

ACS Independent Churches

DUAL

Wordings.



DUAL Australia ACS Independent Churches

Policy Wording

Table Of Contents

DUAL Australia Association Liability Insurance MODULE 1	4
Section 1: Preamble	4
Section 2: Insuring Clauses	4
Section 3: Automatic Extensions Applicable to Insuring Clauses 2.1 and 2.2(a) – (d)	5
Section 4: Interpretation	10
Section 5: Definitions	10
Section 6: Exclusions (not applicable to Insuring Clause 2.2(e) crime)	16
Section 7: Additional Exclusions applying to Insuring Clause 2.2(b) Association Liability	20
Section 8: Additional Exclusions applying to Insuring Clause 2.2(c) Employment Practices	21
Section 9: Exclusions applying to Insuring Clause 2.2(e) Crime	21
Section 10: Exclusions applying to Insuring Clause 2.2(f) Taxation Investigation	23

Section 11: Claims/Loss Conditions	23
Section 12: General Conditions	25
Section 13: Authority	29
DUAL Australia Professional Indemnity Insurance MODULE 2	30
Section 1: Preamble	30
Section 2: Insuring Clause	30
Section 3: Automatic Extensions	30
Section 4: Interpretation	35
Section 5: Definitions	35
Section 6: Exclusions	37
Section 7: Claim Conditions	41
Section 8: General Conditions	42
Section 9: Limit Of Liability	45
Section 10: Authority	45

DUAL Australia Association Liability Insurance

MODULE 1

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 that 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; and
- h. any amount in connection with alleged breaches of the Privacy Act 1988 (Cth).

For the purpose of this Additional Benefit only:

- i. the reference in clauses 5.31 (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 5.51 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 **insurance period** 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; and
- 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; or
- 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 cryptoasset means a **digital asset** and a public or private key or any component thereof solely when used for a **digital asset**.

- 5.11 deductible** means the amounts specified in the Schedule in respect of each Insuring Clause.
- 5.12 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.
- 5.13 digital asset** means any actual, counterfeit or fictitious:
- a. digital coin;
 - b. digital token;
 - c. cryptocurrency;
 - d. cryptosecurity; or
 - e. any other digital representation of value or contractual rights that uses a type of distributed ledger of technology and that:
 - i. functions, or purports to function, as a medium of exchange, a unit of account or a store of value; or
 - ii. is or becomes regulated as a security.
- 5.14 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.
- 5.15 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.
- 5.16 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**.
- 5.17 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**.
- 5.18 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.

5.19 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.

5.20 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).

5.21 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**.

5.22 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.

5.23 entities means any company, direct or indirect holding company owned or controlled (either in whole or in part) either directly or indirectly by the Government or State of any of the **territories**.

5.24 fund means any single employer superannuation fund established for the benefit of **employees**. **Fund** does not include any industry or master superannuation funds.

5.25 indemnity limit means the amounts specified in the Schedule.

5.26 industrial instrument means

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

b. any other collective agreement;
which regulates the terms and conditions of employment.

5.27 insurance period means the period specified in the Schedule.

5.28 insured means each **insured person**, the **association** or both.

5.29 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.

5.30 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.

5.31 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**.

5.32 lost documents means **documents** that cannot be located following a diligent search, and **documents** that have been destroyed or damaged.

5.33 money means only local or foreign currency, coins, bank notes, cheques, travellers cheques, registered cheques, postal orders, money orders and bullion.

5.34 non-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.

- 5.35 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.
- 5.36 outside entity** means any **associated entity** or any **non-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**.
- 5.37 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**.
- 5.38 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.
- 5.39 proposal** means the written proposal specified in the Schedule made to **us** together with any attachments and material referred to therein.
- 5.40 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.
- 5.41 retroactive date** means the date specified in the Schedule.
- 5.42 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.
- 5.43 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**.
- 5.44 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.
- 5.45 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**.
- 5.46 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.

5.47 territories means Belarus, Russia, any disputed Russian territories, including but not limited to, Donetsk Region, Luhansk Region, Crimea Region.

5.48 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**.

5.49 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**; or
- b. by the **association** acting in its capacity as corporate **trustee**; or
- 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**.

5.50 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**.

5.51 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".

5.52 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**.

5.53 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.

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 2.2(c) 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 arising from or directly or indirectly attributable to or in consequence of any matters 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, Australia, United Kingdom or United States of America and we shall have no liability to the **insured** to the extent that to do so would be in breach of the foregoing.

6.22 Crypto

any **loss**, costs, expenses, liabilities, settlement sums and other amounts directly or indirectly connected to, involving or attributable to any **cryptoasset** or allegation relating to any **cryptoasset**, notwithstanding any provision to the contrary in this **policy** (including any endorsement).

6.23 Jurisdictional

any **claim**, investigation, **loss**, or any other amount:

- i. in respect of any **claim**, investigation, court order, judgment, award, payment, costs and expenses or settlement delivered, made or incurred or arising from or in connection with:
 - a. a court of law (or equivalent) within any of the **territories**; or
 - b. any Arbitration, Mediation or Adjudication (or any other dispute resolution process) within any of the **territories**; or
 - c. any court of law or dispute resolution process operating under the laws of any of the **territories**; or
- ii. in respect of any order made anywhere in the world to enforce any court order, judgment sums, award, payment, costs and expenses or settlement either in whole or in part arising out of (i) above; or
- iii. incurred by or resulting from activities that involve or benefit either directly or indirectly the Government or State of any of the Territories, or where the payment of such indemnity by the Insurer will benefit either directly or indirectly the Government or State of any of the **territories**; or
- iv. agreed or incurred prior to, during or subsequent to any matters referred to in (i) and/or (ii) above being brought by, or to the benefit of persons and/or **entities** that are resident in any of the **territories**.

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

In addition to the Exclusions outlined in Section 6 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 6 above, the following Exclusions apply with respect to Insuring Clause 2.2(c) Employment Practices and any relevant Extension.
- a. any obligation, or breach of an obligation, under any law or regulation providing for paid or unpaid leave of any kind or any **industrial instrument**; or
 - b. any obligation pursuant to any law, regulation, or **industrial instrument** in respect of workers' compensation, occupational or workplace health and safety, disability benefits, unemployment benefits or compensation, unemployment insurance, retirement benefits, social security benefits or any similar law, regulation or **industrial instrument** whatsoever.

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

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

- 9.1** We will not cover the **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. money that was not kept in a separate trust account, that was annually audited.
- i. **direct financial loss, loss**, costs, expenses, liabilities, settlement sums and other amounts directly or indirectly connected to, involving or attributable to any **cryptoasset** or allegation relating to any **cryptoasset**, notwithstanding any provision to the contrary in this **policy** (including any endorsement).
- j. **direct financial loss, claim**, investigation, **loss**, or any other amount:
 - i. in respect of any **claim**, investigation, court order, judgment, award, payment, costs and expenses or settlement delivered, made or incurred or arising from or in connection with:
 - a. a court of law (or equivalent) within any of the **territories**; or
 - b. any Arbitration, Mediation or Adjudication (or any other dispute resolution process) within any of the **territories**; or
 - c. any court of law or dispute resolution process operating under the laws of any of the **territories**; or
 - ii. in respect of any order made anywhere in the world to enforce any court order, judgment sums, award, payment, costs and expenses or settlement either in whole or in part arising out of (i) above; or
 - iii. incurred by or resulting from activities that involve or benefit either directly or indirectly the Government or State of any of the **territories**, or where the payment of such indemnity by the Insurer will benefit either directly or indirectly the Government or State of any of the **territories**; or
 - iv. agreed or incurred prior to, during or subsequent to any matters referred to in (i) and/or (ii) above being brought by, or to the benefit of persons and/or **entities** that are resident in any of the **territories**.

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 protectorates.
 - 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 29, Angel Place, 123 Pitt Street, Sydney NSW 2000

Emailed to: claims@dualaustralia.com.au

11.2 Co-operation

- a. The **insured** shall, at the **insured's** own cost, frankly and honestly provide **us** with all information and assistance required by **us** and/or the lawyers and investigators and others appointed by **us** in relation to the **claim** or **loss**. Any unreasonable failure to comply with this obligation 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* (Cth).
- 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

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 5.16, 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* (Cth), 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* (Cth), 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

If **you** have any concerns or wish to make a complaint in relation to this **policy**, **our** services or **your** insurance **claim**, please let **us** know and **we** will attempt to resolve **your** concerns in accordance with **our** Internal Dispute Resolution procedure.

Please contact **us** in the first instance:

[General Counsel Team](#)

DUAL Australia Pty Limited

Email: complaints@dualaustralia.com.au

Telephone: 02 9248 6300

Level 29, Angel Place, 123 Pitt Street,

Sydney NSW 2000

Australia

We will acknowledge receipt of **your** complaint and do **our** utmost to resolve the complaint to **your** satisfaction within 10 business days.

If **we** cannot resolve **your** complaint to **your** satisfaction, **we** will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. A final decision will be provided to **you** within 30 calendar days of the date on which **you** first made the complaint unless certain exceptions apply.

You may refer **your** complaint to the Australian Financial Complaints Authority (AFCA), if **your** complaint is not resolved to **your** satisfaction within 30 calendar days of the date on which **you** first made the complaint or at any time. AFCA can be contacted as follows:

[Australian Financial Complaints Authority Limited](#)

GPO Box 3

Melbourne VIC 3001

Australia

Telephone Number: 1800 93 678

Facsimile Number: (03) 9613 6399

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If **your** complaint is not eligible for consideration by AFCA, **you** may be referred to the Financial Ombudsman Service (UK) or **you** can seek independent legal advice. **you** can also access any other external dispute resolution or other options that may be available to **you**.

Us For the purpose of this Clause only, "this Insurance" means the **policy**, "you/your" means the **insured**.

12.17 Service of Suit (Australia) and About DUAL Australia

DUAL Australia Pty Limited ABN 16 107 553 257 AFSL 280193 (We/Us/Our) is a Coverholder for certain Underwriters at Lloyd's of London (Underwriters) and an Insurer Berkshire Hathaway Specialty Insurance Company (BHSI). DUAL has the authority to bind this **policy** on behalf of these Underwriters and BHSI.

The Underwriters and BHSI hereon agree that:-

- a. if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters and BHSI will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- b. any summons notice or process is to be served upon the Underwriters and BHSI as follows:

[Lloyd's Underwriters' General Representative in Australia](#)
Suite 1603
Level 16
1 Macquarie Place
Sydney NSW 2000

who has authority to accept service on the Underwriters' behalf; and

[Berkshire Hathaway Specialty Insurance](#)
Level 25, 8 Chifley Square
Sydney NSW 2000

- c. if a suit is instituted against any of the Underwriters or BHSI, all Underwriters and BHSI participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

12.18 General Insurance Code of Practice

We are compliant with the Insurance Council of Australia General Insurance Code of Practice.

The Insurance Council of Australia has developed the General Insurance Code of Practice ("the Code"), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd's has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit www.codeofpractice.com.au

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the Code Governance Committee (CGC) go to www.insurancecode.org.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

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 6.14 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 6.14 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; and
- 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; and

- 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**; and
- 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 6.9 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 6.1 (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 5.24 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 **insurance period** 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 cryptoasset** means a **digital asset** and a public or private key or any component thereof solely when used for a **digital asset**.
- 5.3 defence costs** means any necessary and reasonable fees, expenses, costs and disbursements incurred in investigating or defending a **claim** covered by the **policy**.
- 5.4 deductible** means the amount specified in the Schedule or otherwise specified in any extension to this policy.
- 5.5 digital asset** means any actual, counterfeit or fictitious:
- a. digital coin;
 - b. digital token;
 - c. cryptocurrency;
 - d. cryptosecurity; or
 - e. any other digital representation of value or contractual rights that uses a type of distributed ledger of technology and that:
 - i. functions, or purports to function, as a medium of exchange, a unit of account or a store of value; or
 - ii. is or becomes regulated as a security.
- 5.6 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.

- 5.7 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**.
- 5.8 entities** means any company, direct or indirect holding company owned or controlled (either in whole or in part) either directly or indirectly by the Government or State of any of the **territories**.
- 5.9 family member** means the **insured's**
- Legal or de facto spouse, domestic partner or companion;
 - Parent, or the parent of the **insured's** legal or de facto spouse, domestic partner or companion;
 - Children and children of (a) and (b) above;
 - Siblings.
- 5.10 incident** means a matter in which the **insured's** reputation and skill in the conduct of the **professional business** is brought into question.
- 5.11 indemnity limit** means the amounts specified in the Schedule.
- 5.12 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**.
- 5.13 insurance period** means the period specified in the Schedule.
- 5.14 insured** means
- The person, partnership, company, **association, subsidiary** or other entity, specified as the **insured** in the Schedule; and
 - 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 **non-for-profit entity** or entities specified in the Schedule.
- 5.15 lost documents** means **documents** that cannot be located following a diligent search, and **documents** that have been destroyed or damaged.
- 5.16 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**.
- 5.17 pollutants** means any contaminant whether solid, liquid or gas including but not limited to chemicals, smoke, vapours and fumes.
- 5.18 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.
- 5.19 proposal** means the written proposal made by the **insured** to **us** together with any attachments.
- 5.20 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).
- 5.21 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**

- 5.22 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.
- 5.23 territories** means Belarus, Russia, any disputed Russian territories, including but not limited to, Donetsk Region, Luhansk Region, Crimea Region.
- 5.24 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**; or
- 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 arising from or directly or indirectly attributable to or in consequence of any matters 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, Australia, United Kingdom or United States of America and we shall have no liability to the **insured** to the extent that to do so would be in breach of the foregoing.

6.25 Crypto

Any **loss**, costs, expenses, liabilities, settlement sums and other amounts directly or indirectly connected to, involving or attributable to any **cryptoasset** or allegation relating to any **cryptoasset**, notwithstanding any provision to the contrary in this **policy** (including any endorsement).

6.26 Jurisdictional

Any **claim**, investigation, **loss**, or any other amount:

- i. in respect of any **claim**, investigation, court order, judgment, award, payment, costs and expenses or settlement delivered, made or incurred or arising from or in connection with:
 - a. a court of law (or equivalent) within any of the **territories**; or
 - b. any Arbitration, Mediation or Adjudication (or any other dispute resolution process) within any of the **territories**; or
 - c. any court of law or dispute resolution process operating under the laws of any of the **territories**; or
- ii. in respect of any order made anywhere in the world to enforce any court order, judgment sums, award, payment, costs and expenses or settlement either in whole or in part arising out of (i) above; or
- iii. incurred by or resulting from activities that involve or benefit either directly or indirectly the Government or State of any of the Territories, or where the payment of such indemnity by the Insurer will benefit either directly or indirectly the Government or State of any of the **territories**; or
- iv. agreed or incurred prior to, during or subsequent to any matters referred to in (i) and/or (ii) above being brought by, or to the benefit of persons and/or **entities** that are resident in any of the **territories**.

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 29, Angel Place, 123 Pitt Street, Sydney NSW 2000

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 6.1, 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* (Cth).
- 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

If you have any concerns or wish to make a complaint in relation to this **policy**, **our** services or your insurance **claim**, please let **us** know and **we** will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure.

Please contact **us** in the first instance:

[General Counsel Team](#)

DUAL Australia Pty Limited

Email: complaints@dualaustralia.com.au

Telephone: 02 9248 6300

Level 29, Angel Place, 123 Pitt Street,

Sydney NSW 2000

Australia

We will acknowledge receipt of your complaint and do **our** utmost to resolve the complaint to your satisfaction within 10 business days.

If **we** cannot resolve your complaint to your satisfaction, **we** will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

[Australian Financial Complaints Authority Limited](#)

GPO Box 3

Melbourne VIC 3001

Australia

Telephone Number: 1800 93 678

Facsimile Number: (03) 9613 6399

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

us For the purpose of this Clause only, "this Insurance" means the **policy**, "you/your" means the **insured**.

8.10 Service of Suit (Australia) and About DUAL Australia

DUAL Australia Pty Limited ABN 16 107 553 257 AFSL 280193 (We/Us/Our) is a Coverholder for certain Underwriters at Lloyd's of London (Underwriters) and an Insurer Berkshire Hathaway Specialty Insurance Company (BHSI). DUAL has the authority to bind this **policy** on behalf of these Underwriters and BHSI.

The Underwriters and BHSI hereon agree that:-

- a. if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters and BHSI will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- b. any summons notice or process is to be served upon the Underwriters and BHSI as follows:

[Lloyd's Underwriters' General Representative in Australia](#)

Suite 1603

Level 16

1 Macquarie Place

Sydney NSW 2000

who has authority to accept service on the Underwriters' behalf; and

[Berkshire Hathaway Specialty Insurance](#)

Level 25, 8 Chifley Square

Sydney NSW 2000

- c. if a suit is instituted against any of the Underwriters or BHSI, all Underwriters and BHSI participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

8.11 General Insurance Code of Practice

We are compliant with the Insurance Council of Australia General Insurance Code of Practice.

The Insurance Council of Australia has developed the General Insurance Code of Practice (“the Code”), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd’s has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit www.codeofpractice.com.au

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers’ compliance with the Code. For more information on the Code Governance Committee (CGC) go to www.insurancecode.org.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.