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## ACS CHURCHES POLICY WORDING



ACS Independent  
Churches Insurance  
Policy Wording





## ACS Independent Churches Policy Wording

### Table of Contents

<b>DUAL AUSTRALIA ASSOCIATION LIABILITY INSURANCE- MODULE 1</b>	<b>2</b>
SECTION 1: PREAMBLE	2
SECTION 2: INSURING CLAUSES	2
SECTION 3: AUTOMATIC EXTENSIONS	3
SECTION 4: INTERPRETATION	12
SECTION 5: DEFINITIONS	13
SECTION 6: EXCLUSIONS (NOT APPLICABLE TO INSURING CLAUSE 2.2(E) CRIME	19
SECTION 7: ADDITIONAL EXCLUSIONS APPLYING TO INSURING CLAUSE 2.2(B) ASSOCIATION LIABILITY)	23
SECTION 8: ADDITIONAL EXCLUSIONS APPLYING TO INSURING CLAUSE 2.2(C) EMPLOYMENT PRACTICES	20
SECTION 9: EXCLUSIONS APPLYING TO INSURING CLAUSE 2.2(E) CRIME	20
SECTION 10: EXCLUSIONS APPLYING TO INSURING CLAUSE 2.2(F) TAXATION INVESTIGATION	22
SECTION 11: CLAIMS/LOSS CONDITIONS	23
SECTION 12: GENERAL CONDITIONS	25
SECTION 13: AUTHORITY	32
<b>DUAL AUSTRALIA PROFESSIONAL INDEMNITY INSURANCE- MODULE 2</b>	<b>30</b>
SECTION 1: PREAMBLE	30
SECTION 2: INSURING CLAUSE	30
SECTION 3: AUTOMATIC EXTENSIONS	30
SECTION 4: INTERPRETATION	35
SECTION 5: DEFINITIONS	36
SECTION 6: EXCLUSIONS	43
SECTION 7: CLAIM CONDITIONS	48
SECTION 8: GENERAL CONDITIONS	43
SECTION 9: LIMIT OF LIABILITY	46
SECTION 10: AUTHORITY	46

# DUAL AUSTRALIA ASSOCIATION LIABILITY INSURANCE MODULE 1

## 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 ASSOCIATION is not permitted or required to indemnify the INSURED PERSON.

#### 2.2 Cover for the ASSOCIATION

WE agree to pay all LOSS:

- a. ASSOCIATION Reimbursement - on behalf of the ASSOCIATION 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 by the INSURED PERSON for which the ASSOCIATION is permitted or required to indemnify the INSURED PERSON;
- b. ASSOCIATION Liability - on behalf of the ASSOCIATION on account of any CLAIM first made against the ASSOCIATION and reported to US during the INSURANCE PERIOD for a WRONGFUL ACT by the ASSOCIATION
- c. Employment Practices - on behalf of the ASSOCIATION on account of any CLAIM first made against the ASSOCIATION and reported to US during the INSURANCE PERIOD for an EMPLOYMENT PRACTICE BREACH;
- d. Trustee - on behalf of the ASSOCIATION on account of any CLAIM first made against the ASSOCIATION and reported to US during the INSURANCE PERIOD for a TRUSTEE BREACH by the ASSOCIATION;
- e. Crime - sustained by the ASSOCIATION, in excess of the DEDUCTIBLE, which is first DISCOVERED during the INSURANCE PERIOD and caused by DISHONEST ACTS.
  - i. 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 shown in the Schedule. This Sub-Limit forms part of, and is not payable in addition to, the INDEMNITY LIMIT.

- f. Taxation Investigation – where the ASSOCIATION has received a TAX AUDIT NOTICE, and has reported it to US, during the INSURANCE PERIOD, WE will provide cover to the ASSOCIATION for necessary and reasonable TAX AUDIT COSTS incurred by the ASSOCIATION 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 the Schedule. This Sub-Limit forms part of, and is not payable in addition to, the INDEMNITY LIMIT. A separate DEDUCTIBLE will apply to each CLAIM and LOSS under this extension.

## 2.3 **Defence Costs for Claims**

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:

- a. where WE give the INSURED written confirmation that WE will pay the INSURED's LOSS arising from the CLAIM; or
- b. where WE take over and conduct proceedings in respect of the CLAIM under Clause 11.4 Legal Defence and Settlement.

For the purpose of Insuring Clauses 2.1 and 2.2(a) ASSOCIATION Reimbursement - (d) Trustee, this clause is subject to clause 3.14 (Advance Payment of Defence Costs), WE may pay DEFENCE COSTS before final disposition of a CLAIM at OUR discretion.

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

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 3.3 (Official Investigations and Enquiries).

## 2.4 **Retroactive Date**

The POLICY shall only provide cover with respect to a WRONGFUL ACT, EMPLOYMENT PRACTICE BREACH, TRUSTEE BREACH and/or DISHONEST ACT committed after the RETROACTIVE DATE.

## Section 3 **Automatic Extensions Applicable to Insuring Clauses 2.1 and 2.2(a) ASSOCIATION Reimbursement – (d) Trustee**

In respect of all Insuring Clauses other than 2.2(e) Crime and 2.2(f) Taxation Investigations, as applicable:

### 3.1 **Heirs, Estates and Legal Representatives**

WE agree to provide cover for any CLAIM against:

- a. an INSURED PERSON's legal or defacto spouse, domestic partner or companion; or
- b. the estate, heirs, legal representatives or assigns of any deceased or mentally incompetent INSURED PERSON

in respect of LOSS resulting from any WRONGFUL ACT, EMPLOYMENT PRACTICE BREACH or TRUSTEE BREACH committed by an INSURED PERSON.

### 3.2 **Committees**

WE agree to provide cover for any CLAIM against any member of any COMMITTEE established by the ASSOCIATION, in respect of the conduct of the business or activities of such COMMITTEE.

### 3.3 **Official Investigations and Inquiries**

#### **Cover for YOU**

- a. WE agree to provide cover for any 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 ASSOCIATION or any other examination of the INSURED PERSON by virtue of his/her position as a director or OFFICER of the ASSOCIATION where such investigation, examination or inquiry may lead to a recommendation in respect of civil liability or civil proceedings which would be a CLAIM covered under this POLICY; 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.

#### **Cover for the ASSOCIATION**

- b. WE agree to provide cover for any DEFENCE COSTS incurred with OUR prior written consent for any attendance by the ASSOCIATION at any official investigation, examination or inquiry in relation to the affairs of the ASSOCIATION, provided that the attendance at the investigation, examination or inquiry may lead to a recommendation in respect of civil liability or civil proceedings which would be a CLAIM covered under this POLICY; provided that notice of the official investigation, examination or inquiry is first received by the ASSOCIATION and notified to US during the INSURANCE PERIOD.

### 3.4 **Reinstatement of INDEMNITY LIMIT**

WE agree to provide cover in respect of any CLAIM(S) which require(s) reinstatement of the INDEMNITY LIMIT during the INSURANCE PERIOD because the INDEMNITY LIMIT is eroded (partially or totally) as a result of the payment of an earlier and separate CLAIM, CLAIMS or DEFENCE COSTS. However the aggregate of all such reinstatements in connection with all CLAIMS will not exceed a total amount equal to the INDEMNITY LIMIT, inclusive of DEFENCE COSTS, and such reinstatements are only available where the subsequent CLAIM(S) is/are based on facts and matters totally different from and unrelated to those which gave rise to the erosion or exhaustion of the INDEMNITY LIMIT.

Further, this extension does not apply:

- a. until the INSURED has exhausted the limits of any policy which is in excess of the original INDEMNITY LIMIT under this POLICY, other than any similar reinstatement provisions under such excess policies;
- b. to any sections or extensions under this POLICY that has a sub limit of INDEMNITY.

### 3.5 **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.

### 3.6 Retirement Cover

If the ASSOCIATION does not renew this POLICY or replace it with any other insurance providing directors and officers liability coverage and one of the DISCOVERY PERIOD Options detailed in Extension 3.5 (Discovery Period) of this POLICY has not been purchased, then any INSURED PERSON will be automatically entitled to a 12 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.

### 3.7 Outside Directorship Cover (current and run off 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, 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 be specifically in excess of any insurance in force in respect of the OUTSIDE ENTITY as well as any indemnification provided by the OUTSIDE ENTITY. The cover provided by this extension shall not apply in connection with any CLAIM made against any INSURED PERSON by the OUTSIDE ENTITY, any of its directors, officers, trustees, governors or equivalent or any shareholder of the OUTSIDE ENTITY holding more than 20% of the issued and outstanding voting share capital of the OUTSIDE ENTITY.

WE are not liable to make any payment for LOSS 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.

### 3.8 New Subsidiary Cover

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

- a. has total gross assets which are less than 20% of the total gross assets of the ASSOCIATION; or
- b. has gross annual turnover of less than 20% of the total gross annual turnover of the ASSOCIATION; or
- c. has total gross assets which are less than 10% of the total gross assets of the ASSOCIATION 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.

### 3.9 Former Subsidiary Cover

WE agree to provide cover in respect of any ASSOCIATION 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 ASSOCIATION. There is no cover under Insuring Clause 2.2(e) Crime under this Extension.

### 3.10

#### Occupational Health and Safety

WE agree to provide cover for DEFENCE COSTS, notwithstanding the Bodily Injury / Property Damage Exclusion 6.4, 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 DEFENCE COSTS. This Sub-Limit forms part of, and is not payable in addition to the INDEMNITY LIMIT.

### 3.11

#### Statutory Liability

Under Insuring Clauses 2.1 Cover for YOU, 2.2(a) ASSOCIATION Reimbursement and 2.2(b) ASSOCIATION Liability only, WE agree to pay on behalf of the INSURED as LOSS all STATUTORY LIABILITY and DEFENCE COSTS on account of any CLAIM, if WE are not legally prohibited from doing so.

WE are not liable to make any payment under this Additional Benefit for STATUTORY LIABILITY or DEFENCE COSTS in any way whatsoever in connection with:

- i. alleged violation of any law in relation to air or marine traffic;
- ii. alleged violation of any law in relation to vehicle traffic, except to the extent it results directly from the undertaking of the business of the COMPANY;
- iii. 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, Trade Practices Act 1974 (Cth), and Competition and Consumer Act (2010) and any similar law of any state, territory or jurisdiction and any amendment, consolidation or re-enactment of any of those Acts;
- iv. contract of service, or any intended contract of service, with any current, former or prospective EMPLOYEE.

For the purpose of this Additional Benefit only, WE shall not be liable for, or to pay as LOSS:

- a. any amounts payable as compensation, damages, including any exemplary or punitive damages or the multiplied part ;
- b. the cost or payment of any compliance, remedial, reparation, restitution , or enforcement orders;
- c. any tax (including any fine or penalty resulting from the failure to pay any tax), rate, duty, or interest thereon or any amount on account of such tax, rate, duty or interest;
- d. any economic loss, consequential or otherwise;
- e. any other monetary payment, penalty or fine, the insurance of which is prohibited by the law where the CLAIM is brought;
- f. fines or penalties ordered in any criminal proceeding, other than as described in the definition of STATUTORY LIABILITY;
- g. any penalty awarded outside the jurisdiction or laws of Australia or New Zealand;
- h. any amount in connection with alleged breaches of the Privacy Act 1998.

For the purpose of this Additional Benefit only:

- i. the reference in clauses 5.28 (a) LOSS and 7 .1 (d) Additional Exclusions applying to Insuring Clause 2.2(b) ASSOCIATION Liability, of the POLICY to fines and penalties shall not apply to the extent that this Additional Benefit operates; and

- ii. Exclusions 6.4 Bodily Injury / Property Damage and 6.5 Pollution Cover do not apply.

If any claim by an INSURED under this Extension is in respect of a CLAIM to which Automatic Extension 3.10 Occupational Health & Safety DEFENCE COSTS or 6.5 Pollution Cover Writeback, then the cover under this Extension in respect of such CLAIM shall be limited solely to STATUTORY LIABILITY and shall not include DEFENCE COSTS.

### 3.12 Public Relations Cover

It is agreed that the definition of LOSS under this POLICY shall include, at the election of any INSURED PERSON, the PUBLIC RELATIONS EXPENSES of such INSURED PERSON:

- a. in connection with a CLAIM for extradition of such INSURED PERSON; or
- b. to mitigate any adverse effect on such INSURED PERSON'S reputation by disseminating findings which exonerates the INSURED PERSON from fault, liability or culpability in connection with a CLAIM that is covered under this POLICY, provided such findings are made by a court with jurisdiction to finally dispose of such CLAIM (including the outcome of any appeal in relation to such CLAIM).

The total amount payable under this Extension in respect of all INSURED PERSONS for all CLAIMS 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.

For the purpose of this Extension 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).

### 3.13 Order of Payment

If the payment of LOSS in respect of a CLAIM or CLAIMS 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 (Cover for YOU) 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.

### 3.14 Advance Payment of Defence Costs

WE agree to pay DEFENCE COSTS either incurred by US or incurred by the applicable INSURED with OUR prior written consent in respect of a CLAIM for LOSS covered under the POLICY.

WE also agree to advance DEFENCE COSTS before final disposition of a CLAIM, where we have not determined the INSURED's right to indemnity for the 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 applicable INSURED must reimburse US for any DEFENCE COSTS that WE have paid in advance, according to the respective interests of the INSURED.

### 3.15 Continuous Cover

Notwithstanding the Prior Knowledge Clause 6.1 (a) and 6.1 (b), WE agree to provide cover in respect of any CLAIM 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 any insurer of such facts or circumstances prior to the INSURANCE PERIOD.

Provided that:

- i. There has not been any fraudulent non-disclosure or fraudulent misrepresentation by the INSURED in respect of such facts or circumstances; and
- ii. There has not been any CLAIMS notified to or paid by US or any other Insurer.

WE have the discretion to apply either the terms and conditions of the policy in force when the INSURED first became aware of the facts and circumstances, including but not limited to the INDEMNITY LIMIT and DEDUCTIBLE, or the terms and conditions of this POLICY.

For the purpose of this Extension only, the definition of WE/US/OUR in clause 5.47 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.

### 3.16 **Crisis Containment**

WE shall reimburse the ASSOCIATION for the CRISIS LOSS in excess of the DEDUCTIBLE which the ASSOCIATION 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 ASSOCIATION 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.

### 3.17 **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 sub limit of liability for all such payments under this Extension is 10% of the INDEMNITY LIMIT. This Sub-Limit forms part of, and is not payable in addition to, the INDEMNITY LIMIT.

### 3.18 **Unintentional Defamation**

WE agree to provide cover in respect of any CLAIM against the INSURED which results from the INSURED making an unintentional defamatory statement.

### 3.19 **Loss of Documents**

Subject to the Insuring Clauses and all other POLICY terms and conditions, WE agree to provide cover in respect of any costs and expenses incurred by the INSURED in replacing or restoring LOST DOCUMENTS for which the INSURED is legally responsible if:

- a. The loss of the DOCUMENTS is first discovered during the INSURANCE PERIOD;
- b. The INSURED notifies US within 30 days of discovery of the loss of the DOCUMENTS;
- c. The INSURED provides US with bills and accounts substantiating the costs and expenses incurred by the INSURED in replacing or restoring the LOST DOCUMENTS; and
- d. WE approve or a competent person nominated by US approves the bills and accounts.

### 3.20 **Free Legal Consultation**

During the PERIOD of INSURANCE the INSURED is entitled to up to two hours free legal advice from the appointed firm and nominated practitioner as prescribed by US, on any matter

relating to the INSURED's professional business practice. This extension is subject to the following:

- (i) The legal advice will be of a general nature;
- (ii) Any unused hours or consultations cannot be aggregated from one POLICY period to another;
- (iii) WE reserve the right to change the appointed firm or nominated practitioner at any time. These changes will be notified to the INSURED upon request;
- (iv) The INSURED may not seek legal advice on this POLICY or other indemnity issues concerning insurance policies issued by US under this extension.

### 3.21 Intellectual Property

Notwithstanding Clause 7.1 (a) Intellectual Property Exclusion of this POLICY, DUAL agrees to provide cover under Insuring Clause 2.1 Cover for YOU or Insuring Clause 2.2 (a) ASSOCIATION Reimbursement in respect of any CLAIM against the INSURED PERSON for or in connection with actual or alleged 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.

### 3.22 Pollution Defence Costs

Notwithstanding Exclusion 6.4 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 \$500,000 in respect of all CLAIMS. This Sub-Limit forms part of, and is not payable in addition to the INDEMNITY LIMIT.

## 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 ASSOCIATION for the purpose of preparing, or supervising the preparation, of or reviewing prior to dispatch, all returns and statements required by the Australian Taxation Office, in respect of any liability to pay tax by the ASSOCIATION.

5.2 ASSOCIATED ENTITY means any ASSOCIATED ENTITY in which the ASSOCIATION 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 ASSOCIATION means:

a. For the purposes of Insuring Clauses 2.1 Cover for YOU and 2.2(a) ASSOCIATION Reimbursement - (f) Taxation Investigation, the NOT-FOR -PROFIT ENTITY or entities specified in the schedule; and

b. any SUBSIDIARY in existence at the commencement of the INSURANCE PERIOD.

5.4 BENEFITS means any amount payable to a beneficiary of a FUND by the TRUSTEE under the rules governing the FUND.

5.5 CLAIM means:

a. a civil proceeding brought by a third party for recovery of compensation or damages; or

b. any suit, proceeding or written demand for monetary damages

c. any formal administrative or regulatory proceeding including any arbitration, mediation, conciliation or alternative dispute resolution proceeding 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.

5.6 COMMITTEE means:

a. Any auxiliary committee, foundation, trust (other than a superannuation trust), or fundraising committee;

b. Any disciplinary, examining or research body or committee;

c. Any sporting or social club committee.

5.7 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.

5.8 CRISIS EVENT means any of the following unforeseen events where, in the reasonable opinion of the chief executive officer (or equivalent) of the ASSOCIATION, the event has the potential to cause an imminent decrease of greater than 30% of the total consolidated annual revenues of the ASSOCIATION if left unmanaged:

a. the sudden, unexpected death or disability of any Executive;

b. loss of a major customer, contract or credit facility;

c. EMPLOYEE workplace violence;

d. the first apparent unauthorised intrusion into any ASSOCIATION'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 an ASSOCIATION'S industry in general; rather than an ASSOCIATION, specifically.

**5.9** CRISIS LOSS means the reasonable and necessary fees, costs and expenses paid by the ASSOCIATION for external crisis management services provided in response to a CRISIS EVENT within the first thirty (30) days after the event

**5.10** DEDUCTIBLE means the amounts specified in the Schedule in respect of each Insuring Clause.

**5.11** DEFENCE COSTS means that part of LOSS consisting of reasonable costs, charges, fees (including but not limited to legal counsels' fees) and expenses reasonably incurred by the INSURED, as applicable, with OUR prior written consent in investigating or defending a CLAIM but does not include regular or overtime wages, salaries or fees of the directors, officers or employees of the ASSOCIATION incurred in attending, defending, investigating or monitoring CLAIMS. In respect of Extension 3.3 Official Investigations and Enquiries it means the costs of YOUR or the ASSOCIATION's reasonable legal representation reasonably required for the attendance at any official investigation, examination or inquiry.

**5.12** DIRECT FINANCIAL LOSS means direct financial loss to the ASSOCIATION directly caused by the loss of MONEY, SECURITIES or other tangible property:

- a. owned by the ASSOCIATION; or
- b. in the care, custody or control of the ASSOCIATION and for which the ASSOCIATION is legally liable.

DIRECT FINANCIAL LOSS does not include wages, salaries or other remuneration or benefits paid by the ASSOCIATION to its directors, OFFICERS and EMPLOYEES, or any amount excluded by the Exclusions applicable to Insuring Clause 2.2(e) Crime. 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) Crime.

**5.13** 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.

**5.14** DISCOVERED or DISCOVERY means when any director or OFFICER (who is not in collusion with an EMPLOYEE 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.

**5.15** DISCOVERY PERIOD means the period of time specified in Extension 3.5 Discovery Period 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.

**5.16** DISHONEST ACTS means any fraudulent or dishonest acts committed by an EMPLOYEE (acting alone or in collusion with others) with the principal intent to cause the ASSOCIATION to

sustain a DIRECT FINANCIAL LOSS and results in the EMPLOYEE making an improper financial gain for themselves or for any other individual or organisation intended by the EMPLOYEE to receive such gain.

5.17 DOCUMENTS means deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature, whether printed, written or reproduced by any method including computer records and electronically stored data but does not mean bearer bonds or coupons, stamps, bank or currency notes, money or any negotiable instrument.

5.18 EMPLOYEE means

- a. any natural person who is a past, present or prospective employee or volunteer of the ASSOCIATION;
- b. in respect of Insuring Clause 2.2(e) Crime only, any natural person who is a present employee or volunteer of the ASSOCIATION

including any full-time, part-time or casual employee.

EMPLOYEE does not include consultants, independent contractors, secondees to or agents of the ASSOCIATION or their respective employees (including the employees of labour-hire agencies).

5.19 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 ASSOCIATION and its past, present or prospective EMPLOYEES.

5.20 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;
- 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 (which, for the avoidance of doubt, does not include any payments, entitlement or right under any commission scheme);
- 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 ASSOCIATION 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.

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

- 5.22 INDEMNITY LIMIT means the amounts specified in the Schedule.
- 5.23 INDUSTRIAL INSTRUMENT means
- a. an award, collective or individual agreement, minimum wage order or any other instrument made or authorised under statute;
  - b. any other collective agreement;
- which regulates the terms and conditions of employment.
- 5.24 INSURANCE PERIOD means the period specified in the Schedule.
- 5.25 INSURED means each INSURED PERSON, the ASSOCIATION or both.
- 5.26 INSURED PERSON means any past, present or future director, management COMMITTEE member, secretary, OFFICER or EMPLOYEE of the ASSOCIATION 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 ASSOCIATION.
- 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 ASSOCIATION and any other person or persons;
  - b. for the purpose of Insuring Clauses 2.1 Cover for YOU and 2.2(a) ASSOCIATION Reimbursement, any EMPLOYEE or volunteer while not acting in the management of the ASSOCIATION or as a TRUSTEE;
  - c. any ASSOCIATION, organisation or other body corporate.
- 5.27 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.
- 5.28 LOSS means, for the purpose of Insuring Clauses 2.1 Cover for YOU and 2.2(a) ASSOCIATION Reimbursement – (d) Trustee, 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, duties, rates, levies, charges, fees or any other revenue raising measure;
  - c. back pay, or any compensation or damages calculated by reference to the back-payment of remuneration, where the ASSOCIATION is ordered by the relevant court or tribunal to reinstate the claimant as an EMPLOYEE;
  - 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 ASSOCIATION 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 ASSOCIATION 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 ASSOCIATION 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) Crime, LOSS means only DIRECT FINANCIAL LOSS.

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

- 5.29 LOST DOCUMENTS means DOCUMENTS that cannot be located following a diligent search, and documents that have been destroyed or damaged.
- 5.30 MONEY means only local or foreign currency, coins, bank notes, cheques, travellers cheques, registered cheques, postal orders, money orders and bullion.
- 5.31 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.
- 5.32 OFFICER means any ASSOCIATION secretary or office bearer, and any EMPLOYEE who is concerned in, or takes part in, the management of the ASSOCIATION regardless of the name that is given to their position.
- 5.33 OUTSIDE ENTITY means any ASSOCIATED ENTITY or any NOT-FOR-PROFIT ENTITY. OUTSIDE ENTITY also means any other corporation, partnership, joint venture or the organisation which has been listed by endorsement to this POLICY.
- 5.34 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.
- 5.35 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.
- 5.36 PROPOSAL means the written proposal specified in the Schedule made to US together with any attachments and material referred to therein.
- 5.37 PROFESSIONAL BUSINESS means the Professional Activity set out in the Schedule and shall include the following:
  - a. advocacy and promotion of the ASSOCIATION's objectives and area of focus or interest, including publication of information in any media type;
  - b. acting as an insurance intermediary for the purpose of distribution only of personal lines, general and life insurance products to members;
  - c. events for members and others that promote the ASSOCIATION's objectives and area of focus or interest; and
  - d. fundraising activities for the benefit of the ASSOCIATION and its members.
- 5.38 RETROACTIVE DATE means the date specified in the Schedule.
- 5.39 SECURITIES for the purposes of the cover in, and terms of this POLICY applicable to, Insuring Clause 2.2(e) Crime 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.

5.40 STATUTORY LIABILITY means:

- a. civil fines and civil penalties awarded against an INSURED for breach of an Act (Act means any legislation of a State or Territory in, or the Federal Parliament of, the Commonwealth of Australia), and
- b. pecuniary penalties awarded in criminal proceedings, but solely in respect of accidental and unintentional:
  - i. breaches by an INSURED of any Commonwealth, State or Territory occupational or workplace health and safety legislation; and
  - ii. breaches by an INSURED resulting in the discharge, dispersal, release or escape of POLLUTANTS.

5.41 SUBSIDIARY means any entity in which the ASSOCIATION 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 ASSOCIATION's subsidiary under any applicable legislation, law or Australian Accounting Standard. SUBSIDIARY shall include any incorporated joint venture over which the ASSOCIATION exercises effective management and control.

5.42 TAX AUDIT COSTS means any reasonable fees, charges or disbursements of an ACCOUNTANT or REGISTERED TAX AGENT or any other consultant who is not an INSURED PERSON engaged by or replacing the ACCOUNTANT or REGISTERED TAX AGENT, for work undertaken in response to a TAX AUDIT NOTICE.

5.43 TAX AUDIT NOTICE means any notification from the Australian Taxation Office relating to the ASSOCIATION'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.

5.44 TRUSTEE means any INSURED PERSON or the ASSOCIATION 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 ASSOCIATION acting as corporate TRUSTEE;
- b. by the ASSOCIATION acting in its capacity as corporate TRUSTEE;
- c. by any other person for which an INSURED PERSON referred to in (a) or the ASSOCIATION referred to in (b) is legally liable;

but only in respect of the administration of a FUND.

5.46 TRANSACTION means any one of the following events:

- a. the ASSOCIATION 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 ASSOCIATION or control the appointment of directors who are able to exercise a majority of votes at Board meetings of the ASSOCIATION.

5.47 WE/US/OUR means DUAL Australia Pty Limited, ACN 107 553 257 as agent of the Underwriters named in the Schedule under the heading "Underwriters".

5.48 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. for the purpose of Insuring Clauses 2.1 Cover for YOU and 2.2(a) ASSOCIATION Reimbursement, any INSURED PERSON, individually or otherwise, solely because of their status as such in the course of his or her duties to the ASSOCIATION or OUTSIDE ENTITY.; or
- b. for the purpose of Insuring Clauses 2.2(b) ASSOCIATION Entity - (d) Trustee, the ASSOCIATION.

5.49 YOU/YOUR means any INSURED PERSON(S).

## Section 6: EXCLUSIONS (NOT APPLICABLE TO 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 ASSOCIATION or any INSURED PERSON prior to the commencement of the INSURANCE PERIOD and which the ASSOCIATION 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 or indirectly 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.

### 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. improperly using their position to cause detriment to the ASSOCIATION.

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. In relation to any CLAIM under Insuring Clause 2.1 Cover for YOU or 2.2 (a) ASSOCIATION Reimbursement 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 ASSOCIATION 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 any shareholder owning, directly or indirectly, more than or equal to 15% of the voting share capital of the ASSOCIATION or any of its SUBSIDIARIES or any ASSOCIATED ENTITY and/or by any shareholder that has or had any Board representation on the ASSOCIATION or any of its SUBSIDIARIES or any ASSOCIATED ASSOCIATION.

## 6.12 **Insolvency**

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

## 6.13 **Trading Debt**

Any CLAIM arising from or directly or indirectly attributable to any trading debt or business liability of the INSURED or any guarantee given by any INSURED for a debt.

## 6.14 **Investment Performance**

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

- a. any actual or alleged dealings of any nature by which it is sought to affect the price of, or market in, any shares or debentures of any ASSOCIATION or commodity or currency, or

of any negotiable instrument, other than dealings carried out in accordance with the laws, rules and regulations applicable to such dealings;

- b. any CLAIM arising from any financial or investment advice provided by any INSURED, including but not limited to any advice or recommendation as to the valuation, tax implications or performance of any investment
- c. a failure by the INSURED to warn of the risks of market fluctuation of any investment.

#### 6.15 **Assumed Liability**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of any duty or obligation assumed by an INSURED by way of warranty, guarantee, indemnity, contract or agreement, unless the INSURED would have incurred the liability in the absence of such warranty, guarantee, indemnity, contract or agreement.

#### 6.16 **Liability As Occupier, Motor, Marine**

Any CLAIM or liability arising from or incurred or alleged to have been incurred:

- a. in connection with the use, occupation, ownership or lease of any real estate or personal property, by or on behalf of the INSURED; or
- b. as an owner or operator of any aircraft, marine craft or motor vehicles of any kind.

#### 6.17 **Product Liability**

Any CLAIM or liability arising from or in connection with the manufacture, preparation, modification, repair, supply, maintenance or treatment of any goods or products sold, supplied or distributed by the INSURED.

#### 6.18 **Medical Treatment**

Any CLAIM based upon, arising out of, resulting from or in connection with or consequence of any medical treatment, advice and/or services and/or scientific or medical research. This exclusion does not apply to counselling services provided by the INSURED.

#### 6.19 **Molestation**

Any CLAIM, including DEFENCE COSTS, directly or indirectly related to, based upon, attributable to or in connection with or in consequence of any actual or alleged molestation of, interference with, mental abuse of or physical abuse of any person, whether by the INSURED, or by any agent, or EMPLOYEE of the INSURED, or by any person performing any volunteer service for or on behalf of the INSURED.

This exclusion does not apply to any CLAIM brought under Insuring Clause 2.2c) Employment Practices.

#### 6.20 **Asbestos**

any CLAIM arising from or directly or indirectly attributable to or in consequence of, or in any way involving the existence, mining, handling, processing, manufacture, sale, distribution, remediation, storage or use of asbestos, or other things that contain it, including but not limited to clean up costs.

#### 6.21 **Sanctions Limitation Exclusion**

Any CLAIM or liability for any matter where the provision of such benefit would expose US to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

## **Section 7: Additional Exclusions applying to Insuring Clause 2.2(b) ASSOCIATION Liability**

In addition to the Exclusions outlined in Section 7 above, the following Exclusions apply with respect to Insuring Clause 2.2(b) ASSOCIATION Liability and any relevant Extension.

- 7.1 WE will not cover the ASSOCIATION in connection with any CLAIM made 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, 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 ASSOCIATION under any express or implied contract or agreement. However, this exclusion shall not apply to a CLAIM for an EMPLOYMENT PRACTICE BREACH to the extent the ASSOCIATION would have had such liability in the absence of such contract or agreement;
  - d. fines or penalties or non-monetary relief;
  - e. 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
  - f. 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 8: Additional Exclusions applying to Insuring Clause 2.2(c) Employment Practices**

- 8.1 In addition to the Exclusions in Section 7 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 ASSOCIATION 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 from the time any director or OFFICER (who is not in collusion with such EMPLOYEE) had actual knowledge that the EMPLOYEE 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 ASSOCIATION or any of its SUBSIDIARIES or any ASSOCIATED ENTITY.
- 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 ASSOCIATION or any other person or organisation;
  - ii. any costs incurred by the ASSOCIATION in re-writing or amending the ASSOCIATION'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 ASSOCIATION;
  - iv. any liability to a third party;
  - v. any costs, fees or other expenses incurred by the ASSOCIATION in establishing a right under this POLICY (except as provided for under Section 11 Claims/Loss Conditions);
  - vi. any costs, fees or other expenses incurred by the ASSOCIATION 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/Loss Condition 11.5 INSURED'S Right To Contest.
- 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 ASSOCIATION and whether or not in a genuine or fictitious account.
- h. DIRECT FINANCIAL LOSS arising from, attributable to or in any way relating to:
- i. the issuing of cheques exceeding \$5,000 that are not countersigned;
  - ii. any bank transfers or electronic funds transfers that are not properly authorised;
  - iii. EMPLOYEES responsible for cheque orders that also have cheque signing authority, or
  - iv. (iv) money that was not kept in a separate trust account, that was annually audited

#### **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 ASSOCIATION 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 ASSOCIATION.
  - 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 ASSOCIATION prior to the INSURANCE PERIOD. Receipt of such communication will have occurred when the Australian Taxation Office makes communication with the ASSOCIATION or any other person acting on its behalf.
  - f. Any fraudulent act, error, omission or misrepresentation committed by or on behalf of the ASSOCIATION.
  - 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 as soon as practicable and within the INSURANCE PERIOD.
- b. Any Notice to US shall be given in writing and either:

Delivered to:

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

Emailed to:

[claims@dualaustralia.com.au](mailto: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 may 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 ASSOCIATION (if applicable), and in the case of DEFENCE COSTS those which are directly attributable to (where applicable) both YOUR and the ASSOCIATION'S defence of such CLAIM, 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 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 ASSOCIATION (whichever is appropriate) or both YOU and the ASSOCIATION 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 Cover for YOU applies to part of a LOSS and the DEDUCTIBLE applicable to Insuring Clause 2.2 Cover for the ASSOCIATION applies to part, then WE and the INSURED must use best efforts to reach an agreement of a fair allocation of such LOSS between Insuring Clause 2.1 Cover for YOU and Insuring Clause 2.2 Cover for the ASSOCIATION. 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 ASSOCIATION 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 ASSOCIATION 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 ASSOCIATION notifies US of a DIRECT FINANCIAL LOSS and WE accept the notification under this POLICY, subject to the ASSOCIATION's compliance with Clause 11.5 INSURED's Right to Contest above, an appropriate fraud investigator will be nominated by the INSURED, and approved in writing by US, to establish proof of any element or part of the 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 ASSOCIATION'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 ASSOCIATION 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 ASSOCIATION 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 Subrogation**

- a. Where WE have paid a CLAIM or LOSS 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.

### **12.2 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 ASSOCIATION decides to make a public offering of its SECURITIES in any jurisdiction, whether its SECURITIES are already traded or not, by any means, public or private, then as soon as the information is publicly available, the ASSOCIATION 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 ASSOCIATION'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 ASSOCIATION, WE will enter into a confidentiality agreement with the ASSOCIATION relating to any information provided regarding the proposed SECURITIES offering.

### **12.3 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.

#### 12.4 Cancellation

- a. The ASSOCIATION 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 of this POLICY, we will retain the proportion of the premium calculated pro rata as at the date of the cancellation plus fifteen percent (15%) of that amount.

#### 12.5 Several Liability of Underwriters

The obligations of OUR subscribing Underwriters, where there is more than one Underwriter named in 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.

#### 12.6 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 the law; or
- f. WE consent to the disclosure in writing.

#### 12.7 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.

#### 12.8 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.

#### 12.9 Indemnity Limit

- a. Subject to Extension 3.4 Reinstatement of INDEMNITY LIMIT OUR total liability under the POLICY in respect of any single CLAIM including DEFENCE COSTS shall not exceed the INDEMNITY LIMIT. OUR total liability under the POLICY in the aggregate for all CLAIMS and LOSS, including DEFENCE COSTS, shall not exceed the INDEMNITY LIMIT, subject to Extension 3.4 Reinstatement of INDEMNITY LIMIT. Where Extensions

3.4 Reinstatement of INDEMNITY LIMIT is operative, the total aggregate maximum amount payable by US under the POLICY in excess of the INDEMNITY LIMIT is an amount equal to the INDEMNITY LIMIT (for all CLAIMS and LOSS including DEFENCE COSTS). The POLICY does not provide a separate INDEMNITY LIMIT under each of Extensions 3.4 Reinstatement of INDEMNITY LIMIT.

- b. Subject to Extension 3.4 Reinstatement of INDEMNITY LIMIT, OUR total liability under the POLICY for any single LOSS and all LOSSES under Insuring Clause 2.2(e) Crime or 2.2(f) Taxation Investigations; shall not exceed the Sub-limit specified in the Schedule.

#### 12.10

##### **Deductible**

- a. OUR liability under Insuring Clause 2.1 Cover for YOU (in respect of each INSURED PERSON) or Insuring Clause 2.2 Cover for the ASSOCIATION (in respect of the ASSOCIATION and other INSURED) 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 applicable INSURED 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.

#### 12.11

##### **Non-Imputation**

Except as provided for under Insuring Clause 2.2(e) Crime which includes reference to the definition of DISCOVERED in Clause 5.12, 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 or management committee, chief executive officer, director, chief operating officer or chief financial officer of the ASSOCIATION will be imputed to the ASSOCIATION.

#### 12.12

##### **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 ASSOCIATION 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 ASSOCIATION in order to reproduce such electronic data.

#### 12.13

##### **Preservation of Right to Indemnity**

In the event and to the extent that the ASSOCIATION 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)

ASSOCIATION Reimbursement shall be paid by the ASSOCIATION to US. However, the amount of the DEDUCTIBLE will not be payable by the ASSOCIATION if the ASSOCIATION is unable to pay the amount of the DEDUCTIBLE due to insolvency.

12.14

#### **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.

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 effected on behalf of the INSURED or under which the INSURED is a beneficiary (but not a policy to which the preceding paragraph applies).

Neither of the two paragraphs immediately above applies 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 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 member company, associate or affiliate) under such other insurance.

12.15

#### **Several Liability Notice**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

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  
Level 9  
1 O'Connell Street  
Sydney NSW 2000

Telephone Number: (02) 8298 0700  
Facsimile Number: (02) 8298 0788

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

If your enquiry or complaint is not resolved or Lloyd's Australia do not resolve your complaint within 45 calendar days of first receiving your complaint, you may refer the matter to the Australian Financial Complaints Authority (AFCA) as follows:

Australian Financial Complaints Authority (AFCA)  
Post: GPO Box 3, Melbourne VIC 3001  
Phone: 1800 931 678  
Email: info@afca.org.au

AFCA service is free of charge. More information can be found on their website [www.afca.org.au](http://www.afca.org.au)

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  
Level 9  
1 O'Connell 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](http://www.ica.com.au) or from the Code's dedicated website at [www.codeofpractice.com.au](http://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.

# DUAL AUSTRALIA PROFESSIONAL INDEMNITY INSURANCE

## MODULE 2

### Policy Wording

#### Section 1: PREAMBLE

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

#### Section 2: INSURING CLAUSE

- 2.1 WE agree to pay on behalf of the INSURED for all loss for which it becomes legally liable to pay on account of any CLAIM first made against the INSURED and reported to US during the INSURANCE PERIOD in respect of any civil liability incurred by the INSURED in the conduct of the INSURED'S PROFESSIONAL BUSINESS.
- 2.2 WE also agree to pay DEFENCE COSTS either incurred by US or incurred by the INSURED with OUR prior written consent.
- 2.3 The POLICY shall only provide cover for breaches of professional duty committed after the RETROACTIVE DATE.

#### Section 3: AUTOMATIC EXTENSIONS

The automatic extensions are subject to the Insuring Clauses and all other POLICY terms and conditions.

##### 3.1 Fraud and Dishonesty

WE agree to provide cover in respect of any CLAIM which would otherwise be excluded because of fraud and dishonesty in Exclusion 7.14 of the POLICY provided that WE will not provide cover in respect of any:

- a. person committing or condoning any act, omission or breach excluded by Exclusion 7.14 of the POLICY.
- b. CLAIM arising from or directly or indirectly attributable to or in consequence of:
  - i. any loss of money, negotiable instruments, bonds, coupons, currency, bank notes, stamps, cheques, bills of exchange, letters of credit or other instruments whether negotiable or not or whether matured or not or securities or documents evidencing title to or ownership of land or any other property; or
  - ii. any actual or alleged fraudulent or dishonest instruction or direction; or use of electronic equipment, including but not limited to, telephony or the internet; resulting in:
    - a) any unauthorised transfer, delivery or payment of, or dealing with, any money, land or other property; or

- b) any unauthorised reduction in the amount of any funds or other assets held by any person with any bank, building society or other institution or person having a responsibility for the maintenance or care of such funds or assets; or
- c) any adverse effect upon any right of any person to the payment of money.

### 3.2 **Former Principals**

WE agree to provide cover in respect of any CLAIM against any former principal, partner, director, or EMPLOYEE of the INSURED in respect of the conduct of the INSURED's PROFESSIONAL BUSINESS.

### 3.3 **Consultants, Subcontractors and Agents**

WE agree to provide cover in respect of any CLAIM against the INSURED resulting from the conduct of any consultant, subcontractor or agent in the PROFESSIONAL BUSINESS of the INSURED and for whose acts, errors or omissions the INSURED is liable.

WE will not cover the consultant, subcontractor or agent.

### 3.4 **Loss of Documents**

WE agree to provide cover in respect of any costs and expenses incurred by the INSURED in replacing or restoring LOST DOCUMENTS for which the INSURED is legally responsible if:

- a. The loss of the DOCUMENTS is first discovered during the INSURANCE PERIOD;
- b. The INSURED notifies US within 30 days of discovery of the loss of the DOCUMENTS;
- c. The INSURED provides US with bills and accounts substantiating the costs and expenses incurred by the INSURED in replacing or restoring the LOST DOCUMENTS; and
- d. WE approve or a competent person nominated by US approves the bills and accounts.

A separate DEDUCTIBLE will apply to each loss under this extension.

### 3.5 **Run-off Cover Insured Entity or Subsidiary (Former Subsidiary)**

WE agree to provide cover in respect of any CLAIM against the INSURED resulting from the conduct of the PROFESSIONAL BUSINESS by a SUBSIDIARY that ceased or ceases to be a SUBSIDIARY either before or during the INSURANCE PERIOD.

### 3.6 **Joint Venture Liability**

WE agree to provide cover in respect of any CLAIM against the INSURED resulting from its conduct of the PROFESSIONAL BUSINESS as a joint venturer.

WE will not cover any liability of the joint venture partner.

### 3.7 **Defamation**

WE agree to provide cover in respect of any CLAIM against the INSURED which results from the INSURED making a defamatory statement in the conduct of the PROFESSIONAL BUSINESS.

### 3.8 **Fidelity**

WE agree to provide cover in respect of any CLAIM against, or loss discovered by, the INSURED resulting from:

- a. any loss of money, negotiable instruments, bonds, coupons, currency, bank notes, stamps, cheques, bills of exchange, letters of credit and other instruments whether

negotiable or not or whether matured or not or securities or documents evidencing title to or ownership of land or any other property belonging to the INSURED or for which the INSURED is legally liable; and/or

- b. any actual or alleged fraudulent or dishonest instruction, direction or use of electronic equipment, including but not limited to telephony and the internet, resulting in the unauthorised transfer, delivery or payment of, or dealing with, money, land or any other property belonging to the INSURED or for which the INSURED is legally liable ("fraudulent transaction")

where such loss is sustained or fraudulent transaction occurs in consequence of any dishonest, fraudulent, malicious or reckless act or omission of any INSURED, provided always that:

- i. Such CLAIM is first made against the INSURED or loss or fraudulent transaction is first discovered by the INSURED during the INSURANCE PERIOD and is notified in writing to US within 28 days after such discovery and where the INSURED must bear any costs or expenses to substantiate the loss or fraudulent transaction;
- ii. WE shall not be liable for any CLAIM based on or loss sustained in respect of any fraudulent transaction which occurs in consequence of any act or omission occurring after the date of the discovery of, or of reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the INSURED concerned; nor will WE be liable to indemnify any INSURED committing or condoning any dishonest or fraudulent conduct.
- iii. The INSURED kept a separate trust account for any money misappropriated or stolen and the trust account was audited annually by a qualified, independent accountant.
- iv. All cheques prepared on that trust account were countersigned by two authorised people; and
- v. The INSURED took all reasonable precautions to prevent any loss and continued to perform all supervision, controls, checks and audits.

The cover provided under this extension is sub-limited to \$50,000 any one CLAIM or loss and in the aggregate all CLAIMS and losses. This sub-limit is part of and not in addition to the INDEMNITY LIMIT. A separate DEDUCTIBLE will apply to each loss under this extension.

### 3.9 Intellectual Property

WE agree to provide cover in respect of any CLAIM which would otherwise be excluded by Exclusion 7.9 of the POLICY (Intellectual Property), provided that the liability incurred from the breach of intellectual property rights results from the provision of advice by the INSURED in the conduct of the PROFESSIONAL BUSINESS.

### 3.10 Reinstatement of INDEMNITY LIMIT

WE agree to provide cover in respect of any CLAIM(S) which require(s) reinstatement of the INDEMNITY LIMIT during the INSURANCE PERIOD because the INDEMNITY LIMIT is eroded (partially or totally) as a result of the payment of an earlier and separate CLAIM, CLAIMS or DEFENCE COSTS. However the aggregate of all such reinstatements in connection with all CLAIMS will not exceed a total amount equal to two times the INDEMNITY LIMIT, inclusive of DEFENCE COSTS, and such reinstatements are only available where the subsequent CLAIM(S) is/are based on facts and matters totally different from and unrelated to those which gave rise to the erosion or exhaustion of the INDEMNITY LIMIT. Further, this Extension does not apply until the INSURED has exhausted the limits of any policy which is in excess of the original INDEMNITY LIMIT under this POLICY, other than any similar reinstatement provisions under such excess policies.

### 3.11 Attendance at Inquiries

WE agree to provide cover in respect of any legal representation costs resulting directly from the attendance by the INSURED at any INQUIRY. WE will only do this if:

- a. the INQUIRY is ordered or commissioned during the INSURANCE PERIOD, and
- b. OUR consent is obtained before such costs are incurred, and
- c. the INSURED notifies US during the INSURANCE PERIOD that the INSURED is legally compelled to attend the INQUIRY, and
- d. the INQUIRY is not being held in USA or Canada, and
- e. the INSURED's attendance is required because of the INSURED's conduct of its PROFESSIONAL BUSINESS, and
- f. at OUR option, WE can nominate legal advisers to be used.

The cover provided under this extension is sub-limited to \$500,000 any one INQUIRY and in the aggregate for all INQUIRIES and a separate DEDUCTIBLE will apply to each INQUIRY under this extension. This sub-limit is part of and not in addition to the INDEMNITY LIMIT. For the application of the terms and conditions of this POLICY to this Extension, INQUIRY is deemed to be a CLAIM.

### 3.12 Court Attendance Costs

WE agree to provide cover in respect of any Court attendance costs of any partner, principal, director or EMPLOYEE of the INSURED who is legally required to attend Court as a witness in a CLAIM covered by the POLICY, to an amount not exceeding \$250 per day for EMPLOYEES and \$500 per day for those other persons. No DEDUCTIBLE applies.

### 3.13 Public Relations

WE agree to provide cover in respect of any PUBLIC RELATIONS EXPENSES incurred by the INSURED 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 results in a CLAIM covered under the POLICY.

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

The cover provided under this extension is sub-limited to \$100,000 any one INCIDENT and in the aggregate for all INCIDENTS. A separate DEDUCTIBLE of \$1,000 will apply to each INCIDENT under this extension. This sub-limit is part of and not in addition to the INDEMNITY LIMIT.

### 3.14 Heirs, Estates and Legal Representatives

WE agree to provide cover in respect of any Estate, heirs, legal representatives or assigns of any deceased or mentally incompetent INSURED in respect of CLAIMS resulting from the conduct of the PROFESSIONAL BUSINESS by such INSURED.

### 3.15 Continuous Cover

Notwithstanding the Prior Knowledge Clause 7.1 (a) and (b), WE agree to provide cover in respect of any CLAIM 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 to US , or notified to any other insurer of, such facts or circumstances prior to the INSURANCE PERIOD .

Provided that:

- i. the CLAIM would have been covered under the professional indemnity insurance policy in force at the time the INSURED first became aware of such facts or circumstances; and
- ii. the INSURED has been continuously, without interruption, covered under a professional indemnity insurance policy from the time the INSURED first became aware of such facts or circumstances; and
- iii. there has not been any fraudulent non-disclosure or fraudulent misrepresentation by the INSURED in respect of such facts or circumstances; and
- iv. had not notified US or the previous insurer of such facts or circumstances prior to the INSURANCE PERIOD ; and
- v. 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 the indemnity limit and deductible, or the terms and conditions of this POLICY; and
- vi. the INSURED agrees to only make a claim under one professional indemnity policy issued by US.

If the INSURED still has an entitlement to indemnity, in whole or in part, under another professional indemnity insurance POLICY in respect of a CLAIM, then this extension does not apply under this INSURED in respect of such CLAIM.

WE may reduce the amount WE pay out under this extension by the amount of any prejudice WE have suffered as a result of any delayed notification to US or the previous insurer.

Entitlement to cover under this extension is conditional upon the receipt of all policy documents issued to the INSURED by the previous insurer for each professional liability policy in force from the time the INSURED first became aware of a fact or circumstance which might give rise to a CLAIM under this POLICY .

For the purpose of this extension only, the definition of WE/US/OUR in clause 5.20 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.

Except as otherwise provided in this endorsement, the Insuring Clause and all other POLICY terms and conditions shall have full force and effect.

### 3.16 **Defence Costs In Addition**

WE agree to provide cover for any DEFENCE COSTS in addition to the INDEMNITY LIMIT, in an amount not exceeding the INDEMNITY LIMIT. WE will only pay these, however, if:

- a. WE incur them; or
- b. The INSURED incurs them after first obtaining OUR agreement in writing and the DEFENCE COSTS are in OUR view reasonable and necessary.

WE will not be obliged to defend, or to continue to defend, any CLAIMS or pay, or continue to pay, any DEFENCE COSTS associated with such defence, once the INDEMNITY LIMIT has been exhausted.

DEFENCE COSTS does not include any internal or overhead expenses of the INSURED or the cost of the INSURED'S time.

### 3.17 **Emergency Defence Costs**

WE agree to provide cover for any DEFENCE COSTS incurred by the INSURED prior to obtaining our consent, provided OUR consent is obtained within 30 days of the first of such DEFENCE COSTS being incurred, and provided that for the purposes of this Extension only:

- a. WE are only liable to indemnify the INSURED for that part of the INSURED's liability in respect of each CLAIM and DEFENCE COSTS in excess of the DEDUCTIBLE, and
- b. If WE subsequently refuse to pay under the POLICY, the INSURED must reimburse US for any DEFENCE COSTS that WE have paid in advance, according to their respective rights and interests.

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

### 3.18 **Previous Business**

WE agree to provide cover in respect of any principal, partner or director of the INSURED for CLAIMS resulting from professional services they performed prior to joining the INSURED.

This extension will only apply if:

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

The retroactive date for this Extension is limited to the commencement date of the past business in which the principal, partner or director practised

### 3.19 **Free Legal Consultation**

During the PERIOD of INSURANCE the INSURED is entitled to up to two hours free legal advice from the appointed firm and nominated practitioner as prescribed by US, on any matter relating to the INSURED's professional business practice. This extension is subject to the following:

- i) The legal advice will be of a general nature
- ii) Any unused hours or consultations cannot be aggregated from one POLICY period to another.
- iii) WE reserve the right to change the appointed firm or nominated practitioner at any time. These changes will be notified to the INSURED upon request.
- iv) The INSURED may not seek legal advice on this POLICY or other indemnity issues concerning insurance policies issued by US under this extension.

## **Section 4: INTERPRETATION**

In the POLICY:

- 4.1 a. Person includes individuals, partnerships, bodies corporate and associations.

- b. The singular includes the plural and the masculine includes the feminine.
- c. The headings are for descriptive purposes only.

4.2 The construction and interpretation of the POLICY shall be determined in accordance with the law of the jurisdiction in which it is issued.

4.3 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.

4.4 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 CLAIM means:

- a. any written or oral demand made by a third party against the INSURED for compensation; or
- b. Any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon the INSURED which seeks compensatory relief made by a third party against the INSURED.

5.2 DEFENCE COSTS means any necessary and reasonable fees, expenses, costs and disbursements incurred in investigating or defending a CLAIM covered by the POLICY.

5.3 DEDUCTIBLE means the amount specified in the Schedule or otherwise specified in any extension to this POLICY.

5.4 DOCUMENTS means deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature, whether printed, written or reproduced by any method including computer records and electronically stored data but does not mean bearer bonds or coupons, stamps, bank or currency notes, money or any negotiable instrument.

5.5 EMPLOYEE means any person employed by the INSURED under a contract of service or apprenticeship during or prior to the commencement of the INSURED PERIOD.

5.6 FAMILY MEMBER means the INSURED's

- a. Legal or de facto spouse, domestic partner or companion;
- b. Parent, or the parent of the INSURED's legal or de facto spouse, domestic partner or companion;
- c. Children and children of (a) and (b) above
- d. Siblings.

5.7 INCIDENT means a matter in which the INSURED's reputation and skill in the conduct of the PROFESSIONAL BUSINESS is brought into question.

5.8 INDEMNITY LIMIT means the amounts specified in the Schedule.

5.9 INQUIRY means any official investigation, examination, inquiry or other proceedings ordered or commissioned by any official body or institution empowered by law to investigate the conduct of the PROFESSIONAL BUSINESS of the INSURED.

5.10 INSURANCE PERIOD means the period specified in the Schedule.

- 5.11 INSURED means
- a. The person, partnership, company, ASSOCIATION, SUBSIDIARY or other entity, specified as the INSURED in the Schedule; and
  - b. Any person who is during the INSURANCE PERIOD a principal, partner, director, employee, volunteer, committee member of the person, partnership, company, ASSOCIATION, SUBSIDIARY or other entity specified as the INSURED in the Schedule, but only while acting in the course of the PROFESSIONAL BUSINESS. ASSOCIATION means the NOT-FOR -PROFIT ENTITY or entities specified in the Schedule.
- 5.12 LOST DOCUMENTS means DOCUMENTS that cannot be located following a diligent search, and documents that have been destroyed or damaged.
- 5.13 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.
- 5.14 POLLUTANTS means any contaminant whether solid, liquid or gas including but not limited to chemicals, smoke, vapours and fumes.
- 5.15 PROFESSIONAL BUSINESS means the PROFESSIONAL ACTIVITY set out in the Schedule but shall only include services of design, advice, specification, calculation and formula undertaken by or under the direct supervision of a properly qualified and appropriate professional in that PROFESSIONAL ACTIVITY. A person will be properly qualified if they possess appropriate professional qualifications from a recognised body relevant to that PROFESSIONAL ACTIVITY. For the avoidance of doubt, the PROFESSIONAL BUSINESS does not include manual labour or physical construction work, or supervision of such, that is normally the responsibility of a builder.
- 5.16 PROPOSAL means the written proposal made by the INSURED to US together with any attachments.
- 5.17 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).
- 5.18 RETROACTIVE DATE means the date specified in the Schedule but no earlier than the commencement of the INSURED's business specified in the Schedule but only while in the course of the PROFESSIONAL BUSINESS
- 5.19 SUBSIDIARY means any entity which by virtue of any applicable legislation or law is deemed to be a SUBSIDIARY of the INSURED or in which the INSURED owns or controls, directly or indirectly 50% of the issued voting shares of such entity.
- 5.20 WE/US/OUR means DUAL Australia Pty Limited, ACN 107 553 257 as agent of the Underwriters named in the Schedule under the heading "Underwriters".

**Section 6: EXCLUSIONS**

WE will not cover the INSURED, including for DEFENCE COSTS or other loss, in respect of:

**6.1 Prior knowledge**

- a. Any CLAIM arising from or in connection with a fact or circumstance that the INSURED knew or ought reasonably to have known prior to the INSURANCE PERIOD might or could give rise to a CLAIM;
- b. Any CLAIM arising from or in connection with a fact or circumstance of which notice has been or reasonably should have been given under any previous insurance.

- c. Any CLAIM that was first made, threatened or intimated against the INSURED prior to the INSURANCE PERIOD.

#### 6.2 **Fines and Penalties and Non-Compensatory**

- a. Taxes, fines or penalties;
- b. Punitive, aggravated, multiple, exemplary, liquidated or other non-compensatory damages or the consequences of non-payment;
- c. Any demand for the repayment or refund by the INSURED to a third party of professional fees paid to the INSURED for the provision of professional or other services.

#### 6.3 **Assumed Liability**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of any duty or obligation assumed by the INSURED by way of warranty, guarantee, indemnity, contract or agreement, unless the INSURED would have incurred the liability in the absence of such warranty, guarantee, indemnity, contract or agreement.

#### 6.4 **Liability to Employees**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of bodily injury, mental injury, sickness, disease or death of any EMPLOYEE or damage to or destruction of any property of any EMPLOYEE, including loss of use.

#### 6.5 **Bodily Injury**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of the death of, or bodily injury or illness to, any person, unless it results directly from the INSURED's conduct of the PROFESSIONAL BUSINESS.

#### 6.6 **Property Damage**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of the loss or destruction of, or damage to, any property, unless it results directly from the INSURED's conduct of the PROFESSIONAL BUSINESS.

#### 6.7 **Liability as Occupier**

Any CLAIM or liability arising from or incurred or alleged to have been incurred in connection with the use, occupation, ownership or lease of any real estate or personal property, by or on behalf of the INSURED.

#### 6.8 **Product Liability**

Any CLAIM or liability arising from or in connection with the manufacture, preparation, modification, repair, supply, maintenance or treatment of any goods or products sold, supplied or distributed by the INSURED.

#### 6.9 **Intellectual Property**

Any CLAIM arising from infringement or alleged infringement of any intellectual property right including but not limited to copyright, patent, trademark, privacy, plagiarism, design or confidentiality.

#### 6.10 **Pollution**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of the actual or alleged release or discharge of POLLUTANTS.

## 6.11

### War/Terrorism

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

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

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

## 6.12

### Nuclear

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

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

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

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

## 6.13

### Trading Debts

Any CLAIM arising from or directly or indirectly attributable to any trading debt or business liability of the INSURED or any guarantee given by the INSURED for a debt.

## 6.14

### Fraud and Dishonesty

- a. Any CLAIM arising from or directly or indirectly attributable to or in consequence of any actual or alleged act or omission by the INSURED, its consultants, sub-contractors or agents which was reckless, fraudulent, dishonest, malicious or criminal.
- b. Any CLAIM arising from or directly or indirectly attributable to or in consequence of any wilful breach of any statute, regulation, contract or duty by the INSURED, its consultants, sub-contractors or agents.

## 6.15

### Associates

- a. Any CLAIM by, on behalf of or for the benefit of any INSURED;
- b. Any CLAIM by, on behalf of or for the benefit of any SUBSIDIARY; or
- c. Any CLAIM by, on behalf of or for the benefit of any FAMILY MEMBER of the INSURED, unless the FAMILY MEMBER is acting without any prior direct or indirect solicitation or co-operation from the INSURED.

irrespective of the capacity in which the CLAIM is brought.

**6.16 Directors & Officers**

Any CLAIM alleging a breach by an INSURED of a duty owed or any alleged wrongful conduct in the capacity of a director, secretary or officer of a body corporate.

**6.17 Asbestos and Toxic Mould**

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

- a. asbestos or other things that contain it; or
- b. the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, or mycotoxins relating to Stachy Botrys, such action to including investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, mycotoxins relating to Stachy Botrys.

**6.18 Performance Obligation**

Any CLAIM arising from or directly or indirectly caused by, or in any way connected with the INSURED's failure to perform its obligations within any agreed period of time, including but not limited to any delay in delivery or failure to deliver the product or service to be supplied by the agreed time.

**6.19 Infrastructure, Manufacturing and Financial**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of:

- a. any errors in an estimate of probable construction cost or cost estimate; or
- b. any construction, assembly, installation, erection or maintenance undertaken by or on behalf of the INSURED; or
- c. any breach of any express or implied warranty arising out of the development of any property; or
- d. the insolvency or financial failure of any person or entity involved in any project; or
- e. the failure to provide, effect or maintain any bond or any form of insurance; or
- f. actual or alleged advice in relation to finance, accounting or tax matters; or
- g. any loss or damage which would normally be the responsibility of a contractor; or
- h. any loss of or damage to, including loss of use of or value in, any goods in the care, custody or control of the INSURED; or
- i. any failure by the INSURED to inspect, access, sight or review any property or relevant part thereof in respect of any report or assessment of such property prepared by or on behalf of the INSURED in the conduct of the PROFESSIONAL BUSINESS; or
- j. any valuation of property or premises made by or on behalf of the INSURED; or
- k. the carrying out of any pest and/or pre purchase property inspection or provision of any pest and/or pre purchase property inspection report, whether oral or written; or
- l. any bodily injury or property damage occurring in the course of a property inspection or tangible property inspection or testing; or

- m. work undertaken in connection with any railway signalling; or
- n. work undertaken in connection with design of amusement rides, lifting and bulk handling equipment; or
- o. work undertaken in connection with swimming pool contracts; or
- p. work undertaken in connection with building certification; or
- q. work undertaken in connection with cooling towers.

#### 6.20 **Investment Performance**

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

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

#### 6.21 **Excluded Activities**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of:

- a. Finance and or Mortgage Broking;
- b. Corporate Advisory;
- c. Stockbroking;
- d. financial planning, insurance-related or funds management activities, whether or not it requires an Australian Financial Services Licence or an authority under such a License;
- e. advice or consulting in connection with mergers and acquisitions of entities or businesses or parts thereof.

#### 6.22 **Prescription Drug**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of the death of, or personal injury or illness to, any person as a result of prescription drugs, unless it results directly from the actual provision by the INSURED of a prescription in accordance with the standards of the relevant professional body in the conduct of the PROFESSIONAL BUSINESS on the matter or thing which gives rise to the personal injury.

#### 6.23 **Molestation**

Any CLAIM, including DEFENCE COSTS, directly or indirectly related to, based upon, attributable to or in connection with or consequence of any actual or alleged molestation of, interference with, mental abuse of or physical abuse of any person, whether by the INSURED, or by any agent, or EMPLOYEE of the INSURED, or by any person performing any volunteer service for or on behalf of the INSURED.

#### 6.24 **Sanctions Limitation Exclusion**

Any CLAIM or liability for any matter where the provision of such benefit would expose US to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

## **Section 7: CLAIM CONDITIONS**

**7.1** The cover provided by the POLICY shall extend to the conduct of the PROFESSIONAL BUSINESS by the INSURED anywhere in the world, except within the territorial limits of the United States of America or the dominion of Canada or their respective territories or protectorates.

### **7.2 Notification**

a. The INSURED shall notify US of any CLAIM or loss as soon as practicable and within the INSURANCE PERIOD.

b. Notice of any CLAIM or loss shall be given to US in writing, and either:

Delivered to:

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

Emailed to:

claims@dualaustralia.com.au

### **7.3 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 any CLAIM or loss. Any unreasonable failure to comply with this obligation may entitle US to deny cover for the CLAIM or loss, in whole or part.

b. The INSURED shall, at its own cost, do all things reasonably practicable to minimise the INSURED's liability in respect of any CLAIM or loss.

### **7.4 Legal Defence and Settlement**

a. Unless otherwise agreed, WE shall have the right to assume, in the name of the INSURED, the legal defence of any CLAIM covered under this POLICY. WE shall have the right to appoint the lawyers that will defend and represent the INSURED in respect of any CLAIM.

b. WE shall have full discretion in managing any negotiation or proceeding as to the resolution of such CLAIM. WE shall be entitled to settle a CLAIM if WE so choose.

c. The INSURED agrees not to admit liability for or settle any CLAIM or loss, make any admission, offer any payment or assume any obligation in connection with any CLAIM or loss, or incur any DEFENCE COSTS in connection with any CLAIM, without OUR written consent.

d. WE shall not be liable for any settlement, DEFENCE COSTS, admission, offer, payment or assumed obligation made, incurred or entered into without OUR written consent.

e. 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 WE will pay the amount in excess of the DEDUCTIBLE.

### **7.5 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 to the date upon which the CLAIM could have been settled.

#### 7.6 Senior Counsel

- a. WE shall not require the INSURED to contest a CLAIM unless a Senior Counsel (agreed upon by the INSURED and US) advises that the CLAIM should be contested, taking into account all likely DEFENCE COSTS, prospects of successfully defending the CLAIM and the damages and costs likely to be recovered by the third party claimant.
- b. The costs of Senior Counsel's advice shall be regarded as part of the DEFENCE COSTS.

#### 7.7 Non-Imputation

Except for Exclusion Clause 7.1, no state of mind or knowledge possessed by any one INSURED will be imputed to any other INSURED 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 principal, director, partner of the INSURED will be imputed to the INSURED in Clause 6.11(a) of this POLICY.

#### 7.8 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.

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 effected on behalf of the INSURED or under which the INSURED is a beneficiary (but not a policy to which the preceding paragraph applies).

Neither of the two paragraphs immediately above applies 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 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 member company, associate or affiliate) under such other insurance.

### Section 8: GENERAL CONDITIONS

#### 8.1 Subrogation

- a. Where WE have paid an amount under the POLICY WE become entitled to any rights of the INSURED against any party in relation to the CLAIM or loss, to the extent of OUR payment.
- b. The INSURED, at its own cost, must 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, among other things.

#### 8.2 Alteration to Risk

The INSURED must notify US in writing as soon as practicable of any material alteration to the risk during the INSURANCE PERIOD including:

- a. The INSURED going into voluntary bankruptcy, receivership or liquidation; or
- b. The INSURED failing to pay debts as and when those debts become due; or

- c. The INSURED breaching any other obligation giving rise to the appointment of a receiver or the commencement of bankruptcy or winding up proceedings; or
- d. Any material change in the nature of the PROFESSIONAL ACTIVITY.

WE may not cover the INSURED for any CLAIM if the INSURED does not notify US in writing as soon as practicable of any material alteration to risk.

### 8.3 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.

### 8.4 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 of this POLICY, WE will retain the proportion of the premium calculated pro rata as at the date of the cancellation plus fifteen percent (15%) of that amount.

### 8.5 Jurisdictional Limitation

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

- a. Any CLAIM brought within the territorial limits of the United States of America or the dominion of Canada or their territories or protectorates;
- b. To enforce any judgement, order or award obtained in or determined under the laws of the United States of America or the dominion of Canada or their territories or protectorates.

### 8.6 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.

### 8.7 Insuring Clause Clarification

For the avoidance of doubt, the cover provided by the Insuring Clause of this POLICY, includes but is not restricted to civil liability under the Part V of the Competition and Consumer Act 2010, the Fair Trading Act 1987 (NSW), the Fair Trading Act 1985 (Victoria), Australian Securities and Investment Commission Act or similar legislation enacted by the other States or Territories of the Commonwealth of Australia or the Dominion of New Zealand.

### 8.8 Several Liability Notice

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

### 8.9 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  
Level 9

1 O'Connell Street  
Sydney NSW 2000  
Sydney NSW 2000

Telephone Number: (02) 8298 0700  
Facsimile Number: (02) 8298 0788

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

If your enquiry or complaint is not resolved or Lloyd's Australia do not resolve your complaint within 45 calendar days of first receiving your complaint, you may refer the matter to the Australian Financial Complaints Authority (AFCA) as follows:

Australian Financial Complaints Authority (AFCA)  
Post: GPO Box 3, Melbourne VIC 3001  
Phone: 1800 931 678  
Email: info@afca.org.au

AFCA service is free of charge. More information can be found on their website [www.afca.org.au](http://www.afca.org.au)

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.

#### 8.10 **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  
Level 9  
1 O'Connell 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.

#### 8.11 **General Insurance Code of Practice**

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

A copy of this Code is available by contacting DUAL Australia or from the Insurance Council of Australia's website at [www.ica.com.au](http://www.ica.com.au) or from the Code's dedicated website at [www.codeofpractice.com.au](http://www.codeofpractice.com.au)

## **Section 9: LIMIT OF LIABILITY**

### **9.1 Indemnity Limit**

Subject to Clause 3.10 and Clause 3.16, OUR total liability under the POLICY for any one CLAIM including DEFENCE COSTS and in the aggregate from all CLAIMS including DEFENCE COSTS shall not exceed the INDEMNITY LIMIT. For the purposes of determining the INDEMNITY LIMIT available for each CLAIM covered by the POLICY, all CLAIMS arising from the same breach of professional duty, or related breaches of professional duty, shall be regarded as one CLAIM.

### **9.2 Deductible**

- a. The INSURED is responsible for the DEDUCTIBLE in respect of each and every CLAIM. Subject to clause (c) below, WE are only liable to indemnify the INSURED for that part of the INSURED's liability in respect of each CLAIM and DEFENCE COSTS in excess of the DEDUCTIBLE.
- b. Where WE have paid on the INSURED's behalf part or all of the DEDUCTIBLE, the INSURED shall reimburse US.
- c. Unless otherwise expressed in the Schedule, all DEDUCTIBLES are inclusive of DEFENCE COSTS up to the amount of the DEDUCTIBLE.
- d. 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.
- e. For the purposes of determining the DEDUCTIBLE(S) applicable to any CLAIM(S) covered by the POLICY, all CLAIMS arising from the same breach of professional duty, or related breaches of professional duty, shall be regarded as one CLAIM.

## **Section 10 AUTHORITY**

**10.1** This is to certify that in accordance with the authorisation granted under Contract to the undersigned by the Underwriters as named in the SCHEDULE.

**10.2** 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.