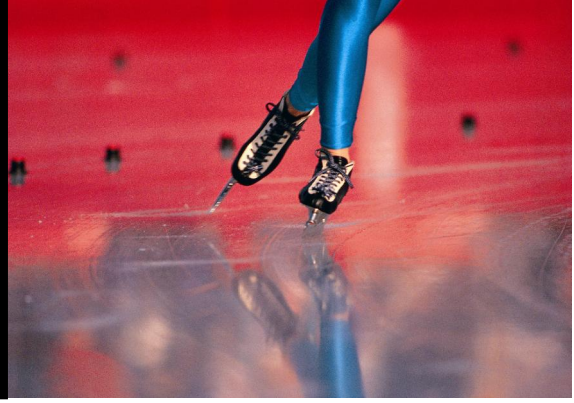


The  
**DUAL**  
Approach



**Health Professionals  
Combined Liability**



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# DUAL New Zealand Health Professionals

## Combined Liability Policy Wording

### Section 1: PREAMBLE

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

### Part A: PROFESSIONAL INDEMNITY

#### Section 2: INSURING CLAUSE

- 2.1 WE agree to indemnify the INSURED for any CLAIM for compensation first made against the INSURED and reported to US during the INSURANCE PERIOD in respect of any civil liability resulting from any breach of professional duty by the INSURED in its conduct of its PROFESSIONAL BUSINESS.
- 2.2 WE also agree to pay DEFENCE COSTS either incurred by US or incurred by the INSURED with OUR prior written consent.
- 2.3 The POLICY shall only provide cover for breaches of professional duty committed after the RETROACTIVE DATE.

#### Section 3: AUTOMATIC EXTENSIONS (Applicable to Part A only)

The automatic extensions are subject to the Insuring Clauses in Section 2 above and all other applicable POLICY terms and conditions, including but not limited to the INDEMNITY LIMIT for this Part A.

##### 3.1 Fraud and Dishonesty

WE agree to provide cover in respect of any CLAIM which would otherwise be excluded because of fraud and dishonesty in Exclusion 8.15 of the POLICY provided that WE will not provide cover in respect of any:

- (a) Person committing or condoning any act, omission or breach excluded by Exclusion 8.15 of the POLICY.
- (b) CLAIM arising from or directly or indirectly attributable to or in consequence of:
  - (i) Any loss of money, negotiable instruments, bonds, coupons, currency, bank notes, stamps, cheques, bills of exchange, letters of credit or other instruments whether negotiable or not or whether matured or not or securities or documents evidencing title to or ownership of land or any other property; or
  - (ii) Any actual or alleged fraudulent or dishonest instruction or direction; or use of electronic equipment, including but not limited to, telephony or the internet; resulting in:
    - a) Any unauthorised transfer, delivery or payment of, or dealing with, any money, land or other property; or
    - b) Any unauthorised reduction in the amount of any funds or other assets held by any person with any bank, building society or other institution or person having a responsibility for the maintenance or care of such funds or assets; or
    - c) Any adverse effect upon any right of any person to the payment of money.

### 3.2 **Former Principals**

WE agree to provide cover in respect of any CLAIM against any former principal, partner, director, or EMPLOYEE of the INSURED in respect of the conduct of the INSURED's PROFESSIONAL BUSINESS.

### 3.3 **Loss of Documents**

WE agree to provide cover in respect of any costs and expenses incurred by the INSURED in replacing or restoring LOST DOCUMENTS for which the INSURED is legally responsible if:

- (a) The loss of the DOCUMENTS is first discovered during the INSURANCE PERIOD;
- (b) The INSURED notifies US within 30 days of discovery of the loss of the DOCUMENTS;
- (c) The INSURED provides US with bills and accounts substantiating the costs and expenses incurred by the INSURED in replacing or restoring the LOST DOCUMENTS; and
- (d) WE approve or a competent person nominated by US approves the bills and accounts.

OUR total liability under this extension for any one claim and in the aggregate from all claims during the INSURANCE PERIOD shall not exceed \$500,000. This sub-limit is part of and not in addition to the INDEMNITY LIMIT. A separate DEDUCTIBLE of \$2,000 or amount shown in Item 6 headed DEDUCTIBLE (whichever is the lesser) will apply to each loss under this extension.

### 3.4 **Run-off Cover Insured Entity or Subsidiary (Former Subsidiary)**

WE agree to provide cover in respect of any CLAIM against the INSURED resulting from the conduct of the PROFESSIONAL BUSINESS by a SUBSIDIARY that ceased or ceases to be a SUBSIDIARY either before or during the INSURANCE PERIOD.

### 3.5 **Joint Venture Liability**

WE agree to provide cover in respect of any CLAIM against the INSURED resulting from its conduct of the PROFESSIONAL BUSINESS as a joint venturer.

WE will not cover any liability of the joint venture partner.

### 3.6 **Defamation**

WE agree to provide cover in respect of any CLAIM against the INSURED which results from the INSURED making a defamatory statement in the conduct of the PROFESSIONAL BUSINESS.

### 3.7 **Fidelity**

WE agree to provide cover in respect of any CLAIM against, or loss discovered by, the INSURED resulting from:

- (a) Any loss of money, negotiable instruments, bonds, coupons, currency, bank notes, stamps, cheques, bills of exchange, letters of credit and other instruments whether negotiable or not or whether matured or not or securities or documents evidencing title to or ownership of land or any other property belonging to the INSURED or for which the INSURED is legally liable; and/or
- (b) Any actual or alleged fraudulent or dishonest instruction, direction or use of electronic equipment, including but not limited to telephony and the internet, resulting in the unauthorised transfer, delivery or payment of, or dealing with, money, land or any other property belonging to the INSURED or for which the INSURED is legally liable ("fraudulent transaction")

Where such loss is sustained or fraudulent transaction occurs in consequence of any dishonest, fraudulent, malicious or reckless act or omission of any INSURED, provided always that:

- (a) Such CLAIM is first made against the INSURED or loss or fraudulent transaction is first discovered by the INSURED during the INSURANCE PERIOD and is notified in writing to US within 28 days after such discovery and where the INSURED must bear any costs or expenses to substantiate the loss or fraudulent transaction;
- (b) We shall not be liable for any CLAIM based on or loss sustained in respect of any fraudulent transaction which occurs in consequence of any act or omission occurring after the date of the discovery of, or of reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the INSURED concerned; nor will we be liable to indemnify any INSURED committing or condoning any dishonest or fraudulent conduct.

The cover provided under this extension is sub-limited to \$50,000 any one CLAIM or loss and in the aggregate all CLAIMS and losses. This sub-limit is part of and not in addition to the INDEMNITY LIMIT. A separate DEDUCTIBLE of \$5,000 will apply to each loss under this extension.

### 3.8 **Intellectual Property**

WE agree to provide cover in respect of any CLAIM which would otherwise be excluded by Exclusion 8.10 of the POLICY (Intellectual Property), provided that the liability incurred from the breach of intellectual property rights results from the provision of advice by the INSURED in the conduct of the PROFESSIONAL BUSINESS.

### 3.9 **Reinstatement of INDEMNITY LIMIT**

WE agree to provide cover in respect of any CLAIM(S) which require(s) reinstatement of the INDEMNITY LIMIT during the INSURANCE PERIOD because the INDEMNITY LIMIT is eroded (partially or totally) as a result of the payment of an earlier and separate CLAIM or CLAIMS. However the aggregate of all such reinstatements in connection with all CLAIMS will not exceed a total amount equal to the INDEMNITY LIMIT, exclusive of DEFENCE COSTS, and such reinstatements are only available where the subsequent CLAIM(S) is/are based on facts and matters totally different from and unrelated to those which gave rise to the erosion or exhaustion of the INDEMNITY LIMIT. Further, this Extension does not apply until the INSURED has exhausted the limits of any policy which is in excess of the original INDEMNITY LIMIT under this POLICY, other than any similar reinstatement provisions under such excess policies.

### 3.10 **Attendance at Inquiries**

WE agree to provide cover in respect of any legal representation costs resulting directly from the attendance by the INSURED at any INQUIRY. WE will only do this if:

- (a) The INQUIRY is ordered or commissioned during the INSURANCE PERIOD, and
- (b) OUR consent is obtained before such costs are incurred, and
- (c) The INSURED notifies US during the INSURANCE PERIOD that the INSURED is legally compelled to attend the INQUIRY, and
- (d) The INQUIRY is not being held in USA or Canada, and
- (e) The INSURED's attendance is required because of the INSURED's conduct of its PROFESSIONAL BUSINESS, and
- (f) The notice requiring the INSURED to attend does not relate to any allegations of sexual misconduct
- (g) At OUR option, WE can nominate legal advisers to be used.

The cover provided under this extension is sub-limited to \$100,000 any one INQUIRY and in the aggregate for all INQUIRIES and a separate DEDUCTIBLE will apply to each INQUIRY under this extension. This sub-limit is part of and not in addition to the INDEMNITY LIMIT. For the application of the terms and conditions of this POLICY to this Extension, INQUIRY is deemed to be a CLAIM.

### 3.11 **Court Attendance Costs**

WE agree to provide cover in respect of any Court attendance costs of any partner, principal, director or EMPLOYEE of the INSURED who is legally required to attend Court as a witness in a CLAIM covered by the POLICY, to an amount not exceeding \$250 per day for EMPLOYEES and \$500 per day for those other persons. No DEDUCTIBLE applies.

### 3.12 **Public Relations**

WE agree to provide cover in respect of any PUBLIC RELATIONS EXPENSES incurred by the INSURED in connection with an INCIDENT in order to prevent or minimise the risk of a CLAIM which would be covered under the POLICY, or in connection with an INCIDENT that results in a CLAIM covered under the POLICY. The INSURED's entitlement to this cover is conditional upon the INSURED providing US with full written details of the INCIDENT no later than 30 days after the INSURED first becomes aware of the INCIDENT. The INCIDENT must occur and be reported during the INSURANCE PERIOD. The INCIDENT must occur outside of the USA/Canada.

The cover provided under this extension is sub-limited to \$50,000 any one INCIDENT and in the aggregate for all INCIDENTS. A separate DEDUCTIBLE of \$1,000 will apply to each INCIDENT under this extension. This sub-limit is part of and not in addition to the INDEMNITY LIMIT.

3.13 **Heirs, Estates and Legal Representatives**

WE agree to provide cover in respect of any Estate, heirs, legal representatives or assigns of any deceased or mentally incompetent INSURED in respect of CLAIMS resulting from the conduct of the PROFESSIONAL BUSINESS by such INSURED.

3.14 **Continuous Cover**

Notwithstanding the Prior Knowledge Clause 8.1 (a) and (b), WE agree to provide cover in respect of any CLAIM 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 it; and
- (b) Had not notified US of such facts or circumstances prior to the INSURANCE PERIOD.

Provided that:

- (a) WE were the professional indemnity liability insurer of the INSURED when the INSURED first became aware of such facts and circumstances; and
- (b) WE have continued, without interruption, to be the INSURED's professional indemnity insurer up until this POLICY came into effect; and
- (c) There has not been any fraudulent non-disclosure or fraudulent misrepresentation by the INSURED in respect of such facts or circumstances; and
- (d) WE have the discretion to apply either the terms and conditions of the Policy on foot when the INSURED first became aware of the facts and circumstances, including but not limited to the INDEMNITY LIMIT and DEDUCTIBLE, or the terms and conditions of this POLICY; and
- (e) The INSURED agrees to only make a claim under one professional indemnity POLICY issued by US.

For the purpose of this Extension only, the definition of WE/US/OUR in clause 7.28 of this POLICY also includes the Underwriter(s) for which WE were the agent on any previous policy issued by US as such Underwriter's agent to the INSURED. Subject to the terms of this extension and the terms of the POLICY, the intention of this 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.

3.15 **Defence Costs In Addition**

WE agree to provide cover for any DEFENCE COSTS in addition to the INDEMNITY LIMIT, in an amount not exceeding the INDEMNITY LIMIT. We will only pay these, however, if:

- (a) WE incur them; or
- (b) The INSURED incurs them after first obtaining OUR agreement in writing and the DEFENCE COSTS are in OUR view reasonable and necessary.

We will not be obliged to defend, or to continue to defend, any CLAIMS or pay, or continue to pay, any DEFENCE COSTS associated with such defence, once the INDEMNITY LIMIT has been exhausted.

DEFENCE COSTS does not include any internal or overhead expenses of the INSURED or the cost of the INSURED'S time.

3.16 **Emergency Defence Costs**

WE agree to provide cover for any DEFENCE COSTS incurred by the INSURED prior to obtaining our consent, provided OUR consent is obtained within 30 days of the first of such DEFENCE COSTS being incurred, and provided that for the purposes of this Extension only:

- (a) WE are only liable to indemnify the INSURED for that part of the INSURED's liability in respect of each CLAIM and DEFENCE COSTS in excess of the DEDUCTIBLE, and
- (b) If WE subsequently refuse to pay under the POLICY, the INSURED must reimburse US for any DEFENCE COSTS that WE have paid in advance, according to their respective rights and interests.

The sub limit of liability for all such payments under this Extension is \$100,000. This sub limit forms part of, and is not payable in addition to, the INDEMNITY LIMIT.

3.17 **Advanced Defence Costs (Sexual Misconduct)**

WE agree to advance DEFENCE COSTS incurred by the INSURED before final disposition of a CLAIM against the INSURED alleging sexual misconduct of the INSURED in the course of is PROFESSIONAL BUSINESS;

- (a) Where WE give the INSURED written confirmation that WE will pay the INSURED's LOSS arising from the CLAIM; or
- (b) Where WE take over and conduct proceedings in respect of the CLAIM under Clause 9.4.

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

The sub limit of liability for all such payments under this Extension is \$100,000. This sub limit forms part of, and is not payable in addition to, the INDEMNITY LIMIT.

3.18 **Previous Business**

WE agree to provide cover in respect of any principal, partner or director of the INSURED for CLAIMS resulting from professional services they performed prior to joining the INSURED.

This extension will only apply if:

- (a) The professional services were performed in the same profession as the PROFESSIONAL ACTIVITY of the INSURED; and
- (b) There were no more than 10 partners or directors in the past business in which the principal, partner or director practised; and
- (c) The principal, partner or director of the INSURED does not have the benefit of cover under any other insurance or indemnity.

The retroactive date for this Extension is limited to the commencement date of the past business in which the principal, partner or director practised

3.19 **Good Samaritan Acts**

WE agree to indemnify the INSURED for any CLAIM for compensation first made against the INSURED and reported to US during the INSURANCE PERIOD in respect of any civil liability resulting from the rendering of emergency first aid and assistance to persons by the INSURED in a capacity the same as that of the INSURED's PROFESSIONAL BUSINESS

3.20 **Teachers Liability**

WE agree to indemnify the INSURED for any CLAIM for compensation in respect of any civil liability resulting from the provision of teaching and training services provided by the INSURED in the conduct of its PROFESSIONAL BUSINESS.

**Part B Public and Products Liability**

**Section 4 INSURING CLAUSES**

4.1 WE agree to indemnify the INSURED for any amount the INSURED becomes legally liable to pay in respect of CLAIMS for compensation for PERSONAL INJURY or PROPERTY DAMAGE arising out of an OCCURRENCE in the INSURANCE PERIOD in connection with the INSURED's BUSINESS.

4.2 **Defence Costs and Expenses**

In addition to the INDEMNITY LIMIT WE will pay in respect of a CLAIM covered under this Section of the POLICY, all:

- (a) DEFENCE COSTS incurred by US;
- (b) Costs awarded against the INSURED and all interest accruing after judgement until WE have paid, tendered or deposited in court that part of any judgement which does not exceed the INDEMNITY LIMIT;

- (c) Reasonable costs and expenses, other than loss of earnings, incurred by the INSURED with OUR prior written consent; and
- (d) Costs and expenses incurred by the INSURED for rendering first aid to others at the time of any PERSONAL INJURY;

Provided that:

- (i) If to dispose of or settle a CLAIM covered under this section of the POLICY, compensation is payable in excess of the INDEMNITY LIMIT, OUR liability in respect of DEFENCE COSTS and costs and expenses under this clause will be limited to that proportion of such DEFENCE COSTS and costs and expenses as the INDEMNITY LIMIT bears to the total compensation payable to dispose of or settle the CLAIM;
- (ii) WE will not pay for any DEFENCE COSTS or costs or expenses that are incurred after WE have paid or agreed to pay an amount equal to the INDEMNITY LIMIT; and
- (iii) In relation to any CLAIM made or actions instituted within the United States of America or the Dominion of Canada or their territories or protectorates, OUR liability to pay any DEFENCE COSTS or costs or expenses detailed above shall be included in the INDEMNITY LIMIT, and not in addition to the INDEMNITY LIMIT.

#### 4.3 Tenants Liability

WE agree to indemnify any lessor with whom the INSURED has entered into an agreement for the rental or lease of premises (not belonging to the INSURED) from which the INSURED conducts its BUSINESS, provided always that no wider cover shall be afforded to the lessor than would have been provided hereunder to the INSURED if the INSURED had been held legally liable for the same PERSONAL INJURY or PROPERTY DAMAGE and only where that liability arises out of the INSURED's use of such premises in the carrying on of its BUSINESS. Exclusion 8.3 (b) shall not apply to any cover provided under this Extension.

#### Section 5: OPTIONAL EXTENSIONS:

The optional extensions are subject to Insuring Clause 4.1 (as applicable) and all other applicable POLICY terms and conditions, including but not limited to the INDEMNITY LIMIT for Part B.

#### 5.1 Consultants, Subcontractors and Agents (Part B only)

WE agree to provide cover in accordance with Insuring clause 4.1 for any CLAIM against any consultant, sub contractor or agent named in the Schedule whilst acting for and on behalf of the INSURED in the course of the INSURED's BUSINESS.

For the purpose of this Optional Extension only all terms, conditions and exclusions of the POLICY apply under this Extension as if the consultant, subcontractor or agent were an INSURED. The cover provided under this Extension is part of and not in addition to the INDEMNITY LIMIT.

#### Section 6: INTERPRETATION

In the POLICY:

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



**Section 7: DEFINITIONS**

In the POLICY:

- 7.1 AIRCRAFT means any object that is intended to fly or move in or through the air, atmosphere or space.
- 7.2 CLAIM means:
- (a) Any civil proceeding brought by a third party against the INSURED for compensation; or
  - (b) A written demand by a third party for monetary damages.
- 7.3 DEDUCTIBLE means, for Part A, the amount specified in Item 6(a) of the Schedule and, for Part B, the amount specified in Item 6(b) of the Schedule.
- 7.4 DEFENCE COSTS means any necessary and reasonable fees, expenses, costs and disbursements incurred in investigating or defending a CLAIM covered by the POLICY.
- 7.5 DOCUMENTS means deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature, whether printed, written or reproduced by any method including computer records and electronically stored data but does not mean bearer bonds or coupons, stamps, bank or currency notes, money or any negotiable instrument.
- 7.6 EMPLOYEE means any person employed by the INSURED under a contract of service or apprenticeship during or prior to the commencement of the INSURED PERIOD and includes volunteers, locums and student(s) whilst directly supervised by the INSURED or by a qualified allied health practitioner of the INSURED specified in the Schedule.
- 7.7 FAMILY MEMBER means the INSURED's
- (a) Legal or defacto spouse, domestic partner or companion;
  - (b) Parent, or the parent of the INSURED's legal or defacto spouse, domestic partner or companion;
  - (c) Children and children of (a) and (b) above
  - (d) Siblings.
- 7.8 INCIDENT means a matter in which the INSURED's reputation and skill in the conduct of the PROFESSIONAL BUSINESS is brought into question.
- 7.9 INDEMNITY LIMIT means, for Part A, the amount specified in Item 5(a) of the Schedule and, for Part B, the amount specified in Item 5(b) of the Schedule.
- 7.10 INQUIRY means any official investigation, examination, inquiry, prosecution or hearing of a professional nature held before an industry or professional disciplinary board or coronial inquiry or other proceedings ordered or commissioned by any official body or institution empowered by law to investigate the conduct of the PROFESSIONAL BUSINESS of the INSURED.
- 7.11 INSURANCE PERIOD means the period specified in Item 4 of the Schedule.
- 7.12 INSURED means
- (a) The person, partnership, company, SUBSIDIARY or other entity, specified as the INSURED in the Schedule; and
  - (b) Any person who is during the INSURANCE PERIOD a principal, partner, director or employee of the person, partnership, company, SUBSIDIARY or other entity specified as the INSURED in the Schedule, but only while acting in the course of the PROFESSIONAL BUSINESS; and
  - (c) For the purpose of Part A only any consultant, subcontractor or agent in the course of the PROFESSIONAL BUSINESS for or on behalf of the INSURED in the course of the INSURED's BUSINESS and for whose acts, errors or omissions the INSURED is liable.
- 7.13 LOST DOCUMENTS means DOCUMENTS that cannot be located following a diligent search, and documents that have been destroyed or damaged.

- 7.14 OCCURRENCE means an event, including continuous or repeated exposure to substantially the same general conditions, which results in PERSONAL INJURY or PROPERTY DAMAGE, neither expected nor intended by the INSURED.
- 7.15 PERSONAL INJURY means:
- (a) Bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
  - (b) False arrest, false imprisonment, wrongful detention, malicious prosecution and humiliation;
  - (d) Wrongful entry, wrongful eviction or other invasion of right of privacy; and/or
  - (e) Assault and battery committed by the INSURED for the purpose of preventing or eliminating danger to persons or property, resulting from an OCCURRENCE.
- In the event of PERSONAL INJURY arising from latent injury, latent sickness, latent disease or latent disability, that PERSONAL INJURY shall be deemed to have occurred on the day the injury, sickness, disease or disability was first medically diagnosed.
- 7.16 POLICY means this POLICY wording, the Schedule, the PROPOSAL and any endorsement attaching to and forming part of the POLICY either at commencement or during the INSURANCE PERIOD.
- 7.17 POLLUTANTS means any contaminant whether solid, liquid or gas including but not limited to chemicals, smoke, vapours and fumes.
- 7.18 PRODUCT means anything (after it has ceased to be in the INSURED's possession or in the INSURED's legal control) which has been manufactured, grown, extracted, produced, processed, constructed, erected, installed, assembled, altered, repaired, serviced, treated, sold, supplied or distributed by the INSURED in the course of the INSURED'S BUSINESS, including any packaging or containers (other than a VEHICLE) used to package or contain the INSURED'S PRODUCT(S).
- 7.19 PRODUCT LIABILITY means any liability for an OCCURRENCE that is caused by or arises out of any PRODUCT.
- 7.20 PROPERTY DAMAGE means physical loss, damage or destruction of tangible property including the resultant loss of use, or loss of use of tangible property which has not been physically damaged or destroyed, provided such loss of use is caused by or arises from an OCCURRENCE. In the event of a CLAIM arising from latent damage or from the exposure of tangible property to gradual deterioration and eventual damage, such PROPERTY DAMAGE shall be deemed to have occurred on the day such deterioration or damage was first discovered.
- 7.21 PROFESSIONAL BUSINESS means the PROFESSIONAL ACTIVITY set out in the Schedule.
- 7.22 PROPOSAL means the written proposal made by the INSURED to US together with any attachments.
- 7.23 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).
- 7.24 RETROACTIVE DATE means the date specified in Item 7 of the Schedule but no earlier than the commencement of the INSURED's business specified in the Schedule but only while in the course of the PROFESSIONAL BUSINESS.
- 7.25 SUBSIDIARY means any entity which by virtue of any applicable legislation or law is deemed to be a SUBSIDIARY of the INSURED or in which the INSURED owns or controls, directly or indirectly 50% of the issued voting shares of such entity.
- 7.26 WE/US/OUR means DUAL New Zealand Limited as agent of the Underwriters named in the Schedule under the heading "Underwriters".

**Section 8: EXCLUSIONS**

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

**8.1 Prior knowledge (Part A only)**

- (a) Any CLAIM arising from or in connection with a fact or circumstance that the INSURED knew or ought reasonably to have known prior to the INSURANCE PERIOD might or could give rise to a CLAIM;
- (b) Any CLAIM arising from or in connection with a fact or circumstance of which notice has been or reasonably should have been given under any previous insurance.
- (c) Any CLAIM that was first made, threatened or intimated against the INSURED prior to the INSURANCE PERIOD.

**8.2 Fines and Penalties and Non-Compensatory**

- (a) Taxes, fines or penalties;
- (b) Punitive, aggravated, multiple, exemplary, liquidated or other non-compensatory damages or the consequences of non-payment;
- (c) Any demand for the repayment or refund by the INSURED to a third party of professional fees paid to the INSURED for the provision of professional or other services.

**8.3 Assumed Liability**

Any obligation assumed by the INSURED under any agreement, except that this Exclusion does not apply to:

- (a) Any liability which is, or would have been, implied by law in such agreement or would have arisen separately from it; or
- (b) Section B (PERSONAL INJURY and PROPERTY DAMAGE), where the liability arises from a provision in a contract for lease of real or personal property, other than a provision which obliges the INSURED to effect insurance or provide indemnity in respect of the subject matter of that contract; or
- (c) Any liability which is in respect of the treatment or use of confidential information.

**8.4 Liability to EMPLOYEES**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of bodily injury, mental injury, sickness, disease or death of any EMPLOYEE or damage to or destruction of any property of any EMPLOYEE, including loss of use.

**8.5 Prescription Drug**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of the death of, or personal injury or illness to, any person as a result of prescription drugs, unless it results directly from the actual provision by the INSURED of a prescription in accordance with the standards of the relevant professional body in the conduct of the PROFESSIONAL BUSINESS on the matter or thing which gives rise to the personal injury.

**8.6 Liability As Occupier**

Any CLAIM or liability arising from or incurred or alleged to have been incurred in connection with the use, occupation, ownership or lease of any real estate or personal property, by or on behalf of the INSURED.

**8.7 Termination of Pregnancy**

Any CLAIM or liability arising from or incurred or alleged to have been incurred in connection with the performance of any operation to terminate pregnancy.

**8.8 Intoxicants and Drugs**

Any CLAIM or liability arising from or incurred or alleged to have been incurred in connection with any services rendered by any person while that person is under the influence of intoxicants or drugs or from any failure to render services competently or at all because of such influence.

8.9 **Product Liability**

Any CLAIM or liability arising from or in connection with the manufacture, preparation, modification, repair, supply, maintenance or treatment of the INSURED's PRODUCTS.

8.10 **Intellectual Property**

Any CLAIM arising from infringement or alleged infringement of any intellectual property right including but not limited to copyright, patent, trademark, privacy, plagiarism, design or confidentiality.

8.11 **Pollution**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of the actual or alleged release or discharge of POLLUTANTS.

8.12 **War/Terrorism**

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

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

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

8.13 **Nuclear**

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

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

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

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

8.14 **Trading Debts**

Any CLAIM arising from or directly or indirectly attributable to any trading debt or business liability of the INSURED or any guarantee given by the INSURED for a debt.

8.15 **Fraud and Dishonesty**

- (a) Any CLAIM arising from or directly or indirectly attributable to or in consequence of any actual or alleged act or omission by the INSURED, its consultants, sub-contractors or agents which was reckless, fraudulent, dishonest, malicious or criminal.
- (b) Any CLAIM arising from or directly or indirectly attributable to or in consequence of any wilful breach of any statute, regulation, contract or duty by the INSURED, its consultants, sub-contractors or agents.

8.16 **Associates**

- (a) Any CLAIM by, on behalf of or for the benefit of any INSURED;
- (b) Any CLAIM by, on behalf of or for the benefit of any SUBSIDIARY; or
- (c) Any CLAIM by, on behalf of or for the benefit of any FAMILY MEMBER of the INSURED, unless the FAMILY MEMBER is acting without any prior direct or indirect solicitation or co-operation from the INSURED.

irrespective of the capacity in which the CLAIM is brought.

8.17 **Directors & Officers**

Any CLAIM alleging a breach by an INSURED of a duty owed or any alleged wrongful conduct in the capacity of a director, secretary or officer of a corporate body.

8.18 **Asbestos and Toxic Mould**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of:

- (a) Asbestos or other things that contain it; or
- (b) The actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, or mycotoxins relating to Stachy Botrys, such action to including investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, mycotoxins relating to Stachy Botrys.

8.19 **AIDS**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of any disease disorder breakdown condition syndrome malfunction or dysfunction of the blood hepatic or lymphatic systems of the human body caused directly or indirectly by or associated with Lymphadenopathy Associated Virus (LAV), Human Immunodeficiency Virus (HIV), or in any way related or connected to Acquired Immune Deficiency Syndrome (AIDS), or any syndrome or condition of a similar kind howsoever named.

8.20 **Property In Your Physical or Legal Control (Section B only)**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of PROPERTY DAMAGE to property owned by the INSURED or in the INSURED's physical or legal control, other than:

- (a) Premises which are leased or rented to the INSURED;
- (b) Premises which the INSURED temporarily occupies in order for the INSURED to carry out work;
- (c) VEHICLES (not belonging to the INSURED or used by the INSURED or on the INSURED'S behalf) in the INSURED's physical or legal control whilst within a car park owned or operated by the INSURED unless part of the INSURED's BUSINESS is the operation of a car park for reward;
- (d) The INSURED's EMPLOYEES' property; or
- (e) Other property in the INSURED's physical or legal control, provided that OUR total liability payable from all CLAIMS during the INSURANCE PERIOD shall not exceed \$250,000 in the aggregate for all CLAIMS.

8.21 **Product Recall**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of the recall, withdrawal, inspection, repair, replacement or loss of use of the INSURED's PRODUCTS or of any property of which the INSURED's PRODUCTS form a part, if these PRODUCTS are recalled by the INSURED or another, or withdrawn from the market or from use, because of any known or suspected defect or deficiency therein.

8.22 **General Anaesthesia**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of the performance of any operation or procedure carried out under general anaesthesia.

8.23 **Faulty Workmanship (In relation to Section B only)**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of the cost of performing, correcting or improving any work undertaken by the INSURED.

8.24 **Genetically Modified or Engineered Organisms (GMO)**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of the manufacture, importing, growing, blending, mixing or distributing of Genetically Modified or Engineered Organisms (GMO).

For the purpose of this Exclusion, a Genetically Modified or Engineered Organism is defined to be a living plant, animal or microbe that has been altered by the addition or modification of a gene through the process of genetic engineering and contains genes or portions of genes from unrelated organisms.

8.25 **TSE**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of Transmissible Spongiform Encephalopathy (TSE) including but not limited to Bovine Spongiform Encephalopathy (BSE) or new Variant Creutzfeldt-Jakob Disease (VCJD).

This exclusion applies regardless of any other contributing or aggravating cause or event.

8.26 **Loss of Use and Fit For Purpose**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of use of tangible property which has not been physically damaged or destroyed resulting from:

- (a) A delay in, or lack of performance by the INSURED or on the behalf of the INSURED of any contract or agreement or service; or
- (b) The failure of the INSURED's PRODUCTS to meet the level of performance, quality, fitness or durability expressly warranted or represented by the INSURED. This Exclusion shall not apply to loss of use of other tangible property resulting from sudden and accidental physical damage to or destruction of the INSURED's PRODUCTS after the INSURED's PRODUCTS have been put to use by any person or organisation other than the INSURED.

8.27 **Product Defect**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of PROPERTY DAMAGE to the INSURED's PRODUCTS if the damage results from any defect contained within the PRODUCT or to their harmful nature or unsuitability

8.28 **Beauty Therapy**

Any CLAIM or liability directly or indirectly arising from or attributable to any:

- (a) The incidence of Carcinomas, Melanoma or Sarcoma arising from the use of solaria, tanning machines or sunbeds; or
- (b) Tattooing; or
- (c) Botox injections; or
- (d) Genital piercing

8.29 **Molestation**

Any CLAIM or liability directly or indirectly arising from or attributable to any actual or alleged sexual molestation or any kind of abuse of people under the care of the INSURED.

8.30 **Aircraft and Watercraft**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of:

- (a) The ownership, maintenance, servicing, operation or use by the INSURED of:
  - (i) Any AIRCRAFT; or

- (ii) Any WATERCRAFT exceeding 8 metres in length, except where such WATERCRAFT is not owned by the INSURED but used by the INSURED for business entertainment; or
- (b) PRODUCTS that the INSURED could reasonably be expected to know are installed in or on any AIRCRAFT; or
- (c) The use by the INSURED as a landing area for AIRCRAFT of any PROPERTY or structure owned occupied or controlled by the INSURED. The term "landing area" includes any area on which AIRCRAFT taxi, land, take-off, are housed, maintained or operated.

**8.31 Vehicles**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of the use of or ownership or operation by the INSURED of any VEHICLE which is legally required to be registered or legally required to be insured.

This exclusion shall not apply to:

- (a) CLAIMS or liability caused by or arising from the delivery or collection of goods to or from any VEHICLE where such PERSONAL INJURY or PROPERTY DAMAGE occurs beyond the limits of any carriage-way or thoroughfare;
- (b) CLAIMS or liability arising during the trade use of any VEHICLE at any site where the INSURED are working or at the INSURED's premises, provided that the INSURED is not indemnified under this POLICY where the VEHICLE is used only for the transportation or haulage of goods; or
- (c) CLAIMS or liability caused by or arising out of the use of an unregistered VEHICLE whilst being driven under its own power between its point of unloading and a worksite and whilst returning from a worksite to the point of reloading for its conveyance from the area.

**Jurisdiction**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of any legal action or regulatory proceedings:

- a. first brought in a Court of Law outside the jurisdiction of the countries specified in the Schedule; or
- b. brought in a Court of Law within the jurisdiction of the countries specified in the Schedule to enforce a judgement of a Court of Law outside the jurisdiction of the countries specified in the Schedule whether by way of reciprocal agreement or otherwise; or
- c. in which proper law to be applied to the issues or any of them is that of a country other than the countries specified in the Schedule.

**Section 9: CLAIM CONDITIONS**

**9.1 Cover**

The cover provided by the POLICY shall extend to the conduct of the PROFESSIONAL BUSINESS by the INSURED anywhere within the territorial limits specified in the Schedule.

**9.2 Notification**

- (a) The INSURED shall notify US:
  - (i) **Applying to Part A only:**

In writing of any CLAIM or INQUIRY as soon as practicable after it is made against, or is commenced involving, any INSURED (this does not alter the requirement to notify during the Notification Period).

(ii) **Applying to Part B only :**

As soon as practicable in writing of every OCCURRENCE, CLAIM, proceeding, impending prosecution and inquest together with all relevant information which may result in a claim under this POLICY.

The INSURED shall notify DUAL Australia as soon as practicable and within the INSURANCE PERIOD of:

- (a) any CLAIM; or
- (b) any incident of which the INSURED becomes aware, and which the INSURED or a reasonable INSURED should consider may give rise to a CLAIM.

If during the INSURANCE PERIOD, the INSURED notifies DUAL Australia of any incident which the INSURED considers or a reasonable INSURED should have considered may give rise to a CLAIM, and this incident later gives rise to a CLAIM first made to the INSURED after expiry of the INSURANCE PERIOD, WE will treat the CLAIM as first made against the INSURED during the INSURANCE PERIOD. In this context, the incident must be sufficiently specific that the INSURED can and does provide to DUAL Australia details of name(s) of potential claimants and potential wrongful acts / omissions.

Notice of any CLAIM or loss shall be given to DUAL Australia in writing via:

- (i) your insurance broker (email or letter); or
- (ii) the DUAL New Zealand Limited office for the attention of DUAL Australia.

For the purpose of this clause only, "DUAL Australia" means:

The Claims Manager  
DUAL Australia Pty Limited  
Level 4  
332 Kent Street  
Sydney NSW 2000  
Australia

claims@dualaustralia.com.au

**9.3 Co-operation**

- (a) The INSURED shall, at the INSURED's own cost, frankly and honestly provide US with all information and assistance required by US and/or the lawyers and investigators and others appointed by US in relation to any CLAIM or loss. Any unreasonable failure to comply with this obligation may entitle US to deny cover for the CLAIM or loss, in whole or part.
- (b) The INSURED shall, at its own cost, do all things reasonably practicable to minimise the INSURED's liability in respect of any CLAIM or loss.

**9.4 Legal Defence and Settlement**

Unless otherwise agreed, WE shall have the right to assume, in the name of the INSURED, the legal defence of any CLAIM covered under this POLICY. WE shall have the right to appoint the lawyers that will defend and represent the INSURED in respect of any CLAIM.

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



9.5 **INSURED's right to contest**

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

9.6 **Senior Counsel**

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

9.7 **Other Insurance**

This POLICY will only cover loss to the extent that the amount of such loss is in excess of any indemnity or cover available to the INSURED in respect of that loss under any other policy entered into by the INSURED even if the other insurance or indemnity has a term to that effect.

This POLICY will only cover loss to the extent that the amount of such loss is in excess of any indemnity or cover available to the INSURED in respect of that loss under any other policy effected on behalf of the INSURED or under which the INSURED is a beneficiary even if the other insurance or indemnity has a term to that effect (but not a policy to which the preceding paragraph applies).

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

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

9.8 **Goods & Services Tax**

Where upon receiving any indemnity payment under this POLICY, the INSURED is liable to pay tax under section 5 (13) of the Goods and Services Act 1985 (or any statutory amendment or re-enactment of the section or Act) and / or under the equivalent legislation in any other jurisdiction to which cover applies, WE will indemnify the INSURED for the amount of that tax. The indemnity under this clause is payable by US in addition to the INDEMNITY LIMIT.

**Section 10: GENERAL CONDITIONS**

10.1 **Subrogation**

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

10.2 **Alteration to Risk**

The INSURED must notify US in writing as soon as practicable of any material alteration to the risk during the INSURANCE PERIOD including:

- (a) The INSURED going into voluntary bankruptcy, receivership or liquidation; or
- (b) The INSURED breaching any other obligation giving rise to the appointment of a receiver or the commencement of bankruptcy or winding up proceedings; or
- (c) Any material change in the nature of the PROFESSIONAL ACTIVITY.

WE may not cover the INSURED for any CLAIM if the INSURED does not notify US in writing as soon as practicable of any material alteration to risk.

10.3 **Assignment**

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

10.4 **Cancellation**

- (a) The INSURED may cancel the POLICY at any time by notifying US in writing.
- (b) WE may cancel the POLICY at any time by sending 30 days notice in writing to the INSURED named in the Schedule of the date from which cancellation is to take effect. Such notice may be delivered personally, posted, emailed or faxed to the INSURED named in the Schedule or their representative last notified to US.
- (c) On cancellation of this POLICY, we will retain the proportion of the premium calculated pro rata as at the date of the cancellation plus fifteen percent (15%) of that amount.

10.5 **Jurisdictional Limitation**

The cover provided by the POLICY shall extend to a CLAIM brought anywhere in the world except:

- (a) Any CLAIM brought within the territorial limits of the United States of America or the dominion of Canada or their territories or protectorates;
- (b) To enforce any judgement, order or award obtained in or determined under the laws of the United States of America or the dominion of Canada or their territories or protectorates.

10.6 **Governing Law and Jurisdiction**

This POLICY is governed by the laws of New Zealand. Any disputes relating to interpretation shall be submitted to the exclusive jurisdiction of the Courts of New Zealand.

10.8 **Severability and Non-Imputation (Part A only)**

Where more than one party comprises the INSURED, any conduct on the part of any party or parties whereby such party or parties:

- (a) Made a misrepresentation to US before this POLICY was entered into; or
- (b) Failed to comply with any terms or conditions of this POLICY;

The right of the remaining parties to indemnity will not be prejudiced provided always that such remaining parties:

- (i) Be entirely innocent of and have had no prior knowledge of any such conduct; and
- (ii) Notify US in writing of all known facts in relation to such conduct as soon as is reasonably practicable upon becoming aware of any such conduct.

10.9 **Joint Insured (Part B only)**

Where more than one party comprises the INSURED, each of the parties will be considered as a separate and distinct unit and the word INSURED will be considered as applying to each party in the same manner as if a separate POLICY had been issued to each of them provided always that nothing in this Condition will result in an increase of the INDEMNITY LIMIT or DEFENCE COSTS.

10.10 **Complaints Procedures**

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

Lloyds General Representative in New Zealand  
c/o Hazelton Law  
Level 3  
101 Molesworth Street  
PO Box 5639  
Wellington  
New Zealand

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

**Section 11: LIMIT OF LIABILITY**

**11.1 Indemnity Limit (Section A)**

Subject to Clause 3.10 Reinstatement of INDEMNITY LIMIT, OUR total liability under the POLICY for any one CLAIM and in the aggregate for all CLAIMS shall not exceed the INDEMNITY LIMIT. For the purposes of determining the INDEMNITY LIMIT available for each CLAIM covered by the POLICY, all CLAIMS arising from the same act, error or omission, or related acts, errors or omissions, shall be regarded as one CLAIM.

The INDEMNITY LIMIT is inclusive of amounts payable under Clauses 3.8 Fidelity, 3.11 Attendance at Inquiries, 3.13 Public Relations, 3.17 Emergency Defence Costs.

**11.2 Indemnity Limit (Section B)**

- (a) OUR liability for all compensation payable in respect of any CLAIM or a series of CLAIMS caused by or arising out of one OCCURRENCE shall not exceed the INDEMNITY LIMIT;
- (b) All CLAIMS for compensation that result from one original source, or one original cause, shall be considered to have been caused by or arise out of a single OCCURRENCE; and
- (c) OUR total aggregate liability in any one INSURANCE PERIOD for PRODUCT LIABILITY CLAIMS shall not exceed the INDEMNITY LIMIT inclusive of DEFENCE COSTS.
- (d) OUR total aggregate liability under clause 4.2 (c) for all CLAIMS and other costs and expenses, is the INDEMNITY LIMIT.

The INSURED agrees that in no circumstances shall the INDEMNITY LIMIT for Section A and the INDEMNITY LIMIT for Section B both apply to a CLAIM covered by this POLICY.

**11.3 Deductible**

- (a) The INSURED is responsible for the DEDUCTIBLE in respect of each and every CLAIM or claim under the POLICY. Subject to clause (b) below, WE are only liable to indemnify the INSURED for that part of the INSURED's liability in respect of each CLAIM, DEFENCE COSTS and other costs and expenses in excess of the DEDUCTIBLE.
- (b) Where WE have paid on the INSURED's behalf part or all of the DEDUCTIBLE, the INSURED shall reimburse US.
- (c) Costs and expenses incurred by US in determining whether WE are liable to indemnify the INSURED under the POLICY shall not be subject to the DEDUCTIBLE and will be met by US.
- (d) For the purposes of determining the DEDUCTIBLE(S) applicable to any CLAIM(S) covered by Section A of the POLICY, all CLAIMS arising from the same act, error or omission, or related acts, errors or omissions, shall be regarded as one CLAIM.
- (e) For the purpose of CLAIMS covered by Section B of the POLICY, only one DEDUCTIBLE shall apply where the CLAIM(S) or a series of CLAIMS is/are caused by or arise(s) out of one OCCURRENCE or is caused by or arises out of one original source, or one original cause, or related original sources or causes.

**Section 12 AUTHORITY**

12.1 This is to certify that in accordance with the authorisation granted under Contract to the undersigned by the Underwriters.

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



## Statutory Liability Insurance Policy Wording

### Section 1: PREAMBLE

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

### Section 2: INSURING CLAUSES

WE agree to indemnify the INSURED for:

2.1 Any FINE payable by the INSURED upon conviction of an OFFENCE.

2.2 WE also agree to pay DEFENCE COSTS either incurred by US or by the INSURED with OUR prior written consent.

Incurred under any ACT OF PARLIAMENT not otherwise excluded, resulting from the conduct by the INSURED of its BUSINESS and only if WE are not legally prohibited from paying the FINE.

### Section 3: AUTOMATIC EXTENSIONS

#### 3.1 Consolidation or Merger

If the INSURED acquires by merger, consolidates with, is merged into or acquired by any other entity after the commencement of the INSURANCE PERIOD, the INSURED shall give written notice to US as soon as practicable, together with such information as WE may require; and the INSURED shall pay US any required additional premium.

#### 3.2 Newly Created or Acquired Subsidiary Company

If any SUBSIDIARY is created or acquired by the INSURED after the commencement of the INSURANCE PERIOD, such SUBSIDIARY shall be included as an INSURED provided that:

- (a) written notice of such creation or acquisition is given to US, together with appropriate underwriting information and payment of any required additional premium; and
- (b) in respect of acquisitions, cover granted under this POLICY shall only apply to any EVENT which occurred or allegedly occurred after the date of such acquisition and which took place after the RETROACTIVE DATE, and if the INSURED has agreed to indemnify the SUBSIDIARY in respect of the EVENT.

#### 3.3 Official Investigations

WE shall provide cover for CIVIL DEFENCE LEGAL COSTS incurred by the INSURED in relation to an inquiry involving the INSURED.

### 3.4 Progress Payment of Legal Expenses

In the event of an EVENT for which WE have agreed to indemnify the INSURED, on production of acceptable evidence of expenditure prior to the final settlement of the claim, WE shall pay DEFENCE COSTS or CIVIL DEFENCE LEGAL COSTS necessarily and reasonably incurred by the INSURED.

## Section 4: INTERPRETATION

In the POLICY:

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

## Section 5: DEFINITIONS

In the POLICY:

- 5.1 ACQUITTED means dismissal of charges before or after a defended hearing or entry of a not guilty verdict (but shall not include the disposition of a charge pursuant to a plea bargain where multiple informations have been laid).
- 5.2 ACT OF PARLIAMENT means any Act of the New Zealand Parliament, other than an EXCLUDED ACT (including any amendment to or re-enactment, and any code, rules, regulations, bylaws or other subordinate legislation made under such Act).
- 5.3 BUSINESS means the Business specified in the Schedule.
- 5.4 CIVIL DEFENCE LEGAL COSTS means the legal costs and expenses, including witness costs and expenses, necessarily and reasonably incurred in relation to:
- (a) a formal inquiry by a regulatory body, which could lead to a prosecution for an OFFENCE;
- (b) proceedings before a Human Rights or Privacy Complaints Review Tribunal.
- 5.5 DEDUCTIBLE means the amount specified in the Schedule.
- 5.6 DEFENCE COSTS means the legal costs and expenses, including defence witness costs and expenses, necessarily and reasonably incurred with OUR prior written consent in investigating and/or defending any prosecution or threatened prosecution alleging the commission of an OFFENCE.
- 5.7 EVENT means any occurrence, act, circumstance or omission in the course of the BUSINESS that gives rise, or may give rise, to:
- (a) a prosecution for an OFFENCE; or
- (b) a formal inquiry by a regulatory body, which could lead to a prosecution for an OFFENCE; or
- (c) proceedings before a Human Rights or Privacy Complaints Review Tribunal.

- 5.8 EXCLUDED ACT means the following:
- Arms Act 1983
- Aviation Crimes Act 1972
- Crimes Act 1961
- Proceeds of Crime Act 1991
- Summary Offences Act 1981
- Transport Act 1962
- Transport (Vehicle and Driver Registration and Licensing) Act 1986
- and any other ACT OF PARLIAMENT specified in the Schedule as an EXCLUDED ACT.
- 5.9 FINE means any fine, infringement fee, court costs, witness expenses or solicitor's costs, ordered by a court to be paid by the INSURED upon its conviction for an OFFENCE, for which WE may legally indemnify the INSURED. This does not include a FINE imposed pursuant to the Health and Safety in Employment Act, but this definition is extended to include a sentence of reparation imposed following a conviction under that Act.
- 5.10 INDEMNITY LIMIT means the amount specified in the Schedule.
- 5.11 INSURANCE PERIOD means the period specified in the Schedule.
- 5.12 INSURED means:
- (a) the person, partnership, company or other entity that is specified as the INSURED in the Schedule, including a SUBSIDIARY who was at the time of the EVENT a SUBSIDIARY; and
  - (b) any person who is during the INSURANCE PERIOD, or was at the time of the EVENT, a principal, partner, director or employee of the person, partnership, company, SUBSIDIARY or other entity specified as the INSURED in the Schedule, but only while acting in the course of the BUSINESS.
- 5.13 OFFENCE means any information alleging the commission by the INSURED of an offence under an ACT OF PARLIAMENT, for which the INSURED is liable to a FINE if convicted.
- 5.14 POLICY means this policy wording, the Schedule, the PROPOSAL and any Endorsement attaching to and forming part of the policy either at commencement or during the INSURANCE PERIOD.
- 5.15 PROPOSAL means the written proposal made by the INSURED to US together with any attachments.
- 5.16 RETROACTIVE DATE means the date specified in the Schedule.
- 5.17 SUBSIDIARY means any entity which by virtue of any applicable legislation or law is deemed to be a subsidiary of the INSURED or in which the INSURED owns or controls, directly or indirectly more than 50% of the issued voting shares of such entity.
- 5.18 WE/US/OUR means DUAL New Zealand Limited for and on behalf of certain Underwriters at Lloyd's.

## Section 6: EXCLUSIONS

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

### 6.1 Asbestos

Any liability 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, storage or use of, asbestos or other things that contain it.

### 6.2 Daily Continuing Offences

- (a) The cost or payment of any enforcement order, remedial order or compliance order; or
- (b) any fine imposed in relation to a daily continuing OFFENCE where the fine is imposed in relation to a period of time after the INSURED first received notice from the informant or his employing body of the intention to commence a prosecution in relation to that OFFENCE.

### 6.3 Deliberate Disregard

A prosecution, unless the INSURED is ACQUITTED, for any OFFENCE which has allegedly resulted from the:

- (a) deliberate disregard by the INSURED of any of the provisions of any ACT OF PARLIAMENT which the INSURED is alleged to have contravened; or
- (b) INSURED instructing another person to discharge one or more of its obligations under any of the provisions of the Acts and failing to take all reasonable steps to ensure that the INSURED'S obligations were discharged as instructed; or
- (c) failure by the INSURED to comply with any lawful abatement notice or enforcement order, improvement notice, prohibition notice or suspension notice, building consent, Notice to Rectify, Compliance Schedule, Gazetted Notice, or order made by a Human Rights or Privacy Review Tribunal.

### 6.4 Dishonest Acts

Any OFFENCE actually or allegedly brought about or contributed to by any dishonest, fraudulent or malicious act or omission by or on behalf of the INSURED.

### 6.5 Orders and Costs

- (a) Any pecuniary penalty, restitution, compensation or order for payment pursuant to the Commerce Act 1986; or
- (b) any order for payment of costs made under the Commissions of Inquiry Act 1908; or
- (c) any court order in the nature of damages or compensation, except a sentence of reparation following a Health and Safety in Employment Act prosecution; or
- (d) any action, proceeding, inquiry, investigation or prosecution taken against the INSURED by the Inland Revenue Department or any other revenue collecting authority.

### 6.6 Personal Grievances

Any contract of service or any intended contract of service with any current, former or prospective employee, including any personal grievance or like action by an employee, but this Exclusion shall not apply to any investigation, inquiry or prosecution by the Department of Labour pursuant to the Health & Safety in Employment Act.

6.7 **Prior Knowledge**

- (a) Any OFFENCE arising from or in connection with a fact or circumstance that the INSURED knew or ought reasonably to have known prior to the INSURANCE PERIOD might or could give rise to an OFFENCE; or
- (b) any OFFENCE arising from or in connection with a fact or circumstance of which notice has been or reasonably should have been given under any previous insurance; or
- (c) any OFFENCE that was first made, threatened or intimated against the INSURED prior to the INSURANCE PERIOD; or
- (d) any OFFENCE arising from any litigation or other proceeding pending or begun before the commencement of this POLICY.

6.8 **Private Prosecutions**

Any investigation of and defence of any action, proceeding, inquiry, investigation or prosecution taken against the INSURED by a person other than the statutory authority or enforcement agency given that responsibility under the Act.

6.9 **Retroactive Date**

Any EVENT or conduct which occurred or allegedly occurred prior to the RETROACTIVE DATE.

6.10 **Sanctions Limitation and Exclusion**

Any claim or any benefit to the extent that the provision of such cover, payment of such claim or 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 the European Union, United Kingdom or United States of America.

6.11 **Territorial Limits**

Any liability suffered outside of New Zealand and from any judgement brought in any Court outside of New Zealand.

6.12 **War / Terrorism**

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

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

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



## Section 7: CLAIM CONDITIONS

### 7.1 Co-operation

- (a) The INSURED shall, at the INSURED'S own cost, frankly and honestly provide US with all information and assistance required by US and/or lawyers and investigators and others appointed by US in relation to any EVENT or loss. Any unreasonable failure to comply with this obligation may entitle US to deny cover for the EVENT or loss, in whole or part.
- (b) The INSURED shall, at its own cost, do all things reasonably practicable to minimise the INSURED'S liability in respect of any EVENT or loss.
- (c) The INSURED waives all claims to legal professional privilege between themselves and any solicitor retained by US to act on the INSURED'S behalf in relation to any EVENT. The INSURED will allow the solicitor to disclose to US and OUR reinsurers any information obtained in the course of his duties.
- (d) If the OFFENCE is a continuing one, the INSURED shall promptly take, at its expense, all reasonable steps to prevent its continuation.
- (e) WE may, upon receipt of notice from the INSURED of any request for indemnity under this POLICY, take whatever action WE consider appropriate to protect the INSURED'S position in respect of the EVENT, and such action by US will not be regarded in any way as prejudicing the INSURED'S or OUR position and will not be an admission of the INSURED'S entitlement to indemnity.

### 7.2 Goods & Services Tax

Where upon receiving any indemnity payment under this POLICY, the INSURED is liable to pay tax under section 5 (13) of the Goods and Services Act 1985 (or any statutory amendment or re-enactment of the section or Act) WE will indemnify the INSURED for the amount of that tax. The indemnity under this clause is payable by US in addition to the INDEMNITY LIMIT.

### 7.3 Insured's Right to Contest

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

### 7.4 Legal Defence and Settlement

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

**Notification**

The INSURED shall notify US as soon as practicable and within the INSURANCE PERIOD of:

- (a) any EVENT; or
- (b) any EVENT of which the INSURED becomes aware, and which the INSURED or a reasonable INSURED should consider may give rise to an OFFENCE.

If during the INSURANCE PERIOD, the INSURED notifies US of any EVENT which the INSURED considers or a reasonable INSURED should have considered may give rise to an OFFENCE, and this EVENT later gives rise to an OFFENCE first made to the INSURED after expiry of the INSURANCE PERIOD, WE will treat the OFFENCE as first made against the INSURED during the INSURANCE PERIOD. In this context, the EVENT must be sufficiently specific that the INSURED can and does provide to US details of name(s) of potential claimants and potential wrongful acts/omissions.

Notice of any EVENT or loss shall be given to US in writing via:

- (i) your insurance broker (email or letter); or
- (ii) the DUAL New Zealand Limited office for the attention of the Claims Manager.

The Claims Manager  
DUAL New Zealand Limited  
Level 20  
191 Queen Street  
Auckland 1010

claims@dualnewzealand.co.nz

**Other Insurance**

This POLICY will only cover loss to the extent that the amount of such loss is in excess of any indemnity or cover available to the INSURED in respect of that loss under any other policy entered into by the INSURED even if the other insurance or indemnity has a term to that effect.

This POLICY will only cover loss to the extent that the amount of such loss is in excess of any indemnity or cover available to the INSURED in respect of that loss under any other policy effected on behalf of the INSURED or under which the INSURED is a beneficiary even if the other insurance or indemnity has a term to that effect (but not a policy to which the preceding paragraph applies).

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

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

**Senior Counsel**

- (a) WE shall not require the INSURED to contest an OFFENCE unless a Senior Counsel (to be mutually agreed upon by the INSURED and US, or in default of agreement, nominated by US) advises that the OFFENCE should be contested, taking into account all likely DEFENCE COSTS, prospects of successfully defending the claim and the damages and costs likely to be recovered by the third party claimant.
- (b) The costs of Senior Counsel's advice shall be regarded as part of the DEFENCE COSTS.

**Severability and Non-Imputation**

Except for Exclusion 6.7 (Prior Knowledge) no state of mind or knowledge possessed by any one INSURED will be imputed to any other INSURED 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 principal, director, partner of the INSURED will be imputed to the INSURED in Definition 5.12 (Insured) (a) of this POLICY.

The terms of the POLICY apply to each INSURED provided that the failure by any INSURED to observe and fulfil the terms of this POLICY will not prejudice this insurance in relation to any other INSURED.

Notwithstanding the above, the maximum aggregate amount payable under all Insuring Clauses and Extensions will apply to all INSUREDS combined.

## **Section 8: GENERAL CONDITIONS**

### **8.1 Alteration to Risk**

The INSURED must notify US in writing as soon as practicable but always within 90 calendar days of any material alteration to the risk during the INSURANCE PERIOD including:

- (a) the INSURED going into voluntary bankruptcy, receivership or liquidation; or
- (b) the INSURED failing to pay debts as and when those debts become due; or
- (c) the INSURED breaching any other obligation giving rise to the appointment of a receiver or the commencement of bankruptcy or winding up proceedings; or
- (d) any material change in the nature of the BUSINESS.

WE may impose additional premiums or terms and conditions arising from such alteration of the risk.

WE may not cover the INSURED for any EVENT if the INSURED does not notify US in writing as soon as practicable of any material alteration to risk.

### **8.2 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.

### **8.3 Cancellation**

- (a) The INSURED may cancel the POLICY at any time by notifying US in writing.
- (b) WE may cancel the POLICY at any time by sending 30 days notice in writing to the INSURED named in the Schedule of the date from which cancellation is to take effect. Such notice may be delivered personally, posted, emailed or faxed to the INSURED named in the Schedule or their representative last notified to US.
- (c) On cancellation of this POLICY, we will retain the proportion of the premium calculated pro rata as at the date of the cancellation plus fifteen percent (15%) of that amount.

### **8.4 Complaints Procedures**

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

Lloyd's General Representative in New Zealand  
c/o Hazelton Law  
Level 3  
101 Molesworth Street  
PO Box 5639  
Wellington  
New Zealand

For the purpose of this clause only, YOU means the INSURED.

**8.5 Fraud**

If any answers or statements in support of any EVENT, or in any information provided to obtain, amend or renew this insurance, are false in any way, WE shall not provide any indemnity under this POLICY.

**8.6 Governing Law and Jurisdiction**

This POLICY is governed by the laws of New Zealand. Any disputes relating to interpretation shall be submitted to the exclusive jurisdiction of the Courts of New Zealand.

**8.7 Reasonable Precautions**

As a condition precedent to OUR liability, the INSURED shall take all reasonable precautions to:

- (a) avoid, prevent or minimise any circumstances that may give rise to an EVENT; and
- (b) comply with all relevant statutory obligations.

**8.8 Several Liability Notice**

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

**8.9 Subrogation**

- (a) Where WE have paid an amount under the POLICY WE become entitled to any rights of the INSURED against any party in relation to the EVENT or loss, to the extent of OUR payment.
- (b) The INSURED, at its own cost, must assist US and provide information as WE may reasonably require to exercise OUR rights of subrogation. This may include providing and signing statements and other documents and the giving of evidence, among other things.
- (c) WE shall not exercise any subrogated rights of recovery against any employee of the INSURED unless the EVENT has been brought about or contributed to the dishonest, fraudulent, criminal or malicious act or omission of the employee.

**Section 9: LIMIT OF LIABILITY**

**9.1 Deductible**

- (a) The INSURED is responsible for the DEDUCTIBLE in respect of each and every EVENT. Subject to (c) below, WE are only liable to indemnify the INSURED for that part of the INSURED'S liability in respect of each EVENT and DEFENCE COSTS in excess of the DEDUCTIBLE.
- (b) Where WE have paid on the INSURED'S behalf part or all of the DEDUCTIBLE, the INSURED shall reimburse US.
- (c) Unless otherwise expressed in the Schedule or as detailed below (9.1 e), all DEDUCTIBLES are inclusive of DEFENCE COSTS up to the amount of the DEDUCTIBLE.
- (d) Costs and expenses incurred by US in determining whether WE are liable to indemnify the INSURED under the POLICY shall not be subject to the DEDUCTIBLE and will be met by US.
- (e) Specific Deductible for the following acts any one Event

a. Resource Management Act 1991,	\$5,000
b. Health and Safety Act 1992	\$ 5,000
c. Hazardous Substances and New Organisms Act 1996,	\$7,500
d. Injury Prevention, Rehabilitation and Compensation Act 2001	\$5,000
e. Financial Market Authority Act 2011	\$25,000
f. Fair Trading Act 1986	\$7,500
g. Credit Contracts Act and Consumer Finance Act 2003	\$10,000

9.2 **Indemnity Limit**

OUR total liability under the POLICY for any one EVENT including DEFENCE COSTS and in the aggregate from all EVENTS including DEFENCE COSTS shall not exceed the INDEMNITY LIMIT.

WE may at any time pay the INDEMNITY LIMIT applying to any one EVENT or series of EVENTS (after deduction of sums already paid) or any lesser amount for which such EVENTS can be settled and will then be under no further liability in connection with such EVENTS except for its proportion of DEFENCE COSTS incurred prior to the date of payment.

**Section 10: AUTHORITY**

10.1 This is to certify that authorisation is granted under contract to the undersigned by the Underwriters.

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



## Employers Liability Insurance Policy Wording

### Section 1: PREAMBLE

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

### Section 2: INSURING CLAUSES

2.1 WE agree to indemnify the INSURED for any CLAIM up to the INDEMNITY LIMIT brought by an EMPLOYEE for: DAMAGES as a result of the EMPLOYEE sustaining BODILY INJURY in New Zealand that arose out of, or in the course of, such EMPLOYEE's employment in the BUSINESS.

Provided that:

The BODILY INJURY was not a BODILY INJURY for which coverage is determined to exist under the Accident Rehabilitation and Compensation Insurance Act 1992 or the Accident Insurance Act 1998 or any amending or replacement legislation.

or

2.2 PUNITIVE or EXEMPLARY DAMAGES as a result of the EMPLOYEE sustaining BODILY INJURY in New Zealand that arose out of, or in the course of, such EMPLOYEE's employment in the BUSINESS.

Provided that:

The BODILY INJURY was a BODILY INJURY for which coverage is determined to exist under the Accident Rehabilitation and Compensation Insurance Act 1992 or the Accident Insurance Act 1998 or any amending or replacement legislation.

The INDEMNITY LIMIT under Insuring Clause 2.2 PUNITIVE or EXEMPLARY DAMAGES is the lesser of the INDEMNITY LIMIT available under the POLICY or \$1,000,000 and which is part of, and not in addition to, the INDEMNITY LIMIT shown in the Schedule.

2.3 WE also agree to pay DEFENCE COSTS either incurred by US or incurred by the INSURED with OUR prior written consent.

2.4 The POLICY shall only provide cover for BODILY INJURY arising out of an event, circumstance, accident or happening which occurred after the RETROACTIVE DATE.

### Section 3: INTERPRETATION

In the POLICY:

3.1 (a) Person includes individuals, partnerships, bodies corporate and associations.

(b) The singular includes the plural and the masculine includes the feminine.

(c) The headings are for descriptive purposes only.

3.2 In the event that any portion of the POLICY is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

3.3 All POLICY documents shall be read together as one contract and any word or expression to which a specific meaning has been attached shall bear the same meaning wherever it may appear.

#### Section 4: DEFINITIONS

In the POLICY:

4.1 BODILY INJURY means sickness, disease or infection including death resulting therefrom and shall further include disability, shock, fright, mental anguish or mental injury sustained by an EMPLOYEE which arose out of or in the course of such EMPLOYEE's employment in the BUSINESS.

4.2 BUSINESS means the Business specified in the Schedule.

4.3 CLAIM means:

(a) any legal proceedings brought against the INSURED: or

(b) a written or verbal demand for monetary damages or monetary relief.

4.4 DAMAGES means monies ordered to be paid or agreed to be paid pursuant to (respectively) a judgement or settlement of any common law claim brought or capable of being brought in the District or High Court of New Zealand in respect of BODILY INJURY to an EMPLOYEE of the INSURED, but not including any such monies payable pursuant to any remedy or relief provided in any statute of New Zealand, whether by way of damages, penalty, fine, reparation or other order.

4.5 DEFENCE COSTS means any necessary and reasonable fees, expenses, costs and disbursements incurred investigating or defending a CLAIM covered by the POLICY and any necessary and reasonable fees, expenses, costs and disbursements incurred in determining whether the BODILY INJURY is properly the subject of cover pursuant to the Accident Rehabilitation and Compensation Insurance Act 1992 or the Accident Insurance Act 1998 or any amending or replacement legislation.

4.6 EMPLOYEE means any person employed by the INSURED under a contract of service or apprenticeship on a full-time, part-time or seasonal basis.

4.7 INDEMNITY LIMIT means the amount specified in the Schedule.

4.8 INSURANCE PERIOD means the period specified in the Schedule.

4.9 INSURED means:

(a) the person, partnership, company or other entity that is specified as the INSURED in the Schedule, including a SUBSIDIARY who was at the time of the BODILY INJURY a SUBSIDIARY; and

(b) any person who is during the INSURANCE PERIOD, or was at the time of the BODILY INJURY, a principal, partner, director or employee of the person, partnership, company, SUBSIDIARY or other entity specified as the INSURED in the Schedule, but only while acting in the course of the BUSINESS.

4.10 POLICY means this policy wording, the Schedule, the PROPOSAL and any Endorsement attaching to and forming part of the POLICY either at commencement or during the INSURANCE PERIOD.

4.11 PROPOSAL means the written proposal made by the INSURED to US together with any attachments.

- 4.12 PUNITIVE OR EXEMPLARY DAMAGES means monies ordered to be paid as punitive or exemplary damages pursuant to a judgement of the District or High Court of New Zealand in respect of a common law action brought by an EMPLOYEE against the INSURED in relation to BODILY INJURY.
- 4.13 RETROACTIVE DATE means the date specified the Schedule but no earlier than the commencement of the INSURED's BUSINESS.
- 4.14 SUBSIDIARY means any entity which by virtue of any applicable legislation or law is deemed to be a subsidiary of the INSURED or in which the INSURED owns or controls, directly or indirectly more than 50% of the issued voting shares of such entity.
- 4.15 WE/US/OUR means DUAL New Zealand Limited for and on behalf of certain Underwriters at Lloyd's.

## Section 5: EXCLUSIONS

### INSURING CLAUSE 2.1 EXCLUSIONS

WE will not cover the INSURED, including for DEFENCE COSTS or other loss under Insuring Clause 2.1, in respect of:

#### 5.1 Accident Rehabilitation and Compensation Insurance Act

Any BODILY INJURY suffered by an EMPLOYEE for which cover to any extent is provided by the Accident Rehabilitation and Compensation Insurance Act 1992, or would be so provided if the INSURED were not an exempt employer under the Act, or the Accident Insurance Act 1998 or any amending or replacement legislation, or would have been so provided had a claim been lodged under such legislation.

#### 5.2 Damages

Any CLAIM seeking aggravated, punitive or exemplary damages.

#### 5.3 Health and Safety in Employment Act - Compliance

Any CLAIM as a result of an EMPLOYEE sustaining BODILY INJURY which arose out of the failure by the INSURED to comply with any improvement, prohibition or suspension notice issued to the INSURED or its EMPLOYEE under the Health and Safety in Employment Act 1992.

### INSURING CLAUSE 2.2 EXCLUSIONS

WE will not cover the INSURED, including for DEFENCE COSTS or other loss under Insuring Clause 2.2, in respect of:

#### 5.4 Accident Rehabilitation and Compensation Insurance Act

Any CLAIM in respect of BODILY INJURY suffered by an EMPLOYEE, which if made the subject of a claim under the Accident Rehabilitation and Compensation Insurance Act 1992 or the Accident Insurance Act 1998 or any amending or replacement legislation and would not be eligible for cover under such legislation.

#### 5.5 Health and Safety in Employment Act - Compliance

Any CLAIM as a result of an EMPLOYEE sustaining BODILY INJURY which arose out of the wilfully reckless omission of the INSURED to comply with any improvement, prohibition or suspension notice issued to the Insured under the Health and Safety in Employment Act 1992 or any amending or replacement legislation.

#### 5.6 Other Relief

Any CLAIM seeking any relief other than PUNITIVE OR EXEMPLARY DAMAGES.



5.7 **Reckless Conduct**

Any CLAIM by an EMPLOYEE as a result of that EMPLOYEE sustaining BODILY INJURY which was caused by any wilfully reckless and/or contumelious conduct of the INSURED.

**GENERAL EXCLUSIONS**

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

5.8 **Asbestos**

Any CLAIM or liability 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, storage or use of, asbestos or other things that contain it.

5.9 **Fraud and Dishonesty**

Any CLAIM resulting from or contributed to by any dishonest, fraudulent, criminal, or malicious act or omission of the INSURED.

5.10 **Jurisdiction**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of any judgement entered in any Court other than a New Zealand Court or any debt incurred by the INSURED as the result of such a judgement.

5.11 **Prior Knowledge**

- (a) Any CLAIM arising from or in connection with a fact or circumstance that the INSURED knew or ought reasonably to have known prior to the INSURANCE PERIOD might or could give rise to a CLAIM; or
- (b) any CLAIM arising from or in connection with a fact or circumstance of which notice has been or reasonably should have been given under any previous insurance; or
- (c) any CLAIM that was first made, threatened or intimated against the INSURED prior to the INSURANCE PERIOD; or
- (d) any CLAIM arising from any litigation or other proceeding pending or begun before the commencement of this POLICY.

5.12 **Physical Harm**

Any damages or PUNITIVE OR EXEMPLARY DAMAGES sought by, or awarded to, an EMPLOYEE pursuant to a cause of action pleading or alleging against the INSURED trespass to the person, assault, battery, false imprisonment, intentional physical harm, malicious prosecution, sexual harassment, or sexual abuse.

5.13 **Sanctions Limitation and Exclusion**

Any claim or any benefit to the extent that the provision of such cover, payment of such claim or 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 the European Union, United Kingdom or United States of America.

5.14 **Usual Activities**

Any CLAIM as a result of the INSURED directing an EMPLOYEE to undertake activities otherwise than in the course of or in connection with the usual activities of the INSURED's BUSINESS.

5.15 **War / Terrorism**

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

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

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

#### 5.16 **Wilful Intent**

Any CLAIM as a result of an EMPLOYEE sustaining BODILY INJURY which arose out of any wilfully intentional or deliberate conduct of the INSURED which it knew or should have known could cause injury to any EMPLOYEE.

### Section 6: **CLAIM CONDITIONS**

#### 6.1 **Co-operation**

- (a) The INSURED shall, at the INSURED's own cost, frankly and honestly provide US with all information and assistance required by US and/or the lawyers and investigators and others appointed by US in relation to any CLAIM or loss. Any unreasonable failure to comply with this obligation may entitle US to deny cover for the CLAIM or loss, in whole or part.
- (b) The INSURED shall, at its own cost, do all things reasonably practicable to minimise the INSURED's liability in respect of any CLAIM or loss.
- (c) The INSURED waives all claims to legal professional privilege between themselves and any solicitor retained by US to act on the INSURED'S behalf in relation to any CLAIM. The INSURED will allow the solicitor to disclose to US and OUR reinsurers any information obtained in the course of his duties.
- (d) If the BODILY INJURY is a continuing one, the INSURED shall promptly take, at its expense, all reasonable steps to prevent its continuation.
- (e) WE may, upon receipt of notice from the INSURED of any request for indemnity under this POLICY, take whatever action WE consider appropriate to protect the INSURED'S position in respect of the CLAIM, and such action by US will not be regarded in any way as prejudicing the INSURED'S or OUR position and will not be an admission of the INSURED'S entitlement to indemnity.

#### 6.2 **Goods & Services Tax**

Where upon receiving any indemnity payment under this POLICY, the INSURED is liable to pay tax under section 5 (13) of the Goods and Services Act 1985 (or any statutory amendment or re-enactment of the section or Act) WE will indemnify the INSURED for the amount of that tax. The indemnity under this clause is payable by US in addition to the INDEMNITY LIMIT.

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

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

**Legal Defence and Settlement**

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

**Notification**

The INSURED shall notify US as soon as practicable and within the INSURANCE PERIOD of:

- (a) any CLAIM; or
- (b) any INCIDENT of which the INSURED becomes aware, and which the INSURED or a reasonable INSURED should consider may give rise to a CLAIM.

If during the INSURANCE PERIOD, the INSURED notifies US of any INCIDENT which the INSURED considers or a reasonable INSURED should have considered may give rise to a CLAIM, and this INCIDENT later gives rise to a CLAIM first made to the INSURED after expiry of the INSURANCE PERIOD, WE will treat the CLAIM as first made against the INSURED during the INSURANCE PERIOD. In this context, the INCIDENT must be sufficiently specific that the INSURED can and does provide to US details of name(s) of potential claimants and potential wrongful acts/ omissions.

Notice of any CLAIM or loss shall be given to US in writing via:

- (i) your insurance broker (email or letter); or
- (ii) the DUAL New Zealand Limited office for the attention of the Claims Manager.

The Claims Manager  
DUAL New Zealand Limited  
Level 20  
191 Queen Street  
Auckland 1010

claims@dualnewzealand.co.nz

**Other Insurance**

This POLICY will only cover loss to the extent that the amount of such loss is in excess of any indemnity or cover available to the INSURED in respect of that loss under any other policy entered into by the INSURED even if the other insurance or indemnity has a term to that effect.

This POLICY will only cover loss to the extent that the amount of such loss is in excess of any indemnity or cover available to the INSURED in respect of that loss under any other policy effected on behalf of the INSURED or under which the INSURED is a beneficiary even if the other insurance or indemnity has a term to that effect (but not a policy to which the preceding paragraph applies).

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

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

#### 6.7 **Senior Counsel**

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

#### 6.8 **Severability and Non-Imputation**

Except for Exclusion 5.11 (Prior Knowledge) no state of mind or knowledge possessed by any one INSURED will be imputed to any other INSURED 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 principal, director, partner of the INSURED will be imputed to the INSURED in Definition 4.9 (Insured) (a) of this POLICY.

The terms of the POLICY apply to each INSURED provided that the failure by any INSURED to observe and fulfil the terms of this POLICY will not prejudice this insurance in relation to any other INSURED.

Notwithstanding the above, the maximum aggregate amount payable under all Insuring Clauses and Extensions will apply to all INSUREDs combined.

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

#### 7.1 **Alteration to Risk**

The INSURED must notify US in writing as soon as practicable but always within 90 calendar days of any material alteration to the risk during the INSURANCE PERIOD including:

- (a) The INSURED going into voluntary bankruptcy, receivership or liquidation; or
- (b) The INSURED failing to pay debts as and when those debts become due; or
- (c) The INSURED breaching any other obligation giving rise to the appointment of a receiver or the commencement of bankruptcy or winding up proceedings; or
- (d) Any material change in the nature of the BUSINESS.

WE may impose additional premiums or terms and conditions arising from such alteration of the risk.

WE may not cover the INSURED for any CLAIM if the INSURED does not notify US in writing as soon as practicable of any material alteration to risk.

#### 7.2 **Assignment**

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

#### 7.3 **Cancellation**

- (a) The INSURED may cancel the POLICY at any time by notifying US in writing.
- (b) WE may cancel the POLICY at any time by sending 30 days notice in writing to the INSURED named in the Schedule of the date from which cancellation is to take effect. Such notice may be delivered personally, posted, emailed or faxed to the INSURED named in the Schedule or their representative last notified to US.

- (c) On cancellation of this POLICY, we will retain the proportion of the premium calculated pro rata as at the date of the cancellation plus fifteen percent (15%) of that amount.

#### 7.4 **Complaints Procedures**

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

Lloyd's General Representative in New Zealand  
c/o Hazelton Law  
Level 3  
101 Molesworth Street  
PO Box 5639  
Wellington  
New Zealand

For the purpose of this clause only, YOU means the INSURED.

#### 7.5 **Governing Law and Jurisdiction**

This POLICY is governed by the laws of New Zealand. Any disputes relating to interpretation shall be submitted to the exclusive jurisdiction of the Courts of New Zealand.

#### 7.6 **Several Liability Notice**

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

#### 7.7 **Subrogation**

- (a) Where WE have paid an amount under the POLICY WE become entitled to any rights of the INSURED against any party in relation to the CLAIM or loss, to the extent of OUR payment.
- (b) The INSURED, at its own cost, must assist US and provide information as WE may reasonably require to exercise OUR rights of subrogation. This may include providing and signing statements and other documents and the giving of evidence, among other things.
- (c) WE shall not exercise any subrogated rights of recovery against any EMPLOYEE of the INSURED unless the CLAIM has been brought about or contributed to the dishonest, fraudulent, criminal or malicious act or omission of the EMPLOYEE.

### **Section 8: LIMIT OF LIABILITY**

#### 8.1 **Deductible**

- (a) The INSURED is responsible for the DEDUCTIBLE in respect of each and every CLAIM. Subject to clause (c) below, WE are only liable to indemnify the INSURED for that part of the INSURED's liability in respect of each CLAIM and DEFENCE COSTS in excess of the DEDUCTIBLE.
- (b) Where WE have paid on the INSURED's behalf part or all of the DEDUCTIBLE, the INSURED shall reimburse US.
- (c) Unless otherwise expressed in the Schedule, all DEDUCTIBLES are inclusive of DEFENCE COSTS up to the amount of the DEDUCTIBLE.
- (d) Costs and expenses incurred by US in determining whether WE are liable to indemnify the INSURED under the POLICY shall not be subject to the DEDUCTIBLE and will be met by US.
- (e) For the purposes of determining the DEDUCTIBLE(S) applicable to any CLAIM(S) covered by the POLICY, irrespective of the number of CLAIMS made; or the number of BODILY INJURIES sustained; or

whether indemnity is granted under Insuring Clause 2.1, Insuring Clause 2.2 or both; CLAIMS arising from the same BODILY INJURY event shall be regarded as one CLAIM.

## 8.2 Indemnity Limit

OUR total liability under the POLICY for any one CLAIM including DEFENCE COSTS and in the aggregate from all CLAIMS including DEFENCE COSTS shall not exceed the INDEMNITY LIMIT.

For the purposes of determining the INDEMNITY LIMIT applicable to any CLAIM(S) covered by the POLICY, irrespective of the number of CLAIMS made; or the number of BODILY INJURIES sustained; or whether indemnity is granted under Section 2.1, Section 2.2 or both; CLAIMS arising from the same BODILY INJURY event shall be regarded as one CLAIM.

WE may at any time pay the INDEMNITY LIMIT applying to any one CLAIM or series of CLAIMS (after deduction of sums already paid) or any lesser amount for which such CLAIMS can be settled and will then be under no further liability in connection with such CLAIMS except for its proportion of DEFENCE COSTS incurred prior to the date of payment.

## Section 9: AUTHORITY

9.1 This is to certify that authorisation is granted under contract to the undersigned by the Underwriters.

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