

DUAL
A U S T R A L I A

Wording

Management Liability



Steadfast 
STRENGTH WHEN YOU NEED IT

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Introduction

Welcome to DUAL Australia Pty Ltd.

Why is this document important?

This document is the Management Liability insurance **policy** wording. It contains details of **your** insurance if **you** purchase this product from **us**.

Who is this policy designed for?

Dual's Management Liability insurance **policy** is designed to protect small and medium sized companies and their directors and **officers**.

There are five coverage parts and associated Additional Benefits. The **policy** Schedule will indicate what coverage parts have been selected, stating coverage is "Included". If the Schedule states "Not Included" there is no cover under that Insuring Clause and/or Additional Benefit.

Insuring Clause 1.1, 1.2(a) **Wrongful Acts** or **Employment Practice Breaches** by Directors & **Officers**

Insuring Clause 1.2(b) **Wrongful Acts** by the **Company**

Insuring Clause 1.2(c) **Employment Practice Breaches** by the **Company**

Insuring Clause 1.2(d) **Direct Financial Loss** sustained by the **Company** (Crime)

Insuring Clause 1.2(e) **Tax Audit Costs** for the **Company**

Understanding your policy and its important terms and conditions

Details of the available cover are set out in the **policy** document. Please read it carefully to be sure it provides the protection **you** need.

In return for **you** having paid the premium to **us**, subject to the terms, conditions, exclusions and limitations as set out in the **policy** wording and/or the Schedule, **we** will insure **you** during the **period of insurance** to the extent described in the **policy**.

The **policy** wording, Schedule and endorsements (if any) are to be read together, as they set out the terms, conditions, exclusions and limitations that apply to this management liability insurance **policy**.

What we do not cover

There are things **we** do not cover, detailed within each section of the **policy**. Please refer to the 'Exclusions' section for information on what **we** do not cover under any part of the **policy**.

Your privacy

Your privacy and the security of **your** personal information are very important to **us**. **We** are committed to protecting the privacy of **your** personal information and the handling of **your** personal information in a responsible manner. **We** will take all reasonable steps to ensure that **your** personal information is accurate and current.

The information **you** give **us** is used by **us** to provide **you** with insurance product quotations. **We** also use that information to assist **us** in managing your **policy**, compiling statistics, processing any **claims you** may have and updating **you** with details of **our** products and services.

Please refer to DUAL's website to read **our** Privacy Policy www.dualaustralia.com.au

When to make a claim

As soon as practical and within the **period of insurance**, or during the **discovery period** if applicable.

How to make a claim

If **you** need to make a claim under this **policy**, please refer to Claims Conditions, Notification 10.1 on page 35. If **you** have any questions, please contact **your** broker or insurance intermediary as soon as possible or contact DUAL Australia on 1300 769 772 : or by email : claims@dualaustralia.com.au

Our claims forms are located on **our** website: www.dualaustralia.com.au

How Goods and Services Tax affects any payments we make

If **you** are entitled to an input tax credit for the premium paid for this **policy**, then **you** should advise **us** of the extent of that entitlement at or before making a claim under the **policy**. The **deductible** paid by **you** shall be net of any input tax credit that is or may be available in connection with **your** payment of **loss** within the **deductible**.

You must advise **us** of **your** correct Australian Business Number & Taxable Percentage.

Section 1 What we cover: Management Liability

We will provide cover to the extent described in this **policy** during the **period of insurance**, subject to the terms, conditions, exclusions and limitations set out in the **policy**. Cover commences upon payment of the premium unless otherwise agreed by **us** in writing.

Subject to the terms and conditions of the **policy**, the total amount payable by **us** under the **policy** shall not exceed the **limit of indemnity** displayed in Item 4 of the **policy** Schedule.

If there is a Sub Limit referred to in Item 4 of the Schedule for an Insuring Clause or an Additional Benefit, then that is the maximum amount, in the aggregate, which is payable by **us** for that Insuring Clause or that Additional Benefit .

All applicable Sub-Limits are displayed in the **policy** Schedule and shall be part of and not in addition to the **limit of indemnity** unless otherwise expressed.

If the **policy** Schedule states "Not Included" there is no cover under that Insuring Clause and/or Additional Benefit.

The **policy** only covers, under Insuring Clauses 1.1, 1.2 (a) to (c), **claims** first made against the **insured** and notified to **us** in the **period of insurance** or **discovery period** if applicable.

In the **policy**, except to the extent that the context otherwise requires:

- a. words and expressions in the singular include reference to the plural, and vice versa;
- b. any word or expression which is given a specific meaning in the **policy** will appear in bold typeface, is defined, and will have that meaning wherever it may appear;
- c. words that are not specifically defined in this **policy** have the meaning normally attributed to them.

The headings and sub headings contained in this **policy** document are used for convenience only and do not form part of the terms of this **policy**.

1.1 Cover for You

We agree to pay on behalf of each **insured person** all **loss** on account of any **claim** for any **wrongful act** or **employment practice breach** for which the **company** has not indemnified or agreed to indemnify the **insured person**.

1.2 Cover for the Company

We agree to pay on behalf of the **company**:

Company Reimbursement

- a. all **loss** on account of any **claim** against any **insured person** for any **wrongful act** or **employment practice breach** for which the **company** has indemnified or agreed to indemnify such **insured person**;

Entity

- b. all **loss** on account of any **claim** against the **company** for a **wrongful act** by the **company**;

Employment Practices Breach

- c. all **loss** on account of any **claim** against the **company** for an **employment practice breach**;

Crime

- d. **Direct financial loss** sustained by the **company**, in excess of the **deductible**, which is first **discovered** and notified to **us** during the **period of insurance**, or **discovery period** if applicable, and caused by **dishonest acts**;

Tax Audit Costs

- e. **Tax audit costs** resulting from a **tax audit notice** served on the **company**, and reported to **us**, during the **period of insurance**.

1.3 Defence costs for claims

Except where **we** deny liability under this **policy we** agree to pay **defence costs** either incurred by **us** or incurred by the **insured** with **our** prior written consent, in respect of a **claim** for **loss** covered by this **policy**. **We** also agree to advance **defence costs** in respect of such a **claim** before its final disposition.

We will not rely on Exclusion 4.7 (Fraudulent, Dishonest and Wilful Conduct) until there is a relevant judgment, final adjudication or admission by such **insured** that the relevant conduct by such **insured** did occur.

If **we** subsequently refuse to pay the **insured's loss** under the **policy**, the **insured** must reimburse **us** for any **defence costs** that **we** have paid in advance, according to the respective interests of the **insured**.

For the purpose of this clause and the application of the terms, conditions and exclusions of the **policy** to Additional Benefit 2.1 Official Investigations and Inquiries, **claim** also means an official investigation, examination or inquiry under Additional Benefit 2.1.

1.4 Retroactive Date

The **policy** shall only provide cover in connection with **wrongful acts**, **employment practices breaches**, **dishonest acts** and any other conduct occurring after the **retroactive date**.

Section 2 What **we** cover: Additional Benefits

We will provide a range of Additional Benefits subject to the **policy** terms, conditions, exclusions and limitations set out in the **policy**. These benefits are listed below.

Our liability for these Additional Benefits will be limited to:

- a. the amount shown in Item 4 of the **policy** Schedule for the relevant Additional Benefit; or
- b. if no amount is shown in Item 4 of the **policy** Schedule, then the amounts shown below, subject to the extent that the **limit of indemnity** is not otherwise exhausted.

2.1 Official Investigations and Inquiries

We agree to pay **defence costs** in connection with the attendance by an **insured** for examination at any **investigation** in relation to the affairs of the **company** or any other examination of an **insured person** by virtue of his/her position as such.

We will only do this if the notice of the **investigation** is first received by the **insured** and notified to **us** during the **period of insurance**, or **discovery period** if applicable.

For the purpose of this Additional Benefit only, Exclusions 4.4 Bodily Injury / Property Damage and 4.5 Pollution Cover do not apply.

2.2 Occupational Health and Safety Defence Costs

We agree to pay:

- i. **defence costs** in connection with the attendance by an **insured** for examination at any **investigation** in connection with a breach or alleged breach of any Commonwealth, State or Territory occupational or workplace health and safety legislation;
- ii. **defence costs** in respect of any **claim** made against an **insured** where such **claim** arises from a breach or alleged breach of any Commonwealth, State or Territory occupational or workplace health and safety legislation.

For the purpose of this Additional Benefit only:

- (a) **claim** shall also include any official notice asserting a breach by an **insured** of any Commonwealth, State or Territory occupational or workplace health and safety legislation; and
- (b) Exclusion 4.4 Bodily Injury / Property Damage does not apply.

2.3 Statutory Liability

Under Insuring Clauses 1.1, 1.2(a) and 1.2(b) only, **we** agree to pay on behalf of the **insured** as **loss** all **statutory liability** and **defence costs** on account of any **claim**, if **we** are not legally prohibited from doing so.

We are not liable to make any payment under this Additional Benefit for **statutory liability** or **defence costs** in any way whatsoever in connection with:

- (i) alleged violation of any law in relation to air or marine traffic;
- (ii) alleged violation of any law in relation to vehicle traffic, except to the extent it results directly from the undertaking of the business of the **company**;
- (iii) actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, intellectual property rights, trade secret, unfair trade practices or business competition or any consumer protection Act, including but not limited to any Fair Trading Acts, Trade Practices Act 1974 (Cth), and Competition and Consumer Act (2010) and any similar

law of any state, territory or jurisdiction and any amendment, consolidation or re-enactment of any of those Acts;

- (iv) contract of service, or any intended contract of service, with any current, former or prospective **employee**.

For the purpose of this Additional Benefit only, **we** shall not be liable for, or to pay as **loss**:

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

For the purpose of this Additional Benefit only:

- (i) the reference in clauses 9.30 (a) **loss** and 5.1(d) of the **policy** to fines and penalties shall not apply to the extent that this Additional Benefit operates; and
- (ii) Exclusions 4.4 Bodily Injury / Property Damage and 4.5 Pollution Cover do not apply.

If any claim by an **insured** under this Additional Benefit 2.3 is in respect of a **claim** to which Additional Benefit 2.2 Occupational Health & Safety Defence Costs or Additional Benefit 2.4 Pollution Cover responds, then the cover under this Additional Benefit 2.3 in respect of such **claim** shall be limited solely to **statutory liability** and shall not include **defence costs**.

2.4 Pollution Cover

We agree to pay:

- (a) **defence costs** in respect of any **claim** made against an **insured** in connection with **pollutants**; and
- (b) for or on behalf of the **insured** all **loss** on account of any **claim** in respect of **pollutants** made by any shareholder of the **company** either directly or derivatively alleging damage to the **company** or its shareholders.

For the purpose of this Additional Benefit only, Exclusions 4.4 Bodily Injury / Property Damage and 4.5 Pollution do not apply to the cover under this Additional Benefit 2.4.

2.5 Emergency defence costs

If it is not possible for the **insured** to obtain **our** consent prior to incurring **defence costs** for a **claim** covered under this **policy**, **we** will waive prior consent provided **our** consent is obtained within thirty (30) days of the first of such **defence costs** being incurred.

The sub-limit of liability for all such payments under this Additional Benefit is 10% of the **limit of indemnity** and is part of and not in addition to the **limit of indemnity**.

2.6 Continuous cover

Subject to the terms, conditions, exclusions and limitations of this **policy**, in respect of any **claim** first made in the **period of insurance** where the **insured**:

- a. first became aware, prior to the **period of insurance**, that a **claim** might or could arise from facts or circumstances known to the **insured**; and
- b. had not prior to the **period of insurance** notified its insurer of such facts or circumstances,

Exclusion 4.1 (a) Prior or Pending will not apply, provided that:

1. **we** were the management liability insurer of the **insured** when the **insured** first became aware of such facts and circumstances;
2. **we** have continued without interruption to be the **insured**'s management liability insurer up to when this **policy** came into effect;
3. the **claim** would have been covered under the management liability insurance policy in force at the time the **insured** first became aware of such facts or circumstances;
4. there has not been any fraudulent non-disclosure or fraudulent misrepresentation to **us** by the **insured** in respect of such facts or circumstances;
5. **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 limit of indemnity and deductible, or the terms and conditions of this **policy**; and
6. **we** will reduce **our** liability to the extent of any prejudice suffered as a result of the **insured**'s failure to notify **us** of such facts or circumstances giving rise to a **claim** prior to the **period of insurance**.

For the purpose of this Additional Benefit only, the definition of **we/us/our** in clause 9.53 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 Additional Benefit and the terms of the **policy**, the intention of this Additional Benefit 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.

2.7 Employment Superannuation Scheme

We agree to pay on behalf of the **insured** all **loss** on account of a **claim** resulting from:

- a. a **wrongful act** by an **insured person** in their capacity as a **trustee**, or as a director or **officer** of the **company** acting as corporate **trustee**;
- b. a **wrongful act** by the **company** acting in its capacity as corporate **trustee**;
- c. conduct of any other person for which an **insured person** referred to in (a) or the **company** referred to in (b) above is legally liable;

but only in respect of the administration of a **fund**.

2.8 Automatic Reinstatement for insured persons

In the event of a reduction (in whole or in part) of the **limit of indemnity** for **insured persons** only due to payment by **us** of **loss** under Insuring Clauses 1.1 and/or 1.2 (a), **we** agree to reinstate the **limit of indemnity** by the amount by which the **limit of indemnity** is reduced under those Insuring Clauses on the following basis:

- a. the total amount payable by **us** under this **policy** shall not exceed twice the **limit of indemnity**; and
- b. the cover under this Additional Benefit will only be available for **insured persons** for any subsequent **loss** on account of any **claim(s)** which is based on facts and matters that are entirely different from and unrelated to those upon which the **claim(s)** is (or are) based that led or contributed to the reduction or exhaustion referred to above. This Additional Benefit does not provide additional coverage in respect of the **claim(s)** that lead(s) or contribute(s) to the reduction or exhaustion referred to above; and
- c. the maximum amount of **loss** payable by **us** for all **insured persons** under this Additional Benefit in respect of any number of **claims** which arise out of or are attributable to or are in any way connected with a single **wrongful act**, or **employment practice breach**, as defined in Clause 11.5 Limit of Indemnity shall not exceed the **limit of indemnity** inclusive of all **loss**; and
- d. if the **company** or **insured persons** has or have in effect, or the benefit of, any policy or policies providing coverage in excess of this **policy** or any other policy, then the additional coverage provided by this clause will only take effect after the total exhaustion of any amounts payable under any such other policies but before any similar reinstatement provisions as may be contained in any such other policies take effect; and
- e. this provision shall only be available to **you** to the extent that **you** are an **insured person**.

This provision does not apply in respect of Sections 1.2 (b) – (e) of this **policy**, or any Additional Benefit thereunder.

2.9 Discovery period

If this **policy** is not renewed or replaced with a similar policy, the **insured** may give written notice to **us** of any **claim**, **investigation** or **loss** in respect of a **wrongful act**, **employment practice breach**, **dishonest act** or conduct occurring prior to the end of the **period of insurance**, during a **discovery period** immediately following the **period of insurance** of:

- a. 60 days, granted automatically with no additional premium payable; or
- b. at **our** discretion, 12 months, if the **insured** requests such period in writing within 15 days after the end of the **period of insurance** and the **insured** tenders an additional premium of 100% of the annual premium level in effect immediately prior to the end of the **period of insurance** within thirty (30) days after the end of the **period of insurance**.

If a **transaction** takes place prior to the end of the **period of insurance**, the **insured** does not have the right to purchase the **discovery period** specified above, however, the **company** does have the right, within 30 days of the end of the **period of insurance**, to request an offer from **us** for a **discovery period** of up to 84 months. **We** may, but are not obliged to, offer a **discovery period** on such terms and conditions as **we** may decide in **our** discretion.

The provision of any **discovery period** is conditional upon:

- (a) the **insured** requesting its purchase in writing within 30 days following the end of the **period of insurance** or date of **transaction**; and
- (b) payment of the additional premium within 30 days of the expiry of the **period of insurance**; and
- (c) this **policy** not being replaced by a similar policy.

This Additional Benefit is not available if this **policy** is:

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

A **discovery period** purchased under this Additional Benefit is non-cancellable and the premium paid for the **discovery period** is non-refundable. The purchase of a **discovery period** does not increase the **limit of indemnity**.

2.10 Retirement Cover

If the **company** 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 Additional Benefit 2.9 of this **policy** has not been purchased, then the **insured persons** will be automatically entitled to a 84 month **discovery period** at no additional premium after the expiry of the **period of insurance** provided that the **insured person** retired from all employment or office prior to the expiry of the **period of insurance**.

2.11 Outside Directorship Cover

We agree to pay for or on behalf of an **insured** all **loss** on account of any **claim** made against an **insured person** who was, is or may become, at the written request of the **company**, a director, officer, trustee, governor or equivalent position, in any **outside entity** for any alleged conduct in such **insured person's** capacity as a director, officer, trustee, governor or equivalent position, in the **outside entity**.

This cover shall:

- a. only apply in excess of any insurance in respect of the **outside entity** as well as any indemnification provided by the **outside entity**; and

- b. not apply in connection with any **claim** made against any **insured person** by any shareholder of the **outside entity** holding 20% or more of the issued and outstanding voting share capital of the **outside entity**; and
- c. not apply in respect of any **claim** arising out of, based upon, attributable to or in any way whatsoever 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.

2.12 New Subsidiaries

We agree to provide cover in respect of any entity which becomes a **subsidiary** because it was created or acquired by the **company** during the **period of insurance**, provided that such entity has:

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

The cover provided shall only apply in respect of a **wrongful act, employment practice breach, dishonest act** or other conduct occurring after the date of creation or acquisition and while that entity is a **subsidiary**.

2.13 Former subsidiaries

We agree to provide cover in respect of any entity that ceases to be a **subsidiary** during the **period of insurance** or prior to commencement of the **period of insurance**, provided that the cover provided shall only apply in respect of a **wrongful act, employment practice breach** or other conduct whilst the entity was a **subsidiary**.

2.14 Directors' Tax Penalties

Under Insuring Clause 1.1, **we** shall pay as **loss** an **insured person's** personal liability arising out of the **company's** unpaid taxes where the **company** is insolvent and where the **company** has failed solely because of its insolvency to pay such taxes, except to the extent that such liability arises from the wilful intent of the **insured person** to breach legislation governing the payment of such taxes or condoned the **company** failing to do so.

For the purpose of this Additional Benefit only, Exclusion 4.11 Insolvency shall not apply.

2.15 Identity Theft Expenses

We will pay as **loss** the reasonable legal fees, costs and expenses incurred by an **insured person**, with **our** prior written consent (which will not be unreasonably withheld or delayed):

- a. when applying for civil or criminal proceedings to be dismissed or withdrawn on the basis it is that the alleged conduct by a third party perpetrator of an **identity theft** fraud and not the **insured person**;
- b. to correct or reinstate public records after an **identity theft** has occurred.

We will also pay for **public relations expenses** to mitigate the adverse publicity or reputational injury due to an **identity theft**.

2.16 Deprivation of Assets

Under Insuring Clauses 1.1 and 1.2 (a) **we** will pay for the following services directly to the provider of such services in the event of an interim or interlocutory order confiscating, controlling, suspending or freezing rights of ownership of real property or personal assets of an **insured person** or creating a charge over real property or personal assets of the **insured person** during the **period of insurance** in connection with a **claim** that is covered under this **policy**:

- a. Schooling;
- b. Housing;
- c. Utilities;
- d. Personal Insurance

Such expenses shall only be payable after a personal allowance which has been directed by the court to meet such payments has been exhausted. Expenses will be payable after 30 days following the event above for a period of up to 12 months.

2.17 Extradition Costs

Under Insuring Clauses 1.1 and 1.2 (a) **we** will pay as **loss**:

- a. any reasonable fees, costs and expenses of an **insured person** (except remuneration of any **insured**, costs of their time or overheads of any **insured**) incurred with **our** prior written consent (which will not be unreasonably withheld or delayed) incurred in challenging, resisting and/or defending a **claim** for extradition including any appeal relating thereto, brought against such **insured person** following the execution of a warrant for arrest against such person; and
- b. any reasonable fees, costs and expenses of any accredited:
 - i. Counsellor; or
 - ii. Tax advisor

retained by an **insured person** in connection with an extradition proceeding with **our** prior written consent.

2.18 Bail & Civil Bond Expenses

Under Insuring Clauses 1.1 and 1.2 (a) **we** will pay as **loss** the **bail bond & civil bond expenses** of each **insured person** incurred during the **period of insurance** in connection with a **claim** that is covered under this **policy**.

For the purpose of this Additional Benefit, **bail bond & civil bond expenses** means the reasonable premium (but not collateral) for a bond or other financial instrument to guarantee an **insured person's** contingent obligation for bail required by a Court hearing a **claim** for any **wrongful act**.

2.19 Crisis Containment

We shall reimburse the **company** for **crisis loss** in excess of the **deductible** that the **company** incurs by reason of a **crisis event** which first occurs and is notified to **us** during the **period of insurance**.

For the purpose of this Additional Benefit only, the **deductible** applicable to Insuring Clause 1.2 (b) shall apply.

2.20 Public Relations Expenses

Under Insuring Clauses 1.1 and 1.2(b), **we** shall pay as **loss**, at the election of the **insured**, the **public relations expenses** of an **insured person** to mitigate any adverse effect on such **insured person's** reputation by disseminating findings which exonerate the **insured person** from fault, liability or culpability in connection with a **claim** that is covered under this **policy** or to prevent or minimise the risk of a **claim**, 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**).

2.21 Court Attendance

We agree to pay as **loss** the Court attendance costs of any **insured person** who is legally required to attend Court as a witness in a **claim** covered by the **policy**, to an amount not exceeding \$500 per day for all **insured persons**. No **deductible** applies under this Additional Benefit.

2.22 Third Party Discrimination and Sexual Harassment

Under Insuring Clauses 1.1, 1.2(a) and 1.2(c) Employment Practices Breach, **we** shall reimburse, on behalf of an **insured**, **loss** on account of any **third party claim**.

2.23 Crime Investigation Fees

Under Insuring Clause 1.2 (d) Crime and subject to Clause 10.6 Notification of Direct Financial Loss **we** will pay the reasonable and necessary fees, costs and expenses of a fraud investigator nominated by the **company** and approved in writing by **us** to establish the amount of any **direct financial loss** notified to **us** and covered by the **policy**, in excess of the **deductible** applicable for Insuring Clause 1.2 (d) Crime.

The investigation fees do not include expenses incurred by the **company**.

The fraud investigator shall:

- a. Investigate the facts behind such **direct financial loss**; and
- b. Determine the quantum of such **direct financial loss**, and
- c. Advise when and how the **company's** controls were or may have been breached; and
- d. Provide recommendations which may prevent future similar **direct financial loss**; and

- e. Issue their findings in a report format approved by **us**; and
- f. Provide a copy of the report to the **company** and to **us**.

We will pay for the reasonable and necessary fees, costs and expenses of the fraud investigator provided the **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 **company** must reimburse **us** for any fees, costs and expenses of the fraud investigator **we** have incurred.

The Sub-Limit for this Additional Benefit is in addition to the Sub-Limit applicable for Insuring Clause 1.2 (d) Crime displayed in the **policy** Schedule.

2.24 Unidentifiable Employees

Under Insuring Clause 1.2 (d) Crime only, if the **company** suspects a **loss** to have been caused by **dishonest acts** of any one or more **employees** and the **company** is unable to identify the specific **employee(s)** causing such **loss**, subject to the terms conditions exclusions and limitations for Insuring Clause 1.2 (d) Crime the **company** will be entitled to an indemnity provided the **company** furnishes evidence to **us** to prove the **loss** was due to the **dishonest acts** of one or more of its **employee(s)**.

2.25 Copyright Defence Costs

Under Insuring Clause 1.2(b) Entity **we** agree to pay as **loss defence costs** arising from any **claim** in connection with an unintentional and accidental breach of copyright by the **company** in the course of its business.

We shall only provide such **defence costs** where the **company** can demonstrate it has adequate copyright compliance procedures. Such copyright compliance procedures include but are not limited to:

- (i) procedures for posting content online; and
- (ii) procedures for seeking permission to copy and reproducing material; and
- (iii) all employment contracts issued to former, current and prospective **employees**; and contracts for service or goods issued to independent contractors, contractors, consultants and agents, contain clear provisions regarding ownership of any intellectual property rights belonging to the **company** or for which the **company** is legally liable; and
- (iv) appropriately qualified independent third parties review and confirm that any product designed, manufactured or supplied by the **insured** and any publication issued by the **insured** do not breach third party intellectual property rights.

Exclusion 5.1(a) Entity shall have no effect in respect of breach of copyright only to the extent of the cover under this Additional Benefit. A separate **deductible** of \$5,000 shall apply under this Additional Benefit.

Section 3 Optional Extensions

The following Optional Extensions are subject to the **policy** terms, conditions and limitations except as otherwise expressly set out in this Optional Extension 3.1

3.1 Cyber Risks Extension

What is covered?

3.1.1. Third Party Cyber Liability

We will indemnify **you** against the sums **you** have to pay as compensation if, during the **period of insurance** and as a result of **your** business, any party brings a **claim** against **you** arising from:

- a. the content of **your** email, intranet, extranet or **website** (including its domain name, metatags and hyperlinks and the marketing and advertising of **your** business on the **website**), including alterations or additions made by a **hacker**, but not connected with any professional business activity for a client, and due to:
 - i. **your** infringement of any intellectual property rights, including any copyright, trademark, passing off or linking to or framing of another page;
 - ii. Any defamatory statement on **your website** or in **your** email, including any defamatory statement concerning **your** client or business competitor;
 - iii. **your** breach of confidence or infringement of any right to privacy;
- b. **your** negligent transmission of a computer **virus**, worm, logic bomb or Trojan horse to anyone with whom **you** do business or who uses **your website** in the course of their business;
- c. **your** unauthorised collection or misuse of any data concerning any customer or potential customer of **yours** which is either confidential or subject to statutory restrictions on its use and which **you** obtained through the internet or extranet or **website** and hold electronically.
- d. a third party's good faith reliance on a **hacker's** fraudulent use of **your** encrypted electronic signature, encrypted electronic certificate, email or **website** where there was a clear intention to cause **you** loss or obtain a personal gain for the **hacker**,

For the purposes of (b) and (c) only, Exclusion 4.2 Breach of Professional Duty shall not apply.

3.1.2 First Party Hacker Damage

We will pay the reasonable and necessary costs and expenses **you** incur with **our** prior written consent if, during the **period of insurance**, a **hacker** damages, destroys or alters **your website** or **computer system**.

Such costs and expenses are to be payable to repair or replace the affected part of the **website** or **computer system** to the same or equivalent standard and with the same contents or as near as reasonably possible as immediately before such **website** or **computer system** was damaged, destroyed or altered.

3.1.3 Cyber Extortion

We will indemnify **you** against the ransom paid with **our** prior written consent if, during the **period of insurance**, a **hacker** threatens to damage **your website** in a way which would be covered by this Optional Extension. If the ransom demanded is for goods or services, **we** will indemnify **you** to the extent of their market value at the time of surrender, provided **you** can prove the ransom has been surrendered under duress and that prior to agreeing the payment of such ransom **you** had taken all reasonable efforts to determine the ransom threat was genuine and ensured that at least one of **your** senior officers agreed to the ransom's payment.

We will also pay, under this Clause 3.1.3 Cyber Extortion any advertising or publicity expenses reasonably and necessarily incurred and, with **our** prior consent, in contacting any people who attempted to use the **website** whilst it was damaged, destroyed or altered.

3.1.4 Limit of Liability for Cyber Risks

The cover provided under this Optional Extension is limited to \$100,000 any one **claim** and in the aggregate for all **claims** and **your** own losses exclusive of **defence costs** irrespective of the number of **claims** or the amount of **your** losses first made. A separate **deductible** of \$1,000 inclusive of costs will apply under this Optional Extension.

3.1.5 Continuous Cover

Additional Benefit 2.6 Continuous Cover shall not apply to the cover under this Optional Extension 3.1.

3.1.6. Special Definitions for this Optional Extension

- i. **claim** means only a written demand or proceedings by a party other than the **insured** for monetary compensation or damages.
- ii. **computer system** means **your** own computer network, including any third party software programs.
- iii. **date recognition** means any failure by any equipment including any hardware or software to correctly recognise any given date or to process any data or to operate properly due to any failure to correctly recognise any given date.
- iv. **hacker** means anyone who specifically and maliciously targets **you** and gains access to **your website** via the internet or other external electronic link, solely by electronically circumventing the security systems in place to protect against such access.

hacker does not include:

- a. any director or partner of **yours** or any sub contractor, self-employed freelancer or third party on **your** premises without permission, and/or;
- b. anyone who gains access directly through either any computer, **computer system** of **yours** or the physical possession of any password or other security code.
- v. **programme** means a set of instructions written in a computer language that tells a computer how to process data or interact with ancillary equipment.
- vi. **virus** means **programmes** that are secretly introduced without **your** permission or knowledge including but not limited to malware, worms, Trojans, rootkits, spyware, dishonest adware, crimeware and other malicious unwanted software.
- vii. **website** means any website(s), intranet or extranet where **you** have full control over the content and which **you** operate for the promotion of **your** own business.

viii. **you / your** means the **insured** named in the Schedule.

3.1.7 Special Exclusions for this Optional Extension only

We will not make any payment for any claim or loss directly or indirectly due to:

- a. any **virus**, worm, logic bomb or Trojan horse written or created by **you**, or;
- b. any self-replicating or malicious code that was not specifically targeted to **your** system, or;
- c. the infringement of any patent, or;
- d. the use or provision of any games, or any gaming, gambling, lottery or auctioneering facilities or services, or;
- e. the failure or interruption of the service provider by an internet service provider or any telecommunications or other utility provider, or;
- f. any pornographic, sexually explicit or obscene material unless arising directly from the activities of a **hacker**, or;
- g. any defamatory statement concerning any partner, director or **employees** of **yours** or a self-employed freelancer directly contracted to **you** and under **your** supervision, or;
- h. **your** liability under any contract which is greater than the liability **you** would have at law without the contract, or;
- i. Any data or software unique to **your company**, or;
- j. Anyone's employment with or work for **you**, or any breach of an obligation owed by **you** as an employer or any kind of discrimination, harassment or unfair treatment, or;
- k. Any personal liability incurred by a director or officer of **yours** when acting in that capacity or managing **your** business, or **your** breach of fiduciary duty, or any statement, representation or information concerning **you** or **your** business contained in **your** accounts, reports or financial statements, or;
- l. **your** supply, manufacture, sale, installation or maintenance of any product, or;
- m. Any statement **you** knew or ought reasonably to have known was defamatory at the time of publication, or;
- n. **Date recognition**, or;
- o. Any trading loss or trading liability including those arising from the loss of any client, account or business, or;
- p. Any liability arising from any user generated content; or
- q. Any claim, including arbitration, brought outside Australia or New Zealand. This applies to proceedings in the applicable courts to enforce, or which are based on, a judgement or award from outside the applicable courts; or
- r. Fines and contractual penalties, punitive or exemplary damages; or
- s. Any unauthorised or fraudulent use of any credit, debit, charge, store card or card with a similar purpose or function; or

- t. Any act, breach, omission or infringement **you** deliberately, spitefully, dishonestly or recklessly commit, condone or ignore.

We will not make any payment under this Optional Extension 3.1 if **you** have failed to:

- i. take reasonable steps to use, maintain and upgrade any program which protects against computer viruses or any unauthorised use of or access to **your computer system**, electronic link or **website**; and/or
- ii. make back-up copies of any data, file or program at reasonably frequent intervals; and/or
- iii. cancel any user name, password or other security protection after **you** knew or had reasonable grounds to suspect that it had been made available to any unauthorised person or parties.

We will not make any payment under this Optional Extension 3.1 unless **you** notify **us** promptly of the following within the **period of insurance** or at the latest within fourteen (14) days after it expires for any problem **you** first become aware of in the seven (7) days before expiry:

- (a) **your** first awareness of any fraud, threatened fraud or suspicion of fraud involving **your website**, electronic signature or electronic mail;
- (b) Any damage, destruction or alteration to **your website** or **computer system**;
- (c) **your** first awareness of any threat to damage **your website**.

We will not make any payment under this Optional Extension if **you** do not inform the police of any ransom demand as soon as is practicable.

We will not make any payment for any **claim** or loss under this Optional Extension 3.1 that is covered under any other section of this **policy**.

Section 4 : What **we** do not cover: General Exclusions

The exclusions in this Section apply to Insuring Clauses 1.1 - 1.2(c) and 1.2 (e) and the Additional Benefits relating to those Insuring Clauses. **We** will not cover the **insured** for or in connection with:

4.1 Prior or Pending

any **claim** arising out of or in any way connected with any:

- a. actual or alleged facts which were known to the **company** or any **insured person** prior to the commencement of the **period of insurance** and which the **company** or the **insured person** knew or ought reasonably to have known might give rise to a **claim**;
- b. actual or alleged facts which were, which could have been or which can be notified under any policy existing prior to the commencement of the **period of insurance**;
- 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 **period of insurance**.

4.2 Breach of Professional Duty

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

For the sake of clarity, this Exclusion does not apply to **wrongful acts** by any **insured person** in their capacity as an **insured person** other than in the provision of professional services to a third party. This Exclusion does not apply to the extent that cover may be provided under Additional Benefit 2.7 Employment Superannuation Scheme.

4.3 Consensual Claim

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**.

4.4 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.

This Exclusion shall not apply to any **claim** in respect of mental anguish or emotional distress or disturbance alleging an **employment practice breach** or **third party claim** alleging such mental anguish or emotional distress or disturbance.

4.5 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**.

4.6 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.

4.7 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 reckless, intentional, dishonest, fraudulent, criminal or malicious act or omission or any reckless, intentional, wilful violation or breach of any statute, regulation, contract or duty;
- d. committing any breach of either Section 182 or Section 183 of the Corporations Act 2001 (Cth).

This Exclusion (c) does not apply to the extent there is cover available under Additional Benefit 2.3 Statutory Liability.

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 the **insured** against whom the conduct is alleged, that the relevant conduct did in fact occur.

In such event any **defence costs** that **we** have paid in advance will be reimbursed according to the respective interests of the **insured**. Clause 11.7 Non-Imputation applies to this Exclusion.

4.8 Capital-raising

any **claim** made against any **insured** arising out of or in any way connected with:

- a. any **disclosure document** which contains an offer or invitation for the issue, sale, purchase or transfer of **securities**;
- b. the making of any written or verbal representations, forecasts or projections by an **insured** in connection with a **disclosure document** or any offer referred to in (a);
- c. any representation made by an **insured** in connection with any sale or purchase agreement of the **company's** assets or **securities** unless such statement has been authorised by an independent party other than an **insured** and who is or which is a duly qualified professional in that field;
- d. any rendering of advice, recommendations or a fairness opinion by an **insured** in connection with any actual or alleged merger, acquisition, divestment, tender offer, capital restructuring or raising, dissolution, or sale of all or substantially all of the assets or stock of a business entity, or any activity similar in nature or effect;
- e. an amount which represents the price paid in relation to the acquisition or sale of substantially all of the issued shared capital or the assets of an entity and in respect of which it is alleged that the value of the assets acquired or consideration received was inadequate, by which such price or consideration is effectively increased.

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4.9 Superannuation Liabilities

any **claim**:

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

4.10 Major Shareholder

any **claim** brought by or on behalf of any shareholder:

- a. who or which currently owns, controls or has an interest in, or previously owned, controlled or had an interest in, directly or indirectly, equal to or more than 20% of the voting share capital of the **company**, any **subsidiary** or any **associated company**; and/or
- b. who or which has or had, at any time, any Board representation on the **company**, any **subsidiary** or any **associated company**

irrespective of the time of the **wrongful act, employment practice breach** or other conduct.

4.11 Insolvency

any **claim** arising from or in any way whatsoever connected with the insolvency, liquidation, bankruptcy, receivership or administration of the **company**, any **subsidiary** or any **associated company**, its actual or alleged inability to meet any or all of its debts as and when they fall due.

4.12 Territorial and Jurisdictional Limits

- a. any **claim** resulting from or arising out of any **wrongful act, employment practice breach, dishonest act** or conduct committed or alleged to have been committed outside the **territorial limits**; or
- b. any **claim** brought or judgment entered in a court of law, arbitration, tribunal, forum or other body entitled to impose enforceable orders against the **insured** pursuant to the laws of the United States of America or the Dominion of Canada or their territories or protectorates; or
- c. any claim arising out of the enforcement of any judgement, 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.

4.13 War / Acts of 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, or 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 threat thereof, of any person or group(s), 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.

4.14 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.

Section 5 : Additional Exclusions applying to Insuring Clause 1.2(b) Entity

In addition to the Exclusions outlined in Section 4 above, the following Exclusions apply with respect to Insuring Clause 1.2 (b) Entity and any relevant Additional Benefit.

5.1 We will not cover the **company** for or in connection with any **claim** against it for or in connection with:

- a. breaches of intellectual property rights, including but not limited to any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark or trade secret except to the extent that Optional Extension 3.1 Cyber Risks is operative and responds to the **claim** against the **company**; or
- b. any actual or alleged breach of any law, whether statutory, regulatory or common law that regulates or restricts anti-trust or cartel conduct, business competition, price fixing, price discrimination, predatory pricing, unfair or restrictive trade practices, or tortious interference in any other party's business or contractual relationships; or
- c. any actual or alleged contractual liability of the **company** whether under any express or implied contract or agreement (including but not limited to any guarantee or warranty). However, this Exclusion shall not apply to the extent the **company** would have had such liability in the absence of such contract or agreement; or
- d. fines or penalties or non-monetary relief; or
- e. the repayment or refund by the **company** of any amount paid to any party for services, advice or goods of any kind whatsoever; or
- f. any trading debt or business liability of the **company**; or
- g. any obligation, or breach of an obligation, under any law or regulation providing for paid or unpaid leave of any kind or any **industrial instrument**; or

- h. any **employment practice breach**, or any obligation pursuant to any law, regulation, or **industrial instrument** in respect of workers' compensation, disability benefits, unemployment benefits or compensation, unemployment insurance, retirement benefits, social security benefits or any similar law, regulation or **industrial instrument** whatsoever; or
- i. the imposition of, or seeking to impose, any tax, penalty tax, costs, interest or any fees or expenses in connection with any criminal prosecution; or
- j. any entity, trust or person in any way associated with an **employee** who has alleged an **employment practice breach**, and which **claim** is based upon the separate entitlement of that entity, trust or person to compensation, damages or other monetary amounts as a result of conduct in any way whatsoever connected with that alleged **employment practice breach**.

This includes, but is not limited to, any **claim** against the **company** in respect of stock, shares, stock options, share options or any entitlement or right of that entity, trust or person to any monetary amount, including but not limited to dividends or amounts calculated by reference to dividends, that in any way whatsoever relates to the remuneration of an **employee** of the **company** or otherwise.

Section 6 : Additional Exclusions applying to Insuring Clause 1.2(c) Employment Practices Breach

In addition to the Exclusions in Section 4 above, the following Exclusions apply with respect to Insuring Clause 1.2(c) Employment Practices Breach and any relevant Additional Benefit.

6.1 We will not cover the **company in connection with any **claim** for or in connection with:**

- a. any obligation, or breach of an obligation, under any law or regulation providing for paid or unpaid leave of any kind or under 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; or
- c. front pay, future loss, future damages, future compensation or future economic relief (in all cases, considered from the point in time that reinstatement was to occur) where the **company** is ordered by the relevant court or tribunal to reinstate the claimant as an **employee** but refuses or fails to do so for whatever reason; or
- d. any **employment-related benefits** or amounts calculated by reference to any **employment-related benefits**; or
- e. **benefits**; or
- f. any actual or alleged contractual liability of the **company**, whether under any express or implied contract or agreement (including but not limited to any guarantee or warranty). However, this Exclusion shall not apply to the extent the **company** would have had such liability in the absence of such contract or agreement.

Section 7 : Exclusions applying to Insuring Clause 1.2(d) Crime

The following Exclusions apply with respect to Insuring Clause 1.2(d) Crime and any relevant Additional Benefit.

7.1 We will not cover the **company** for or in connection with:

- a. **direct financial loss** arising out of or in any way connected with any **dishonest acts** committed, in whole or part, outside of Australia or New Zealand.
- b. **direct financial loss:**
 - i. first **discovered** prior to the commencement of the **period of insurance**; or
 - ii. first **discovered** after the end of the **period of insurance**, or the **discovery period** if applicable; or
 - iii. in any way connected with any **employee** or **third party** from the time any director or **officer** (who is not in collusion with such **employee** or **third party**) had actual knowledge that the **employee** or **third party** had committed or was suspected of having committed any fraudulent or dishonest act, even if it does not constitute a **dishonest act** as defined; or
 - iv. caused by any **employee** if a director or **officer** possessed at any time knowledge of any act or acts of theft, fraud or dishonesty committed by such **employee** prior to employment by the **company** provided the act(s) involved **money, securities** or property valued at \$10,000 or more or failed to make reasonable enquiries prior to employment of such **employee**; or
- 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 who at the time of the **dishonest act** owns or controls more than 5% of the issued share capital of the **company**; or
 - ii. any shareholder who, at the time of committing such acts, had direct or indirect ownership of or control over more than 5% of the voting share capital of the **company** or any of its **subsidiaries** or any **associated company**.
- d. Any indirect or consequential loss of any nature, including but not limited to:
 - i. any loss of income (such as interest and dividends) not realised by the **company** or any other person or organisation; or
 - ii. any costs incurred by the **company** in re-writing or amending the **company's** software programs or systems where such re-writing or amending is necessary to correct the programs or systems; or
 - iii. any contractual penalties incurred by the **company**; or
 - iv. any liability to a third party; or
 - v. any costs, fees or other expenses incurred by the **insured** in establishing a right under this **policy** (except as provided for under Claims Condition 10.6 Notification of Direct Financial Loss); or
 - vi. any costs, fees or other expenses incurred by the **insured** in prosecuting or defending any demand, claim or legal proceeding

resulting from a **direct financial loss** which is covered under this **policy**.

- e. **direct financial loss** the proof of which is dependent solely upon:
- i. a profit and loss computation; or
 - ii. a comparison of inventory records with an actual physical count.
- If, however, an **employee** is identified as having caused a **direct financial loss**, then inventory records and actual physical count of inventory can be submitted as partial evidence in support of proof of the **direct financial loss** as required by Claims Condition 10.6 Notification of Direct Financial Loss.
- f. **direct financial loss** arising out of or in any way connected with the accessing, use or dissemination of any confidential information including, but not limited to, proprietary information, 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; or
 - 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; or
 - iii. any trading, whether or not in the name of the **company** and whether or not in a genuine or fictitious account; or
 - iv. the forgery or alteration or fraudulent use of any credit card, store card, fuel card or other form of credit issued by the **company** to **employees**, unless the provisions, conditions and other terms under which such credit card, store card or fuel card issued have been fully complied with by the **company**.

- 7.2** **We** will not cover the **company** for or in connection with **direct financial loss** connected with the issuing and drawing of cheques, account withdrawals or funds transfers sustained by the **company** by reason of the absence of or failure to have a clear segregation of duties and procedures in connection with the issuing and drawing of cheques, account withdrawals or fund transfers in excess of \$1,000 in value.

Such cheques, account transactions or fund transfers must be counter signed or authorised by another authorised officer who must, independently of the **employee** drawing the cheque, making account withdrawals or fund transfers, examine the supporting vouchers or requisitions or verify against an authorised payment list prepared and checked independently of the drawer of the cheque, or person making the account withdrawals or fund transfers.

Section 8 : Exclusions applying to Insuring Clause 1.2(e) Tax Audit Costs

The following Exclusions apply with respect to Insuring Clause 1.2(e) Tax Audit Costs and any relevant Additional Benefit.

- 8.1** **We** will not cover the **company** 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 **company**; or
- b. Inquiries from the Australian Taxation Office which are not related to an identified intention to conduct an audit of a return or likely future audit of a return, of the **company** or likely future audit of the **company**; or
- c. Any audit 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; or
- d. Matters arising under customs legislation; or
- e. Any audit, where notice or information as to their likely conduct was received by the **company** prior to the **period of insurance**. Receipt of such communication will have occurred when the Australian Taxation Office makes communication with the **company** or any other person acting on its behalf; or
- f. Any fraudulent act, error, omission or misrepresentation committed by or on behalf of the **company**; or
- 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; or
- h. An audit of a return of income that has not been prepared or reviewed by an **accountant** or **registered tax agent**.

Section 9 : Words with Special Meaning

- 9.1 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 **company**.
- 9.2 Act** means any legislation of a State or Territory in, or the Federal Parliament of, the Commonwealth of Australia.
- 9.3 Associated Company** means any company named in the **proposal** and in which the **company** owns on or before the inception of the **period of insurance** more than or equal to 25% of the issued and outstanding voting shares, either directly or indirectly through one or more of its **subsidiaries** but is not a **subsidiary**.
- 9.4 Benefits** mean any amount payable to a beneficiary of a **fund** by the **trustee** under the rules governing the **fund**.
- 9.5 Claim** means:
 - (a) A civil proceeding, or written demand for compensation or damages; or
 - (b) A criminal proceeding against an **insured person** commenced by summons, charge or equivalent document, including but not limited to a Court Attendance Notice; or
 - (c) Any formal administrative or regulatory proceeding, including an arbitration, mediation, conciliation or alternative dispute resolution proceeding,

alleging a **wrongful act**; and

- (d) A civil proceeding, or a written demand, by an **employee** for compensation or damages alleging an **employment practice breach**.

For the purpose of Additional Benefit 2.3 Statutory Liability only **claim** shall also mean the receipt by an **insured** of a formal written notice or process which asserts a breach of an **Act**.

9.6 Company means:

- a. the entity or entities specified in Item 2 in the Schedule; and
- b. any **subsidiary** in existence at the commencement of the **insurance period** which is controlled by the **insured** and over which the **company** named in the Schedule has active management.

Company does not include any **outside entity**.

9.7 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.

9.8 Crisis Event means any of the following unforeseen events where, in the reasonable opinion of the chief executive **officer** (or equivalent) of the **company**, the event has the potential to cause a material impact on the reputation or an imminent decrease of greater than 30% of the total consolidated annual revenues of the **company** if left unmanaged:

- a. the sudden, unexpected death or disability of any Executive;
- b. loss of a major customer, contract or credit facility;
- c. workplace violence;
- d. the first apparent unauthorised intrusion into any **company's** computer facilities;
- e. a recall, illegal tampering, contamination or boycott of any product;
- f. a man-made disaster;
- g. any criminal or fraud investigation or conviction;
- h. the sudden and unexpected death or injury of any **insured person**;
- i. the unexpected imposition of a tax bill

Crisis event does not include an event that affects a **company's** industry in general; rather than a **company** specifically.

9.9 Crisis Loss means the reasonable and necessary fees, costs and expenses paid by the **company** for external crisis management services provided in response to a **crisis event** within the first thirty (30) days after the event.

9.10 Deductible means the amount the **insured** must pay towards every **claim** as shown in Item 5 on the Schedule in respect of each Insuring Clause, Additional Benefits or Optional Extension or otherwise stated in any Additional Benefit.

9.11 Defence costs means that part of **loss** consisting of reasonable costs, charges, fees and expenses, incurred with **our** prior written consent (such consent not to be unreasonably withheld), in defending, investigating, settling or appealing any **claim** for **loss** covered by this **policy**.

Defence costs does not include:

- i. wages, salaries, fees or costs of time or other remuneration of any **insured** or **employees**; or
- ii. profit, costs or office overheads of any **company**; or
- iii. travel costs incurred by the **insured**; or
- iv. other administration costs; or
- v. costs and expenses in defending a **claim** where no other **loss** is covered by the **policy**, unless Additional Benefit 2.1 Official **Investigations**, Additional Benefit 2.2 Occupational Health & Safety Defence Costs, Additional Benefit 2.4 Pollution and/or Additional Benefit 2.25 Copyright Defence Costs is operative.

9.12 Direct financial loss means direct financial loss to the **company** directly caused by the loss of **money, securities** or other tangible property:

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

Direct financial loss also includes the direct financial loss to the **company** of **money** or **securities** resulting directly from a **fraudulent funds transfer** from an account, maintained by the **company** and which **loss** is **discovered** during the **period of insurance**.

All such **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 considered a single **loss** for the purpose of cover under Insuring Clause 1.2 (d) Crime.

9.13 Disclosure document means any prospectus, information memorandum, registration statement or similar document regardless of whether or not it has been, or is required to be, filed or registered with the Australian Securities and Investments Commission or any other similar authority in any other jurisdiction.

9.14 Discovered or **discovery** means when any director or **officer** (who is not in collusion with an **employee** or **third party** who has committed or is attempting to commit a **dishonest act**) becomes aware of any facts which would cause a reasonable person to suspect that a **direct financial loss** 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**.

9.15 Discovery Period means the period of time specified in Additional Benefit 2.9 Discovery Period during which time written notice may be given to **us** of any:

- (a) **claim** which is first made against the **insured** in that period for a **wrongful act, employment practice breach** or other conduct committed or allegedly committed prior to the end of the **period of insurance** or **transaction**;
- (b) **direct financial loss** which is first **discovered** in that period and results from **dishonest acts** or conduct committed or allegedly committed prior to the end of the **period of insurance**.

9.16 Dishonest acts means any fraudulent or dishonest act committed by an **employee** or **third party** (acting alone or in collusion with others) with the intent to cause the **company** to sustain a **loss** or to obtain financial benefit for that **employee** or **third party** or for any other person or organisation intended by that **employee** or **third party** to receive the financial benefit.

9.17 Employee means any person who is a past, present or prospective employee of the **company** whose labour or service is engaged and directed by the **company** including volunteers, those undertaking an apprenticeship, traineeship, or work experience, part-time, casual, seasonal and temporary employees, but only while that natural person is acting in his capacity as such.

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Employee does not mean an independent contractor, on-hire labour or secondees to the **company**, any person providing services for labour only under contract for services to the **company** or any **insured persons**, unless agreed by **us** and provided at the time of the **employment practice breach** such individual is under the direction and supervision of the **company**.

and in respect of Insuring Clause 1.2(d) Crime only, any person who:

- i. is an employee; or
- ii. is assigned by any agency providing temporary personnel on a contingent or part-time basis to perform duties within the usual duties of an employee, as described in (a) above, within the **company**. However this Definition does not cover any **loss** if such **loss** is also covered by any other insurance or sureties, including but not limited to any held by the agency providing temporary personnel to the **company**;

at the time of the **dishonest act**, or for a period of up to thirty (30) days following termination of employment with the **company**.

9.18 Employment Practice Breach means any actual or alleged:

- a. unfair or wrongful dismissal from or termination or discharge of employment (either actual or constructive, including breach of an implied contract) or refusal to hire or failure to employ or promote wrongful deprivation of career opportunity; or
- b. adverse change in the terms and conditions of a person's employment, wrongful demotion or negligent employee evaluation (including the provision of negative or defamatory statements in connection with an employee reference); or
- c. discrimination, harassment, humiliation, retaliation (including lockouts); or
- d. defamation, invasion of privacy; wrongful deprivation of career opportunity, allegations of retaliatory treatment of a person on account of such person exercising his rights under law; refusing to violate any law; disclosing or threatening to disclose any alleged violation of law; or filing or pursuing any **claim** under any 'whistle blower' law anywhere in the world

which relates solely to the **company** and its past, present or prospective **employees**.

9.19 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 including dividends payable directly to **employees** or by way of associated entities or trusts set up by **employees**;
- c. participation in any stock, share option or share option plan, or participation in any employee plan of any description;
- d. severance or redundancy payments or entitlements, including but not limited to payment in lieu of notice required by law to be paid;
- e. any benefit, payment or entitlement of any kind in respect of paid or unpaid leave;
- f. bonus or incentive payments, or any entitlement or right under a bonus or incentive plan;
- g. payments or contributions in respect of any provident, benefit, superannuation, pension or retirement fund, or any other account, fund, scheme or plan intended to provide benefits, in whole or in part, at retirement or a particular age, or on the happening of a particular event;

- h. any amount the **company** pays or is ordered to pay pursuant to any determination or settlement in respect of an allegedly unfair contract, notwithstanding that it acted in accordance with the terms of the employment contract.

9.20 Fraudulent Funds Transfer means fraudulent telephonic, facsimile, cable, teletype, electronic, telegraphic or written instructions issued to a financial institution directing the financial institution to pay, deliver or transfer **money** or **securities** from any account maintained by the **company** at such financial institution, without the knowledge or consent of the **company**.

9.21 Fund means any single employer superannuation fund established for the benefit of **employees**. **Fund** does not include any industry or master superannuation fund, or superannuation fund or trust set up for the personal benefit of **employees** and or the **insured persons** related beneficiaries, heirs or legal representatives.

9.22 Identity Theft means the theft, duplication of and fraudulent use of the publicly available data on file or within the computer storage and processing facilities (including memoranda and articles of association, statutorily required returns or filings, official records of regulatory authorisations, licences or permits and records of legal compliance or infractions, the purpose of which is to publicly document, authenticate or prove the existence and good standing of the entity or which may be relied upon by investors, financial institutions, clearing corporation, vendors, credit reporting authorities and others in assessing and establishing the **insured's** credit ratings and/or reputation) of an **insured**, an official registry or of any party which relates to the **insured's** formation and genuine identity.

9.23 Industrial Instrument means

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

that regulates the terms and conditions of employment.

9.24 Insured means the **company** and any **insured persons**, and any incorporated **joint venture** where declared and agreed by **us**.

9.25 Insured person(s) means:

- a. any past, present or future director, shadow director, secretary, **officer**, **employee** performing a management function, or any natural person who by virtue of any applicable legislation or law is deemed to be a director or **officer** of the **company**, or any natural person **trustee**;
- b. the estate, heirs, legal representatives or assigns of any deceased or mentally incompetent, bankrupt or insolvent person in (a) above, but only in respect of **loss** arising from a **wrongful act** committed by such person;
- c. a legal or de facto spouse, domestic partner or companion of a person in (a) above, but only in respect of **loss** arising from a **wrongful act** committed by such person;
- d. any natural person who is a past, present or future director of a corporate **trustee** of a **fund**;
- e. any person in (a) above or **employee** who holds an executive position in an **outside entity** at the specific request of the **company**;
- f. for the purpose only of a **claim** for an **employment practice breach** against an **employee**, such **employee** shall also be considered an **insured person**.

Insured person does not include:

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

9.26 Investigation means where the **insured** receives a written notice from an **official body** that:

- i. requires, invites or directs them to attend before or produce documents to, or answer questions by or attend interviews with, an **official body**; or
- ii. identifies them as a target of the investigating **official body** for a hearing, examination, investigation or inquiry

into the **company**, or an **insured person** in their capacity as such.

Investigation does not include a routine regulatory supervision, inspection or compliance review or hearing, investigation or examination or inquiry which focuses on an industry rather than the **insured**.

9.27 Joint venture means any enterprise undertaken jointly by the **company** and any other party.

9.28 Limit of indemnity means the amount specified in Item 4 of the Schedule.

9.29 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.

9.30 Loss means, for the purpose of Insuring Clauses 1.1 and 1.2 (a) – (c), damages, compensation, settlements to which **we** have consented, claimant costs and **defence costs** which a person or entity becomes legally obliged to pay on account of a **claim**. 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**; or
- b. taxes; or
- c. costs incurred by the **company** to modify any building or property, or to provide any service, in order to make such building or property, or make any service more accessible or accommodating to any disabled person; or
- d. costs incurred by the **company** in connection with any educational, corrective, sensitivity or other programme, policy or seminar relating to any **employment practice breach**; or
- e. any amount payable by the **insured** under any warranty, guarantee, debt or for fees payable to a third party for good or services supplied to the **insured** (including but not limited to amounts which the **insured** is required to refund or repay); or
- f. any damages ordered or settlement agreed to in connection with any dispute arising from the agreed sale or purchase agreement for a **transaction**; or
- g. **defence costs** or any other cost or expense where there is no other covered **loss**.

For the purpose of Insuring Clause 1.2(d) Crime, **loss** means only **direct financial loss**.

For the purposes of Insuring Clause 1.2(e) Tax Audit Costs, **loss** means only **tax audit costs**.

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

- 9.32 Officer** means any natural person who was, now is or shall be a company secretary, executive officer, officer, principal, partner, or the holder of an equivalent position, of the **company** or senior manager as defined in Section 9 of Corps Act (Cth).
- 9.33 Official body** means any regulator, government or administrative body or agency empowered to investigate the affairs of the **company** or the conduct of an **insured person** in such capacity. For the avoidance of doubt this includes a coronial inquest, judicial body or commission of inquiry.
- 9.34 Outside entity** means a company, corporation, partnership or joint venture other than the **company**, **subsidiary** or any **associated company**.

Outside entity shall not include any other corporation, partnership, joint venture which is:

- a. registered or approved for direct or indirect trading on a national securities exchange or over the counter trading system anywhere in the world, or
 - b. which is located, incorporated or domiciled or operates in the United States of America or any territory under its jurisdiction, or
 - c. which is an authorised deposit taking institution, finance company, leasing company, friendly society, life insurance company, general insurance company, reinsurance company, investment company, mutual fund, collective investment scheme, fund manager, investment adviser, responsible entity of a managed investment scheme, trustee company, money market corporation, investment bank or any broker in securities or commodities, mortgage broker, real estate agent, stock exchange, commodities exchange, futures exchange, custodian, clearing house, registrar, medical benefits association or hospital benefits association or organisations of similar nature.
- 9.35 Period of insurance** means the period shown in Item 3 on the Schedule.
- 9.36 Policy** means this policy wording, the Schedule, the **proposal** and any endorsements attaching to and forming part of the **policy**.
- 9.37 Pollutants** means any substance, solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals, toxic mould, fibres, spores, fungi, germs, dust, liquids or gases, or waste materials. Waste materials include but are not limited to recycled, reconditioned or reclaimed materials.
- Pollutants** shall also mean any other air emission, odour, waste water, oil or oil products, infectious or medical waste, and noise.
- 9.38 Proposal** means the **insured's** written application for insurance made to **us** and including attachments and materials submitted therewith.
- 9.39 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).
- 9.40 Retroactive Date** means the date specified in Item 6 of the Schedule.
- 9.41 Securities** for the purposes of the cover in, and terms of this **policy** applicable to, Insuring Clause 1.2 (d) 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.
- 9.42 Statutory Liability** means:
- a. civil fines and civil penalties awarded against an **insured** for breach of an **Act**, 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**.

9.43 Subsidiary means

- a. any entity in which the **company** owns or controls, directly or indirectly, in any combination, more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors; and
- b. any entity which is deemed to be the **company's** subsidiary under any applicable legislation, law or Australian Accounting Standard; and
- c. any incorporated **joint venture** over which the **company** exercises effective management and control.

9.44 Tax Audit Costs means any reasonable fees, charges or disbursements of an **accountant** or **registered tax agent** who is engaged by the **company** for work undertaken in response to a **tax audit notice**.

Tax Audit Costs does not include legal costs and expenses.

9.45 Tax Audit Notice means a formal notice or process from the Australian Taxation Office relating to a specific return filed by the **company** as to its 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).

9.46 Territorial limits means anywhere in the world, other than:

- a. for the purpose of Additional Benefits 2.1 Official Investigations and Inquiries, 2.2 Occupational Health and Safety Defence Costs and 2.3 Pollution Cover **territorial limits** shall mean anywhere in Australia; and
- b. for the purpose of Insuring Clause 1.2(d) Crime and Additional Benefit 2.3 Statutory Liability **territorial limits** shall mean anywhere in Australia and New Zealand.

9.47 Third Party means any natural person who is a customer, vendor, service provider, or business invitee of a **company**.

9.48 Third Party Claim means a **claim** which is brought and maintained by or on behalf of a **third party** against an **insured** in connection with any actual or alleged **third party discrimination and sexual harassment** including any appeal therefrom.

9.49 Third party Discrimination and Sexual Harassment means:

- a. discrimination against a **third party** based upon such **third party's** race, colour, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference or protected military status or other status which is protected pursuant to any law anywhere in the world;
- b. sexual harassment, including unwelcome sexual advances, requests for sexual favours or conduct of a sexual nature against a **third party**.

9.50 Transaction means any one of the following events:

- a. the **company** consolidates with or merges into or sells all or substantially all of its assets to any other person or entity or group of persons and/or entities acting in concert; or
- b. any person or entity, whether individually or together with any other person or persons, entity or entities becomes entitled to exercise more than 50% of the rights to vote at general meetings of the **company** or control the appointment of directors who are able to exercise a majority of votes at Board meetings of the **company**; or
- c. the **company** lists its securities on any **securities** exchange or market; or
- d. the **company** is placed into external administration, receivership, liquidation or similar.

9.51 Trustee means any **insured person** or the **company** if validly appointed to act, and while acting in the capacity, as a trustee of a **fund**.

9.52 You/your means any **insured person(s)** and the **company**.

9.53 We, our or us means DUAL Australia Limited, ACN 107 553 257 as agent of the Underwriters named in the Schedule Item 12 under the heading "Underwriters".

9.54 Wrongful act shall mean any alleged breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, or other act by:

- a. any **insured person**, individually or otherwise, solely because of their status as such and in the course of his or her duties to the **company** or **outside entity**, or
- b. the **company**.

Section 10 : Claims Conditions

These claims conditions apply to all Sections of this **policy**.

10.1 Notification

The **insured** shall notify **us** of any **claim**, or **investigation** as soon as practicable and within the **period of insurance**, or **discovery period** if applicable.

Any notice to **us** shall be given in writing and delivered to:

DUAL Australia Pty Limited
332 Kent Street
Sydney NSW 2000
Australia

Or by email and addressed to:

claims@dualaustralia.com.au

10.2 Co-operation

The **insured** shall, at its own cost, frankly and honestly provide **us** with all information and assistance required by **us** and/or lawyers and investigators and others appointed by **us** in relation to any **claim** or **loss**. Any unreasonable failure to comply with this obligation shall entitle **us** to deny liability under the **policy** in whole or part.

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**.

If the **wrongful act** or conduct is a continuing one, the **insured** shall promptly take, at its expense, all reasonable steps to prevent its continuation.

10.3 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** and **we** shall have full discretion in managing the defence of any **claim** and any negotiation or proceeding as to the resolution or settlement 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. Unless otherwise agreed, **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 assert as against **us** any form of client or other privilege or confidentiality in respect of information provided to lawyers appointed by **us**.
- c. 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** prior written consent.
- d. **We** shall not be liable for any settlement, **loss**, **defence costs**, admission, offer, payment or assumed obligation to which **we** have not given **our** prior 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 a **claim**. If the **defence costs** and/or payment exceed the **deductible** then, subject to the terms and conditions of the **policy**, **we** will pay the amount in excess of the **deductible**.

10.4 Insured's right to contest and our discharge of liabilities

- a. In the event that **we** recommend settlement of a **claim** and the **insured**:
 - i. does not agree to the settlement of the **claim**; and
 - ii. 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.
- b. At any time, **we** may pay to the **insured**, or on the **insured's** behalf, in respect of any **claim**, the **limit of indemnity**, or any applicable sub-limit, (after deduction of any amount already paid) or any lesser amount for which a **claim** or **claims** may reasonably be settled.

After **we** have paid such an amount, **we** will relinquish the conduct and control of such **claim** or **claims** and **we** will no longer be liable for the **claim(s)** (or future conduct of the **claim(s)**) except for **defence costs** incurred up until the time **we** agreed to pay.

We will not pay any amount or defend any **claim** after **our limit of indemnity** has been exhausted.

10.5 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 the **insured persons** or **company** (if applicable), and in the case of **defence costs** those that are directly attributable to (where applicable) both the **insured person** and the **company'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 as an expert and 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, the **insured persons** or the **company** (whichever is appropriate) or both will refund to **us** any amount which **we** have paid that exceeds the entitlement under this **policy**.

The costs of Senior Counsel under this clause shall be borne by **us**.

- c. If the **deductible** applicable to Insuring Clause 1.1 applies to part of a **loss** and the **deductible** applicable to Insuring Clause 1.2 applies to part, then **we** and the **insured** must use best efforts to reach an agreement of a fair and proper allocation of such **loss** between Insuring Clause 1.1 and Insuring Clause 1.2. If no agreement can be reached, the dispute will be referred to Senior Counsel using the mechanism in (b) above for determination of the issue.

10.6 Notification of Direct Financial Loss

The **company** 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 **period of insurance**, 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 **company** may offer a comparison between the **company's** inventory records and actual physical counts of its inventory to prove the amount of **loss** only where the **company** establishes that, wholly apart from such comparison, it has sustained a covered **loss** caused by an **employee**.

The **insured** must, at its own cost, also:

- a. Provide **us** with affirmative proof of the **direct financial loss** with full particulars within 6 months of the **direct financial loss** being first **discovered**, and

- b. Provide **us** with all requested information and documents and co-operate with **us** in all matters pertaining to the **direct financial loss**.

Section 11 : General Conditions

11.1 Order of Payment

If the payment of **loss** in respect of a **claim** is due under this **policy** but the amount of such **loss** in the aggregate exceeds the remaining available **limit of indemnity**, **we** shall:

- a. first pay such **loss** for which coverage is provided to an **insured person** under Insuring Clause 1.1 and Additional Benefit 2.1 Official Investigations and Inquiries for which there is no indemnification by any **company**; then
- b. to the extent of any remaining amount of the **limit of indemnity** available after payment under (a) above, pay such **loss** for which coverage is provided under any other provision of this **policy**.

We shall remain entitled, but not obliged, to pay **loss** in the sequence in which it is submitted to **us**.

11.2 Alteration of risk

- a. The **company** in Item 2 of the Schedule must notify **us** in writing as soon as possible of any changes in the insured risk during the **period of insurance** which alters the nature of the **insured's** business. This includes if the **insured** acquires by merger, consolidates with, is merged into or acquired by any other entity during the **period of insurance**. In such event, written notice shall be given to **us** as soon as practicable together with such information and any additional premium **we** may require.
- b. If during the **period of insurance** a **transaction** takes place, then the cover provided under this **policy** is amended to apply only to **wrongful acts**, **employment practice breaches**, **dishonest acts** or conduct committed prior to the effective date of the **transaction**.
- c. 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**.
- d. If, during the **period of insurance**, the **company** decides to make a public offering of its **securities** in any jurisdiction then as soon as the information is publicly available, the **company** shall provide **us** with any prospectus or offering statement for **our** evaluation and assessment of the increased exposure of the **insured**, and **we** shall be entitled at **our** discretion to amend the terms and conditions of this **policy** and/or charge a reasonable additional premium reflecting the increase in exposure.
- e. At the **company's** request and at our **discretion**, prior to the public announcement of such **securities** offering, **we** shall evaluate and assess the increased exposure and advise of all necessary amendments to the terms and conditions of this **policy** and additional premium. In this event and at the request of the **company**, **we** will enter into a confidentiality agreement with the **company** relating to any information provided regarding the proposed **securities** offering.

We may impose additional premium and/or terms, conditions, exclusions and limitations arising from such alteration of the risk.

11.3 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**.

11.4 Subrogation

- a. Where **we** have paid an amount under the **policy** **we** become entitled to any rights the **insured** has against any person or entity in relation to the **claim** or **loss**, 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.
- c. Other than as set out in (d) below, **we** shall not exercise any subrogated rights of recovery against any **employee** unless the **claim** or **loss** has been brought about by or contributed to by the dishonest, fraudulent, criminal or malicious conduct of such **employee**. **We** shall only exercise such rights where it has been established that such conduct did occur.
- d. In respect of Insuring Clause 1.2(d) Crime **we** may at any time and at **our** own expense exercise **our** rights of subrogation against any **third party** or **employee** where it has been found they have committed **dishonest acts** resulting in a **direct financial loss** that **we** have paid or will be liable to pay under the **policy**.

11.5 Limit of indemnity

- a. Subject to Additional Benefits 2.8 Automatic Reinstatement for Insured Persons, 2.23 Crime Investigation Fees and Optional Extension 3.1 Cyber Risks (if operative), **our** total liability under the **policy** in respect of any **claim** or **loss** and in the aggregate for all **claims** and **losses** shall not exceed the **limit of indemnity**.
- b. Any Sub-Limit stated in item 4 on the Schedule, except for 2.23 Crime Investigation Fees and Optional Extension 3.1 Cyber Risks (if operative), will be part of and not in addition to the **limit of indemnity**, and each Sub-Limit is an aggregate amount for the **period of insurance**. Other than for Additional Benefits 2.2 Occupational Health and Safety Defence Costs, 2.3 Statutory Liability and/or 2.4 Pollution Cover, if more than one Sub-Limit is applicable to any one **claim** then only the highest Sub-Limit shall apply.
- c. All **claims** which arise out of or are attributable to or are in any way connected with a single **wrongful act** or **employment practice breach** shall constitute a single **claim** for the purpose of this **policy**. A single **wrongful act** or **employment practice breach** means all respective **wrongful acts** or **employment practice 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.

11.6 Deductible

- a. **Our** liability shall only apply to that part of **loss** which is in excess of the **deductible**.
- b. Such **deductible** shall be borne by the **insured person** and/or **company**, as the case may be, at their own risk.

- c. Unless otherwise expressed in the Schedule, all **deductibles** are inclusive of **defence costs** up to the amount of the **deductible**.
- d. 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**.

11.7 Non-Imputation

- a. Except for Exclusion 4.1 'Prior or Pending', 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.
- b. The terms of the **policy** apply to each **insured** provided that the failure by any **insured** to observe and fulfill the terms of this **policy** will not prejudice any other **insured**.
- c. Any state of mind or knowledge possessed by any past or present chairman of the board, chief executive **officer**, director, chief operating **officer** or chief financial **officer** of the **company** will be imputed to the **company**.

11.8 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 **company** 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 **company** in order to reproduce such electronic data.

11.9 Preservation of Right to Indemnity

In the event and to the extent that the **company** is legally permitted or required to indemnify an **insured person** in respect of a **claim**, but for whatever reason fails or refuses to do so, then **we** shall pay on behalf of the **insured person** any **loss** arising from the **claim**.

In such event, the **deductible** applicable to the Insuring Clause 1.2 (a) Company Reimbursement shall be paid by the **company** to **us** unless the **company** is insolvent and for that reason is unable to pay the **deductible** to **us**.

11.10 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 under any other policy effected on behalf of the **insured** or under which the **insured** is a beneficiary.

This clause does not apply to such other insurance that is written as specific excess insurance over the **limit of indemnity** provided in this **policy**.

If such other insurance is provided by **us**, or any other related or member company, associate or affiliate, and it covers a **loss** covered by this **policy** in respect of that **claim** or **investigation**, the **limit of indemnity** or any applicable sub-limit shall be reduced by any amount paid by **us** (or related or member company, associate or affiliate) under such other insurance.

11.11 Several Liability of Underwriters

The obligations of **our** subscribing Underwriters, where there is more than one Underwriter named in Item 12 of the Schedule subscribing to the **policy**, are several and not joint and are limited solely to the extent of their individual subscriptions. No subscribing Underwriter is responsible for the subscription of any co-subscribing Underwriter who, for any reason, does not satisfy all or part of its obligations.

11.12 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 the interpretation of this **policy** shall be submitted to the exclusive jurisdiction of the Courts of Australia and the State or Territory where the **policy** was issued.

11.13 Cancellation

The **insured** may cancel the **policy** at any time by notifying **us** in writing.

We may cancel the **policy** in accordance with the provisions of the *Insurance Contracts Act 1984* (Commonwealth).

On cancellation, **we** agree to allow a pro-rata refund of premium based upon the unexpired **period of insurance** unless **we** have been notified of any matter under this **policy**.

11.14 Complaints Procedures

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

Lloyd's Underwriters' General Representative in Australia
Suite 2, Level 21
Angel Place

123 Pitt Street
Sydney NSW 2000

Telephone Number: (02) 9223 1433

Facsimile Number: (02) 9223 1466

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

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

For the purpose of this Complaints Procedure only, "this Insurance" means the **policy**, and "**you/your**" means the **insured**.

11.15 General Insurance Code of Practice

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

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

11.16 Service Of Suit (Australia)

The underwriters hereon agree that:-

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

Lloyd's Underwriters' General Representative in Australia
Suite 2, Level 21 Angel Place 123 Pitt Street
Sydney NSW 2000
Australia

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

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

11.17 Authority

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**.