

For the purpose of determining the applicability of these exclusions, the conduct and knowledge of any INSURED shall not be imputed to any other INSURED. These exclusions shall only apply if it is established through a judgment or any other final adjudication adverse to the INSURED, or any admission by an INSURED, that the relevant conduct did in fact occur.

6.9 Prospectus Liability

any CLAIM made against any INSURED arising out of or in any way connected with:

- a. any DISCLOSURE DOCUMENT which contains an offer for the issue, sale, purchase or transfer of SECURITIES;
- b. the making of any written or verbal representations in connection with a DISCLOSURE DOCUMENT or any offer referred to in (a).

6.10 Superannuation Liabilities

any CLAIM:

- a. arising out of or in any way connected with the failure of the COMPANY to pay into, or collect contributions for, a FUND as required by law and/or a FUND trust deed;
- b. for or in respect of BENEFITS.

6.11 Major Shareholder

any CLAIM brought by or on behalf of any shareholder owning or who or which previously owned, directly or indirectly, more than or equal to 15% of the voting share capital of the COMPANY or any of its SUBSIDIARIES or any ASSOCIATED COMPANY and/or by or on behalf of any shareholder that has or had, at any time, any Board representation on the COMPANY or any of its SUBSIDIARIES or any ASSOCIATED COMPANY.

6.12 Insolvency

Any CLAIM arising from or in any way whatsoever connected with the insolvency, liquidation, bankruptcy, receivership or administration of the COMPANY or any SUBSIDIARY, its actual or alleged inability to meet any or all of its debts as and when they fall due or its actual or alleged inability to meet amount owing to any creditor.

Section 7: Additional Exclusions applying to Insuring Clause 2.2(b) Entity

In addition to the Exclusions outlined in Section 6 above, the following Exclusions apply with respect to Insuring Clause 2.2 (b) and any relevant Extension.

7.1 WE will not cover the COMPANY in connection with any CLAIM against it for or in connection with:

- a. breaches of intellectual property rights, including but not limited to any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark or trade secret;
- b. any actual or alleged breach of any law, whether statutory, regulatory or common law, relating to anti-trust, cartel conduct, business competition, price fixing, unfair or restrictive trade practices, or tortious interference in any other party's business or contractual relationships;
- c. any actual or alleged contractual liability of the COMPANY whether under any express or implied contract or agreement (including but not limited to any guarantee or warranty). However, this Exclusion shall not apply to the extent the COMPANY would have had such liability in the absence of such contract or agreement;
- d. fines or penalties ;

- e. the repayment or refund by an INSURED of any amount paid to any INSURED for services, advice or goods of any kind whatsoever;
- f. any trading debt or business liability of an INSURED;
- g. any obligation, or breach of an obligation, under any law or regulation providing for paid or unpaid leave of any kind or any INDUSTRIAL INSTRUMENT; or
- h. any EMPLOYMENT PRACTICES BREACH or any obligation pursuant to any law, regulation, or INDUSTRIAL INSTRUMENT in respect of workers' compensation, disability benefits, unemployment benefits or compensation, unemployment insurance, retirement benefits, social security benefits or any similar law, regulation or INDUSTRIAL INSTRUMENT whatsoever.

Section 8: Additional Exclusions applying to Insuring Clause 2.2(c) Employment Practices

8.1 in addition to the Exclusions in Section 6 above, the following Exclusions apply with respect to Insuring Clause 2.2(c) Employment Practices and any relevant Extension.

- a. any obligation, or breach of an obligation, under any law or regulation providing for paid or unpaid leave of any kind or any INDUSTRIAL INSTRUMENT; or
- b. any obligation pursuant to any law, regulation, or INDUSTRIAL INSTRUMENT in respect of workers' compensation, occupational or workplace health and safety, disability benefits, unemployment benefits or compensation, unemployment insurance, retirement benefits, social security benefits or any similar law, regulation or INDUSTRIAL INSTRUMENT whatsoever.

Section 9: Exclusions applying to Insuring Clause 2.2(e) Crime

The following Exclusions apply with respect to Insuring Clause 2.2(e) Crime and any relevant Extension.

9.1 WE will not cover the COMPANY for or in connection with:

- a. DIRECT FINANCIAL LOSS arising out of or in any way connected with any DISHONEST ACTS committed, in whole or part, outside of Australia or New Zealand.
- b. DIRECT FINANCIAL LOSS:
 - i. first DISCOVERED prior to the commencement of the INSURANCE PERIOD; or
 - ii. first DISCOVERED after the end of the INSURANCE PERIOD, or the DISCOVERY PERIOD if applicable; or
 - iii. in any way connected with any EMPLOYEE or THIRD PARTY from the time any director or OFFICER (who is not in collusion with such EMPLOYEE or THIRD PARTY) had actual knowledge that the EMPLOYEE or THIRD PARTY had committed or was suspected of having committed any fraudulent or dishonest act, even if it does not constitute a DISHONEST ACT as defined.
- c. DIRECT FINANCIAL LOSS arising out of or in any way connected with any fraudulent or dishonest activities, or involving collusion by or complicity, of:

- i. a director or OFFICER who at the time of the DISHONEST ACT owns or controls more than 5% of the issued share capital of the COMPANY; or
 - ii. any shareholder who, at the time of committing such acts, had direct or indirect ownership of or control over more than 5% of the voting share capital of the COMPANY or any of its SUBSIDIARIES or any ASSOCIATED COMPANY.
- d. Any indirect or consequential loss of any nature, including but not limited to:
- i. any loss of income (such as interest and dividends) not realised by the COMPANY or any other person or organisation;
 - ii. any costs incurred by the COMPANY in re-writing or amending the COMPANY'S software programs or systems where such re-writing or amending is necessary to correct the programs or systems;
 - iii. any contractual penalties incurred by the COMPANY;
 - iv. any liability to a third party;
 - v. any costs, fees or other expenses incurred by the INSURED in establishing a right under this POLICY (except as provided for under Claims Condition);
 - vi. any costs, fees or other expenses incurred by the INSURED in prosecuting or defending any demand, claim or legal proceeding

resulting from a DIRECT FINANCIAL LOSS which is covered under this policy.

- e. DIRECT FINANCIAL LOSS the proof of which is dependent solely upon:

- i. a profit and loss computation; or
- ii. a comparison of inventory records with an actual physical count.

If, however, an EMPLOYEE is identified as having caused a DIRECT FINANCIAL LOSS, then inventory records and actual physical count of inventory can be submitted as partial evidence in support of proof of the DIRECT FINANCIAL LOSS as required by Claims Condition 11.6 Notification of Direct Financial Loss.

- f. DIRECT FINANCIAL LOSS arising out of or in any way connected with the accessing, use or dissemination of any confidential information including, but not limited to, trade secrets, computer programs, customer information, patents, trademarks, copyrights or processing methods.
- g. DIRECT FINANCIAL LOSS arising out of or in any way connected with:
- i. the voluntary giving or surrendering of MONEY, SECURITIES or other tangible property in any exchange or purchase, unless such DIRECT FINANCIAL LOSS is directly caused by DISHONEST ACTS committed.
 - ii. the complete or partial non-payment or default under any CREDIT ARRANGEMENT including any payments made or withdrawals from any customer account involving items which are not finally paid for any reason.
 - iii. any trading, whether or not in the name of the COMPANY and whether or not in a genuine or fictitious account.

Section 10: Exclusions applying to Insuring Clause 2.2(f) Taxation Investigation

The following Exclusions apply with respect to Insuring Clause 2.2(f) Taxation Investigation and any relevant Extension.

- 10.1 We will not cover the INSURED for or in respect of any TAX AUDIT COSTS in connection with;
- a. Any improper, unwarranted or unjustified delay, refusal or failure to comply with any request made by or on behalf of the Australian Taxation Office, for the production of documents or the provision of information by the INSURED.
 - b. Inquiries from the Australian Taxation Office which are not related to an identified intention to conduct an audit or likely future audit.
 - c. Any audit or investigation concerning income earned or where the source of income is outside Australia and its external territories or protectorates, or where the services giving rise to the audit are performed by persons or any corporate entity outside of Australia and its external territories or protectors.
 - d. Matters arising under customs legislation.
 - e. Any audit or investigation, where notice or information as to their likely conduct was received by the INSURED prior to the INSURANCE PERIOD. Receipt of such communication will have occurred when the Australian Taxation Office makes communication with the INSURED or any other person acting on its behalf.
 - f. Any fraudulent act, error, omission or misrepresentation committed by or on behalf of the INSURED..
 - g. The imposition of, or seeking to impose, any tax, penalty tax, costs, interest, fine or any fees or expenses in connection with any criminal prosecution.
 - h. An audit or investigation of a return of income that has not been prepared or reviewed by the ACCOUNTANT or REGISTERED TAX AGENT, except where the return is a prescribed sales tax return or a prescribed payroll tax return.
 - i. TAX AUDIT COSTS incurred after the audit or investigation has been completed.

Section 11: CLAIMS/LOSS CONDITIONS

11.1 Notification

- a. The INSURED shall notify US of any CLAIM or LOSS as soon as practicable and within the INSURANCE PERIOD.
- b. Any Notice to US shall be given in writing, and delivered to:

DUAL Australia Pty Limited
332 Kent Street
Sydney NSW 2000
Australia

Or by email and addressed to:
claims@dualaustralia.com.au

11.2 Co-operation

- a. The INSURED shall, at the INSURED's own cost, frankly and honestly provide US with all information and assistance required by US and/or the lawyers and investigators and others appointed by US in relation to the CLAIM or LOSS. Any unreasonable failure to comply with this obligation shall entitle US to deny liability under the POLICY in whole or part.
- b. The INSURED shall, at their own cost, do all things reasonably practicable to minimise any LOSS, including but not limited to the INSURED's liability in respect of any CLAIM.

11.3

Allocation

- a. Where a CLAIM involves matters and/or parties which give rise to LOSS covered by this POLICY and matters and/or parties which do not, then WE will use OUR best efforts to agree upon a fair and proper allocation of the proportion covered under this POLICY, having regard to the relative legal and financial exposures attributable to covered and uncovered matters and/or parties. Only LOSS incurred by YOU or the COMPANY (if applicable), is covered, subject always to the terms and conditions of this POLICY.
- b. If an allocation cannot be agreed then it shall be determined by a Senior Counsel to be mutually agreed upon or, in default of agreement, to be nominated by the then President of the Bar Association. Such determination will be as an expert and be based upon written submissions only and will be final and binding. The Senior Counsel shall make the determination based on the relative legal and financial exposures attributable to covered and uncovered matters and/or parties. Pending that determination WE may at OUR sole discretion meet the LOSS on an interim basis. After the allocation has been determined, YOU or the COMPANY (whichever is appropriate) or both YOU and the COMPANY will refund to US any amount which WE have paid that exceeds the entitlement under this POLICY. The costs of any reference to a Senior Counsel under this clause shall be borne by US.
- c. If the DEDUCTIBLE applicable to Insuring Clause 2.1 applies to part of a LOSS and the DEDUCTIBLE applicable to Insuring Clause 2.2 applies to part, then WE and the INSURED must use best efforts to reach an agreement of a fair and proper allocation of such LOSS between Insuring Clause 2.1 and Insuring Clause 2.2. If no agreement can be reached, the dispute will be referred to Senior Counsel using the mechanism in (b) above for determination of the issue.

11.4

Legal Defence and Settlement

- a. Unless otherwise agreed, WE shall assume the legal defence of any CLAIM covered under this POLICY in the name of the INSURED and WE shall have full discretion in managing the defence of any CLAIM, and any negotiation or proceeding as to the resolution of such CLAIM. In exercising such discretion, WE will act in utmost good faith towards the INSURED and consult with the INSURED about decisions in the conduct, negotiation and settlement of any CLAIM.
- b. WE shall appoint the lawyers that will defend and represent the INSURED in respect of any CLAIM. Those lawyers remain at all times able to report all information obtained from the INSURED to US and to be able to advise US on all issues, including on the right of the INSURED to indemnity under the POLICY. The INSURED has no right to claim or assert any form of client privilege in respect of information provided to lawyers appointed by US.
- c. Subject to the matters in (a) above, WE shall be entitled to settle a CLAIM if WE so choose.
- d. The INSURED agrees not to admit liability for or settle any CLAIM, make any admission, offer any payment or assume any obligation in connection with any CLAIM, or incur any DEFENCE COSTS in connection with any CLAIM, without OUR written consent.
- e. WE shall not be liable for any settlement, LOSS, DEFENCE COSTS, admission, offer, payment or assumed obligation to which WE have not given OUR written consent.
- f. If WE are of the opinion that a CLAIM will not exceed the DEDUCTIBLE, WE may require the INSURED to conduct the defence of the CLAIM. If the DEFENCE COSTS and/or any other payment exceed the DEDUCTIBLE then, subject to the terms and conditions of the POLICY, WE will pay the amount in excess of the DEDUCTIBLE.

11.5

Insured's Right to Contest

In the event that WE recommend settlement of a CLAIM and the INSURED does not agree to the settlement of the CLAIM, and the INSURED decides to contest the CLAIM, OUR liability shall not exceed the amount for which the CLAIM could have been settled, and DEFENCE COSTS incurred up until the date upon which the CLAIM could have been settled.

11.6 **Notification of Direct Financial Loss**

The INSURED shall, as a condition precedent to OUR obligations under this POLICY, give written notice to US of any DIRECT FINANCIAL LOSS as soon as practicable within the POLICY PERIOD, or within the DISCOVERY PERIOD if applicable, but in any event not later than 60 days after any DIRECT FINANCIAL LOSS is first DISCOVERED.

The INSURED must, at its own cost, also:

- a. Provide US with affirmative proof of the DIRECT FINANCIAL LOSS with full particulars within 6 months of the DIRECT FINANCIAL LOSS being first DISCOVERED, and
- b. Provide US with all requested information and documents and co-operate with US in all matters pertaining to the DIRECT FINANCIAL LOSS.

11.7 **Settlement of Direct Financial Loss**

If the INSURED notify US of a DIRECT FINANCIAL LOSS and WE accept the notification under this POLICY, subject to the INSURED's compliance with Clause 11.6 above, an appropriate fraud investigator will be nominated by the INSURED, and approved in writing by US, to establish proof of any DIRECT FINANCIAL LOSS not yet accepted by US. The fraud investigator shall:

- a. Investigate the facts behind such unproven DIRECT FINANCIAL LOSS; and
- b. Determine the quantum of such unproven DIRECT FINANCIAL LOSS, and
- c. Advise when and how the INSURED'S controls were or may have been breached; and
- d. Provide recommendations which may prevent future similar DIRECT FINANCIAL LOSS; and
- e. Issue their findings in a report format approved by US; and
- f. Provide a copy of the report to the COMPANY and to US.

The report of the fraud investigator will not be binding and definitive as to the facts and quantum of such unproven DIRECT FINANCIAL LOSS.

WE will pay for the reasonable and necessary fees, costs and expenses of the fraud investigator provided the unproven DIRECT FINANCIAL LOSS is ultimately determined to be covered under this POLICY. If that part of the DIRECT FINANCIAL LOSS is determined not to be covered under this POLICY, the INSURED will pay the said fees, costs and expenses of the fraud investigator.

Any amount of investigator's fees paid by US under this Claims Condition will be paid in addition to the INDEMNITY LIMIT, and will not be the subject of any DEDUCTIBLE.

Section 12: GENERAL CONDITIONS

12.1 **Order Of Payment**

If the payment of LOSS is due under this POLICY but the amount of such LOSS in the aggregate exceeds the remaining available INDEMNITY LIMIT, WE shall:

- a. first pay such LOSS for which coverage is provided under Insuring Clause 2.1 and Clause 3.1 (a) of this POLICY; then
- b. to the extent of any remaining amount of the INDEMNITY LIMIT available after payment under (a) above, pay such LOSS for which coverage is provided under any other provision of this POLICY.

WE shall remain entitled, but not obliged, to pay LOSS in the sequence in which it is submitted to US.

12.2 Subrogation

- a. Where WE have made any payment under the POLICY WE become entitled to any rights the INSURED has against any party to the extent of OUR payment.
- b. The INSURED must, at its own cost, assist US and provide information as WE may reasonably require to exercise OUR rights of subrogation. This may include providing and signing statements and other documents and the giving of evidence.

12.3 Alteration to Risk

- a. If during the INSURANCE PERIOD a TRANSACTION takes place, then the cover provided under this POLICY is amended to apply only to WRONGFUL ACTS, EMPLOYMENT PRACTICE BREACHES, TRUSTEE BREACHES and DISHONEST ACTS committed prior to the effective date of the TRANSACTION.

The INSURED shall give US written notice of the TRANSACTION as soon as practicable but not later than 30 days after the effective date of the TRANSACTION.

- b. If, during the INSURANCE PERIOD, the COMPANY decides to make a public offering of its SECURITIES in any jurisdiction then as soon as the information is publicly available, the COMPANY shall provide US with any prospectus or offering statement for OUR evaluation and assessment of the increased exposure of the INSURED, and WE shall be entitled to amend the terms and conditions of this POLICY and/or charge a reasonable additional premium reflecting the increase in exposure.
- c. At the COMPANY's request, prior to the public announcement of such SECURITIES offering, WE shall evaluate and assess the increased exposure and advise of all necessary amendments to the terms and conditions of this POLICY and additional premium. In this event and at the request of the COMPANY, WE will enter into a confidentiality agreement with the COMPANY relating to any information provided regarding the proposed SECURITIES offering.

12.4 Assignment

The INSURED must not assign the POLICY or any rights under the POLICY without OUR prior written consent by way of endorsement to the POLICY.

12.5 Cancellation

- a. The INSURED may cancel the POLICY at any time by notifying US in writing.
- b. WE may cancel the POLICY in accordance with the provisions of the Insurance Contracts Act 1984 (Commonwealth).
- c. On cancellation, WE agree to allow a pro-rata refund of premium based upon the unexpired INSURANCE PERIOD.

12.6 Several Liability of Underwriters

The obligations of OUR subscribing Underwriters, where there is more than one Underwriter named in Item 11 of the Schedule subscribing to the POLICY, are several and not joint and are limited solely to the extent of their individual subscriptions. No subscribing Underwriter is responsible for the subscription of any co-subscribing Underwriter who, for any reason, does not satisfy all or part of its obligations.

12.7 Confidentiality

The INSURED must not disclose, either personally or through any person or entity acting on the INSURED's behalf or at the INSURED's direction, to any third party:

- a. the existence of this POLICY; or

- b. the nature of the indemnity provided; or
- c. the INDEMNITY LIMIT; or
- d. the amount of premium paid.

However, the INSURED may disclose the above matters to the extent that:

- e. the INSURED is required to do so by Court order ;or
- f. WE consent to the disclosure in writing.

12.8 **Jurisdictional Limitation**

The cover provided by the POLICY shall extend to a CLAIM brought anywhere in the world except:

- a. Any CLAIM made in or determined pursuant to the laws of the United States of America or the Dominion of Canada or their territories or protectorates; or
- b. Any CLAIM arising out of the enforcement of any judgment, order or award obtained within or determined pursuant to the laws of the United States of America or the Dominion of Canada or their territories or protectorates.

12.9 **Governing Law and Jurisdiction**

This POLICY is governed by the laws of the Commonwealth of Australia and the State or Territory where the POLICY was issued. Any disputes relating to interpretation shall be submitted to the exclusive jurisdiction of the Courts of Australia and the State or Territory where the POLICY was issued.

12.10 **Indemnity Limit**

- a. OUR total liability under the POLICY in respect of any single CLAIM including DEFENCE COSTS and in the aggregate from all CLAIMS and DEFENCE COSTS shall not exceed the INDEMNITY LIMIT.
- b. OUR total liability under the POLICY for any single LOSS and all LOSSES under insuring Clauses 2.2(e) and 2.2(f) shall not exceed the Sub-limit specified in Item 4 of the Schedule.

12.11 **Deductible**

- a. OUR liability under Insuring Clause 2.1 (in respect of each INSURED PERSON) or Insuring Clause 2.2 (in respect of the COMPANY) or both shall only apply to that part of each LOSS which is in excess of the DEDUCTIBLE specified in the schedule and such DEDUCTIBLE shall be borne by the INSURED PERSON and/or the COMPANY (as the case may be) at their own risk.
- b. Unless otherwise expressed in the Schedule, all DEDUCTIBLES in respect of CLAIMS are inclusive of DEFENCE COSTS up to the amount of the DEDUCTIBLE.
- c. Except as otherwise stated in the POLICY, costs and expenses incurred by US in determining whether WE are liable to indemnify the INSURED under the POLICY shall not be subject to the DEDUCTIBLE and will be met by US.

12.12 **Non-Imputation**

Except as provided for under Insuring Clause 2.2(e) which includes reference to the definition of DISCOVERED in Clause 5.13 and notwithstanding Exclusion 6.1 Prior Known Facts, no state of mind or knowledge possessed by any one INSURED PERSON will be imputed to any other INSURED PERSON for the purpose of determining whether any provision in this POLICY applies. However, any state of mind or knowledge possessed by any past or present chairman of the board, chief executive officer, director, chief operating officer or chief financial officer of the COMPANY will be imputed to the COMPANY.

12.13

Basis of Valuation

With respect to any DIRECT FINANCIAL LOSS which is covered under this POLICY, WE are not liable for more than:

- a. the actual market value of SECURITIES, MONEY or precious metals at the close of business on the day the DIRECT FINANCIAL LOSS was first DISCOVERED (determined by the value published in the Australian Financial Review), or the actual cost of replacing the SECURITIES, MONEY or precious metals, whichever is less.
- b. the actual cash value of other tangible property (not referred to in (a) above) at the close of business on the day the DIRECT FINANCIAL LOSS was first DISCOVERED, or the actual cost of replacing the property with property of like quality or value, whichever is less.
- c. the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of data furnished by the INSURED in order to reproduce books of account and other records.
- d. The cost of labour for the actual transcription or copying of electronic data furnished by the INSURED in order to reproduce such electronic data.

12.14

Preservation of Right to Indemnity

In the event and to the extent that the COMPANY is legally permitted or required to indemnify an INSURED PERSON in respect of a CLAIM, but for whatever reason fails or refuses to do so, then WE shall pay on behalf of the INSURED PERSON any LOSS arising from the CLAIM. In such event, the DEDUCTIBLE applicable to the Insuring Clause 2.2 (a) Company Reimbursement shall be paid by the COMPANY to US. However, the amount of the DEDUCTIBLE will not be payable by the COMPANY if the COMPANY is unable to pay the amount of the DEDUCTIBLE due to insolvency.

12.15

Other Insurance

To the extent permitted by the *Insurance Contracts Act 1984*, this POLICY will only cover LOSS to the extent that the amount of such LOSS is in excess of any indemnity or cover available to the INSURED in respect of that LOSS under any other policy entered into by the INSURED or the COMPANY or under any other policy effected on behalf of the INSURED or under which the INSURED is a beneficiary.

This clause does not apply to such other insurance that is written only as specific excess insurance over the INDEMNITY LIMIT provided in this POLICY.

If such other insurance is provided by US, or any other related or member company, associate or affiliate, and it covers a LOSS covered by this POLICY in respect of a CLAIM or inquiry, the INDEMNITY LIMIT under this POLICY in respect of that CLAIM or inquiry shall be reduced by any amount paid by US (or related or member company, associate or affiliate) under such other insurance.

12.16

Complaints Procedures

Any enquiry or complaint relating to this Insurance should be referred to US in the first instance. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

Lloyd's Underwriters' General Representative in Australia

Suite 2, Level 21
Angel Place
123 Pitt Street
Sydney NSW 2000

Telephone Number: (02) 9223 1433

Facsimile Number: (02) 9223 1466

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

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

For the purpose of this Clause only, "this Insurance" means the POLICY, "you/your" means the INSURED.

12.17 **Service Of Suit (Australia)**

The Underwriters hereon agree that:-

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

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

who has authority to accept service and to enter an appearance on Underwriters' behalf, and who is directed at the request of the INSURED (or reinsured) to give a written undertaking to the INSURED (or reinsured) that he will enter an appearance on Underwriters' behalf.

- c. If a suit is instituted against any one of the Underwriters all Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.

12.18 **General Insurance Code of Practice**

This POLICY is Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any claims adjusted outside Australia. Underwriters at Lloyd's and DUAL Australia proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry.

A copy of this Code is available by contacting DUAL Australia or from the Insurance Council of Australia's website at www.ica.com.au or from the Code's dedicated website at www.codeofpractice.com.au

Section 13: AUTHORITY

13.1 This is to certify that in accordance with the authorisation granted under Contract to the undersigned by certain Underwriters:

In consideration of the premium paid the Underwriters are hereby bound, severally and not jointly, to insure in accordance with the terms and conditions contained herein or endorsed hereon. WE hereby agree, to the extent and in the manner hereinafter provided, to indemnify or otherwise pay the INSURED in respect of the contingencies or events specified in the sections of the POLICY. However this POLICY only applies to those sections as indicated in the Schedule attached to this POLICY.