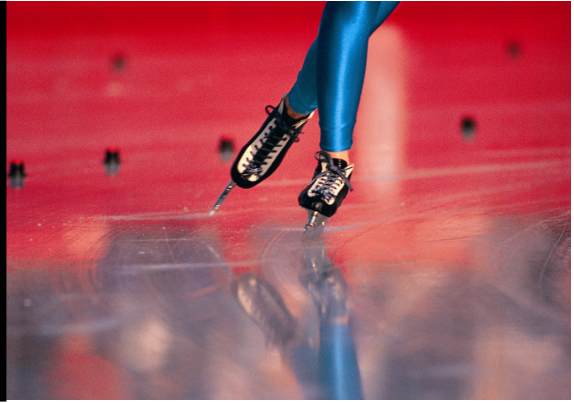


The  
**DUAL**  
Approach



**DIRECTORS AND  
OFFICERS**

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# DUAL Australia Directors & Officers Liability Insurance

## Policy Wording

### Section 1: PREAMBLE

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

### Section 2: INSURING CLAUSES

- 2.1 WE agree to pay on behalf of each INSURED PERSON, LOSS resulting from 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 INSURED ENTITY is not permitted or required to indemnify the INSURED PERSON.

- 2.2 WE agree to pay on behalf of each INSURED ENTITY, LOSS resulting from 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 INSURED ENTITY is permitted or required to indemnify the INSURED PERSON.

#### 2.3 Defence Costs for Claims

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

WE also agree to advance DEFENCE COSTS before final disposition of a CLAIM, where we have not determined the INSURED's right to indemnity for the CLAIM. For clarity, WE will not rely on clause 7.9 (Fraudulent, Dishonest and Wilful Conduct) until there is a relevant judgment, final adjudication or admission.

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

#### 2.4 Retroactive Date

The POLICY shall only provide cover with regard to WRONGFUL ACTS committed after the RETROACTIVE DATE.

### Section 3: AUTOMATIC EXTENSIONS

The automatic extensions are subject to the Insuring Clauses and all other POLICY terms and conditions. WE agree to provide cover in respect of any:

#### 3.1 Official Investigations and Inquires

WE agree to pay DEFENCE COSTS incurred with OUR prior written consent in respect of any legally compelled attendance by an INSURED PERSON at any official investigation, examination or inquiry in relation to the affairs of the INSURED ENTITY, by virtue of INSURED PERSON's position as such with the INSURED ENTITY, where such investigation, examination or inquiry may lead to a recommendation in respect of civil or criminal liability or civil or criminal proceedings and which would be the subject of a CLAIM covered under this POLICY, provided that notice of the official investigation, examination or inquiry is first received by the INSURED PERSON during the POLICY PERIOD and notified to US during the POLICY PERIOD. For the purpose of the application of the terms and conditions of the POLICY, CLAIM includes such official investigation, examination or inquiry even if there is no WRONGFUL ACT alleged against the INSURED PERSON.

3.2 **Occupational Health and Safety**

WE agree to pay DEFENCE COSTS, notwithstanding the Bodily Injury / Property Damage Exclusion (7.5), in respect of any CLAIM made against an INSURED PERSON where such CLAIM arises from a breach or alleged breach of any Commonwealth, State or Territory occupational or workplace health and safety legislation.

3.3 **Outside Directorship Cover**

WE agree to provide cover in respect of LOSS resulting from any CLAIM made against an INSURED PERSON who was, is or may become, at the specific request of the INSURED ENTITY, a director, officer, trustee, governor or equivalent position, in any OUTSIDE ENTITY for any WRONGFUL ACT in such capacity in the OUTSIDE ENTITY.

This cover shall be specifically excess of any insurance in force in respect of the OUTSIDE ENTITY as well as any indemnification provided by the OUTSIDE ENTITY. The cover provided by this clause shall not apply in connection with any CLAIM made against any INSURED PERSON by, on behalf or for the benefit of the OUTSIDE ENTITY, any of its directors, officers, trustees, governors or equivalent or any shareholder of the OUTSIDE ENTITY holding more than 15% of the issued and outstanding voting share capital of the OUTSIDE ENTITY.

3.4 **New Subsidiary Cover**

WE agree to provide cover in respect of any SUBSIDIARY which is created or acquired by the INSURED ENTITY during the INSURANCE PERIOD, provided that the SUBSIDIARY has at the time of creation or acquisition:

- (a) total gross assets which are less than 20% of the total gross assets of the INSURED ENTITY; or
- (b) total gross assets which are less than 10% of the total gross assets of the INSURED ENTITY 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.

3.5 **Former Subsidiary Cover**

WE agree to provide cover in respect of any entity 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.

3.6 **Heirs, Estates and Legal Representatives**

WE agree to provide cover to the estate, heirs, legal representatives or assigns of any deceased or mentally incompetent INSURED PERSON in respect of LOSS arising from a WRONGFUL ACT committed by such INSURED PERSON.

3.7 **Pecuniary Penalties Extension**

It is agreed that the definition of LOSS under this POLICY is amended to include any pecuniary penalties awarded against an INSURED PERSON in and under the laws of the jurisdictions of Australia and New Zealand, if and to the extent that WE are not legally prohibited from paying the pecuniary penalties. The total amount payable under this Extension is \$500,000 in the aggregate for all CLAIMS.

3.8 **Public Relations Cover**

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

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

The total amount payable under this Extension is \$250,000 in the aggregate in respect of all INSURED PERSONS for all CLAIMS.

3.9 **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 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.

Except as otherwise provided in this clause, WE may pay LOSS as it becomes due under this POLICY without regard to the potential for other future payment obligations under this POLICY.

3.10 **Discovery**

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

- (a) 30 days, granted automatically with no additional premium payable; or
- (b) 12 months, if the INSURED requests such period in writing within 15 days after the end of the INSURANCE PERIOD and tenders an additional premium of 50% of the annual premium level in effect immediately prior to the end of the INSURANCE PERIOD within 30 days after the end of the INSURANCE PERIOD; or
- (c) 72 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.

3.11 **Pollution Defence Costs**

Notwithstanding Exclusion 7.6 (Pollution) DEFENCE COSTS are payable in respect of any CLAIM against an INSURED PERSON resulting from a WRONGFUL ACT in connection with the discharge, dispersal, release or escape of POLLUTANTS. The total amount payable under this Extension is \$2,000,000 or the INDEMNITY LIMIT, whichever the less, in the aggregate in respect of all CLAIMS.

**Section 4** **OPTIONAL EXTENSIONS**

If shown as operative in the SCHEDULE, then subject to the terms and conditions of this POLICY, WE agree to provide the following additional cover:

4.1 **Securities Entity Extension**

WE agree to provide cover for LOSS in respect of any SECURITIES CLAIM against the INSURED ENTITY.

For the purposes of this Extension, SECURITIES CLAIM means any suit, proceeding or written demand for monetary damages in connection with the purchase or sale, or offer to purchase or sell, SECURITIES.

For the purposes only of this Extension the definition of CLAIM is modified to include SECURITIES CLAIM.

The definition of WRONGFUL ACT in clause 6.25 is hereby amended to read:

WRONGFUL ACT shall mean:

- (a) for clauses 2.1 and 2.2, any breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, or other act committed or attempted by an INSURED PERSON, individually or otherwise, solely because of their status as a director or officer in the course of his or her duties to the INSURED ENTITY or OUTSIDE ENTITY.

- (b) solely for any SECURITIES CLAIM, any breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, breach of warranty of authority or other act by the INSURED ENTITY.

A separate DEDUCTIBLE shall apply to any SECURITIES CLAIM and is specified in Item 9 of the Schedule.

For any SECURITIES CLAIM alleging 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.

The following additional Exclusions apply to the cover provided under this Extension. WE will not cover the INSURED ENTITY for LOSS in connection with any SECURITIES CLAIM directly or indirectly based upon or attributable to any:

- (a) criminal, administrative or disciplinary proceedings against the INSURED ENTITY or any SUBSIDIARY;
- (b) express representations, contracts, agreements, warranties or guarantees made by any INSURED ENTITY, provided, however, that this Exclusion shall not apply if the INSURED ENTITY would have had such liability in the absence of such representations, contracts, agreements, warranties or guarantees.

#### 4.2 **Prospectuses issued prior to Inception Of Policy**

We hereby agree Exclusion 7.12 is deleted in its entirety and replaced with the following:

WE will not cover the INSURED for LOSS in connection with any CLAIM arising from or attributable to:

- (a) any public sale or issue of any shares or other SECURITIES or similar instruments in or of the INSURED ENTITY issued after the commencement of the first INSURANCE PERIOD for which WE provided Directors and Officers Insurance continuously to the INSURED, unless otherwise agreed by Endorsement ; or
- (b) the preparation or release of any prospectus or offer document relating to any public sale or issue of any shares or other SECURITIES or similar instruments in or of the INSURED ENTITY issued after the commencement of the INSURANCE PERIOD.

If, during the INSURANCE PERIOD, the INSURED ENTITY decides to make an offering of its SECURITIES in any jurisdiction, whether its SECURITIES are already traded or not, by any public means, then as soon as the information is publicly available, the INSURED ENTITY shall provide US with any prospectus or offer document for OUR evaluation and assessment of the increased exposure of the INSURED, and WE shall be entitled, at OUR discretion, to amend the terms and conditions of this POLICY and/or charge a reasonable additional premium reflecting the increase in exposure.

At the INSURED ENTITY's request, prior to the public announcement of such SECURITIES offering, WE shall evaluate and assess the increased exposure and advise, at OUR discretion, all amendments to the terms and conditions of this POLICY and additional premium. In this event and at the request of the INSURED ENTITY, WE will enter into a confidentiality agreement with the INSURED ENTITY relating to any information provided regarding the proposed SECURITIES offering.

#### 4.3 **Employment Practices Extension**

WE agree to provide cover in respect of LOSS resulting from any EMPLOYMENT CLAIM against the INSURED ENTITY.

The following additional Exclusion will apply to the cover provided under this Extension. WE will not cover the INSURED ENTITY for LOSS in connection with any EMPLOYMENT CLAIM for or directly or indirectly based upon, attributable to or in consequence of any BENEFITS or EMPLOYMENT-RELATED BENEFITS or a breach of an express obligation of any INSURED;

- (a) to make payments(including the provision of non cash benefits); or
- (b) pursuant to any procedural or notification requirements in the event of termination of employment; whether such obligation arises under statute, regulation, award, contract of employment (including any arrangement or agreement collateral to any contract of employment) or any industrial, workplace or enterprise agreement or otherwise.

The cover provided under this Extension is sub-limited to \$500,000 any one CLAIM and in the aggregate for all CLAIMS and the DEDUCTIBLE in respect to each CLAIM under this extension is \$25,000.

#### 4.4 **Additional Cover For Non-Executive Directors**

If the INDEMNITY LIMIT is exhausted by the payment by US of LOSS, WE agree to pay an amount not exceeding 25% of the INDEMNITY LIMIT for all further CLAIMS, in addition to the INDEMNITY LIMIT, on the following terms:

- (a) this Extension is only available to YOU if YOU are a non-executive director of the INSURED ENTITY; and
- (b) any other available insurance or source of indemnity available to YOU has also been exhausted; and
- (c) the maximum amount of LOSS paid by US in respect of all CLAIMS which arise out of or are attributable to or are in any way connected with a single WRONGFUL ACT (as defined) shall not exceed the INDEMNITY LIMIT; and
- (d) this Extension is only available for any subsequent LOSS if the subsequent CLAIM is entirely unrelated to the CLAIM that causes the exhaustion of the INDEMNITY LIMIT, and the facts and circumstances underlying that earlier CLAIM that causes the exhaustion of the INDEMNITY LIMIT; and
- (e) the total amount payable by US under this Extension shall not exceed 25% of the INDEMNITY LIMIT in respect of all CLAIMS.

#### 4.5 **Retired Directors and Officers**

Any INSURED PERSON who retires before the expiry of the INSURANCE PERIOD may give written notice to US of any CLAIM in respect of a WRONGFUL ACT by the INSURED PERSON occurring before the end of the INSURANCE PERIOD, during a run-off period of 72 months immediately following the INSURANCE PERIOD, provided such INSURED PERSON has retired prior to:

- (a) any TRANSACTION; or
- (b) the insolvency, liquidation, receivership, bankruptcy or administration of the INSURED.

This Extension is not available if:

- (i) this policy is renewed or replaced with any other Directors and Officers or Management Liability Policy; or
- (ii) a discovery period is purchased by the INSURED under the "Discovery" Extension.

No cover is provided to the INSURED ENTITY under this Extension.

### **Section 5: INTERPRETATION**

In the POLICY:

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

### **Section 6: DEFINITIONS**

In the POLICY:

- 6.1 ASSOCIATED COMPANY means any company named in the PROPOSAL of which the INSURED ENTITY owns on or before the inception of the POLICY PERIOD any amount which is more than or equal to 25% of the issued and outstanding voting shares either directly or indirectly through one or more of its SUBSIDIARIES.

- 6.2 BENEFITS means any amount payable to a beneficiary of a superannuation fund by the TRUSTEE under the rules governing the fund.
- 6.3 CLAIM means:
- (a) a civil proceeding brought by a third party for recovery of compensation or damages
  - (b) any suit, proceeding or written demand for monetary damages or other relief, including but not limited to extradition;
  - (c) a criminal proceeding commenced by a summons or charge; or
  - (d) a formal regulatory or formal administrative proceeding commenced by the filing of charges or orders.
- 6.4 DEDUCTIBLE means the amounts specified in Item 5 of the Schedule.
- 6.5 DEFENCE COSTS means that part of LOSS consisting of reasonable costs, charges, fees (including but not limited to legal counsels' fees) and expenses incurred with OUR prior written consent in investigating or defending a CLAIM or an official investigation, examination or inquiry but does not include regular or overtime wages, salaries or fees of the directors, officers or employees of the INSURED ENTITY incurred in attending, defending, investigating or monitoring CLAIMS and such official investigations.
- 6.6 EMPLOYMENT-RELATED BENEFITS includes but is not limited to:
- (a) non-monetary benefits including but not limited to the allocation of a company car, travel allowance, mobile or landline telephone, medical or life insurance expenses, education and training allowances, and equipment allowances;
  - (b) stock, shares, stock options, share options or any entitlement or right under any employee plan of any description;
  - (c) participation in any stock, share option or share option plan, or participation in any employee plan of any description;
  - (d) severance or redundancy payments or entitlements;
  - (e) any benefit, payment or entitlement of any kind in respect of paid or unpaid leave;
  - (f) bonus or incentive payments, or any entitlement or right under a bonus or incentive plan (which, for the avoidance of doubt, does not include any payments, entitlement or right under any commission scheme);
  - (g) payments or contributions in respect of any provident, benefit, superannuation, pension or retirement fund, or any other account, fund, scheme or plan intended to provide benefits, in whole or in part, at retirement or a particular age, or on the happening of a particular event.
  - (h) any amount the INSURED ENTITY 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.
- 6.7 EMPLOYMENT CLAIM means any CLAIM involving employment-related actual or alleged wrongful dismissal, wrongful termination or wrongful discharge of employment (either actual or constructive, including breach of an implied term of a contract) misrepresentation, wrongful failure to employ or promote, failure to grant tenure, discrimination, harassment, retaliation (including lockouts), humiliation, defamation, invasion of privacy, wrongful deprivation of career opportunity, wrongful demotion or negligent employee evaluation (including the provision of negative or defamatory statements in connection with an employee reference).
- 6.8 INDEMNITY LIMIT means the amounts specified in Item 4 of the Schedule.
- 6.9 INSURANCE PERIOD means the period specified in Item 3 of the Schedule.
- 6.10 INSURED means each INSURED PERSON, the INSURED ENTITY or both.
- 6.11 INSURED ENTITY means:
- (a) the entity or entities specified in Item 2 of the SCHEDULE; and
  - (b) any SUBSIDIARY in existence at the commencement of the INSURANCE PERIOD noted in the PROPOSAL.

- 6.12 INSURED PERSON shall mean any past, present, or future director, secretary, officer or employee of the INSURED ENTITY, or any natural person who by virtue of any applicable legislation or law is deemed to be a director or officer of the INSURED ENTITY. Employees are only covered where they participate in management functions of the INSURED ENTITY.
- INSURED PERSON shall not include:
- (a) a receiver, receiver and manager, official manager, liquidator, administrator, trustee or other person administering a compromise or scheme of arrangement made between the INSURED ENTITY and any other person or persons;
  - (b) any company, organisation or other body corporate.
- 6.13 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, costs and DEFENCE COSTS. However, LOSS does not include fines or penalties imposed by law, punitive, aggravated, and exemplary or multiple damages or matters uninsurable under the laws governing this POLICY.
- 6.14 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.
- 6.15 OUTSIDE ENTITY means any ASSOCIATED COMPANY or any NOT-FOR-PROFIT ENTITY named in the PROPOSAL or any entity referred to as such in the Schedule to the POLICY. OUTSIDE ENTITY also means any other corporation, partnership, joint venture or the organisation which has been listed by endorsement to this POLICY.
- 6.16 POLICY means this policy wording, the Schedule, the PROPOSAL and any endorsement attaching to and forming part of the POLICY either at commencement or during the INSURANCE PERIOD.
- 6.17 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.
- 6.18 PROPOSAL means the INSURED's written proposal specified in Item 7 of the Schedule made to US together with any attachments.
- 6.19 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).
- 6.20 RETROACTIVE DATE means the date specified in Item 6 of the Schedule.
- 6.21 SECURITIES means any note, stock, bond, debenture, evidence of indebtedness, share or other equity or debt security of the INSURED ENTITY and shall include any certificate of interest or participation in, receipt for, warrant, or other right to subscribe to or purchase, voting trust certificate relating to, certificate of deposit for, or other interest in any of the foregoing.
- 6.22 SUBSIDIARY means any entity in which the INSURED own or control, directly or indirectly, in any combination, more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors; or any entity which is deemed to be the INSURED's subsidiary under any applicable legislation, law or Australian Accounting Standard.
- 6.23 TRANSACTION means any one of the following events:
- (a) the INSURED ENTITY 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 INSURED ENTITY or control the appointment of directors who are able to exercise a majority of votes at Board meetings of the INSURED ENTITY.
- 6.24 WE/US/OUR means DUAL Australia Pty Limited, ACN 107 553 257 as agent of the Underwriters named in the Schedule under the heading "Underwriters".

6.25 WRONGFUL ACT shall mean any breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, or other act committed or attempted by an INSURED PERSON, individually or otherwise, solely in their status as a director or officer in the course of his or her duties to the INSURED ENTITY or OUTSIDE ENTITY.

## **Section 7: EXCLUSIONS**

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

### **7.1 Prior Knowledge**

- (a) any CLAIM arising from or in connection with any fact or circumstance that the INSURED knew or ought reasonably to have known prior to the INSURANCE PERIOD could give rise to a CLAIM;
- (b) any CLAIM that was first made, threatened or intimated against the INSURED prior to the INSURANCE PERIOD;
- (c) any CLAIM arising from or in connection with any fact or circumstance of which notice has been or reasonably should have been given under any previous insurance, no matter how expressed.

### **7.2 Breach of Professional Duty**

Any CLAIM based upon, directly or indirectly attributable to or in consequence of the provision of any professional services and/or advice, or the failure to provide such services or advice.

### **7.3 Insured V Insured**

Any CLAIM which is brought by, on behalf of or for the benefit of the INSURED ENTITY; provided, however, that this exclusion shall not apply to:

- (a) DEFENCE COSTS;
- (b) any CLAIM brought or maintained by the INSURED ENTITY for contribution or indemnity, if the CLAIM directly results from another CLAIM otherwise covered under the POLICY;
- (c) any CLAIM brought or maintained by any external administrator to the INSURED ENTITY (including but not limited to a liquidator, receiver, administrator or other external administrator) where such external administrator is appointed by a Court and such CLAIM is brought without the solicitation, assistance or co-operation of any INSURED PERSON.
- (d) a derivative action on behalf of the INSURED ENTITY brought by persons who are not INSURED PERSONS and without the solicitation, assistance or co-operation of any INSURED; or
- (e) a CLAIM by a regulatory body in the name of the INSURED ENTITY pursuant to section 50 Australian Securities & Insurance Commission Act 2001 or any predecessor legislation.

### **7.4 Trustee Liability**

Any CLAIM based upon, directly or indirectly attributable to or in consequence of any position held by an INSURED PERSON as trustee or administrator of any superannuation, pension, health and welfare, or other employee benefit plan or trust established or maintained for the purpose of providing pensions, annuities or any other form of BENEFITS to employees of the INSURED ENTITY or OUTSIDE ENTITY.

### **7.5 Bodily Injury / Property Damage**

Any CLAIM based upon, attributable to, involving, contributed to by or which arises directly or indirectly 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 in respect of an EMPLOYMENT CLAIM.

7.6 **Pollution and Nuclear Risk**

Any CLAIM directly or indirectly arising from or attributable to:

- (a) the actual, alleged or threatened discharge, dispersal, release or escape of POLLUTANTS into or upon land, the atmosphere or any water course or body of water, whether such discharge, dispersal, release or escape is intentional or accidental; or
- (b) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise POLLUTANTS.

7.7 **Radioactivity and Nuclear Risk**

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

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

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

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

7.8 **War/Terrorism**

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

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

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

7.9 **Fraudulent, Dishonest and Wilful Conduct**

Any CLAIM directly or indirectly arising from or attributable to:

- (a) the gaining in fact of any personal profit or advantage to which the INSURED was not legally entitled;
- (b) the INSURED having participated in SECURITIES transactions with information that is/was not available to other sellers or purchasers of such SECURITIES;
- (c) the committing in fact by an INSURED of any dishonest, fraudulent, criminal or malicious act; or
- (d) Any wilful violation or wilful breach by an INSURED of any statute, contract or regulation.

For the purpose of determining the applicability of these exclusions, the WRONGFUL ACT 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.

7.10

**Jurisdictional Limit**

Any CLAIM:

- (a) made in or determined pursuant to the laws of the United States of America or the Dominion of Canada or their territories or protectorates; or
- (b) arising out of the enforcement of judgements, orders or awards obtained within or determined pursuant to the laws of the United States of America or the Dominion of Canada or their territories or protectorates.

7.11

**Closely Held (15%) Exclusion**

Any CLAIM brought by, on behalf or for the benefit of any shareholder owning, directly or indirectly, more than or equal to 15% of the voting share capital of the INSURED ENTITY at the time of the WRONGFUL ACT and/or any shareholder that had, at the time of the WRONGFUL ACT any board representation.

7.12

**Public Offering Of Securities Exclusion**

Any CLAIM directly or indirectly arising from or attributable to:

- (a) any public sale or issue of any shares or other SECURITIES or similar instruments in or of the INSURED ENTITY or OUTSIDE ENTITY; or
- (b) the preparation or release of any prospectus or offer document relating to any public sale or issue of any shares or other SECURITIES or similar instruments in or of the INSURED ENTITY or OUTSIDE ENTITY.

**Section 8:**

**CLAIMS CONDITIONS**

8.1

**Notification**

- (a) The INSURED shall notify US of any CLAIM as soon as practicable and within the INSURANCE PERIOD.
- (b) Notice of any CLAIM shall be given to US in writing, and delivered to:  
DUAL Australia Pty Ltd,  
332 Kent Street, Sydney, NSW, 2000 Australia

8.2

**Co-operation**

- (a) The INSURED shall, at its 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. Any unreasonable failure to comply with this obligation may entitle US to deny liability for the CLAIM in whole or part.
- (b) The INSURED shall, at its own cost, do all things reasonably practicable to minimise LOSS, including but not limited to the INSURED's liability in respect of any CLAIM.

8.3

**Allocation**

- (a) If a CLAIM gives rise to both a LOSS and/or DEFENCE COSTS which are covered under this POLICY and LOSSES or DEFENCE COSTS which are not, WE and the INSURED shall negotiate in good faith to agree on a basis for allocation, taking into consideration the relative legal and financial exposures of the parties and the matters involved. In such negotiations, the parties shall take into consideration factors such as (but not limited to):
  - (i) the extent to which the CLAIM is directed to covered or uncovered parties and matters;
  - (ii) the relative legal and financial exposure of the INSURED PERSON compared to that of the uncovered parties; and
  - (iii) the financial benefits obtained by the covered and uncovered parties in the relevant transaction or litigation due to its settlement.

- (b) 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 both 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.
- (c) If WE and the INSURED cannot agree on allocation the dispute shall be submitted to a Queen's or Senior Counsel (who in the absence of agreement by the parties shall be selected by the President of the Bar Association in the State or Territory of the Commonwealth of Australia in which the CLAIM is being contested, from a list comprised of three nominations from each of parties) to determine a basis for allocation. In determining the basis for allocation the Queen's or Senior Counsel shall take into consideration the factors contained in 8.3(i-iii) above and the intent of this clause.

#### 8.4 **Legal Defence and Settlement**

- (a) WE shall be entitled to assume the legal defence of any CLAIM covered under this POLICY in the name of the INSURED and WE shall have full discretion in managing any negotiation or proceeding as to the resolution of such CLAIM.
- (b) WE shall be entitled to appoint the lawyers that will defend and represent the INSURED in respect of any CLAIM.
- (c) WE shall be entitled to settle a CLAIM if WE so choose.
- (d) The INSURED agrees not to admit liability for or settle any CLAIM, make any admission, offer or payment or assume any obligation in connection with any CLAIM, or incur any DEFENCE COSTS in connection with any CLAIM, without OUR prior written consent.
- (e) WE shall not be liable for any settlement, DEFENCE COSTS, admission, offer, payment or assumed obligation incurred without OUR prior written consent.
- (f) If WE are of the opinion that a CLAIM will not exceed the DEDUCTIBLE, WE may require the INSURED to conduct the defence of the CLAIM. If the DEFENCE COSTS and/or any other payment exceed the DEDUCTIBLE then WE will pay the amount in excess of the DEDUCTIBLE.

#### 8.5 **Insured's Right to Contest**

In the event that WE recommend settlement of a CLAIM and the INSURED does not agree to the settlement of the CLAIM, and the INSURED decides to contest the CLAIM, OUR liability shall not exceed the amount for which the CLAIM could have been settled, and DEFENCE COSTS incurred up until the date upon which the CLAIM could have been settled.

#### 8.6 **Senior Counsel**

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

### **Section 9: GENERAL CONDITIONS**

#### 9.1 **Subrogation**

- (a) Where WE have paid LOSS under the POLICY WE become entitled to any rights the INSURED has against any party in relation to the payment.
- (b) The INSURED must, at its own cost, assist US and provide information as WE may reasonably require to exercise OUR rights of subrogation. This may include providing and signing statements and other documents and the giving of evidence.

#### 9.2 **Alteration to Risk**

If during the INSURANCE PERIOD a TRANSACTION takes place, then the cover provided under this POLICY is amended to apply only to WRONGFUL ACT(s) 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.

9.3 **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.

9.4 **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 pro-rata refund of premium based upon the unexpired INSURANCE PERIOD.

9.5 **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 LOSS or liability indemnified; 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 the law ;or
- (ii) WE consent to the disclosure in writing.

9.6 **Governing Law And Jurisdiction**

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

9.7 **Indemnity Limit**

- (a) Subject to clause 4.4 (Additional Cover for Non-Executive Directors) OUR total liability under the POLICY for any one CLAIM including DEFENCE COSTS and in the aggregate from all CLAIMS including DEFENCE COSTS shall not exceed the INDEMNITY LIMIT.
- (b) For the purposes of determining the INDEMNITY LIMIT available for any CLAIM covered by the POLICY including for clause 4.4, 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 includes all WRONGFUL ACTS which are related or form part of a series of related conduct or form part of a course of conduct in which the WRONGFUL ACTS are not entirely unconnected, different and/or unrelated.

9.8 **Deductible**

- (a) OUR liability under Insuring Clause 2.1 (in respect of an INSURED PERSON) or Insuring Clause 2.2 (in respect of an INSURED ENTITY) or both shall only apply to that part of each LOSS in respect of each CLAIM which is in excess of the DEDUCTIBLE and such DEDUCTIBLE shall be borne by the INSURED PERSON and/or the INSURED ENTITY (as the case may be) at their own risk.
- (b) Unless otherwise expressed in the Schedule, all DEDUCTIBLES are inclusive of DEFENCE COSTS up to the amount of the DEDUCTIBLE.
- (c) 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.
- (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 WRONGFUL ACT shall constitute a single CLAIM for the purposes of this POLICY. A single

WRONGFUL ACT includes all WRONGFUL ACTS which are related or form part of a series of related conduct or form part of a course of conduct in which the WRONGFUL ACTS are not entirely unconnected, different and/or unrelated.

9.9 **Severability and Non-Imputation**

For the purposes of determining the application of Exclusion 7.9 (Fraudulent, Dishonest and Wilful Conduct) and duties of disclosure before entry of the POLICY, no fact pertaining to or knowledge possessed by any INSURED PERSON shall be imputed to any other INSURED PERSON.

9.10 **Several Liability Notice**

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

9.11 **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.

9.12 **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.

9.13

**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 10: AUTHORITY**

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

10.2 In consideration of the premium paid the Underwriters are hereby bound, severally and not jointly, to insure in accordance with the terms and conditions contained herein or endorsed hereon.