

DUAL Financial Lines

Management Liability Sole Traders & Partnerships



DUAL

DUAL Australia

Sole Traders and Partnerships policy wording

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Important Notices

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

Claims Made and Notified Policy

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

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

Your Duty of Disclosure

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

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

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

You do not need to tell us anything that:

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

If you do not tell us something

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

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

Notification of Facts that may give rise to a Claim

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

Privacy Statement

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

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

We provide your information to the insurer **we** represent when **we** issue and administer your insurance. When providing a quotation or insurance terms, **we** will tell you if the insurer is overseas and if so, where they are. **We** are part of the Howden Group and may provide your information to UK Based Group entities who provide **us** with business support services. **We** may also provide your information

to your broker and **our** contracted third party service providers (e.g. claims management companies) but will take all reasonable steps to ensure that they comply with the Privacy Act.

We understand that this information is often sensitive, and **we** shall treat it with the utmost care. **Our** Privacy Policy contains information about how you can access the information **we** hold about you, ask **us** to correct, or make a privacy related complaint. You can obtain a copy from **our** Privacy Officer by:

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

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

General Insurance Code of Practice

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

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

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

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

Complaints and Disputes

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

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

General Counsel Team

DUAL Australia Pty Limited
Email: complaints@dualaustralia.com.au
Telephone: 02 9248 6300
Level 29, Angel Place, 123 Pitt Street
Sydney NSW 2000

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

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

Lloyd's contact details are:

Lloyd's Australia Limited
Email: ldraustralia@lloyds.com
Telephone: (02) 8298 0783
Level 16, Suite 1603
1 Macquarie Place
Sydney NSW 2000

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

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

Australian Financial Complaints Authority Limited

GPO Box 3
Melbourne VIC 3001
Australia
Telephone Number: 1800 93 678
Facsimile Number: (03) 9613 6399

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

Service of Suit and Legal Notices

The Underwriters accepting this Insurance agree that:

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

Lloyd's Underwriters' General Representative in Australia

Level 16, Suite 1603
1 Macquarie Place
Sydney NSW 2000
Australia
Telephone Number: (02) 8298 0700
Facsimile Number: (02) 8298 0788

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

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

Notification of Claims

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

The National Claims Manager

DUAL Australia Pty Limited
Level 29, Angel Place, 123 Pitt Street
Sydney NSW 2000
Australia
Or by email to: claims@dualaustralia.com.au

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

About DUAL Australia Pty Ltd

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

Section 1: Preamble

- 1.1** In consideration of payment of the premium and subject to all the terms and conditions of the **policy**, and, in reliance upon the disclosures made in the **proposal**, **we** agree to provide insurance on the terms set out in this **policy**.
- Subject to the terms and conditions of the **policy**, the total amount payable by **us** under the **policy** shall not exceed the **indemnity limit** displayed in the **policy schedule**.

Section 2: Insuring Clauses

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

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

2.1 Cover for You

We agree to pay to or on behalf of each **insured person** all **loss** arising from any **claim** first made and notified to **us** during the **insurance period** arising from a **wrongful act** or **employment practice breach** for which the **service company** has not indemnified or agreed to indemnify the **insured person**.

2.2 Cover for the Service Company / Insured

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

Service Company Reimbursement

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

Entity

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

Employment Practice Breach

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

Crime

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

Tax Audit Costs

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

2.3 Defence Costs for Claims

Except where **we** deny indemnity under this **policy**, **we** agree to pay **defence costs** either incurred by **us** or incurred by the **insured** with **our** prior written consent, in respect of a **claim** for loss covered by this **policy**. **We** also agree to advance **defence costs** in respect of such a **claim** before its final disposition. Payment will be made within 28 days of receipt of sufficiently detailed invoices for **defence costs** incurred.

We will not rely on Exclusion 5.6 (Fraudulent, Dishonest and Wilful Conduct) until there is a relevant judgment, final adjudication or admission by such **insured** that the relevant conduct by such **insured** did occur.

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

2.4 Retroactive Date

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

Section 3: Automatic Extensions

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

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

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

3.1 Allocation of Defence Costs

Where we assume the conduct of the defence of a **claim** and that **claim** gives rise to **defence costs** for matters and/or parties covered by this **policy** and also to costs in the defence of uncovered matters and/or parties, then we will pay as **defence costs** those costs which are jointly incurred for the covered and uncovered matters and/or parties.

For the purpose of this Automatic Extension only, Claims Condition 7.4 (Allocation) will not be enforced by us, however, we will rely on Claims Condition 7.4 (Allocation) to calculate the allocation between covered and uncovered parties and matters.

This Automatic Extension will not apply if we have not assumed the conduct of the defence of the **claim**.

This Automatic Extension only applies to uninsured components of the **claim** as allocated by us, or as determined by final adjudication. Once this sub-limit has been exhausted, Claims Condition (7.4 Allocation) will have full force and effect.

3.2 Automatic Reinstatement for Insured Persons

In the event of a reduction (in whole or in part) of the **indemnity limit** for **insured persons** only due to payment by us of **loss** under Insuring Clauses 2.1 and/or 2.2(a), we agree to reinstate the **indemnity limit** by the amount by which the **indemnity limit** is reduced under those Insuring Clauses on the following basis:

- a) the total amount payable by us under this **policy** shall not exceed twice the **indemnity limit**; and
- b) the cover under this Automatic Extension will only be available for **insured persons** for any subsequent **loss** as a result of any **claim** which is based on facts and matters that are entirely different from and unrelated to those upon which the **claim** is based that led or contributed to the reduction or exhaustion referred to above. This Automatic Extension does not provide additional coverage in respect of the **claim** that lead or contribute to the reduction or exhaustion referred to above; and
- c) the maximum amount of **loss** payable by us for all **insured persons** under this Automatic Extension in respect of any number of **claims** which arise out of or are attributable to or are in any way connected with a single **wrongful act, or employment practice breach**, as defined in General Condition 8.9 (Indemnity Limit) shall not exceed the **indemnity limit** inclusive of all **loss**; and

- d) if the **service company** or **insured persons** has or have in effect, or the benefit of, any policy or policies providing coverage in excess of this **policy** or any other policy, then the additional coverage provided by this clause will only take effect after the total exhaustion of any amounts payable under any such other policies but before any similar reinstatement provisions as may be contained in any such other policies take effect; and
- e) this provision shall only be available to an **insured person**.

This Automatic Extension does not apply in respect of Sections 2.2(b) – (e) of this **policy**, or any related Automatic Extension.

3.3 Bail and Civil Bond Expenses

We will pay as **loss** the **bail bond and civil bond expenses** of each **insured person** incurred during the **insurance period** in connection with a **claim** that is covered under this **policy**.

3.4 Continuous Cover

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

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

Exclusion 5.10 (Prior Known Facts) will not apply, provided that:

- i) the **claim** would have been covered under the management liability insurance policy in force at the time the **insured** first became aware of such facts or circumstances;
- ii) there has not been any fraudulent non-disclosure or fraudulent misrepresentation to **us** by the **insured** in respect of such facts or circumstances;

For the purpose of this Automatic Extension only, the definition of **we/us/our** in Clause 6.71 of this **policy** also includes the Underwriter(s) for which **we** were the agent on any previous policy issued by **us**. Subject to the terms of this Automatic Extension and the terms of the **policy**, the intention of this Automatic Extension is to provide continuous cover to the **insured** notwithstanding any change in the identity of the Underwriters for which **we** presently act, or have previously acted, as agent.

3.5 Contractual Liability

Notwithstanding Exclusion 5.17(c) **we** agree to pay the **defence costs** arising from any **claim** in connection with an alleged breach by the **service company** of any express contract or agreement only to the extent of the cover under this Automatic Extension.

3.6 Copyright Defence Costs

Notwithstanding Exclusion 5.17(a) **we** agree to pay the **defence costs** arising from any **claim** arising from an unintentional and accidental breach of copyright by the **insured** in the course of its **business**.

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

- a) procedures for posting content online; and
- b) procedures for seeking permission to copy and reproducing material; and
- c) all employment contracts issued to former, current and prospective **employees**; and contracts for service or goods issued to independent contractors, contractors, consultants and agents, contain clear provisions regarding ownership of any intellectual property rights belonging to the **insured** or for which the **insured** is legally liable; and

- d) appropriately qualified independent third parties review and confirm that any product designed, manufactured or supplied by the **insured** and any publication issued by the **insured** do not breach **third party** intellectual property rights.

3.7 Court Attendance

We agree to pay as **loss** the Court attendance costs of any **insured person** who is legally required to attend Court as a witness in a **claim** covered by the **policy**, to an amount not exceeding \$1,000 per day for all **insured persons**. No **deductible** applies under this Automatic Extension.

3.8 Crime Investigation Fees

We will pay the reasonable and necessary fees, costs and expenses of a fraud investigator nominated by the **business operator**, and approved in writing by **us**, to investigate, prove and establish the amount of any covered or potentially covered **direct financial loss discovered** and notified to **us** and covered by the **policy**.

The investigation fees do not include internal expenses incurred by the **service company** or any legal costs.

The fraud investigator shall:

- a) investigate the facts behind such **direct financial loss**; and
- b) determine the quantum of such **direct financial loss**, and
- c) advise when and how the **business'** controls were or may have been breached; and
- d) provide recommendations which may prevent future similar **direct financial loss**; and
- e) issue their findings in a report format approved by **us**; and
- f) provide a copy of the report to the **business operator** and to **us**.

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

3.9 Crisis Containment

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

3.10 Critical Regulatory Event

We agree to pay, in addition to **defence costs** and **investigation costs**, the reasonable fees, costs and expenses incurred by or on behalf of the **insured** in retaining legal advisors for the purpose of responding to a **critical regulatory event**.

3.11 Defence Costs for Claims - Direct Financial Loss

We agree to pay to or on behalf of the **insured** the reasonable **defence costs** incurred in the defence of a **claim** directly resulting from a covered **direct financial loss** that is made during the **insurance period** against the **insured**. The onus of proving that the **claim** is a direct result of a **direct financial loss** is borne by the **insured**.

3.12 Deprivation of Assets

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

- a) schooling;
- b) housing;
- c) utilities; and

- d) personal insurance.

We will only pay such expenses after a personal allowance which has been directed by the Court to meet such expenses has been exhausted. Expenses will be payable after 30 days from the date of the interim or interlocutory order for a period of up to 12 months.

3.13 Directors' Tax Penalties

We agree to pay to or on behalf of an **insured person** their personal liability arising out of the **service company's** unpaid taxes where the **service company** is insolvent, except to the extent that such liability arises from the wilful intent of the **insured person** to breach legislation governing the payment of such taxes or condoning the **service company** failing to do so.

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

3.14 Discovery Period

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

- a) ninety (90) days, granted automatically with no additional premium payable; or
- b) at **our** discretion, twelve (12) months, if the **insured** requests such period in writing within 15 days after the end of the **insurance period** and the **insured** tenders an additional premium of 100% of the annual premium level in effect immediately prior to the end of the **insurance period** within thirty (30) days after the end of the **insurance period**.

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

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

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

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

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

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

3.15 Extradition Costs

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

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

- i) counsellor; or
- ii) tax advisor retained by an **insured person** in connection with an extradition proceeding with **our** prior written consent.

3.16 Emergency Costs

If it is not possible for the **insured** to obtain **our** consent prior to incurring **defence costs, investigation costs or public relations costs**, **we** will waive prior consent provided **our** consent is obtained within thirty (30) days of the first of such costs being incurred.

3.17 Employment Superannuation Scheme

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

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

3.18 Former Subsidiaries

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 shall only apply in respect of a **wrongful act, employment practice breach** or other conduct whilst the entity was a **subsidiary**.

3.19 Identity Theft Expenses

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

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

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

3.20 New Subsidiaries

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

- a) total gross assets which are less than 50% of the total gross assets of the **service company**; or
- b) gross annual turnover of less than 50% of the total gross annual turnover of the **service company**; or
- c) total gross assets which are less than 10% of the total gross assets of the **service company** in the USA or Canada.

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

3.21 Occupational Health and Safety Defence Costs

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

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

- b) **defence costs** arising from any **claim** made against an **insured** where such **claim** arises from a breach or alleged breach of any Commonwealth, State or Territory occupational or workplace health and safety legislation.

For the purpose of this Automatic Extension only:

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

3.22 Official Investigations and Inquiries

We agree to pay to or on behalf of an **insured** any **investigation costs** in connection with their attendance for examination at, or the production of documents to, any **investigation** in relation to the affairs of the **business** or **service company** or any other examination of an **insured person** by virtue of their position as such.

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

For the purpose of this Automatic Extension only Exclusions 5.2 (Bodily Injury / Property Damage) and 5.9 (Pollution) do not apply.

3.23 Outside Directorship Cover

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

This cover shall:

- a) only apply in excess of any insurance in respect of the **outside entity** as well as any indemnification provided by the **outside entity**; and
- b) not apply in connection with any **claim** made against any **insured person** by any shareholder of the **outside entity** holding 20% or more of the issued and outstanding voting share capital of the **outside entity**; and
- c) not apply in respect of any **claim** arising out of, based upon, attributable to or in any way whatsoever connected with the actual or alleged insolvency of any **outside entity** or any actual or alleged inability of any **outside entity** to pay its debts as and when they fall due.

3.24 Panel Counsel

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

3.25 Pollution Cover

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

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

For the purpose of this Automatic Extension only Exclusions 5.2 (Bodily Injury/Property Damage) and 5.9 (Pollution) do not apply.

We are not liable under this Automatic Extension for any **defence costs** or **loss** relating to, arising out of or incurred in relation to:

- i) the imposition of, or seeking to impose, any tax, penalty tax, costs, interest, fine or any fees or expenses in connection with any criminal prosecution; or
- ii) any actual or alleged breach of food safety, production or licensing legislation or regulations, and other similar legislation, regulations or regulatory instruments.

3.26 Public Relations Expenses

We agree to pay to or on behalf of the **insured** all **public relations expenses** incurred by the **insured** with our prior written consent to mitigate any adverse effect on an **insured's** reputation by disseminating findings which exonerate the **insured** 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**).

3.27 Retirement Cover

If the **business operator** does not renew this **policy** or replace it with any other insurance providing directors and officers liability coverage and one of the **discovery period** options detailed in Automatic Extension 3.14 (Discovery Period) of this **policy** has not been purchased, then the **insured persons** will be automatically entitled to a 84 month **discovery period** at no additional premium after the expiry of the **insurance period** provided that the **insured person** retired from all employment or office prior to the expiry of the **insurance period**.

3.28 Statutory Liability (Fines and Penalties)

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

For the purpose of this Automatic Extension only:

- a) the reference in Clauses 6.40(a) **loss** and 5.17(d) of the **policy** to fines and penalties do not apply to the extent that this Automatic Extension operates;
- b) Exclusions 5.2 (Bodily Injury/Property Damage) and 5.9 (Pollution) do not apply; and
- c) **loss** includes **statutory liability**.

Where Automatic Extension 3.21 (Occupational Health & Safety Defence Costs) or Automatic Extension 3.25 (Pollution Cover) respond to a **claim** then the cover under this Automatic Extension in respect of such **claim** is limited solely to **statutory liability** and does not include **defence costs**.

3.29 Third Party Discrimination and Sexual Harassment

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

3.30 Triangulation Fraud

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

3.31 Unidentifiable Employees

If the **business operator** suspects a **loss** to have been caused by **dishonest acts** of any one or more **employees** and the **business operator** is unable to identify the specific **employee** causing such **loss**, subject to the terms conditions exclusions and limitations for Insuring Clause 2.2 (d) Crime the **business operator** will be entitled to an indemnity provided the **business operator** furnishes evidence to **us** to prove the **loss** was due to the **dishonest acts** of one or more of its **employees**.

3.32 Whistleblower Hotline Access

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

Section 4: Optional Extensions

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

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

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

4.1 State Revenue Costs

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

- a) the definition of **tax audit notice** is extended to include a **state revenue notice**; and
- b) Exclusion 5.21(i) does not apply.

4.2 Risk Review Costs

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

- a) the definition of **tax audit notice** is extended to include a **risk review notice**; and
- b) Exclusion 5.21(j) does not apply.

4.3 R&D Incentive Review Costs

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

- a) the definition of **tax audit notice** is extended to include an **incentive notice**; and
- b) Exclusion 5.21(k) does not apply.

Section 5: Exclusions

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

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

5.1 Asbestos

any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of, or in any way involving the existence, mining, handling, processing, manufacture, sale, distribution, remediation, storage or use of, asbestos or other things that contain it, including but not limited to clean up costs.

5.2 Bodily Injury/Property Damage

any **claim** or **investigation** arising from bodily injury, sickness, mental anguish or emotional distress or disturbance, disease or death of any person howsoever caused or damage to or destruction of any tangible property, including loss of use thereof.

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

5.3 Breach of Professional Duty

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

For the sake of clarity, this Exclusion does not apply to **wrongful acts** by any **insured person** in their capacity as an **insured person** other than in the provision of professional services to a third party. This Exclusion does not apply to the extent that cover may be provided under Automatic Extension 3.17 (Employment Superannuation Scheme).

5.4 Capital Raising

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

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

5.5 Consensual Claim

any **claim** or **investigation** which is brought with the solicitation, intervention, participation or assistance of an **insured** against whom it is brought, other than where the **insured** is compelled by law to assist or participate in a **claim**.

5.6 Fraudulent, Dishonest and Wilful Conduct

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

- a) gaining any personal profit or advantage to which the **insured** was not legally entitled; or
- b) having improperly benefited from any **securities** transaction as a result of information that is/was not available to other sellers or purchasers of such **securities**; or
- c) committing any reckless, intentional, dishonest, fraudulent, criminal or malicious act or omission or any reckless, intentional, wilful violation or breach of any statute, regulation, contract or duty; or
- d) committing any breach of either Section 182 or Section 183 of the *Corporations Act 2001* (Cth).

Exclusion 5.6(c) does not apply to the extent there is cover available under Automatic Extension 3.28 Statutory Liability (Fines and Penalties).

This Exclusion 5.6 shall only apply if it is established through a final, non-appealable determination adverse to the **insured**, or any admission by the **insured** against whom the conduct is alleged, that the relevant conduct did in fact occur.

In such event any **defence costs** that **we** have paid in advance will be reimbursed according to the respective interests of the **insured**. General Condition 8.12 (Severability, Non-Imputation and Non-Avoidance) applies to this Exclusion.

5.7 Insolvency

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

5.8 Major Shareholder

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

- a) who or which currently owns, controls or has an interest in, or previously owned, controlled or had an interest in, directly or indirectly, equal to or more than 25% of the voting share capital of the **service company**, any **subsidiary** or any **associated company**; and/or
- b) who or which has or had, at any time, any Board representation on the **service company**, any **subsidiary** or any **associated company** irrespective of the time of the **wrongful act**, **employment practice breach** or other conduct.

5.9 Pollution

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

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

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

5.11 Radioactivity

any **claim** or **investigation** arising from or in any way connected with 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 any legal liability of whatsoever nature, directly or indirectly caused by or contributed to 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.

5.12 Sanctions

any **claim** or **investigation** arising from or in any way connected with any matters where the provision of such benefit would expose **us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America. For the avoidance of doubt, **we** shall have no liability to the **insured** to the extent that this exclusion applies.

5.13 Social Engineering, Cyber Fraud, Phishing and Phreaking

any **claim** or **investigation** arising from or in connection with any **social engineering fraud, cyber fraud, phishing, phreaking** or **push-payment fraud**.

5.14 Superannuation Liabilities

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

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

5.15 Territorial and Jurisdictional Limits

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

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

5.16 War/Terrorism

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

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

Exclusions applying to Insuring Clause 2.2(b) Entity

5.17 These Exclusions apply to Insuring Clause 2.2(b) Entity and any associated Extension.

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

- a) breaches of intellectual property rights, including but not limited to any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark or trade secret; or
- b) any actual or alleged breach of any law, whether statutory, regulatory or common law that regulates or restricts anti-trust or cartel conduct, business competition, price fixing, price discrimination, predatory pricing, unfair or restrictive trade practices, or tortious interference in any other party's business or contractual relationships; or
- c) any actual or alleged contractual liability of the **insured** whether under any express or implied contract or agreement (including but not limited to any guarantee or warranty). However, this Exclusion shall not apply to the extent the **insured** would have had such liability in the absence of such contract or agreement; or
- d) fines or penalties or non-monetary relief; or
- e) the repayment or refund by the **insured** of any amount paid to any party for services, advice or goods of any kind whatsoever; or

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

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

Exclusions applying to Insuring Clause 2.2(c) Employment Practice Breach

5.18 These Exclusions apply to Insuring Clause 2.2(c) Employment Practice Breach and any associated Extension. **We** will not cover the **insured** in connection with any **claim** for or in connection with:

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

Exclusions applying to Insuring Clause 2.2(d) Crime

5.19 These Exclusions apply to Insuring Clause 2.2(d) Crime and any associated Extension. **We** will not cover the **insured** for or in connection with:

- a) **direct financial loss** arising out of or in any way connected with any **dishonest acts** committed, in whole or part, outside of Australia or New Zealand; or
- b) **direct financial loss**:
 - i) first **discovered** prior to the commencement of the **insurance period**; or

- ii) first **discovered** after the end of the **insurance period**, or the **discovery period** if applicable; or
 - iii) in any way connected with any **employee** or **third party** from the time the **business operator**, any **director** or **officer** (who is not in collusion with such **employee** or **third party**) had actual knowledge that the **employee** or **third party** had committed or was suspected of having committed any fraudulent or **dishonest act**, even if it does not constitute a dishonest act as defined. However, cover is available for **direct financial loss** arising during a period of 30 days from the time any **director** or **officer** (who is not in collusion with such **employee** or **third party**) had actual knowledge that the **employee** or **third party** had committed or was suspected of having committed any fraudulent or **dishonest act**; or
 - iv) caused by any **employee** if the **business operator**, a **director** or **officer** possessed at any time knowledge of any act or acts of theft, fraud or dishonesty committed by such **employee** prior to employment by the **business** provided the act(s) involved **money**, **securities** or property valued at \$10,000 or more, or such **business operator**, **director** or **officer** failed to make reasonable enquiries prior to employment of such **employee**;
 - v) arising from or in connection with any **social engineering fraud**, **cyber fraud**, **phishing**, **phreaking**, or **push-payment fraud**.
- c) **direct financial loss** arising out of or in any way connected with any fraudulent or dishonest activities, or involving collusion by or complicity of
- i) the **business operator**, or a **director** or **officer** of the **service company**, who at the time of the dishonest act owns or controls more than 5% of the issued share capital of the **service company**; or
 - ii) any shareholder who, at the time of committing such acts, had direct or indirect ownership of or control over more than 5% of the voting share capital of the **service company** or any of its **subsidiaries** or any **associated company**;
- d) any indirect or consequential loss of any nature, including but not limited to:
- i) any loss of income (such as interest and dividends) not realised by the **insured** or any other person or organisation; or
 - ii) any costs incurred by the **insured** in re-writing or amending software programs or systems where such re-writing or amending is necessary to correct the programs or systems; or
 - iii) any contractual penalties incurred by the **insured**; or
 - iv) any liability to a third party; or
 - v) any costs, fees or other expenses incurred by the **insured** in establishing a right under this **policy** (except as provided for under Automatic Extension 3.8 (Crime Investigation Fees); or
 - vi) any costs, fees or other expenses incurred by the **insured** in prosecuting or defending any demand, **claim** or legal proceeding resulting from a **direct financial loss** which is covered under this **policy**, other than those covered under Automatic Extension 3.11 (Defence Costs for Claims – Direct Financial Loss);
- e) **direct financial loss** the proof of which is dependent solely upon:
- i) a profit and loss computation; or
 - ii) a comparison of inventory records with an actual physical count.
- If, however, an **employee** is identified as having caused a **direct financial loss**, then inventory records and actual physical count of inventory can be submitted as partial evidence in support of proof of the **direct financial loss** as required by Claims Condition 7.2 (Notification of Direct Financial Loss).
- f) **direct financial loss** arising out of or in any way connected with the accessing, use or dissemination of any confidential information including, but not limited to, proprietary information, trade secrets, computer programs, customer information, patents, trademarks, copyrights or processing methods; or

- g) **direct financial loss** arising out of or in any way connected with:
- i) the voluntary giving or surrendering of **money, securities** or other tangible property in any exchange or purchase, unless such **direct financial loss** is directly caused by **dishonest acts** committed; or
 - ii) the complete or partial non-payment or default under any **credit arrangement** including any payments made or withdrawals from any customer account involving items which are not finally paid for any reason; or
 - iii) any trading, whether or not in the name of the **insured** and whether or not in a genuine or fictitious account; or
 - iv) the forgery or alteration or fraudulent use of any credit card, store card, fuel card or other form of credit issued by the **insured to employees**, unless the provisions, conditions and other terms under which such credit card, store card or fuel card issued have been fully complied with by the **insured**.

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

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

Exclusions applying to Insuring Clause 2.2(e) Tax Audit Costs

5.21 These Exclusions apply to Insuring Clause 2.2(e) Tax Audit Costs and any associated Extension.

We will not cover the **insured** 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 **insured**; or
- b) inquiries from the Australian Taxation Office which are not related to an identified intention to conduct an audit of a return or likely future audit of a return, of the **insured** or likely future audit of the **insured**; or
- c) any audit concerning income earned, or where the source of income is, outside Australia and its external territories or protectorates, or where the services giving rise to the audit are performed by persons or any corporate entity outside of Australia and its external territories or protectorates; or
- d) matters arising under customs legislation; or
- e) any audit, where notice or information as to their likely conduct was received by the **insured** prior to the **insurance period**. Receipt of such communication will have occurred when the Australian Taxation Office makes communication with the **insured** or any other person acting on its behalf; or
- f) any fraudulent act, error, omission or misrepresentation committed by or on behalf of the **insured**; or
- g) the imposition of, or seeking to impose, any tax, penalty tax, costs, interest, fine or any fees or expenses in connection with any criminal prosecution; or
- h) an audit of a return of income that has not been prepared or reviewed by an **accountant** or **registered tax agent**; or
- i) any audit or review conducted by a State or Territory revenue office or department, or other body, agency or authority with jurisdiction over taxation; or
- j) any Risk Review, Comprehensive Risk Review, or other informal review conducted by a **tax authority**; or

- k) any audit or review in any way whatsoever in connection with a Research & Development (R&D) Incentive Claim lodged or intended to be lodged with a **tax authority**; or
- l) **tax audit costs** incurred after a determination or assessment has been issued by a **tax authority**.
- m) any costs incurred by an **accountant** or **registered tax agent** in getting the **insured's** books and records up to date prior to providing them to the investigating body.

Exclusions applying to Automatic Extension 3.28 Statutory Liability

- 5.22** These Exclusions apply to Automatic Extension 3.28 Statutory Liability (Fines and Penalties).
We will not cover the **insured** for or in respect of any **statutory liability** or **defence costs** in connection with any:
- a) alleged violation of any law in relation to air traffic;
 - b) alleged violation of any law in relation to vehicle or marine traffic, except to the extent that it results directly from the undertaking of the business of the **insured**;
 - c) actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, intellectual property rights, trade secret, unfair trade practices or business competition or any consumer protection Act, including but not limited to any Fair Trading Acts, Trade Practices Act 1974 (Cth), and Competition and Consumer Act 2010 (Cth) and any similar law of any state, territory or jurisdiction and any amendment, consolidation or re-enactment of any of those Acts;
 - d) any contract of service, or any intended contract of service, with any current, former or prospective **employee**;
 - e) any breach of sections 182, 183, 601FD, 601FE or 601JD of the *Corporations Act 2001* (Cth);
 - f) deliberate dishonest, criminal, fraudulent or malicious act or omission of any wilful violation or breach of any law, regulation or by-law or duty conferred by any such law, regulation or by-law anywhere in the world by an **insured**;
 - g) breach of professional duty, or the provision of any professional services and/or advice, or the failure to provide such services or advice;
 - h) breach of any law or regulation with respect to taxes, duties or revenue charges.

5.23 Retroactive Date

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

Section 6: Definitions

In this **policy**:

- 6.1** **Accountant** or **registered tax agent** means a person who is 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 **insured**.
- 6.2** **Act** means any legislation of a State or Territory in, or the Federal Parliament of, the Commonwealth, of Australia.
- 6.3** **Act of terrorism** means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s), whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

- 6.4 **Associated company** means any company named in the **proposal** and in which the **service company** owns on or before the inception of the **insurance period** more than or equal to 25% of the issued and outstanding voting shares, either directly or indirectly through one or more of its **subsidiaries** but is not a **subsidiary**.
- 6.5 **Bail bond and civil bond expenses** means the reasonable premium (but not collateral) for a bond or other financial instrument to guarantee an **insured person's** contingent obligation for bail required by a Court hearing a **claim** for any **wrongful act**.
- 6.6 **Benefits** mean any amount payable to a beneficiary of a **fund** by the **trustee** under the rules governing the **fund**.
- 6.7 **Business** means the business or enterprise carried on by the **business operator** listed in the **schedule**.
- 6.8 **Business operator** means the natural person or persons specified in the **schedule** as the Policyholder, in his, her or either capacity trading as the **business** and any natural person who in the past, present or future trades as a sole proprietor or in partnership with the **business operators** as specified in the **schedule** as Policyholders, to carry out the **business**, in his or her capacity as such.
- 6.9 **Claim** means:
- a) a suit, summons, statement of claim, writ or similar, proceeding, cross-claim or counter-claim, written demand, brought by a third party for monetary compensation or damages or non-pecuniary relief, or actions solely for declaratory or injunctive relief or other legal remedy; or
 - b) a criminal proceeding against an **insured person** commenced by summons, charge or equivalent document, including but not limited to a Court Attendance Notice; or
 - c) any formal administrative or regulatory proceeding, including an arbitration, mediation, conciliation or alternative dispute resolution proceeding, alleging a **wrongful act**; or
 - d) a civil proceeding, or a written demand, by an **employee** for compensation or damages alleging an **employment practice breach**.
- For the purpose of Automatic Extension 3.28 (Statutory Liability) only, **claim** shall also mean the receipt by an **insured** of a formal written notice or process which asserts a breach of an **Act**.
- 6.10 **Credit arrangement** means any credit agreement, extension of credit, loan or transaction in the nature of a loan, lease or rental agreement, invoice, account, agreement or other evidence of debt.
- 6.11 **Crisis event** means any of the following unforeseen events where, in the reasonable opinion of the chief executive officer (or equivalent) of the **business**, the event has the potential to cause a material impact on the reputation or an imminent decrease of greater than 15% of the total consolidated annual revenues of the **business** if left unmanaged:
- a) the sudden, unexpected death or disability of any Executive; or
 - b) loss of a major customer, contract or credit facility; or
 - c) workplace violence; or
 - d) the first apparent unauthorised intrusion into any **insured's** computer facilities;
 - e) a recall, illegal tampering, contamination or boycott of any product; or
 - f) a man-made disaster; or
 - g) any criminal or fraud investigation or conviction; or
 - h) the sudden and unexpected death or injury of any **insured person**; or
 - i) the unexpected imposition of a tax bill.

Crisis event does not include an event that affects a **business'** industry in general rather than a **insured** specifically.

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

- 6.12 Crisis loss** means the reasonable and necessary fees, costs and expenses paid by the **business operator** or **service company** for external crisis management services provided in response to a **crisis event** within the first thirty (30) days after the event.
- 6.13 Critical regulatory event** means a raid on, or onsite visit to, the **insured** which first takes place during the **insurance period** by any regulator that involves the production, review, copying or confiscation of files or interviews of any **insured person**.
- 6.14 Cyber fraud** means any fraudulent, dishonest or intentionally unauthorised instruction transmitted by any person or entity without the knowledge or consent of the **insured** to a financial institution, which directly or indirectly causes or leads to the payment, delivery or transfer of **money** or **securities** owned by or in the care custody or control of the **insured**.
Cyber fraud does not include a **fraudulent funds transfer**.
- 6.15 Deductible** means the amount the **insured** must pay towards every claim as shown in the **schedule** in respect of each Insuring Clause, Automatic Extension or Optional Extension.
- 6.16 Defence costs** means that part of **loss** consisting of reasonable costs, charges, fees and expenses, incurred with **our** prior written consent (such consent not to be unreasonably withheld), in defending, investigating, settling or appealing any **claim** covered by this **policy**.
Defence costs does not include:
- a) Wages, salaries, fees or costs of time or other remuneration of any **insured** or its **employees**; or
 - b) Profit, costs or office overheads of the **business**; or
 - c) Travel costs incurred by the **insured**; or
 - d) Other administration costs; or
 - e) Costs and expenses in defending a **claim** where no other **loss** is covered by the **policy**, unless Automatic Extension 3.25 (Pollution Cover) and/or Automatic Extension 3.6 (Copyright Defence Costs) is operative.
- 6.17 Direct financial loss** means direct financial loss to the **business operator** or **service company** directly caused by the **loss** of **money**, **securities** or other tangible property:
- a) owned by the **business operator** or **service company**; or
 - b) in the care, custody or control of the **business operator** or **service company** and for which the **service company** is legally liable.
- Direct financial loss** also includes the direct financial loss to the **business operator** or **service company** of **money** or **securities** resulting directly from a **fraudulent funds transfer** from an account, maintained by the **business operator** or **service company** and which **loss** is **discovered** during the **insurance period**.
- All such **loss** caused by multiple **dishonest acts** that are related or are part of a series of such conduct that is not entirely unconnected and entirely different, shall be considered a single **loss** for the purpose of cover under Insuring Clause 2.2(d) Crime and any associated Extension.
- For the purposes of Automatic Extension 3.30 (Triangulation Fraud) only, **direct financial loss** means **loss** to the **business operator** or **service company** that is calculated with reference to:
- c) the cost price (net of profit) of any misappropriated goods; and
 - d) the cost price (net of profit) of any misappropriated services.
- 6.18 Director** means any natural person who was, now is or shall be appointed to the position of a director or secretary of the **service company** or is appointed to the position of an alternate director **service company** and is acting in that capacity.
- 6.19 Disclosure document** means any prospectus, information memorandum, registration statement or similar document regardless of whether or not it has been, or is required to be, filed or registered with the Australian Securities and Investments Commission or any other similar authority in any other jurisdiction.

- 6.20** **Discovered or discovery** means when any **business operator, director or officer** (who is not in collusion with an **employee or third party** who has committed or is attempting to commit a **dishonest act**) becomes aware of any facts which would cause a reasonable person to suspect that a **direct financial loss** has been or may be incurred, even though the exact amount or details of the **direct financial loss** are not known at the time of **discovery**. Such **discovery** constitutes **discovery** by every **insured**.
- 6.21** **Discovery period** means the period of time specified in Automatic Extension 3.14 (Discovery Period) during which time written notice may be given to **us** of any:
- claim** which is first made against the **insured** in that period for a **wrongful act, employment practice breach** or other conduct committed or allegedly committed prior to the end of the **insurance period** or **transaction**;
 - direct financial loss** which is first **discovered** in that period and results from **dishonest acts** or conduct committed or allegedly committed prior to the end of the **insurance period**.
- 6.22** **Dishonest acts** means any fraudulent or dishonest act committed by an **employee or third party** (acting alone or in collusion with others) with the intent to cause the **insured** to sustain a **loss** or to obtain financial benefit for that **employee or third party** or for any other person or organisation intended by that **employee or third party** to receive the financial benefit.
- 6.23** **DUAL Whistleblower Hotline** means the use of a dedicated toll-free number to report suspected incidents and misconduct. The dedicated toll-free number will be provided when the **policy** is purchased, together with a fact sheet regarding how the **insured** can use the **DUAL Whistleblower Hotline**.
- 6.24** **Employee** means any person who is a past, present or prospective employee of the **business operator or service company** whose labour or service is engaged and directed by the **business operator or service company** including volunteers, those undertaking an apprenticeship, traineeship, or work experience, part-time, casual, seasonal and temporary employees, but only while that natural person is acting in his capacity as such. **Employee** does not mean an independent contractor, on-hire labour or secondees to the **business operator or service company**, any person providing services for labour only under contract for services to the **service company** or any **insured persons**, unless agreed by **us** and provided at the time of the **employment practice breach** such individual is under the direction and supervision of the **business operator or service company**.
- In respect of Insuring Clause 2.2(d) Crime only, **employee** means any person who:
- Is an employee; or
 - Is assigned by any agency providing temporary personnel on a contingent or part-time basis to perform duties within the usual duties of an employee, as described in (a) above, within the **business**. However this definition does not cover any **loss** if such **loss** is also covered by any other insurance or sureties, including but not limited to any held by the agency providing temporary personnel to the **business operator or service company**; or
 - Is an **insured person** while performing acts within the scope of the usual duties of an **employee**; or
 - Is in the service of any **fund** as fiduciary, **trustee**, administrator, **officer** or **employee** while performing acts within the scope of the usual duties of an **employee**,
- At the time of the dishonest act, or for a period of up to ninety (90) days following termination of employment with the **business**.
- 6.25** **Employment practice breach** means any actual or alleged:
- unfair or wrongful dismissal from or termination or discharge of employment (either actual or constructive, including breach of an implied contract) or refusal to hire or failure to employ or promote wrongful deprivation of career opportunity; or
 - adverse change in the terms and conditions of a person's employment, wrongful demotion or negligent employee evaluation (including the provision of negative or defamatory statement in connection with an employee reference); or
 - discrimination, harassment, humiliation, retaliation (including lockouts); or

- d) defamation, invasion of privacy, wrongful deprivation of career opportunity, allegations of retaliatory treatment of a person as a result of such person exercising his rights under law; refusing to violate any law; disclosing or threatening to disclose any alleged violation of law; or filing or pursuing any **claim** under any 'whistle blower' law anywhere in the world which relates solely to the **business** and its past, present or prospective **employees**.

6.26 Employment-related benefits includes but is not limited to:

- a) Non-monetary benefits including but not limited to the allocation of a **business** car travel allowance, mobile or landline telephone, medical or life insurance expenses, education and training allowances, and equipment allowances;
- b) Stock, shares, stock options, share options or any entitlement or right under any employee plan of any description including dividends payable directly to **employees** or by way of associated entities or trusts set up by **employees**;
- c) Participation in any stock, share option or share option plan, or participation in any employee plan of any description;
- d) Severance or redundancy payments or entitlements, including but not limited to payment in lieu of notice required by law to be paid;
- e) Any benefit, payment or entitlement of any kind in respect of paid or unpaid leave;
- f) Bonus or incentive payments, or any entitlement or right under a bonus or incentive plan;
- g) payments or contributions in respect of any provident, benefit, superannuation, pension or retirement fund, or any other account, **fund**, scheme or plan intended to provide **benefits**, in whole or in part, at retirement or a particular age, or on the happening of a particular event;
- h) any amount the **insured** 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.

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

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

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

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

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

6.32 Industrial Instrument means:

- a) an award, collective or individual agreement, minimum wage order or any other instrument made or authorised under statute or regulation;
- b) any other collective agreement that regulates the terms and conditions of employment.

- 6.33 Insurance period** means the period shown in the **schedule**.
- 6.34 Insured** means the **service company** and any **insured persons**, and any incorporated **joint venture** where declared and agreed by **us**.
- 6.35 Insured person** means:
- a) the **business operator**;
 - b) any natural person performing a management function of the **business**;
 - c) a **director, officer, employee** performing a management function of the **service company**, or any natural person who by virtue of any applicable legislation or law is deemed to be a **director** or **officer** of the **service company**, or any natural person **trustee**; or
 - d) the estate, heirs, legal representatives or assigns of any deceased or mentally incompetent, bankrupt or insolvent person in (a) above, but only in respect of **loss** arising from a **wrongful act** committed by such person; or
 - e) a legal or de facto spouse, domestic partner or companion of a person in (a) above, but only in respect of **loss** arising from a **wrongful act** committed by such person; or
 - f) any natural person who is a past, present or future **director** of a corporate **trustee** of a **fund**; or
 - g) any person in (a) above or **employee** who holds an executive position in an **outside entity** at the specific request of the **business operator**; or
 - h) for the purpose only of a **claim** for an **employment practice breach** against an **employee**, such **employee** shall also be considered an **insured person**.
- Insured person** does not include:
- i) a receiver, receiver and manager, official manager, liquidator, administrator, trustee or other person administering a compromise or scheme of arrangement made between the **service company** and any other person or persons;
 - ii) any company, organisation or other body corporate.
- 6.36 Investigation** means where the **insured** receives a written notice from an **official body** that:
- a) requires, invites or directs them to attend before or produce documents to, or answer questions by or attend interviews with, an **official body**; or
 - b) identifies them as a target of the investigating **official body** for a hearing, examination, **investigation** or inquiry into the **business**, or an **insured person** in their capacity as such.
- Investigation** does not include:
- i) a routine regulatory supervision, inspection or compliance review or hearing, investigation or examination or inquiry which focuses on an industry rather than the **insured**, or
 - ii) a notice or formal process from the Australian Taxation Office or any State or Territory Revenue Office with respect to an actual, prospective or potential audit or review of any return legally required to be lodged.
- 6.37 Investigation costs** means the reasonable fees, costs and expenses incurred by or on behalf of an **insured**, with **our** prior written consent (not to be unreasonably withheld), in preparing for, attending or producing documents to an **investigation**.
- 6.38 Joint venture** means any enterprise undertaken jointly by the **business operator** or **service company** and any other party.
- 6.39 Litigation** includes, but is not limited to, any civil, criminal, administrative or regulatory proceeding as well as any official investigation, examination, inquiry, arbitration or adjudication.

- 6.40 Loss** means, for the purpose of Insuring Clauses 2.1 and 2.2(a) – (c), damages, compensation, settlements to which **we** have consented, claimant costs and **defence costs** which a person or entity becomes legally obliged to pay as a result of a **claim**. However, **loss** does not include:
- a) fines or penalties (whether civil or criminal) imposed by law, punitive, aggravated, exemplary or multiple damages, or matters uninsurable under the laws governing this **policy**; or
 - b) taxes, duties or amounts, other than damages, calculated by reference to taxes and/or duties; or
 - c) costs incurred by the **insured** to modify any building or property, or to provide any service, in order to make such building or property, or make any service more accessible or accommodating to any disabled person; or
 - d) costs incurred by the **insured** in connection with any educational, corrective, sensitivity or other programme, policy or seminar relating to any **employment practice breach**; or
 - e) any amount payable by the **insured** under any warranty, guarantee, debt or for fees payable to a third party for good or services supplied to the **insured** (including but not limited to amounts which the **insured** is required to refund or repay); or
 - f) any damages ordered or settlement agreed to in connection with any dispute arising from the agreed sale or purchase agreement for a **transaction**;
 - g) wages, salaries, fees or costs of time or other remuneration of any **insured** or **employees**; or
 - h) **defence costs**, claimant costs or any other cost or expense where there is no other covered **loss**, but for **claims** for non-pecuniary relief.

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

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

- 6.41 Money** means only local or foreign currency, coins, bank notes, cheques, travellers' cheques, registered cheques, postal orders, money orders and bullion.
- 6.42 Officer** means any natural person who was, now is or shall be a company secretary, executive officer, officer, **director**, partner, or the holder of an equivalent position, of the **service company** or senior manager as defined in Section 9 of the *Corporations Act 2001* (Cth).
- 6.43 Official body** means any regulator, government or administrative body or agency empowered to investigate the affairs of the **business** or the conduct of an **insured person** in such capacity. For the avoidance of doubt this includes a coronial inquest, judicial body or commission of inquiry.
- 6.44 Outside entity** means a company, corporation, partnership or **joint venture** other than the **service company**, **subsidiary** or any associated company.
- Outside entity** shall not include any other corporation, partnership, joint venture which is:
- a) registered or approved for direct or indirect trading on a national securities exchange or over the counter trading system anywhere in the world, or
 - b) which is located, incorporated or domiciled or operates in the United States of America or any territory under its jurisdiction, or
 - c) which is an authorised deposit taking institution, finance company, leasing company, friendly society, life insurance company, general insurance company, reinsurance company, investment company, mutual fund, collective investment scheme, fund manager, investment adviser, responsible entity of a managed investment scheme, trustee company, money market corporation, investment bank or any broker in securities or commodities, mortgage broker, real estate agent, stock exchange, commodities exchange, futures exchange, custodian, clearing house, registrar, medical benefits association or hospital benefits association or organisations of similar nature.

- 6.45 **Phishing** means any fraudulent or dishonest conduct of any person or entity, known or unknown to the **insured**, involving a written or verbal communication (including but not limited to the sending of an email) to the **insured** or its agents, from an apparently or purportedly legitimate or trusted source (including but not limited to an apparent **employee, director, officer**, supplier, vendor or customer of the **insured**) and directly or indirectly causing or leading to the **insured**:
- a) revealing confidential information; or
 - b) transferring **money** or **securities**; or
 - c) entering a website (including a website which is fake or bogus) by using a link contained in or related to the communication; or
 - d) changing or altering bank account or payment details of any person or entity.
- 6.46 **Phreaking** means any fraudulent, dishonest, unauthorised or malicious use of the telephone system of the **insured** which results in unauthorised charges or bandwidth costs which the **insured** is legally liable to pay.
- 6.47 **Policy** means this policy wording, the **schedule**, the **proposal** and any endorsements attaching to and forming part of the **policy**.
- 6.48 **Pollutants** means any substance, solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals, toxic mould, fibres, spores, fungi, germs, dust, liquids or gases, air emission, odour, waste water, oil or oil products, infectious or medical waste, noise or waste materials. Waste materials include but are not limited to recycled, reconditioned or reclaimed materials.
- 6.49 **Proposal** means the **insured's** written application for insurance made to **us** and including attachments and materials submitted therewith.
- 6.50 **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).
- 6.51 **Push-payment fraud** means from the impersonation of an **insured** by a **third party** to manipulate a client or customer of the **insured**, or another party the **insured** has a written contract with, to issue an instruction to a financial institution to debit, pay, deliver or transfer **money** or **securities** from an account maintained by the client, customer or other such party, to another account not maintained by the **insured**.
- 6.52 **Retroactive date** means the date specified in the **schedule**.
- 6.53 **Risk review notice** means notice of a Risk Review or Comprehensive Risk Review from a **tax authority** relating to any return legally required to be and actually lodged with a **tax authority** by the company only.
- 6.54 **Schedule** means the schedule attached to this **policy**.
- 6.55 **Securities** for the purposes of the cover in, and terms of this **policy** applicable to, Insuring Clause 2.2 (d) Crime means any negotiable or non-negotiable instruments or contracts representing **money** or other property, but excluding **money**. For the purposes of the other terms, conditions and exclusions of this **policy**, **securities** means any shares, preference shares, stocks, debentures, warrants, options, bonds, promissory notes or other equity or debt security.
- 6.56 **Service company** means:
- a) any service, administration or nominee company connected with the **business** or listed as a **service company** in the **schedule**, or in an endorsement attached to this **policy**, to the extent that its activities are carried out exclusively in the conduct of the **business**; and
 - b) any **subsidiary** in existence at the commencement of the **insurance period** which is controlled by the **business operator** and over which the **business operator** has active management.
- Service company** does not include any **outside entity**.

- 6.57 Social engineering fraud** means any fraudulent or dishonest impersonation by any means of an **insured**, **employee**, vendor, client or customer of the **insured** or a party with which the **insured** has a contract, by any person or entity which directly or indirectly causes or leads to an **insured** paying, delivering or transferring **money, securities** or tangible property from an account maintained by the **insured** to another person or entity, and includes any person or entity acting in collusion with an **insured** or **employee** provided that the **insured** or **employee** issuing the instruction was not a party to the collusion.
- 6.58 State revenue notice** means a formal notice or process from a **tax authority** relating to any return legally required to be and actually lodged with a **tax authority** by the **company** only.
- 6.59 Statutory liability** means:
- a) civil fines and civil penalties awarded against an **insured** for breach of an **Act**, and
 - b) pecuniary penalties awarded in criminal proceedings, except where the insurance of such penalties is legally prohibited
- Statutory liability** does not include:
- i) any amounts payable as compensation, damages, including any exemplary or punitive damages or the multiplied part;
 - ii) the cost or payment of any compliance, remedial, reparation, restitution, or enforcement orders;
 - iii) any tax (including any fine or penalty resulting from the failure to pay any tax), rate, duty, or interest thereon or any amount arising from such tax, rate, duty or interest;
 - iv) any economic **loss**, consequential or otherwise;
 - v) any other monetary payment, penalty or fine, the insurance of which is prohibited by the law where the **claim** is brought;
 - vi) any penalty awarded outside the jurisdiction or laws of Australia or New Zealand;
 - vii) any amount in connection with alleged breaches of the *Privacy Act 1988* (Cth)
- 6.60 Subsidiary** means:
- a) any entity in which the **service company** owns or controls, directly or indirectly, in any combination, more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors; or
 - b) any entity which is deemed to be the **service company's** subsidiary under any applicable legislation, law or Australian Accounting Standard; or
 - c) any incorporated **joint venture** over which the **service company** exercises effective management and control.
- 6.61 Tax audit costs** means any reasonable fees, charges or disbursements of an **accountant** or **registered tax agent** who is engaged by the **insured** for work undertaken in response to a **tax audit notice**.
Tax audit costs does not include legal costs and expenses.
- 6.62 Tax audit notice** means a formal notice or process from a **tax authority** relating to a specific return filed by the **insured** as to its liability to pay income tax, fringe benefits tax, capital gains tax, A New Tax System (Goods and Services) Tax, superannuation payments tax, termination payments tax or sales tax (including the amount of any such tax).
- 6.63 Tax authority** means:
- a) the Australian Taxation Office; and
 - b) if Optional Extension 4.1 (State Revenue Costs) is included in the **schedule**, any Australian State or Territory revenue department, or other body, agency or authority with jurisdiction over taxation.

- 6.64 **Territorial limits** means anywhere in the world, other than:
- a) for the purpose of Automatic Extensions 3.22 (Official Investigations and Inquiries), 3.21 (Occupational Health and Safety Defence Costs) and 3.25 (Pollution Cover) **territorial limits** shall mean anywhere in Australia; and
 - b) for the purpose of Insuring Clause 2.2(d) Crime and Automatic Extension 3.28 (Statutory Liability) **territorial limits** shall mean anywhere in Australia and New Zealand.
- 6.65 **Third party** means any natural person who is not an **insured**, or a person acting in collusion with the **business**.
- 6.66 **Third party claim** means a **claim** which is brought and maintained by or on behalf of a **third party** against an **insured** in connection with any actual or alleged **third party discrimination and sexual harassment** including any appeal therefrom.
- 6.67 **Third party discrimination and sexual harassment** means:
- a) discrimination against a **third party** based upon such **third party's** race, colour, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference or protected military status or other status which is protected pursuant to any law anywhere in the world;
 - b) sexual harassment, including unwelcome sexual advances, requests for sexual favours or conduct of a sexual nature against a **third party**.
- 6.68 **Transaction** means any one of the following events:
- a) the **business operator** enters into partnership with, consolidates with or merges into or sells all or substantially all of the **business'** 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 **business** or control the appointment of persons who are able to exercise a majority of votes at management meetings of the **business**; or
 - c) the **service company** lists its securities on any **securities** exchange or market; or
 - d) the **business** is placed into external administration, receivership, liquidation or similar.
- 6.69 **Triangulation fraud** means the use of a fraudulent payment method, including a stolen credit card, by any natural person other than an **insured** posing as a customer of the **business**, which results in a merchant charge-back from the bank or other financial institution that facilitated the fraudulent payment.
- 6.70 **Trustee** means any **insured person** or the **service company** if validly appointed to act, and while acting in the capacity, as a trustee of a **fund**.
- 6.71 **We, our or us** means DUAL Australia Pty Limited, ACN 107 553 257 as agent of the Underwriters named in the **schedule** under the heading "Underwriters".
- 6.72 **Wrongful act** shall mean any alleged breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, or other act by:
- a) any **insured person**, individually or otherwise, solely because of their status as such and in the course of his or her duties to the **business** or **outside entity**, or
 - b) the **service company**.

Section 7: Claims Conditions

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

7.1 Notification

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

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

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

The National Claims Manager

DUAL Australia Pty Limited

Level 6, 160 Sussex Street

Sydney NSW 2000

Australia

or by email to claims@dualaustralia.com.au

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

7.2 Notification of Direct Financial Loss

The **insured** shall, as a condition precedent to **our** obligations under this **policy**, give written notice to **us** of any **direct financial loss** as soon as practicable within the **insurance period**, or within the **discovery period** if applicable, but in any event not later than sixty (60) days after any **direct financial loss** is first **discovered**. The **insured** may offer a comparison between the **insured's** inventory records and actual physical counts of its inventory to prove the amount of **loss** only where the **insured** establishes that, wholly apart from such comparison, it has sustained a covered **loss** caused by an **employee**.

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

- a) Provide **us** with affirmative proof of the **direct financial loss** with full particulars within six (6) months of the **direct financial loss** being first **discovered**, and
- b) Provide **us** with all requested information and documents and co-operate with **us** in all matters pertaining to the **direct financial loss**.

7.3 Co-operation

- a) The **insured** must, at the **insured's** own cost, frankly and honestly provide **us** with all information, documentation, evidence and assistance reasonably required by **us** and/or any lawyers, investigators or other professionals, who may be appointed by **us**.
- b) The **insured** must, at their own cost, do all things reasonably practicable to minimise any **loss**, including but not limited to the **insured's** liability in respect of any **claim**.
- c) Each **insured** must provide **us**, at their own cost, with all information, assistance and co-operation which **we** reasonably require, and in the event of a **claim** or potential claim, each **insured** agrees that they will not do anything that could potentially prejudice **our** position or **our** potential or actual rights of recovery.

- d) No **insured** may settle any **claim** or incur any **defence costs** and expenses and assume any contractual obligation or admit any liability with respect to any **claim** without **our** written consent.

7.4 Allocation

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

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

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

We will use **our** best endeavours to agree upon a fair and equitable allocation of the proportion covered under this **policy**, having regard to the relative legal and financial exposures attributable to covered and uncovered matters and/or parties.

If an allocation cannot be agreed, then it will be determined by a suitably qualified Senior Counsel to be mutually agreed upon or, in default of agreement, to be nominated by the then President of the Bar Association of the jurisdiction in which the **policy** was underwritten. The Senior Counsel will make a determination as an expert based on the relative legal and financial exposures attributable to covered and uncovered matters and/or parties. Submissions made to the Senior Counsel will be in writing. Pending Senior Counsel's determination **we** will meet the **loss** and **defence costs** on an interim basis at the percentage, which **we** contend should be fairly and equitably allocated. After the allocation has been determined or agreed, such allocation will be applied retrospectively. The parties agree to be bound by the Senior Counsel's determination. The costs of any referral for determination to a Senior Counsel under this clause will be borne by **us**.

7.5 Insured's Right to Contest and our Discharge of Liabilities

- a) In the event that **we** recommend settlement of a **claim** and the **insured**:
 - i) does not agree to the settlement of the claim; and
 - ii) decides to contest the **claim**

our liability shall not exceed the amount for which the **claim** could have been settled, and **defence costs** incurred up to the date upon which the **claim** could have been settled.

- b) At any time, **we** may pay to the **insured**, or on the **insured's** behalf, in respect of any claim, the **indemnity limit**, or any applicable sub-limit, (after deduction of any amount already paid) or any lesser amount for which a **claim** or **claims** may reasonably be settled.

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

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

7.6 Legal Representation and Settlement

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

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

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

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

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

7.7 Order of Payments

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

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

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

Section 8: General Conditions

8.1 Subrogation and Recoveries

- a) Where **we** have paid any amount of **loss** and **defence costs** under the **policy**, **we** become entitled to assume any rights available to the **insured** against any party to the extent of **our** payment. On **our** request, the **insured** will assign all rights of recovery against any person or entity, but only to the extent that payment has been made under the **policy**.
- b) The **insured** must, at its own cost, assist **us** and provide information as **we** may reasonably require, to exercise **our** rights of recovery and/or subrogation. This may include providing and signing statements and other documents and the giving of evidence.
- c) Other than as set out in (d) below, **we** shall not exercise any subrogated rights of recovery against any **employee** unless the **claim** or **loss** has been brought about by or contributed to by the dishonest, fraudulent, criminal or malicious conduct of such **employee**. **We** shall only exercise such rights where it has been established that such conduct did occur.
- d) In respect of Insuring Clause 2.2(d) Crime **we** may at any time and at **our** own expense exercise **our** rights of subrogation against any **third party** or **employee** where it has been found that they have committed **dishonest acts** resulting in a **direct financial loss** that **we** have paid or will be liable to pay under the **policy**.
- e) Where a recovery is made, the proceeds of such a recovery will be applied as follows:
 - i) firstly, to the satisfaction of all costs incurred in effecting the recovery; and
 - ii) secondly, to the **insured** for the amount of **loss** or **defence costs** in excess of the **indemnity limit** specified in the **schedule** which is also in excess of any excess insurance purchased over this **policy**; and
 - iii) thirdly, to **us** and any excess insurers amounts paid under the **policy** and such excess policies; and
 - iv) finally, to the **insured** for the amount paid in respect of the **deductible**.

8.2 Goods and Services Tax

We will charge an appropriate amount to the **business operator** and **service company** on account of GST.

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

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

No payment will be made to the **business operator** and **service company**, for any GST liability on account of a covered **claim** or **investigation**.

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

8.3 Alteration to Risk

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

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

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

8.4 Assignment

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

8.5 Cancellation

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

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

Provided that there have been no **claims** or notifications made on or under the **policy**, **we** agree to allow a refund of premium calculated on a pro-rata basis, provided that **we** will always retain a minimum of 25% of the full annual premium.

8.6 Several Liability of Underwriters

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

8.7 Confidentiality

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

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

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

- i) the **insured** is required to do so by law; or
- ii) **we** consent to the disclosure in writing, or
- iii) **we** provide a Certificate of Currency which can be provided to third parties.

8.8 Governing Law and Jurisdiction

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

8.9 Indemnity Limit

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

8.10 Deductible

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

8.11 Severability, Non-Imputation and Non-Avoidance

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

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

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

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

8.12 Preservation of Right to Indemnity

In the event and to the extent that the **service 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, refuses to do so, then **we** will pay on behalf of the **insured person** any **loss** arising from the **claim** or **investigation** within the **deductible** and, the applicable **deductible** will be paid by the **service company** to **us**.

8.13 Other Insurance

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

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

8.14 Currency

Any reference to premium, **indemnity limit**, **deductibles**, **loss**, **defence costs**, costs or any other amounts payable by **us** under this **policy** are expressed and are payable in Australian Dollars. Where any payment is to be made into an admitted foreign jurisdiction, such payment is to be made and denominated in Australian Dollars at the cash rate for the purchase of Australian Dollars set by the Reserve Bank of Australia as at 4.00pm on the date which the foreign payment becomes due.

8.15 Basis of Valuation

With respect to any **direct financial loss** which is covered under this **policy**, **we** are not liable for more than:

- a) the actual market value of **securities**, **money** or precious metals at the close of **business** on the day the **direct financial loss** was first **discovered** (determined by the value published in the Australian Financial Review), or the actual cost of replacing the **securities**, **money** or precious metals, whichever is less; or
- b) the actual cash value of other tangible property (not referred to in (a) above) at the close of business on the day the **direct financial loss** was first **discovered**, or the actual cost of replacing the property with property of like quality or value, whichever is less; or
- c) the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of data furnished by the **insured** in order to reproduce books of account and other records; or
- d) the cost of labour for the actual transcription or copying of electronic data furnished by the **insured** in order to reproduce such electronic data.

8.16 Service of Legal Notices

The Underwriters hereon agree that any Summons, Writ or other like legal Notice or Process, which is to be served upon the Underwriters may be served upon Lloyd's General Representative at Lloyd's Australia:

Lloyd's Underwriters' General Representative in Australia

Level 16, Suite 1603

1 Macquarie Place

Sydney NSW 2000

Australia

Telephone Number: (02) 8298 0700

Facsimile Number: (02) 8298 0788

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

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

8.17 Interpretation

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

In this **policy**:

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

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

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