

# Wordings.



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

Information Technology Liability Policy Wording

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**DUAL New Zealand**  
**Mind The Gap**  
**Information Technology Liability Policy Wording**

## **SECTION A: PROFESSIONAL INDEMNITY**

### **Section 1: Insuring Clauses**

#### **1.1 Civil Liability**

**We** agree to pay to or on behalf of the **insured** all **loss** resulting from any **claim** for any **civil liability** first made and reported during the **insurance period** in relation to:

- a. the performance of **information technology services** by or on behalf of the **insured**, or
- b. the provision of **information technology products** by or on behalf of the **insured**.

#### **1.2 Defence Costs**

**We** agree to pay to or on behalf of the **insured** any **defence costs** in respect of a **claim** for **civil liability** 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.

In the event that the amount of **loss** exceeds the **indemnity limit**, **our** liability in respect of **defence costs** is limited to that proportion of such **defence costs** as the **indemnity limit** bears to the total amount of a final judgment, award or settlement sum.

The maximum **we** will pay for any **defence costs** or other costs and expenses that are incurred by the **insured** is an amount up to, but not exceeding the **indemnity limit**.

If any Automatic Coverage Clause in this **policy** provides a sub-limit, such a sub-limit is inclusive of **defence costs** unless otherwise stated expressly.

#### **1.3 Advancement of Defence Costs**

**We** agree to pay for **defence costs** in respect of any **claim** covered under Section A of the **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**.

## 1.4 Retroactive Date

This **policy** Section A will only provide cover in respect of **civil liability** arising from an act, error or omission of the **insured** after the **retroactive date**.

# Section 2: Automatic Coverage Clauses (Section A)

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 DUAL New Zealand Mind The Gap 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 Amounts Paid for Product and Service

**We** agree to extend coverage under Insuring Clause 1.1 to include amounts the **insured** has actually paid for **information technology services** and **information technology products**.

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**.

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

## 2.2 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 **insured** is required to pay, however **we** will only do this if:

- a. the **insured** is legally compelled to attend the **investigation**;
- b. the notice or process requiring the **insured** 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 **insured**'s attendance is required because of the **insured**'s conduct of its **business**; 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.

## 2.3 Civil Penalties

Notwithstanding Exclusion 3.13 (Fines and Penalties and Non-Compensatory Damages), **we** agree to pay to or on behalf of the **insured** all **loss** arising from **claims** resulting in civil penalties being imposed against the **insured**.

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.

## 2.4 Consultants, Subcontractors and Agents

We agree to pay to or on behalf of the **insured** all **loss** resulting from any **claim** for **civil liability** arising from the conduct of any consultant, sub-contractor or agents of the **insured** in connection with the performance of **information technology services** or the provision of **information technology products** for which the **insured** is liable.

## 2.5 Continuous Cover

Notwithstanding General Exclusion 6.13 (Prior Knowledge), **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 notified **us** or the previous insurer of such facts or circumstances prior to the **insurance period**,

Provided that:

- i. **we** were the 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** 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 5.49 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.

## 2.6 Contractual Liability

Notwithstanding Exclusion 3.5 (Assumed Liability), **we** agree to pay to or on behalf of the **insured** all **loss** and **defence costs** resulting from any **claim** for **civil liability** in connection with an indemnity and/or hold harmless provision of a contract, but only to the extent such **civil liability** arises from the **insured's** performance of **information technology services** or provision of **information technology products**.

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**.

## 2.7 Court Attendance Costs

**We** agree to pay to or on behalf of the **insured** any court attendance costs of any, **officer** or **employee** who is legally compelled and does attend Court as a witness in a **claim** for **civil liability** covered by the **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.

## 2.8 Crime

We agree to pay 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 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 as specified in the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

## 2.9 Defamation

We agree to pay to or on behalf of the **insured** all **loss** resulting from any **claim** against the **insured** arising out of the **insured** making an unintentional defamatory statement in the conduct of its **business**.

## 2.10 Discovery Period

The **insured** may give written notice to **us** of any **claim** resulting from **civil liability** in connection with the performance of **information technology services** or provision of **information technology products** in its conduct of its **business** prior to the expiration of the **insurance period** and during a **discovery period** immediately following the **insurance period** of:

- 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 Extension is not available if this **policy** is:

- i. renewed or replaced with any similar or like Information Technology Liability Insurance 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.

## 2.11 Emergency Defence Costs

If **our** written consent cannot be reasonably obtained before **defence costs** are incurred by an **insured**, **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 Automatic Coverage Clause, the **insured** must repay those amounts to **us** immediately.

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**.

## 2.12 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 **insured** alleging breach of any of sections 9-14 of the *Fair Trading Act 1986*.

## 2.13 Fee Recovery

Notwithstanding Exclusion 3.2 (Amounts Paid or Restitution), **we** agree to pay the **insured's** fee and expenses in

respect of the provision of **information technology services** and **information technology products** invoiced by the **insured** to a client (or balance of the outstanding fee at the time the circumstances outlined within this clause 2.13 arise and are submitted to **us** for consideration) in circumstances:

- a. where a client has expressed dissatisfaction with the work undertaken by the **insured** and demonstrates reasonable grounds for such dissatisfaction, and
- b. subsequent refusal to pay such fees and expenses (including amounts the **insured** is legally obligated to pay subcontractors at the time of the refusal to pay such fees) and threatens to bring a **claim** against the **insured** for a sum greater than the outstanding fee and expenses, but agrees not to pursue such **claim** if the **insured** agrees not to press for their outstanding fee and expenses.

**Our** payment of the outstanding fee and expenses to the **insured** will only be made if **we** believe that this will avoid a **claim** for a greater amount and approval to settle the **claim** in these circumstances has been received by the **insured** from **us** in writing.

If all attempts to avoid a **claim** fail and a **claim** is received, it is agreed that **we** will only pay the part of any **claim** that is covered by the **policy** and the total amount payable by **us** (including any amount already paid) will not exceed the **indemnity limit**.

The **insured** will repay **us** any amount that is recovered from the client.

The maximum amount payable by **us** under this Extension 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**.

The **deductible** applicable to this Extension is specified in the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

#### **2.14 Former Principals and Employees**

**We** agree to pay to or on behalf of the **insured** all **loss** in respect of any **claim** against any former principal, partner, director, or **employee** of the **insured** in respect of the conduct of the **business**.

#### **2.15 Former Subsidiary**

**We** agree to pay to or on behalf of the **insured** all **loss** resulting from any **claim** that arises from the provision of **information technology services** and **information technology products** against the **insured** in the conduct of its **business** by a **subsidiary** that ceased or ceases to be a **subsidiary** either before or during the **insurance period**.

#### **2.16 Fraud and Dishonesty for Innocent Parties**

Notwithstanding 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** any **loss** resulting from any **claim** for **civil liability** made against the **insured** resulting from the performance of **information technology services** or the provision of **information technology products**, in connection with the **insured's business** provided that **we** will not provide cover to any **insured** committing or condoning any act, omission or breach.

#### **2.17 Heirs, Estates and Legal Representatives**

**We** agree to provide cover for any estate, heirs, legal representatives or assigns of any deceased or mentally incompetent **insured** in respect of any **claim** resulting from the performance of **information technology services** or provision of **information technology products** by or on behalf of the **insured** in the conduct of its **business** that is covered under this **policy**.

#### **2.18 Intellectual Property**

**We** agree to pay to or on behalf of the **insured** all **loss** resulting from any **claim** for **civil liability** for unintentional infringement of copyright, trademarks, trade secrets, registered designs, circuit layout, rights, service marks, patents or any unintentional passing off, plagiarism or breach of confidentiality by the **insured** in the performance of **information technology services** or the provision of **information technology products**.

#### **2.19 Internet Liability**

**We** agree to pay to or on behalf of the **insured** all **loss** resulting from any **claim** arising from unintentional:

- a. infringement or unauthorised use of intellectual property rights which includes but is not limited to breach of copyright, trademark, registered design or patent or plagiarism; or
- b. defamation;
- c. unauthorised use of names (including domain names), trade names, trade address, service marks, service names, titles, slogans, formats, characters, character names, characterisations, plots, musical compositions, performances, logos, artwork, graphics, photographs or program materials; or
- d. passing off; or
- e. breach of confidentiality or infringement of any right to privacy, including any alleged breach of the terms of the Privacy Act 1993; or
- f. misuse of information which is either confidential or subject to statutory restrictions on use; or
- g. transmission of any computer virus, programme or code that causes loss or damage to any computer system and/or prevents or impairs any computer system from performing and/or functioning accurately and/or properly; or
- h. belittling of a product or work (whether completed or not) of others; or
- i. unauthorised taking for use of any advertising idea, material, slogan, style or title of others.

committed or alleged to have been committed by the **insured** via its internet site, use of the internet, electronic mail or any electronic network.

**We** will not cover the **insured**, including for **defence costs** or **loss**, in respect of any **claim** arising from or directly or indirectly caused by, or in any way connected with:

- a. chat rooms, electronic bulletin boards or electronic open forum debates; or
- b. indecent, obscene, pornographic, adult or objectionable material of any kind or any matter prohibited by any law, rule or regulation.

The sub-limit of liability for all such payments under this Automatic Coverage Clause is the amount specified in the **schedule**. This sub-limit forms part of, and is not payable in addition to, the **indemnity limit**.

## 2.20 **Joint Venture Liability**

**We** agree to pay to or on behalf of the **insured** any **loss** resulting from any **claim** for **civil liability** resulting from the performance of **information technology services** or the provision of **information technology products** by or on behalf of the **insured** in any joint venture of which the **insured** forms part. **Our** liability will be proportionate to the lowest of:

- a. the percentage of the share capital of the joint venture owned by the **insured**; or
- b. the percentage of the voting control of the joint venture exercised by the **insured**.

This Automatic Coverage Clause will only provide cover to the **insured**. No other participant of such joint venture and no other third party will have any rights under this **policy**, and neither will **we** be liable to pay a contribution to any insurer of any other participant in such joint venture.

## 2.21 **Key Man Loss**

**We** agree to pay to or on behalf of the **insured** a **key man loss** sustained during the **insurance period**.

The maximum amount payable by **us** under this Extension 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 **key man loss** under this Extension as specified in the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.



## 2.22 Licensee Intellectual Property Rights

Notwithstanding Exclusion 3.5 (Assumed Liability) **we** agree to pay to or on behalf of the **insured** any **loss** resulting from any **claim** for **civil liability** brought by a **licensee** of the **insured** under any warranty or indemnity given by the **insured** in respect of the **insured's** ownership or ability to licence any intellectual property rights.

## 2.23 Limitation of Liability Contracts

Notwithstanding General Condition 6.35 (Subrogation) and Exclusion 3.5 (Assumed Liability), **we** recognise that in the performance of **information technology services** or in the provision of **information technology products**, the **insured** may enter into written commercial contracts or agreements with other parties which may exclude or limit the liability of such parties, and **we** agree that such agreements will not prejudice the **insured's** right to claim under the **policy**.

## 2.24 Loss Mitigation and Rectification Costs

Notwithstanding Exclusion 3.18 (Own Cost of Rectification), **we** agree to pay to or on behalf of the **insured** all reasonable costs and expenses incurred by the **insured** in taking appropriate and necessary action to rectify, or to mitigate the effects of any **civil liability** of the **insured** resulting from the performance of **information technology services** or the provision of **information technology products**, which would otherwise result in a **claim** covered by the **policy**, provided that:

- a. the **civil liability** is discovered by the **insured** and notified to **us** as soon as practicable during the **insurance period**; and
- b. the **insured** notifies **us** of their intention to take such action and receive **our** written consent which will not be unreasonably withheld before incurring these costs and expenses.

This Extension will not cover:

- i. the **insured's** loss of opportunity, revenue, bonus or profits; or
- ii. overheads, staff remuneration or management time of any **insured**; or
- iii. damages, compensation or other payments made, or consideration given to customers, clients or potential clients.

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

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

## 2.25 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 **insured** is legally responsible if:

- a. the loss of the **data** is first discovered 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**.

## 2.26 Newly Created or Acquired Entity or Subsidiary

We agree to provide cover to any entity or **subsidiary** acquired or created by the **insured** during the **insurance period** for a period of up to sixty (60) days (but never beyond the expiry date of the **insurance period**) from the date of such acquisition or creation.

We may, at **our** discretion, agree to provide further coverage beyond a period of sixty (60) days (but never beyond the expiry date of the **insurance period**) where:

- a. the **insured** has notified **us** of the acquisition or creation of the entity or **subsidiary** and has provided all information requested by **us**; and
- b. any terms imposed by **us**, including the charging of any additional premium considered appropriate, have been agreed by the **insured**.

Provided always that any coverage provided under this Automatic Coverage Clause will only apply in respect of **civil liability** occurring subsequent to the date of acquisition or creation, unless otherwise agreed in writing by **us**.

## 2.27 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 a notification of circumstances which may give rise to a **claim** under this section of the **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**.

## 2.28 Previous Business

We agree to provide cover to any principal, partner or **officer** of the **insured** for **loss** resulting from any **claim** for **civil liability** in relation to:

- a. the performance of **information technology service**; or
- b. the provision of **information technology products**

prior to joining the **insured** and the **claim** was first made and reported to **us** during the **insurance period**.

Cover under this Automatic Coverage Clause will only apply if:

- a. there were no more than 10 partners or directors in the previous business in which the principal, partner or **officer** practised; and
- b. the principal, partner or **officer** of the **insured** does not have the benefit of cover under any other insurance or indemnity.

The **retroactive date** for this Automatic Coverage Clause is limited to the commencement date of the previous business in which the principal, partner or **officer** practised.

## 2.29 Public Relations Expenses

We agree to pay to or on behalf of the **insured** all **public relations expenses** incurred by the **insured** with **our** prior written consent.

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 an **incident**. The **incident** must occur and be reported during the **insurance period**.

The **incident** must occur outside of the USA/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 is specified in the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

## 2.30

### 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 Automatic Coverage Clause 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 **claims** 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** will continue to apply in the same manner, in respect of any **claim** or **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 Automatic Coverage Clause 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 B: PUBLIC AND PRODUCTS LIABILITY

### Section 1: Insuring Clauses

#### 1.1 Public and Products Liability

**We** agree to pay on behalf of the **insured** up to the **indemnity limit** all sums that the **insured** shall become legally liable to pay as **damages** in respect of **personal injury** or **property damage** during the **insurance period** within the territory and caused by an **occurrence** in connection with the performance of **information technology services** and provision of **information technology products** by or on behalf of the **insured**.

#### 1.2 Defence Costs In Addition

In addition to the **indemnity limit**, **we** agree to pay to or on behalf of the **insured** any **defence costs** necessarily and reasonably incurred in respect of a **claim** for **damages** covered under Section B this **policy**.

**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 **we** have paid the **indemnity limit** in relation to any judgment or settlement.

#### 1.3 Product Recall Expenses

Notwithstanding Exclusion 3.23 (Product Recall), **we** agree to pay on behalf of the **insured** any **claim** in respect of **product recall expenses** incurred by the **insured**, in the event the **insured's information technology products**

are recalled from the market or from use, whether in response to a regulatory order or otherwise, because it has become known or reasonably anticipated that they may cause **personal injury** or **property damage** due solely to:

- a. the unintentional omission of an ingredient or component; or
- b. unintentional introduction or substitution of a deleterious ingredient or component.

We will not cover any **product recall expenses**:

- a. which are not incurred in the circumstances set out in (a) and (b) above; or
- b. where the **insured's products** known or reasonably anticipated propensity to cause **personal injury** or **property damage** arises from:
  - i. inherent or inevitable degradation, degeneration or corruption; or any characteristic of which the **insured** knew or reasonably ought to have known at the commencement of the **insurance period**; or
  - ii. mislabelling or misdirection due to the continued use of existing labels or instructions which have passed their internal review date or have ceased to be approved for the **insured's information technology** products by the relevant regulator.

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

The **deductible** applicable to this coverage clause is specified in the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

#### 1.4 Advancement of Defence Costs

**We** agree to pay for **defence costs** in respect of any **claim** covered under Section B of the **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** **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 (Section B)

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 DUAL New Zealand Mind The Gap 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 Business Advice or Service

**We** will pay on behalf of the **insured** damages the **insured** shall be legally liable to pay in respect of **personal injury** or **property damage** arising out of an error or omission in:

- a. advice or services rendered by the **insured** without charge;
- b. professional medical advice by **medical persons** employed by the **insured** to provide first aid and other medical services on the **insured's** premises.

For the purposes of this Automatic Coverage Clause, **medical persons** means any legally qualified medical practitioner, legally qualified registered nurse, dentist or first aid attendant.

## 2.2 Consultants, Subcontractors and Agents

We agree to pay to or on behalf of the **insured** all **loss** resulting from any **claim** for **civil liability** arising from the conduct of any consultant, sub-contractor or agents of the **insured** in connection with the performance of **information technology services** or the provision of **information technology products**.

## 2.3 Cross Liability

Where more than one party compromises the **insured**, each of the parties will be considered as a separate and distinct unit and the word **insured** will be considered as applying to each party in the same manner as if a separate **policy** had been issued to each of them, provided always that nothing in this Automatic Coverage Clause will result in an increase of the **indemnity limit** or **defence costs**.

## 2.4 Innkeepers Liability

We agree to pay on behalf of the **insured** all sums which the **insured** shall become legally liable to pay as damages in respect of **property damage** as provided for under the *Innkeepers Act 1962* and any amendments thereafter.

## 2.5 Lost or Stolen Keys

We agree to pay to or on behalf of the **insured** costs reasonably and necessarily incurred in altering or replacing locks and their keys or combinations where, keys or combinations giving access to properties, for which the **insured** is responsible but does not own, hire, lease or rent, are lost, stolen or believed on reasonable grounds to have been duplicated without proper authority.

## 2.6 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 a notification of circumstances which may give rise to a **claim** under this section of the **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**.

## 2.7 Principal's Vicarious Liability

We will cover a **principal** of the **insured** for that **principal's** vicarious liability for the **insured's** acts errors or omissions which are covered under the **policy**.

We will not be liable under this Automatic Coverage Clause for the **principal's** own liability.

## 2.8 Tenants Liability

Notwithstanding Exclusion 3.5 (Assumed Liability), **we** agree to indemnify any lessor with whom the **insured** has entered into a written agreement for the rental or lease of premises (not belonging to the **insured**) from which the **insured** conducts its **business**, provided always that no wider cover will be afforded to the lessor than would have been provided hereunder to the **insured** if the **insured** had been held legally liable for the same **personal injury** or **property damage**, and only where that liability arises out of the **insured's** use of such premises in the carrying on of its **business**.

## 2.9 Vendor's Liability

We agree to extend indemnity to the **insured's** vendor, with whom the **insured** has entered into a written contract for the distribution or sale of the **insured's information technology products**, for any legal liability it has to pay compensation to any person or entity (other than the **insured**) provided that no cover will be afforded to the vendor for any modification, representation or warranty unauthorised by the **insured**.

## Section 3: Exclusions

We will not cover the **insured**, for **loss, defence costs**, or other amounts, in respect of:

### 3.1 Aircraft and Watercraft

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

- a. the ownership, maintenance, servicing, operation or use by the **insured** of:
  - i. any **aircraft**; or
  - ii. any **watercraft** exceeding 8 metres in length, except where such **watercraft** is not owned by the **insured** but used by the **insured** for business entertainment;
- b. **information technology products** that the **insured** could reasonably be expected to know are installed in or on any **aircraft**; or
- c. the use by the **insured** as a landing area for **aircraft** of any property or structure owned occupied or controlled by the **insured**. The term "landing area" includes any area on which **aircraft** taxi, land, take-off, are housed, maintained or operated.

### 3.2 Amounts Paid or Restitution

Any **claim** arising from or directly or indirectly attributable to or in consequence of any disgorgement of charges, fees or consideration owed or paid to any **insured** in connection with the provision of **information technology products** or performance of **information technology services**, including any restitution or return of such amount.

### 3.3 Asbestos and Toxic Mould

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

- a. asbestos, asbestos fibres or derivatives of asbestos or other things that contain it; or
- b. the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, or mycotoxins relating to Stachy Botrys, such action to including investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, mycotoxins relating to Stachy Botrys.

### 3.4 Associates

- a. Any **claim** by, on behalf of or for the benefit of any **insured**; or
  - b. Any **claim** by, on behalf of or for the benefit of any **family member** of the **insured**, unless the **family member** is acting without any prior direct or indirect solicitation or co-operation from the **insured**;
- irrespective of the capacity in which the **claim** is brought.

### 3.5 Assumed Liability

Any **claim** arising from or directly or indirectly attributable to or in consequence of any obligation assumed by the **insured** under any agreement, except that this Exclusion does not apply to:

- a. any liability which is, or would have been, implied by law in such agreement or would have arisen separately from it; or
  - b. Section B (**Personal Injury** and **Property Damage**), where the liability arises from a provision in a contract for lease of real or personal property, other than a provision which obliges the **insured** to effect insurance or provide indemnity in respect of the subject matter of that contract; or
- any liability which is in respect of the treatment or use of confidential information.

### 3.6 Defective Products

Any **claim** arising from or directly or indirectly attributable to or in consequence of any loss or damage to or destruction of the **insured's information technology products** if such loss, damage or destruction is attributable to any defect in them, or their harmful nature or their unsuitability.

### 3.7 Deliberate Acts

Any **claim** arising from or directly or indirectly attributable to or in consequence of any act or failure to act:

- a. intended by the **insured**; or
- b. that would be **expected** from the standpoint of a reasonable person in the circumstances of the **insured** to cause injury or damage, even if the actual injury or damage is of a different degree or type than intended or expected.

### 3.8 Deterioration and Wear and Tear

Any **claim** arising from or directly or indirectly attributable to or in consequence of the normal deterioration or wear and tear of the **information technology products**.

### 3.9 Directors and Officers

Any **claim** alleging a breach by an **insured** of a duty owed or any alleged wrongful conduct in the capacity of a director, secretary or **officer** of a body corporate.

### 3.10 Employment Practices Liability

Any **claim** arising from or directly or indirectly attributable to or in consequence of any employment or prospective employment of any past, present, future or prospective **employee** of the **insured**.

### 3.11 Faulty Workmanship (In relation to Section B only)

Any **claim** arising from or directly or indirectly attributable to or in consequence of the cost of performing, correcting or improving any work undertaken by the **insured**.

### 3.12 Financial

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

- a. the insolvency, bankruptcy, receivership, administration or financial failure of any **insured** or the subcontractors or agents of the **insured**; or
- b. the failure to provide, effect or maintain any bond or any form of insurance; or
- c. actual or alleged advice in relation to finance, accounting or tax matters.

### 3.13 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.

### 3.14 Fraud and Dishonesty

- a. Any **claim** arising from or directly or indirectly attributable to or in consequence of any actual or alleged act or omission by the **insured**, its consultants, sub-contractors or agents which was wilfully reckless, fraudulent, dishonest, malicious or criminal; or
- b. Any **claim** arising from or directly or indirectly attributable to or in consequence of any intentional violation

or wilful breach of any law, statute, regulation, contract or duty by the **insured**, its consultants, sub-contractors or agents.

This exclusion will only apply where it is established by an admission of such **insured**, or by a judgment, award, finding or other adjudication of a court, tribunal, commission, or arbitrator that such conduct did in fact occur.

### **3.15 Genetically Modified or Engineered Organisms (GMO)**

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of the manufacture, importing, growing, blending, mixing or distributing of Genetically Modified or Engineered Organisms (GMO).

For the purpose of this exclusion, a GMO is defined to be a living plant, animal or microbe that has been altered by the addition or modification of a gene through the process of genetic engineering and contains genes or portions of genes from unrelated organisms.

### **3.16 Known Defects**

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

- a. The provision of **information technology products** or the performance of **information technology services** which are known by the insured or which in the course of the **insured's** business ought to have been known by the **insured**, to be defective or ineffective or incapable of fulfilling the purpose for which they were intended or warranted (whether expressly or impliedly) or guaranteed; or
- b. The withdrawal, inspection, repair modification, replacement and loss of use of the **information technology products**, or of any property of which such **information technology products** form a part, if such **information technology products** or property are withdrawn from the market or from use because of any known defect or deficiency therein or any defect of which the **insured** knew or in the ordinary course of the **insured's** business ought to have known.

### **3.17 Liability to Employees**

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

- a. any **personal injury** to any **employee** of the **insured** or arising out of, based upon or attributable to any breach of any obligation owed by the **insured** as an **employer**; or
- b. any **property damage** to the property of any **employee**; or
- c. any provision of any workers' compensation legislation or any industrial award or agreement or determination; or
- d. any liability for which the **insured** is or would have been entitled to seek indemnity under any policy of insurance required to be taken out pursuant to any legislation relating to workers' or workmens' compensation including any legislation of any State or Territory (whether insurance is effected or not).

### **3.18 Own Costs of Rectification**

Any **claim** arising from or directly or indirectly attributable to or in consequence of the cost of performing, correcting rectifying or improving any **information technology products** provided or any **information technology services** performed by the **insured**.

### **3.19 Personal and Reputation Injury**

Any **claim** arising from or directly or indirectly attributable to or in consequence of any actual or threatened arrest, detention, imprisonment, prosecution, discrimination, harassment or segregation.

### **3.20 Pollution and Radioactive Contamination**

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

- a. ionizing radiation or contamination by radioactivity from a nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or



- b. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly; or
- c. the actual, alleged or threatened discharge of **pollution**.

### 3.21 **Prior Known Facts**

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

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

### 3.22 **Products Acquired or Prior Goods (Section B)**

Any **claim** arising from or directly or indirectly attributable to or in consequence of any goods or products manufactured, sold, handled or distributed by any organisation an **insured** acquires, if such goods or products were manufactured, sold, handled or distributed prior to the completion of such acquisition.

### 3.23 **Product Recall**

Any **claim** arising from or directly or indirectly attributable to or in consequence of the recall, withdrawal, inspection, repair, replacement or loss of use of the **insured's products** or of any property of which the **insured's products** form a part, if these **products** are recalled by the **insured** or another, or withdrawn from the market or from use, because of any known or suspected defect or deficiency therein.

### 3.24 **Property In Your Physical or Legal Control (Section B only)**

Any **claim** arising from or directly or indirectly attributable to or in consequence of **property damage** to property owned by the **insured** or in the **insured's** physical or legal control, other than:

- a. premises which are leased or rented to the **insured**;
- b. premises which the **insured** temporarily occupies in order for the **insured** to carry out work;
- c. personal property loaned or leased to the **insured**;
- d. **vehicles** (not belonging to the **insured** or used by the **insured** or on the **insured's** behalf) in the **insured's** physical or legal control whilst within a car park owned or operated by the **insured** unless part of the **insured's business** is the operation of a car park for reward;
- e. the **insured's** employees' property.

### 3.25 **Refund of Payments**

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of the repayment of any money received or entitled to be received for any **information technology products** provided or any **information technology services** performed by the **insured** or any amount claimed by a third party as the price paid for the **insured's products**.

### 3.26 **Restraint of Trade or Unfair Business**

Any **claim** arising from or directly or indirectly attributable to or in consequence of any actual or alleged violation of any law governing unconscionable conduct or antitrust or competition law or other law prohibiting restraint of trade, or business.

### 3.27 Trading Debts

Any **claim** arising from or directly or indirectly attributable to or in consequence of any trading debt or business liability of the **insured** or any guarantee given by the **insured** in respect of such a debt.

### 3.28 Vehicles

Any **claim** arising from or directly or indirectly attributable to or in consequence of the use of or ownership or operation by the **insured** of any **vehicle** which is legally required to be registered or legally required to be insured.

This exclusion will not apply to:

- a. **claims** or liability caused by or arising from the delivery or collection of goods to or from any **vehicle** where such **personal injury** or **property damage** occurs beyond the limits of any carriage- way or thoroughfare; or
- b. **claims** or liability arising during the trade use of any **vehicle** at any site where the **insured** is working or at the **insured's** premises, provided that the **insured** is not indemnified under this **policy** where the **vehicle** is used only for the transportation or haulage of goods; or
- c. **claims** or liability caused by or arising out of the use of an unregistered **vehicle** whilst being driven under its own power between its point of unloading and a worksite and whilst returning from a worksite to the point of reloading for its conveyance from the area.

## Section 4: Conditions

### 4.1 Cross Liability / Joint Insureds

If more than one legal entity is **insured** under this **policy**, each entity is covered in the same manner as though **we** had issued them with a separate **policy**. However, the total amount payable in respect of all **claims** and indemnified entities in one **insurance period** shall not exceed the **indemnity limit** specified in the **schedule**.

If there is a **claim** against more than one entity in respect of the same **occurrence**, only one **deductible** and one **indemnity limit** shall apply, regardless of the number of entities indemnified.

The coverage under this Condition does not apply to entities which are **insured** under this **policy** by Definition 5.22 (c), 5.22 (e) or 5.22 (f).

### 4.2 Deductible

The amount/s shown in the **schedule**, or in any applicable Automatic Coverage Clause, as the **deductible**, shall be borne by the **insured** in respect of each and every **claim**, or series of **claims** arising out of one **occurrence**.

**Our** liability under this **policy** for **loss** will only apply to that part of each **loss**, **defence costs** which is in excess of the **deductible** specified in the **schedule**. Such **deductible** will be borne by the **insured**, except where otherwise provided.

Unless otherwise expressed in the **schedule**, all **deductibles** are inclusive of **defence costs** and/or **investigation costs** and/or **loss** to the amount of the **deductible**.

Except as otherwise stated in the **policy**, costs and expenses incurred by **us** in determining whether **we** are liable to indemnify the **insured** under the **policy** will not erode the **indemnity limit** and will be met by **us**.

For the purposes of determining the **deductible(s)** applicable to any **claim(s)** covered by the **policy**, all **claims** arising from the same act, error or omission, or related acts, errors or omissions, will be regarded as one **claim**.

### 4.3 Indemnity Limit

**Our** maximum liability in respect of any **claim**, or any series of **claims**, arising out of one **occurrence**, or in the aggregate during the **insurance period** in respect of an **occurrence** involving the **insured's products**, shall not exceed the **indemnity limit** stated in the **schedule**, or the sub-limit in any applicable Automatic Coverage Clause.

All **personal injury** or **property damage** in respect of continuous or repeated exposure to substantially the same general conditions shall be construed as arising out of one **occurrence**.

Provided that:

- a. immediately that **we** have paid the **indemnity limit** in respect of any judgment or settlement, **our** liability in relation to **defence costs** shall cease;
- b. if a payment exceeding the **indemnity limit** has to be made to dispose of a **claim**, **our** liability in relation to **defence costs** shall be limited to the same proportion as the **indemnity limit** bears to the amount required to dispose of the **claim**.

## Section A

- a. Subject to any Extension of coverage which states otherwise, **our** total liability under the **policy** in respect of any one **claim** or **investigation**, and in the aggregate for all **claims** and **investigations** for all **insureds**, will not exceed the **indemnity limit** inclusive of all **loss**.
- b. The **schedule** will indicate the **indemnity limit** applicable to each **policy**. If more than one **policy** has been purchased, the **schedule** will also indicate the aggregate **indemnity limit** for all **policies** which have been purchased by the **insured**.
- c. **We** will have no liability in excess of the sub-limits specified in the **schedule** in the aggregate for the applicable extension of cover, irrespective of the number of **policy** sections, which respond to the **claim** or **investigation**. In such circumstances, we will apply the higher of the sub-limits or **indemnity limit** available.
- d. For the purposes of determining the **indemnity limit** available for each **claim** covered by the **policy**, all **claims** arising from the same act, error or omission, or related acts, errors or omissions, will be regarded as one **claim**.

## Section B

- a. **Our** liability for all compensation payable in respect of any **claim** or a series of **claims** caused by or arising out of one **occurrence** will not exceed the **indemnity limit**.
- b. All **claims** for compensation that result from one original source, or one original cause, will be considered to have been caused by or arise out of a single **occurrence**.
- c. **Our** total aggregate liability in any one **insurance period** for public and product liability **claims** will not exceed the **indemnity limit**.
- d. **Our** total aggregate liability for all **claims** and other costs and expenses, is the **indemnity limit**.

The **insured** agrees that in no circumstances will the **indemnity limit** for Section A and the **indemnity limit** for Section B both apply to a **claim** covered by this **policy**.

The total aggregate amount of **loss**, **defence costs** and **legal representations costs** payable by **us** for section A & B of the **policy** (including all Extensions) will not exceed the **indemnity limit**.

Sub-limits of liability are in the aggregate and are part of and not payable in addition to the **indemnity limit**.

### 4.4 Joint Insured (Section B only)

Where more than one party comprises the **insured**, each of the parties will be considered as a separate and distinct unit and the word **insured** will be considered as applying to each party in the same manner as if a separate **policy** had been issued to each of them provided always that nothing in this condition will result in an increase of the **indemnity limit** or **defence costs**.

### 4.5 Jurisdictional Limitation

Unless otherwise stated in the **schedule**, the cover provided under this **policy** extends to **loss** with respect to a **claim** or **investigation** brought and maintained anywhere in the world, except within the territorial limits of the United States of America or Canada or their respective territories or protectorates or to enforce any judgment,

order or award obtained in or determined under the laws of the United States of America or Canada or their territories or protectorates.

#### 4.6 Severability, Non-Imputation and Non-Avoidance

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, chief operating officer or chief financial officer of the **insured** will be imputed to the **insured**.

**We** agree not to rescind or avoid this **policy** in whole or in part, for any reason.

#### 4.7 Inspection of Property

**We** shall be permitted, but not obligated to, inspect the **insured's** property and operations at any reasonable time.

#### 4.8 Insured's Right to Contest

In the event that **we** recommend settlement of a **claim** and the **insured** does not agree to the settlement of the **claim**, and the **insured** decides to contest the **claim**, **our** liability shall not exceed the amount for which the **claim** could have been settled, and **defence costs** and any other costs and expenses covered under this **policy** incurred up to the date upon which the **claim** could have been settled.

#### 4.9 Legal Representation and Settlement

Unless otherwise specified in a **policy**, it will be **our** duty and not the duty of the **insured** 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**, 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 more than one **insured**, the **insureds** agree that **we** have the right to require such **insureds** to retain separate legal representation.

## Section 5: Definitions

In this **Policy**:

- 5.1 Aircraft** means any machine, craft or thing made or intended to fly or move in or through the atmosphere or space.
- 5.2 Benefits** means any amount payable to a beneficiary of a superannuation fund by the Trustee under the rules governing the fund.
- 5.3 Business** means:
- the **information technology services** or **information technology products** described in the **Schedule** and
  - (for Section B only) the provision and management of canteens, social, sports welfare and childcare organisations for the benefit of the **insured's employees**,
  - The provision of first aid, fire and ambulance services; and

- d. any other activity that the **insured** may undertake provided that the **insured** gives written notice to **us** and obtains **our** acknowledgement of coverage within 60 days of any new activity commencing.

**5.4 Civil liability** means a legally enforceable obligation to a third party.

**5.5 Claim** means:

- a. any civil proceeding brought by a third party against the **insured** for compensation; or a written or verbal demand by a third party against the **insured** for monetary damages; or
- b. 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.

**5.6 Computer Equipment** means but is not limited to any or any combination or part of computer data, computer hardware, computer operating system, computer application, computer software and computer chip, including microprocessor chip or embedded control logic.

**5.7 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 the **insured**, or in the **insured's** care, custody or control, or for which the **insured** 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 the **insured**, or in the **insured's** care, custody or control, or for which the **insured** is legally responsible.

**Crime Loss** does not include:

- a. **direct financial loss** which is indirect and consequential; or
- 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**; or
- c. **direct financial loss** resulting from any dishonest, fraudulent or malicious acts committed by an **employee** or **officer** who prepares cheque requisitions and also has cheque signing authority; or
- 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 **officers** and/or **employees**.

**5.8 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 whatsoever, whether written, printed or reproduced by any method but will not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

**5.9 Damages** means any amount payable as compensation, including interest and costs.

**5.10 Deductible** means the relevant amount specified in the **schedule**.

**5.11 Defence Costs** means all necessary and reasonable fees, expenses, costs and disbursements, witness costs, assessors or adjusters costs or experts costs incurred by **us**, or by the **insured** with **our** prior written consent

in relation to the investigation, defence or settlement of a **claim** covered by the **policy**, as well as any first aid expenses incurred by the **insured** arising from a **personal injury**. **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.

- 5.12** **Direct financial loss** means direct financial loss suffered by the **insured** which is covered under Automatic Coverage Clause 2.8 (Crime).
- 5.13** **Discovered** means when an **officer** 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.
- 5.14** **Discovery Period** means the period of time specified in Automatic Coverage Clause 2.10 during which time written notice may be given to **us** of a **claim** which is first made against the **insured** for **civil liability** incurred prior to the end of the **insurance period** or **transaction**.
- 5.15** **Employee** means any natural person employed by the **insured** under a contract of service or apprenticeship during or prior to the commencement of the **insured period**.
- 5.16** **Family Member** means the **insured's**:
- a. legal or de facto spouse, domestic partner or companion;
  - b. parent or the parent of the **insured's** legal or de facto spouse, domestic partner or companion;
  - c. children and children of (a) and (b) above
  - d. siblings
- 5.17** **Incident** means an event in the **insurance period** which causes the **insured's** reputation and skill in the conduct of the **business** to be brought into question.
- 5.18** **Indemnity Limit** means, the relevant amounts specified in the **schedule**.
- 5.19** **Information Technology Products** means any electronic equipment, communication equipment or computer hardware or software created, designed, manufactured, sold, licensed, handled or distributed by the **insured**.
- 5.20** **Information Technology Services** means:
- a. software development
  - b. systems integration
  - c. information management consulting
  - d. electronic data processing
  - e. computer facilities management
  - f. computer programming
  - g. design, manufacture and installation of **information technology products**
  - h. computer and electronic equipment maintenance and repair
  - i. computer and data network analysis, consulting and design
  - j. Telecommunication and data communication services
  - k. internet services
  - l. network consulting and support services; and
  - m. call centre services
  - n. service advice or work provided by the **insured** in connection with **information technology products**.

**5.21** **Insurance Period** means the period specified in the **schedule**.

**5.22** **Insured** means:

- a. The insured(s) named in the schedule and any subsidiary; and
- b. Every director, officer, **employee**, partner or shareholder of an **insured** whilst acting within the scope of their duties as such, except in respect of any liability under the Companies Act 1993.
- c. Every principal, in respect of its vicarious liability arising solely out of the performance, by an **insured** of any contract of work for such principal, but always subject to the terms of this **policy**.
- d. Every office bearer or member of social and sporting clubs formed with the consent of the **insured** in respect of **claims** arising from the duties connected with the activities of any such club.
- e. Each joint venture, co-venture or joint lessee of a named **insured** but only with respect to liability incurred as a joint venture, co-venture or joint lessee, provided that a named **insured** gives written notice to **us** and obtains **our** written acknowledgement of coverage for such joint venture, co-venture or joint lease.
- f. any contractor or sub-contractor but only while they are engaged and working in New Zealand for and on behalf of the person or entity named in the **schedule** or any entity referred to in (a) and (b) above, provided that they are not otherwise insured.

**5.23** **Insured person** means:

- a. any former, present or future principal, partner, director or **employee** of the person, partnership, company, **subsidiary** or other entity specified as the **insured** in the **schedule**, but only while acting in the conduct of the **business**; or
- b. for the purpose of Section A only any consultant, subcontractor or agent in the performance of **information technology services** or provision of **information technology products** for or on behalf of the **insured** in the course of the **insured's business** and for whose acts, errors or omissions the **insured** is liable; or
- c. for the purpose of Section B only any consultant, subcontractor or agent in the performance of **information technology services** or provision of **information technology products** for or on behalf of the **insured** in the course of the **insured's business**.

**5.24** **Investigation** means any official investigation, examination, or other proceedings ordered or commissioned by any **official body** or institution empowered by law to investigate the conduct of the **business** of the **insured**.

**5.25** **Key Man Loss** means reasonable costs and expenses incurred by an **insured** with **our** prior written consent (and which will not be delayed or unreasonably withheld) in order to procure public relations services and/or executive search services and in order to manage the public communication of, and limit the disruption to the **insured's business** that is directly caused by the permanent disability or death during the **insurance period** of any principal, partner or director of the **insured**.

**5.26** **Licensee** means any party who enters into a licence agreement with the **insured**.

**5.27** **Loss** means:

- a. damages or claimant's costs or both payable by the **insured** pursuant to an award or judgment entered against the **insured**; or
- b. settlements negotiated by us and consented to by the **insured**; 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, liquidated or other non-compensatory damages or the consequences of non-payment;
- 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**.

**5.28 Lost Data** means **Data** that cannot be located following a diligent search, and data that has been destroyed or damaged.

**5.29 Occurrence** means an event, including continuous or repeated exposure to substantially the same general conditions, which results in **personal injury** or **property damage**, neither expected nor intended by the **insured**.

**5.30 Officer** means any past, present or future:

- a. partner, principal, director or secretary of the **insured** or a **subsidiary**; or
- b. person who makes or participates in making decisions that affect the whole, or a substantial part, of the business of the **insured** or **subsidiary**.

**5.31 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 **insured** or the conduct of an **insured person** in their **insured** capacity.

**5.32 Personal Injury** means:

- a. bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury; or
- b. false arrest, false imprisonment, wrongful detention, malicious prosecution and humiliation; or
- c. wrongful entry, wrongful eviction or other invasion of right of privacy; or
- d. assault and battery committed by the **insured** for the purpose of preventing or eliminating danger to persons or property,
- e. trespass to the person; or
- f. defamation

resulting from an **occurrence**.

In the event of **personal injury** arising from latent injury, latent sickness, latent disease or latent disability, that **personal injury** will be deemed to have occurred on the day the injury, sickness, disease or disability was first medically diagnosed.

**5.33 Policy** means this Information Technology Liability policy wording, the DUAL New Zealand Mind the Gap General Conditions and Exclusions, the **schedule**, the **proposal** and any endorsements attaching to and forming part of the **policy** either at commencement of or during the **insurance period**.

**5.34 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.

**5.35 Principal** means a natural person or company or other entity who has a contract with the **insured** under which the natural person or company or other entity engages the **insured** to perform **information technology services** or to provide **information technology products**.



- 5.36** **Product** means anything (after it has ceased to be in the **insured's** possession or in the **insured's** legal control) which has been manufactured, grown, extracted, produced, processed, constructed, erected, installed, assembled, altered, repaired, serviced, treated, sold, supplied or distributed by the **insured** in the course of the **insured's business**, including any packaging or containers (other than a **vehicle**) used to package or contain the **insured's products**.
- 5.37** **Product Liability** means any liability for an **occurrence** that is caused by or arises out of any **product**.
- 5.38** **Product Recall Expenses** means reasonable and necessary costs directly incurred by the **insured** in respect of:
- a. Communications including radio and television announcements and printed advertisements;
  - b. The cost of shipping the **insured's products** from any purchaser, distributor or user to the place or places designated by the **insured**;
  - c. The costs of hire of necessary, additional staff other than the **insured's** regular **employees**;
  - d. Remuneration paid to the **insured's** regular, hourly **employees** other than salaried **employees** at basic rates for necessary straight time or overtime if required;
  - e. Expenses incurred by **employees** for transportation and accommodation where necessary;
  - f. The extra expense for rent or hire of additional warehouse or storage space;
  - g. The disposal or destruction of the **insured's products** recalled;
- But only when such costs are incurred exclusively for the purpose of recalling the **insured's products** or property of which they form a part, because of an **occurrence**. It does not include the actual value of the **insured's products** themselves, or of any property of which they form a part, any legal liability to pay damages or compensation of any sort to any other person.
- 5.39** **Property Damage** means physical loss, damage or destruction of tangible property including the resultant loss of use, or loss of use of tangible property which has not been physically damaged or destroyed, provided such loss of use is caused by or arises from an **occurrence**. In the event of a **claim** arising from latent damage or from the exposure of tangible property to gradual deterioration and eventual damage, such **property damage** will be deemed to have occurred on the day such deterioration or damage was first discovered.
- 5.40** **Proposal** means the proposal form, submission and all other supporting documentation and attachments provided to **us** in the application for this **policy**.
- 5.41** **Public Relations Expenses** means any reasonable fees, costs and expenses of a public relations consultant retained with **our** prior written consent (which will not be unreasonably delayed or withheld) required to prevent or minimise any adverse or negative publicity, or in connection with an **incident** that results in a **claim** covered under the **policy**. 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.
- 5.42** **Retroactive date** means the date specified in the **schedule** but no earlier than the commencement of the **insured's business** specified in the **schedule**, but only while in the course of the performance of **information technology services** or provision of **information technology products**.
- 5.43** **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**.
- 5.44** **Subsidiary** means any entity which by virtue of any applicable legislation or law is deemed to be a **subsidiary** of the **insured** or in which the **insured** owns or controls, directly or indirectly greater than 50% of the issued voting shares of such entity.
- 5.45** **Terrorism** means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

- 5.46** **Transaction** means any one of the following events:
- a. the **insured** 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 **insured** or control the appointment of directors who are able to exercise a majority of votes at Board Meetings of the **insured**; or
  - c. the insolvency of the **insured**; or
  - d. the appointment of an administrator, liquidator, receiver, receiver and manager and manager or court appointed manager to the **insured**.
- 5.47** **Vehicle** means a motor vehicle or any type of machine on wheels or on self-laid tracks or rollers that is propelled by its own power and anything other than a watercraft intended to be towed by any such machine, and includes its accessories, tools, specialised equipment and spare parts.
- 5.48** **Watercraft** means any vessel, craft or thing made or intended to float on or in or travel on or through water not exceeding 10 metres in length.
- 5.49** **We/Us/Our** means DUAL New Zealand Limited for and on behalf of Certain Underwriters at Lloyd's.
- 5.50** **You/Your** means the **insured**.