

A black and white photograph of three business professionals in a factory setting. An older man with a white beard and a younger man are looking at a laptop screen. A woman is partially visible on the left, holding a coffee cup. A hard hat is on the table in the foreground.

# Wordings.



## **DUAL New Zealand Mind the Gap**

Directors & Officers Liability Policy Wording

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# DUAL New Zealand

## Mind The Gap

### Directors & Officers Liability Policy Wording

## Section 1: Insuring Clauses

### 1.1 Insured Person Liability Cover

We agree to pay 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 **company** has not indemnified the **insured person**.

### 1.2 Insured Person Investigation Cover

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

### 1.3 Company Reimbursement - Insured Person Liability

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

### 1.4 Company Reimbursement - Investigations

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

### 1.5 Securities Entity Cover

We agree to pay on behalf of the **company** its **loss** on account of a **securities claim** first made against the **company** during the **insurance period**.

### 1.6 Defence Costs in Addition

We agree to pay to or on behalf of the **insured** any **defence costs** in respect of a **claim** for **loss** covered by this **policy** in addition to the **indemnity limit**, in an amount not exceeding the same **indemnity limit**.

We will only pay **defence costs** however if:

- a. **we** incur them; or
- b. the **insured** incurs them after obtaining **our** agreement in writing and the **defence costs** are in **our** view reasonable and necessary.

We will not defend or continue to defend any **claim** to which the **policy** would provide indemnity, or pay or continue to pay any **defence costs** associated with such defence, once the **defence costs indemnity limit** has been exhausted.

### 1.7 Advancement of Defence Costs

We agree to pay for **defence costs** in respect of any **claim** covered under this **policy** as and when they are incurred prior to final resolution of the **claim**, and within 30 days of receipt by **us** of sufficiently detailed invoices for those costs.

The maximum amount of **defence costs** and other costs and expenses **we** will advance is the amount of any applicable sub-limit or the **indemnity limit**. Upon exhaustion of the applicable sub-limit or the **indemnity limit** **our** obligation to advance **defence costs** will cease.

However any **defence costs** that are paid will be repayable to **us** by the **insured** in the event and to the extent that it is determined under the **policy** that the **insured** was not entitled to the payment of the **defence costs**.

## Section 2: Automatic Coverage Clauses

Each of the following Automatic Coverage Clauses is automatically included under the **policy** unless specifically stated otherwise in the **schedule**. Automatic Coverage Clauses are subject to the Insuring Clauses and all other **policy** terms, conditions and exclusions, definitions and the General Conditions & Exclusions Section. The sub-limits applicable to these Automatic Coverage Clauses form part of and are not in addition to the **indemnity limit**.

### 2.1 Additional Cover for Directors

If the **indemnity limit** is exhausted by the payment by **us** of **loss**, **we** agree to pay an amount not exceeding 25% of the **indemnity limit** for all further **claims**, in addition to the **indemnity limit**, on the following terms:

- a. this Automatic Coverage Clause is only available to non-executive directors of the **company**; and
- b. any other available insurance or source of indemnity available to non-executive directors has also been exhausted; and
- c. the maximum amount of **loss** paid by **us** in respect of all **claims** which arise out of or are attributable to or are in any way connected with a single **wrongful act** shall not exceed the **indemnity limit**; and
- d. this Automatic Coverage Clause is only available for any subsequent **loss** if the subsequent **claim** is entirely unrelated to the **claim** that causes the exhaustion of the **indemnity limit**, and the facts and circumstances underlying that earlier **claim** that causes the exhaustion of the **indemnity limit**; and
- e. the total amount payable by **us** under this Automatic Coverage Clause shall not exceed 25% of the **indemnity limit** in respect of all **claims** made during the **insurance period**.

### 2.2 Automatic Run-off Cover for Retired Insured Persons

If an **insured person** retires from all employment or office with the **company** prior to the expiry of the **insurance period** or any **discovery period** and the **company** 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 **company**. The total amount payable by **us** under this Automatic Coverage Clause is the sub-limit specified in the **schedule**.

### 2.3 Bail Bond Expenses

**We** will pay the **bail bond expenses** of an **insured person** up to the sub-limit specified in the **schedule**.

### 2.4 Continuous Cover

Notwithstanding General Exclusion Clause 6.13 (a) and (b) (Prior Knowledge), **we** agree to provide cover 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**.

**We** have the absolute discretion to apply either the terms and conditions of the policy in place when the **insured** first became aware of the facts and circumstances, including but not limited to the indemnity limit and deductible, or the terms and conditions of this **policy**.

### 2.5 Crisis Costs

**We** will pay the **crisis loss** of the **insured** following a **crisis event** up to the sub-limit specified in the **schedule**.

## 2.6 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** up to the sub-limit specified in the **schedule**.

## 2.7 Discovery Period

In the event of non-renewal of this **policy**, for reasons other than for the non-payment of premium, 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. 60 days, granted automatically with no additional premium payable; or
- b. 12 months, if the **insured** requests such period in writing within 30 days after the end of the **insurance period** and tenders an additional premium of 100% of 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. 84 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.

This Automatic Coverage Clause is not available if this **policy** is:

- i) renewed or replaced with any other like directors and officers policy; or
- ii) cancelled or avoided.

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

## 2.8 Employment Practices Liability Cover

We agree to provide cover in respect of **loss** resulting from any **employment practices breach** against the **company**.

However, **we** will not cover the **company** for **loss** in connection with any **employment practices breach** for or directly or indirectly based upon, attributable to or in consequence of any **benefits** or **employment related benefits** or a breach of an express obligation of any **insured**:

- a. to make payments (including the provision of non cash benefits); or
- b. pursuant to any procedural or notification requirements in the event of termination of employment; whether such obligation arises under statute, regulation, award, contract of employment (including any arrangement or agreement collateral to any contract of employment) or any industrial, workplace or enterprise agreement or otherwise.

The maximum amount payable under this Automatic Coverage Clause during the **insurance period** is the sub-limit specified in the **schedule** which is part of and not in addition to the **indemnity limit**.

## 2.9 Employment Practices Investigation Cover

We agree to pay all **investigation costs** arising from an **investigation** based upon, arising from, or in consequence of an actual or alleged **employment practices breach** commenced during the **insurance period**, up to the sub-limit specified in the **schedule**.

## 2.10 Estates, Heirs, 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 of an **insured person**;
- c. but only in respect of a **wrongful act** committed or allegedly committed by an **insured person**.

Such coverage is provided, up to the sub-limit specified in the **schedule**.

## 2.11 Extradition Costs

We will pay the **extradition costs** of an **insured person** up to the sub-limit specified in the **schedule**.

## 2.12 Insured Person Tax Liability

We will pay as **loss** an **insured person's** personal liability for the unpaid taxes of the **company** in the event that the **company** becomes insolvent and an **insured person** is ordered to pay the unpaid taxes of the **company**, except to the extent that such liability arises from the wilful intent of the **insured person** to breach any duty or obligation governing the payment of taxes. The maximum amount payable by **us** under this Automatic Coverage Clause is the sub-limit specified in the **schedule**.

## 2.13 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**. The maximum amount payable by **us** under this Automatic Coverage Clause is the sub-limit specified in the **schedule**.

## 2.14 Panel Counsel

The **insured** is entitled to one (1) hour free advice from any one firm listed on **our** panel of solicitors relating to a matter which **we** have accepted as notification of circumstances which may give rise to a **claim** under 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**.

## 2.15 Pollution Defence Costs and Investigation Costs

We will pay the **defence costs** or **investigation costs** of an **insured** in relation to the actual, alleged or threatened discharge of **pollution**, notwithstanding Exclusion Clause 3.1 (Bodily Injury and Property Damage) or Exclusion Clause 3.8 (Pollution Risk), provided always, that General Exclusions 6.12 (a) and (b) (Nuclear/Radioactivity) will always apply. The maximum amount payable by **us** under this Automatic Coverage Clause is the sub-limit specified in the **schedule**.

## 2.16 Prosecution Costs

We will pay the **prosecution costs** of an **insured person** up to the sub-limit specified in the **schedule**.

## 2.17 Public Relations Expenses

We will pay the **public relations expenses** of an **insured** up to the sub-limit specified in the **schedule**.

## 2.18 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 **company** 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 **company**.

## 2.19 Retired Directors and Officers

Any **insured person** who retires before the expiry of the **insurance period** may give written notice to **us** of any **claim** in respect of a **wrongful act** by the **insured person** occurring before the end of the **insurance period**, during a run-off period of 84 months immediately following the **insurance period**, provided such **insured person** has retired prior to:

- a. any **transaction**; or
- b. the insolvency, liquidation, receivership, bankruptcy or administration of the **company**.

This Automatic Coverage Clause is not available if:

- i) this **policy** is renewed or replaced with any other Director and Officer or Management Liability Policy; or
- ii) a **discovery period** is purchased by the **insured** under Automatic Coverage Clause 2.7 (Discovery Period).

No cover is provided to the **company** under this Automatic Coverage Clause.

## 2.20 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 **company** up to the sub-limit specified in the **schedule**.

## 2.21 Trustees Liability

**We** agree to provide cover in respect of **loss** resulting from any **claim** made against an **insured person** as a result of their individual or collective capacities as trustees of the **company's** own superannuation or pension funds. Cover will be provided for any **claim** by any member of the superannuation or pension fund, notwithstanding that they may also be an **insured**.

## 2.22 Unincorporated Joint Venture Cover

**We** will pay the **loss** of an **insured person**, where the **insured person** was performing duties for or on behalf of an unincorporated joint venture of the **company** and at the direction of the **company** up to the sub-limit specified in the **schedule**.

## 2.23 Work Health & Safety Costs

**We** will pay the **loss** of an **insured person** in relation to any **claim** arising from an alleged breach of the *Health & Safety at Work Act 2015* (or any amendment or re-enactment thereof), or any other New Zealand or Australian legislation governing workplace conditions and procedures. Exclusion 3.1, (Bodily Injury / Property Damage), does not apply to this Automatic Coverage Clause.

The maximum amount payable under this Automatic Coverage Clause is the sub-limit specified in the **schedule** which is part of and not in addition to the **indemnity limit**.

## Section 3: Exclusions

We will not cover the **insured** for any form of **loss**, including for **defence costs**, in respect of:

### 3.1 Bodily Injury / Property Damage

any **claim** or **investigation** for bodily injury or property 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 an emotional hurt or mental anguish or distress occasioned by an **employment practice breach**;
- b. a **claim** or **investigation** covered under Automatic Coverage Clause 2.23 (Work Health & Safety Costs).

### 3.2 Breach of Professional Duty

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

### 3.3 Consensual Claim

any **claim** which is brought or maintained with the intervention, assistance or active participation (unless required by law) of any **insured person** against whom the **claim** is brought.

### 3.4 ERISA

any **claim** based upon, attributable to, involving, contributed to by or which arise directly or indirectly from any actual or alleged violation of the responsibilities, obligations or duties imposed by the *Employee Retirement Income Security Act 1974 (USA)* or any amendments thereto.

### 3.5 Fines and Penalties

any **claim** arising from or directly or indirectly, attributable to or in consequence of any liability to pay:

- a. taxes, fines, penalties or liquidated damages; or
- b. punitive, exemplary, aggravated or additional damages resulting from the multiplication of compensatory damages of any kind awarded against an **insured person** arising out of a **claim** made and/or action instituted in the USA or Canada.

### 3.6 Insured v Insured

any **claim** which is brought by, on behalf of or for the benefit of the **company**; provided, however, that this Exclusion shall not apply to:

- a. **defence costs**;
- b. any **claim** brought or maintained by the **company** for contribution or indemnity, if the **claim** directly results from another **claim** otherwise covered under the **policy**;
- c. any **claim** brought or maintained by any external administrator to the **company** (including but not limited to a liquidator, receiver, administrator or other external administrator) where such external administrator is appointed by a Court and such **claim** is brought without the solicitation, assistance or co-operation of any **insured person**;
- d. a derivative action on behalf of the **company** brought by persons who are not **insured persons** and without the solicitation, assistance or co-operation of any **insured**; or
- e. a **claim** by a regulatory body in the name of the **company** provided the action is brought or maintained without any direct or indirect consent, solicitation, co-operation or enticement from any **insured person**.



### 3.7 Securities and Exchange Commission

any **claim** based upon, attributable to, involving, contributed to, by or which arise directly or indirectly from any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, any rules of the Securities and Exchange Commission adopted thereunder, or any Federal, State, or Provincial Law similar to the foregoing including amendments thereto, in the USA or Canada.

### 3.8 Pollution Risk

any **claim** directly or indirectly arising from, based upon, or attributable to:

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

## Additional Exclusions Applying To Insuring Clause 1.5 Only

### 3.9 Securities Claim Specific

**We** will not cover the **company** for **loss** in connection with a **securities claim** directly or indirectly based upon or attributable to any:

- a. express representations, contracts, agreements, warranties or guarantees made by the **company**, provided, however, that this Exclusion shall not apply if the **company** would have had such liability in the absence of such representations, contracts, agreements, warranties or guarantees; or
- b. allegation that the consideration for the acquisition or completion of the acquisition of all or substantially all the ownership, interest or assets of a **subsidiary**, business or other enterprise is inadequate. **Loss** does not include any amount of any judgement or settlement representing the amount by which such price or consideration is effectively increased nor any amount for the claimant's costs and expenses, which relate to such allegations.

## Additional Exclusions Applying To Automatic Coverage Clause 2.8 And 2.9 Only

### 3.10 Employee-Related Benefits

any **claim** directly or indirectly based upon or attributable to any:

- a. obligation, or actual or alleged breach of an obligation, under any law, regulation or **industrial instrument** providing for paid or unpaid leave of any kind;
- b. obligation, pursuant to any law, regulation, or **industrial instrument** providing for the payment of workers' compensation entitlements, disability benefits, unemployment benefits, unemployment insurance, retirement benefits, social security benefits;
- c. **employment related benefits** or amounts calculated by reference to any **employment related benefits**;
- d. costs incurred by the **company** to modify any building or property, or to provide any service, in order to make such building or property, more accessible for accommodating a disabled person;
- e. costs incurred by the **company** in connection with any educational or corrective measures undertaken under order of a Court of competent jurisdiction, arising from an **employment practices breach**;

- f. specified sums payable by the **company** to an **employee** pursuant to a contract of employment or **industrial instrument**; or
- g. **benefits**.

## Section 4: Conditions Applying To This Policy Only

### 4.1 Allocation

- a. 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):
  - i) the extent to which the **claim** is directed to covered or uncovered parties and matters;
  - ii) the relative legal and financial exposure of the **insured person** compared to that of the uncovered parties; and
  - iii) the financial benefits obtained by the covered and uncovered parties in the relevant transaction or litigation due to its settlement.
- b. If the **deductible** applicable to Insuring Clause 1.1 applies to part of a **loss** and the **deductible** applicable to Insuring Clause 1.2 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 1.1 and Insuring Clause 1.2.
- c. If **we** and the **insured** cannot agree on allocation the dispute shall be submitted to a Queen's or Senior Counsel (who in the absence of agreement by the parties shall be selected by the President of the Bar Association in New Zealand from a list comprised of three nominations from each of parties) to determine a basis for allocation. In determining the basis for allocation the Queen's or Senior Counsel shall take into consideration the factors contained in 4.1 (a) (i-iii) above and the intent of this clause.

### 4.2 Legal Representation and Settlement

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**.

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

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

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

With respect to any **claim** or **investigation** involving both an **insured** person and the **company**, the **insured** agree that **we** have the right to require the **insureds** to retain separate legal representation.

### 4.3 Order of Payment

If the payment of **loss** is to be made where such **loss** in the aggregate exceeds the remaining available **indemnity limit**, **we** will:

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

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

## Section 5: Definitions

In this **policy**:

- 5.1** **Accountant** or registered tax agent means a person who is not an **insured** and is recognised by Chartered Accountants Australia and New Zealand (formerly the Institute of Chartered Accountants) or similar, or any other person registered by the Inland Revenue Department as a tax agent.
- 5.2** **Bail 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** **Benefits** means any amount payable to a beneficiary of a **fund** by the **trustee** under the rules governing the **fund**.
- 5.4** **Business** means the description of the **company's** business activities outlined in the **schedule**.
- 5.5** **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**.
- 5.6** **Company** means the entity or entities specified in the **schedule** and any **subsidiaries**.
- 5.7** **Continuity date** means the date specified in the **schedule**.
- 5.8** **Crisis event** means any of the following unforeseen events where, in the reasonable opinion of the chief executive officer (or equivalent) of the **company**, the event has the potential to cause an imminent decrease of greater than 25% of the total consolidated annual revenues of the **company** 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 **company's** computer facilities;
  - e. a recall or boycott of any product;
  - f. a man-made disaster;
  - g. any criminal investigation in respect of an **insured person**.
- Crisis event** does not include an event that affects the **company's** industry in general rather than the **company** specifically.
- 5.9** **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.
- 5.10** **Deductible** means the amount or amounts specified in the **schedule** in respect of each Insuring Clause.
- 5.11** **Defence costs** means that part of **loss** consisting of the reasonable costs, charges, fees (including but not limited

to legal fees) and expenses reasonably incurred by an **insured**, with **our** prior written consent in investigating or defending a **claim** but does not include regular or overtime wages, salaries or fees of the directors, **officers** or **employees** of the **company** incurred in attending, defending, investigating or monitoring **claims**.

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

- a. schooling;
- b. housing;
- c. utilities;
- d. personal insurance.

These expenses will only be payable after the exhaustion of any personal allowance which has been directed by a Court to meet such payments. Expenses will be payable 30 days after the triggering of Automatic Coverage Clause 2.6 (Deprivation of Assets Expenses) and for a period of up to 12 months.

**5.13 Discovery period** means the period of time specified in Automatic Coverage Clause 2.7 (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**.

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

**5.15 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 **company** and its past, present or prospective **employees**.

**5.16 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, medical or life insurance expenses, education and training allowances, and equipment allowances;
- b. shares, share options or any entitlement or right under any employee plan of any description;
- c. participation in any share option 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 paid or unpaid entitlements in relation to a notice period.

**5.17 Extradition costs** means:

- a. the reasonable fees, costs and expenses (except remuneration of any **insured**, costs of their time or overheads of the **company**) 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 appeal from such **claim**; and
- b. the reasonable fees, costs and expenses of any accredited:
  - i) counsellor; or
  - ii) **accountant**;

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).

**5.18 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.

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

**5.20 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.

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

**5.22 Insured** means an **insured person**, or the **company**, or both.

**5.23 Insured person** means:

- a. any past, present or future director, shadow director, secretary, **officer**, **employee** whilst acting in a managerial function, of the **company**, **trustee**, or a natural person whom, by virtue of any applicable law is deemed to be a director or **officer** of the **company**;
- b. the estate, heirs, legal representatives or assigns of any deceased or mentally incompetent, bankrupt or insolvent **insured person** in (a) above, but only in respect of a **wrongful act** committed by an **insured person**;
- c. a legal or de facto spouse, domestic partner of an **insured person** in (a) above, but only in respect of a **wrongful act** committed by an **insured person**;
- d. any natural person who was, is or may become, at the request of the **company**, a director, **officer** or **employee** acting in a managerial capacity in an **outside entity**;
- e. an **employee** of the **company** but only whilst acting in the capacity as a member of a committee convened by the **company** and at the **company's** specific request, but only in relation to **wrongful acts** committed in the course of the **employee's** performance of their duties on behalf of the committee, where the committee has the specific purpose of advising the board of directors of the **company**.

**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 **company**;
- ii) a company or other body corporate.

- 5.24** **Investigation** means a formal criminal, administrative or regulatory investigation, examination, hearing or inquiry, into the **company, 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.
- 5.25** **Investigation costs** means the reasonable 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 **company** 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 **company**.
- 5.26** **Litigation** includes, but is not limited to, any civil, criminal, administrative or regulatory proceeding as well as any official investigation, examination, enquiry, arbitration or adjudication.
- 5.27** **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 expenses**;
  - f. **deprivation of assets expenses**;
  - g. **prosecution costs**;
  - h. **investigation costs**;
  - i. court attendance costs of any **insured person** who is legally required to attend court as a witness in a **claim** covered by the **policy**, to an amount not exceeding \$500 per day for all **insured persons**. No **deductible** applies;
  - j. 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 Coverage Clause 2.12 (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 **company** 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 **company**.
- 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 company secretary, general counsel or an **employee** who is concerned in, or takes part in, the management of the **company** regardless of the name that is given to their position.

- 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 **company** 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 any other insurance policy including but not limited to those policies specified in the **schedule**, or by endorsement.
- 5.33** **Outside entity** means a **not-for-profit entity**, which is not a **subsidiary** of the **company**, which has been listed in the **schedule** or the **proposal**.
- 5.34** **Outside entity executive** means a natural person who is an **employee**, director or **officer** of the **company**, who serves at the specific request of the **company** as a director, **officer**, trustee, governor or equivalent of an **outside entity**.
- 5.35** **Policy** means this Directors and Officers Liability Policy Wording, the DUAL New Zealand Mind The Gap General Conditions and Exclusions Section, the **schedule**, the **proposal** and any Endorsements attaching to and forming part of the **policy** either at commencement of or during the **insurance period**.
- 5.36** **Pollution** 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.
- 5.37** **Proposal** means the proposal form, submission and all other supporting documentation and attachments provided to **us** in the application for this **policy**.
- 5.38** **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:
- a. in respect of a **claim**, 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:
      - I. confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such **insured person**;
      - II. a charge over real property or personal assets of such **insured person**;
      - III. restriction of such **insured person's** liberty to a specified domestic residence or official detention; or
      - IV. 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**.
- 5.39** **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 limit adverse effects or negative publicity in respect of:
- a. a **claim**; or
  - b. an **investigation**; or

- c. a **crisis event**.

**5.40** **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**.

**5.41** **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 **company**.

**5.42** **Securities 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** in connection with the purchase or sale of, or offer to purchase or sell, **securities**.

**5.43** **Subsidiary** means:

- a. any legal entity in which the **company** 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 **company's** subsidiary under any applicable legislation, law or International Accounting Standard;
- b. any legal entity that ceases to be a **subsidiary** of the **company** 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 **company**;
- c. any legal entity which is created or acquired by the **company** 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 **company**; or
  - ii) has gross annual turnover of less than 25% of the total gross annual turnover of the **company**; or
  - iii) has total gross assets which are less than 25% of the total gross assets of the **company** 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.

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

**5.45** **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 **company** acting as corporate **trustee**; or
- 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**.

**5.46** **Transaction** means any one of the following events:

- a. the **company** 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 **company** or



control the appointment of directors who are able to exercise a majority of votes at Board meetings of the **company**; or

- c. the insolvency of the **company**;
- d. the appointment of an administrator, liquidator, receiver, receiver and manager or court appointed manager to the **company**.

**5.47** **We/us/our** means DUAL New Zealand Limited for and on behalf of Certain Underwriters at Lloyd's.

**5.48** **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 1.1 to 1.4, an **insured person**, individually or otherwise, in their insured capacity as an **insured person** of the **company** and includes an **employment practices breach** or a **trustee breach**; or
- b. for the purposes of Insuring Clause 1.5 only, a **company**, in connection with the purchase or sale of, or offer to purchase or sell, **securities**.