

Evolution - Directors & Officers
Liability Insurance

DUAL

Wordings:





DUAL Australia Evolution

Directors & Officers Liability Insurance Policy Wording

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Important Notices

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

About DUAL Australia

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

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

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

Your Duty of Disclosure

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

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

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

You do not need to tell us anything that:

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

If you do not tell us something

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

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

Notification of Facts that may give rise to a Claim

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

Privacy Statement

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

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

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

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

telephone (+61 (0) 2 9248 6300)

email (privacy@dualaustralia.com.au)

or by visiting our website (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.

General Insurance Code of Practice

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

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

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

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

Complaints and Disputes

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

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

General Counsel Team

DUAL Australia Pty Limited

Email: complaints@dualaustralia.com.au

Telephone: 02 9248 6300

Level 29, Angel Place, 123 Pitt Street,

Sydney NSW 2000

Australia

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

If **we** cannot resolve your complaint to your satisfaction, **we** will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

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

Australian Financial Complaints Authority Limited

GPO Box 3

Melbourne VIC 3001

Australia

Telephone Number: 1800 931 678

Facsimile Number: (03) 9613 6399

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

Service of Suit and Legal Notices

The Underwriters and BHSI accepting this Insurance agree that:

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

Lloyd's Underwriters' General Representative in Australia

Suite 1603

Level 16

1 Macquarie Place

Sydney NSW 2000

who has authority to accept service on the Underwriters' behalf; and

Berkshire Hathaway Specialty Insurance

Level 25, 8 Chifley Square

Sydney NSW 2000

- iii. if a suit is instituted against any of the Underwriters or BHSI, all Underwriters and BHSI participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

Notification of Claims

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

The National Claims Manager

DUAL Australia Pty Limited

Level 29, Angel Place, 123 Pitt Street,

Sydney NSW 2000

Australia

Or by email to: claims@dualaustralia.com.au

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

DUAL Australia Evolution Directors & Officers Liability Insurance

Policy Wording

Section 1: Preamble

- 1.1** In consideration of payment of the premium and subject to all the terms and conditions of the **policy** and, in reliance upon the disclosures made in the **proposal**, **we** agree to provide insurance on the terms set out in this **policy**.
- Subject to the terms and conditions of the **policy**, the total amount payable by **us** under the **policy** shall not exceed the **indemnity limit** displayed in the **policy schedule**.
- Words and phrases appearing in bold text have the meaning provided in Section 5 - Definitions.

Section 2: Insuring Clauses

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

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

2.1 Insured Person Liability Cover

We agree to pay to or on behalf of each **insured person** their **loss** arising from a **claim** first made against an **insured person** during the **insurance period**, for which the **policyholder** has not indemnified the **insured person**.

2.2 Insured Person Investigation Cover

We agree to pay to or on behalf of each **insured person** their **loss** arising from an **investigation** commenced during the **insurance period**, for which the **policyholder** has not indemnified the **insured person**.

2.3 Company Reimbursement - Insured Person Liability

We agree to pay to or on behalf of the **policyholder** an **insured person's loss** arising from a **claim** first made against an **insured person** during the **insurance period**, for which the **policyholder** has indemnified the **insured person**.

2.4 Company Reimbursement - Investigations

We agree to pay to or on behalf of the **policyholder** an **insured person's loss** arising from an **investigation** commenced during the **insurance period**, for which the **policyholder** has indemnified the **insured person**.

2.5 Securities Entity Cover

We agree to pay to or on behalf of the **policyholder** its **loss** arising from a **securities claim** first made against the **policyholder** during the **insurance period**.

2.6 Retroactive Date

The **policy** will only provide cover in respect of any **wrongful acts** and any other conduct occurring after the **retroactive date**.

Section 3: Automatic Extensions

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

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

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

3.1 Advancement of Defence Costs or Investigation Costs

We agree to advance **defence costs** or **investigation costs** reasonably incurred with **our** prior written consent before final disposition of a **claim** or **investigation**.

If it is not possible for the **insured** to obtain **our** written consent prior to incurring **defence costs** or **investigation costs**, **we** agree to waive prior consent so long as **our** written consent is obtained within 30 days of the first of such **defence costs** or **investigation costs** being incurred. Such coverage is provided up to the sub-limit specified in the **schedule**.

If cover under the **policy** is subsequently denied, the **insured** must reimburse **us** for any **defence costs** or **investigation costs** that **we** have paid in advance, according to their respective rights and interests.

3.2 Automatic Run-off Cover for Retired Insured Persons

If an **insured person** retires from all employment or office with the **policyholder** prior to the expiry of the **insurance period** or any **discovery period** and the **policyholder** does not renew this **policy** and no **discovery period** is operable, then that **insured person** will be automatically entitled to an 84 month **discovery period** at no additional premium commencing at 4.00pm local time on the date which they retire from office with the **policyholder**.

3.3 Bail Bond and Civil Bond Expenses

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

3.4 Continuous Cover

We will not rely on Exclusion 4.3 (a) and (b) (Prior Known Facts), in respect of any **claim** or **investigation** where the **insured**:

- a. first became aware, prior to the **insurance period** and after the **continuity date** that a **claim** or **investigation** might or could arise from facts or circumstances known to the **insured**; and
- b. through error or oversight failed to notify the previous insurer or insurers on risk of such facts or circumstances, under any like policy existing prior to the **insurance period**.

If **we** do not rely upon Exclusion 4.3 (a) or (b) by reason of this Extension, **we** have the absolute discretion to apply the terms of this **policy** or the terms of the policy in place when the **insured** first became aware of the relevant facts and circumstances, in providing indemnity under this **policy**. For the avoidance of doubt, policy terms include (but are not limited to) any deductible and the indemnity limit in any prior policy.

3.5 Court Attendance Costs

We agree to pay to or on behalf of the **policyholder** any court attendance costs of any **insured person** who is legally compelled to and does attend Court as a witness in a **claim** for **wrongful acts** covered by the **policy**, to an amount not exceeding \$1,000 per day for all **insured persons**.

3.6 Crisis Costs

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

3.7 Deprivation of Assets Expenses

We will pay the **deprivation of asset expenses** of an **insured person** in the event that an interim or interlocutory court order is made against an **insured person** which seeks to confiscate, control, suspend or freeze rights of ownership of real property or personal assets of an **insured person** or creates a charge over real property or personal assets of an **insured person**.

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

3.8 Discovery Period

The **insured** may give written notice to **us** during a **discovery period** of any **claim** or **investigation**, arising from or in consequence of any actual or alleged **wrongful act**, which occurred during the **insurance period**. Such **discovery period** will commence immediately after the **insurance period** for a period of:

- a. 90 days, granted automatically with no additional premium payable; or
- b. at **our** discretion, 12 months, if the **insured** requests such period in writing within 30 days after the end of the **insurance period** and tenders the expiring annual premium, commencing immediately after the end of the **insurance period**, with such premium payable within 30 days of the receipt by **us** of such written request; or
- c. at **our** discretion, 84 months, if a **transaction** takes place and the **insured** requests such period in writing within 30 days after the end of the **insurance period**, on such terms and conditions, if any, and for such additional premium as **we** may reasonably decide.

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

- i. renewed or replaced with any other directors and officers or management liability or other policy offering similar cover to this **policy**; or
- ii. cancelled or avoided.

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

3.9 Extradition Costs

We will pay the **extradition costs** of an **insured person**.

3.10 Heirs, Estates, Legal Representatives and Spousal Cover

We will pay the **loss** of:

- a. the estate, heirs, legal representatives or assigns of any deceased or mentally incompetent, bankrupt or insolvent **insured person**; or
- b. a legal or de facto spouse, domestic partner of an **insured person**;

but only in respect of a **wrongful act** committed or allegedly committed by an **insured person**.

For the purpose of this Automatic Extension only, the definition of **insured person** in Clause 5.22 of this **policy** is limited to any past, present or future director, shadow director, secretary, **officer**, **employee** whilst acting in a managerial function, of the **policyholder**, **trustee**, or a natural person whom, by virtue of any applicable law is deemed to be a director or **officer** of the **policyholder**.

3.11 Insured Person Tax Liability

We will pay as **loss** an **insured person's** personal liability for the unpaid taxes of the **policyholder** for penalty proceedings commenced during the **insurance period** in the event that the **policyholder** becomes insolvent and an **insured person** is ordered to pay the unpaid taxes of the **policyholder**, except to the extent that such liability arises from the willful intent of the **insured person** to breach any duty governing the payment of taxes.

3.12 Loss Mitigation Costs

We will pay to or on behalf of an **insured person** their **mitigation costs**, incurred in taking action to limit or mitigate the **insured person's** exposure to any actual covered **claim**, or potential **claim**, for a **wrongful act**, which would otherwise be covered under this **policy** provided the **policyholder**:

- a. discovers and notifies **us** during the **insurance period** of the circumstances that have, or may, give rise to a **claim** for a **wrongful act** and the action proposed to mitigate that exposure; and
- b. satisfies to **us** that:
 - i. the circumstances giving rise to the **claim** or potential **claim** occurred during the **insurance period**; and
 - ii. the circumstances notified would otherwise result in a covered **claim**; and
 - iii. the costs and expenses of the proposed action are less than the likely costs and expenses of such covered **claim**; and
 - iv. the proposed costs and expenses are reasonable in all the circumstances.

3.13 Not for Profit Outside Entity Executive Cover

We will pay the **loss** of an **outside entity executive** in the event that a **claim** is made against such **outside entity executive** or an **outside entity executive** is required to attend an **investigation** during the **insurance period** or any **discovery period**, in relation to the performance of their duties for an **outside entity**, in their capacity as an **outside entity executive**.

3.14 Panel Counsel

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

3.15 Pollution Defence Costs and Investigation Costs

We will pay the **defence costs** or **investigation costs** of an **insured person** in relation to the actual, alleged or threatened discharge of **pollutants**, notwithstanding Exclusion 4.1 (Bodily Injury and Property Damage) or Exclusion 10.3 (Pollution) in Section 10 (General Exclusions), provided that Exclusion 10.4 (Radioactivity) will always apply.

3.16 Prosecution Costs

We will pay the **prosecution costs** of an **insured person**.

3.17 Public Relations Expenses

We will pay the **public relations expenses** of an **insured**.

3.18 Reinstatement of the Indemnity Limit – Insured Persons

In the event of a reduction (in whole or in part) of the **indemnity limit** due to payment by **us** of **loss** under this **policy**, it is agreed that the **indemnity limit** shall be reinstated by the amount by which the **indemnity limit** is reduced, provided that:

- a. the total amount payable by **us** with respect to any one **claim** or **investigation** shall not exceed the **indemnity limit**; and
- b. the total amount payable by **us** under this **policy** shall not exceed twice the **indemnity limit**; and

- c. if the **policyholder** has in effect any policy or policies providing coverage in excess of this **policy**, then the reinstated amount of the **indemnity limit** as allowed for by this clause will take effect after the total exhaustion of any amounts payable under any such other policies but before any similar reinstatement provisions as may be contained in any such other policies; and
- d. this provision shall only be available to **insured persons** who are, or were, at the time of the **wrongful act**, a director of the **policyholder**.

3.19 Shareholder Costs

We will pay as **loss** any adverse costs orders awarded against the **insured** in favour of a shareholder or group of shareholders of the **policyholder**.

3.20 Unincorporated Joint Venture Cover

We will pay the **loss** of an **insured person** in respect of any **claim** or **investigation**, where the **insured person** was performing duties for or on behalf of an unincorporated joint venture of the **policyholder** and at the direction of the **policyholder**.

3.21 Work Health & Safety Costs

We will pay the **loss** of an **insured person** in relation to an actual or alleged breach of any occupational health and safety or work health and safety laws, notwithstanding Exclusion 4.1 (Bodily Injury / Property Damage) except where **we** are prohibited by law to do so.

Section 4: Exclusions

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

We will not cover the **insured** for any **loss**, including for **defence costs**, or other amounts under this **policy** in respect of:

4.1 Bodily Injury / Property Damage

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

However, this Exclusion shall not apply to:

- a. a **claim** or **investigation** regarding emotional distress occasioned by an **employment practice breach**; or
- b. a **claim** or **investigation** covered under Automatic Extension 3.21 (Work Health & Safety Costs).

4.2 Fraudulent, Dishonest and Wilful Conduct

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

- a. gaining any personal profit or advantage to which the **insured** was not legally entitled;
- b. committing any dishonest, fraudulent, criminal or malicious act;
- c. committing any wilful violation or wilful breach of any statute or regulation;
- d. committing any breach of either Section 182 or Section 183 or Section 184 of the *Corporations Act 2001* (Cth); or
- e. incurring a liability which is uninsurable at law.

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

4.3 Prior Known Facts

a **claim** or **investigation** arising out of or in any way connected with any:

- a. actual or alleged facts which were known to the **insured** prior to the commencement of the **insurance period** and which the **insured** knew or ought reasonably to have known might give rise to a **claim** or **investigation**, notwithstanding that such facts are disputed by the **insured**; or
- b. actual or alleged facts which could have been, or which can be notified under any previous like policy existing prior to the commencement of the **insurance period**; or
- c. pending or prior **litigation**, or **litigation** derived from the same or essentially the same facts as are or might be alleged in such pending or prior **litigation**, as at the commencement of the **insurance period**; or
- d. any fact or matter referred to in the **proposal**, or notified under any previous like policy existing prior to the commencement of the **insurance period**.

4.4 Retroactive Date

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

Section 5: Definitions

In this **policy**:

5.1 Accountant means a person or entity that is not an **insured** and is recognised by the Institute of Chartered Accountants or the Australian Society of Accountants, or any other person registered by the Australian Taxation Office as a tax agent.

5.2 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** in relation to a **wrongful act** committed or allegedly committed by such **insured person**.

5.3 Claim means:

- a. a written demand for monetary damages or non-pecuniary relief;
 - b. a civil proceeding or counter-claim commenced by the service of a writ, complaint, summons, statement of claim, or similar originating process;
 - c. an alternative dispute resolution proceeding, a formal administrative or regulatory proceeding including any arbitration, mediation, conciliation or other alternative dispute resolution proceeding commenced in writing; or
 - d. a criminal proceeding;
- alleging a **wrongful act**.

5.4 Continuity date means the date specified in the **schedule**.

5.5 Crisis event means any of the following unforeseen events where, in the reasonable opinion of the chief executive officer (or equivalent) of the **policyholder**, the event has the potential to cause an imminent decrease of greater than 25% of the total consolidated annual revenues of the **policyholder** if left unmanaged:

- a. the sudden, unexpected death or disability of any Executive;
- b. the loss of a major customer or contract;
- c. workplace violence concerning an **employee**;
- d. the first apparent unauthorised intrusion into any **policyholder's** computer facilities;

- e. a recall or boycott of any product;
- f. a man-made disaster; or
- g. any criminal investigation in respect of an **insured person**.

Crisis event does not include an event that affects the **policyholder's** industry in general rather than the **policyholder** specifically.

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

5.6 Crisis loss means the reasonable and necessary fees, costs and expenses for external crisis management services provided in response to a **crisis event** within the first thirty (30) days after the event.

5.7 Cryptoasset means a **Digital Asset** and a public or private key or any component thereof solely when used for a **Digital Asset**.

5.8 Deductible means the amount or amounts specified in the **schedule** in respect of each Insuring Clause and Automatic Extensions and is payable in respect of each **claim** or **investigation** or specified **loss** under an Automatic Extension or endorsement.

5.9 Defence costs means that part of **loss** consisting of the reasonable and necessary costs, charges, fees (including but not limited to legal fees) and expenses reasonably incurred by an **insured**, with **our** prior written consent in investigating, settling, appealing or defending a **claim** covered by this **policy**.

Defence costs does not include regular or overtime wages, salaries, costs of time, other remuneration or other fees of the directors, **officers** or **employees** of the **policyholder** incurred in attending, defending, investigating or monitoring **claims**.

5.10 Deprivation of assets expenses means the payment of the following services directly to the provider of such services:

- a. schooling;
- b. housing;
- c. utilities; or
- d. personal Insurance.

5.11 Digital Asset means any actual, counterfeit or fictitious:

- a. digital coin;
- b. digital token;
- c. cryptocurrency;
- d. cryptosecurity; or

any other digital representation of value or contractual rights that uses a type of distributed ledger of technology and that:

- i. functions, or purports to function, as a medium of exchange, a unit of account or a store of value; or
- ii. is or becomes regulated as a security.

5.12 Discovery period means the period of time specified in Automatic Extension 3.8 (Discovery Period) during which time written notice may be given to **us** of a **claim** which is first made against the **insured** for a **wrongful act** committed or allegedly committed prior to the end of the **insurance period** or **transaction**, or an **investigation** into conduct which occurred prior to the end of the **insurance period** or **transaction**.

5.13 Employee means any natural person who is a past, present or future employee of the **policyholder**, regardless of whether they are employed on a full-time, part-time or casual basis. **Employee** does not include independent contractors.

5.14 Employment practices breach means any of the following employment-related matters:

- a. actual or alleged unfair or wrongful dismissal;
- b. termination or discharge of employment (either actual or constructive, including breach of an implied contract);
- c. wrongful failure to employ or promote;
- d. wrongful deprivation of career opportunity or demotion;
- e. negligent employee evaluation (including the provision of negative or defamatory statements in connection with an employee reference);
- f. failure to grant tenure; or
- g. misrepresentation, discrimination, harassment, retaliation (including lockouts), humiliation, defamation or invasion of privacy;

which relate solely to the **policyholder** and its past, present or prospective **employees**.

5.15 Entities means any company, direct or indirect holding company owned or controlled (either in whole or in part) either directly or indirectly by the Government or State of any of the **Territories**.

5.16 Extradition costs means:

- a. the reasonable fees, costs and expenses (except remuneration of any **insured**, costs of their time or overheads of the **policyholder**) incurred by or on behalf of an **insured person** in challenging, resisting and/or defending a **claim** seeking the extradition of such **insured person**, including any related appeal, brought against such **insured person** following the execution of a warrant for arrest against such person; and
- b. the reasonable fees, costs and expenses of any accredited:
 - i. counsellor; or
 - ii. **accountant** or registered tax agent;

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).

5.17 Fund means any single employer superannuation fund established for the benefit of **employees**. **Fund** does not include any self-managed, industry or master superannuation funds.

5.18 Indemnity limit means the amounts specified in the **schedule**.

5.19 Industrial Instrument means an award, collective or individual agreement, minimum wage order or any other instrument entered into by agreement or authorised under statute, which regulates the terms and conditions of an **employee's** employment.

5.20 Insurance period means the period of insurance specified in the **schedule**.

5.21 Insured means an **insured person**, the **policyholder**, or both.

5.22 Insured person means:

- a. any past, present or future director, shadow director, secretary, **officer**, **employee** whilst acting in a managerial function, of the **policyholder**, **trustee**, or a natural person whom, by virtue of any applicable law is deemed to be a director or **officer** of the **policyholder**.
- b. any natural person who was, is or may become, at the request of the **policyholder**, a director, officer or employee acting in a managerial capacity in an **outside entity**.

- c. an **employee** of the **policyholder** whilst acting as a member of a committee convened by the **policyholder** for the specific purpose of advising the board of directors of the **policyholder** and at the **policyholder's** specific request but only in respect of **wrongful acts** committed in that capacity.

Insured person does not include:

- i. a receiver, receiver and manager, official manager, liquidator, administrator, trustee or other person administering a compromise or scheme of arrangement made for **policyholder**; or
- ii. a company or other body corporate.

5.23 Investigation means a formal criminal, administrative or regulatory investigation, examination, hearing or inquiry, into the **policyholder**, **outside entity**, or an **insured person** in their capacity as such, commenced in writing by an **official body** during the **insurance period** or any **discovery period** which may be operable.

5.24 Investigation costs means the reasonable and necessary fees, costs and expenses 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 **policyholder** by an **official body** that involves the actual or possible production, review copying or confiscation of files or interviews of any **insured**.

Investigation costs do not include the remuneration of any **insured**, the cost of their time or costs or overheads of any **policyholder**.

5.25 Litigation means includes, but is not limited to, any civil, criminal, administrative or regulatory proceeding as well as any official investigation, examination, enquiry, arbitration or adjudication.

5.26 Loss means the total amount which an **insured** becomes legally obliged to pay on account of a **claim** or **investigation**. **Loss** includes, but is not limited to:

- a. damages, judgments, settlements and adverse costs orders;
- b. **defence costs**;
- c. **extradition costs**;
- d. **public relations expenses**;
- e. **bail bond and civil bond expenses**;
- f. **deprivation of assets expenses**;
- g. **prosecution costs**;
- h. **investigation costs**;
- i. pecuniary penalties awarded against an **insured person** in and under the laws of the jurisdictions of Australia and New Zealand, provided that **we** are not legally prohibited from paying such pecuniary penalties.

However, **loss** does not include:

- i. fines or penalties (whether civil or criminal) which are uninsurable at law in the jurisdiction in which the **claim** was brought or the laws which govern this **policy**;
- ii. taxes, except those payable under Automatic Extension 3.11 (Insured Person Tax Liability);
- iii. the past and future economic loss of an **employee**;
- iv. any costs of reinstating an **employee**;
- v. any employee benefits, which the **policyholder** is legally obligated pay under an **industrial instrument**; or
- vi. the remuneration of any **insured**, the cost of their time or costs or overheads of any **policyholder**.

- 5.27 Mitigation costs** means the reasonable and necessary costs and expenses incurred by an **insured person** in taking such action to mitigate an **insured's** exposure to any actual covered **claim** or potential **claim**. **Mitigation costs** do not include:
- the **insured's** loss of opportunity, revenue, bonus or profits;
 - internal and overhead expenses of the **policyholder** or a **fund**, including wages, staff remuneration and management time costs;
 - employment related benefits;
 - damages, compensation or other payments made, or consideration given to customers, clients or potential clients;
 - an increase in liability against an **insured**, which is caused as a direct result of an **insured** attempting to mitigate a **claim** or potential **claim**; or
 - any costs not approved by **us**.
- 5.28 Not-for-profit entity** means any entity with 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.
- 5.29 Officer** means any natural person who was, now is or shall be a company secretary, executive officer, officer, principal, partner, or the holder of an equivalent position, of the **policyholder** or senior manager as defined in Section 9 of the *Corporations Act 2001* (Cth) and acting in that capacity.
- 5.30 Official body** means any regulator, government or administrative body or agency, official trade body or self-regulatory body legally empowered to investigate the affairs of the **policyholder** or **outside entity** or the conduct of an **insured person** in their insured capacity.
- 5.31 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** where final adjudication of the **claim** has not yet been determined.
- 5.32 Other insurance** means the other insurance policy or policies specified in the **schedule**.
- 5.33 Outside entity** means a **not-for-profit entity**, which is not a **subsidiary** of the **policyholder**, which has been listed in the **proposal**.
- 5.34 Outside entity executive** means a natural person who is an **employee**, director or **officer** of the **policyholder**, who serves at the specific request of the **policyholder** as a director, officer, trustee, governor or equivalent of an **outside entity**.
- 5.34 Policy** means this policy wording, the **schedule**, the General Conditions, Claims Conditions, and General Exclusions Wording and any Endorsements attaching to and forming part of the **policy** either at commencement of or during the **insurance period**.
- 5.35 Policyholder** means the entity or entities specified in the **schedule** and any **subsidiaries**.
- 5.38 Pollutants** means any substance, solid, liquid, particulate, noise, gaseous or thermal irritant or contaminant including but not limited to smoke vapours, soot, fumes, acids, alkalis, chemicals or waste materials.
- 5.39 Principal organisation** means the entity or entities specified as such in the **schedule**. **Principal organisation** does not include any **subsidiaries** or **outside entities**.
- 5.40 Proposal** means the **insured's** written proposal form, submission and all other supporting documentation and attachments provided to **us** in the application for this **policy**.
- 5.41 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:
- in respect of a **claim**, to obtain the discharge or revocation of:
 - a temporary or permanent disqualification of such **insured person** from managing a corporation (including as

- a senior manager or responsible officer) during the **insured person**; or
- ii. a judicial order entered during the **insurance period** imposing:
 1. confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such **insured person**;
 2. a charge over real property or personal assets of such **insured person**;
 3. restriction of such **insured person's** liberty to a specified domestic residence or **official detention**; or
 4. 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. in respect of an **investigation**, to obtain injunctive relief where an **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 an **investigation**.

5.42 Public relations expenses means the reasonable fees, costs and expenses of a public relations firm or consultant, or crisis management firm, or law firm retained by an **insured** with **our** prior written consent (which shall not be unreasonably withheld or delayed) to prevent or minimise the risk of negative publicity in respect of:

- a. a **claim**; or
- b. an **investigation**; or
- c. a **crisis event**.

It does not include overheads, staff remuneration or management time of any **insured** or compensation or other payments made to customers, clients or potential **claims** or any fines and penalties.

5.43 Retroactive date means the date specified in the **schedule**.

5.44 Schedule means the schedule attached to this **policy** or any **schedule** subsequently substituted for it during the **insurance period** and duly signed, stamped and dated by an authorised representative of **us**.

5.45 Securities means a bond, debenture, note, share, preference share, warrant, option, promissory note or other equity, debt or hybrid security which is issued or given by the **policyholder**.

5.46 Securities claim means a:

- a. a written demand for monetary damages or non-pecuniary relief;
- b. a civil proceeding or counter-claim commenced by the service of a writ, complaint, summons, statement of claim, or similar originating process;
- c. an alternative dispute resolution proceeding, a formal administrative or regulatory proceeding including any arbitration, mediation, conciliation or other alternative dispute resolution proceeding commenced in writing; or
- d. a criminal proceeding;

alleging a **wrongful act** in connection with the purchase or sale of, or offer to purchase or sell, **securities**.

5.47 Subsidiary means:

- a. any legal entity in which the **principal organisation** owns or controls, directly or indirectly, more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors; or any entity which is deemed to be the **principal organisation's** subsidiary under any applicable legislation, law or International Accounting Standard.
- b. any legal entity that ceases to be a **subsidiary** of the **principal organisation** during the **insurance period** or prior to commencement of the **insurance period**, provided that the cover provided will only apply in respect of a **wrongful act** that occurred whilst the entity was a **subsidiary** of the **principal organisation**.

- c. any legal entity which is created or acquired by the **policyholder** during the **insurance period**, provided that the legal entity:
 - i. has total gross assets which are less than 25% of the total gross assets of the **policyholder**; or
 - ii. has gross annual turnover of less than 25% of the total gross annual turnover of the **policyholder**; or
 - iii. has total gross assets which are less than 25% of the total gross assets of the **policyholder** in the United States of America or Canada.

The cover provided in this **policy** will only apply in respect of a **wrongful act** occurring after the date of creation or acquisition.

5.48 Territories means Belarus, Russia, any disputed Russian territories, including but not limited to, Donetsk Region, Luhansk Region, Crimea Region.

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

5.50 Trustee means an **insured** if validly appointed to act, and while acting in the capacity, as a trustee of a **fund**.

5.51 Trustee breach means a **wrongful act** committed or allegedly committed:

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

5.52 Transaction means any one of the following events:

- a. the **policyholder** consolidates with or merges into or sells all or a controlling interest in its assets to any other person or entity or group of persons and/or entities acting in concert; or
- b. any person or entity, whether individually or together with any other person or persons, entity or entities becomes entitled to exercise more than 50% of the rights to vote at general meetings of the **policyholder** or control the appointment of directors who are able to exercise a majority of votes at Board meetings of the **policyholder**; or
- c. the insolvency of the **policyholder**; or
- d. the appointment of an administrator, liquidator, receiver, receiver and manager or court appointed manager to the **policyholder**.

5.53 We, Us or Our means DUAL Australia Pty Limited, ACN 107 553 257 as agent of the Underwriters and Insurers specified in the schedule.

5.54 Wrongful act means any actual or alleged breach of duty, breach of trust, breach of fiduciary duty, neglect, error, omission, misstatement, misleading statement, or other act, error or omission, committed or attempted by:

- a. for the purposes of Insuring Clauses 2.1 to 2.4, an **insured person**, individually or otherwise, in their insured capacity as an **insured person** of the **policyholder** and includes an **employment practices breach** or a **trustee breach**; or
- b. for the purposes of Insuring Clause 2.5 only, a **policyholder**, in connection with the purchase or sale of, or offer to purchase or sell, **securities**.

Section 6: Conditions

The following Conditions applies to this **policy** only:

6.1 Legal Representation and Settlement

- a. For the purposes of this **policy** only, it will be the duty of the **insured** and not **our** duty to defend **claims** and arrange for legal representation at **investigations**.
- b. The **insured** must not admit liability, settle any **claim**, make any admission, offer any payment or assume any obligation in connection with any **claim** or **investigation**, incur any **defence costs**, **investigation costs** or other **loss** covered by this **policy**, without **our** prior written consent, which will not be unreasonably withheld or delayed.
- c. **We** will not be liable for any settlement, **defence costs** or other form of **loss**, admission, offer, payment or assumed obligation to which **we** have not given **our** prior written consent.
- d. **We** will have the right and will be given the opportunity to associate with each **insured** and participate in the defence of any **claim** or **investigation** including the negotiation and settlement of a covered **claim**.
- e. With respect to any **claim** or **investigation** involving both an **insured person** and the company, the **insured** agree that **we** have the right to require the **insureds** to retain separate legal representation.