

Mind the Gap - Trustees Liability

DUAL

**Wordings.**





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

Turstees Liability Policy Wording

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# DUAL New Zealand Mind the Gap

## Trustees Liability Policy Wording

### Section 1: Insuring Clauses

#### 1.1 Trustee Liability Cover

We agree to pay on behalf of any **trustee** their **loss** resulting from any **claim** in respect of a **wrongful act** first:

- (a) made against the **trustee**, and
- (b) reported to **us**;

during the **insurance period** for which the **trust/employer** is not permitted or required to indemnify the **trustee**.

#### 1.2 Trust / Employer Reimbursement

We agree to pay on behalf of each **trust/employer** a **trustee's loss** resulting from any **claim** against that **trustee** in respect of a **wrongful act** first:

- (a) made against the **trustee**, and
- (b) reported to **us**

during the **insurance period** for which the **trust/employer** is permitted or required to indemnify the **trustee**.

#### 1.3 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.

#### 1.4 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**.

#### 1.5 Retroactive Date

This **policy** shall only provide cover in respect of **wrongful acts** committed or allegedly committed after the **retroactive date**.

## Section 2: Automatic Coverage Clauses

The Automatic Coverage Clauses are subject to the Insuring Clauses above and all other **policy** terms.

### 2.1 Attendance at Investigations

**We** agree to pay to or on behalf of the **insured** any **defence costs** incurred by the **insured** as a result of any **investigation**. **We** will also pay to or on behalf of the **insured** any costs incurred by an **official body** as part of the **investigation** which the **trustee** is required to pay. However **we** will only pay under this Automatic Coverage Clause if:

- (a) The **trustee** is legally compelled to attend the **investigation**;
- (b) The notice or process requiring the **trustee** to attend or answer questions is first served on the **insured** during the **insurance period**; and
- (c) **Our** consent is obtained before such costs are incurred; and
- (d) The **insured** first notifies **us** during the **insurance period**; and
- (e) The conduct which is the subject of the **investigation** occurred after the **retroactive date**; and
- (f) The **trustee's** attendance is required because of the **trustee's** conduct of the affairs of the **trust**; and
- (g) The **investigation** is not being held outside New Zealand; and

**We** shall nominate legal advisers to be used, if **we** consider legal advice and/or legal representation is required.

The maximum amount payable under this Automatic Coverage Clause is the sub-limit specified in the **schedule** for any one **investigation** and in the aggregate for all **investigations** combined during the **insurance period** which is part of and not in addition to the **indemnity limit**. A separate **deductible** will apply to each **investigation** under this Automatic Coverage Clause.

### 2.2 Civil Penalties

Notwithstanding Exclusion 3.5 (Fines and Penalties and Non-Compensatory), **we** agree to pay to or on behalf of the **insured** all **loss** arising from **claims** resulting in civil penalties being imposed against the **trustee**.

Provided that **we** will not be liable to cover the **insured** for any civil penalty:

- (a) for which **we** are legally prohibited at law from indemnifying the **insured**; or
- (b) based upon, contributable to or in consequence of any:
  - i) wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any legislation; or
  - ii) gross negligence or recklessness; or
  - iii) requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue charge or impost.

For the purposes of this Extension 'claims' includes civil proceedings brought by an **official body** against a **trustee** for civil penalties.

### 2.3 Consultants, Subcontractors and Agents

**We** agree to pay to or on behalf of the **insured** all **loss** resulting from any **claim** in respect of a **wrongful act** by any consultant, subcontractor or agent and for whose acts, errors or omissions the **trustee** is liable in their capacity of **trustee**.

**We** will not cover the consultant, subcontractor or agent.

### 2.4 Continuous Cover

Notwithstanding General Exclusion 6.13 (Prior Knowledge) (a) and (b), **we** agree to provide cover in respect of any **claim** first made in the **insurance period** where the **insured**:

- (a) first became aware, prior to the **insurance period**, that a **claim** might or could arise from facts or circumstances known to it; and
- (b) had not first notified **us** of such facts or circumstances prior to the **insurance period**.

Provided that:

- i) **we** were the Trustees Liability insurer of the **insured** when the **insured** first became aware of such facts and circumstances; and
- ii) **we** have continued, without interruption, to be the **insured's** Trustees Liability insurer up until this **policy** came into effect; and
- iii) there has not been any fraudulent non-disclosure or fraudulent misrepresentation by the **insured** in respect of such facts or circumstances; and
- iv) **we** have the discretion to apply either the terms of the **policy** on foot when the **insured** first became aware of the facts and circumstances, including but not limited to the **indemnity limit** and **deductible**, or the terms of this **policy**; and
- v) the **insured** agrees to only make a **claim** under one **policy** issued by **us**.

For the purpose of this Automatic Coverage Clause only, the definition of **we/us/our** in Definition 5.33 also includes the Underwriter(s) for which **we** were the agent on any previous **policy** issued by **us**.

Subject to the terms of this Automatic Coverage Clause and the terms of the **policy**, the intention of this Automatic Coverage Clause is to provide continuous cover to the **insured** notwithstanding any change in the identity of the Underwriters for which **we** presently act, or have previously acted, as agent.

## 2.5 Court Attendance Costs

**We** agree to pay to or on behalf of the **insured** any court attendance costs of any **trustee** who is legally compelled to and does attend Court as a witness in a **claim** covered by this **policy**, to an amount of \$500 per day.

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**. No **deductible** applies to this Automatic Coverage Clause.

## 2.6 Crime

**We** agree to pay to or on behalf of the **insured** any **crime loss discovered** by the **insured** during the **insurance period** and notified in writing to **us** within 30 days following such discovery.

The maximum amount payable by **us** under this Automatic Coverage Clause is the applicable sub-limit of liability as specified in the **schedule**. This sub-limit is part of and not in addition to the **indemnity limit**.

A separate **deductible** will apply to each **crime loss** under this Automatic Coverage Clause. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

## 2.7 Defamation

**We** agree to pay to or on behalf of the **insured** all **loss** resulting from any **claim** against a **trustee** arising out of the **trustee** making an unintentional defamatory statement in the course of executing any of the functions of the **trust**.

## 2.8 Discovery Period

The **insured** may give written notice to **us** during the **discovery periods** specified in (a) to (c) below of any **claim** first made prior to the expiration of the **insurance period** resulting from any **wrongful act**. If written notice is given to **us**:

- (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**.
- (c) within 84 months of the end of the **insurance period**, then **we** will grant cover 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 require.

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

- (d) renewed or replaced with any other Trustees Liability policy; or
- (e) 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.

## 2.9 Emergency Defence Costs

Notwithstanding any provision in the **policy** to the contrary, if it is not possible for the **insured** to obtain **our** written consent prior to incurring **defence costs**, **we** will waive prior consent if the **insured** has not received a response from **us** to a request for legal assistance within 48 hours of making such request and provided that **our** consent is obtained within 30 days of the first of such **defence costs** being incurred.

If **we** subsequently determine that there is no entitlement under the **policy** for any **defence costs** that **we** have paid under this clause, the **insured** must repay those amounts to **us** immediately.

The maximum amount payable by **us** under this Automatic Coverage Clause is the applicable sub-limit of liability as specified in the **schedule**. This sub-limit is part of and not in addition to the **indemnity limit**.

A separate **deductible** will apply under this Automatic Coverage Clause, as specified in the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**

## 2.10 Fair Trading Act

**We** agree to pay to or on behalf of the **insured** all **loss** resulting from any **claim** for compensation made against the **trustee** alleging breach of any of sections 9 -14 of the Fair Trading Act 1986 in the course of executing any functions of the **trust**.

## 2.11 Fraud and Dishonesty for Innocent Parties

Notwithstanding General Exclusion 6.8 (Dishonesty), but subject to all other terms and conditions of this **policy**, **we** agree to pay to or on behalf of the **insured** all **loss** resulting from any **claim** made against a **trustee** in respect of a **wrongful act**, provided that **we** will not provide cover to any **insured** committing or condoning any dishonest act, omission or breach.

## 2.12 Heirs, Estates and Legal Representatives

**We** agree to provide cover in respect of:

- (a) any estate, heirs, legal representatives or assigns of any deceased, bankrupt, insolvent or mentally incompetent **trustee**; and
- (b) a legal or de facto spouse of a **trustee**

but only in respect of **claims** arising from a **wrongful act** committed by such **trustee** where the claim is covered under this **policy**.

It is a condition of this Automatic Coverage Clause that any estate, heirs, legal representatives, assigns or spouse will observe and be subject to all the applicable provisions of this **policy**.

## 2.13 Loss of Data

**We** agree to pay to or on behalf of the **insured** any costs and expenses incurred by the **insured** in replacing or

restoring **lost data** for which the **trustee** is legally responsible if:

- (a) the loss of the **data** is first discovered by a **trustee** or **officer** of the **employer/trust** during the **insurance period**; and
- (b) the **insured** first notifies **us** within 30 days of discovery of the loss of the **data**; and
- (c) the **insured** provides **us** with bills and accounts substantiating the costs and expenses incurred by the **insured** in replacing or restoring the **lost data**; and
- (d) **we** approve or a competent person nominated by **us** approves the bills and accounts.

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**.

A separate **deductible** is applicable under this Automatic Coverage Clause as specified in the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

## 2.14 **Outside Entity Executive Cover**

**We** agree to pay the **loss** resulting from a **claim** for any **wrongful act** made against a **trustee** who was, is or may become, at the specific request of the **trust**, a director, officer, trustee, governor or equivalent position, in any **outside entity**, in relation to the performance of their duties in such capacity for the **outside entity**.

The cover under this Optional Coverage Clause:

- (a) Is excess of any insurance in force in respect of the **Outside Entity** and any indemnification provided by the **Outside Entity**; and
- (b) Shall not apply in connection with any **claim** made against any **insured** by, on behalf or for the benefit of the **Outside Entity**, any of its directors, officers, trustees, governors or equivalent, or any shareholder of the **Outside Entity** holding more than 15% of the issued and outstanding voting share capital of the **Outside Entity**.

## 2.15 **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**.

## 2.16 **Pollution Defence Costs**

Notwithstanding Exclusion 3.12 (Pollution), **we** agree to pay to or on behalf of the **insured defence costs** in relation to **claims** arising from the **trustee's** negligent misstatement with regard to **pollutants** up to the sub-limit specified in the **schedule**. This sub-limit is part of, and not in addition to, the **defence costs indemnity limit** shown in the **schedule**.

## 2.17 **Preservation of Indemnity**

**We** agree to pay on behalf of any **trustee** their **loss** resulting from a **claim** where the **trustee** is unable to enforce a right to indemnity against the **trust** by reason of the **trust** being placed in liquidation (other than voluntary liquidation) and having insufficient funds available to indemnify the **trustee**.

The **deductible** applicable to Insuring Clause 1.1 as specified in the **schedule** is applicable under this Automatic Coverage Clause.

## 2.18 **Public Relations**

**We** agree to pay to or on behalf of the **insured** all **public relations expenses** incurred by the **insured** with **our** prior written consent in connection with an **incident** in order to prevent or minimise the risk of a **claim** which would be covered under the **policy**, or in connection with an **incident** that results in a **claim** covered under the **policy**.

Cover under this Automatic Coverage Clause is conditional upon the **insured** providing **us** with full written details of the **incident** no later than 30 days after the **insured** first becomes aware of the **incident**. The **incident** must occur and be reported during the **insurance period**.

The **incident** must occur outside of the USA or Canada.

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

A separate **deductible** will apply to each **incident** under this Automatic Coverage Clause as specified in the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

## 2.19 Reinstatement of Indemnity Limit

In the event that the **indemnity limit** under the **policy** has been exhausted during the **insurance period** by **claims** or **loss** for which **we** have agreed to indemnify, the **indemnity limit** will be reinstated in the same amount once only.

Cover for this Extension will be conditional upon the following:

- (a) the exhaustion of limits of any policy which is in excess of the original **indemnity limit** under this **policy** other than any similar reinstatement provisions under such excess policies;
- (b) the reinstated **indemnity limit** will only apply to **claim** or **loss** which do not arise out of and do not have any connection with the originating cause of any **claim** or **loss** already paid or payable under the original **indemnity limit**;
- (c) all other terms, conditions, exclusions and limitations of the **policy** shall continue to apply in the same manner, in respect of any **claim** and **loss** to which the reinstated **indemnity limit** applies;
- (d) there will be no reinstatement of sub-limits except if the original **indemnity limit** is reinstated.

However no cover is provided under this Extension for any **claim** arising out of or in connection with proceedings brought in the United States of America or Canada or the enforcement of any judgment, award or regulatory order obtained within and determined pursuant to the laws of United States of America or Canada or their respective territories or protectorates.

The aggregate **indemnity limit** available under this **policy** is specified in the **schedule**.

## Section 3: Exclusions

### 3.1 Conflicts of Interest and Disclosure of Commissions

Any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of:

- (a) any failure of any **trustee** (or any of their agents) to disclose or adequately disclose any:
  - i) conflict of interest; or
  - ii) commissions, fees or other remuneration or benefits received or that may be received or payable.
- (b) any transaction in which any **trustee** (or any of their agents) has a direct or indirect beneficial ownership or interest as a buyer or seller of securities. This exclusion does not apply to a direct or indirect beneficial interest or shareholding of less than 5% in a public listed company.

### 3.2 Contractual Liability

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of any duty or obligation assumed by a **trustee** by way of warranty, guarantee, indemnity, contract or agreement, unless the **trustee** would have incurred the liability in the absence of such warranty, guarantee, indemnity, contract or agreement.

### 3.3 Fee Refunds

Any **claim** or demand for the repayment or refund of fees paid to the **trustee** for the provision of services.

### 3.4 Financial Condition

Any **claim** or liability arising from or directly or indirectly caused by or in any way connected with the insolvency, bankruptcy, receivership, statutory management or liquidation of the **insured**.

### 3.5 Fines and Penalties and Non-Compensatory Damages

- (a) Taxes, fines or penalties.
- (b) Punitive, aggravated, multiple, exemplary, liquidated or other non-compensatory damages or the consequences of non-payment.

### 3.6 Insured v Insured

Any **claim** brought by a **trustee** or the **trust** unless the **claim**:

- (a) arises out of an employment dispute;
- (b) is brought by or on behalf of the trust by any regulatory authority, receiver, receiver and manager, administrator, statutory manager or liquidator; or
- (c) is brought or maintained by or on behalf of any other insured who is obliged to bring the claim and is acting without any direct or indirect solicitation or enticement from the insured being claimed against.

### 3.7 Intellectual Property

Any **claim** or liability arising from infringement or alleged infringement of any intellectual property right including but not limited to copyright, patent, trademark, privacy, plagiarism, design or confidentiality.

### 3.8 Investment Performance

Any **claim** or **investigation** directly or indirectly arising from attributable to or in consequence of:

- (a) any actual or alleged dealings of any nature by which it is sought to affect the price of, or market in, any shares or debentures of any company or commodity or currency, or of any negotiable instrument, other than dealings carried out in accordance with the laws, rules and regulations applicable to such dealings; or
- (b) any financial or investment advice provided by the trustee, including but not limited to any advice or recommendation as to the valuation, tax implications or performance of any investment; or
- (c) a failure by the trustee to warn of the risks of market fluctuation of any investment

### 3.9 Liability as an Occupier

Any **claim** or liability arising from or incurred or alleged to have been incurred in connection with the use, occupation, ownership or lease of any real estate or personal property (whether mobile or immobile), by or on behalf of the **trustee**.

### 3.10 Liability to Employees

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of bodily injury, mental injury, sickness, disease or death of any **employee** or damage to or destruction of any property of any **employee**, including loss of use.

### 3.11 Personal Injury

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of the death of, or bodily injury or illness to, any person, unless it results directly in the course of any **trustee** executing any of the functions of the **trust**.

### 3.12 Pollution

Any **claim** arising from or in any way connected with:

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

### 3.13 Professional Services

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of a breach of professional duty owed in a capacity other than that of a **trustee**.

### 3.14 Property Damage

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of the loss or destruction of, or damage to, any property, unless it results directly in the course of any **trustee** executing any of the functions of the **trust**.

### 3.15 Territory

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of any act, error or omission that occurred outside the territories of the countries specified in the **schedule**.

### 3.16 Trading Debts

Any **claim** or liability arising from or directly or indirectly attributable to any trading debt or business liability of the **trustee** or any guarantee given by the **trustee** for a debt.

### 3.17 Treatment Risk

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of any treatment risk activities provided by and/or on behalf of a **trustee**.

For the purposes of this exclusion 'Treatment Risk' shall mean the rendering of medical services including the physical manipulation or contact to any person for medical or treatment purposes.

## Section 4: Conditions

### 4.1 Allocation

If a **claim** gives rise to both a **loss** which is covered under this **policy** and losses or other costs and expenses which are not, **we** and the **insured** shall negotiate in good faith to agree on a basis for allocation, taking into consideration the relative legal and financial exposures of the parties and the matters involved. In such negotiations, the parties shall take into consideration factors such as (but not limited to):

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

If the **deductible** applicable to Insuring Clause 21.1 applies to part of a **loss** and the **deductible** applicable to Insuring Clause 21.2 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 21.1 and Insuring Clause 21.2.

If **we** and the **insured** cannot agree on allocation the dispute shall be submitted to a Queen's Counsel to determine a basis for allocation, taking into consideration the factors at 5.1(a) to (c) above and the intent of this

clause. In the absence of agreement by the parties, the Queen's Counsel shall be selected by the President of the Bar Association of New Zealand. The cost of Queen's Counsel's determination shall be regarded as part of the **defence costs**.

#### 4.2 **Alteration to Risk**

In addition to General Condition 6.16 (Alteration to Risk), in this policy only if during the **insurance period** a **transaction** takes place, this **policy** is amended to apply only to **wrongful acts** committed prior to the effective date of the **transaction**. The **insured** shall give **us** written notice of the **transaction** as soon as practicable but not later than 30 days after the effective date of the **transaction**. We may impose additional premiums or terms and conditions arising from such alteration of the risk.

#### 4.3 **Deductible**

- (a) The **insured** is responsible for the **deductible** in respect of each and every **claim**. Subject to (c) below, **we** are only liable to indemnify the **insured** for that part of the **insured's loss** in respect of each **claim** in excess of the **deductible**.
- (b) Unless otherwise expressed in the **schedule**, all **deductibles** are inclusive of **defence costs** up to the amount of the **deductible**.
- (c) Where **we** have paid on the **insured's** behalf part or all of the **deductible**, the **insured** shall reimburse **us**.
- (d) Costs and expenses incurred by **us** in determining whether **we** are liable to indemnify the **insured** under the **policy** shall not be subject to the **deductible** and will be met by **us**.
- (e) For the purpose of determining the **deductible(s)** applicable to any **claim(s)** covered by the **policy**, all **claims** arising from the same **wrongful act**, or related **wrongful acts**, shall be regarded as one **claim**.

#### 4.4 **Indemnity Limit**

**Our** total liability under this **policy** for any one **claim** and in the aggregate from all **claims** shall not exceed the **indemnity limit**. For the purpose of determining the **indemnity limit** available for each **claim** covered by the **policy**, all **claims** arising from the same **wrongful act**, or related **wrongful acts**, shall be regarded as one **claim**.

**We** may at any time pay the **indemnity limit** applying to any one **claim** or series of **claims** (after deduction of sums already paid) or any lesser amount for which such **claims** can be settled and will then be under no further liability in connection with such **claims**.

#### 4.5 **Recovery Rights**

The **insured** shall not, without **our** written consent, surrender or waive any right of contribution or indemnity to which the **insured** might otherwise have been entitled.

#### 4.6 **Severability and Non-Imputation**

Except for General Exclusion 6.13 (Prior Knowledge) no state of mind or knowledge possessed by any one **insured** will be imputed to any other **insured** for the purpose of determining whether any provision in this **policy** applies. However:

- (a) any state of mind or knowledge possessed by any past or present principal, director or partner of the **insured** will be imputed to an **insured**.
- (b) where the **insured** named in the **schedule** is a company with a sole director the knowledge of the sole director shall be imputed to the **insured**.

The terms of the **policy** apply to each **insured** provided that the failure by any **insured** to observe and fulfil the terms of this **policy** will not prejudice this insurance in relation to any other **insured**.

Notwithstanding the above, the maximum aggregate amount payable under all Insuring Clauses and Automatic Coverage Clauses in this **policy** will apply to all **insureds** combined.

## Section 5: Definitions

For the purposes of this **policy**

### 5.1 **Claim** means:

- (a) any civil proceeding brought by a third party against any **trustee** for recovery of compensation or damages;
- (b) any written or verbal demand by a third party upon any **trustee** for monetary relief.
- (c) any circumstance that the **insured** becomes aware of, and the **insured** or a reasonable insured should consider may give rise to either of (a) or (b) above.

### 5.2 **Crime Loss** means

- (a) the **direct financial loss** of any money, negotiable instruments, bonds, coupons, currency, bank notes, stamps, cheques, bills of exchange, letters of credit and other instruments whether negotiable or not or whether matured or not or securities or documents evidencing title to or ownership of land or any other property belonging to a **trustee**, or in a **trustee's** care, custody or control or for which a **trustee** is legally responsible; and/or
- (b) the **direct financial loss** resulting from any actual or alleged fraudulent or dishonest instruction, direction or use of electronic equipment, including but not limited to telephony and the internet, resulting in the unauthorised transfer, delivery or payment of, or dealing with, **money**, land or any other property belonging to a **trustee**, or in a **trustee's** care, custody or control, or for which a **trustee** is legally responsible.

**Crime Loss** does not include:

- (a) **direct financial loss** which is indirect and consequential;
- (b) **direct financial loss** resulting from the accessing of, any confidential information (including but not limited to trade secrets, customer information, patents, trademarks), except to the extent that any such confidential information is used to support or facilitate the commission of any act for which cover would otherwise be granted by this policy;
- (c) **direct financial loss** resulting from any dishonest, fraudulent or malicious acts committed by a **trustee** who prepares cheque requisitions and also has cheque signing authority;
- (d) **direct financial loss** resulting from cheques that are not countersigned; and
- (e) **direct financial loss** resulting from the transfer of funds not authorised by two or more trustees.

### 5.3 **Data** means:

- (a) information such as text, numbers, sounds and images that can be processed by any form of electronic device; and/or
- (b) deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature, whether printed, written or reproduced by any method including computer records and electronically stored data but does not mean bearer bonds or coupons, stamps, bank or currency notes, **money** or any negotiable instrument.

### 5.4 **Deductible** means the amounts specified in the **schedule**, or otherwise specified in any Extension to this **policy**.

### 5.5 **Defence costs** means any necessary and reasonable fees, expenses, costs and disbursements incurred in investigating, defending or settling a **claim** covered by the **policy**. **Defence costs** shall not include any internal or overhead expenses of the **insured**, the cost of the **insured's** time or any **loss** of earnings or profits.

### 5.6 **Direct financial loss** means financial loss suffered directly by the **insured** which is covered under Automatic Coverage Clause 2.6 (Crime).

- 5.7** **Discovered** means when a **trustee** or an **officer** of the **employer/trust** first becomes aware of facts which would cause a reasonable person to believe that a **direct financial loss** of the kind covered by this **policy** has been or is likely to be incurred, even though the exact amount or detail of the **direct financial loss** may not then be known.
- 5.8** **Discovery period** in this **policy** means the period of time specified in Automatic Coverage Clause 2.8 during which time written notice may be given to **us** of any **claim** first made prior to the expiration of the **insurance period** resulting from any **wrongful act**.
- 5.9** **Employee** means any person who is a past, present or prospective **employee** of the **insured** under a contract or service of apprenticeship on a full-time or casual basis during or prior to the commencement of the **insurance period**.
- 5.10** **Employer** means
- (a) The entity or entities specified in the **schedule** which contributes to or participates in the **trust**; and
  - (b) Any **subsidiary** in existence at the commencement of the **insurance period** noted in the **proposal** which contributes to or participates in the **trust**.
- 5.11** **Employment Dispute** means any actual or threatened claim or grievance by any former, current or prospective **trustee** or **employee** in connection with that person's previous, current or prospective appointment or employment with the **trust**.
- 5.12** **Incident** means a matter in which the **trustee's** reputation and skill in the execution of the functions of the **trust** is brought into question.
- 5.13** **Indemnity limit** means the amounts specified in the **schedule**.
- 5.14** **Insurance period** means the period specified in the **schedule**.
- 5.15** **Insured** means each **trustee**, the **trust/employer** or both.
- 5.16** **Investigation** means any official investigation, examination, inquiry or other proceedings ordered or commissioned by any **official body** or institution empowered by law to investigate the conduct of the **trustee** in relation to the **trust**. Any **investigation** to which this **policy** responds shall be deemed to be a **claim**.
- 5.17** **Loss** means:
- (a) damages or claimant's costs or both payable by the **insured** pursuant to an award or judgment entered into against the **trustee**;
  - (b) settlements negotiated by **us** and consented to by the **insured**; and/or
  - (c) settlements negotiated by the **insured** but only with **our** prior written consent.
- Loss** does not include any:
- i) **defence costs**
  - ii) amounts uninsurable at law;
  - iii) wages, salaries, allowances, fees, commissions, awards, bonuses, travel or accommodation costs incurred by the **insured** in assessing, investigating, dealing with or assisting others to deal with the **claim**;
  - iv) taxes, fines or penalties;
  - v) punitive, aggravated, multiple, exemplary, or liquidated damages or the consequences of non-payment; or
  - vi) GST imposed or payable in respect of the premium or any payment of insured amounts made under the **policy**.

All **loss** attributable to one source or originating cause will be deemed one **loss**.

- 5.18** **Lost data** means **data** that cannot be located following a diligent search, and **data** that has been destroyed or damaged.
- 5.19** **Money** means only local or foreign currency, coins, bank notes, cheques, traveller's cheques, registered cheques, postal orders, money orders and bullion.
- 5.20** **Officer** means any past, present or future:
- (a) **trustee**; or
  - (b) partner, principal, director or secretary of the **employer**; or
  - (c) person who makes or participates in making decisions that affect the whole, or a substantial part, of the business of the **employer**.
- 5.21** **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 a **trustee**.
- 5.22** **Outside entity** means any non-profit organisation or any other entity that is specified in the **schedule** or endorsed onto the **policy**.
- 5.23** **Policy** means this Trustees Liability policy wording, the DUAL New Zealand Mind the Gap General Conditions and Exclusions, the **schedule**, the **proposal**, and any endorsement attaching to and forming part of the policy either at commencement or during the **insurance period**.
- 5.24** **Pollutants** 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.
- 5.25** **Proposal** means the **insured's** proposal specified in the **schedule** made to **us** together with any attachments and materials referred to therein.
- 5.26** **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). 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.
- 5.27** **Retroactive Date** means the date specified in the **schedule**.
- 5.28** **Schedule** means the policy schedule issued by **us**.
- 5.29** **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**.

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

- (a) the **trust/employer** 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 **trust/employer** or control the appointment of directors who are able to exercise a majority of votes at Board Meetings of the **trust/employer**; or
- (c) the insolvency or bankruptcy of the **insured**.
- (d) the appointment of an administrator, liquidator, receiver, receiver and manager and manager or court appointed manager to the **insured**.

**5.31** **Trust** means each superannuation plan, fund or trust (or any predecessors of such plan, fund or trust) which is specified in the **schedule**.

**5.32** **Trustee** means:

- (a) any natural person who was, is or may hereafter be a duly appointed trustee of the **trust**; or
- (b) any body corporate (including any past, present, or future director, officer, secretary or employee of such body corporate), who was, is or may be a duly appointed **trustee** of the trust; or
- (c) any member of any policy or management committee which has been established pursuant to the governing rules of the **trust**; or
- (d) any natural person who by virtue of any applicable legislation or law is deemed to be a trustee of the **trust**.

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

**5.34** **Wrongful act** means any breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, or other act committed or attempted by a **trustee** solely in the course of executing any of the functions of the **trust**.

**5.35** **You/your** means the **insured**.