

Crime Protection

DUAL

**Wordings.**





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

Crime Protection Policy Wording

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# DUAL New Zealand

## Mind The Gap

### Crime Protection Policy Wording

## Section 1: Insuring Clauses

### 1.1 Internal Crime Cover

We agree to pay on behalf of the **insured** its **loss** resulting from an **internal crime** which is first **discovered** and reported to **us** during the **insurance period**.

### 1.2 External Crime Cover

We agree to pay on behalf of the **insured** its **loss** resulting from an **external crime** which is first **discovered** and reported to **us** during the **insurance period**.

### 1.3 Defence Costs in Addition

We agree to pay to or on behalf of the **insured** any **defence costs** directly relating to 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; or
- c. the **defence costs** are not recoverable from any other party or under any other insurance policy.

Before incurring **defence costs** the **insured** must have requested and obtained **our** written consent to incur the **defence costs** and the **insured** agrees that no **defence costs** shall be payable by **us** if consent is not obtained or until consent is obtained.

## Section 2: Automatic Coverage Clauses

Each Automatic Coverage Clause 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 and 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 Care Custody and Control

We agree to pay the direct **loss** suffered by a client or customer of the **insured** of **money, securities** or **other property** in the care custody or control of the **insured** and which is the subject of an **internal crime** or **external crime**.

### 2.2 Continuous Cover

We will pay the **insured** all **loss** on account of an **internal crime** or **external crime** committed at any time, provided it is **discovered** during the **insurance period**.

### 2.3 Contractual Penalties

We agree to pay on behalf of the **insured** for any contractual penalty for which the **insured** is liable under a written contract and which directly results from an **internal** or **external crime** covered by this **policy**.

The maximum amount payable under this Automatic Coverage Clause during the **insurance period** is the sub-limit specified in the **schedule**.

### 2.4 Computer Crime Costs

We will pay the **insured's computer crime costs** which directly results from an **internal crime** or **external crime** covered by this **policy**.

The maximum amount payable under this Automatic Coverage Clause during the **insurance period** is the sub-limit specified in the **schedule**.

### 2.5 Credit Card Fraud

We will pay the **insured's loss** which directly results from a **credit card fraud** covered by this **policy** and occurring during the **insurance period**.

### 2.6 Discovery Period

If the **insured** gives written notice to **us** during the **discovery period** as specified in (a) to (b) below of any **internal crime** or **external crime** which was **discovered** prior to the end of the **insurance period**:

- a. within 30 days of the end of the **insurance period**, then **we** will grant cover automatically with no additional premium payable; or
- b. within 12 months of the end of the **insurance period**, then **we** will grant cover if the **insured** requests such period in writing within 15 days after the end of the **insurance period** and tenders an additional premium of 100% of the annual premium level within 30 days of the end of the **insurance period**.

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

- a. renewed or replaced with any other Crime Protection Policy; or
- b. cancelled or avoided.

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

### 2.7 Employee Plans

We agree to pay on behalf of the **insured** any **loss** covered by this **policy** which is sustained by an **employee plan**. Any amount payable by us under this Automatic Coverage Clause shall be paid solely for the benefit of the **employee plan** which has sustained the **loss** and the **insured** shall not be entitled to any payment in respect of the **loss**. For the purposes of this Automatic Coverage Clause only, **employee** includes an **employee** of an **employment plan** and an **employment plan** shall be deemed to be an **insured**.

### 2.8 Erroneous Transfer of Money or Securities

We agree to pay to the **insured** any **loss** covered by this **policy** caused by the wrongful retention by a **third party** of **money** or **securities** transferred to that **third party** by mistake which is first **discovered** during the **insurance period**. Any amount payable by **us** under this Automatic Coverage Clause shall only be payable once the **insured** has taken all reasonable steps to recover the **money** or **securities** from the **third party** without success.

The maximum amount payable under this Automatic Coverage Clause during the **insurance period** is the sub-limit specified in the **schedule**.

## 2.9 Extortion

We agree to pay to or on behalf of the **insured** any **loss** covered by this **policy** caused by **extortion** committed by a **third party** provided that the **insured** has reported the **extortion** to the police.

## 2.10 Interest Receivable or Payable

We agree to pay to or on behalf of the **insured** any interest actually lost or paid by the **insured** directly as a result of any **internal crime** or **external crime** covered by this **policy**, provided that **our** liability under this Automatic Coverage Clause shall be calculated by applying the average of the Reserve Bank of New Zealand base rate in force between the time that the **loss** is sustained and the date of **discovery** of the **loss**.

The maximum amount payable under this Automatic Coverage Clause during the **insurance period** is the sub-limit specified in the **schedule**.

## 2.11 Future Loss Prevention Costs

We agree to pay the **future loss prevention costs** of the **insured** up to the sub-limit specified in the **schedule**.

## 2.12 Loss Investigation Costs

We agree to pay the **loss investigation costs** of the **insured** up to the sub-limit specified in the **schedule**, provided the **direct financial loss** is ultimately determined to be covered under this **policy**.

## 2.13 Outsourcing

The definition of **employee** is extended to include employees of any company or firm authorised and retained by the **insured** to perform normal administrative services which the **insured** outsources to such company or firm provided that:

- a. such services are provided under a written contract;
- b. the **insured** has the right to audit the performance of such services;
- c. the **insured** can demonstrate that the company or firm has been checked for competency, financial stability and honesty prior to the retention of such company or firm; and
- d. the indemnity provided by this Automatic Coverage Clause is always in excess of any valid and collectible indemnity, contractual or otherwise, available to the company or firm or to the **insured** or which would be valid and collectible except for the application of an excess or the exhaustion of a policy limit.

## 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 Physical Loss or Destruction of or Damage to Money or Securities

We agree to reimburse the **insured** for any physical loss or destruction of or damage to **money** or **securities** during the **insurance period** directly as a result of an **internal crime** or **external crime** provided that such physical loss, destruction or damage occurs:

- a. within the **premises**; or
- b. inside any banking premises or similar recognised place of safe deposit; or
- c. whilst in transit and in the care, custody and control of the **insured** or any security company or armoured motor vehicle company which is duly authorised by the **insured** to have the care, custody or control of such **money** or **securities**.

The amount payable under this Automatic Coverage Clause is limited to the excess of any valid and collectible indemnity, contractual or otherwise, available to the **insured**, or which would be valid and collectible except for the application of an excess or the exhaustion of a policy limit.

## 2.16 Public Relations Expenses

We agree to pay on behalf of the **insured** any **public relations expenses** incurred by the **insured** in connection with an **internal crime** or **external crime**:

Provided that:

- i. the **insured's** entitlement to this cover is conditional upon the **insured** providing **us** with full written details of the **internal crime** or **external crime** no later than 30 days after the **insured** first becomes aware of the **internal crime** or **external crime**;
- ii. the **internal crime** or **external crime** must occur and be reported during the **insurance period**;
- iii. the **internal crime** or **external crime** must occur in New Zealand; and
- iv. in connection with a **claim** that is covered under this **policy** for extradition of such **insured**; or
- v. to mitigate any adverse effect on the **insured's** reputation following an **internal crime** or **external crime** that is covered under this **policy**.

The total amount payable by **us** under this Automatic Coverage Clause in respect of all **insureds** for all **public relations expenses** shall not exceed the sub-limit specified in the **schedule**. This sub-limit forms part of the **indemnity limit**, and is not payable in addition to that **indemnity limit**. A separate **deductible** will apply to each **claim** under this Automatic Coverage Clause, as specified in the **schedule**.

## 2.17 Software Reconstitution Costs

We agree to pay on behalf of the **insured** any reasonable and necessary costs incurred, with our prior consent, for re-writing or correcting or amending the **insured's** software programmes which have been damaged or modified in consequence of an **internal crime** or **external crime** covered by this **policy**.

For the avoidance of doubt this Automatic Coverage Clause does not provide indemnity in respect of the costs of rectifying or amending errors or deficiencies in such software programmes that existed prior to the acts giving rise to the **loss**.

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

## 2.18 Joint Venture Cover

We agree to pay the **loss** of the **insured** sustained as a result of an **internal crime** or **external crime** perpetrated against a joint venture in which the **insured** owns at least a 50% share, which is **discovered** during the **insurance period** up to the sub-limit specified in the **schedule**.

# Section 3: Exclusions

We will not cover the **insured** for any **loss** under the **policy**:

## 3.1 Confidential Information

arising from or in any way related to the accessing, use or dissemination of any confidential information including but not limited to trade secrets, computer programs, customer information, patents, trademarks, copyrights or processing methods.

## 3.2 Consequential Loss

indirectly or consequentially arising out of an **internal crime** or **external crime**, including but not limited to any

loss of income, profits, or dividends not realised by the **insured** or any other individual or organisation, business interruption costs or denial of service including but not limited to computer time, access or use, wear and/or tear, gradual deterioration or damage from moth or vermin or mechanical or electronic equipment damage, breakdown or failure or other property damage.

### 3.3 Credit Risks

resulting from any of the following acts or omissions by **third parties** not acting in collusion with an **employee**:

- a. default under a **credit arrangement**; and / or
- b. **fraudulent alteration** or **forgery** of documents in connection with a **credit arrangement**.

### 3.4 Fire Damage

resulting from fire except as expressly provided in Automatic Coverage Clause 2.15 (Physical Loss or Destruction of or Damage to Money or Securities).

### 3.5 Intellectual Property and Confidential Information

resulting from or in any way connected with infringement or plagiarism of any copyright, trademark, registered design or patent, breach of any intellectual property right or breach of confidence, or any allegation of such conduct.

### 3.6 Inventory Computation Losses

a profit and loss computation or comparison of inventory records, which is the sole means of proving that a **loss** has been sustained.

### 3.7 Liabilities to Third Parties

finer, penalties and liabilities to any persons other than as expressly provided for in Automatic Coverage Clause 2.1 (Care, Custody and Control) or Automatic Coverage Clause 2.3 (Contractual Penalties).

### 3.8 Loss Sustained after Knowledge

arising from any **loss** sustained after the **discovery** of the **loss** by the **insured** or any **employee**.

### 3.9 Property Loss

arising from any **loss** in respect of **other property** on the **insured's premises** unless resulting from **theft** or attempted **theft** by a **third party** following the **third party's** entry to or exit from the **insured's premises** by violent or forcible means or resulting from the dishonest acts of an **employee**.

### 3.10 Pollution

directly or indirectly caused by or contributed to by or arising from seepage, **pollution** or contamination of any kind.

### 3.11 Premises Damage

resulting in damage or destruction to any the **insured's premises**, howsoever caused.

### 3.12 Prior or Subsequent Discovery of Loss

arising from or directly or indirectly attributable to or in connection with any **loss discovered** before the commencement of this **policy** or **loss discovered** after the **insurance period** or **discovery period** regardless of the time at which the act or acts giving rise to the **loss** occurred.

### 3.13 Plastic Cards

arising from or directly or indirectly attributable to or in connection with the **fraudulent alteration** of any written instrument required in connection with a debit, credit, bank, VISA, Mastercard, American Express or other similar credit card except any plastic card issued to an **employee** or director or **officer** of the **insured**.

### 3.14 Property Damage

arising from or in connection with damage or destruction of any real property (including fixtures and fittings) resulting from any **internal crime** or **external crime** except to the extent that Automatic Coverage Clause 2.15 (Physical Loss or Destruction of or Damage to Money or Securities) applies.

### 3.15 Reckless Conduct

arising from or in connection with reckless or intentional conduct of the **insured**.

### 3.16 Securities Trading

arising or resulting from any dealing or trading in **securities**, futures or foreign currencies or funds.

### 3.17 Voluntary Surrender

arising from or in any way related to the voluntary giving or surrendering of **money**, **securities** or any **other property** in any exchange, transaction or purchase except where Automatic Coverage Clause 2.8 (Erroneous Transfer of Money or Securities) applies.

## Section 4: Conditions

### 4.1 Alteration to Risk

The **insured** must give to **us** written notice as soon as possible of any material alteration of risk from that disclosed in the **proposal**, declaration and any other underwriting information provided for this insurance that occurs during the **insurance period** including but not limited to:

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

**We** may impose additional premium or terms and conditions arising from such alteration of the risk.

**We** may not cover the **insured** for any **claim**, **loss** or other **claim** under this **policy** if the **insured** does not notify **us** in writing as soon as practicable of any material alteration to risk.

### 4.2 Basis of Valuation

- a. Securities and Foreign Currency

**We** shall not be liable for more than the actual market value of **securities** or foreign currency determined by their closing market price or value on the day that the **loss** was **discovered** or the actual cost of its replacement, whichever is the lesser value.

- b. Precious Metals

**We** shall not be liable for more than the actual market value of precious metals determined by their mid-spot rate on the last **business** day prior to the day the **loss** was **discovered** or in the event of the **discovery** of the **loss** after the close of the market, by their mid-spot rate on the day the **loss** was **discovered**.



c. Other property

The lesser of the actual value of **other property** or the actual cost of repairing **other property** or replacing same with property or material of like quality and value. **We** may, at **our** election, pay such actual cash value or make such repair or replacement.

**We** may, with the **insured's** consent, settle any **claim** by the **insured** in respect of **loss** of property, with the owner of that property. Any property for which **we** have indemnified the **insured** becomes **our** property.

#### 4.3 **Change of Control of Insured**

If during the **insurance period** there is a **change of control** this **policy** shall terminate at 4.00pm on the date on which a **change of control** takes effect and the **benefits** of this **policy** shall cease absolutely at that time, subject only to paragraph (b) below. In the event of a **change of control**:

- a. the **insured** shall forthwith give notice of such to **us**;
- b. no **claim** will be payable under this **policy** unless it is in respect of **loss** covered by this **policy** resulting from acts which occurred exclusively before the date on which the **change of control** takes effect and which was first **discovered** within 30 days of that date; and
- c. **we** shall be entitled to a pro-rata proportion of the premium (subject to any adjustment required by the terms of this **policy**) for the time during which the **policy** has been in force.

#### 4.4 **Notification of Direct Financial Loss**

The **insured** must give written notice to **us** of any **direct financial loss** as soon as practicable within the **insurance period** or within the **discovery period** if applicable, but in any event no later than 60 days after any **direct financial loss** is first **discovered**.

The **insured** must, at its own cost, also:

- a. provide **us** with affirmative proof of the **direct financial loss** with full particulars within 6 months of the **direct financial loss** being first **discovered**; and
- b. provide **us** with all requested information and documents and co-operate with **us** in all matters pertaining to the **direct financial loss**.

#### 4.5 **Prior Enquiries**

The **insured** must make all reasonable enquiries and take all reasonable steps to satisfy itself about the honesty and good character of each **employee** before offering him/her employment, including but not limited to checking with all referees and recent relevant employers.

#### 4.6 **Proof of Loss**

Following **discovery** and subsequent notification of a **loss** to **us** the **insured** must:

- a. provide **us** with affirmative **proof of loss** with full particulars within 6 months of the **loss** being first **discovered**; and
- b. provide **us** with all requested information and documents and co-operate with **us** in all matters pertaining to the **loss**.

#### 4.7 **Prosecution for Internal or External Crime**

The **insured**, when required by **us**, and at **our** expense, must use all diligence in prosecuting or assisting to prosecute any person in respect of whom a **loss** arising from any **internal crime** or **external crime** is paid under this **policy**.

#### 4.8 Recoveries

Where any amount is recovered from any person in respect of a **loss**, whether or not the **indemnity limit** has been or may be exhausted, that amount will be distributed (after deducting the costs and expenses of the recovery) in the following order of priority:

- a. first, to the **insured** in respect the **deductible**;
- b. second, to **us** in respect of any and all amounts paid or payable by **us** under this **policy**;
- c. thereafter, to the **insured** in respect of any part of **loss** which is uninsured for whatever reason.

#### 4.9 Severability and Non-Imputation

No state of mind or knowledge possessed by any one **insured person** will be imputed to any other **insured person** for the purpose of determining whether any provision in this **policy** applies.

However, any state of mind or knowledge possessed by any past or present chairman of the board, chief executive officer, director, chief operating officer or chief financial officer of the **company** will be imputed to the **insured**.

#### 4.10 Single Policy / Single Loss

- a. If the **insured** comprises more than one person, this **policy** shall nevertheless be and remain a single contract of insurance for the benefit of the **insureds** as joint insureds.
- b. Where **loss** results from a series of related, continuous or repeated acts of an **employee** or a **third party** the **loss** shall be treated as one **loss** and in particular all **loss** as a result of the acts of any one **employee** or **third party** acting alone or in collusion with others will be treated as one **loss** regardless of the means by which the **loss** was caused.

#### 4.11 Governing Law and Jurisdiction

This **policy** is governed by the laws of New Zealand. Any disputes relating to interpretation shall be submitted to the exclusive jurisdiction of the Courts of New Zealand. The insurance provided by this **policy** shall apply only to **internal crimes** and **external crimes** committed within the jurisdictional limit specified in the **schedule**, unless otherwise stated.

## Section 5: Definitions

For the purposes of this **policy** only:

- 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 Benefits** means any amount payable including pensions, welfare, shares or share options, charity, shares or share options for past, present or future **employees** (not including directors, partners or trustees) to a beneficiary of a **fund** by the **trustee** under the rules governing the **fund**.
- 5.3 Business** means the business of the **insured** specified in the **schedule**.
- 5.4 Change of control** means the effective consolidation, amalgamation, merger, transfer, assignment, pledge or sale of a majority of the assets or shareholding of the **company** with or to any other entity which was not an **insured** at the commencement of this **policy** or became an **insured** during the **insurance period**.

## 5.5

**Claim** means:

- a. an **internal crime**;
- b. an **external crime**;
- c. **direct financial loss**;
- d. **extortion**;
- e. any circumstance that the **insured** becomes aware of, and the **insured** or a reasonable insured should consider may give rise to any of a), b), c) or d) above.

All **claims** which arise out of or are attributable to or are in any way connected with a single act shall constitute a single **claim** for the purposes of this **policy**. A single act is one which is related or form part of a series of related conduct or form part of a course of conduct that is not entirely unconnected, different and/or unrelated.

## 5.6

**Computer crime costs** means reasonable fees, costs and expenses incurred by the **insured** with **our** prior written consent to retain a suitably qualified consultant to assist the **insured** with:

- a. the identification, verification and removal of fraudulent, maliciously introduced or altered computer programs which erase, corrupt, destroy or modify data or deny access to the **insured's** computer network; and
  - b. the reproduction or duplication of damaged or destroyed electronic computer programs;
- as a result of an **internal crime** or **external crime**.

## 5.7

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

## 5.8

**Counterfeiting** means any act which causes the **insured** to act upon or give value to a negotiable instrument that is an imitation of an authentic negotiable instrument and which deceives the **insured** into believing the imitation is authentic.

## 5.9

**Credit arrangement** means any credit agreement, extension of credit or hire purchase agreement, loan or transaction in the nature of a loan, lease or rental agreement, invoice, account or otherwise evidence of debt, payments made or withdrawals from any customer's account involving items which are not finally paid for any reason.

## 5.10

**Credit card fraud** means the fraudulent alteration of any written instrument required in connection with a credit card issued to any **employee** or director or **officer** of the **insured**.

## 5.11

**Deductible** means the amounts specified in the **schedule**.

## 5.12

**Defence costs** means reasonable costs, charges, fees (including but not limited to legal counsel's fees) and expenses reasonably incurred by the **insured**, as applicable, with **our** prior written consent which result directly from a **claim** covered by this **policy**. It does not include regular or overtime wages, salaries or fees of the directors, **officers** or **employees** of the **insured** incurred in attending, defending, investigating or monitoring **claims**, any internal or overhead expenses of the **insured** or the cost of the **insured's** time or any loss of earnings or profit.

## 5.13

**Direct financial loss** means direct financial loss to the **insured** directly caused by the loss of **money, securities** or **other property** owned by the **insured** or in the care, custody or control of the **insured** at the time of that loss and for which the **insured** is legally liable.

**Direct financial loss** does not include wages, salaries or other remuneration or benefits paid by the **insured** to its directors, **officers** and **employees**.

## 5.14

**Discovery** and **discovered** means the time at which any **management personnel** (excluding a person whose **internal crime** have resulted in **loss**) first becomes aware of facts which would cause a reasonable person to believe that a loss had or was likely to have been sustained as a result of a **internal crime** or **external crime** whether or not the amount of such **loss** or the means by which the **loss** was or may have been caused are known.

**Discovery** by one **management personnel** constitutes **discovery** on behalf of each and every **insured**.

**5.15** **Discovery period** means the period of time specified in Automatic Coverage Clause 2.6 (Discovery Period) during which time written notice may be given to **us** of any:

- a. **loss** arising from an **internal** or **external crime** which was **discovered** during the **insurance period** or **discovery period**; or
- b. **direct financial loss** which is first **discovered** and results from dishonest acts committed; prior to the end of the **insurance period**.

The **discovery period** is not available where Condition 4.3 (Change of Control of Insured) applies.

**5.16** **Electronic fraud** means:

- a. **theft** where the property in question is subject to the direct or indirect control of a computer system caused by manipulation of computer hardware or software programmes or systems; or
- b. **money** taken from an account maintained by the **insured** at a financial institution (from which the **insured** or a person or organisation authorised by the **insured** may request the transfer, payment or delivery of **funds**) following fraudulent electronic, telegraphic, tested facsimile, tested telex, telephone or written instructions to debit such account and to transfer, pay or deliver **funds** from such account and which instructions purport to come from the **insured** or a person or organisation authorised by the **insured** to issue such instructions.

**5.17** **Employee** means any person who is a past, present or prospective employee of the **insured** under a contract of service or apprenticeship on a full-time, part-time or casual basis. **Employee** does not include consultants, independent contractors, secondees to or agents of the **insured** or their respective employees (including the employees of labour-hire agencies).

**5.18** **Employee plan** means any plan, foundation or body established and maintained by the **insured** to provide **benefits** including pensions, welfare, shares or share options, charity, shares or share options for past, present or future **employees** (not including directors, partners or trustees) or their respective beneficiaries. **Employee plan** does not include any sports or social club or organisation.

**5.19** **Employment-related benefits** includes but is not limited to:

- a. non-monetary benefits including but not limited to the allocation of a company car, travel allowance, mobile or landline telephone, medical or life insurance expenses, education and training allowances, and equipment allowances;
- b. stock, shares, stock options, share options or any entitlement or right under any **employee plan**;
- c. participation in any stock, share option or share option plan, or participation in any **employee plan**;
- 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; or
- h. any amount the **insured** pays or is ordered to pay pursuant to any determination or settlement in respect of an allegedly unfair contract, notwithstanding that it acted in accordance with the terms of the employment contract.

**5.20** **External crime** means any fraudulent, criminal or dishonest act committed by a **third party** including but not limited to **theft**, criminal damage, **forgery**, **counterfeiting**, fraudulent creation, **fraudulent alteration**, **electronic fraud** and **incoming cheque forgery**, or **credit card fraud**, which results in:

- a. the **third party** making an improper financial gain for themselves; or
- b. the **insured** suffering a **loss**.

**5.21 Extortion** means any threat made to any director, partner, trustee, **officer** or **employee** of the **insured** to make any accusation against any person, to disclose something about any person or to cause serious damage to property or endanger the safety of any person with intent:

- a. to cause the person who is the victim of the threat is made to act in accordance with the will of the person making the threat; and
- b. to obtain any financial benefit or to cause loss to any other person.

For the avoidance of doubt **extortion** includes ransom demands in relation to the kidnapping or abduction of a person.

**5.22 Forgery** means the handwritten signing or endorsing of the name of a genuine person without authority and with intention to deceive. It does not include the signing in whole or in part of one's own name, with or without authority, in any capacity, for any purpose. Mechanically or electronically produced or reproduced signatures are to be treated in the same manner as hand-written signatures.

**5.23 Fraudulent alteration** means a material alteration for a fraudulent purpose by any person.

**5.24 Fund** means any single employer superannuation fund established for the benefit of **employees**. **Fund** does not include any industry or master superannuation funds.

**5.25 Future loss prevention costs** means the cost to the **insured** of engaging an external consultant to investigate the cause of a **loss** covered under this **policy** and to provide a report detailing ways in which the **insured** can prevent future instances of **internal crime** or **external crime** from re-occurring.

**5.26 Incoming cheque forgery** means the **fraudulent alteration** of, on or in any cheque or draft drawn on any bank or by any company upon itself or any cheque or written order or direction to pay a verifiable sum representing **money** drawn by any entity itself, or any warrant drawn by any entity which the **insured** receives at the **premises** in payment or purported payment for tangible property sold and delivered or for services rendered.

**5.27 Indemnity limit** means the amount specified in the **schedule**.

**5.28 Insurance period** means the period specified in the **schedule** and includes, where applicable, the **discovery period**.

**5.29 Insured** means each named **insured** specified in the **schedule**, an **employee**, director, **officer** of the **insured** and any **subsidiary**.

**5.30 Insured's premises** means the interior portion of any building owned or occupied by an **insured** and in which it conducts its **business**.

**5.31 Internal crime** means any fraudulent, criminal or dishonest act committed by an **employee** including but not limited to **theft**, criminal damage, **forgery**, **counterfeiting**, fraudulent creation, **fraudulent alteration**, **electronic fraud** and **incoming cheque forgery** the fraudulent use of any credit, debit or charge card issued to an **employee** for **business** purposes, which results in:

- a. the **employee** making an improper financial gain for themselves or a **third party**; or
- b. the **insured** suffering a **loss**.

**5.32 Interest** means the actual bank interest rate which would have been applicable to **money** which has been lost as a result of an **internal crime** or **external crime**. Interest is calculated from the date of the **internal crime** or **external crime** and will run until payment is made under this **policy**.

- 5.33** **Loss** means the **direct financial loss** sustained by the **insured** which results from the actual loss of **money, securities or other property** owned by the **insured** or in the care, custody or control of the **insured** and for which the **insured** is legally liable as a result of an **internal crime** or **external crime**. **Loss** also includes:
- a. contractual penalties;
  - b. **computer crime costs**;
  - c. **future loss prevention costs**;
  - d. **interest**;
  - e. **loss investigation costs**; and
  - f. **public relations expenses**.
- Loss** does not include:
- a. loss in respect of salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or **employee-related benefits** paid by the **insured** in the normal course of business;
  - b. fines or penalties imposed by law;
  - c. punitive, aggravated, or exemplary damages;
  - d. any loss of income or profit other than interest covered under Automatic Coverage Clause 2.10 (Interest Receivable or Payable).
  - e. any costs, fees or other expenses incurred by the **insured** in establishing a **claim** under the **policy** except as provided for under Automatic Coverage Clause 2.12 (Loss Investigation Costs ).
- 5.34** **Loss investigation costs** means the reasonable fees, costs and charges of an **accountant** or other external consultant retained to assist the **insured** in providing us with **proof of loss** under this **policy**. **Loss investigation costs** do not include any internal overheads, time costs, profit margins, internal staff costs, wages or salaries of the **insured** incurred in order to provide **proof of loss** to us.
- 5.35** **Management personnel** means the **insured's** directors, trustees, partners, members of a management board or those **officers** who report directly to the **insured's** directors, trustees, partners or management board.
- 5.36** **Money** means only local or foreign currency, coins, bank notes, cheques, traveller's cheques, registered cheques, postal orders, money orders and bullion.
- 5.37** **Officer** means any company secretary, and any **employee** who is concerned in, or takes part in, the management of the **insured** regardless of the name that is given to their position.
- 5.38** **Other property** means any property of any kind other than **money** and **securities**.
- 5.39** **Policy** means this Crime Protection Policy Wording, the DUAL New Zealand Mind The Gap General Conditions and Exclusions Section, the **schedule**, the **proposal** and any endorsement attaching to and forming part of the policy wording.
- 5.40** **Pollution** means any substance, solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste materials. Waste materials include, but are not limited to, recycled, reconditioned or reclaimed materials.
- 5.41** **Premises** means the interior portion of any building owned or occupied by the **insured** and in which it conducts its **business**.
- 5.42** **Proof of loss** means documented evidence that the **insured** has sustained a **direct financial loss**. A **proof of loss** should include the following, however these items should not be seen as limiting the information which could form part of the **proof of loss**:

- a. The name of the entity claiming under the **policy**, and details of their relationship to the **insured**;
- b. The policy number of the **policy**;
- c. The name of the alleged **employee** or **third party** (if known);
- d. A description of the events which led to the **discovery** of the **loss**;
- e. A chronology of all relevant facts known;
- f. A description of the alleged **employee** or **third party's** modus operandi;
- g. Statutory Declarations from witnesses to the **internal crime** or **external crime**;
- h. Complete documentary evidence to support that the **insured** has sustained a **loss**, including but not limited to: receipts, bank statements, requisitions, invoices, cash receipts, cheques or cheque butts;
- i. Photographs, Video or Closed Circuit Television footage of the **internal crime** or **external crime** occurring;
- j. Any internal investigation reports;
- k. Police report/s and/or any statement/s made to the police;
- l. A signed confession; and/or
- m. Any other document or other form of evidence which may be relevant to the proof of a **loss** or quantification of a **loss**.

**5.43** **Proposal** means the **insured's** proposal made to **us** for this **policy**, together with any attachments and material referred to therein.

**5.44** **Public relations expenses** means any reasonable fees, costs and expenses of a public relations consultant retained with **our** prior written consent (which shall not be unreasonably delayed or withheld) to prevent or limit adverse effects or negative publicity in respect of an **internal crime** or **external crime**.

**5.45** **Schedule** means the latest schedule to this **policy** issued by **us**.

**5.46** **Securities** means any shares, preference shares, stocks, debentures, warrants, options, bonds, promissory notes or other equity or debt security.

**5.47** **Subsidiary** means:

- a. any entity which, at the commencement of the **insurance period**, is a subsidiary of the **insured** as defined in section 5 of the *Companies Act 1993* (or any equivalent amendments or re-enactments of that provision); or
- b. any entity which, at the commencement of the **insurance period**, by virtue of any applicable legislation or law, is deemed to be a subsidiary of the **insured**; or
- c. any entity over which, at the commencement of the **insurance period**, the **insured** is in a position to exercise effective direction or control by means of a direct or uninterrupted succession of **subsidiaries** as defined in clauses (a) or (b) above; or
- d. any entity with total gross assets in value of 30% or less of the total gross assets of the **insured** which becomes a **subsidiary** of the **insured** as defined in clauses (a), (b) or (c) above after the commencement of the **insurance period**; or
- e. any entity with total gross assets in value greater than 30% of the total gross assets of the **insured** which becomes a **subsidiary** of the **insured** as defined in clauses (a), (b) or (c) above after the commencement of the **insurance period**, provided that within 60 days of the completion of the acquisition of such entity the **insured** provides **us** with full particulars of the entity and agrees to the imposition of any additional terms, including any additional premium, that **we** may require. If any part of this clause is not complied with the entity shall not be an **insured** under this **policy**.

- 5.48** **Theft** means the unlawful taking, including by violence or threat of violence, of **money, securities** or **other property** to the permanent deprivation of its owner.
- 5.49** **Third party** means any natural person who is not a director, partner, **officer**, trustee or **employee** of any **insured** and does not have and does not provide services under any contract of service, written or unwritten, with any **insured** and is not acting in collusion with any **employee**.
- 5.50** **We/us/our** means DUAL New Zealand Limited for and on behalf of Certain Underwriters at Lloyd's.
- 5.51** **You/your** means the **insured**.