

Wordings.





DUAL Australia Association Liability Insurance

Policy Wording

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Important Notices

You should read the entire **policy** carefully, including all definitions and, in particular, the exclusions to ensure that it meets your requirements. **We** recommend that you consult an insurance agent or broker to ensure a clear understanding of your rights and obligations under the **policy**.

Claims Made and Notified Policy

This is a claims made and notified policy. **We** shall only cover you for **claims** made against you during the **insurance period** and notified to **us** as soon as practicable during the **insurance period**.

If your **policy** does not have a continuity of cover provision or provide retrospective cover then your **policy** may not provide insurance cover in relation to events that occurred before the **policy** was entered into.

Your Duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell **us** anything that you know, or could reasonably be expected to know, that may affect **our** decision to insure you and on what terms.

You have this duty until **we** agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- a) reduces the risk **we** insure you for;
- b) is common knowledge;
- c) **we** know or should know as an insurance company; or
- d) **we** waive your duty to tell **us** about.

If you do not tell us something

If you do not tell **us** something you are required to, **we** may cancel your **policy** or reduce the amount **we** shall indemnify you if you make a claim, or both.

If your failure to tell **us** is fraudulent, **we** may refuse to pay a claim and treat the **policy** as if it never existed.

Notification of Facts that may give rise to a Claim

Section 40(3) of the *Insurance Contracts Act 1984* (Cth) provides that if you give notice in writing to **us** of facts that may give rise to a **claim** against you as soon as reasonably practicable after you became aware of such facts but before the **policy** expires, then **we** will continue to be liable under the **policy** for that claim, if made.

Privacy Statement

We are committed to compliance with the "Privacy Act 1988" (Cth) ("the Privacy Act.") **We** use your personal information to assess the risk of and provide insurance, assess and manage claims, to perform administrative functions and to comply with regulatory requirements. **We** may also use your contact details to send you information and offers about products and services that **we** believe will be of interest to you.

If you do not consent to provide **us** with the information which **we** request, **we** may not be able to provide insurance or assess a claim. If you provide **us** with information about someone else, you must obtain their consent to do so.

We provide your information to the insurer **we** represent when **we** issue and administer your insurance. When providing a quotation

or insurance terms, **we** will tell you if the insurer is overseas and if so, where they are. **We** are part of the Howden Group and may provide your information to UK Based Group entities who provide **us** with business support services. **We** may also provide your information to your broker and **our** contracted third party service providers (e.g. claims management companies) but will take all reasonable steps to ensure that they comply with the Privacy Act. **We** understand that this information is often sensitive, and **we** shall treat it with the utmost care. **Our** Privacy Policy contains information about how you can access the information **we** hold about you, ask **us** to correct, or make a privacy related complaint. You can obtain a copy from **our** Privacy Officer by:

- telephone (+61 (0) 2 9248 6300)
- email (privacy@dualaustralia.com.au)
- or by visiting **our** website (www.dualaustralia.com.au).

By providing **us** with your personal information, you consent to its collection and use as outlined above and in **our** Privacy Policy.

General Insurance Code of Practice

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

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

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

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

Complaints and Disputes

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

Please contact us in the first instance:

General Counsel Team

DUAL Australia Pty Limited

Email: complaints@dualaustralia.com.au

Telephone: 02 9248 6300

Level 6, 160 Sussex Street

Sydney NSW 2000

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

If **we** cannot resolve your complaint to your satisfaction, we will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. Lloyd's contact details are:

Lloyd's Australia Limited

Email: ldraustralia@lloyds.com

Telephone: (02) 8298 0783

Level 16, Suite 1603

1 Macquarie Place

Sydney NSW 2000

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

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

[Australian Financial Complaints Authority Limited](#)

GPO Box 3
Melbourne VIC 3001
Australia

Telephone Number: 1800 931 678

Facsimile Number: (03) 9613 6399

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

Service of Suit and Legal Notices

The Underwriters accepting this Insurance agree that:

- (i) if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- (ii) any summons notice or process to be served upon the Underwriters may be served upon:

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

Level 16, Suite 1603
1 Macquarie Place
Sydney NSW 2000
Australia

Telephone Number: (02) 8298 0700

Facsimile Number: (02) 8298 0788

Who has authority to accept service on the Underwriters' behalf;

- (iii) If a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

Notification of Claims

In the event of a claim arising under this Insurance, immediate notice should be given to:

[The National Claims Manager](#)

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

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

Please refer to the Claims Conditions section of this **policy** for further details regarding the notification of claims or loss subject to this Insurance.

About DUAL Australia Pty Ltd

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

DUAL Australia Association Liability Insurance

Policy Wording

Section 1: Preamble

- 1.1** In consideration of payment of the premium and subject to all the terms and conditions of the **policy**, and, in reliance upon the disclosures made in the **proposal**, **we** agree to provide insurance on the terms set out in this **policy**.
- Subject to the terms and conditions of the **policy**, the total amount payable by **us** under the **policy** shall not exceed the **indemnity limit** displayed in the **policy schedule**.
- 1.2** Words and phrases appearing in bold text have the meaning provided in Section 6 Definitions.

Section 2: Insuring Clauses

A sub-limit of indemnity may apply to an Insuring Clause. All applicable sub-limits are specified in the **schedule**. The sub-limit is the maximum amount payable by **us** under an Insuring Clause. A sub-limit is part of and not in addition to the **indemnity limit**.

A **deductible** may apply to an Insuring Clause. All applicable **deductibles** are specified in the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

2.1 Cover for You

We agree to pay to or on behalf of each **insured person** all **loss** arising from any **claim** for any **wrongful act**, **employment practice breach** or **trustee breach** for which the **association** has not indemnified or agreed to indemnify such **insured person**.

2.2 Cover for the Association

We agree to pay to or on behalf of the **association**:

Professional Indemnity

- a) all **loss** arising from any **claim** for any **civil liability** first made and notified to **us** during the **insurance period** arising from the conduct of the **insured's business**;

Crime

- b) **direct financial loss** sustained by the **association** which is first **discovered** and notified to **us** during the **insurance period** and caused by **dishonest acts**;

Association Reimbursement

- c) all **loss** arising from any **claim** against any **insured person** first made and notified to **us** during the **insurance period** for a **wrongful act** or **employment practice breach** for which the **association** has indemnified or agreed to indemnify such **insured person**;

Association Liability

- d) all **loss** arising from any **claim** against the **association** first made and notified to **us** during the **insurance period** for a **wrongful act** by the **association**;

Employment Practices Liability

- e) all **loss** arising from any **claim** against the **association** first made and notified to **us** during the **insurance period** for an **employment practice breach**;

Trustee Liability

- f) all **loss** arising from any **claim** against the **association** first made and notified to **us** during the **insurance period** for a **trustee breach**;

Tax Audit Costs

- g) **tax audit costs** resulting from a **tax audit notice** served on the **insured** and notified to **us** during the **insurance period**.

2.3 Advancement of Defence Costs

We agree to pay for **defence costs** in respect of any **claim** covered under this **policy** as and when they are incurred prior to final resolution of the **claim**, and within thirty (30) days of receipt by **us** of sufficiently detailed invoices for those costs.

The maximum amount of **defence costs** and other costs and expenses **we** will advance is the amount of any applicable sub-limit or the **indemnity limit**. Upon exhaustion of the applicable sub-limit or the **indemnity limit**, **our** obligation to advance **defence costs** will cease.

Paid **defence costs** will be repayable to **us** by the **insured** in the event, and to the extent, that it is established that such **defence costs** are not insured under the **policy**.

2.4 Retroactive Date

This **policy** will only provide cover in respect of **civil liability, wrongful acts, employment practice breaches, trustee breaches, tax audit notices, dishonest acts**, or any other conduct of the **insured** occurring after the **retroactive date**.

Section 3: Automatic Extensions

Subject to all the terms and conditions of the **policy**, **we** further agree to extend cover through the following Automatic Extensions.

A sub-limit of indemnity may apply to an Automatic Extension. All applicable sub-limits are specified in the **schedule**. The sub-limit is the maximum amount repayable by **us** under an Automatic Extension. A sub-limit is part of and not in addition to the **indemnity limit**.

A **deductible** may apply to an Automatic Extension. All applicable **deductibles** are specified in the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

These Automatic Extensions, unless otherwise specified, apply to all sections of the **policy**.

3.1 Automatic Reinstatement of Indemnity Limit

In the event that the **indemnity limit** is exhausted during the **insurance period** by **loss** arising from **claims** for which **we** have agreed to indemnify, the **indemnity limit** will be reinstated in the same amount once only.

This Automatic Extension is conditional on:

- a) The exhaustion of limits of any policy which is in excess of the original **indemnity limit** under this **policy** other than any similar reinstatement provisions under such excess policies; and
- b) The reinstated **indemnity limit** will only apply to **claims** or **loss** which do not arise out of and do not have any connection with the originating cause of any **claim** or **loss** already paid or payable under the original **indemnity limit**; and

- c) All other terms, conditions, exclusions and limitations of the **policy** shall continue to apply in the same manner, in respect of any **claim** and **loss** to which the reinstated **indemnity limit** applies; and
- d) There will be no reinstatement of sub-limits excepts if the original **indemnity limit** is reinstated.
- e) If the **association** has 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 Automatic Extension 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 such other policies take effect.

This Automatic Extension only applies to Insuring Clauses 2.2(a) (Professional Indemnity), 2.2(c) (Association Reimbursement), and 2.2(d) (Association Liability) only.

3.2 Continuous Cover

Notwithstanding Exclusion 5.13 (Prior Known Facts), **we** agree to provide cover in respect of any **claim** made against the **insured** in the **insurance period** where the **insured**:

- (a) first became aware, prior to the **insurance period**, that a **claim** might or could arise from facts or circumstances known to it; and
- (b) had not notified **us** or the previous insurer of such facts or circumstances prior to the **insurance period**;

Provided that:

- i) **we** were the Association Liability insurer of the **association** when the **insured** first became aware of such facts or circumstances and have continued, without interruption, to be the **associations** Association Liability insurer until this **policy** came into effect; and
- ii) there has not been any fraudulent non-disclosure or fraudulent misrepresentation by an **insured** in respect of such facts or circumstances; and
- iii) if the fact or circumstance had been notified under the previous policy, the **insured** would have been entitled to indemnity under the previous policy; and
- iv) if **we** had been notified of the facts or circumstances when the **insured** first became aware of such facts, the **insured** would have been indemnified under the policy in force at that time, however is now not entitled to be indemnified by that policy, and the **insured** would, but for Exclusion 5.13 (Prior Known Facts) otherwise be indemnified by this **policy**; and
- v) **we** have the discretion to apply either the terms and conditions of the policy on foot when the **insured** first became aware of the facts and circumstances, including but not limited to the **indemnity limit** and **deductible**, or the terms and conditions of this **policy**; and
- vi) the **insured** all agree only to make a claim under one association liability **policy** issued by **us**.

For the purpose of this Automatic Extension only, the definition of **we/us/our** in clause 6.76 of this **policy** also includes the Underwriter(s) for which **we** were the agent on any previous **policy** issued by **us**.

3.3 Contractual Liability

Notwithstanding Exclusion 5.1 (Assumed Liability) and Exclusion 5.26(c) **we** agree to pay to or on behalf of an **insured defence costs** arising from any **claim** in connection with an alleged breach by the **association** of any express contract or agreement only to the extent of the cover under this Automatic Extension.

3.4 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 \$1,000 per day for all **insured persons**. No **deductible** applies under this Automatic Extension.

3.5 Crisis Containment

We agree to pay to or on behalf of the **association crisis loss** that the **association** incurs, with our prior written consent, by reason of a **crisis event** which first occurs and is notified to **us** during the **insurance period**.

3.6 Discovery Period

The **insured** may give written notice to **us** of any **claim** arising from any **civil liability, employment practice breach, wrongful act, trustee breach** or **dishonest act** occurring prior to the expiration of the **insurance period** and during a **discovery period** immediately following the **insurance period** of:

- (a) 90 days granted automatically with no additional premium payable; or
- (b) 12 months if the **association** requests such period in writing within thirty (30) days after the end of the **insurance period** and tenders an additional premium of 100% of the expiring annual premium, commencing immediately after the end of the **insurance period**, which is payable within thirty (30) days of the receipt by **us** of such written request; or
- (c) 84 months, if a **transaction** takes place and the **association** requests such period in writing within thirty (30) days following the end of the **insurance period**, on such terms and conditions, if any, and for such additional premium as **we** may reasonably require.

This Automatic Extension is not available if this **policy** is:

- i) renewed or replaced with any other Association Liability policy; or
- ii) cancelled or avoided.

Any **discovery period** purchased under this Automatic Extension is non-cancellable, and the premium paid for the **discovery period** is fully earned by **us** and is non-refundable.

3.7 Emergency Costs

If **our** written consent cannot reasonably be obtained before **defence costs, investigation costs, or public relations expenses** are incurred by an **insured, we** will pay those such costs if the **insured** obtains **our** consent within thirty (30) days of the date that the first of those costs were incurred.

If **we** subsequently determine that there is no entitlement under the **policy** for any **defence costs** that **we** have paid under this clause, the **insured** must repay those amounts to **us** immediately.

3.8 Fraud and Dishonesty for Innocent Parties

Notwithstanding Exclusion 5.6 (Fraudulent, Dishonest and Wilful Conduct) **we** agree to pay to or on behalf of an **insured** all **loss** and **defence costs** arising from a **claim** for any **civil liability, wrongful act, employment practice breach** or **trustee breach** made against an **insured**, provided that **we** will not provide cover to any **insured** committing or condoning any act, omission or breach.

3.9 Former Subsidiary Cover

We agree to pay to or on behalf of the **insured** all **loss** arising from any **claim** for any **civil liability, wrongful act, employment practice breach** or **trustee breach** in relation to the conduct of the **association's business** by a **subsidiary** that ceased or ceases to be a **subsidiary** either before or during the **insurance period**.

3.10 Heirs, Estates and Legal Representatives

We agree to provide cover to the estate, heirs, legal representatives or assigns of any deceased or mentally incompetent, bankrupt or insolvent **insured person** in respect of **loss** arising from any **civil liability, wrongful act, employment practice breach** or **trustee breach** committed by an **insured person** that is covered under this **policy**.

It is a condition of this Automatic Extension that any estate, heirs, legal representatives or assigns will observe and be subject to all applicable provisions of this **policy**.

3.11 New Subsidiaries

We agree to provide cover in respect of any **subsidiary** which is created or acquired by the **association** during the **insurance period**, provided that such entity has:

- a) total gross assets which are less than 20% of the total gross assets of the **association**; and
- b) gross annual turnover of less than 20% of the total gross annual turnover of the **association**; and
- c) total gross assets which are less than 10% of the total gross assets of the **association** in the United States of America or Canada.

The cover provided shall only apply in respect of **civil liability, wrongful acts, employment practice breaches, trustee breaches** or **dishonest acts** occurring after the date of creation or acquisition and while that entity is a **subsidiary**.

3.12 Panel Counsel

The **insured** is entitled to one (1) hour of free advice per enquiry from any one firm listed on **our** panel of solicitors for each matter relevant to the risks insured by this **policy**. We consent to that firm listed on **our** panel of solicitors being retained to act for an **insured** in respect of any **claim** covered by this **policy**.

3.13 Public Relations Expenses

We agree to pay on behalf of an **insured** any **public relations expenses** incurred by the **insured**:

- a) in connection with an **incident** in order to prevent or minimise the risk of a **claim** which would be covered under the **policy**, or in connection with an **incident** that results in a **claim** covered under the **policy**, provided that:
 - i) the **insured** provides **us** with written notice of the **incident** no later than 30 days after the **insured** first becomes aware of the **incident**; and
 - ii) the **incident** must occur and be reported during the **insurance period**; and
 - iii) the **incident** must occur in Australia;
- b) in connection with a **claim** that is covered under this **policy** for extradition of such **insured**; or
- c) to mitigate any adverse effect on such **insured's** reputation by disseminating findings which exonerate the **insured person** from fault, liability or responsibility in connection with a **claim** that is covered under this **policy**, provided such findings are made by a court with jurisdiction to finally dispose of such **claim** (including the outcome of any appeal in relation to such **claim**).

3.14 Retirement Cover

If the **association** does not renew this **policy** or replace it with any other insurance providing Association Liability coverage, and a **discovery period** is not purchased by the **insured** under Automatic Extension 3.6 (Discovery Period) of this **policy**, then the **insured persons** will be automatically entitled to an 84 month **discovery period** at no additional premium after the expiry of the **insurance period** provided that the **insured person** retired from all employment or office prior to the expiry of the **insurance period**.

3.15 Whistleblower Hotline Access

The **association** and their internal and external stakeholders are hereby entitled to access the **DUAL Whistleblower Hotline** throughout the **insurance period**.

Automatic Extensions: 2.2(a) Professional Indemnity

The following Automatic Extensions apply to Insuring Clause 2.2(a) Professional Indemnity unless otherwise specified:

3.16 Breach of Privacy

Notwithstanding Exclusion 5.8 (Intellectual Property and Privacy), **we** agree to pay to or on behalf of an **insured** the reasonable direct costs of notifying individuals or corporations of an incident involving the unauthorised disclosure, loss, modification, misuse, interference or access of:

- a) Personal information, as defined in the *Privacy Act 1988* (Cth) or applicable equivalent legislation enacted by the other States or Territories of the Commonwealth of Australia; or
- b) The **insured** notifies **us** of their intention to take such action and receives **our** written consent (which will not be unreasonably withheld) before incurring those costs and expenses and we are satisfied that:
 - i) the circumstances giving rise to the **claim** or potential **claim** occurred during the **insurance period**;
 - ii) the circumstances notified would otherwise result in a covered **claim**;
 - iii) the costs of the proposed action are less than the likely costs of such covered **claim**;
 - iv) the proposed costs are reasonable in the circumstances.
- c) **We** are satisfied that the action proposed to mitigate that fact.

3.17 Consultants, Sub-contractors and Agents

We agree to pay to or on behalf of an **insured** all **loss** and **defence costs** arising from any **claim** for **civil liability** arising from the conduct of any consultant, sub-contractor or agents of the **association** in the conduct of the **association's business**.

Cover under this Automatic Extension is not available to consultants, sub-contractors or agents in respect of their own liability.

3.18 Consumer Protection Legislation

We agree to pay to or on behalf of an **insured** all **loss** and **defence costs** arising from any **claim** for **civil liability** for unintentional contraventions of the *Competition and Consumer Act 2010* (Cth), the Australian Consumer Law, or similar or equivalent legislation enacted by the other States or Territories of the Commonwealth of Australia or by New Zealand.

3.19 Contract Review Service

The **insured** is entitled to access four (4) **contract reviews** during the **insurance period**.

3.20 Defamation

We agree to pay to or on behalf of an **insured** all **loss** and **defence costs** arising from any **claim** alleging defamation committed in the conduct of the **insured's business**, provided that the **insured** did not intend to defame.

3.21 Intellectual Property

Notwithstanding Exclusion 5.8 (Intellectual Property and Privacy), **we** agree to pay to or on behalf of an **insured** all **loss** and **defence costs** arising from any **claim** for **civil liability** made against an **insured** arising from infringement or alleged infringement of any intellectual property right in the conduct of the **association's business**.

3.22 Joint Venture Liability

We agree to pay to or on behalf of the **association** all **loss** and **defence costs** arising from any **claim** for **civil liability** arising from the conduct of the **association's business** in any joint venture of which the **association** forms part. **Our** liability is limited to the extent of the **insured's** own liability as a joint venture partner.

This Automatic Extension will only provide cover to the **association**. No other participant of the joint venture and no other third party will have any rights under this **policy**, and neither will **we** be liable to pay a contribution to any insurer of any other participant in the joint venture.

3.23 Loss Mitigation and Rectification Costs

We agree to pay to or on behalf of an **insured** all reasonable costs and expenses incurred by the **insured** in taking appropriate and necessary action to rectify, or to mitigate the effects of any conduct by the **insured**, or any person or entity for whom the **insured** is legally liable, arising from the performance of the **association's business**, which would otherwise result in a **claim** covered by the **policy**, provided that:

- a) The conduct is **discovered** by the **insured** and notified to **us** as soon as practicable during the **insurance period**; and
- b) The **insured** notifies **us** of their intention to take such action and receives **our** written consent (which will not be unreasonably withheld) before incurring those costs and expenses.

This Automatic Extension will not cover:

- i) The **insured's** loss of opportunity, revenue, bonus or profits; or
- ii) Overheads, staff remuneration or management time of any **insured**; or
- iii) Damages, compensation or other payments made, or consideration given to customers, clients or potential clients.

3.24 Lost Data

We agree to pay to or on behalf of an **insured** any reasonable costs and expenses incurred by the **insured** in replacing or restoring **lost data** for which the **insured** is legally responsible if:

- a) the loss of the **data** is first discovered during the **insurance period**; and
- b) the **insured** first notifies **us** within 30 days of discovery of the loss of the **data**; and
- c) the **insured** provides **us** with bills and accounts substantiating the costs and expenses incurred by the **insured** in replacing or restoring the **lost data**; and
- d) **we** approve or a competent person nominated by **us** approves the bills and accounts.

Automatic Extensions: 2.2(b) Crime

The following Automatic Extensions apply to Insuring Clause 2.2(b) Crime unless otherwise specified:

3.25 Contractual Penalties

We agree to pay to or on behalf of the **insured** any penalty for which the **insured** is liable under a written contract resulting directly from **direct financial loss** covered by this **policy**.

3.26 Crime Investigation Fees

We agree to pay to or on behalf of the **insured** the reasonable and necessary fees, costs and expenses of a fraud investigator nominated by the **association**, and approved in writing by **us**, to investigate, prove and establish the amount of any covered or potentially covered **direct financial loss discovered** and notified to **us** in the **insurance period**.

The investigator's fees do not include overtime, wages, salaries, fees and other internal costs incurred by the **association** in the normal course of business.

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 **association's** controls were or may have been breached; and
- d) provide recommendations which may prevent future similar **direct financial loss**; and
- e) issue their findings in a report format approved by **us**; and
- f) provide a copy of the report to the **association** and to **us**.

The applicable sub-limit of indemnity for this Automatic Extension is in addition to the applicable **indemnity limit** for Insuring Clause 2.2(b) Crime. No **deductible** applies to this Automatic Extension.

3.27 Disposal of Subsidiary

We agree to pay to or on behalf of the **association**, **direct financial loss** sustained by any **subsidiary** prior to being sold, otherwise disposed of or liquidated during the **insurance period** and which was previously **insured** by **us** under this **policy** if the **direct financial loss**:

- a) is **discovered** after the date of sale, disposal or liquidation and before the expiry of this **policy**; and
- b) was caused by a **dishonest act** committed before the date of sale, disposal or liquidation.

Any part of such **direct financial loss** that was caused by a **dishonest act** committed after the date of sale, disposal or liquidation is not covered by this Automatic Extension.

3.28 Employee Plans

We agree to pay on behalf of the **association** **direct financial loss** covered by this **policy** which is sustained by an **employee plan**. Any amount payable by **us** under this Automatic Extension shall be paid solely for the benefit of the **employee plan** which has sustained the **direct financial loss** and the **association** shall not be entitled to any payment in respect of the **direct financial loss**. For the purposes of this Automatic Extension only, **employee** includes an **employee** of an employment plan and an employment plan shall be deemed to be an **insured**.

3.29 Extortion

We agree to pay to or on behalf of the **association** **direct financial loss** covered by this **policy** caused by **money** or **securities** being paid or surrendered by an **associated person** from the **premises** as the direct result of **extortion** provided that before such payment or surrender occurs the person who is the victim of the **extortion** has made reasonable efforts to inform the **association** of the **extortion** and the **association** has reported the **extortion** to the police.

3.30 Interest Receivable or Payable

We agree to pay to or on behalf of the **association** any interest actually lost or paid by the **association** directly in respect of **direct financial loss** covered by this **policy** provided that **our** liability under this Automatic Extension shall be calculated by applying the average of the Reserve Bank of Australia base rate in force between the time that the **direct financial loss** is sustained and the date of **discovery** of the **loss**.

3.31 Physical Loss or Destruction of or Damage to Money or Securities

We agree to reimburse the **association** for any physical loss or destruction of or damage to **money** or **securities** during the indemnity **period** caused by a **dishonest act** provided that such physical loss, destruction or damage occurs:

- a) within the **premises**; or

- b) inside any banking premises or similar recognised place of safe deposit; or
- c) whilst in transit and in the care, custody and control of the **association** or any security company or armoured motor vehicle association which is duly authorised by the **association** to have the care, custody or control of such **money** or **securities**.

The amount payable under this Automatic Extension is limited to the amount in excess of any valid and collectible indemnity, contractual or otherwise, available to the **association**, or which would be valid and collectible except for the application of an excess or the exhaustion of a policy limit.

3.32 Software Reconstitution Costs

We agree to pay to or on behalf of the **association** any reasonable and necessary costs incurred, with **our** prior consent, for re-writing or correcting or amending the **association's** software programmes which have been damaged or modified in consequence of a **dishonest act** covered by this **policy**.

For the avoidance of doubt this Automatic Extension does not provide indemnity in respect of the costs of rectifying or amending errors or deficiencies in such software programmes that existed prior to the acts giving rise to the **loss**.

3.33 Triangulation Fraud

We agree to pay on behalf of the **association** as **loss** any **direct financial loss** arising from **triangulation fraud**.

Automatic Extensions: 2.1, 2.2(c) – (f) Directors' and Officers' Liability

The following Automatic Extensions apply to Insuring Clauses 2.1, 2.2(c) – (f) unless otherwise specified:

3.34 Bail and Civil Bond Expenses

We will pay as **loss** the **bail bond and civil bond expenses** of each **insured person** incurred during the **insurance period** in connection with a **claim** for any **wrongful act, employment practice breach** or **trustee breach** that is covered under this **policy**.

3.35 Committees

We agree to pay, to or on behalf of an **insured**, all **loss** and **defence costs** arising from any **claim** brought against any **committee** member for a **wrongful act** or **employment practice breach** arising from the conduct of the **business** or activities of such **committee**.

3.36 Directors' Tax Penalties

We agree to pay to or on behalf of an **insured person** their personal liability arising out of the **association's** unpaid taxes where the **association** is insolvent, 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 condoning the **association** failing to do so.

For the purpose of this Automatic Extension only Exclusion 5.7 (Insolvency) shall not apply.

3.37 Extradition Costs

We agree to pay to or on behalf of an **insured**:

- 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.

3.38 Occupational Health and Safety Defence Costs

We agree to pay to or on behalf of an **insured**:

- a) **investigation costs** arising from the attendance by an **insured** for examination at, or the production of documents to, any **investigation** in connection with a breach or alleged breach of any Commonwealth, State or Territory occupational or workplace health and safety legislation; or
- b) **defence costs** arising from 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 Automatic Extension only:

- c) **claim** shall only mean any official notice asserting a breach by an **insured** of any Commonwealth, State or Territory occupational or workplace health and safety legislation; and
- d) Exclusion 5.2 (Bodily Injury / Property Damage) does not apply.

3.39 Official Investigations and Inquiries

We agree to pay **investigation costs** in connection with the attendance by an **insured** for examination at, or the production of documents to, any **investigation** in relation to the affairs of the **association** 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** or the notice requesting documents is first received by the **insured** and notified to **us** during the **insurance period**.

For the purpose of this Automatic Extension only, Exclusions 5.2 (Bodily Injury / Property Damage) and 5.12 (Pollution) do not apply.

3.40 Outside Directorship Cover

We agree to pay on behalf of the **insured** all **loss** arising out of any **claim** made against an **insured person** who was, is or may become, at the written request of the **association**, a **director, officer, trustee, governor** or equivalent position in any **outside entity** for any **wrongful act, employment practice breach** or **trustee breach** in such **insured person's** capacity as a **director, officer, trustee, governor** or equivalent position in the **outside entity**.

This cover shall:

- 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**.

3.41 Pollution Cover

We agree to pay to or on behalf of an **insured** all **defence costs** arising from any **claim** made against an **insured** in connection with **pollutants**.

For the purpose of this Automatic Extension only, Exclusions 5.2 (Bodily Injury / Property Damage) and 5.12 (Pollution) do not apply.

3.42 Prosecution Costs

We agree to pay to or on behalf of an **insured person** the reasonable costs, charges, fees and expenses incurred by an **insured person** with **our** prior consent to bring legal proceedings to overturn, or obtain the discharge, revocation or stay of any judicial order by an **official body** that is to the detriment of such **insured person** and arises from an **investigation**.

3.43 Statutory Liability (Fines and Penalties)

We agree to pay to or on behalf of the **insured** all **statutory liability** and **defence costs** arising from any **claim**, if **we** are not legally prohibited from doing so.

For the purpose of this Automatic Extension only:

- a) the references in clauses 6.42(a) **loss** and 5.26(d) of the **policy** to fines and penalties do not apply to the extent that this Automatic Extension operates; and
- b) Exclusions 5.2 (Bodily Injury/Property Damage) and 5.12 (Pollution) do not apply; and
- c) **loss** includes **statutory liability**.

Where Automatic Extension 3.38 (Occupational Health & Safety Defence Costs) or Automatic Extension 3.41 (Pollution Cover) respond to a **claim** then the cover under this Automatic Extension in respect of such **claim** is limited solely to **statutory liability** and does not include **defence costs**.

This Automatic Extension only applies to Insuring Clauses 2.1 (Cover for You), 2.2(c) (Association Reimbursement) and 2.2(d) (Association Liability)

3.44 Third Party Discrimination and Sexual Harassment

We agree to pay to or on behalf of an **insured** all **loss** and **defence costs** arising from any **third party claim**.

3.45 Travel and Accommodation Expenses

We agree to pay to or on behalf of an **insured person** their reasonable travel and accommodation expenses incurred in attending an **investigation** in a state, territory or country in which they do not normally reside, but only to the extent that the **association** is unable to indemnify the **insured person** due to insolvency, or legal or regulatory prohibition.

Section 4: Optional Extensions

The following Optional Extensions are subject to all the terms and conditions of the **policy**, and shall only apply if they are specifically included in the **schedule**.

A sub-limit of indemnity may apply to an Optional Extension. All applicable sub-limits are specified in the **schedule**. The sub-limit is the maximum amount payable by **us** under an Optional Extension. A sub-limit is part of and not in addition to the **indemnity limit**.

A **deductible** may apply to an Optional Extension. All applicable **deductibles** are specified in the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

4.1 State Revenue Costs

This Optional Extension applies to Insuring Clause 2.2(g):

- a) the definition of **tax audit notice** is extended to include a **state revenue notice**; and
- b) Exclusion 5.27(i) does not apply.

4.2 Risk Review Costs

This Optional Extension applies to Insuring Clause 2.2(g):

- a) the definition of **tax audit notice** is extended to include a **risk review notice**; and
- b) Exclusion 5.27(j) does not apply.

4.3 R&D Incentive Review Costs

This Optional Extension applies to Insuring Clause 2.2(g):

- a) the definition of **tax audit notice** is extended to include an **incentive notice**; and
- b) Exclusion 5.27(k) does not apply.

Section 5: Exclusions

The following Exclusions apply to all sections of the **policy** unless otherwise expressly stated.

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

5.1 Assumed Liability

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of any duty or obligation assumed by an **insured** under any agreement, except that this Exclusion does not apply to any liability which would have arisen in the absence of such agreement.

5.2 Bodily Injury / Property Damage

any **claim** or **investigation** arising from 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 as a result of an **employment practice breach**.

5.3 Breach of Professional Duty

any **claim** or **investigation** 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 Insuring Clause 2.2(a) Professional Indemnity or Insuring Clause 2.2(f) Trustee Liability.

5.4 Consensual Claim

any **claim** which is brought for the benefit of an **insured** or 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**.

5.5 Excluded Activities

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of:

- a) finance and/or mortgage broking; or
- b) the provision of legal advice or legal services;
- c) corporate advisory services, including but not limited to advice or consulting in connection with mergers and acquisitions of entities or businesses or parts thereof; or
- d) stockbroking, financial planning, insurance-related or funds management activities; or

- e) actual or alleged advice in relation to finance, accounting or tax matters; or
- f) provision of medical advice or medical services; or
- g) any valuation of property or premises made by or on behalf of the **insured**; or
- h) any errors in an estimate of probable construction cost or cost estimate; or
- i) any construction, assembly, installation, erection or maintenance undertaken by or on behalf of the **insured**;
or
- j) any breach of any express or implied warranty arising out of the development of any property; or
- k) any loss or damage which would normally be the responsibility of a contractor; or
- l) any loss of or damage to, including loss of use of or value in, any goods in the care, custody or control of the **insured**; or
- m) any conduct not arising from the performance of the **insured's business**.

5.6 **Fraudulent, Dishonest and Wilful Conduct**

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of any **insured**:

- a) gaining any personal profit or advantage to which the **insured** was not legally entitled; or
- 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**; or
- c) committing any reckless, intentional, dishonest, fraudulent, criminal or malicious act or omission or any reckless, intentional, wilful violation of any statute, regulation, contract or duty; or
- d) committing any breach of either Section 182 or Section 183 of the *Corporations Act 2001* (For the purpose of determining the applicability of this Exclusion, the conduct and knowledge of any **insured** shall not be imputed to any other **insured**).

This Exclusion shall only apply if it is established through a final non-appealable adjudication adverse to the **insured**, or any admission by an **insured** that the relevant conduct did in fact occur.

In any such event, the **defence costs** that **we** have paid in advance will be reimbursed according to the respective interests of the **insured**.

5.7 **Insolvency**

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of the insolvency, liquidation, bankruptcy, receivership or administration of the **association** or any **subsidiary** or any **outside entity** or its actual or alleged inability to meet any or all of its debts as and when they fall due.

5.8 **Intellectual Property and Privacy**

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of any:

- a) infringement or alleged infringement of any intellectual property right including but not limited to copyright, patent, trademark, plagiarism, design or confidentiality; and
- b) breach of privacy, including corporate confidential information.

5.9 **Investment Performance**

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of:

- a) any actual or alleged dealing of any nature by which it is sought to affect the price of, or market in, any shares or debentures of any **association** or commodity or currency, or of any negotiable instrument, other than dealings carried out in accordance with the laws, rules and regulations applicable to such dealings; or

- b) any financial investment advice provided by any **insured**, including but not limited to any advice or recommendation as to the valuation, tax implications or performance of any investment; or
- c) a failure by the **insured** to warn of the risks of market fluctuation of any investment.

5.10 **Liability as Occupier, Motor, Marine**

any **claim** or **investigation** arising from or incurred or alleged to have been incurred:

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

5.11 **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 25% of the voting share capital of the **association**, any **subsidiary** or any **associated association**; and/or
- b) who or which has or had, at any time, any Board representation on the **association** or any of its **subsidiaries** or any **associated association**.

5.12 **Pollution**

any **claim** or **incident** arising from or directly or indirectly attributable to or in consequence of:

- a) the actual, alleged or threatened discharge, dispersal, release, seepage or escape of **pollutants** into or upon land, building or **other property**, the atmosphere or any water course or body of water, whether such discharge, dispersal, release, seepage 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**.

This Exclusion shall not apply to **claims** made by a shareholder of the **association** either directly or derivatively alleging damage to the **association** or its shareholders, but subject always to Exclusion 5.11 (Major Shareholder).

5.13 **Prior Known Facts**

any **claim** arising from or in any way connected with any:

- a) actual or alleged facts which were known to the **association** or any **insured person** prior to the commencement of the **insurance** period and which the association or the insured person knew or ought reasonably to have known might give rise to a claim, notwithstanding that such facts are disputed by the **insured**; or
- b) actual or alleged facts which were, which could have been, or which can be notified under any policy existing prior to the commencement of the **insurance period**; or
- c) pending or prior litigation, or litigation derived from the same or essentially the same facts as are or might be alleged in such pending or prior litigation, as at the commencement of the **insurance period**.

5.14 **Product Liability**

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

5.15 **Prospectus Liability**

any **claim** arising from or directly or indirectly attributable to or in consequence of:

- a) any **disclosure document** which contains an offer for the issue, sale, purchase or transfer of **securities**; or

- b) the making of any written or verbal representations in connection with a **disclosure document** or any offer referred to in 5.15(a).

For the purposes of raising or restructuring capital for the **association** or any **outside entity**, it is agreed, however, that this Exclusion shall not apply to **private placements**.

For the purpose of this Exclusion, **private placements** means any capital raisings by the offer of securities by the **association** which do not require disclosure under Chapter 6D of the *Corporations Act 2001* (Cth).

5.16 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 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.

5.17 Sanctions

any **claim** or **investigation** arising from or in any way connected with any matters where the provision of such benefit would expose **us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America.

For the avoidance of doubt, **we** shall have no **liability** to the insured to the extent that this exclusion applies.

5.18 Social Engineering and Cyber Fraud

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of any **social engineering fraud, cyber fraud, phishing, phreaking, or push-payment fraud**.

5.19 Superannuation Liabilities

any **claim** or **investigation**:

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

5.20 Territorial and Jurisdictional Limits

any **claim** or **investigation**:

- a) 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) brought or judgment entered in a court of law, arbitration, tribunal, form 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) arising out of the enforcement of any judgment, order or award obtained within or determined pursuant to the laws of the United States of America or the Dominion of Canada or their territories or protectorates.

5.21 Trading Debt

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of any trading debt or business liability of the **insured** or any guarantee given by any **insured** for a debt.

5.22 War/Terrorism

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

- a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, 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.

Exclusions Applying to Insuring Clause 2.2 (b) (Crime)

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

5.23 We will not cover the **association** in connection with any:

Consequential Loss

- a) indirect or consequential **loss** of any nature, including but not limited to any loss of income, profits, or dividends not realised by the **insured** or any other individual or organisation, business interruption costs or denial of service including but not limited to computer time, access or use, wear and/or tear, gradual deterioration or damage from moth or vermin or mechanical or electronic equipment damage, breakdown or failure or other property damage.

Credit Risks

- b) **loss** resulting from any of the following acts or omissions by **third parties** not acting in collusion with an **associated person**:
 - i) default under a **credit arrangement**; or
 - ii) **fraudulent alteration** or **forgery** of documents in connection with a **credit arrangement**.

Dual Controls

- c) **loss** connected with the issuing and drawing of cheques, account withdrawals or funds transfers sustained by the **association** 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.

Fees, Costs or Expenses

- d) fees, costs or expenses incurred by the **association** in establishing the existence or amount of any **loss** covered by this **policy** (except to the extent that Automatic Extension 3.26 (Crime Investigation Fees) applies, or in prosecuting or defending any legal proceeding or for any recall costs or costs associated with a recall.
- e) **loss** caused by fire except as expressly provided in Automatic Extension 3.31 (Physical Loss or Destruction of or Damage to Money or Securities).

Intellectual Property and Confidential Information

- f) **loss** that is in any way connected with infringement or plagiarism of any copyright, trademark, registered design or patent, breach of any intellectual property right or breach of confidence, or any allegation of such conduct.

Inventory Computation Losses

- g) **loss** of which there is no proof or supporting documentation to prove a covered **loss** other than an inventory or profit and loss computation provided that where the **association** has proven to **our** satisfaction that an identifiable **associated person** has caused the **loss**, an inventory or profit and loss computation may be submitted in support of a **claim** under this **policy** but subject always to **our** discretion to require additional information to prove a covered **loss**.

Liabilities to Third Parties

- h) fines, penalties and liabilities to any persons other than as expressly provided for in the definition of **direct financial loss** or Automatic Extension 3.25 (Contractual Penalties).

Loss Sustained After Knowledge

- i) **loss** sustained after the **discovery** of any part of that **loss**.

Non-Violent Crime

- j) **loss** in respect of **other property** in the **premises** unless resulting from any actual or attempted theft of **money, securities** or other tangible property by a **third party** following the **third party's** entry to or exit from the **premises** by violent or forcible means or resulting from the **dishonest acts** of an **associated person**.

Premises Damage

- k) **loss** in respect of damage or destruction to any of the **premises**, howsoever caused.

Prior or Subsequent Discovery of Loss

- l) **loss discovered** before the commencement of this **policy** or **loss discovered** after the expiry date of this **policy** regardless of the time at which the act or acts giving rise to the **loss** occurred.

Reckless Conduct

- m) **loss** resulting from recklessness by the **association**.

Securities

- n) **loss** resulting from any dealing or trading in **securities**, futures or foreign currencies or **funds**.

Social Engineering and Cyber Fraud

- o) **loss** arising from or in connection with any **social engineering fraud, cyber fraud, phishing, phreaking, or push-payment fraud**.

Voluntary Exchange or Purchase

- p) **loss** arising out of the voluntary giving or surrendering of **money, securities** or **other property** in any exchange or purchase unless such **loss** is committed by an **associated person** acting alone or in collusion with others.

Theft or Fraud by Directors and Officers

- q) **loss** arising out of or in any way connected with any fraudulent or dishonest activities, or involving collusion by or complicity, of:

- i) a **director** or **officer**; or
- ii) any shareholder who, at the time of committing such acts, had direct or indirect ownership of or control over more than 5% of the voting share capital of the **association** or any of its **subsidiaries** or any **associated association**.

- 5.24** We will not cover the **association** for or in connection with **direct financial loss**:
- a) in any way connected with any **employee** or **third party** up to a period of 30 days 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
 - b) 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 **association** 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**.

- 5.25** We will not cover the **association** for or in connection with **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.

Exclusions Applying to Insuring Clause 2.2 (d) Association Liability

The following Exclusions apply with respect to Insuring Clause 2.2 (d) (Association Liability) and any relevant Automatic Extension.

- 5.26** We will not cover the **association** in connection with any **claim** made against it for or in connection with:
- a) breaches of intellectual property rights, including but not limited to any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark or trade secret; or
 - b) any actual or alleged breach of any law, whether statutory, regulatory or common law, relating to anti-trust, business competition, price fixing, unfair or restrictive trade practices, or tortious interference in any other party's business or contractual relationships; or
 - c) any actual or alleged contractual liability of the **association** under any express or implied contract or agreement. However, this Exclusion shall not apply to a **claim** for an **employment practice breach** to the extent the **association** would have had such liability in the absence of such contract or agreement; or
 - d) fines or penalties or non-monetary relief; or
 - e) any obligation, or breach of an obligation, under any law or regulation providing for paid or unpaid leave of any kind or any **industrial instrument**; or
 - f) any obligation pursuant to any law, regulation, or **industrial instrument** in respect of workers' compensation, occupational or workplace health and safety, disability benefits, unemployment benefits or compensation, unemployment insurance, retirement benefits, social security benefits or any similar law, regulation or **industrial instrument** whatsoever.

Exclusions Applying to Insuring Clause 2.2 (g) Tax Audit Costs

The following exclusions apply with respect to Insuring Clause 2.2(g) (Tax Audit Costs) and any relevant Extension.

- 5.27** We will not cover the **association** for or in respect of any **tax audit costs** in connection with:

- a) any improper, unwarranted or unjustified delay, refusal or failure to comply with any request made by or on behalf of a **tax authority**, for the production of documents or the provision of information by the **association**; or
- b) inquiries from a **tax authority** which are not related to an identified intention to conduct an audit or likely future audit; or
- c) any audit or investigation concerning income earned or where the source of income is outside Australia and its external territories or protectorates, or where the services giving rise to the audit are performed by persons or any corporate entity outside of Australia and its external territories or protectorates; or
- d) matters arising under customs legislation; or
- e) any audit or investigation, where notice or information as to their likely conduct was received by the **association** prior to the **insurance period**. Receipt of such communication will have occurred when the **tax authority** makes communication with the **association** or any other person acting on its behalf; or
- f) any fraudulent act, error, omission or misrepresentation committed by or on behalf of the **association**; 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 or investigation of a return of income that has not been prepared or reviewed by the **accountant** or **registered tax agent**; or
- i) any audit or review conducted by a State or Territory revenue office or department, or other body, agency or authority with jurisdiction over taxation; or
- j) any Risk Review, Comprehensive Risk Review, or other informal review conducted by a **tax authority**; or
- k) any audit or review in any way whatsoever in connection with a Research & Development (R&D) Incentive **Claim** lodged or intended to be lodged with a **tax authority**; or
- l) **tax audit costs** incurred after a determination or assessment has been issued by a **tax authority**.

Exclusions applying to Automatic Extension 3.43 Statutory Liability (Fines & Penalties)

5.28 We will not cover the **insured** for or in respect of any **statutory liability** or **defence costs** in connection with any:

- a) alleged violation of any law in relation to air traffic; or
- b) alleged violation of any law in relation to vehicle or marine traffic, except to the extent that it results directly from the undertaking of the business of the **association**; or
- c) 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* (Cth) and any similar law of any state, territory or jurisdiction and any amendment, consolidation or re-enactment of any of those Acts; or
- d) contract of service, or any intended contract of service, with any current, former or prospective **employee**; or
- e) breach of sections 182, 183, 601FD, 601FE or 601JD of the *Corporations Act 2001* (Cth); or
- f) deliberate dishonest, criminal, fraudulent or malicious act or omission of any wilful violation or breach of any law, regulation or by-law or duty conferred by any such law, regulation or by-law anywhere in the world by an **insured**; or
- g) breach of professional duty, or the provision of any professional services and/or advice, or the failure to provide such services or advice; or

- h) breach of any law or regulation with respect to taxes, duties or revenue charges.

5.29 Retroactive Date

any **claim** based upon, arising from or in connection with any act, error or omission which occurred in whole or in part, prior to the **retroactive date**.

Section 6: Definitions

In this **policy**:

- 6.1 Accountant or registered tax agent** means a person who is engaged by the **association** who is not an **insured** and is recognised by Chartered Accountants Australia and New Zealand (formerly the Institute of Chartered Accountants) or similar or any other person registered by the Australian Taxation Office as a tax agent.
- 6.2 Act of Parliament** means any legislation of a State or Territory in, or the Federal Parliament of, the Commonwealth of Australia, including any amendment to or re-enactment, and any code, rules, regulations, bylaws or other subordinate legislation made under such Act.
- 6.3 Associated association** means any Association in which the **association** or any **subsidiary** owns on or before the inception of the **insurance period** at least 25% of the issued and outstanding voting shares.
- 6.4 Association** means:
- a) the not-for-profit entity or entities specified as Policyholder in the **schedule**; and
 - b) any subsidiary or **associated association** in existence at the commencement of the **insurance period**.
- 6.5 Associated person** means any natural person, other than a **director** or partner, who has entered into or works under a contract of service with the **association** and whom the **association** compensates by salary, wages and/or commissions and whom the **association** has the right to govern and direct in the performance of such service. It includes any:
- a) **director** or trustee of the **association** but only in respect of **dishonest acts** performed while acting within the scope of the usual duties of an **employee** of the **insured**; or
 - b) part-time or temporary **employee** performing the duties of an **employee** under the **association's** supervision; or
 - c) retired **employee** appointed by the **association** under a written contract whom the **association** governs and directs in the performance of their service as an **employee**; or
 - d) student, secondee or volunteer pursuing studies, gaining work experience or performing the duties of an **employee** under the **association's** supervision; or
 - e) ex-**employee** of the **association**, for a period not exceeding 90 days following the formal termination of their employment with the **insured** (other than where such termination is as a result of a dishonest act); or
 - f) person provided to the **insured** by an employment agency (or similar source) to perform the duties of an **employee** under the **insured's** supervision; or
 - g) **employees** of any **association** or firm authorised and retained by the **association** to perform normal administrative services which the **association** outsources to such **association** or firm provided that:
 - i) such services are provided under a written contract; and
 - ii) the **association** has the right to audit the performance of such services; and
 - iii) the **association** can demonstrate that the outsourced **association** or firm has been checked for competency, financial stability and honesty prior to the retention of such Association or firm; and
 - iv) any indemnity provided is in excess of any valid and collectible indemnity, contractual or otherwise,

available to the Association or firm or to the **insured** or which would be valid and collectible except for the application of an excess or the exhaustion of a policy limit.

Associated person does not include any person who is or acts on behalf of any external auditor, external accountant, broker, investment adviser or investment manager, consignee, contractor or other similar agent or representative unless specifically agreed by **us** and endorsed to this policy.

6.6 Bail bond and 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**.

6.7 Benefits means any amount payable including pensions, welfare, shares or share options, charity, shares or share options for past, present or future **employees** (not including **directors**, partners or trustees) to a beneficiary of a **fund** by the **trustee** under the rules governing the **fund**.

6.8 Business means the business of the **association** specified in the **schedule**.

6.9 Civil liability means a legally enforceable obligation to a **third party** arising from the **association's** performance of their **business**.

6.10 Claim means:

- a) any formal administrative or regulatory proceeding against the **insured**, including any arbitration, mediation, conciliation or alternative dispute resolution proceeding, alleging an **employment practices breach, trustee breach, wrongful act, or dishonest act**; or
- b) any civil proceeding brought by a third party against the **insured** for recovery of compensation or damages; or
- c) any written or verbal demand by a third party upon the **insured** for monetary relief.

All **claims** which arise out of or are attributable to or are in any way connected with a single **wrongful act, employment practice breach, trustee breach** or **dishonest act** shall constitute a single **claim** for the purposes of this **policy**. A single **wrongful act, employment practice breach, trustee breach** or **dishonest act** means all respective **wrongful acts, employment practice breaches, trustee breaches** or **dishonest acts** 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.

6.11 Committee means:

- a) any auxiliary committee, foundation, trust (other than a superannuation trust), or fundraising committee; or
- b) any disciplinary, examining or research body or committee; or
- c) any sporting or social club committee;

established by the **association**.

6.12 Contract review means access to the DUAL Contract Review Service as described in the Contract Review Service Fact Sheet.

6.13 Credit arrangement means any credit agreement, extension of credit or hire purchase agreement, loan or transaction in the nature of a loan, lease or rental agreement, invoice, account or otherwise evidence of debt, payments made or withdrawals from any customer's account involving items which are not finally paid for any reason.

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

- a) the sudden, unexpected death or disability of any executive; or
- b) loss of a major customer, contract or credit facility; or

- c) **employee** workplace violence; or
- d) the first apparent unauthorised intrusion into any of the **association's** computer facilities; or
- e) a recall or boycott of any product; or
- f) a man-made disaster; or
- g) any criminal or fraud investigation.

Crisis event does not include an event that affects an **association's** industry in general, rather than an **association** specifically.

All **crisis events** that arise out of or are attributable to or are in any way connected with the same or related facts, matters or circumstances will be deemed a single **crisis event**.

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

6.16 **Cyber fraud** means any fraudulent, dishonest or intentionally unauthorised instruction transmitted by any person or entity without the knowledge or consent of the **insured** to a financial institution, which directly or indirectly causes or leads to the payment, delivery or transfer of money or securities owned by or in the care, custody or control of the **insured**.

6.17 **Data** means:

- a) information such as text, numbers, sounds and images that can be processed by any form of electronic device; or
- b) deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature, whether printed, written or reproduced by any method including computer records and electronically stored data, but does not mean bearer bonds or coupons, stamps, bank or currency notes, **money** or any negotiable instrument.

6.18 **Deductible** means the amounts specified in the **schedule**.

6.19 **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** covered by this **policy**.

Defence costs does not include:

- a) Wages, salaries, fees or costs of time or other remuneration of any **insured** or its **employees**; or
- b) Profit, costs or office overheads of any **association**; or
- c) Travel costs incurred by the **insured**; or
- d) Other administration costs; or
- e) Costs and expenses in defending a **claim** where no other **loss** is covered by the **policy**, unless Automatic Extension 3.38 (Occupational Health and Safety Defence Costs), or Automatic Extension 3.41 (Pollution Cover) is operative.

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

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

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

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 2.2(b) Crime.

For the purposes of Automatic Extension 3.33 (Triangulation Fraud) only, **direct financial loss** means loss to the **association** that is calculated with reference to:

- c) the cost price (net of profit) of any misappropriated goods; and
- d) the cost price (net of profit) of any misappropriated services.

6.21 **Director** means any natural person who was, now is or shall be appointed to the position of a director or secretary of the **association** or is appointed to the position of an alternate director **association** and is acting in that capacity.

6.22 **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.

6.23 **Discovery** and **discovered** 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**.

6.24 **Discovery period** means the period of time specified in Automatic Extension 3.6 during which time written notice may be given to **us** of any:

- a) **claim** which is first made against the **insured** for a **wrongful act** committed or allegedly committed; or
- b) **direct financial loss** which is first **discovered** and results from **dishonest acts** committed; prior to the end of the **insurance period**.

The **discovery period** is not available where Condition 8.3 (Alteration to Risk) applies.

6.25 **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 **association** 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.

6.26 **DUAL Whistleblower Hotline** means the use of a dedicated toll-free number to report suspected incidents and misconduct. The dedicated toll-free number will be provided when the **policy** is purchase, together with a fact sheet regarding how the **insured** can use the **DUAL Whistleblower Hotline**.

6.27 **Employee** means any person who is a past, present or prospective employee of the **insured** under a contract of service or apprenticeship on a full-time, part-time or casual basis, or a volunteer of the **insured**.

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

6.28 **Employee plan** means any plan, foundation or body established and maintained by the **insured** to provide **benefits**.

Employee plan does not include any sports or social club or organisation.

6.29 **Employment practice breach** means any **wrongful act** in relation to any of the following:

- a) employment-related actual or alleged unfair or wrongful dismissal from, termination or discharge of employment (either actual or constructive, including breach of an implied contract); or
- b) misrepresentation; or

- c) wrongful failure to employ or promote, or failure to grant tenure; or
- d) discrimination, harassment, retaliation (including lockouts), humiliation, defamation or invasion of privacy; or
- e) wrongful deprivation of career opportunity, wrongful demotion or negligent employee evaluation (including the provision of negative or defamatory statements in connection with an employee reference);

which relate solely to the **insured** and its past, present or prospective **employees**.

6.30 **Employment-related benefits** includes, but is not limited to:

- a) non-monetary benefits including but not limited to the allocation of an Association car, travel allowance, mobile or landline telephone, medical or life insurance expenses, education and training allowances, and equipment allowances; or
- b) stock, shares, stock options, share options or any entitlement or right under any **employee plan**; or
- c) participation in any stock, share option or share option plan, or participation in any **employee plan**; or
- d) severance or redundancy payments or entitlements; or
- e) any benefit, payment or entitlement of any kind in respect of paid or unpaid leave; or
- f) bonus or incentive payments, or any entitlement or right under a bonus or incentive plan (which, for the avoidance of doubt, does not include any payments, entitlement or right under any commission scheme); or
- 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; or
- h) any amount the **association** pays or is ordered to pay pursuant to any determination or settlement in respect of an allegedly unfair contract, notwithstanding that it acted in accordance with the terms of the employment contract.

6.31 **Extortion** means any threat made to any **director**, partner, trustee, **officer** or **employee** of the **association** to make any accusation against any person, to disclose something about any person or to cause serious damage to property or endanger the safety of any person with intent:

- a) to cause the person who is the victim of the threat is made to act in accordance with the will of the person making the threat; and
- b) to obtain any financial benefit or to cause loss to any other person.

For the avoidance of doubt **extortion** includes ransom demands in relation to the kidnapping or abduction of a person.

6.32 **Fund** means any single employer superannuation fund established for the benefit of **employees**.

Fund does not include any industry or master superannuation funds.

6.33 **Incident** means a matter in which the **insured's** reputation and skill in the conduct of the **business** is brought into question.

6.34 **Incentive notice** means a notice of intention to audit or review a Research & Development (R&D) Incentive concession claim lodged or intended to be lodged with a **tax authority**.

6.35 **Indemnity limit** means the amount specified in the **schedule**.

6.36 **Industrial instrument** means:

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

which regulates the terms and conditions of employment.

6.37 Insurance period means the period specified in the **schedule**.

6.38 Insured means each **insured person**, the **association** or both.

6.39 Insured person means:

- a) any past, present or prospective **director**, secretary, **officer**, **employee** of the **association**, or
- b) any **trustee**, or
- c) any natural person who by virtue of any applicable legislation or law is deemed to be a **director** or **officer** of the **association**.

Insured person does not include a receiver, receiver and manager, official manager, liquidator, administrator, trustee or other person administering a compromise or scheme of arrangement made between the **association** and any other person or persons; or any Association, organisation or other body corporate.

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

- a) requires, invites or directs them to attend before or produce documents to, or answer question by or attend interviews with, an **official body**; or
- b) identifies them as a target of the investigating **official body** for a hearing, examination, investigation or inquiry into the **association** or an **insured person** in their capacity as such.

Investigation does not include:

- i) a routine regulatory supervision, inspection or compliance review or hearing, investigation or examination or inquiry which focuses on an industry rather than the **insured**; or
- ii) a notice or formal process from the Australian Taxation Office or any State or Territory Revenue Office with respect to an actual, prospective or potential audit or review of any return legally required to be lodged.

6.41 Investigation costs means the reasonable fees, costs and expenses incurred by or on behalf of an **insured**, with **our** prior written consent (not to be unreasonably withheld), in preparing for, attending or producing documents to an **investigation**.

6.42 Loss means the total amount which a person or entity becomes legally obliged to pay in respect of a **claim**.

Loss includes, but is not limited to damages, judgments, settlements, and any award of costs.

However, **loss** does not include:

- a) fines or penalties (whether civil or criminal) imposed by law, punitive, aggravated, exemplary or multiple damages, or matters uninsurable under the laws governing this **policy**; or
- b) taxes or duties, or amounts, other than damages, calculated by reference to taxes and/or duties;
- c) back pay, or any compensation or damages calculated by reference to the back-payment of remuneration, where the **association** is ordered by the relevant court or tribunal to reinstate the claimant as an **employee**; or
- d) front pay, future loss, future damages, future compensation or future economic relief (in all cases, considered from the point in time that reinstatement was to occur) where the **association** is ordered by the relevant court or tribunal to reinstate the claimant as an **employee** but refuses or fails to do so for whatever reason; or
- e) any **employment-related benefits** or amounts calculated by reference to any **employment-related benefits**; or
- f) costs incurred by the **association** to modify any building or property, or to provide any service, in order to make such building or property, or make any service more accessible or accommodating to any disabled

person; or

- g) costs incurred by the **association** in connection with any educational, corrective, sensitivity or other programme, policy or seminar relating to any **employment practice breach**; or
- h) **benefits**; or
- i) amounts ordered to be paid pursuant to a determination by a Court, Commission or other tribunal in relation to an unfair contract; or
- j) **defence costs**.

For the purposes of Insuring Clause 2.2 (b) Crime, **loss** means only **direct financial loss**.

For the purposes of Insuring Clause 2.2 (g) Tax Audit Costs, **loss** means only **tax audit costs**.

- 6.43** **Lost data** means **data** that cannot be located following a diligent search, and **data** that has been destroyed or damaged.
- 6.44** **Money** means only local or foreign currency, coins, bank notes, cheques, traveller's cheques, registered cheques, postal orders, money orders and bullion.
- 6.45** **Officer** means any **association** secretary, and any **employee** who is concerned in, or takes part in, the management of the **association** regardless of the name that is given to their position and acting in that capacity.
- 6.46** **Official body** means any regulator, government or administrative body or agency empowered to investigate the affairs of the **association** 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.
- 6.47** **Other property** means any property of any kind other than **money** and **securities**.
- 6.48** **Outside entity** means any **associated association** or any other Association, corporation, partnership, joint venture or organisation which is named in the **proposal** or listed by endorsement to this **policy** or **schedule**.
- 6.49** **Phishing** means any fraudulent or dishonest conduct of any person or entity, known or unknown to the **insured**, involving a written or verbal communication (including but not limited to the sending of an email) to the **insured** or its agents, from an apparently or purportedly legitimate or trusted source (including but not limited to an apparent **employee, director, officer, supplier, vendor or customer of the insured**) and directly or indirectly causing or leading to the **insured**:
- a) revealing confidential information; or
 - b) transferring **money** or **securities**; or
 - c) entering a website (including a website which is fake or bogus) by using a link contained in or related to the communication; or
 - d) changing or altering bank account or payment details of any person or entity.
- 6.50** **Phreaking** means any fraudulent, dishonest, unauthorised or malicious use of the telephone system of the **insured** which results in unauthorised charges or bandwidth costs which the **insured** is legally liable to pay.
- 6.51** **Policy** means this Association Liability Policy Wording, the **schedule**, the **proposal** and any endorsement attaching to and forming part of the **policy** wording.
- 6.52** **Pollutants** means any substance, solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste materials. Waste materials include, but are not limited to, recycled, reconditioned or reclaimed materials.
- 6.53** **Premises** means the interior portion of any building owned or occupied by the **association** and in which it conducts its **business**.

- 6.54** **Proposal** means the **insured's proposal** made to **us** for this **policy**, together with any attachments and material referred to therein.
- 6.55** **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).
- 6.56** **Push-payment fraud** means from the impersonation of an **insured** by a **third party** to manipulate a client or customer of the **insured**, or another party the **insured** has a written contract with, to issue an instruction to a financial institution to debit, pay, deliver or transfer **money** or **securities** from an account maintained by the client, customer or other such party, to another account not maintained by the **insured**.
- 6.57** **Retroactive date** means the date specified in the **schedule** but no earlier than the commencement of the **insured's business** specified in the **schedule**.
- 6.58** **Risk review notice** means notice of a Risk Review or Comprehensive Risk Review from a **tax authority** relating to any return legally required to be and actually lodged with a **tax authority** by the **association** only.
- 6.59** **Schedule** means the latest Schedule to this **policy** issued by **us**.
- 6.60** **Securities** means any shares, preference shares, stocks, debentures, warrants, options, bonds, promissory notes or other equity or debt security.
- 6.61** **Social engineering fraud** means any fraudulent or dishonest impersonation by any means of an **insured**, **employee**, vendor, client or customer of the **insured** or a party with which the **insured** has a contract, by any person or entity which directly or indirectly causes or leads to an **insured** paying, delivering or transferring **money**, **securities** or tangible property from an account maintained by the **insured** to another person or entity, and includes any person or entity acting in collusion with an **insured** or **employee** provided that the **insured** or **employee** issuing the instruction was not a party to the collusion.
- 6.62** **State revenue notice** means a formal notice or process from a **tax authority** relating to any return legally required to be and actually lodged with a **tax authority** by the **association** only.
- 6.63** **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, except where the insurance of such penalties is legally prohibited
- Statutory liability** does not include:
- i) any amounts payable as compensation, damages, including any exemplary or punitive damages or the multiplied part; or
 - ii) the cost or payment of any compliance, remedial, reparation, restitution, or enforcement orders; or
 - iii) any tax (including any fine or penalty resulting from the failure to pay any tax), rate, duty, or interest thereon or any amount arising from such tax, rate, duty or interest; or
 - iv) any economic loss, consequential or otherwise; or
 - v) any other monetary payment, penalty or fine, the insurance of which is prohibited by the law where the **claim** is brought; or
 - vi) any penalty awarded outside the jurisdiction or laws of Australia or New Zealand; or
 - vii) any amount in connection with alleged breaches of the *Privacy Act 1988* (Cth)
- 6.64** **Subsidiary** means:
- a) any entity which, at the commencement of the **insurance period**, is a subsidiary of the **association** as defined in section 46 of the *Corporations Act 2001* (Cth) (or any equivalent amendments or re-enactments of that provision); or

- b) any entity which, at the commencement of the **insurance period**, by virtue of any applicable legislation or law, is deemed to be a **subsidiary** of the **association**; or
- c) any entity over which, at the commencement of the **insurance period**, the **association** is in a position to exercise effective direction or control by means of a direct or uninterrupted succession of **subsidiaries** as defined in clauses (a) or (b) above; or
- d) any entity with total gross assets in value of 30% or less of the total gross assets of the **association** which becomes a **subsidiary** of the **association** as defined in clauses (a), (b) or (c) above after the commencement of the **insurance period**; or
- e) any entity with total gross assets in value greater than 30% of the total gross assets of the **association** which becomes a **subsidiary** of the **insured** as defined in clauses (a), (b) or (c) above after the commencement of the **insurance period**, provided that within 60 days of the completion of the acquisition of such entity the **insured** provides **us** with full particulars of the entity and agrees to the imposition of any additional terms, including any additional premium, that **we** may require. If any part of this clause is not complied with the entity shall not be an **insured** under this **policy**.

6.65 Tax audit costs means any reasonable fees, charges or disbursements of an **accountant** or **registered tax agent** or any other consultant who is engaged by the **association** for work undertaken in response to a **tax audit notice**.

Tax audit costs does not include legal costs or expenses.

6.66 Tax audit notice means any notification from a **tax authority** relating to the **association's** liability to pay income tax, fringe benefits tax, capital gains tax, goods and services tax or employer superannuation contribution tax (including the amount of any such tax) only.

6.67 Tax authority means:

- a) the Australian Taxation Office; and
- b) if Optional Extension 4.1 is included in the **schedule**, any Australian State or Territory revenue department, or other body, agency or authority with jurisdiction over taxation.

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

- a) for the purpose of Automatic Extensions 3.38 (Occupational Health and Safety Costs), 3.39 (Official Investigations and Inquiries) and 3.41 (Pollution Cover) **territorial limits** shall mean anywhere in Australia; and
- b) for the purpose of Insuring Clause 2.2(b) Crime and Automatic Extension 3.43 (Statutory Liability (Fines and Penalties)) **territorial limits** shall mean anywhere in Australia and New Zealand.

6.69 Third party means any natural person who is not a **director**, partner, **officer**, trustee or **employee** of any **insured** and does not provide services under any contract of service, written or unwritten, with any **insured** and is not acting in collusion with any **employee**.

6.70 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 resultant appeal.

6.71 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**.

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

- 6.73** **Trustee breach** means any **wrongful act** committed or allegedly committed:
- a) by an **insured person** in their capacity as a **trustee**, or as a **director** or **officer** of the **association** acting as corporate **trustee**; or
 - b) by the **association** acting in its capacity as corporate **trustee**; or
 - c) by any other person for whom an **insured person** referred to in (a) or the **association** referred to in (b) is legally liable;
- but only in respect of the administration of a **fund**.
- 6.74** **Transaction** means any one of the following events:
- a) the **association** consolidates with or merges into or sells all or substantially all of its assets to any other person or entity or group of persons and/or entities acting in concert; or
 - b) any person or entity, whether individually or together with any other person or persons, entity or entities becomes entitled to exercise more than 50% of the rights to vote at general meetings of the **association** or control the appointment of **directors** who are able to exercise a majority of votes at Board meetings of the **association**.
- 6.75** **Triangulation fraud** means the use of a fraudulent payment method, including a stolen credit card, by any natural person other than an **insured** posing as a customer of the **association**, which results in a merchant charge-back from the bank or other financial institution that facilitated the fraudulent payment.
- 6.76** **We/us/our** means DUAL Australia Limited, ACN 107 553 257 as agent of the Underwriters named in the **schedule**.
- 6.77** **Wrongful act** means any breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, or other act committed or attempted by:
- a) any **insured person**, individually or otherwise, solely because of their status as a **director**, **officer** or **employee** in the course of his or her duties to the **association** or **outside entity**; or
 - b) the **association**.

Section 7: Claims Conditions

These Claims Conditions apply to all Sections of this **policy**.

7.1 Notification

The **association** and/or any **insured** must notify **us** in writing of any **claim** or **investigation**, or other relevant circumstance which may trigger this **policy** as soon as is reasonably practicable after they first become aware of such circumstance and within the **insurance period**.

The written notice should include, so far as is reasonably practicable and so far as the relevant **insured** is aware:

- a) the identity of the claimant if relevant; and
- b) an outline of the factual matrix; and
- c) an estimate of the likely quantum of any **loss**.
- d) Such notice to **us** must be given in writing, and delivered to:

[The National Claims Manager](#)
DUAL Australia Pty Limited
Level 6, 160 Sussex Street
Sydney NSW 2000
Australia
or by email to claims@dualaustralia.com.au

- a) Any written notice will be considered effective from the date such notice is first received by **us**.

7.2 Notification of Direct Financial Loss

The **association** shall, as a condition precedent to **our** obligations under this **policy**, give written notice to **us** of any **direct financial loss** as soon as practicable within the **insurance period**, or within the **discovery period** if applicable, but in any event not later than sixty (60) days after any **direct financial loss** is first **discovered**. The **association** may offer a comparison between the **association's** inventory records and actual physical counts of its inventory to prove the amount of **loss** only where the **association** 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 six (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**.

7.3 Co-operation

- a) The **insured** must, at the **insured's** own cost, frankly and honestly provide **us** with all information, documentation, evidence and assistance reasonably required by **us** and/or any lawyers, investigators or other professionals, who may be appointed by **us**.
- b) The **insured** must, at their own cost, do all things reasonably practicable to minimise any **loss**, including but not limited to the **insured's** liability in respect of any **claim**.
- c) Each **insured** must provide **us**, at their own cost, with all information, assistance and co-operation which **we** reasonably require, and in the event of a **claim** or potential **claim**, each **insured** agrees that they will not do anything that could potentially prejudice **our** position or **our** potential or actual rights of recovery.
- d) No **insured** may settle any **claim** or incur any **defence costs** or assume any contractual obligation or admit any liability with respect to any **claim** without **our** written consent.

7.4 Allocation

Our liability under this **policy** is limited to the proportion of **loss** and **defence costs**, which is a fair and equitable allocation as between:

- a) covered and uncovered parties; and/or
- b) covered and uncovered matters;

having regard to the relative legal and financial exposures attributed to the covered and uncovered matters and/or parties. Only **loss** and **defence costs** incurred by covered parties in relation to covered matters will be covered by this **policy**, and is subject always to the terms and conditions of this **policy**.

We will use **our** best endeavours to agree upon a fair and equitable 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.

If an allocation cannot be agreed then it will be determined by a suitably qualified Senior Counsel to be mutually agreed upon or, in default of agreement, to be nominated by the then President of the Bar Association of the jurisdiction in which the **policy** was underwritten.

The Senior Counsel will make a determination as an expert based on the relative legal and financial exposures attributable to covered and uncovered matters and/or parties. Submissions made to the Senior Counsel will be in writing.

Pending Senior Counsel's determination **we** will meet the **loss** and **defence costs** on an interim basis at the percentage at which **we** contend they should be fairly and equitably allocated. After the allocation has been determined or agreed, such allocation will be applied retrospectively. The parties agree to be bound by the Senior

Counsel's determination. The costs of any referral for determination to a Senior Counsel under this clause will be borne by **us**.

7.5 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 **indemnity limit**, 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.
- c) 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.
- d) **We** will not pay any amount or defend any **claim** after **our indemnity limit** has been exhausted.

7.6 Legal Representation and Settlement

Unless otherwise specified in a **policy**, it will be **our** duty and not the duty of the **insured** to defend **claims** and arrange for legal representation at **investigations**.

The **insured** must not admit liability, settle any **claim**, make any admission, offer any payment or assume any obligation in connection with any **claim** or investigation, incur any **defence costs** or other **loss** covered by this **policy**, without **our** prior written consent, which will not be unreasonably withheld or delayed.

We will not be liable for any settlement, **defence costs** or other form of **loss**, admission, offer, payment or assumed obligation to which **we** have not given **our** prior written consent.

We will have the right and will be given the opportunity to associate with each **insured** and participate in the defence of any **claim** or **investigation** including the negotiation and settlement of a covered **claim**.

With respect to any **claim** or **investigation** involving more than one **insured**, the **insureds** agree that **we** have the right to require such **insureds** to retain separate legal representation.

7.7 Order of Payments

If the payment of **loss** or **defence costs** in respect of a covered **claim** under a **policy** where such **loss** in the aggregate exceeds the remaining available **indemnity limit**, **we** will:

- a) first pay such **loss** for which the **association** does not indemnify an **insured person**; then
- b) to the extent of any remaining amount of the **indemnity limit** available after payment under paragraph a) above, pay such **loss** for which coverage is provided under any other provision of this **policy**.

We will otherwise pay **loss** covered under this **policy** in the order in which such **loss** is presented to **us** for payment.

Section 8: General Conditions

8.1 Subrogation and Recoveries

- a) Where **we** have paid any amount of **loss** and **defence costs** under the **policy**, **we** become entitled to assume any rights available to the **insured** against any party to the extent of **our** payment. On **our** request, the **insured** will assign all rights of recovery against any person or entity, but only to the extent that payment has been made under the **policy**.

- b) The **insured** must, at its own cost, assist **us** and provide information as **we** may reasonably require, to exercise **our** rights of recovery and/or 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 2.2(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**.
- e) Where a recovery is made, the proceeds of such a recovery will be applied as follows:
 - i) firstly, to the satisfaction of all costs incurred in effecting the recovery; and
 - ii) secondly, to the **insured** for the amount of **loss** or **defence costs** in excess of the **indemnity limit** specified in the **schedule** which is also in excess of any excess insurance purchased over this **policy**; and
 - iii) thirdly, to **us** and any excess insurers amounts paid under the **policy** and such excess policies; and
 - iv) finally, to the **insured** for the amount paid in respect of the **deductible**.

8.2 Goods and Services Tax

We will charge an appropriate amount to the **association** on account of GST.

It is the duty of the **association** to inform **us** whether or not it is entitled to an Input Tax Credit in relation to any amounts **claimed** under this **policy**.

Our liability to pay **loss** under this **policy** will be calculated having regard the **association** or any other **insured's** entitlement to claim an Input Tax Credit.

No payment will be made to the **association**, for any GST liability on account of a covered **claim** or **investigation**.

GST, Goods & Services Tax and Input Tax Credit have the meanings attributed to them under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

8.3 Alteration to Risk

If during the **insurance period** a **transaction** occurs then the cover under the **policy** will only apply to any conduct which occurred prior to the effective date of the **transaction**.

If, during the **insurance period**, the **association** decides to make a public offering of its **securities** in any jurisdiction, the **association** will provide **us** with any prospectus or offering statement for **our** review and assessment. **We** will be entitled to amend the terms and conditions of any **policy** and/or charge an additional premium reflecting any potential increase in exposure, which **we** deem reasonable.

The **insured** will give **us** written notice of the above listed events as soon as reasonably practicable.

8.4 Assignment

The **insured** must not assign the **policy** or any rights under the **policy** without **our** prior written consent by way of endorsement to the **policy**.

8.5 Cancellation

The **insured** may cancel any **policy** at any time by providing **us** with a minimum of 14 days written notice.

We may only cancel the **policy** for non-payment of premium and must do so in accordance with the provisions of the *Insurance Contracts Act 1984* (Cth).

Provided that there have been no **claims** or notifications made on or under the **policy**, **we** agree to allow a refund

of premium calculated on a pro-rata basis, provided that **we** will always retain a minimum of 25% of the full annual premium.

8.6 Several Liability of Underwriters

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

8.7 Confidentiality

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

- a) the existence of this **policy**; or
- b) the nature of the indemnity provided; or
- c) the **indemnity limit**; or
- d) the amount of premium paid.

However, the **insured** may disclose the above matters to the extent that:

- i) the **insured** is required to do so by law; or
- ii) **we** consent to the disclosure in writing, or
- iii) **we** provide a Certificate of Currency which can be provided to third parties.
- iv) it is necessary to disclose to the **insured's** professional advisers including accountants, auditors, legal advisers and insurance brokers.

8.8 Governing Law and Jurisdiction

This **policy** is governed by the laws of the Commonwealth of Australia and the State or Territory where the **policy** was issued. Any disputes relating to 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.

8.9 Indemnity Limit

- a) Subject to any Extension of coverage which states otherwise, **our** total liability under the **policy** in respect of any one **claim** or **investigation**, and in the aggregate for all **claims** and **investigations** for all **insureds**, will not exceed the **indemnity limit** inclusive of all **loss**.
- b) The **schedule** will indicate the **indemnity limit** applicable to each **policy**. If more than one **policy** has been purchased, the **schedule** will also indicate the aggregate **indemnity limit** for all policies which have been purchased by the **company**.
- c) **We** will have no liability in excess of the sub-limits specified in the **schedule** in the aggregate for the applicable Extension of cover, irrespective of the number of **policy** sections, which respond to the **claim** or **investigation**. In such circumstances, **we** will apply the higher of the sub-limits or **indemnity limit** available. Where an Insuring Clause is subject to a sub-limit and an Extension is specified as applying to that Insuring Clause, the sub-limit listed in the **schedule** for that Extension will be part of and not in addition to the sub-limit applying to the specified Insuring Clause.
- d) For the purposes of determining the **indemnity limit** available for each **claim** covered by the **policy**, all **claims** which arise out of or are attributable to or are in any way connected with a single **civil liability**, wrongful act or **employment practice breach** shall constitute a single **claim** for the purpose of this **policy**. A single **civil liability**, **wrongful act** or **employment practice breach** means all respective civil liabilities, **wrongful acts** or **employment practice breaches** which are related or form part of a series of related

conduct/omission or form part of a course of conduct/omission that is not entirely unconnected, different and/or unrelated.

8.10 Deductible

- a) **Our** liability under this **policy** for **loss** will only apply to that part of each **loss** and **defence costs** which is in excess of the **deductible** specified in the **schedule**. Such **deductible** will be borne by the **insured**, except where otherwise provided.
- b) Unless otherwise expressed in the **schedule**, all **deductibles** are inclusive of **defence costs** and/or **investigation costs** and/or **loss** to the amount of the **deductible**.
- c) Except as otherwise stated in the **policy**, costs and expenses incurred by **us** in determining whether **we** are liable to indemnify the **insured** under the **policy** will not erode the **indemnity limit** and will be met by **us**.
- d) For the purposes of determining the **deductible** applicable to any **claim** covered by the **policy**, all **claims** which arise out of or are attributable to or are in any way connected with a single **civil liability, wrongful act** or **employment practice breach** shall constitute a single **claim** for the purpose of this **policy**. A single **civil liability, wrongful act** or **employment practice breach** means all respective civil liabilities, wrongful acts or **employment practice breaches** which are related or form part of a series of related conduct/omission or form part of a course of conduct/omission that is not entirely unconnected, different and/or unrelated.

8.11 Severability, Non-Imputation and Non-Avoidance

No state of mind or knowledge possessed by any one **insured person** will be imputed to any other **insured person** for the purpose of determining whether any provision in this **policy** applies. However, any state of mind or knowledge possessed by any past or present chairman of the board, chief executive officer, chief operating officer or chief financial officer of the **association** will be imputed to the **association**.

We agree not to rescind or avoid this **policy** in whole or in part, for any reason.

We waive all rights under section 28(3) of the *Insurance Contracts Act 1984* (Cth) for non-fraudulent non-disclosure or non-fraudulent misrepresentation by an **insured**.

If **we** are entitled to reduce **our** liability pursuant to section 28(3) of the *Insurance Contracts Act 1984* (Cth) as a result of fraudulent non-disclosure or fraudulent misrepresentation, **we** will only reduce **our** liability under the **policy** in respect of such **insureds** who were involved in or were aware of the fraudulent non-disclosure or fraudulent misrepresentation.

8.12 Preservation of Right to Indemnity

In the event and to the extent that the **association** has not indemnified an **insured person** but is legally permitted or required to do so in respect of a **claim** or **investigation**, but for whatever reason, refuses to do so, then **we** will pay on behalf of the **insured person** any **loss** arising from the **claim** or **Investigation** within the **deductible** and, the applicable **deductible** will be paid by the **association** to **us**.

8.13 Other Insurance

This **policy** does not apply if any **claim** under this **policy** is covered in whole or in part by another policy or would but for the existence of this **policy** be covered by another policy, except to the extent that the amount of any liability exceeds the amount payable under such other policy or policies, provided always that **we** shall not be liable to pay any amount in excess of any relevant amount specified in the **schedule**.

If **loss** or any other amount insured by the **policy** is also potentially insured under any other insurance policy or policies, then the **insured** must advise **us** within sixty days of making a claim under this **policy** and provide **us** with a copy of such other policy or policies.

8.14 Currency

Any reference to premium, **indemnity limit, deductibles, loss, defence costs, costs** or any other amounts payable by **us** under this **policy** are expressed and are payable in Australian Dollars. Where any payment is to be made into an admitted foreign jurisdiction, such payment is to be made and denominated in Australian Dollars at the cash

rate for the purchase of Australian Dollars set by the Reserve Bank of Australia as at 4.00pm on the date which the foreign payment becomes due.

8.15 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; or
- 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; or
- c) the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of data furnished by the **association** in order to reproduce books of account and other records; or
- d) the cost of labour for the actual transcription or copying of electronic data furnished by the **association** in order to reproduce such electronic data.

8.16 Service of Legal Notices

The Underwriters hereon agree that any Summons, Writ or other like legal Notice or Process, which is 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 1603, Level 16

1 Macquarie Place

Sydney, NSW 2000

Australia

Telephone Number: (02) 8298 0700

Facsimile Number: (02) 8298 0788

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.

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

8.17 Interpretation

Words and phrases appearing in bold text have a defined meaning in the **policy** or policies purchased by the **insured** and shown as having been purchased in the **schedule**.

In this **policy**:

- a) the singular includes the plural and the masculine includes the feminine;
- b) the headings are for descriptive purposes only; and
- c) in the event that any portion of the **policy** is found to be invalid or unenforceable, the remainder will remain in full force and effect.

All **policy** documents will be read together as one contract of insurance.