

**DUAL**  
A U S T R A L I A

# Wording

## Directors And Officers Liability Insurance



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# DUAL Australia Directors & Officers Liability Insurance

## Policy Wording

### Section 1: PREAMBLE

In consideration of the premium, WE shall provide the cover described in the POLICY, subject to its terms and conditions.

### Section 2: INSURING CLAUSES

#### 2.1 Cover for YOU

WE agree to pay on behalf of each INSURED PERSON all LOSS on account of any CLAIM first made against such INSURED PERSON and reported to US during the INSURANCE PERIOD in respect of any WRONGFUL ACT for which the COMPANY does not indemnify the INSURED PERSON.

#### 2.2 Cover for the COMPANY

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

- a. D&O / Company Reimbursement - on account of any CLAIM first made against any INSURED PERSON and reported to US during the INSURANCE PERIOD in respect of a WRONGFUL ACT for which the COMPANY has indemnified the INSURED PERSON;
- b. Employment Practices - on account of any CLAIM made against the COMPANY for an EMPLOYMENT PRACTICE BREACH, up to the sub-limit shown in Item 6 of the Schedule in respect of all such CLAIMS (which sub-limit shall be part of and not in addition to the INDEMNITY LIMIT);
- c. Securities Entity Cover – on account of any SECURITIES CLAIM first made against the COMPANY and reported to US during the INSURANCE PERIOD in respect of a WRONGFUL ACT;
- d. Taxation Investigation – where the COMPANY has received a TAX AUDIT NOTICE and has reported it to US during the INSURANCE PERIOD, WE will provide cover to the COMPANY for necessary and reasonable TAX AUDIT COSTS incurred by the COMPANY up to the completion of the audit or investigation.

#### 2.3 Advancement of Defence Costs

WE agree to advance DEFENCE COSTS and other LOSS reasonably incurred with OUR prior written consent before final disposition of a CLAIM.

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

For the purpose of this clause and the application of the terms, conditions and exclusions of the POLICY to INVESTIGATIONS cover in Extension 3.1 of the POLICY, CLAIM also includes an INVESTIGATION.

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**Section 3: EXTENSIONS**

Each Extension is automatically included under the POLICY unless specifically stated otherwise in the Schedule. Extensions are subject to the Insuring Clauses and all other POLICY terms, conditions and exclusions.

**3.1 Official Investigations and Inquiries**

WE agree to pay INVESTIGATION COSTS incurred with OUR prior written consent in respect of any examination of an INSURED PERSON at any INVESTIGATION provided that notice of the INVESTIGATION is first received by the INSURED and notified to US during the INSURANCE PERIOD.

**3.2 Reinstatement of the Limit of Liability for POLICYHOLDER'S Directors**

In the event of a reduction (in whole or in part) of the INDEMNITY LIMIT due to payment by US of LOSS under Insuring Clauses 2.1 or 2.2(a) only, it is agreed that the INDEMNITY LIMIT shall be reinstated by the amount by which the INDEMNITY LIMIT is reduced, provided in all events that:

- a. the total amount payable by US under this POLICY shall not exceed twice the INDEMNITY LIMIT; and
- b. if the POLICYHOLDER has in effect any policy or policies providing coverage in excess of this POLICY, then the reinstated amount of the INDEMNITY LIMIT as allowed for by this clause will take effect after the total exhaustion of any amounts payable under any such other policies but before any similar reinstatement provisions as may be contained in any such other policies; and
- c. this provision shall only be available to YOU to the extent that YOU are or were at the time of the WRONGFUL ACT a director of the POLICYHOLDER.

**3.3 INSURED PERSON Tax Liability**

WE shall pay as LOSS an INSURED PERSON'S personal liability for unpaid taxes of the COMPANY where the COMPANY has become insolvent, except to the extent that such liability arises from the willful intent of the INSURED PERSON to breach any statutory duty of legislation governing the payment of taxes.

**3.4 Retirement Cover**

If the COMPANY does not renew this POLICY or replace it with any other insurance providing directors and officers or management liability coverage, or one of the DISCOVERY PERIOD options detailed in Extension 3.5 of this POLICY has not been purchased, then any INSURED PERSON 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.

**3.5 Discovery Period**

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

- a. 60 days, granted automatically with no additional premium payable; or
- b. 12 months, if the INSURED requests such period in writing within 30 days after the end of the INSURANCE PERIOD and tenders an additional premium of 75% of the annual premium level in effect immediately prior to the end of the INSURANCE PERIOD within 30 days after the end of the INSURANCE PERIOD; or

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- c. 84 months, if a TRANSACTION takes place and the INSURED requests such period in writing within 30 days following the end of the INSURANCE PERIOD, on such terms and conditions, if any, and for such additional premium as WE may reasonably decide.

This Extension is not available if this POLICY is:

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

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

### **3.6 Continuous Cover**

Notwithstanding the Prior Known Facts Exclusion Clause 5.1 (a) and (b), WE agree to provide cover in respect of any CLAIM or INVESTIGATION where the INSURED:

- a. first became aware, prior to the INSURANCE PERIOD and after the CONTINUITY DATE that a CLAIM or INVESTIGATION might or could arise from facts or circumstances known to the INSURED; and
- b. had not notified any Insurer of such facts or circumstances, under any policy existing prior to the INSURANCE PERIOD.

Provided that WE have the discretion to apply either the terms and conditions of the Policy in place 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.

### **3.7 Shareholder Costs**

This POLICY is extended to cover as LOSS any costs, charges and expenses incurred by any shareholder of the COMPANY in pursuing a CLAIM against any INSURED PERSON on behalf of the COMPANY in the event and to the extent that the COMPANY is legally liable to pay such costs, charges and expenses pursuant to a court order.

### **3.8 Crisis Costs**

This POLICY is extended to cover CRISIS LOSS. The DEDUCTIBLE does not apply to this Extension. The total amount payable under this Extension is 10% of the INDEMNITY LIMIT in the aggregate for all claims and is part of, not in addition to the INDEMNITY LIMIT.

## **Section 4: DEFINITIONS**

In the POLICY:

- 4.1 ACCOUNTANT or REGISTERED TAX AGENT means a person who is not an INSURED and is recognised by the Institute of Chartered Accountants or the Australian Society of Accountants, or any other person registered by the Australian Taxation Office as a tax agent, engaged by the COMPANY.
- 4.2 ASSOCIATED COMPANY means any company named in the PROPOSAL and in which the COMPANY owns on or before the inception of the INSURANCE PERIOD less than 50% of the issued and outstanding voting shares, either directly or indirectly through one or more of its SUBSIDIARIES.
- 4.3 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.

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

**4.5** CLAIM means:

- a. a civil proceeding commenced by the service of a complaint, summons, statement of claim, or similar pleading;
- b. any suit, proceeding or written demand;
- c. any formal administrative or regulatory proceeding including any arbitration, mediation, conciliation or alternative dispute resolution proceeding;

alleging a WRONGFUL ACT.

All CLAIMS which arise out of or are attributable to or are in any way connected with a single WRONGFUL ACT shall constitute a single CLAIM for the purposes of this POLICY. A single WRONGFUL ACT means all respective WRONGFUL 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.

**4.6** COMPANY means:

- a. the POLICYHOLDER; and
- b. any SUBSIDIARY thereof.

**4.7** CONTINUITY DATE means the date specified in Item 4 of the Schedule.

**4.8** CRISIS EVENT means any of the following unforeseen events where, in the reasonable opinion of the chief executive officer (or equivalent) of the POLICYHOLDER, the event has the potential to cause an imminent decrease of greater than 25% of the total consolidated annual revenues of the POLICYHOLDER if left unmanaged:

- a. the sudden, unexpected death or disability of any Executive;
- b. loss of a major customer or contract;
- c. EMPLOYEE workplace violence;
- d. the first apparent unauthorized intrusion into any COMPANY'S computer facilities;
- e. a recall or boycott of any product;
- f. a man-made disaster;
- g. any criminal or fraud investigation in respect of an INSURED.

CRISIS EVENT does not include an event that affects a COMPANY'S industry in general rather than a COMPANY specifically.

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

**4.10** DEDUCTIBLE means the amounts specified in Item 7 of the Schedule in respect of each Insuring Clause.

**4.11** DEFENCE COSTS means that part of LOSS consisting of reasonable costs, charges, fees (including but not limited to legal counsels' fees) and expenses reasonably incurred by YOU or the COMPANY, as applicable under the relevant insuring clause, with OUR prior written consent in investigating or defending a CLAIM but does not include regular or overtime wages,

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salaries or fees of the directors, officers or employees of the COMPANY incurred in attending, defending, investigating or monitoring CLAIMS.

Notwithstanding any provision in the POLICY to the contrary, if it is not possible for the INSURED to obtain OUR consent prior to incurring DEFENCE COSTS, WE will waive prior consent so long as OUR consent is obtained within 30 days of the first of such DEFENCE COSTS being incurred. If prior consent is waived under this clause, the total amount payable by US under it is 10% of the INDEMNITY LIMIT in the aggregate for all CLAIMS and all INSUREDS and is part of, not in addition to the INDEMNITY LIMIT.

**4.12** DEPRIVATION OF ASSETS EXPENSES means the payment of the following services directly to the provider of such services in the event of an interim or interlocutory order confiscating, controlling, suspending or freezing rights of ownership of real property or personal assets of an INSURED PERSON or creating a charge over real property or personal assets of the INSURED PERSON during the INSURANCE PERIOD:

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

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

**4.13** DISCOVERY PERIOD means the period of time specified in Extension 3.5 during which time written notice may be given to US of any CLAIM which is first made against the INSURED for a WRONGFUL ACT committed or allegedly committed prior to the end of the INSURANCE PERIOD or TRANSACTION.

**4.14** EMPLOYEE means any natural person who is a past, present or prospective employee of the COMPANY including any full-time, part-time or casual employee.

**4.15** EMPLOYMENT PRACTICE BREACH means any of the following employment-related matters:

- a. actual or alleged unfair or wrongful dismissal;
- b. termination or discharge of employment (either actual or constructive, including breach of an implied contract);
- c. wrongful failure to employ or promote;
- d. wrongful deprivation of career opportunity or demotion;
- e. negligent employee evaluation (including the provision of negative or defamatory statements in connection with an employee reference);
- f. failure to grant tenure;
- g. misrepresentation, discrimination, harassment, retaliation (including lockouts), humiliation, defamation or invasion of privacy, which relate solely to the COMPANY and its past, present or prospective EMPLOYEES;
- h. misrepresentation, discrimination, harassment, retaliation (including lockouts), humiliation, defamation or invasion of privacy, which relate solely to the OUTSIDE ENTITY and its past, present or prospective employees.

**4.16** EMPLOYMENT-RELATED BENEFITS includes but is not limited to:

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- a. non-monetary benefits including but not limited to the allocation of a company car, travel allowance, mobile or landline telephone, medical or life insurance expenses, education and training allowances, and equipment allowances;
- b. shares, share options or any entitlement or right under any employee plan of any description;
- c. participation in any share option or share option plan, or participation in any employee plan of any description;
- d. severance or redundancy payments or entitlements;
- e. any benefit, payment or entitlement of any kind in respect of paid or unpaid leave;
- f. bonus or incentive payments, or any entitlement or right under a bonus or incentive plan (which, for the avoidance of doubt, does not include any payments, entitlement or right under any commission scheme);
- g. payments or contributions in respect of any provident, benefit, superannuation, pension or retirement fund, or any other account, fund, scheme or plan intended to provide benefits, in whole or in part, at retirement or a particular age, or on the happening of a particular event.

**4.17** EXTRADITION COSTS means:

- a. any reasonable fees, costs and expenses (except remuneration of any INSURED, costs of their time or overheads of the COMPANY) incurred by or on behalf of an INSURED PERSON 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, during the INSURANCE PERIOD, with OUR prior written consent (which will not be unreasonably withheld or delayed).

**4.18** FUND means any single employer superannuation fund established for the benefit of EMPLOYEES. FUND does not include any self managed, industry or master superannuation funds.

**4.19** INDEMNITY LIMIT means the amounts specified in Item 5 of the Schedule.

**4.20** INDUSTRIAL INSTRUMENT means:

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

which regulates the terms and conditions of employment.

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

**4.22** INSURED means each INSURED PERSON, the COMPANY or both.

**4.23** INSURED PERSON means:

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- a. any past, present or future director, shadow director, secretary, OFFICER, EMPLOYEE participating in a management function, of the COMPANY or any natural person TRUSTEE, or any natural person who by virtue of any applicable legislation or law is deemed to be a director or officer of the COMPANY;
- b. the estate, heirs, legal representatives or assigns of any deceased or mentally incompetent, bankrupt or insolvent INSURED PERSON in (a) above, but only in respect of LOSS arising from a WRONGFUL ACT committed by such INSURED PERSON;
- c. a legal or defacto spouse, domestic partner or companion of an INSURED PERSON in (a) above, but only in respect of LOSS arising from a WRONGFUL ACT committed by such INSURED PERSON;
- d. any natural person who was, is or may become, at the request of the COMPANY, a director, officer, trustee, governor, general partner or equivalent position, in any OUTSIDE ENTITY.

INSURED PERSON does not include:

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

**4.24** INVESTIGATION means a formal criminal, administrative or regulatory investigation, examination, hearing or inquiry, into the COMPANY, or an INSURED PERSON in their capacity as such, commenced by an OFFICIAL BODY during the INSURANCE PERIOD.

**4.25** INVESTIGATION COSTS means reasonable fees, costs and expenses (except remuneration of any INSURED, cost of their time or costs or overheads of any COMPANY) incurred with OUR prior written consent (which will not be unreasonably withheld or delayed) by or on behalf of an INSURED PERSON in:

- a. preparing for, attending or producing documents to an INVESTIGATION; or
- b. responding to a raid on, or on-site visit to, any COMPANY by an OFFICIAL BODY that involves the production, review copying or confiscation of files or interviews of any INSURED.

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

**4.27** LOSS means the total amount which a person or entity becomes legally obliged to pay on account of a CLAIM. LOSS includes, but is not limited to:

- a. damages, judgments, settlements and costs;
- b. DEFENCE COSTS;
- c. EXTRADITION COSTS;
- d. PUBLIC RELATIONS EXPENSES;
- e. BAIL BOND and CIVIL BOND EXPENSES;
- f. DEPRIVATION OF ASSETS EXPENSES;
- g. PROSECUTION COSTS;
- h. INVESTIGATION COSTS for the purpose of Extension 3.1;

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- i. Court attendance costs of any INSURED PERSON who is legally required to attend Court as a witness in a CLAIM covered by the POLICY, to an amount not exceeding \$500 per day for all INSURED PERSONS. No DEDUCTIBLE applies;
- j. Pecuniary penalties awarded against an INSURED PERSON in and under the laws of the jurisdictions of Australia and New Zealand, provided that WE are not legally prohibited from paying the pecuniary penalties;
- k. Legally insurable civil fines and penalties imposed on an INSURED PERSON pursuant to S78ff (c) or S1 78dd – 2(g) (2) of the Foreign Corrupt Practices Act (US), the Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999 (Cth), the Bribery Act 2010 (UK), 105D of the New Zealand Crimes Act 1961 and the Criminal Code Act 1995 (Cth) or any similar legislation in any other jurisdiction. The total amount payable by US is \$1,000,000 in the aggregate for all CLAIMS and all INSURED PERSONS and is part of, not in addition to the INDEMNITY LIMIT.

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

For the purpose of Extension 3.8, LOSS means only CRISIS LOSS.

However, LOSS does not include:

- i. fines or penalties (whether civil or criminal) imposed by law (except as provided under 4.27(j) and 4.27(k) above, or matters uninsurable under the laws governing this POLICY;
- ii. taxes (Except those payable under Extension 3.3 INSURED PERSON Tax Liability);
- iii. back pay, or any compensation or damages calculated by reference to the back-payment of remuneration, where the COMPANY is ordered by the relevant court or tribunal to reinstate the claimant as an EMPLOYEE;
- iv. front pay, future loss, future damages, future compensation or future economic relief (in all cases, considered from the point in time that reinstatement was to occur) where the COMPANY is ordered by the relevant court or tribunal to reinstate the claimant as an EMPLOYEE but refuses or fails to do so for whatever reason.

- 4.28** NOT-FOR-PROFIT ENTITY means any entity which has a written constitution which prohibits the distribution of profits or assets amongst its members during the lifetime of the entity or upon its winding up.
- 4.29** OFFICER means any COMPANY secretary, and any EMPLOYEE who is concerned in, or takes part in, the management of the COMPANY regardless of the name that is given to their position.
- 4.30** OFFICIAL BODY means any regulator, government or administrative body or agency, official trade body or self regulatory body legally empowered to investigate the affairs of the COMPANY or OUTSIDE ENTITY or the conduct of an INSURED PERSON in such capacity.
- 4.31** OFFICIAL DETENTION means the confinement of an INSURED PERSON in secure custodial premises, operated by or on behalf of a government or judicial agency in connection with a CLAIM against such INSURED PERSON and either without charge or without a judicial finding of culpability or liability in that CLAIM.
- 4.32** OUTSIDE ENTITY means any ASSOCIATED COMPANY named in the PROPOSAL or any NOT-FOR-PROFIT ENTITY.
- 4.33** POLICY means this policy wording, the Schedule, the PROPOSAL and any endorsement attaching to and forming part of the POLICY either at commencement or during the INSURANCE PERIOD.
- 4.34** POLICYHOLDER means the entity specified in Item 2 of the schedule

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**4.35** PROPOSAL means the INSURED's written proposal specified in Item 11 of the Schedule made to US together with any attachments.

**4.36** PROSECUTION COSTS means any reasonable fees, costs and expenses incurred by an INSURED PERSON with OUR prior written consent (which will not be unreasonably withheld or delayed), to bring legal proceedings:

- a. to obtain the discharge or revocation of:
  - i. a temporary or permanent disqualification of such INSURED PERSON from managing a corporation (including as a senior manager or responsible officer) during the INSURANCE PERIOD; or
  - ii. a judicial order entered during the INSURANCE PERIOD imposing:
    - 1. confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such INSURED PERSON;
    - 2. a charge over real property or personal assets of such INSURED PERSON;
    - 3. restriction of such INSURED PERSON'S liberty to a specified domestic residence or OFFICIAL DETENTION; or
    - 4. deportation of an INSURED PERSON following revocation of otherwise current and valid immigration status for any reason other than such INSURED PERSON'S conviction of a crime.
- b. Where such INSURED PERSON alleges an OFFICIAL BODY is acting or proposes to act beyond power or in breach of the rules of natural justice during the course of, or for the purposes of, any INVESTIGATION or administrative or regulatory proceeding conducted by the OFFICIAL BODY.

The total amount payable under this extension is \$1,000,000 in the aggregate for all such costs and is part of, not in addition to the INDEMNITY LIMIT.

**4.37** PUBLIC RELATIONS EXPENSE means the reasonable fees, costs and expenses of a public relations firm or consultant, crisis management firm or law firm retained by the applicable INSURED PERSON with our prior written consent (which shall not be unreasonably withheld or delayed) to prevent or limit adverse effects or negative publicity in respect of:

- a. a CLAIM or INVESTIGATION; or
- b. CRISIS EVENT; or

by disseminating findings which exonerate the INSURED from fault, liability or culpability in connection with a CLAIM or INVESTIGATION that is covered under this POLICY, provided such findings are made by a court with jurisdiction to finally dispose of such CLAIM or INVESTIGATION (including the outcome of any appeal in relation to such).

**4.38** SECURITIES means any bond, debenture, note, share, preference share, warrant, option, promissory note or other equity, debt or hybrid security which is issued or given by the COMPANY.

**4.39** SECURITIES CLAIM means any:

- a. written demand for monetary damages;
- b. civil proceeding;
- c. arbitration, mediation or alternative dispute resolution proceeding;
- d. criminal proceeding;

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- e. administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document;

in connection with the purchase or sale of, or offer to purchase or sell, SECURITIES.

**4.40** SUBSIDIARY means:

- a. any entity in which the COMPANY owns or controls, directly or indirectly, in any combination, equal to or greater than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors; or any entity which is deemed to be the COMPANY's subsidiary under any applicable legislation, law or International Accounting Standard. SUBSIDIARY shall include any incorporated joint venture over which the INSURED exercises effective management and control.
- b. any company that ceases to be a SUBSIDIARY during the INSURANCE PERIOD or prior to commencement of the INSURANCE PERIOD, provided that the cover provided shall only apply in respect of a WRONGFUL ACT that occurred whilst the entity was a SUBSIDIARY of the COMPANY.
- c. any SUBSIDIARY which is created or acquired by the COMPANY during the INSURANCE PERIOD, provided that the SUBSIDIARY:
  - i. has total gross assets which are less than 25% of the total gross assets of the COMPANY; or
  - ii. has gross annual turnover of less than 25% of the total gross annual turnover of the COMPANY; or
  - iii. has total gross assets which are less than 25% of the total gross assets of the COMPANY in the USA or Canada.

The cover provided shall only apply in respect of a WRONGFUL ACT occurring after the date of creation or acquisition.

**4.41** 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 COMPANY for work undertaken in response to a TAX AUDIT NOTICE.

**4.42** TAX AUDIT NOTICE means any notification from the Australian Taxation Office relating to the COMPANY's liability to pay income tax, fringe benefits tax, capital gains tax, A New Tax System (Goods and Services) Tax, superannuation payments tax, termination payments tax or sales tax (including the amount of any such tax) only.

**4.43** TRUSTEE means any INSURED PERSON or the COMPANY if validly appointed to act, and while acting in the capacity, as a trustee of a FUND.

**4.44** TRUSTEE BREACH means any WRONGFUL ACT committed or allegedly committed:

- a. by an INSURED PERSON in their capacity as a TRUSTEE, or as a director or OFFICER of the COMPANY acting as corporate TRUSTEE;
- b. by any other person for which an INSURED PERSON referred to in (a) is legally liable;

but only in respect of the administration of a FUND.

**4.45** TRANSACTION means any one of the following events:

- a. the POLICYHOLDER 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

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general meetings of the POLICYHOLDER or control the appointment of directors who are able to exercise a majority of votes at Board meetings of the POLICYHOLDER; or

c. the insolvency, liquidation, administration or receivership of the POLICYHOLDER.

**4.46** WE/US/OUR means DUAL Australia Pty Limited, ACN 107 553 257 as agent of the Underwriters named in the Schedule Item 12 under the heading "Underwriters".

**4.47** WRONGFUL ACT shall mean any breach of duty, breach of trust, breach of fiduciary duty, neglect, error, omission, misstatement, misleading statement, or other act committed or attempted by:

a. for the purposes of Insuring Clauses 2.1 and 2.2(a), any INSURED PERSON, individually or otherwise, solely because of their status as a director, OFFICER or employee in the course of his or her duties to the COMPANY or OUTSIDE ENTITY. It shall include an EMPLOYMENT PRACTICE BREACH and a TRUSTEE BREACH; or

b. for the purposes of Insuring Clause 2.2(b) only, a COMPANY, which is an EMPLOYMENT PRACTICE BREACH;

c. for the purposes of Insuring Clause 2.2(c) only, a COMPANY, in connection with the purchase or sale of, or offer to purchase or sell, SECURITIES.

**4.48** YOU/YOUR means any INSURED PERSON(S).

## **Section 5: EXCLUSIONS**

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

### **5.1 Prior Known Facts**

any CLAIM or INVESTIGATION arising out of or in any way connected with any:

a. actual or alleged facts which were known to the COMPANY or any INSURED PERSON prior to the commencement of the INSURANCE PERIOD and which the COMPANY or the INSURED PERSON knew or ought reasonably to have known might give rise to a CLAIM or INVESTIGATION;

b. actual or alleged facts which could have been, or which can be notified under any policy existing prior to the commencement of the INSURANCE PERIOD;

c. pending or prior LITIGATION, or LITIGATION derived from the same or essentially the same facts as are or might be alleged in such pending or prior LITIGATION, as at the commencement of the INSURANCE PERIOD;

d. any fact or matter referred to in the PROPOSAL, no matter how it is recorded or expressed therein or notified under any previous policy; or

### **5.2 Fraudulent, Dishonest and Wilful Conduct**

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

a. gaining any personal profit or advantage to which the INSURED was not legally entitled;

b. having improperly benefited from any SECURITIES transaction as a result of information that is/was not available to other sellers or purchasers of such SECURITIES;

c. committing any dishonest, fraudulent, criminal or malicious act;

d. committing any wilful violation or wilful breach of any statute or regulation; or

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- e. committing any breach of either Section 182 or Section 183 of the Corporations Act 2001(Cth).

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

### **5.3 Bodily Injury / Property Damage**

any CLAIM for bodily injury, sickness, mental anguish or emotional distress or disturbance, disease or death of any person howsoever caused or damage to or destruction of any tangible property, including loss of use thereof.

However, this exclusion shall not apply to:

- a. any CLAIM in respect of mental anguish or emotional distress or disturbance alleging an EMPLOYMENT PRACTICE BREACH;
- b. DEFENCE COSTS in respect of any CLAIM made against an INSURED where such CLAIM arises from a breach or alleged breach of any Commonwealth, State or Territory occupational or workplace health and safety legislation including but not limited to any workplace death, corporate manslaughter or industrial manslaughter law anywhere in the world.

### **5.4 USA Insured Vs Insured**

or arising out of or in any way connected with any CLAIM brought within the United States of America, its states, localities, territories or possessions or under any laws thereof by or on behalf of any:

- a. COMPANY;
- b. OUTSIDE ENTITY in which an INSURED PERSON serves or served as a director; or
- c. director or officer in an OUTSIDE ENTITY,

except in respect of a CLAIM against an INSURED PERSON:

- i. Brought or maintained on behalf of a COMPANY by one or more persons who are not INSURED PERSONS, and who bring and maintain the CLAIM without the solicitation, active participation, intervention or assistance of any COMPANY or any INSURED PERSON named as a defendant in such CLAIM other than where required by law including assistance, participation or intervention of any INSURED PERSON for which any 'whistleblower' protection provision of an applicable securities law, affords protection to such INSURED PERSON;
- ii. pursued as a shareholder derivative action on behalf of a COMPANY or OUTSIDE ENTITY;
- iii. for an EMPLOYMENT PRACTICE BREACH;
- iv. by an INSURED PERSON for contribution or indemnity, if the CLAIM directly results from another CLAIM otherwise covered under this POLICY;
- v. by any past director, OFFICER or EMPLOYEE of a COMPANY or the equivalent in an OUTSIDE ENTITY; or
- vi. by an insolvency administrator, receiver, trustee or liquidator of a COMPANY either directly or derivatively on behalf of a COMPANY, or OUTSIDE ENTITY;

This Exclusion does not apply to DEFENCE COSTS of any INSURED PERSON.

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**5.5 ADDITIONAL EXCLUSIONS APPLYING TO INSURING CLAUSE 2.2(b) only**

WE will not cover the COMPANY for LOSS in connection with any CLAIM directly or indirectly based upon or attributable to any:

- a. obligation, or breach of an obligation, under any law or regulation providing for paid or unpaid leave of any kind or any INDUSTRIAL INSTRUMENT;
- b. any obligation pursuant to any law, regulation, or INDUSTRIAL INSTRUMENT in respect of workers' compensation, occupational or workplace health and safety, disability benefits, unemployment benefits or compensation, unemployment insurance, retirement benefits, social security benefits or any similar law, regulation or INDUSTRIAL INSTRUMENT whatsoever;
- c. EMPLOYMENT-RELATED BENEFITS or amounts calculated by reference to any EMPLOYMENT-RELATED BENEFITS;
- d. costs incurred by the COMPANY to modify any building or property, or to provide any service, in order to make such building or property, or make any service more accessible or accommodating to any disabled person;
- e. costs incurred by the COMPANY in connection with any educational, corrective, sensitivity or other programme, policy or seminar relating to any EMPLOYMENT PRACTICE BREACH; or
- f. BENEFITS.

**5.6 ADDITIONAL EXCLUSIONS APPLYING TO INSURING CLAUSE 2.2(c) only**

WE will not cover the COMPANY for LOSS in connection with any SECURITIES CLAIM directly or indirectly based upon or attributable to any:

1. dishonest, fraudulent, criminal act or omission by the COMPANY;
2. express representations, contracts, agreements, warranties or guarantees made by any COMPANY, provided, however, that this Exclusion shall not apply if the COMPANY would have had such liability in the absence of such representations, contracts, agreements, warranties or guarantees; or
3. allegation that the price or consideration paid or proposed to be paid for the acquisition or completion of the acquisition of all or substantially all the ownership, interest or assets of a SUBSIDIARY, business or other enterprise is inadequate. LOSS does not include any amount of any judgement or settlement representing the amount by which such price or consideration is effectively increased nor any amount for the claimant's costs and expenses relating thereto.

**5.7 ADDITIONAL EXCLUSIONS APPLYING TO INSURING CLAUSE 2.2(d) only**

WE will not cover the COMPANY for or in respect of any

TAX AUDIT COSTS in connection with:

- a. Any improper, unwarranted or unjustified delay, refusal or failure to comply with any request made by or on behalf of the Australian Taxation Office, for the production of documents or the provision of information by the COMPANY.
- b. Inquiries from the Australian Taxation Office which are not related to an identified intention to conduct an audit or likely future audit.
- c. Matters arising under customs legislation.
- d. Any audit or investigation, where notice or information as to their likely conduct was received by the COMPANY prior to the INSURANCE PERIOD. Receipt of such

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communication will have occurred when the Australian Taxation Office makes communication with the COMPANY or any other person acting on its behalf.

- e. Any fraudulent act, error, omission or misrepresentation committed by or on behalf of the COMPANY.
- f. 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.
- g. An audit or investigation of a return of income that has not been prepared or reviewed by the ACCOUNTANT or REGISTERED TAX AGENT, except where the return is a prescribed sales tax return or a prescribed payroll tax return.
- h. matters after the audit or investigation has been completed.

## **Section 6: CLAIMS/LOSS CONDITIONS**

### **6.1 Notification**

- a. The POLICYHOLDER shall notify US of any CLAIM (or for the purpose of Insuring clause 2.2(d) and Extension 3.8 LOSS) as soon as practicable and within the INSURANCE PERIOD.
- b. Any Notice to US shall be given in writing, and delivered to:

The Claims Manager

DUAL Australia Pty Limited  
332 Kent Street  
Sydney NSW 2000  
Australia

### **6.2 Co-operation**

- a. The INSURED shall, at the INSURED's own cost, frankly and honestly provide US with all information and assistance required by US and/or the lawyers and investigators and others appointed by US in relation to the CLAIM or LOSS. Any unreasonable failure to comply with this obligation may entitle US to deny liability under the POLICY in whole or part.
- b. The INSURED shall, at their own cost, do all things reasonably practicable to minimise any LOSS, including but not limited to the INSURED's liability in respect of any CLAIM.
- c. Each INSURED agrees to provide US, at their own cost, with all information, assistance and co-operation which WE reasonably require, and in the event of a CLAIM each INSURED agrees that they will do nothing that may prejudice OUR position or OUR potential or actual rights of recovery.

### **6.3 Allocation**

- a. Where a CLAIM involves matters and/or parties which give rise to LOSS covered by this POLICY and matters and/or parties which do not, then WE will use OUR best efforts to agree upon a fair and proper allocation of the proportion covered under this POLICY, having regard to the relative legal and financial exposures attributable to covered and uncovered matters and/or parties. Only LOSS incurred by YOU or the COMPANY (under an applicable insuring clause or Extension), is covered, subject always to the terms and conditions of this POLICY.
- b. If an allocation cannot be agreed then it shall be determined by a Senior Counsel to be mutually agreed upon or, in default of agreement, to be nominated by the then President of the Bar Association. Such determination will be based upon written submissions only and will be final and binding. The Senior Counsel shall make the determination as an

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expert and based on the relative legal and financial exposures attributable to covered and uncovered matters and/or parties. Pending that determination WE may at OUR sole discretion meet the LOSS on an interim basis. After the allocation has been determined or agreed, YOU or the COMPANY or both YOU and the COMPANY (whichever is appropriate to the relevant cover hereunder) will refund to US any amount which WE have paid that exceeds the entitlement under this POLICY. The costs of any reference to a Senior Counsel under this clause shall be borne by US.

- c. If the DEDUCTIBLE applicable to Insuring Clause 2.1 applies to part of a LOSS and the DEDUCTIBLE applicable to Insuring Clause 2.2 applies to part, then WE and the INSURED must use best efforts to reach an agreement of a fair allocation of such LOSS between Insuring Clause 2.1 and Insuring Clause 2.2. If no agreement can be reached, the dispute will be referred to Senior Counsel using the mechanism in (b) above for determination of the issue.

#### **6.4 Legal Defence and Settlement**

- a. It shall be the duty of the INSURED and not OUR duty to defend CLAIMS and arrange for representation at INVESTIGATIONS.
- b. The INSURED agree not to admit liability for or settle any CLAIM, make any admission, offer any payment or assume any obligation in connection with any CLAIM or INVESTIGATION, or incur any DEFENCE COSTS or other LOSS in connection with any CLAIM or INVESTIGATION, without OUR written consent which shall not be unreasonably withheld or delayed.
- c. WE shall not be liable for any settlement, DEFENCE COSTS or other LOSS, admission, offer, payment or assumed obligation to which WE have not given OUR written consent.
- d. WE shall have the right and shall be given the opportunity to associate with each INSURED and participate in the defence of any CLAIM or INVESTIGATION and be consulted in advance by the INSURED, regarding the investigation, defence and settlement, including the negotiation of any settlement of any CLAIM or INVESTIGATION.
- e. With respect to any CLAIM made against both an INSURED PERSON and a COMPANY, the INSURED agree that WE have the right to require the INSURED to retain separate legal counsel.

#### **6.5 Order of Payment**

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

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

WE shall otherwise pay LOSS covered under this POLICY in the order in which such LOSS is presented to US for payment.

### **Section 7: GENERAL CONDITIONS**

#### **7.1 Subrogation**

- a. Where WE have paid a CLAIM or LOSS under the POLICY WE become entitled to any rights the INSURED has against any party to the extent of OUR payment.

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- b. The INSURED must, at its own cost, assist US and provide information as WE may reasonably require to exercise OUR rights of subrogation. This may include providing and signing statements and other documents and the giving of evidence.

## **7.2 Alteration to Risk**

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

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

- b. If, during the INSURANCE PERIOD, the POLICYHOLDER decides to make a public offering of its SECURITIES in any jurisdiction then within 30 days of the information becoming publicly available, the POLICYHOLDER shall provide US with any prospectus or offering statement for OUR evaluation and assessment of the increased exposure of the INSURED, and WE shall be entitled to amend the terms and conditions of this POLICY and/or charge a reasonable additional premium reflecting the increase in exposure.
- c. At the POLICYHOLDER'S request, prior to the public announcement of such SECURITIES offering, WE shall evaluate and assess the increased exposure and advise of all necessary amendments to the terms and conditions of this POLICY and additional premium. In this event and at the request of the POLICYHOLDER, WE will enter into a confidentiality agreement with the COMPANY relating to any information provided regarding the proposed SECURITIES offering.

## **7.3 Assignment**

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

## **7.4 Cancellation**

- a. The INSURED may cancel the POLICY at any time by notifying US in writing.
- b. WE may cancel the POLICY in accordance with the provisions of the Insurance Contracts Act 1984 (Commonwealth).
- c. On cancellation, WE agree to allow a refund of premium calculated on the pro-rata portion of the unexpired INSURANCE PERIOD, subject to a minimum earned premium of 25% of the full annual premium.

## **7.5 Several Liability of Underwriters**

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

## **7.6 Confidentiality**

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

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

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

- a. the INSURED is required to do so by the law ;or
- b. WE consent to the disclosure in writing.

**7.7 Jurisdictional Limitation**

Subject to its terms and conditions, the cover provided by the POLICY shall extend to a CLAIM brought or INVESTIGATION commenced anywhere in the world.

**7.8 Governing Law and Jurisdiction**

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

**7.9 Indemnity Limit**

Subject to Extension 3.2 if applicable, 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 INSURED shall not exceed the INDEMNITY LIMIT inclusive of all LOSS.

**7.10 Deductible**

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

**7.11 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 POLICYHOLDER will be imputed to the COMPANY.

Where there is any fraudulent non-disclosure or misrepresentation to US, WE irrevocably waive any right to rescind, avoid or cancel the POLICY. However, the person or persons who engaged in, or was or were aware of, the fraudulent non-disclosure or misrepresentation shall not be entitled to any indemnity under this POLICY. Where there is any non-disclosure or misrepresentation which is not fraudulent, WE irrevocably waive any right to cancel the POLICY or to reduce OUR liability under the POLICY in respect of any CLAIM or INVESTIGATION arising from the matter not disclosed or misrepresented.

**7.12 Preservation of Right to Indemnity**

In the event and to the extent that the COMPANY 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 fails or refuses to do so, then WE shall pay on behalf of the INSURED PERSON any LOSS arising from the CLAIM or INVESTIGATION. In such event, the DEDUCTIBLE applicable to the Insuring Clause 2.2 (a) Company Reimbursement shall be paid by the COMPANY to US. However, the amount of the DEDUCTIBLE will not be payable by the

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COMPANY if the COMPANY is unable to pay the amount of the DEDUCTIBLE due to insolvency.

**7.13 Other Insurance**

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

To the extent permitted by the *Insurance Contracts Act 1984*, this POLICY will only cover LOSS to the extent that the amount of such LOSS is in excess of any indemnity or cover available to the INSURED in respect of that LOSS under any other policy effected on behalf of the INSURED or under which the INSURED is a beneficiary (but not a policy to which the preceding paragraph applies).

Neither of the two paragraphs immediately above applies to such other insurance that is written only as specific excess insurance over the INDEMNITY LIMIT provided in this POLICY.

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

**7.14 INTERPRETATION**

In the POLICY:

- a. The singular includes the plural and the masculine includes the feminine.
- b. The headings are for descriptive purposes only.
- c. In the event that any portion of the POLICY is found to be invalid or unenforceable, the remainder shall remain in full force and effect.
- d. All POLICY documents shall be read together as one contract and any word or expression to which a specific meaning has been attached shall bear the same meaning wherever it may appear.

**7.15 Complaints Procedures**

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

Lloyd's Underwriters' General Representative in Australia

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

Telephone Number: (02) 9223 1433  
Facsimile Number: (02) 9223 1466

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

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

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

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## 7.16 Service of Suit (Australia)

The Underwriters hereon agree that:-

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

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

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

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

## 7.17 General Insurance Code of Practice

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

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

## Section 8: AUTHORITY

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

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

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