



LLOYD'S

Cyber Liability & Privacy Protection Insurance Policy

LLOYD'S

The **Insurer** hereby agrees, to the extent and in the manner hereinafter provided, to indemnify or otherwise pay the **Insured** in respect of the contingencies or events specified in the sections of the policy. However this policy only applies to those sections as indicated in the schedule attached to this policy.

The policy, schedule, exclusions and general conditions shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of the policy, schedule, exclusions and general conditions shall bear the same meaning wherever it may appear.

Please read this policy and, if it is incorrect, return it immediately for alteration.

A handwritten signature in black ink, appearing to be "R. P. L.", written over a horizontal line.

Signed by DUAL Australia Pty Ltd on behalf of certain underwriters at Lloyd's

| | | |
|---------------|-------------------------------|---|
| ITEM 1 | Policy Number : | P-CY/0/244407/19/K-0 |
| ITEM 2 | Policyholder : | Basketball Australia T/A BA Limited, including all affiliated State/Territories and clubs C/o: INTL V Insurance Group Pty Ltd |
| | Business Description: | Sports and Recreation Activities |
| ITEM 3 | Period of Insurance: | From 4:00pm on 1/09/2019 to 4:00pm on 1/09/2020 Australian local time in the State or Territory where this policy was purchased |
| ITEM 4 | Limit of Liability : | \$ 2,000,000 any one claim and in the aggregate for all claims and loss under this policy |
| ITEM 5 | Retention : | \$ 5,000 Each and every claim . This includes all costs and expenses |
| | Waiting Period : | 10 hours in respect of cover 1.2 |
| ITEM 6 | Retroactive Date : | 01/09/2017 excluding any known claims or circumstances |
| ITEM 7 | Policy Wording: | DUAL Cyber Liability and Privacy Protection Wording 0914V2 |
| ITEM 8 | Territorial Limit : | Worldwide |
| ITEM 9 | Jurisdictional Limit : | Worldwide |

ITEM 10 Endorsements to apply to this policy:

Lloyds/AFCA Contact Information Endorsement

It is agreed that the following endorsement has been applied:

It is hereby noted and agreed that any reference to Lloyd's Australia address is amended to the following:

Lloyd's Australia Limited
Level 9
1 O'Connell Street
Sydney NSW 2000
Australia

Furthermore, it is hereby noted and agreed that any reference to the Financial Ombudsman Service (Australia) and its contact details are amended as follows:

Australian Financial Complaints Authority
Post: GPO Box 3
Melbourne VIC 3001
Phone: 1800 931 678
Email: info@afca.org.au

More information can be found on their website: www.afca.org.au

In all other respects, the policy remains unchanged.

037 Cyber Product Enhancement Endorsement - Platinum

It is agreed that the following Insurance Cover is added to this Policy:

Extended Indemnity Period for Business Interruption Loss

It is agreed that clause 2.2 **Business Interruption Loss** is deleted in its entirety and replaced with:

2.2 **Business Interruption Loss** means the **Insured's** loss of net income (net profit or loss before income taxes) plus the expenses necessary to maintain the operation, including payroll; functionality or service of the **Insured's** business, as the result of a **Business Interruption Event**;

a) After the **Waiting Period**;

b) During the system outage, network interruption or degradation of the network, and;

c) Until the date on which the system or network is restored to the same or equivalent condition, functionality and service that existed prior to the **Loss**, however not exceeding 12 months from the date on which the outage, interruption or degradation first occurred, such period not to be limited by the expiration of the **Period of Insurance**.

Business Interruption Loss shall also include costs to avoid or mitigate the effects of a system outage of network interruption, discover and minimise such interruption or degradation of the network, preserve evidence and substantiate the **Insured's** loss.

Hardware Repair or Replacement

Subject to all the terms and conditions of the Policy, the following Insurance Cover is added to the Policy:

Section 1: Insuring Clause 1.6 - Hardware Repair or Replacement

The **Insurer** will pay, in excess of the applicable **Retention** and subject to the **Retroactive Date**, all **Hardware Repair or Replacement Costs** first incurred and reported to the **Insurer** during the **Period of Insurance**.

Section 2: Definitions

For the purposes of this Endorsement only:

Hardware Repair or Replacement Costs means all reasonable fees, costs and expenses necessarily incurred by the **Insured**, with the **Insurer's** prior written consent (not to be unreasonably withheld), to repair and/or replace the **Insured's** hardware that has been damaged as a direct result of a **Network Security Event** first discovered and reported to the **Insurer** during the **Period of Insurance**.

Section 3: Exclusions

For the purposes of this Endorsement only it is agreed that Exclusion 3.1 is deleted in its entirety and replaced with:

3.1 for death or bodily injury or for loss of or damage to tangible property, however this exclusion shall not apply to mental anguish or mental injury as a result of a **Network Security Event** or damage to or destruction of hardware as covered under this endorsement.

It is agreed that the following additional Exclusion is added to the Policy:

3.11 Wear and Tear

The **Insurer** shall not be liable to make any payment or provide any benefit or service in respect of any **Hardware Repair or Replacement Costs** arising from any defects in, ordinary wear and tear in relation to, or faulty design or installation of, the hardware components of the **Insured's** computer system or network, or any computer system or network operated on behalf of an **Insured** by either an outsourcer or cloud service provider.

Section 5: General Conditions Applying to Insuring Clause 1.6

The cover provided under Insuring Clause 1.6 is limited to \$250,000 for all **Hardware Repair or Replacement Costs** in the aggregate. It is agreed that the applicable **Retention** in respect of **Hardware Repair or Replacement Costs** is the **Retention** specified in Item 5 of the Schedule.

Cover under Insuring Clause 1.6 is part of and not in addition to the Limit of Liability specified in Item 4 of the Schedule.

Except as otherwise provided in this Endorsement, all other Policy terms and conditions shall have full force and effect. To the extent that the Endorsement and the Policy are inconsistent this Endorsement shall prevail.

033 Cyber Platinum Social Engineering, Phishing and Cyber Fraud

Optional Insuring Clause 1.5 - Social Engineering, Phishing & Cyber Fraud Policy

Subject to all the terms and conditions of the **Policy**, the following Insurance Cover is added to the **Policy**:

Section 1: Insuring Clause 1.5 - Social Engineering, Phishing & Cyber Fraud

Part A: Direct Financial Loss of the Insured

The **Insurer** will pay for **Direct Financial Loss** resulting from:

- a) **Social Engineering Fraud;**
- b) **Phishing;**
- c) **Phreaking;** or
- d) **Cyber Fraud,**

first occurring and reported to the **Insurer** during the **Period of Insurance**.

Part B: Legal Liability to Others

The **Insurer** shall pay for **Loss** which the **Insured** is legally liable to pay as a result of a **Claim** arising from:

- a) **Social Engineering Fraud;**
- b) **Phishing;** or
- c) **Cyber Fraud**

first made against the **Insured** and reported to the **Insurer** during the **Period of Insurance**.

Section 2: Definitions

For the purpose of this Endorsement:

Social Engineering Fraud means impersonation by any means of an **Insured Person**, client or customer of the **Insured** or a party with which the **Insured** has a **Contract**, by a third party to manipulate an **Insured Person** to issue an instruction to a financial institution to debit, pay, deliver or transfer money or securities from an account maintained by the **Insured** to that third party or another person or entity and includes a third party acting in collusion with an **Insured Person** provided that the **Insured Person** issuing the instruction was not a party to the collusion.

Insured Person means an employee, director, officer or agent of the **Insured** who is authorized to either give or implement instructions for the debiting, payment, delivery or transfer of money or securities from an account maintained by the **Insured**.

Phishing means the fraudulent use of electronic communications or websites to impersonate the **Insured**, its products or services for the purpose of soliciting personal, confidential or commercial information about the customers or clients of the **Insured**.

Phreaking means the unauthorised and malicious use of the telephone system of the **Insured** which results in unauthorised charges or bandwidth costs which the **Insured** is legally liable to pay.

Contract means a written contract for the sale or purchase of goods or provision of services.

Cyber Fraud means an intentional, unauthorized and fraudulent instruction to a financial institution to debit, pay, deliver or transfer money or securities, but was in fact fraudulently transmitted by a third party without the knowledge or consent of the **Insured**.

Direct Financial Loss means financial loss suffered by the **Insured** including:

- a) loss of the **Insured's** money or securities caused by **Social Engineering Fraud** or **Cyber Fraud** provided such loss is not recoverable from any financial institution or any other source;
- b) The cost of reimbursing the **Insured** for its direct financial loss arising from **Phishing** or **Phreaking**;
- c) **Legal Representation Costs**; and
- d) **Public Relations Costs** arising from **Phishing**.

Loss means judgements, settlements, awards and costs in respect of a **Claim**.

Claim means any written demand for compensation.

Section 4: Claims Conditions Applying only to this Endorsement

It is a condition precedent to cover under the **Policy** that the **Insured** maintains procedures:

- a) for the provision of written training materials to all Employees regarding the dangers of **Social Engineering Fraud**, **Phishing**, **Phreaking** and **Cyber Fraud** which incorporate regular review;
- b) for changing passwords for all online accounts and banking platforms maintained by the **Insured** at least every 45 days and that the password protocols accord with industry best practice, or adopts two factor authentication;
- c) which prevent any one **Insured Person** to pay, deliver or transfer money or securities valued at more than \$2,000 from an account maintained by the **Insured** without a second **Insured Person** co-authorising such transaction.

Section 5: General Conditions Applying to the Endorsement

The cover provided under this Endorsement is limited to \$250,000 any one **claim** and/**loss** in the aggregate for all **claims** and/**losses** made for all **Direct Financial Loss** (inclusive of **defence costs**).

It is agreed that the applicable **Retention** in respect of a **claim** made under this Endorsement is the **Retention** specified in Item 5 of the Schedule (inclusive of **defence costs**).

Cover under this Endorsement is part of and not in addition to the Limit of Indemnity.

Except as otherwise provided in this Endorsement, all other **Policy** terms and conditions shall have full force and effect. To the extent that the Endorsement and the **Policy** are inconsistent this Endorsement shall prevail.

ITEM 11 **Proposal Date :** 29/08/2018

ITEM 12 **Underwriters:** DUAL Australia Pty Ltd on behalf of certain underwriters at Lloyd's

Unique Market Reference
Cyber Liability & Privacy Protection: B1161LS10119

Signed:



Signed by DUAL Australia Pty Ltd on behalf of certain underwriters at Lloyd's



making relationships count

CYBER LIABILITY & PRIVACY PROTECTION WORDING





DUAL Australia Cyber Liability and Privacy

Protection Insurance

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DUAL Australia Cyber Liability and Privacy Protection Insurance

Policy Wording

SECTION 1 INSURANCE COVER

In consideration of the payment of or agreement to pay the premium by the **Policyholder** on behalf of the **Insured**, the **Insurer** will pay, in excess of the applicable **Retention** or **Waiting Period** and subject to the **Retroactive Date** the following:

- 1.1 **Loss** in respect of any **Claim** first made against the **Insured** and reported to the **Insurer** during the **Period of Insurance**;
- 1.2 **Business Interruption Loss** resulting from a **Business Interruption Event** first occurring during the **Period of Insurance**;
- 1.3 **Remediation Costs** incurred by the **Insured** following an actual or threatened **Data Liability Event, Media Liability Event, Network Security Event** or **Business Interruption Event** discovered and reported to the **Insurer** during the **Period of Insurance**;
- 1.4 **Loss** in respect of any **Claim** first made against the **Insured** resulting from a **Media Liability Event** and reported to the **Insurer** during the **Period of Insurance**.

SECTION 2 GENERAL DEFINITIONS

2.1 **Business Interruption Event** means:

- a) **Unauthorised Access**
- b) any damage to the **Insured's Data** and/or programs, or;
- c) any system outage, network interruption, or degradation of the **Insured's** network.

2.2 **Business Interruption Loss** means the **Insured's** loss of net income (net profit or loss before income taxes) plus the expenses necessary to maintain the operation, including payroll; functionality or service of the **Insured's** business, as the result of a **Business Interruption Event**;

- a) after the **Waiting Period**;
- b) during the system outage, network interruption or degradation of the network, and;
- c) until the date on which the business is restored to the same or equivalent condition, functionality and service that existed prior to the **Loss**, however not exceeding 4 months from the date on which the outage, interruption or degradation first occurred, such period not to be limited by the expiration of the **Period of Insurance**.

Business Interruption Loss shall also include costs to avoid or mitigate the effects of a system outage or network interruption, discover and minimise such interruption or degradation of the network, preserve evidence and substantiate the **Insured's** loss.

2.3 **Claim** means any written demand, notice before action or civil, criminal, judicial, administrative, regulatory or arbitral proceeding against the **Insured** seeking compensation or other legal remedy directly or indirectly related to any **Data Liability Event, Media Liability Event** or a **Network Security Event**.

2.4 **Credit Monitoring Costs** means reasonable fees, costs and expenses for the monitoring services of identity or credit theft including the purchase of identity theft insurance for a period of 12 months from the date of any **Data Liability Event, Network Security Event, or Business Interruption Event** or as required by any legislation.

- 2.5 Cyber Extortion Costs** means reasonable fees, costs and expenses and monies paid with the **Insurer's** prior consent to meet, terminate or mitigate any credible threat of a **Business Interruption Event, Data Liability Event** or **Network Security Event** resulting from an actual or attempted extortion by a third party.
- 2.6 Data** means any electronic or non-electronic forms of data held by the **Insured**, or data held on behalf of the **Insured** by either an outsourcer, or cloud service provider for which the **Insured** is legally liable.
- 2.7 Data Liability Event** means:
- a) the loss or suspected loss of any third party non-public **Data** or information for which the **Insured** is legally responsible, on a network owned or operated by an **Insured**; or the network of an outsourcer or cloud service;
 - b) the breach of any privacy legislation worldwide by the **Insured** or person or entity, for whom the **Insured** is legally responsible.
- 2.8 Data Restoration Costs** means reasonable fees, costs and expenses for the restoration and/or replacement of **Data** and/or programs that have been lost or damaged, and costs to prevent, minimise, or mitigate any further damage and preserve critical evidence of criminal or malicious wrongdoings. These costs include the cost of purchasing replacement licenses for programs where necessary.
- 2.9 Defence Costs** means reasonable fees, costs and expenses (including but not limited to lawyers' fees and experts' fees) incurred by the **Insured** relating to the defence, settlement or appeal of a **Claim**.
- 2.10 Forensic Costs** means reasonable fees, costs and expenses to investigate the cause, scope and extent of any **Data Liability Event, Business Interruption Event** or **Network Security Event**.
- 2.11 Insured** means the **Policyholder** and any subsidiary as listed with the company and any current, future or former employee (including directors and officers) of the **Policyholder** or any subsidiary.
- 2.12 Insurer** means DUAL Australia Pty Ltd, ACN 107 553 257 as agent of the Underwriters referred to in Item 12 of the Schedule.
- 2.13 Legal Representation Expenses** means reasonable fees, costs and expenses incurred to obtain legal advice or representation to protect the **Insured's** interests.
- Legal Representation Expenses** shall include the costs associated with the investigation, adjustment and defence of regulatory proceedings.
- 2.14 Loss** means judgments, settlements, awards, and costs, including, without limitation, damages, consumer redress funds, fines, penalties and punitive and exemplary damages in respect of a **Claim**. **Loss** shall also include **Defence Costs, Legal Representation Expenses, Business Interruption Loss** and **Remediation Costs**.
- Notwithstanding the above, **Loss** shall not include any amount which is uninsurable according to the law applicable to the **Claim**. Enforceability of this paragraph shall be governed by such applicable law that most favours coverage.
- 2.15 Malware** means any code designed to:
- a) erase or corrupt **Data**;
 - b) damage or disrupt any network or system;
 - c) circumvent any network security product or service.
- 2.16 Material** means media content, advertising and written, printed, video, electronic, digital, or digitalised content, of;
- a) broadcasts, including, broadcasts via television, motion picture, cable, satellite television, radio, wireless devices or the internet;
 - b) publications, including publications via newspaper, newsletter, magazine, book and other literary, monograph, brochure, directory, music, directories, electronic, screen play, film script, playwright and video publications publishing including the researching, preparation, serialisation, exhibition or distribution of publishing materials; or
 - c) advertising, graphic design, design of logos or trademarks, purchasing of advertising time and space, market research, public relations, direct mailing, design of games, competitions or special offers.

- 2.17** **Media Liability Event** shall include the costs associated with a **Loss** arising out of an actual or alleged act, error, misstatement, misleading statement or omission by an **Insured** in connection with the collection, creation, release, printing, broadcasting, or distribution of **Material** that results in:
- a) an infringement of copyright, title, slogan, trademark, trade name, infringement of domain name;
 - b) plagiarism, piracy or misappropriation or theft of ideas;
 - c) any false light, public disclosure or private facts, defamation committed without malice by reason of words written, spoken or broadcasted, including without limitation, emotional distress or mental anguish in connection with such conduct; or
 - d) an intrusion, invasion of privacy, wrongful entry or eviction, trespassing or eavesdropping.
- 2.18** **Network Security Event** means:
- a) the negligent or inadvertent transmission of any **Malware**;
 - b) negligent or inadvertent failure to secure the **Insured's** computer system or network that results in **Unauthorised Access**;
 - c) the hacking of the **Insured's** telephone system by a third party;
 - d) fraudulent electronic communications or websites by a third party intended to impersonate the **Insured** and or the **Insured's** product.
- 2.19** **Notification Costs** means reasonable fees, costs and expenses in respect of notifying any natural person or legal entity whose **Data** or information has been or may have been lost.
- 2.20** **Period of Insurance** means the period specified in Item 3 of the Schedule.
- 2.21** **Policyholder** means the company named in Item 2 of the Schedule.
- 2.22** **Public Relations Costs** means reasonable fees, costs and expenses for obtaining advice and support to protect, or mitigate any damage to, the **Insured's** reputation.
- 2.23** **Remediation Costs** means any:
- a) **Credit Monitoring Costs**;
 - b) **Cyber Extortion Costs**;
 - c) **Data Restoration Costs**;
 - d) **Forensic Costs**;
 - e) **Legal Representation Expenses**;
 - f) **Notification Costs**;
 - g) **Public Relations Costs**
- Incurred by the **Insured**.
- 2.24** **Retention** means the amount stated in Item 5 of the Schedule.
- 2.25** **Retroactive Date** means the date specified in Item 6 of the Schedule but no earlier than the commencement of the **Insured's** business and only while in the course of the **Insured's** business.
- 2.26** **Unauthorised Access** means use of the **Insured's** computer system or network infrastructure by any person or persons not authorised to do so, including Employees. **Unauthorised Access** shall also include **Loss** associated with the unauthorised acquisition, access, use or disclosure of the **Insured's Data**.
- 2.27** **Waiting Period** means the number of hours stated in Item 5 of the Schedule.

SECTION 3 EXCLUSIONS

The **Insurer** shall not be liable to make any payment or provide any benefit or service in respect of any **Claim or Loss**:

- 3.1** for death, bodily injury or loss of or damage to tangible property, however this exclusion shall not apply to mental anguish or mental injury as a result of a **Data Liability Event, Media Liability Event, Business Interruption Event or Network Security Event**. For the avoidance of doubt **Data** in any electronic format is not tangible property.
- 3.2** arising from, attributable to, or based upon any fact or circumstance known to the **Insured** prior to the **Period of Insurance**.
- 3.3** arising from, attributable to or based upon any intentional, criminal or fraudulent acts by the **Insured**. The acts, knowledge or conduct of any **Insured** shall not be imputed to any other **Insured** for the purposes of applying this exclusion. For the sake of clarity, this exclusion will only apply where it is established by an admission of such **Insured**, consultant, sub-contractor or agent or by a judgment, award, finding or other adjudication of a court, tribunal, commission, or arbitrator that such conduct did in fact occur.
- 3.4** arising from any failure or outage in, or disruption of power, utility services, satellites, or telecommunications external services not under the direct operational control of the **Insured**.
- 3.5** arising from any physical act of war, invasion, or warlike operations.
- 3.6** arising from any bankruptcy, liquidation or insolvency of the **Insured** or any other person, including a business process outsourcer.
- 3.7** to the extent that such cover, payment, service, benefit and/or any business or activity of the **Insured** would violate any applicable trade or economic sanctions or any law or any regulation worldwide. This provision overrides all other terms of this policy.
- 3.8** arising from the upgrading or betterment of any application, system or network of the **Insured**.
- 3.9**
- a) brought against a Director or Officer of the **Insured**, in their capacity as such;
 - b) arising from any obligation owed by the **Insured** as an employer or potential employer to any Employee, including claims for wrongful dismissal, unfair dismissal or under any contract of employment or under any retainer with any consultant or under any training contract;
 - c) whether from any Employee or not, alleging sexual, racial or other harassment and/or sexual molestation, and/or sexual, and/or racial and/or disability, and/or sexual orientation, and/or religious and/or age discrimination or victimisation, or discrimination or victimisation of any other kind.
- 3.10**
- a) directly or indirectly, arising out of, or resulting from, asbestos or any actual or alleged asbestos related loss injury or damage involving the use, presence, existence, detection, removal, elimination or avoidance of asbestos or exposure to asbestos;
 - b) arising from, based upon, attributable to or as a consequence of, whether direct or indirect, or in any way involving:
 - i) ionising radiation or contamination by radioactivity or from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
 - ii) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or component thereof.
 - c) arising out of, based upon, attributable to, as a consequence or in any way involving directly or indirectly the actual, alleged or threatened discharge, dispersal, release or escape of pollutants;
 - d) arising from, based upon, attributable to or as a consequence of any electromagnetic field, electromagnetic radiation or electromagnetism, which terms are defined as follows:
 - i) electromagnetic field means any field of force that is made up of associated electric and magnetic components;

- ii) electromagnetic radiation means any succession of electromagnetic waves;
- iii) electromagnetism means magnetism that is developed by a current of electricity.

SECTION 4 CLAIMS CONDITIONS

4.1 Notification

All notifications of a **Claim** or **Loss** shall be made to Charles Taylor Adjusting as soon as reasonably practicable after the **Insured** has become aware of such **Claim** or **Loss**. The **Insured** shall provide such information and documentation relating to a **Claim** or **Loss** as the **Insurer** or Charles Taylor Adjusting may reasonably require.

If the **Insurer** does not renew or replace this policy, other than for non-payment of premium or any other breach of the terms of this policy by an **Insured**, the **Policyholder** shall have the right to a period of 90 days following the date of cancellation or expiry in which to give notice of any covered **Claim** first made against the **Insured**. This shall not apply if this policy or its cover has been replaced.

All notifications of a **Claim** or **Loss** made by the **Insured** to Charles Taylor Adjusting shall also be deemed a notification of a **Claim** or **Loss** to the **Insurer**. For the purposes of this policy, Charles Taylor Adjusting has been appointed as the Cyber & Privacy Incident Response Manager, in the event that a **Claim** or **Loss** is notified under this policy.

In the event of a **Claim** or **Loss**, please phone Charles Taylor Adjusting in the first instance on:

1300 004 880

Or at cyber@ctplc.com

Charles Taylor Adjusting
Head Office
Standard House
12-13 Essex Street
London, WC2R 3AA

4.2 Continuous Cover

Notwithstanding Exclusion 3.2, the **Insurer** agrees to provide cover in respect of any **Claim** made against the **Insured** in the **Period of Insurance**, where the **Insured**:

- a) first became aware, prior to the **Period of Insurance**, that a **Claim** might or could arise from facts or circumstances known to it; and
- b) had not notified the **Insurer** of such facts or circumstances prior to the **Period of Insurance**

Provided that

- i) the **Insurer** was the Cyber Liability and Privacy Protection **Insurer** of the **Policyholder** when the **Insured** first became aware of such facts or circumstances and have continued , without interruption to be the **Policyholder's** Cyber Liability and Privacy Protection **Insurer** until this policy came into effect and
- ii) there has not been any fraudulent non-disclosure or fraudulent misrepresentation by an **Insured** in respect of such facts or circumstances and
- iii) the **Insurer** has 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 Limit of Liability and **Retention**, or the terms and conditions of this policy.

4.3 Co-operation

- a) The **Insured** must, at the **Insured's** own cost, frankly and honestly provide the **Insurer** with all information, documentation, evidence and assistance reasonably required by the **Insurer** and/or any lawyers, investigators or other professionals, who may be appointed by the **Insurer**.
- b) The **Insured** must, at their own cost, do all things reasonably practicable to minimise any loss, including but not limited to the **Insured's** liability in respect of any **Claim**.

- c) Each **Insured** must provide the **Insurer**, at their own cost, with all information, assistance and co-operation which the **Insurer** reasonably require, and in the event of a **Claim** or potential **Claim**, each **Insured** agrees that they will not do anything that could potentially prejudice the **Insurer's** position or our potential or actual rights of recovery.
- d) No **Insured** may settle any **Claim** or incur any **Defence Costs** or assume any contractual obligation or admit any liability nor consent to any judgment with respect to any **Claim** without the **Insurer's** prior written consent.

4.4 Allocation

The **Insurer's** liability under this policy is limited to the proportion of **Loss, Defence Costs** and other costs, which is a fair and equitable allocation as between:

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

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

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

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

4.5 Defence Costs and Legal Representation Expenses

If the **Policyholder** or subsidiary pays **Loss** in respect of a **Claim** which would otherwise be covered under the terms of this policy, then the **Insurer** shall reimburse the **Policyholder** or subsidiary in respect of such **Loss**. Nothing in this clause shall override the provisions of Clause 4.3(d) above.

The **Insured** where practicable shall obtain the prior written consent of the **Insurer** before incurring **Defence Costs**, such consent not to be unreasonably withheld or delayed. The **Insurer** undertakes to respond within 7 working days of receipt of a request for such consent in relation to a notified **Claim**.

Subject to the **Insured's** compliance with Claims Conditions 4.1 and 4.3 the **Insurer** agrees to advance **Defence Costs** on an on-going basis and prior to the final disposition of a **Claim**.

4.6 Subrogation & Recoveries

Where the **Insurer** has paid any amount of **Loss** under the policy, the **Insurer** becomes entitled to assume any rights available to the **Insured** against any party to the extent of the **Insurer's** payment. On the **Insurer's** request, the **Insured** must assign all rights of recovery against any person or entity, but only to the extent that payment has been made under the policy.

The **Insured** must, at its own cost, assist the **Insurer** and provide information as the **Insurer** reasonably requires, to exercise the **Insurer's** rights of recovery and/or subrogation. This may include providing and signing statements and other documents and the giving of evidence.

Where a recovery is made, the proceeds of such a recovery will be applied as follows:

- a) firstly, to the satisfaction of all costs incurred in effecting the recovery
- b) secondly, to the **Insured** for the amount of loss in excess of the limit of liability specified in the schedule which is also in excess of any excess insurance purchased over this policy
- c) thirdly, to us and any excess **Insurer(s)** amounts paid under the policy and such excess policies
- d) finally, to the **Insured** for the amount paid in respect of the **Retention**.

4.7 Related Claims

Any **Claim(s)** or **Loss(es)** under all applicable sections of this policy, directly or indirectly arising out of or in any way connected with the same originating cause or event, will be deemed to be a single policy claim, reported at the date of the first such policy claim. Any **Claim(s)** or **Loss(es)** under all applicable sections of this policy, triggering more than one coverage section, will be deemed to be a single policy claim, and only one **Retention** shall apply, except in respect of a **Business Interruption Loss** where one **Waiting Period** shall apply.

4.8 Business Interruption Loss Calculations

In respect of Insuring Clause 1.2 only, in determining the amount of net profit (or net loss) and expenses covered under this policy for the purpose of ascertaining the amount of **Business Interruption Loss** (and otherwise); due consideration shall be given to the prior experience of an **Insured's** business before the beginning of a **Business Interruption Event**, and to the probable business an **Insured** could have performed, had no **Business Interruption Event** occurred. Provided, however that such net profit (or net loss) calculations shall not include, and this policy shall not cover, net income that would likely have been earned as a result of an increase in volume of business due to favourable business conditions caused by the impact of a **Business Interruption Event** on other businesses. All such net profit (or net loss) and expenses shall be calculated on an hourly basis and based on such an **Insured's** actual net profit (or net loss) and expenses.

SECTION 5 GENERAL CONDITIONS

The following General Conditions apply to all policies purchased and shown as having been purchased in the schedule.

Each policy purchased is to be read and interpreted as a separate contract of insurance with its own separate limit of liability, unless specified otherwise in the schedule.

5.1 Interpretation

Words and phrases appearing in bold text and where used in a policy, have the meaning defined in that policy or policies purchased by the **Policyholder** as shown in the schedule.

To the extent that there are any inconsistencies between the policy and this General Conditions Section, the terms and conditions contained in the policy will prevail.

In the policy:

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

5.2 Goods & Services Tax

The **Insurer** will charge an appropriate amount to the policyholder on account of GST.

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

The **Insurer's** liability to pay **loss** under this policy will be calculated having regard the **Policyholder** or any other **Insured's** entitlement to claim an Input Tax Credit.

No payment will be made to the **Policyholder**, for any GST liability on account of a covered **Claim**.

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

5.3 Alteration to Risk

Subject to the **Insured's** rights under the *Insurance Contracts Act 1984 (Cth)*, the **Insured** must notify the **Insurer** in writing as soon as practicable of any material alteration to the risk during the **Period of Insurance** including:

- a) The **Insured** going into voluntary bankruptcy, administration, 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.

If the **Insured** fails to do this, then the **Insurer** may be entitled to reduce its liability in whole or in part under this policy in respect of a **Claim** or the **Insurer** may cancel the policy. If the **Insured's** non-disclosure is fraudulent, the **Insurer** may also have the option of avoiding the policy from its beginning.

5.4 Change of Control

If during the **Period of Insurance** any other person, group or entity acquires control of more than 50% of the issued share capital of the **Policyholder** or of the composition of the board of the **Policyholder**, the cover provided by this policy shall be restricted so as to apply only to **Claims** in respect of **Business Interruption Events, Data Liability Events, Media Liability Events** or **Network Security Events** occurring prior to the effective date of such sale, consolidation, merger or acquisition of control, unless the **Insurer** has agreed to extend coverage under the policy and the **Policyholder** has agreed to the terms of any such extension of coverage.

5.5 Assignment

This policy and any rights under it cannot be assigned without the written consent of the **Insurer**.

5.6 Cancellation

The **Policyholder** may cancel any policy at any time by providing the **Insurer** with a minimum of 14 days written notice.

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

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

5.7 Choice of law

This policy, including its construction, application and validity, is governed by the laws of the Commonwealth of Australia and/or the State or the Territory of Australia where the policy was issued. Any dispute relating to policy interpretation will be submitted to the exclusive jurisdiction of the Courts of the State or Territory where the policy was issued.

5.8 Limit of Liability

The limit of liability shown in Item 3 of the Schedule is the maximum amount the policy will pay, including **Defence Costs**, irrespective of the number of **Claim(s)**.

5.9 Satisfying the Retention

The **Insurer** will not make any payment, including any **Defence Cost** payment, toward any portion of any **Claim** unless the **Policyholder** pays the applicable **Retention**. The **Insured** may not insure the **Retention**, and neither sums paid toward uncovered portions of **Claims** nor payments the **Insured** recovers from another insurer or indemnifying party will erode the **Retention**.

5.10 Other Insurance

As permitted by the *Insurance Contracts Act 1984 (Cth)*, 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 the **Other Insurance Policy/Policies** listed in the schedule.

5.11 Confidentiality

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

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

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

- a) the **Insured** is required to do so by the law; or
- b) the **Insurer** consents to the disclosure in writing.

5.12 Several Liability of Underwriters

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

5.13 Currency

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

5.14 Complaints Procedures

Any inquiry or complaint relating to this insurance should be referred to the **Insurer** in the first instance. If the **Insurer** is unable to resolve the matter or the **Insured** is not satisfied with the way a complaint has been dealt with, the **Insured** should write to:

Lloyd's Underwriters' General Representative in Australia
Suite 2, Level 21 Angel Place 123 Pitt Street Sydney NSW 2000
Telephone Number: (02) 9223 1433
Facsimile Number: (02) 9223 1466

who will refer the **Insured's** dispute to Policyholder & Market Assistance at Lloyd's.

5.15 Service of Legal Notices

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

Lloyd's Underwriters' General Representative in Australia
Suite 2, Level 21 Angel Place 123 Pitt Street Sydney NSW 2000
Telephone Number: (02) 9223 1433
Facsimile Number: (02) 9223 1466

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

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

5.16 General Insurance Code of Practice

This policy is compliant with the Insurance Council of Australia's General Insurance Code of Practice. Underwriters at Lloyd's and DUAL Australia proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry.

A copy of the General Insurance Code of Practice is available by contacting DUAL Australia or is available for download from:

www.codeofpractice.com.au

Privacy Statement

At DUAL Australia Pty Ltd, we are committed to compliance with the *Privacy Act 1988 (Cth)*. We use your personal information to assess the risk of and provide insurance, and assess and manage claims. We may also use your contact details to send you information and offers about products and services that we believe will be of interest to you. If you don't provide us with full information, we may not be able to provide insurance or assess a claim. If you provide us with information about someone else you must obtain their consent to do so.

We provide your information to the insurer we represent when we issue and administer your insurance. When providing a quotation or insurance terms, we will tell you if the insurer is overseas and if so, where they are. We are part of the Hyperion Insurance Group and may provide your information to UK based Group entities who provide us with business support services. We may also provide your information to your broker and our contracted third party service providers (e.g. claims management companies), but will take all reasonable steps to ensure that they comply with the Privacy Act.

Our Privacy Policy contains information about how you can access the information we hold about you, ask us to correct it, or make a privacy related complaint. You can obtain a copy from our Privacy Officer by telephone (+61 (0)2 9248 6300), email (reception@dualaustralia.com.au) or by visiting our website (www.dualaustralia.com.au).

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