

Professional Indemnity Real Estate

DUAL

Wordings:





DUAL New Zealand Mind The Gap

Professional Indemnity Real Estate Policy Wording

Table of Contents

Section 1: Insuring Clauses	3
Section 2: Automatic Coverage Clauses	3
Section 3: Exclusions	8
Section 4: Conditions	12
Section 5: Definitions	13

DUAL New Zealand Mind the Gap

Real Estate Professional Indemnity Policy Wording

Section 1: Insuring Clauses

1.1 Civil Liability

We agree to pay on behalf of the **insured** up to the **indemnity limit** all **loss** resulting from any **claim** for **civil liability** first:

- a. made against the **insured**, and
- b. reported to **us**

during the **insurance period** arising out of the **insured's** conduct of its **professional business**.

1.2 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.

1.3 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**.

1.4 Retroactive Date

This **policy** shall only provide cover in respect of **civil liability** arising from an act, error or omission of the **insured** 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 **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 **professional 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.

Subject to all of the above **we** will also pay:

- i. Notwithstanding Exclusion 3.9 (Fines and Penalties and Non-Compensatory) (a) and (b), any fine or monetary penalty or costs imposed by the Complaints Assessment Committee or the Real Estate Agents Disciplinary Tribunal to be paid by the **insured** for an **offence**; and
- ii. compensation ordered against an **insured** by the Real Estate Agents Disciplinary Tribunal (subject to Exclusion 3.9 (Fines and Penalties and Non-Compensatory) (c) as permitted under section 110 of the **REA Act** for an **offence**.

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 as specified in the **schedule**.

2.2 Auctions

We agree to pay to or on behalf of the **insured** all **loss** resulting from any **claim** arising out of the conduct of any auction or auctioneering activities undertaken by the **insured** who holds a licence under the Auctioneers Act 1928.

2.3 Civil Penalties

Notwithstanding Exclusion 3.9 (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** arising out of the conduct of any consultant, subcontractor or agent in the **professional business** and for whose acts, errors or omissions the **insured** is liable.

We will not cover the consultant, subcontractor or agent.

2.5 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 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 5.32 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 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 to and does attend Court as a witness in a **claim** for **civil liability** covered by this **policy**, to an amount not exceeding \$500 per day.

The maximum amount payable under this Automatic Coverage Clause is the sub-limit specified in the **schedule** for any one **claim** and in the aggregate for all **claims** during the **insurance period** which is part of and not in addition to the **indemnity limit**. No **deductible** applies to this Automatic Coverage Clause.

2.7 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**.

2.8 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 **professional business**.

2.9 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 for **civil liability** against the **insured** in its conduct of its **professional business** prior to the expiration of the **insurance period**. 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:

- a. renewed or replaced with any other Professional Indemnity policy; or
- b. cancelled or avoided.

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

2.10 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.

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**.

2.11 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.

2.12 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 **professional business**.

2.13 Former Subsidiary

We agree to pay to or on behalf of the **insured** all **loss** resulting from any **claim** against the **insured** in relation to the conduct of the **professional business** by a **subsidiary** that ceased or ceases to be a **subsidiary** either before or during the **insurance period**.

2.14 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** for **civil liability** made against the **insured**, provided that **we** will not provide cover to any **insured** committing or condoning any dishonest act, omission or breach.

2.15 Heirs, Estates and Legal Representatives

We agree to provide cover in respect of any estate, heirs, legal representatives or assigns of any deceased or mentally incompetent **insured** in respect of **claims** for **civil liability** made against such **insured** in the conduct of its **professional business** that is covered under this **policy**.

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

2.16 Intellectual Property

Notwithstanding Exclusion 3.12 (Intellectual Property), **we** agree to pay to or on behalf of the **insured** all **loss** resulting from any **claim** against the **insured** relating to a breach of intellectual property rights provided that the liability incurred from the breach of intellectual property rights results directly from the provision of advice by the **insured** in the conduct of its **professional business**.

2.17 Joint Venture Liability

We agree to pay to or on behalf of the **insured** any **loss** resulting from any **claim** against the **insured** relating to its conduct of the **professional business** 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 or controlled by the **insured**; or
- b. the percentage of the voting control of the joint venture exercised by the **insured**.

We will not cover any liability of the joint venture partner or any other third party.

2.18 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**.

2.19 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**.

2.20 Previous Business

We agree to provide cover in respect of any principal, partner or director of the **insured** for **claims** arising from professional services they performed prior to joining the **insured**.

This Automatic Coverage Clause will only apply if:

- a. the professional services were performed in the same profession as the **professional business**; and
- b. there were no more than 10 partners or directors in the past business in which the principal, partner or director practised; and
- c. the principal, partner or director 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 past business in which the principal, partner or director practised.

2.21

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 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**.

2.22

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

We will not cover the **insured**, including for **defence costs**, for or in connection with:

3.1

Associates

- a. any **claim** brought by, on behalf of or for the benefit of any **insured**; or
- b. any **claim** brought by, on behalf of or for the benefit of any **subsidiary**; or
- c. any **claim** brought by, on behalf of or for the benefit of any **family member** of the **insured**, unless the **family member** is acting without any direct or indirect solicitation or co-operation from the **insured**; or
- d. any **claim** brought by or on behalf of any **associated company**, company, nominee or trustee of the **insured**; irrespective of the capacity in which the **claim** is brought.

For the purpose of this Exclusion the term **associated company** means any company in which the **insured** owns on or before the inception of the **insurance period** at least 25% of the issued and outstanding voting shares, either directly or indirectly through one or more of its **subsidiaries**.

3.2 Building Defects

Any **claim** or any liability for, directly or indirectly caused by or contributed to, or arises directly or indirectly out of:

- a. The action or effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure; or
- b. Any cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposal of, or in anyway responding to or assessing the effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or similar or like forms, in any building or structure; or
- c. The failure of any building or structure to meet or perform to the requirements of the New Zealand Building Code or any amendment or substitution thereof in relation to:
 - i. External water or moisture; or
 - ii. Either durability or protection from external water or moisture entering that building or structure, or the effects thereof.

3.3 Contractual Liability

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

3.4 Deliberate Disregard and Conduct

Any **claim** or liability arising from or directly or indirectly attributable to or in any way connected with or in consequence of any offence where it is subsequently established by judgement, settlement or other final adjudication that the **offence** resulted from wilful or reckless conduct or deliberate disregard by the insured of any of the provisions of the **REA Act**.

3.5 Directors & Officers

Any **claim** or liability alleging a breach by an **insured** of a duty owed, or any alleged wrongful conduct in, the **insured's** capacity as a **director** or **officer** of a company, association or other legal entity.

3.6 Disclosure of Commissions/Conflicts of Interest

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

- a. any failure of any **insured** (or any of its 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 **insured** (or any of its 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.

3.7 Excluded Activities

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

- a. Finance, insurance or mortgage broking; or
- b. the provision of legal advice or services; or
- c. Corporate advisory services, including but not limited to advice or consulting in connection with mergers and acquisitions of entities or businesses or parts thereof; or
- d. Stockbroking, financial planning, insurance-related or funds management activities, or

- e. Actual or alleged advice in relation to finance, accounting or tax matters; or
- f. Any valuation of property or premises made by or on behalf of the **insured**;
- g. advice or consulting in connection with mergers and acquisitions of entities or businesses or parts thereof; or
- h. the sale or promotion of any contributory mortgage or contributory scheme including acting as promoters, acting as a broker, and any advice in relation to investment in a contributory mortgage or contributory scheme; or
- i. Any act, error or omission in the conduct of any activity not part of the **insured's professional business**.

3.8 Failure to Sight

Any **claim** or liability arising from or directly or indirectly caused by or in any way connected with any failure by the **insured** to inspect, access, sight or review any property or part thereof in respect of any report or assessment prepared by the **insured**.

3.9 Fee Refunds

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

3.10 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**, the **insured's** clients, any authorised deposit taking institution, bank or banking firm, or any broker or dealer in securities or commodities, or the inability of any such person or entity to make payment or settle or effect any transaction of any kind provided that this exclusion shall not apply to any **claim** for **civil liability** made against an **insured** in the conduct of the **insured's professional business**.

3.11 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.

3.12 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.

3.13 Investment Performance

Any **claim** or liability 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 **claim** arising from any financial or investment advice provided by the **insured**, 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 **insured** to warn of the risks of market fluctuation of any investment.

3.14 Liability as 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 **insured**.

3.15 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.

3.16 Methamphetamine Contamination Testing

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of any duty or obligation assumed by the **insured** to undertake or commission the testing of a property or its building materials, fixtures, fittings or contents for contamination from chemicals or residue used in the production of methamphetamine.

3.17 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 from the **insured's** conduct of its **professional business**.

3.18 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**.

3.19 Product Liability

Any **claim** or liability arising from or in connection with the manufacture, preparation, modification, repair, supply, maintenance or treatment of any goods or products sold, supplied or distributed by the **insured**, or the failure of such goods or products to perform in any way.

3.20 Project Specific Insurance

Any **claim** or liability arising from or directly or indirectly caused by or in any way connected with any project that is insured under a project specific insurance policy, provided that this exclusion shall not apply where the **insured's** liability is in excess of the indemnity available under such project specific insurance and which has been specifically included for excess coverage by an endorsement to this **policy**.

3.21 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 from a **claim** for **civil liability** against the **insured** in the conduct of its **professional business**.

3.22 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**.

3.23 Trading Debts

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

3.24 Two Tier Marketing

Any **claim** or liability directly or indirectly arising from or attributable to or in connection with any two tiered real estate marketing scheme or similar scheme.

3.25 Valuation

Any **claim** or liability directly or indirectly arising from or attributable to or in connection with any valuation or estimate of value of property by or on behalf of the **insured**.

Section 4: Conditions

4.1 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** liability in respect of each **claim** in excess of the **deductible**.
- b. Where **we** have paid on the **insured's** behalf part or all of the **deductible**, the **insured** shall reimburse **us**.
- c. 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**.
- d. For the purpose of determining the **deductible(s)** applicable to any **claim(s)** covered by the **policy**, all **claims** arising from the same incident giving rise to the claim for civil liability against the insured, shall be regarded as one **claim**.

4.2 Indemnity Limit

Subject to Automatic Coverage Clause 2.22 (Reinstatement of 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 **incident** giving rise to **civil liability**, 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** except for its proportion of **defence costs** incurred prior to the date of payment.

4.3 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.

4.4 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** defined by Definition 5.13 (a) (Insured) of this **policy**.
- 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 Act of Parliament means any Act of the New Zealand Parliament, including any amendment to or re-enactment, and any code, rules, regulations, bylaws or other subordinate legislation made under such Act.

5.2 Civil Liability means a legally enforceable obligation to a third party.

5.3 Claim means:

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

5.4 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;
- 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 an **employee** or **officers** 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 **officers** and/or **employees**.

5.5 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.

5.6 Deductible means the amounts specified in the **schedule**, or otherwise specified in any extension to this **policy**.

5.7 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.

- 5.8** **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.
- 5.9** **Employee** means any person who is a past, present or prospective **employee** the **insured** under a contract of service or apprenticeship on a full-time or casual basis during or prior to the commencement of the **insurance period**.
- 5.10** **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) above; and
 - d. siblings and siblings of (a) above.
- 5.11** **Incident** means a matter in which the **insured's** reputation and skill in the conduct of the **professional business** is brought into question.
- 5.12** **Indemnity limit** means the amounts specified in the **schedule**.
- 5.13** **Insurance period** means the period specified in the **schedule**.
- 5.14** **Insured** means:
- a. the person, partnership, company, or other entity, specified as the **insured** in the **schedule** and any **subsidiaries**; and
 - b. any person who is during the **insurance period** a principal, partner, director or **employee** or **licensee** of the person, partnership, company, **subsidiary** or other entity specified as the **insured** in the **schedule**, but only while acting in the course of the **professional business**.
- 5.15** **Investigation** means any official investigation, examination, inquiry or other proceedings ordered or commissioned by any **official body** or institution of which the **insured** is a member investigating the conduct of the **professional business** of the **insured**. Any **investigation** to which this **policy** responds shall be deemed to be a **claim**.
- 5.16** **Licensee** means any person registered under the **REA Act**.
- 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 **insured**
 - 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, 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** **Offence** means an unexpected or unintentional incident, act or omission caused by the **insured** that may result in a prosecution under the **REA Act**.
- 5.21** **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 **professional business** of the **insured** or a **subsidiary**.
- 5.22** **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**.
- 5.23** **Policy** means this Professional Indemnity 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** **Professional business** means the business of the **insured** specified in the **schedule** and shall only include services of:
- a. Real Estate Sales;
 - b. Property Managers;
 - c. Auctioneers – where the **insured** holds an annual licence under the Auctioneers Act 1928;
 - d. Strata Title Managers;
 - e. Residential Unit Managers;
 - f. Strata Body Corporate Managers; and
 - g. Business Broking.
- 5.26** **Proposal** means the **insured's** proposal made to **us** together with any attachments and materials referred to therein.
- 5.27** **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.
- 5.28** **REA Act** means The Real Estate Agents Act 2008 and any amendment to or re-enactment, and any code, rules, regulations, bylaws or other subordinate legislation.
- 5.29** **Retroactive Date** means the date specified in the **schedule** but no earlier than the commencement of the **insured's professional business** specified in the **schedule** and only while in the course of the **insured's business**.

5.30 **Schedule** means the policy schedule issued by **us**.

5.31 **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**.

5.32 **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**.
- d. the appointment of an administrator, liquidator, receiver, receiver and manager and manager or court appointed manager to the **insured**.

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

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