



INVESTMENT MANAGERS INSURANCE



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DUAL Asia

Investment Managers Insurance Policy Wording

Section 1: PREAMBLE

- 1.1 In reliance upon the SUBMISSION WE shall provide the cover described in the POLICY, subject to its terms and conditions.
- 1.2 The cover under the POLICY commences upon the payment of the premium unless otherwise agreed in writing.

Section 2: INSURING CLAUSES

2.1 Fund & Investment Manager Professional Civil Liability

WE will pay on behalf of the INSURED, any LOSS resulting from a CLAIM first made against the INSURED and reported to US during the INSURANCE PERIOD, or if applicable the DISCOVERY PERIOD, for a WRONGFUL ACT.

2.2 Fund & Investment Manager Directors And Officers Liability

WE will pay on behalf of each INSURED PERSON, LOSS resulting from any CLAIM first made against any INSURED PERSON and reported to US during the INSURANCE PERIOD, or if applicable the DISCOVERY PERIOD, in respect of a WRONGFUL ACT for which the INSURED ENTITY or FUND is not permitted or required to indemnify the INSURED PERSON.

2.3 Fund & Insured Entity Company Reimbursement

WE will pay on behalf of each INSURED ENTITY and FUND, LOSS resulting from any CLAIM first made against any INSURED PERSON and reported to US during the INSURANCE PERIOD, or if applicable the DISCOVERY PERIOD, in respect of a WRONGFUL ACT for which the INSURED ENTITY is permitted or required to indemnify the INSURED PERSON.

2.4 Fund & Investment Manager Crime Protection

WE will indemnify the INSURED for DIRECT FINANCIAL LOSS, first DISCOVERED by the INSURED and reported to US during the INSURANCE PERIOD, or if applicable the DISCOVERY PERIOD, resulting from any;

- (a) ACT OF INFIDELITY; or
- (b) THIRD PARTY CRIME.

Section 3 EXTENSIONS

The extensions are subject to the Insuring Clauses and all other POLICY terms, conditions and exclusions.

3.1 New Funds

For a period of 90 days after the date a NEW FUND is first managed or sponsored by an INSURED ENTITY, FUND will include any NEW FUND acquired, created or incorporated during the INSURANCE PERIOD, not listed in the SUBMISSION, provided that:

- (a) the offer size of the NEW FUND does not exceed the amount specified in Item 8 of the Schedule; or
- (b) the NEW FUND is not regulated by the U.S. Securities and Exchange Commission (SEC) or a FUND offered for the benefit of residents of the United States of America, or a partnership or corporation organised under the laws of the United States of America; or
- (c) the NEW FUND investment strategies are not materially different in nature to those of the existing FUNDS investment strategies as provided in the SUBMISSION.

When the FUND is no longer deemed to be a NEW FUND, WE may continue to insure the FUND on such terms as agreed between the INSURED ENTITY and DUAL Asia.

In respect of this Extension under Insuring Clause 2.4, cover shall only apply in respect to any act, omission or event committed whilst such entity is a FUND of an INSURED ENTITY.

3.2 New Subsidiaries

For a period of 90 days, SUBSIDIARY will include any entity which, becomes a SUBSIDIARY during the INSURANCE PERIOD, provided that such entity, at the date of acquisition or creation:

- (a) has total gross assets of less than 25% of the consolidated total gross assets of the POLICYHOLDER at the inception date of this POLICY; or
- (b) has total gross assets under management of less than 25% of the consolidated total gross assets under management of all INSURED ENTITIES at the inception date of this POLICY; or
- (c) is not incorporated, domiciled in or providing INVESTMENT ADVISORY SERVICES in the United States of America and is not registered as an investment advisor with the SEC; or
- (d) the new SUBSIDIARY'S business activities are not materially different in their nature to those of the INSURED ENTITIES as provided in the SUBMISSION.

In respect of this Extension under Insuring Clause 2.4, cover shall only apply in respect to any act, omission or event committed whilst such entity is a SUBSIDIARY of an INSURED ENTITY or FUND managed by an INSURED ENTITY.

3.3 Fund & Subsidiary Run Off Cover

In the event of the sale, transfer, disposal or dissolution of any FUND or SUBSIDIARY before or during the INSURANCE PERIOD, WE will pay all LOSS for:

- (a) any WRONGFUL ACT in respect of that SUBSIDIARY or FUND committed prior to the sale, transfer, disposal or dissolution of the SUBSIDIARY or FUND; and
- (b) any INVESTIGATION in respect of conduct committed before the sale, transfer, disposal or dissolution of the SUBSIDIARY or FUND.
- (c) any ACT OF INFIDELITY or THIRD PARTY CRIME committed before the sale, transfer, disposal or dissolution of the SUBSIDIARY or FUND.

3.4 Discovery Period

If on expiry of the INSURANCE PERIOD, this POLICY is neither renewed nor replaced with similar cover, the POLICYHOLDER shall be entitled to a DISCOVERY PERIOD of:

- (a) 60 days, granted automatically with no additional premium payable; or
- (b) 12 months, if the INSURED requests such period in writing within 15 days after the end of the INSURANCE PERIOD and tenders an additional premium of 50% of the annual premium level in effect immediately prior to the end of the INSURANCE PERIOD within 30 days after the end of the INSURANCE PERIOD; or
- (c) 72 months, if a TRANSACTION takes place and the INSURED requests such period in writing within 30 days following the end of the INSURANCE PERIOD, on such terms and conditions, if any, and for such additional premium as WE may reasonably decide.

3.5 Advance Payment Of Defence Costs

WE will advance BAIL BOND AND CIVIL BOND EXPENSES, DEFENCE COSTS, EXTRADITION COSTS, INVESTIGATION COSTS, PROSECUTION COSTS, and PUBLIC RELATIONS EXPENSES in excess of the DEDUCTIBLE as they are incurred and before final disposition of a CLAIM, where we have not determined the INSURED's right to indemnity for the CLAIM. For clarity, under Insuring Clause 2.2 and Insuring Clause 2.3, WE will not rely on Section 5.6 (Fraudulent, Dishonest and Wilful Conduct) until there is a relevant judgment, final adjudication or admission.

Any advancement of such costs or expenses shall be repaid to US by the INSURED, severally according to their respective interests, if and to the extent it is determined that the INSURED were not entitled to receive such payment.

3.6 Continuity Of Cover

In the absence of fraudulent non-disclosure, where a CLAIM that would otherwise be covered by this POLICY is excluded by Exclusion 5.1 (Prior Knowledge) part (i), then cover is provided under this POLICY for that CLAIM, provided always that:

- (a) the RESPONSIBLE PERSON first became aware of the facts that might give rise to the CLAIM after the CONTINUITY DATE; and
- (b) the cover shall be in accordance with all the terms, conditions, Exclusions and limitations of the policy in force when the RESPONSIBLE PERSON first became so aware.

Extensions applicable to Insuring Clause 2.1 Fund & Investment Manager Professional Civil Liability, 2.2 Fund & Investment Manager Directors & Officers Liability and 2.3 Fund & Investment Manager Company Reimbursement.

3.7 Court Attendance

DEFENCE COSTS includes HK\$500 per day for each day on which an INSURED PERSON has been legally compelled to and has attended court as a witness in connection with a CLAIM notified under and covered by this POLICY. The DEDUCTIBLE does not apply to this Extension. The total amount payable under this Extension is HK\$500,000 in the aggregate for all CLAIMS and all INSUREDS and is part of, not in addition to the INDEMNITY LIMIT.

3.8 Retired Insured Persons

If this POLICY is not renewed or replaced with similar cover at the expiry of the INSURANCE PERIOD, RETIRED INSURED PERSONS will automatically be granted a 72 month DISCOVERY PERIOD at no additional premium.

This Extension is not available if the POLICYHOLDER purchases a DISCOVERY PERIOD under section 3.4 of this POLICY. No cover is provided to any INSURED ENTITY or FUND under this Extension.

3.9 Additional Limit For Non Executive Directors

If the INDEMNITY LIMIT is exhausted by the payment by US of LOSS, WE agree to pay an amount not exceeding 10% of the INDEMNITY LIMIT, in addition to the INDEMNITY LIMIT, on the following terms:

- (a) this Extension is only available to NON-EXECUTIVE DIRECTORS of the INSURED ENTITY or FUND; and
- (b) the INDEMNITY LIMIT and any other available insurance or source of indemnity available to the NON EXECUTIVE DIRECTOR has first been exhausted; and
- (c) the maximum amount of LOSS paid by US in respect of all CLAIMS for all NON-EXECUTIVE DIRECTORS will not exceed 10% of the INDEMNITY LIMIT in the aggregate; and
- (d) this Extension does not provide any cover to an INSURED ENTITY.

3.10 Domestic Partners

INSURED PERSON includes the spouse or domestic partner of an INSURED PERSON for LOSS arising from a CLAIM for a WRONGFUL ACT of such INSURED PERSON.

3.11 Administrators And Executors

INSURED PERSON includes the administrator, heirs legal representatives or executor of a deceased, incompetent, bankrupt or insolvent INSURED PERSON'S estate for LOSS arising from a CLAIM for a WRONGFUL ACT of such INSURED PERSON.

Extensions applicable to Insuring Clause 2.1 Fund & Investment Manager Professional Civil Liability.

3.12 Lost Documents

WE will pay on behalf of the INSURED for any CLAIM resulting from DOCUMENTS which while in the custody of the INSURED and for which the INSURED is legally liable have been unintentionally destroyed, damaged, deleted, erased or which after diligent search cannot be found. The total amount payable under this Extension is HK\$1,000,000 in the aggregate for all CLAIMS and all INSUREDS and is part of, not in addition to the INDEMNITY LIMIT.

3.13 Breach Of Privacy

WE will pay for any CLAIM alleging the loss or misuse of confidential or personal information, material or data, or invasion or breach of privacy of any client of an INSURED ENTITY or FUND anywhere in the world or the breach of any law or regulation regulating the collection, management, confidentiality or disclosure of personal or confidential information of any client of an INSURED ENTITY or FUND anywhere in the world.

3.14 Public Relations Cover

LOSS includes, at the election of the INSURED, the PUBLIC RELATIONS EXPENSE of the INSURED:

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

The total amount payable under this Extension is HK\$1,000,000 in the aggregate for all CLAIMS and all INSUREDS and is part of, not in addition to the INDEMNITY LIMIT.

Extensions applicable to Insuring Clauses 2.2 Fund & Investment Manager Directors & Officers Liability and 2.3 Fund & Investment Manager Company Reimbursement.

3.15 Emergency Costs

If due to an emergency, OUR prior written consent to any DEFENCE COSTS or INVESTIGATION COSTS cannot reasonably be obtained as required by this POLICY, WE will waive prior consent, provided OUR consent is obtained within 30 days of the first DEFENCE COSTS or INVESTIGATION COSTS being incurred. The total amount payable under this Extension is HK\$500,000 in the aggregate for all CLAIMS and all INSUREDS and is part of, not in addition to the INDEMNITY LIMIT.

3.16 Extradition Costs

LOSS includes, at the election of the INSURED, the EXTRADITION COSTS of each INSURED PERSON in connection with a CLAIM for extradition of such INSURED PERSON.

3.17 Crisis Mitigation

WE will pay the PUBLIC RELATIONS EXPENSE of any INSURED ENTITY for external crisis management services provided that within 30 days of a CRISIS occurring during the INSURANCE PERIOD and immediately being notified to US during the INSURANCE PERIOD. The DEDUCTIBLE does not apply to this Extension. The total amount payable under this Extension is HK\$1,000,000 in the aggregate for all claims and is part of, not in addition to the INDEMNITY LIMIT. In no circumstances shall the INSURED be entitled to cover of greater than HK\$1,000,000 in the aggregate for all claims and CLAIMS in respect of cover that falls under this extension and extension 3.14 PUBLIC RELATIONS COVER.

3.18 Bail & Civil Bond Expenses

LOSS includes the BAIL BOND & CIVIL BOND EXPENSES of each INSURED PERSON incurred during the INSURANCE PERIOD in connection with a CLAIM that is covered under this POLICY. The total amount payable under this Extension is HK\$1,000,000 in the aggregate for all CLAIMS and all INSUREDS and is part of, not in addition to the INDEMNITY LIMIT.

3.19 Prosecution Costs

LOSS includes the PROSECUTION COSTS of each INSURED PERSON:

- (a) to obtain the discharge or revocation of:
 - (i) a temporary or permanent disqualification of such INSURED PERSON from managing a corporation (including as a senior manager or responsible officer) during the INSURANCE PERIOD; or
 - (ii) a judicial order entered during the INSURANCE PERIOD imposing:
 - a. confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such INSURED PERSON;
 - b. a charge over real property or personal assets of such INSURED PERSON;
 - c. restriction of such INSURED PERSON'S liberty to a specified domestic residence or OFFICIAL DETENTION; or
 - d. deportation of an INSURED PERSON following revocation of otherwise current and valid immigration status for any reason other than such INSURED PERSON'S conviction of a crime.

- (b) Where such INSURED PERSON alleges an OFFICIAL BODY is acting or proposes to act beyond power or in breach of the rules of natural justice during the course of or for the purposes of any INVESTIGATION or administrative or regulatory proceeding conducted by the OFFICIAL BODY.

The total amount payable under this Extension is HK\$1,000,000 in the aggregate for all such LOSS, CLAIMS and all INSUREDS and is part of, not in addition to the INDEMNITY LIMIT.

3.20 Occupational Health & Safety

Notwithstanding Exclusion 5.3 (Bodily Injury / Property Damage Exclusion), WE will pay DEFENCE COSTS

- (a) in respect of any CLAIM made against an INSURED PERSON, or
- (b) in respect to any INVESTIGATION by an OFFICIAL BODY in to the INSUREDS conduct

arising from a breach or alleged breach of any occupational or workplace health and safety legislation.

3.21 Pollution

Notwithstanding Exclusion 5.2 (Pollution), WE will pay:

- (a) DEFENCE COSTS, that are payable in respect of any CLAIM against an INSURED PERSON resulting from a WRONGFUL ACT in connection with the discharge, dispersal, release or escape of POLLUTANTS. The total amount payable under this Extension is HK\$2,000,000 in the aggregate in respect of all CLAIMS and is part of, not in addition to the INDEMNITY LIMIT.
- (b) a LOSS in respect of any CLAIM made against a DIRECTOR OR OFFICER by a shareholder of an INSURED ENTITY, whether made directly or derivatively, alleging damage to that INSURED ENTITY or its shareholders due to a breach of duty owed by the DIRECTOR or OFFICER.

3.22 Outside Directorship Liability

WE will pay LOSS for any CLAIM, or INVESTIGATION, in respect of an OUTSIDE ENTITY DIRECTOR, provided the CLAIM is for a WRONGFUL ACT or INVESTIGATION in respect of conduct, which occurred whilst the OUTSIDE ENTITY DIRECTOR is or was at the specific request of an INSURED ENTITY or FUND a director, officer, trustee, governor or equivalent position of such OUTSIDE ENTITY.

- (a) Cover provided by this extension is specifically excess of any other applicable insurance in force in respect of such OUTSIDE ENTITY and any indemnification provided by such OUTSIDE ENTITY. If the OUTSIDE ENTITY'S other applicable insurance is provided by US, then the applicable INDEMNITY LIMIT for all LOSS covered by virtue of this extension, will be reduced by the indemnity limit specified in the Schedule of the other DUAL policy provided to the OUTSIDE ENTITY.
- (b) If during the INSURANCE PERIOD coverage is requested in respect of an additional OUTSIDE ENTITY, such coverage will be provided automatically (subject to all limitations, conditions, provisions and other terms in this POLICY) for a period of 90 days after the date of commencement of the OUTSIDE ENTITY DIRECTOR position.

3.23 Investigation Costs

WE will pay INVESTIGATION COSTS on behalf of each INSURED PERSON in respect of an INVESTIGATION for which the notice is first served on such INSURED PERSON during the INSURANCE PERIOD or any applicable DISCOVERY PERIOD.

Extensions applicable to Insuring Clause 2.4 Fund & Investment Manager Crime Protection

3.24 Loss Investigation

WE will pay in addition to the INDEMNITY LIMIT any reasonable fees and expenses incurred and paid by the INSURED ENTITY or FUND, with our prior written consent (which will not be unreasonably withheld or delayed), to investigate, prove and report a DIRECT FINANCIAL LOSS covered under section 2.4. Reasonable expenses shall not include wages, salaries, time costs and expenses or other remuneration of any INSURED. The total amount payable under this Extension is HK\$500,000 in the aggregate for all claims. The DEDUCTIBLE does not apply to this Extension.

3.25 Computer Program Restoration

WE will pay any reasonable expenses incurred and paid by the INSURED ENTITY or FUND, with our prior written consent (which will not be unreasonably withheld or delayed) for:

- (a) the verification and removal of fraudulent maliciously introduced or altered computer programs; or
- (b) the reproduction or duplication of damaged or destroyed electronic computer programs as a result of a LOSS covered under Section 2.4. The reproduction or duplication of electronic computer programs will be to the level (or a substantially similar level) of operational capacity prior to the LOSS being discovered.

The total amount payable under this Extension is HK\$1,000,000 in the aggregate for all claims and all INSUREDS and is part of, not in addition to, the INDEMNITY LIMIT.

3.26 Identity Theft Expenses

WE will pay any reasonable legal fees, costs and expenses incurred and paid by the INSURED ENTITY, with our prior written consent (which will not be unreasonably withheld or delayed):

- (a) When applying for civil or criminal proceedings to be dismissed or withdrawn on the basis that the alleged liability resides with a third party perpetrator of an IDENTITY THEFT fraud and not the FUND, INSURED ENTITY or its DIRECTORS OR OFFICERS.
- (b) to correct or reinstate public records after an IDENTITY THEFT has occurred.
- (c) for PUBLIC RELATIONS EXPENSES to address the adverse publicity or reputational injury due to an IDENTITY THEFT.

The total amount payable under this Extension is HK\$500,000 in the aggregate for all claims and is part of, not in addition to the INDEMNITY LIMIT. In no circumstances shall the INSURED be entitled to cover of greater than HK\$500,000 in the aggregate for all claims and CLAIMS in respect of cover that falls under this extension and extension 3.14 PUBLIC RELATIONS COVER.

Section 4 DEFINITIONS:

In the POLICY:

4.1 ACT OF INFIDELITY means any dishonest, fraudulent or malicious act committed by an EMPLOYEE alone or in collusion with others. However with respect to LOANS and TRADING, ACT OF INFIDELITY means only a dishonest or fraudulent act committed by an EMPLOYEE with the intent of making improper financial gain for the EMPLOYEE who committed such act.

4.2 BAIL BOND AND CIVIL BOND EXPENSES means the reasonable premium (but not collateral) for a bond or other financial instrument to guarantee an INSURED PERSON'S contingent obligation for bail required by a court hearing a CLAIM for any WRONGFUL ACT.

- 4.3 BENEFITS means any amount payable to a beneficiary of a superannuation fund under the rules governing the fund.
- 4.4 BILL OF EXCHANGE means an unconditional order in writing, addressed by one person to another, signed by the addresser, requiring the addressee to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer.
- 4.5 CERTIFICATE OF DEPOSIT means a written acknowledgement by a financial institution of a deposit with a promise to pay such deposit to any person or to his order.
- 4.6 COMPUTER SYSTEMS means a computer and all networks, input, output, processing, storage or communication facilities, which are connected, directly or indirectly to such a device.
- 4.7 CLAIM means:
- (a) a written demand seeking compensation or damages for a specified WRONGFUL ACT; or
 - (b) a civil, criminal, administrative, regulatory, arbitration, mediation, conciliation or alternative dispute resolution proceeding for a specified WRONGFUL ACT commenced by the filing of charges or orders; or
 - (c) an INVESTIGATION including where no WRONGFUL ACT has been specified.
- 4.8 CRISIS means any of the following unforeseen INSURED specific events where, in the reasonable opinion of the chief executive officer (or equivalent) of the POLICYHOLDER, the event has the potential to cause an impending decrease in excess of 25% of the combined annual revenue of the INSURED ENTITY or FUND if left unmanaged;
- (a) the sudden, unexpected death or disability of a DIRECTOR OR OFFICER;
 - (b) the discharge or enforced resignation (other than in accordance with planned retirement) of a key investment manager;
 - (c) loss of a major customer, contract or credit facility;
 - (d) EMPLOYEE workplace violence;
 - (e) The first apparent unauthorised intrusion into any INSURED ENTITY or FUNDS computer system or network;
 - (f) a man made disaster;
 - (g) any criminal or fraud investigation.
- CRISIS is INSURED specific and does not include an event which affects the INSUREDS industry in general.
- 4.9 DEDUCTIBLE means the amounts specified in Item 6 of the Schedule in respect of each Insuring Clause.
- 4.10 DEFENCE COSTS means that part of LOSS consisting of reasonable costs, charges, fees (including but not limited to legal counsels' fees) and expenses incurred with OUR prior written consent (which will not be unreasonably withheld or delayed) to investigate, defend, settle or appeal a CLAIM or an official investigation, examination or inquiry but does not include regular or overtime wages, salaries or fees of the directors, officers or EMPLOYEES of the INSURED ENTITY incurred in attending, defending, investigating or monitoring CLAIMS and such official investigations (except as costs under Extension 3.5).
- 4.11 DIRECTOR OR OFFICER means any natural person who was, now is or during the INSURANCE PERIOD becomes:
- (a) any director, officer, senior manager or NON EXECUTIVE DIRECTOR, responsible officer, company secretary, alternate director, shadow director or de-facto director of an INSURED ENTITY or FUND;
 - (b) a compliance committee, investment committee or investment advisory committee member of an INSURED ENTITY or FUND;

- (c) a trustee of a FUND established as a trust;
- (d) a general partner of a FUND established as a limited partnership;
- (e) an EMPLOYEE of an INSURED ENTITY who is concerned in or takes part in the management of that INSURED ENTITY;
- (f) with respect to an EMPLOYMENT CLAIM, an EMPLOYEE; or
- (g) a co-defendant with a DIRECTOR OR OFFICER of an INSURED ENTITY or FUND in a CLAIM for a WRONGFUL ACT.

4.12 DIRECT FINANCIAL LOSS means:

- (a) Direct pecuniary loss sustained by an INSURED ENTITY or FUND as a result of any single act, omission or event. A series of related or continuous acts, omissions or events up to the time of DISCOVERY will be treated as a single act, omission or event.
- (b) Interest not received or which becomes payable as a direct result of an ACT OF INFIDELITY or THIRD PARTY CRIME. For such interest:
 - (i) It will be calculated at the average of the Reserve Bank of Hong Kong a base rate in force between the date the interest would have been received or becomes payable and the date of DISCOVERY; and
 - (ii) The total amount payable in respect to interest is HK\$2,500,000 in the aggregate for all claims and is part of, not in addition to the INDEMNITY LIMIT

DIRECT FINANCIAL LOSS shall not include fines and penalties; or salaries, fees, commissions, bonuses and similar employee benefits earned in the normal course of employment, including salary increases and promotions, other than bonuses, commissions or profit sharing paid to an EMPLOYEE for a specific transaction with which such EMPLOYEE was involved and in respect of which that EMPLOYEE had committed an ACT OF INFIDELITY covered under this POLICY.

4.13 DISCOVERED means when any RESPONSIBLE PERSON first becomes aware of or had knowledge of any act, omission or event which could reasonably be foreseen to give rise to a DIRECT FINANCIAL LOSS covered by this POLICY, even though exact amounts or details of the DIRECT FINANCIAL LOSS, act, omission or event are unclear at the time of DISCOVERY. Such discovery shall constitute DISCOVERY by every INSURED.

4.14 DISCOVERY PERIOD means the period immediately after the expiry of the INSURANCE PERIOD when written notice may be given to US of:

- (a) a DIRECT FINANCIAL LOSS DISCOVERED during such period which was a direct result of an ACT OF INFIDELITY or THIRD PARTY CRIME committed prior to the expiry of the INSURANCE PERIOD;
- (b) a CLAIM first made during such period or the INSURANCE PERIOD for a WRONGFUL ACT committed prior to the expiry of the INSURANCE PERIOD.

4.15 DOCUMENT means any cheque, BILL OF EXCHANGE, DRAFT, CERTIFICATE OF DEPOSIT, LETTER OF CREDIT, PROMISSORY NOTE, withdrawal order or receipt for the withdrawal of funds or PROPERTY, money order, orders upon public treasuries, or any similar instruments of value serving the same purpose.

4.16 DRAFT means a BILL OF EXCHANGE payable on demand drawn by or on behalf of a financial institution upon itself.

4.17 EMPLOYEE means any:

- (a) natural person under contract of employment with or under the direct control and supervision of an INSURED ENTITY or FUND;
- (b) DIRECTOR OR OFFICER when performing acts coming within the scope of the usual duties of an employee as described in (a) above;

- (c) Natural person assigned to perform duties within the scope of the usual duties of an employee, within the PREMISES for an INSURED by any agency supplying temporary personnel on a contingent or part time basis;
- (d) guest student pursuing studies or duties with the INSURED at their PREMISES;
- (e) employee of a parent or related company of the INSURED solely whilst performing duties on behalf of the INSURED;
- (f) In respect of Insuring Clause 2.4 only, EMPLOYEE is extended to also include:
 - (i) a solicitor retained by an INSURED ENTITY whilst they are performing legal services for the INSURED;
 - (ii) consultant retained by an INSURED ENTITY whilst they are performing consulting services for the INSURED pursuant to a written contract;

EMPLOYEE does not include any independent broker, independent financial adviser or similar agent or representative, remunerated on sales or commission basis unless specifically agreed by US and endorsed to the POLICY.

4.18 EMPLOYMENT CLAIM means any CLAIM involving employment-related actual or alleged wrongful dismissal, wrongful termination or wrongful discharge of employment (either actual or constructive, including breach of an implied term of a contract) misrepresentation, wrongful failure to employ or promote, failure to grant tenure, discrimination, harassment (including the alleged creation of a harassing workplace environment), retaliation (including lockouts), humiliation, defamation, invasion of privacy, wrongful deprivation of career opportunity, wrongful demotion or negligent employee evaluation (including the provision of negative or defamatory statements in connection with an employee reference) brought by an EMPLOYEE or employee of an OUTSIDE ENTITY.

4.19 EMPLOYMENT RELATED BENEFITS Includes but is not limited to:

- (a) non-monetary benefits including but not limited to the allocation of a company car, travel allowance, mobile or landline telephone, personal digital assistant (PDA), medical or life insurance expenses, education and training allowances, and equipment allowances;
- (b) stock, shares, stock options, share options or any entitlement or right under any employee plan of any description;
- (c) participation in any stock or share option plan, or participation in any employee plan of any description;
- (d) severance or redundancy payments or entitlements;
- (e) any benefit, payment or entitlement of any kind in respect of paid or unpaid leave;
- (f) bonus or incentive payments, or any entitlement or right under a bonus or incentive plan (which, for the avoidance of doubt, does not include any payments, entitlement or right under any commission scheme);
- (g) payments or contributions in respect of any provident, benefit, superannuation, pension or retirement fund, or any other account, fund, scheme or plan intended to provide benefits, in whole or in part, at retirement or a particular age, or on the happening of a particular event;
- (h) any amount paid or ordered to be paid pursuant to any determination or settlement in respect of an allegedly unfair contract, notwithstanding that it acted in accordance with the terms of the employment contract.

4.20 EXTRADITION COSTS means:

- (a) any reasonable fees, costs and expenses (except remuneration of any INSURED, costs of their time or overheads of any INSURED ENTITY or FUND) incurred with OUR prior written consent (which will not be unreasonably withheld or delayed) by or on behalf of an INSURED PERSON in challenging, resisting and/or defending a CLAIM for extradition including any appeal relating thereto, brought against such INSURED PERSON following the execution of a warrant for arrest against such person; or

(b) any reasonable fees, costs and expenses of any accredited:

- (i) Counsellor; or
- (ii) Tax advisor

retained by an INSURED PERSON in connection with an extradition proceeding, during the INSURANCE PERIOD, with OUR prior written consent (which will not be unreasonably withheld or delayed).

4.21 FUND means any trust, investment trust, investment management company, managed investment scheme, mandate, partnership, fund (including any sub fund or subsidiary thereof) or other similar entity specifically listed in the SUBMISSION or listed by Endorsement to the POLICY and NEW FUNDS, provided any such FUND is managed by an INSURED ENTITY at the time of the WRONGFUL ACT on which a CLAIM is based, or at the time an ACT OF INFIDELITY or THIRD PARTY CRIME which results in DIRECT FINANCIAL LOSS.

4.22 INDEMNITY LIMIT means the amounts specified in Item 4 of the Schedule.

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

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

4.25 INSURED means an INSURED ENTITY, FUND and the INSURED PERSONS.

4.26 INSURED ENTITY means the POLICYHOLDER and any SUBSIDIARY of the POLICYHOLDER.

4.27 INSURED PERSON means any past, present, or future:

- (a) DIRECTOR OR OFFICER of a FUND or INSURED ENTITY;
- (b) EMPLOYEE of the FUND or INSURED ENTITY, or other person for whose WRONGFUL ACT an INSURED ENTITY is legally liable, with respect to Section 2.1 only;
- (c) an OUTSIDE ENTITY DIRECTOR for a WRONGFUL ACT whilst performing duties for the OUTSIDE ENTITY.

INSURED PERSON does not include an external auditor, receiver, receiver and manager, official manager, liquidator, administrator, trustee or other person administering a compromise or scheme of arrangement made between the INSURED ENTITY and any other person or persons.

4.28 INVESTIGATION means any official investigation, inquiry or examination by an OFFICIAL BODY concerning either:

- (a) the affairs of an INSURED ENTITY or possible misconduct by any INSURED PERSON in the performance of or failure to perform INVESTMENT ADVISORY SERVICES, other than a routine regulatory supervision, inspection or compliance review or hearing, investigation or examination or inquiry which focuses on an industry rather than an INSURED; or
- (b) the affairs of an INSURED ENTITY or conduct of an INSURED PERSON in his capacity as such at which the INSURED PERSON is compelled to attend by notice or process.

- 4.29 INVESTIGATION COSTS means reasonable fees costs and expenses (except remuneration of any INSURED, cost of their time or costs or overheads of any INSURED ENTITY or FUND) incurred with OUR prior written consent (which will not be unreasonably withheld or delayed) by or on behalf of an INSURED PERSON in:
- (a) preparing for, attending or producing documents to an INVESTIGATION; or
 - (b) responding to a raid on, or on-site visit to, any INSURED ENTITY by an OFFICIAL BODY that involves the production, review copying or confiscation of files or interviews of any INSURED PERSON.
- 4.30 INVESTMENT ADVISORY SERVICES means the investment advisory, investment management, trustee and financial services declared in the SUBMISSION, performed or required to be performed by or on behalf of an INSURED ENTITY pursuant to an agreement with a third party.
- 4.31 LETTER OF CREDIT means an agreement in writing by a financial institution made at the request of a customer that the issuer will honour DRAFTS or other demands for payment upon compliance with the conditions specified in the agreement.
- 4.32 LOAN means:
- (a) any loan or transaction in the nature of, or amounting to, a loan or extension of credit, including a lease, made by or obtained by or from an INSURED ENTITY or FUND;
 - (b) any note, account, invoice, agreement or other evidence of debt, assigned or sold by or to, or discounted or otherwise acquired by an INSURED ENTITY or FUND;
 - (c) any payments made or withdrawals from an INSURED ENTITY or FUND customer's account involving an uncollected item and any other similar transaction.
- 4.33 LOSS means any amount an applicable INSURED becomes legally liable or legally obligated to pay in respect of a CLAIM including but not limited to:
- (a) BAIL BOND AND CIVIL BOND EXPENSES;
 - (b) DEFENCE COSTS;
 - (c) EXTRADITION COSTS;
 - (d) PUBLIC RELATIONS EXPENSES;
 - (e) INVESTIGATION COSTS;
 - (f) PROSECUTION COSTS; and
 - (g) any damages awarded (including aggravated, punitive or exemplary damages), judgements entered or settlements resulting from a CLAIM to which WE have consented.
- LOSS does not include:
- (a) fines or penalties, other than those covered by Section 3.17, ;
 - (b) the multiplied portion of any damages awarded;
 - (c) taxes or government duties;
 - (d) fees, commissions or any EMPLOYMENT-RELATED BENEFITS paid or payable;
 - (e) any amount which WE are legally prohibited from paying, or is uninsurable, under Australian or New Zealand law as applicable.
 - (f) Costs and expenses of any kind associated with (a)-(d)
- 4.34 NEW FUNDS means any FUND (including sub funds and subsidiaries thereof) sponsored or established by an INSURED ENTITY during the INSURANCE PERIOD.

- 4.35 **NON EXECUTIVE DIRECTOR** means any natural person who serves as a non-executive director of an **INSURED ENTITY** or **FUND** at the time of any **WRONGFUL ACT** or **INVESTIGATION**.
- 4.36 **NOT FOR PROFIT ORGANISATION** means any entity which has a written constitution which prohibits the distribution of profits or assets amongst its members during the lifetime of the entity or upon its winding up.
- 4.37 **OFFICIAL BODY** means any regulator, government, governmental body, governmental or administrative agency, self regulatory body, professional body, authority, royal commission, commission of inquiry, stock exchange or any other person having legal authority to conduct an investigation.
- 4.38 **OFFICIAL DETENTION** means the confinement of an **INSURED PERSON** in secure custodial premises, operated by or on behalf of a government or judicial agency in connection with a **CLAIM** against such **INSURED PERSON** and either without charge or without a judicial finding of culpability or liability in that **CLAIM**.
- 4.39 **OUTSIDE ENTITY** means:
- (a) any **NOT FOR PROFIT ORGANISATION**;
 - (b) any entity named in the **SUBMISSION** in which the **INSURED ENTITY** owns on, before or after the inception of the **INSURANCE PERIOD**, up to 50% of issued and outstanding voting shares;
 - (c) any entity which has been listed by endorsement to this **POLICY**.
- 4.40 **OUTSIDE ENTITY DIRECTOR** means any natural person who was, is, or during the **INSURANCE PERIOD** becomes at the specific request of an **INSURED ENTITY** or **FUND** a director, officer, trustee or equivalent of an **OUTSIDE ENTITY**.
- 4.41 **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**.
- 4.42 **POLICYHOLDER** means the entity listed in item 2 of the Schedule.
- 4.43 **POLLUTANTS** means any substance, solid, liquid, gaseous, biological, radiological or thermal irritant, toxic or hazardous substance or contaminant including, but not limited to asbestos, lead, smoke, vapours, dust, vapour, fibre, mould, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and waste materials. Waste materials include, but are not limited to, recycled, reconditioned or reclaimed materials.
- 4.44 **PREMISES** means the interior of any building occupied by an **INSURED ENTITY** or **FUND** in conducting the business of the **INSURED ENTITY** or **FUND**.
- 4.45 **PROMISSORY NOTE** means an unconditional promise in writing by one person to another signed by the maker agreeing to pay, on demand or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person or to bearer.
- 4.46 **PROPERTY** means:
- (a) cash (including currency, coins and banknotes), bullion, precious metals and articles made therefrom, jewellery, gems, precious and semi precious stones, stamps, artwork, postal orders and insurance policies;
 - (b) any **DOCUMENT**;
 - (c) any **SECURITIES**;
 - (d) all other negotiable and non negotiable instruments or contracts representing money or other property (real or personal) or interests therein, and other valuable papers, including books of account and other records used by an **INSURED ENTITY** or **FUND** in the conduct of their business, in which an **INSURED**

ENTITY or FUND has an interest, or which are held by an INSURED ENTITY or FUND for any purpose or in any capacity;

(e) physical media upon which electronic data are stored and recorded.

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

4.48 PUBLIC RELATIONS EXPENSES means the reasonable fees, costs and expenses of a public relations firm or consultant, crisis management firm or law firm retained by the applicable INSURED with OUR prior written consent (which will not be unreasonably withheld or delayed) to prevent or limit adverse effects or negative publicity in respect of a CLAIM or CRISIS.

4.49 RESPONSIBLE PERSON means any person appointed by an INSURED ENTITY or FUND with responsibility for monitoring or reporting CLAIMS or DIRECT FINANCIAL LOSS, a DIRECTOR OR OFFICER, general counsel, partner or equivalent of an INSURED ENTITY or FUND.

4.50 RETIRED INSURED PERSONS means any DIRECTOR OR OFFICER who ceases to hold such office prior to the expiry of the INSURANCE PERIOD, other than by reason of a TRANSACTION or the insolvency, liquidation receivership or administration of the INSURED ENTITY.

4.51 RETROACTIVE DATE means the date specified in Item 7 of the Schedule.

4.52 SECURITIES means any shares, stock, script, warrants, bonds, debentures, notes, evidence of indebtedness, other equity or debt securities or any other interest in the INSURED, and any right to purchase, subscribe to or vote with respect to such interests.

4.53 SUBSIDIARY means any entity in which an INSURED ENTITY, either directly or indirectly, through one or more other entities:

- (a) controls the composition of the board of directors;
- (b) controls more than half of the shareholder or equity voting power;
- (c) holds more than half of the issued share capital or equity; or
- (d) any joint venture or entity over which the INSURED ENTITY exercises effective management control

on or before the inception date of this POLICY.

WE will not provide cover in respect of any WRONGFUL ACT, DIRECT FINANCIAL LOSS or conduct of a SUBSIDIARY occurring prior to the acquisition, creation or incorporation of such SUBSIDIARY.

4.54 SUBMISSION means each and every signed proposal form; including the declarations, statements and representations therein, its attachments and all other information which is either submitted to US in hard copy or electronic format or incorporated in the proposal form by reference.

4.55 THIRD PARTY CRIME means:

- (a) the physical loss of, damage to or destruction of PROPERTY anywhere by any means;
- (b) the impairment, alteration or modification of the INSURED'S electronic data or COMPUTER SYSTEMS by any natural person who is not an EMPLOYEE and which does not fall within definition 4.1 ACT OF INFIDELITY.

4.56 TRADING means trading or other dealings in securities, contracts for difference, commodities, futures, options, swaps, foreign or federal funds, currencies, foreign exchange and the like.

- 4.57 TRANSACTION means any one of the following events:
- (a) the POLICYHOLDER consolidates with or merges into or sells all or substantially all of its assets to any other person or entity or group of persons and/or entities acting in concert other than another INSURED ENTITY or FUND; or
 - (b) any person or entity, whether individually or together with any other person or persons, entity or entities becomes entitled to exercise more than 50% of the rights to vote at general meetings of the INSURED ENTITY or control the appointment of directors who are able to exercise a majority of votes at Board meetings of the INSURED ENTITY; or
 - (c) The merger, consolidation or other combination of any FUND with any other unrelated fund not currently covered under this POLICY but only in relation to such FUND; or
 - (d) The investment advisor and/or principal underwriter/general distributor of any FUND ceasing to act as such, but only in relation to such FUND.

4.58 WE/US/OUR/ DUAL means DUAL Asia as agent of the Underwriters named in the Schedule under the heading "Underwriters".

4.59 WRONGFUL ACT

In respect of Section 2.1 means any misstatement, misleading statement, act, error, omission, neglect, breach of trust, breach of fiduciary duty or breach of regulations committed or attempted or allegedly committed or attempted by any INSURED, and/or any other person for whom an INSURED ENTITY or FUND is legally liable, while performing or failing to perform INVESTMENT ADVISORY SERVICES

In respect of Section 2.2 and Section 2.3 means any misstatement, misleading statement, act, error, omission, neglect, breach of trust, breach of fiduciary duty or breach of regulations committed or attempted or allegedly committed or attempted by an INSURED PERSON while acting in his or her capacity as an INSURED PERSON or any matter claimed against an INSURED PERSON solely by reason of his or her status as such.

Section 5 EXCLUSIONS

Exclusions applicable to all Insuring Clauses.

5.1 Prior Knowledge

- (a) WE will not pay for any LOSS directly or indirectly caused by, arising out of or in any way connected with:
 - (i) any CLAIM arising from or in connection with any fact or circumstance that the INSURED knew or ought reasonably to have known prior to the INSURANCE PERIOD could give rise to a CLAIM;
 - (ii) any CLAIM that was first made, threatened or intimated against the INSURED prior to the INSURANCE PERIOD;
 - (iii) any litigation or other proceedings commenced against the INSURED and/or any OUTSIDE ENTITY prior to the PERIOD OF INSURANCE;
 - (iv) any CLAIM arising from or in connection with any fact or circumstance of which notice has been or reasonably should have been given under any previous insurance, no matter how expressed.
- (b) WE will not pay for any DIRECT FINANCIAL LOSS DISCOVERED
 - (i) prior to the inception of the INSURANCE PERIOD
 - (ii) after the expiry of the INSURANCE PERIOD or any applicable DISCOVERY PERIOD.

5.2 Pollution

We will not pay any CLAIM directly or indirectly arising from or attributable to:

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

Exclusions applicable to Insuring Clauses 2.1 Fund & Investment Manager Professional Civil Liability and 2.2 Fund & Investment Manager Directors & Officers Liability and 2.3 Fund & Insured Entity Company Reimbursement

5.3 Bodily Injury / Property Damage

WE will not pay any CLAIM based upon, attributable to, involving, contributed to by or which arises directly or indirectly from bodily injury, sickness, mental anguish or emotional distress or disturbance, disease or death of any person howsoever caused or damage to or destruction of any tangible property, including loss of use thereof.

This exclusion shall not apply to:

- (a) any CLAIM in respect of mental anguish or emotional distress or disturbance in respect of an EMPLOYMENT CLAIM.
- (b) Any CLAIM for libel, slander, defamation or injurious falsehood;
- (c) Extension 3.12 "Lost Documents";
- (d) Extension 3.22 "Occupational Health & Safety";
- (e) Extension 3.17 "Crisis Mitigation"; or
- (f) INVESTIGATION COSTS.

5.4 Sec Exclusion

WE will not pay any CLAIM based upon, attributable to or which arises from:

- (a) the filing of a registration statement with the United States Security and Exchange Commission, or the offer or sale by means of a prospectus of any SECURITIES or with respect to which a registration statement has been filed. Including but not limited to, any CLAIM asserting that such registration statement or prospectus contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or;
- (b) any underwriting agreement for the offer or sale of any SECURITIES.

5.5 Assumed Liability

WE will not pay for any LOSS directly or indirectly caused by, arising out of or in any way connected with any CLAIM made against an INSURED for any guarantee or warranty, intentional breach of contract or assumed or accepted liability which would not have otherwise attached to the INSURED in the absence of such contract, warranty or agreement. This Exclusion does not apply to an INSURED PERSON'S contract of employment with an INSURED ENTITY or FUND.

5.6 **Fraudulent, Dishonest & Wilful Conduct**

We will not pay any CLAIM directly or indirectly arising from or attributable to:

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

For the purpose of determining the applicability of these exclusions, the WRONGFUL ACT of any INSURED shall not be imputed to any other INSURED. Only statements made and knowledge of any past, present or future chairman, managing director, chief executive officer, chief financial officer, chief operating officer, chief legal officer (or any equivalent positions) of an INSURED ENTITY will be imputed to that INSURED ENTITY. These exclusions shall only apply if it is established through a relevant judgment, final adjudication or admission adverse to the INSURED, or any admission by an INSURED that the relevant conduct did in fact occur.

Additional exclusions applicable to 2.1 Fund & Investment Manager Professional Civil Liability

5.7 **Proprietary Trading Loss**

WE will not pay any LOSS in respect of any CLAIM for a proprietary trading loss, financial loss or a business loss where an INSURED ENTITY or FUND is acting on its own behalf or as principal.

5.8 **Insured Vs. Insured**

We will not pay any LOSS in respect of any CLAIM brought by or on behalf of any INSURED or FUND, or successors or assigns of any INSURED or FUND, unless such CLAIM is brought by or on behalf of:

- (a) an EMPLOYEE as a customer or client of an INSURED ENTITY or FUND and is not solicited by or brought with the voluntary (instead of legally required) intervention, assistance or participation of any INSURED or FUND against whom it is brought; or
- (b) a FUND, on advice from independent legal counsel selected by and at the expense of the FUND (selection of such counsel being subject to the prior written approval of US) that, on the balance of probabilities, the failure to make such CLAIM would be a breach of duty owed by the DIRECTORS OR OFFICERS of such FUND.

Additional exclusions applicable to 2.2 Fund & Investment Manager Directors & Officers Liability and 2.3 Fund & Insured Entity Company Reimbursement

5.9 **Consensual Claims**

WE will not pay for any LOSS arising out of based upon or attributable to any CLAIM, which is solicited by, or brought with the voluntary (instead of legally required) intervention, assistance or active participation of, any INSURED or FUND against whom it is brought.

5.10 **USA Insured Vs Insured**

We will not pay for any LOSS arising out of based upon or attributable to any CLAIM brought within the United States of America, its states, localities, territories or possessions or under any laws thereof by or on behalf of any:

- (a) INSURED ENTITY;
- (b) FUND;

(c) OUTSIDE ENTITY in which an INSURED PERSON serves or served as an OUTSIDE ENTITY DIRECTOR; or

(d) INSURED PERSON of such INSURED ENTITY, FUND or OUTSIDE ENTITY;

except for any CLAIM against an OUTSIDE ENTITY DIRECTOR or a DIRECTOR OR OFFICER:

- (i) pursued as a shareholder derivative action on behalf of an INSURED ENTITY, FUND or OUTSIDE ENTITY;
- (ii) for an EMPLOYMENT CLAIM
- (iii) pursued by an INSURED PERSON for contribution or indemnity, if the CLAIM directly results from another CLAIM otherwise covered under this POLICY
- (iv) pursued by any past DIRECTOR OR OFFICER or EMPLOYEE of an INSURED ENTITY, FUND or OUTSIDE ENTITY; or
- (v) pursued by an insolvency administrator, receiver, trustee or liquidator of an INSURED ENTITY either directly or derivatively on behalf of an INSURED ENTITY, FUND or OUTSIDE ENTITY;

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

5.11 **Recovery Against Employees**

WE will not pay any LOSS arising from an action brought by or on behalf of an INSURED ENTITY against an INSURED PERSON who is an EMPLOYEE in respect of any loss or liability which the INSURED ENTITY may suffer or incur, whether directly or vicariously, as a result of the conduct of that EMPLOYEE arising out of or in the course of their employment (employment does not include duties as a director or officer of any INSURED ENTITY).

Exclusions applicable to 2.4 Fund & Investment Manager Crime Protection

5.12 **Director Infidelity**

WE will not pay for DIRECT FINANCIAL LOSS resulting from an ACT OF INFIDELITY of any DIRECTOR OR OFFICER or partner of an INSURED ENTITY or FUND who is not an EMPLOYEE.

5.13 **Fraudulent Computer Program Features**

We will not pay for DIRECT FINANCIAL LOSS resulting from fraudulent features contained in computer programs developed for sale to, or were sold to, multiple customers at the time of their acquisition from a vendor or consultant unless:

- (a) the features were inserted after the date of acquisition; or
- (b) at the time of DIRECT FINANCIAL LOSS the fraudulent features were contained solely on the computer programs of an INSURED ENTITY or FUND and not on those sold to any other customer.

5.14 **Proprietary Information**

WE will not pay for DIRECT FINANCIAL LOSS resulting from the actual or alleged plagiarism of, or the accessing and dissemination of any confidential information (including but not limited to trade secrets, computer programs, customer information, patents, trademarks, trade names or copyrights), except to the extent that any such confidential information is used to support or facilitate the commission of an ACT OF INFIDELITY or THIRD PARTY CRIME covered by this POLICY.

5.15 **Mail**

WE will not pay any sum attributable to loss of PROPERTY while in the custody of any postal service, other than PROPERTY sent via registered mail, recorded delivery or courier.

5.16 Property Damage

WE will not pay any sum attributable to loss, damage, or destruction;

- (a) of, or to any office, PREMISES or real estate, however caused;
- (b) of, or to any property as a result of fire, explosion, implosion or collapse, other than loss of PROPERTY due to a malicious act of an EMPLOYEE;
- (c) as a result of looting, or any act of God or nature, including hurricane, typhoon, earthquake or subterranean fire; or
- (d) arising out of based upon or attributable to ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

5.17 Consequential Loss

WE will not pay for:

- (a) indirect or consequential loss of any nature;
- (b) any loss or deprivation of income or profits (including but not limited to interest and dividends), except to the extent such sum falls within Definition 4.12 (DIRECT FINANCIAL LOSS);

any loss arising out of, based upon or attributable to

- (c) business interruption (including loss of computer time or use),
- (d) mechanical, electronic or software failure, faulty construction, error in design, latent defect, wear or tear, gradual deterioration, electrical disturbance, electronic data corruption, failure or breakdown or any malfunction or error in programming or errors or omissions in processing; or
- (e) loss of or damage to any property whatsoever by reason of wear, tear, gradual deterioration, moth or vermin.

Section 6 GENERAL CONDITIONS

6.1 Deductible

Unless stated to the contrary in this POLICY, OUR liability shall only apply to that part of each LOSS or DIRECT FINANCIAL LOSS which is in excess of the DEDUCTIBLE and such DEDUCTIBLE shall be borne by the INSURED ENTITY, FUND and/or the INSURED PERSON (as the case may be) at their own risk.

Unless otherwise expressed in the Schedule, all DEDUCTIBLES are inclusive of DEFENCE COSTS up to the amount of the DEDUCTIBLE.

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.

For the purposes of determining the DEDUCTIBLE applicable to any CLAIM covered by the POLICY, all CLAIMS which arise out of or are attributable to or are in any way connected with a single WRONGFUL ACT shall constitute a single CLAIM for the purposes of this POLICY. A single WRONGFUL ACT includes all WRONGFUL ACTS which are related or form part of a series of related conduct or form part of a course of conduct in which the WRONGFUL ACTS are not entirely unconnected, different and/or unrelated.

For the purposes of determining the DEDUCTIBLE applicable to any DIRECT FINANCIAL LOSS covered by the POLICY, all ACTS OF INFIDELITY or THIRD PARTY CRIME which arise out of or are attributable to or are in any way connected with a single ACT OF INFIDELITY or THIRD PARTY CRIME shall constitute a single ACT

OF INFIDELITY OR THIRD PARTY CRIME for the purposes of this POLICY. A single ACT OF INFIDELITY OR THIRD PARTY CRIME includes all ACTS OF INFIDELITY and THIRD PARTY CRIME which are related or form part of a series of related conduct or form part of a course of conduct in which the ACTS OF INFIDELITY and THIRD PARTY CRIME are not entirely unconnected, different and/or unrelated.

6.2 Indemnity Limit

Subject to Extension 3.9 (Additional Limit for Non-Executive Directors) and Extension 3.24 (Loss Investigation Costs) OUR total liability under the POLICY for any one CLAIM including DEFENCE COSTS or DIRECT FINANCIAL LOSS shall not exceed the INDEMNITY LIMIT.

For the purposes of determining the INDEMNITY LIMIT available for any CLAIM covered by the POLICY (including for Extension 3.9 – ADDITIONAL LIMIT FOR NON EXECUTIVE DIRECTORS), all CLAIMS which arise out of or are attributable to or are in any way connected with a single WRONGFUL ACT shall constitute a single CLAIM for the purposes of this POLICY. A single WRONGFUL ACT includes all WRONGFUL ACTS which are related or form part of a series of related conduct or form part of a course of conduct in which the WRONGFUL ACTS are not entirely unconnected, different and/or unrelated.

For the purposes of determining the INDEMNITY LIMIT applicable to any DIRECT FINANCIAL LOSS covered by the POLICY, all ACTS OF INFIDELITY or THIRD PARTY CRIME which arise out of or are attributable to or are in any way connected with a single ACT OF INFIDELITY or THIRD PARTY CRIME shall constitute a single ACT OF INFIDELITY OR THIRD PARTY CRIME for the purposes of this POLICY. A single ACT OF INFIDELITY OR THIRD PARTY CRIME includes all ACTS OF INFIDELITY and THIRD PARTY CRIME which are related or form part of a series of related conduct or form part of a course of conduct in which the ACTS OF INFIDELITY and THIRD PARTY CRIME are not entirely unconnected, different and/or unrelated.

6.3 Discovery Period

The POLICYHOLDER must make any request for a DISCOVERY PERIOD in writing, and pay any additional premium applicable within 30 days after the expiry of the INSURANCE PERIOD. A DISCOVERY PERIOD is not cancellable by the POLICYHOLDER. No DISCOVERY PERIOD is available if this POLICY is cancelled or avoided.

While this POLICY affords the POLICYHOLDER no right to a DISCOVERY PERIOD, if a TRANSACTION takes place then upon written request of the POLICYHOLDER, WE may quote a 72-month run-off DISCOVERY PERIOD. In considering such request, WE will be entitled to fully underwrite the exposure and to extend such offer on whatever terms, conditions and limitations WE deem appropriate.

6.4 Subrogation

Where WE have paid LOSS under the POLICY WE become entitled to any rights the INSURED has against any party in relation to the payment. The INSURED will do nothing to prejudice such rights.

The INSURED must, at its own cost, assist US and provide information and assistance required by US and/or the lawyers and investigators and others appointed by US 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. Any unreasonable failure to comply with this obligation may entitle US to deny liability for the CLAIM in whole or part.

The INSURED shall, at its own cost, do all things reasonably practicable to minimise LOSS, including but not limited to the INSURED's liability in respect of any CLAIM.

WE will waive OUR right of subrogation against an INSURED PERSON under this POLICY, except where it has been established Exclusion 5.6 Fraudulent, Dishonest & Wilful conduct applies.

6.5 Insureds Right To Contest

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

6.6 Notification

The POLICYHOLDER will act on behalf of all INSUREDS.

The INSURED shall notify US of any CLAIM or DIRECT FINANCIAL LOSS as soon as practicable and within the INSURANCE PERIOD or DISCOVERY PERIOD.

Notice shall be given to US in writing, and delivered to:

DUAL Asia
9/F, Cityplaza One
1111 King's Road, Taikoo Shing
Hong Kong

Or

DCS,
11th Floor,
Hong Kong Club Building,
3A Chater Road,
Central, Hong Kong

Notification must be in writing and include:

- (a) a specific description of the alleged WRONGFUL ACT or other conduct, including all details of parties involved;
- (b) a copy of any CLAIM or INVESTIGATION;
- (c) all requested information and documents to co-operate with US in all matters relating to the DIRECT FINANCIAL LOSS.

6.7 Allocation

If a CLAIM gives rise to both a LOSS and/or DEFENCE COSTS which are covered under this POLICY and LOSS or DEFENCE COSTS which are not, WE and the INSURED shall negotiate in good faith to agree on a basis for allocation, taking into consideration the relative legal and financial exposures of the parties and the matters involved. In such negotiations, the parties shall take into consideration factors such as (but not limited to):

- (a) the extent to which the CLAIM is directed to covered or uncovered parties and matters;
- (b) the relative legal and financial exposure of the INSURED compared to that of the uncovered parties; and
- (c) the financial benefits obtained by the covered and uncovered parties in the relevant transaction or litigation due to its settlement.

If the DEDUCTIBLE applicable to Insuring Clause 2.2 applies to part of a LOSS and the DEDUCTIBLE applicable to Insuring Clause 2.3 applies to part, then both WE and the INSURED must use best efforts to reach an agreement of a fair allocation of such LOSS between Insuring Clause 2.2 and Insuring Clause 2.3.

If WE and the INSURED cannot agree a basis for allocation with the INSURED by negotiation, the dispute or difference shall first be referred to mediation at the Hong Kong International Arbitration Centre (HKIAC) and dealt with in accordance with its Mediation Rules. If the mediation is abandoned by the mediator or otherwise ends without the dispute or difference having been resolved, the dispute or difference shall be referred to

arbitration at the HKIAC under the HKIAC's Domestic Arbitration Rules, Each of the parties to the mediation or arbitration shall bear their own costs for the mediation or arbitration.

6.8 Legal Defence and Settlement

WE will be entitled to assume the legal defence of any CLAIM covered under this POLICY in the name of the INSURED and WE will have full discretion in managing any negotiation or proceeding as to the resolution of such CLAIM.

WE will be entitled to appoint the lawyers that will defend and represent the INSURED in respect of any CLAIM.

WE will be entitled to settle a CLAIM if WE so choose.

The INSURED agrees not to admit liability for or settle any CLAIM, make any admission, offer or payment or assume any obligation in connection with any CLAIM, or incur any DEFENCE COSTS or other LOSS in connection with any CLAIM, without OUR prior written consent.

WE shall not be liable for any settlement, DEFENCE COSTS or other LOSS, admission, offer, payment or assumed obligation incurred without OUR prior written consent.

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.

6.9 Order Of Payment

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

- (a) first pay such LOSS for which coverage is provided under Insuring Clause 2.2 of this POLICY; then
- (b) to the extent of any remaining amount of the INDEMNITY LIMIT available after payment under (i) above, pay such LOSS for which coverage is provided under any other provision of this POLICY.

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

6.10 Confidentiality

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

- (a) the existence of this POLICY; or
- (b) the nature of the LOSS or liability indemnified; or
- (c) the INDEMNITY LIMIT; or
- (d) the amount of premium paid.

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

- (i) the INSURED is required to do so by the law; or
- (ii) WE consent to the disclosure in writing.

6.11 Governing Law

This POLICY is to be interpreted in accordance with the laws of the Hong Kong Special Administrative Region.

Any dispute or differences shall first be referred to mediation at the Hong Kong International Arbitration Centre (HKIAC) and dealt with in accordance with its Mediation Rules. If the mediation is abandoned by the mediator or otherwise ends without the dispute or difference having been resolved, the dispute or difference shall be referred to arbitration at the HKIAC under the HKIAC's Domestic Arbitration Rules. Each of the parties to the mediation or arbitration shall bear their own costs for the mediation or arbitration

6.12 Severability & Non Imputation

The SUBMISSION will be construed as a separate proposal by each of the INSURED. With respect to statements made and particulars provided in the SUBMISSION:

- (a) no knowledge possessed by any INSURED PERSON shall be imputed to any other INSURED PERSON; and
- (b) only statements made and knowledge of any past, present or future chairman, managing director, chief executive officer, chief financial officer, chief operating officer, chief legal officer (or any equivalent positions) of an INSURED ENTITY will be imputed to that INSURED ENTITY.

6.13 Cancellation

- (a) The INSURED has the right to cancel this POLICY at any time by notifying US in writing. 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
- (b) WE have the right to cancel the POLICY if the premium has not been paid. .

6.14 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.

6.15 Alteration To Risk

- (a) If during the INSURANCE PERIOD a TRANSACTION takes place with respect to any INSURED ENTITY or FUND, then the cover provided under this POLICY to such INSURED ENTITY or FUND (and their respective SUBSIDIARIES) is amended to apply only to WRONGFUL ACT(S), ACT(S) OF INFIDELITY or THIRD PARTY CRIME committed prior to the effective date of the TRANSACTION.
- (b) The INSURED shall give US written notice of the TRANSACTION as soon as practicable but not later than 30 days after the effective date of the TRANSACTION.
- (c) Cover for any CLAIM against an INSURED ENTITY or any INSURED PERSON shall apply only to WRONGFUL ACTS committed while such entity is an INSURED ENTITY and while such INSURED PERSON serves in an INSURED PERSON CAPACITY.
- (d) Cover under this POLICY shall cease with respect to an EMPLOYEE of an INSURED ENTITY or FUND as soon as any DIRECTOR OR OFFICER of an INSURED ENTITY not in collusion with such EMPLOYEE shall first learn of any ACT OF INFIDELITY by the EMPLOYEE whenever committed, but without prejudice to the loss of PROPERTY in transit in the custody of such person at the time the DIRECTOR OR OFFICER of the INSURED shall learn of such ACT OF INFIDELITY.
- (e) If during the INSURANCE PERIOD, an INSURED ENTITY decides to make an offering of its own SECURITIES within the jurisdiction of the United States of America, or any FUND decides to make an offering of its own securities in any jurisdiction, whether its securities are already traded or not, by any means, public or private, then as soon as the information is publicly available, the INSURED ENTITY or FUND shall provide the INSURER with any prospectus or offering statement for OUR evaluation and assessment of the increased exposure of the INSURED and WE shall be entitled to amend the terms and

conditions of this POLICY and/or charge a reasonable additional premium reflecting the increase in exposure.

6.16 Valuation

In respect of Insuring Clause 2.4, WE will pay LOSS determined on the following valuation model:

- (a) the actual market value, determined by that published in the Australian Financial Review in Australia or equivalent local daily financial newspaper, of SECURITIES, foreign funds, currencies or precious metals at the close of business on the day the DIRECT FINANCIAL LOSS was DISCOVERED, or, if less, the actual cost of replacing the SECURITIES;
- (b) the actual cash value of the property at the time of the DIRECT FINANCIAL LOSS, or the actual cost of repairing or replacing the property or material of like quality and value, whichever is less;
- (c) Artwork is to be valued at the average valuation of two licensed independent artwork valuers, selection of which is to be mutually agreed upon by the POLICYHOLDER and US;
- (d) the cost of blank books, pages, CD Rom's or disks or other blank materials to replace lost or damaged books of account or other records plus the costs of labour paid by the INSURED for the actual transcription or copying of data to reproduce such books of account or other records. If such electronic data cannot be reproduced and represent SECURITIES or other financial instruments of value, the DIRECT FINANCIAL LOSS will be valued as indicated in paragraphs (a) and (b) of this general condition.

6.17 Authority

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

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.