



General Liability

Policy wording

About This Policy

This Policy is made up of this document, the Schedule, the Proposal Form and any Endorsements and they should all be read as one document.

This Policy is a package policy including the following Coverage Sections:

1. General Liability Coverage Section	3
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3. Statutory Liability Coverage Section	14

In addition, this Policy also has the following General Terms and Conditions:

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You are only insured for those Coverage Sections that have details shown in the Schedule.

The terms and conditions of each Coverage Section apply only to such Coverage Section and should be read in conjunction with the General Terms and Conditions. Where terms defined within the Coverage Sections appear within the General Terms and Conditions, the definition contained in the Coverage Section shall apply for the purposes of determining coverage.

If the terms and conditions within a Coverage Section conflict with the General Terms and Conditions, the terms and conditions of such Coverage Section take priority.

General Liability Insurance Policy

General Liability Coverage Section

The terms and conditions of this Coverage Section apply only to this Coverage Section and should be read in conjunction with the General Terms and Conditions. Where terms defined within this Coverage Section appear within the General Terms and Conditions, the definition contained herein shall apply for the purposes of determining coverage. If the terms and conditions within this Coverage Section conflict with the General Terms and Conditions, the terms of this Coverage Section take priority.

In consideration of the premium charged, and subject to the General Terms and Conditions and this Coverage Section, the **Underwriters** and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

Section 1:

Insuring Agreement

- 1.1.** The **Underwriters** shall indemnify the **Insured** up to the Limit of Liability, and subject to the Excess, for amounts the **Insured** shall become legally liable to pay for loss in respect of **Personal Injury** or **Property Damage** that:
- a.** occurs within the **Territorial Limits** and that;
 - b.** happens during the **Policy Period**; and
 - c.** is caused by an **Occurrence** in connection with the **Insured's Business**;

1.2. Defence Costs

In addition to the Limit of Liability for this Coverage Section, the **Underwriters** will pay **Defence Costs** necessarily and reasonably incurred in relation to any claim against the **Insured** for which there is cover under this Coverage Section. The **Underwriters** may investigate, negotiate and settle any claim as it deems expedient; however, the **Underwriters** shall not be obligated to pay any claim or judgment or to defend any suit after the Limit of Liability has been exhausted by payment of judgments or settlements.

Provided that:

- a.** in the event that the **Underwriters** have paid the Limit of Liability in respect of any judgment or settlement, the **Underwriters'** liability in respect of any further **Defence Costs** shall cease; and
- b.** if the amount of compensation the **Insured** is legally required to pay to dispose of a claim exceeds the **Underwriters'** Limit of Liability, the liability of the **Underwriters** to pay **Defence Costs** in connection with such claim shall be limited to the same proportion of the **Defence Costs** as the **Underwriters'** Limit of Liability bears to the total amount of compensation paid to dispose of the claim.

Section 2:

Automatic Extensions

The following Coverage Extensions are included automatically but subject to a limit or sublimit and/or excess or specific excess being shown in Item 5 of the Schedule, and, provided always that each extension is read in conjunction with Section 1.

In the absence of any limit, sublimit and/or excess, specific excess, being shown in Item 5 of the Schedule, this denotes the Extension is not included.

2.1. Advertising Liability

The **Underwriters** will indemnify the **Insured** for all amounts that the **Insured** is legally liable to pay in respect of claims for **Advertising Injury** happening during the **Policy Period** in connection with the **Insured's Business**.

Provided that the **Underwriters** will not indemnify the **Insured** for any claim in respect of or alleging **Advertising Injury** arising out of:

- a.** statements made by the **Insured** or at the **Insured's** direction with knowledge that such statements are false;
- b.** the failure of performance of a contract, except for claims for unauthorised appropriation of advertising ideas contrary to an implied contract;
- c.** any incorrect description of the **Insured's Products** or services;
- d.** any mistake in the advertised price of a service undertaken by the **Insured's Products** or service;
- e.** the failure of the **Insured's Products** or services to conform with advertised performance, quality, fitness or durability;
- f.** liability incurred by the **Insured** if the **Insured's Business** is advertising, broadcasting, publishing or telecasting.

Definitions

"**Advertising Injury**" means one or more of the following:

- a.** defamation arising out of defamatory statements or material made during the **Policy Period**;
- b.** infringement of copyright, title or slogan;
- c.** unfair competition, misappropriation of advertising ideas or style of doing business;



- d. invasion of privacy committed or alleged to have been committed in any Advertisement and arising out of any advertising activities, provided that 'Advertisement' means any manner of communication to the public including by way of any form of print media, exhibit, publication, telecommunication, radio or television broadcast, e-mail, digital media, application, social media or performance conducted by the **Insured** or on the **Insured's** behalf, in the course of carrying out the **Insured's Business**.

Provided that:

- 1. An Excess of \$1,000 shall apply; and
- 2. A sub-limit of \$1,000,000 in the aggregate for any one **Policy Period** shall apply.

2.2. Business Advice or Service

Notwithstanding Exclusion 5.17 (Professional Advice), the **Underwriters** will indemnify the **Insured** in respect of **Personal Injury** or **Property Damage** arising out of:

- a. The rendering of or failure to render professional medical advice by **Medical Persons** employed by the **Insured** to provide emergency first aid and routine medical services on the **Insured's** premises.

Provided that:

- i. the **Insured** is not operating an ambulance service, hospital, healthcare clinic, long term care facility or other healthcare facility or institution; and
 - ii. such medical advice is not given for a fee; or
- b. The rendering of advice or service by the **Insured**, or error or omission connected therewith, provided that such advice or service is not given for a fee.

2.3. Care, Custody or Control

Notwithstanding Exclusion 5.18 (b) (Property in the Insured's Care, Custody or Control) and Exclusion 5.10 (Faulty Workmanship), the **Underwriters** will indemnify the **Insured** in respect of **Property Damage** to property, including employees' property, where the liability arises while the property is in the care, custody or control of the **Insured**. This Extension is subject to the Care, Custody or Control Sublimit of Liability set forth in Item 5 of the Schedule and to the Excess set forth in Item 5 of the Schedule.

2.4. Forest and Rural Fires Act

The **Underwriters** will indemnify the **Insured** in respect of liability under the Forest and Rural Fires Act 1977 for:

- a. losses incurred during the **Policy Period** recoverable under Section 43 of such Act; and
- b. levies imposed by a Fire Authority and apportioned to the **Insured** during the **Policy Period** under Sections 46 and 46A of such Act.

This Extension is subject to the Forest and Rural Fires Sublimit of Liability set forth in Item 5 of the Schedule and to the Excess set forth in Item 5 of the Schedule.

This Extension will apply regardless of whether or not **Property Damage** has occurred.

2.5. Hazardous Substances Emergency

The **Underwriters** will indemnify the **Insured** for all amounts the **Insured** is legally liable to pay pursuant to section 47C (2) and (3) of the Fire Service Act 1975, in respect of attendance at a hazardous substances emergency which occurs within the **Territorial Limits** during the **Policy Period** and is caused by an **Occurrence** in connection with the **Insured's Business**. This Extension is subject to the Sublimit of Liability and the Specific Excess in Item 5 of the Schedule.

2.6. Hot Work

The **Underwriters** will indemnify the **Insured** in respect of **Personal Injury** or **Property Damage** caused by or arising directly indirectly out of or in connection with any **Hot Work**; provided all of the following precautions are complied with on each occasion that **Hot Work** is being carried out:

- i. the area of the **Hot Work** will be cleared of combustible material for a safe distance from or beneath the place where such **Hot Work** is being carried out. A safe distance will be not less than ten metres. Where such precautions are impracticable such material will be covered with fireproof blankets or similar protective equipment. Combustible parts of premises will be similarly protected; and
- ii. hose reels or fire extinguishers of a type and capacity suitable for the combustible material and the premises will be kept adjacent to the area of the work and available for immediate use; and
- iii. equipment will be lit or switched on for as short a time as possible before use and extinguished immediately after use; and
- iv. lighted or heated **Hot Work** equipment will not be left unattended; and
- v. a thorough examination for any signs of combustion will be made within or below the area in which work has been undertaken immediately then an hour after the termination of each period of **Hot Work**; and
- vi. before applying heat to metal built into or projecting through walls, floors or ceilings an examination will be made to ensure that the other end of the metal is not in hazardous proximity to combustible material.

In addition to the above precautions, any specific site **Hot Work** permit is to be complied with.

For the purposes of this Extension, **Hot Work** means any work involving:

- i. the application of heat, a naked flame or open heat source or work that produces sparks; or
- ii. the use of gas, welding, arc welding, oxyacetylene welding equipment including cutting with such equipment; or
- iii. cutting involving the use of rotary disc or grinding equipment; or
- iv. soldering, brazing or use of heat guns.

An Excess of \$5,000 applies to each and every claim.



2.7. Landlord's Liability

The **Underwriters** will indemnify the **Insured** in respect of **Personal Injury** or **Property Damage** in connection with the **Insured's** legal ownership, but not physical occupation, of any premises.

2.8. Product Withdrawal Costs

Notwithstanding Exclusion 5.19 (Recall of Products), the **Underwriters** will indemnify the **Insured** for 80% of those costs incurred with the prior approval of the **Underwriters** in the withdrawal or recall from use in New Zealand of the **Insured's Products** that have the same defect as other **Insured's Products** that have already given rise to a claim in respect of which the **Insured** is entitled to indemnity under this Coverage Section.

Provided that this Extension is subject to:

- a. the Product Withdrawal Costs Sublimit of Liability set forth in Item 5 of the Schedule in respect of all such withdrawals or recalls; and
- b. the Excess set forth in Item 5 of the Schedule.

2.9. Punitive or Exemplary Damages

Notwithstanding Exclusion 5.12 (Fines and Penalties), the **Underwriters** will indemnify the **Insured** for all sums that the **Insured** shall become legally liable to pay by way of punitive or exemplary damages awarded for **Personal Injury** (for which coverage is determined to exist under the Injury Prevention, Rehabilitation, and Compensation Act 2001 or any amending or replacing legislation) where such **Personal Injury** happened in New Zealand during the **Policy Period** and was caused by an **Occurrence** in connection with the **Insured's Business**.

Provided that:

- a. any liability arising from trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse is excluded;
- b. any punitive or exemplary damages awarded by any court outside New Zealand are excluded;
- c. the Punitive or Exemplary Damages Sublimit of Liability set forth in Item 5 of the Schedule shall apply to this Extension; and
- d. **Defence Costs** related to punitive or exemplary damages will not reduce or exhaust the sublimit in 2.9 (c) above, but they are subject to the Punitive or Exemplary Damages – **Defence Costs** Sublimit of Liability set forth in Item 5 of the Schedule; and
- e. the Excess set forth in Item 5 of the Schedule shall apply to this Extension.

2.10. Rectification of Faulty Workmanship

The **Underwriters** will indemnify the **Insured** for amounts they become legally liable to pay for **Rectification of Faulty Workmanship**.

Provided that:

- i. **Rectification of Faulty Workmanship** occurs within the **Territorial Limits**; and
- ii. **Rectification of Faulty Workmanship** happens during the **Policy Period**; and
- iii. **Rectification of Faulty Workmanship** is in connection with the **Insured's Business**.
- iv. A Limit of Liability of \$100,000 will apply in respect of all **Rectification of Faulty Workmanship** claims during any one **Policy Period**
- v. an Excess of \$1,000 shall apply to each and every claim
- vi. the **Underwriters** shall not indemnify the **Insured** in respect of:
 - a. any liability arising out of professional advice or services provided by the **Insured** or any error or omission connected therewith; or
 - b. any liability for the costs of remedying any defect in design, part or specification; or
 - c. any liability arising out of the **Insured**
 - i. constructing new buildings where the **Insureds Products** form part of the **Fabric** of the building including its services; and/or
 - ii. undertaking concreting activities where the **Insureds Products** include concrete, aggregates, asphalt, bitumen and or seal; or
 - d. **Rectification of Faulty Workmanship** which is required as a result of a deliberate or reckless failure to follow standard or customary trade practices.

For the purpose of this Extension:

"**Rectification of Faulty Workmanship**" means the rectifying, remedying, removal, repair, alteration, treatment or replacement of the **Insured's Products** or part thereof which have proven to be defective, harmful or fail to perform the function for which they were sold, supplied, manufactured or installed.

"**Fabric**" means the physical components of a building, including walls, roof, floors and other necessary or essential services.

Exclusion 5.7 (Damage to the Insureds Products) and 5.11 (Faulty Workmanship) do not apply

2.11. Tenant's Liability

Notwithstanding Exclusion 5.18 (a) (Property in the **Insured's** Care, Custody or Control), the **Underwriters** will indemnify the **Insured** in respect of **Property Damage** to premises (including landlord's fixtures and fittings) leased or rented, but not owned, by the **Insured**.

2.12. Underground Services

The **Underwriters** will indemnify the **Insured** in respect of **Personal Injury** or **Property Damage** in New Zealand to existing underground services, cables, pipes or equipment.



Provided that:

- a. prior to the commencement of any work, the **Insured** enquired of the relevant authority, corporation or company as to the location of such services; and
- b. the **Insured** took all reasonable precautions to prevent **Personal Injury** or **Property Damage**; and
- c. any liability arising out of work carried out more than five metres below ground level is excluded; and
- d. any liability arising out of work carried out underground by directional drilling or by a thrusting or boring machine is excluded; and
- e. the Excess set forth in Item 5 of the Schedule shall apply to this Extension.

2.13. Vehicle and Watercraft Service/Repair

Notwithstanding Exclusion 5.18 (b) (Property in the **Insured's** Care, Custody or Control), and Exclusion 5.21 (**Vehicles**), the **Underwriters** will indemnify the **Insured** in respect of **Personal Injury** or **Property Damage** in New Zealand arising from the service, repair, modification by the **Insured** of any **Vehicle**, and/or **Watercraft** capable of being transported by trailer and not exceeding eight metres in length, and/or its internal combustion engine, accessories or fittings.

Provided that:

- a. the **Vehicle** or **Watercraft** is not owned, hired, leased, or rented by the **Insured**, and is in the care custody or control of the **Insured** for the purposes of the service, repair, modification or installation; and
- b. the cost of rectifying defective workmanship in respect of the actual part or parts worked on is excluded; and
- c. liability in respect of **Watercraft** during testing on water is excluded; and
- d. the **Vehicle** and **Watercraft** Service/Repair Sublimit of Liability set forth in Item 5 of the Schedule shall apply to this Extension; and
- e. the Excess set forth in Item 5 of the Schedule shall apply to this Extension.

2.14. Vibration and Removal of Support

The **Underwriters** will indemnify the **Insured** in respect of **Personal Injury** or **Property Damage** in New Zealand arising from vibration, or removing, weakening or interfering with, the support of land or buildings.

Provided that:

- a. the land or buildings are not owned or occupied by the **Insured**; and
- b. the **Personal Injury** or **Property Damage** arises from the actions of the **Insured**; and
- c. the Vibration and Removal of Support Sublimit of Liability set forth in Item 5 of the Schedule shall apply to this Extension; and
- d. the Excess set forth in Item 5 of the Schedule shall apply to this Extension.

2.15. Visits to any Non-Territorial Country

Notwithstanding Exclusion 5.14 (Legal Jurisdiction) and Exclusion 5.20 (Territorial Limits), the **Underwriters** will indemnify the **Insured** in respect of **Personal Injury** or **Property Damage** occurring in any **Non-Territorial Country** arising solely out of the actions of non-resident directors, executives or salespersons temporarily visiting any **Non-Territorial Country** in the course of the **Insured's Business**.

Provided that:

- a. the **Insured** has no premises, branch or subsidiary operation in the **Non-Territorial Country**; and
- b. any work performed in, on or in connection with, the manufacture, assembly, repair, servicing, maintenance, amendment, alteration or enhancement to any of the **Insured's Products** in the **Non-Territorial Country** is excluded; and
- c. the ownership, possession, control, or maintenance or use of any **Vehicle** or **Watercraft** is excluded.

In addition, in respect of **Personal Injury** or **Property Damage** occurring in the United States of America or Canada (including those territories to which the legal jurisdiction of the United States of America or Canada extends or applies) the following additional provisions shall apply to this Extension:

- i. the Visits to any **Non-Territorial Country** Sublimit of Liability set forth in Item 5 of the Schedule; and
- ii. **Defence Costs** related to **Personal Injury** or **Property Damage** occurring in the United States of America or Canada (including those territories to which the legal jurisdiction of the United States of America or Canada extends or applies) will not reduce or exhaust the sub-limit in 2.15 (i) above, but they are subject to a separate Visits to any **Non-Territorial Country** – Defence Costs Sublimit of Liability set forth in Item 5 of the Schedule.

Section 3:

Definitions

- 3.1. "**Aircraft**" means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.
- 3.2. "**Company**" means:
 - a. the **Named Insured**; and
 - b. any **Subsidiary**.
- 3.3. "**Defence Costs**" means legal costs, disbursements, witnesses' costs, assessors' or adjusters' costs or experts' costs that relate directly to the investigation, defence, compromise or handling of any claim, incurred by the **Underwriters**, or by the **Insured** with the **Underwriters'** prior written consent, and also includes expenses incurred by the **Insured** for first aid to others at the time of any **Personal Injury** for which the **Insured** is entitled to compensation.



"Defence Costs" does not include the **Insured's** time assisting the **Underwriters** or appointed solicitors with the conduct of any claim.

3.4. "Insured" means:

- a.** the **Company**;
- b.** any director, executive officer, employee or partner of the **Company**, but only whilst acting within the scope of their duties in such capacity;
- c.** any principal in respect of the vicarious liability of such principal arising out of the performance by the **Company** of any contract or agreement for the performance of work for such principal to the extent required by such contract or agreement, but limited to the coverage provided by this Policy; and
- d.** any office bearer or member of social or sporting clubs or welfare organisations formed with the consent of the **Insured**, other than an **Insured** designated in (c) above, in respect of claims arising from duties connected with activities of any such club or organisation.

3.5. "Insured's Business" means the business and undertakings of the **Insured, as stated in Item 1C of the Schedule, including any change in the activities undertaken by the **Insured** provided that the **Insured** has given prior written notice of such activities and has received confirmation of coverage from the **Underwriters**.**

3.6. "Insured's Products" means:

- a.** anything (after it has ceased to be in the possession of or under the control of the **Insured**) manufactured, constructed, erected, assembled, installed, repaired, serviced, grown, treated, sold, supplied or distributed by the **Insured** (including any container other than a vehicle); and
- b.** including, for the avoidance of doubt, buildings constructed or whose construction is supervised or managed by the **Insured**.

3.7. "Medical Persons" means qualified medical practitioners, dentists, nurses and first-aid attendants.

3.8. "Non-Territorial Country" means any country, territory or jurisdiction other than the **Territorial Limits.**

3.9. "Occurrence" means an event, including continuous or repeated exposure to substantially the same general conditions that result in **Personal Injury or **Property Damage**.**

3.10. "Personal Injury" means:

- a.** bodily injury, sickness or disease sustained by a person including death resulting from any of these at any time; or
- b.** disability, shock, fright, mental anguish and mental injury including such injury arising from the following by the **Insured**:
 - i** false arrest, false imprisonment, wrongful eviction and wrongful detention; or
 - ii** invasion of rights of privacy; or
 - iii** assault and battery not committed by or at the direction of the **Insured** unless committed for the **purpose of preventing or eliminating danger to persons or property**.

3.11. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fibres, mould, spores, fungus, fumes, acids, alkalis, chemicals and waste. Waste includes, but is not limited to, materials to be recycled, reconditioned or reclaimed.

3.12. "Property Damage" means:

- a.** physical damage to, or destruction, or loss of, tangible property including the loss of use thereof at any time resulting therefrom; or
- b.** loss of use of tangible property, which has not been physically damaged or destroyed, provided such loss of use is caused by an **Occurrence**. All such loss of use shall be deemed to occur at the time of the **Occurrence** that caused it.

For the purposes of this insurance, electronic data is not tangible property. As used in this definition, "electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

3.13. "Territorial Limits" means anywhere in the world, except the United States of America, Canada and any possession or territory of either country. However, solely with respect to the activities of any **Insured travelling executives or sales people, "Territorial Limits" shall include the United States of America, Canada and any possession or territory of either country.**

3.14. "Tool of Trade" means any **Vehicle which has attached as an integral part of such **Vehicle** any equipment for mechanical digging, scraping, grading, slashing, mowing, drilling, lifting or levelling, whilst such equipment is being used for the purposes for which it was designed.**

3.15. "Vehicle" means any type of machine on wheels or on caterpillar tracks made or intended to be propelled other than by manual or animal power.

3.16. "Watercraft" means any vessel, hovercraft, craft or thing made or intended to float on or in or travel on or through the water.

Section 4:

Limits of Liability

4.1. The **Underwriters' maximum liability in respect of any one **Occurrence**, irrespective of the number of claims arising therefrom, shall not exceed the Limit of Liability stated in Item 3A of the Schedule. 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**.**

4.2. The **Underwriters' total aggregate liability during any one Policy Period for all claims arising out of the **Insured's Products** shall not exceed the Limit of Liability stated in Item 3A of the Schedule.**



Section 5:

Exclusions

The **Underwriters** shall not be liable in respect of:

5.1 Aircraft and Watercraft

Personal Injury or **Property Damage** directly or indirectly arising out of the ownership, possession, control, service and repair, maintenance, operation, loading, unloading or use by the **Insured** of:

- a. any **Aircraft**; or
- b. any **Watercraft** exceeding eight metres in length.

5.2 Aircraft Parts

Personal Injury or **Property Damage** directly or indirectly arising out of the **Insured's** Products that are used with the **Insured's** knowledge in any **Aircraft** or any aerial device.

5.3 Asbestos

Personal Injury or **Property Damage** directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

5.4 Assault and Battery

Personal Injury or **Property Damage** caused by or arising directly or indirectly out of or in connection with assault and battery committed by the **Insured** or at the **Insured's** direction unless reasonably necessary for the protection of persons or property.

5.5 Contractual Liability

Liability assumed by the **Insured** under any contract or agreement except to the extent that such liability would have been implied by law. This includes a contractual obligation that excludes or limits the **Insured's** rights of recovery from a third party.

This exclusion shall not apply to:

- a. those written contracts designated in the Schedule;
- b. liability assumed by the **Insured** under a warranty of fitness or quality in respect of the **Insured's Products**, subject always to Exclusions 5.10 (Faulty Workmanship) and 5.14 (a) (Loss of Use); or
- c. liability assumed by the **Insured** under any lease or hire of real or personal property.

5.6 COVID-19

Personal Injury or **Property Damage** caused by an **Occurrence** in any way connected to Covid-19.

Covid-19 means

1. Coronavirus disease (COVID-19);
2. Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
3. Any mutation or variation of SARS-CoV-2;
4. Any fear or threat of 1, 2 or 3 above.

5.7 Damage to Insured's Products

Property Damage to the **Insured's Products** if such damage is attributable to any defect therein or the harmful nature or unsuitability thereof.

5.8 Defamation

Personal Injury directly or indirectly arising out of the publication or utterance of any defamatory or disparaging material.

5.9 Employer's Liability

- a. **Personal Injury** to any employee of the **Insured** arising out of or in the course of employment of such person in the **Insured's Business**.
- b. Any obligation for which the **Insured** may be held liable under the Injury Prevention, Rehabilitation, and Compensation Act 2001, or any similar amending or replacement legislation.
- c. Any liability in respect of which the **Insured** is entitled to seek compensation under any policy of insurance required to be taken out pursuant to any legislation relating to workers' compensation whether or not the **Insured** has effected such a policy.

5.10 Expected or Intended

Personal Injury or **Property Damage** expected or intended from the standpoint of the **Insured**; provided, however, that this exclusion does not apply to:

- a. **Personal Injury** or **Property Damage** resulting from the use of reasonable force to protect persons or property; or
- b. liability of the **Insured** for compensation as the result of an act committed by an employee which results in **Personal Injury** or **Property Damage** expected or intended from the standpoint of the employee, provided such act was not committed at the direction of the **Insured**.

5.11 Faulty Workmanship

The cost of performing, completing, correcting or improving any work undertaken by the **Insured**.



5.12 Fines and Penalties

Aggravated, punitive or exemplary damages, fines, penalties, performance warranties or liquidated damages.

5.13 Information Technology Hazards

a. Personal Injury or Property Damage caused by or arising, directly or indirectly, out of, or in any way involving the **Insured's "Internet Operations"**.

"Internet Operations" means:

- i** use of electronic mail systems by the **Insured's** employees, including part-time and temporary staff and others within the **Insured's** organisation;
- ii** access through the **Insured's** network to the worldwide web or a public internet site by the **Insured's** employees, including part-time and temporary staff and others within the **Insured's** organisation;
- iii** access to the **Insured's** intranet (meaning internal company information and computing resources) which is made available through the world wide web for the **Insured's** customers or others outside the **Insured's** organisation; and
- iv** the operation and maintenance of the **Insured's** web site.

Nothing in this exclusion shall be construed to extend this Policy to any liability which would not have been covered in the absence of this exclusion.

- b.** damage to, loss of, or loss of control over electronic data or software and their storage media arising directly or indirectly out of or caused by, through or in connection with:
 - i** the use of any computer hardware or software;
 - ii** the provision of computer or telecommunication services by the **Insured** or on the **Insured's** behalf; or
 - iii** the use of any computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus.

5.14 Legal Jurisdiction

- a.** any legal action or litigation first brought in a court outside the **Territorial Limits**; or
- b.** any legal action or litigation brought in a court within the **Territorial Limits** to enforce a judgment handed down in a court outside the **Territorial Limits** whether by way of a reciprocal agreement or otherwise; or
- c.** any legal action to which the proper law to be applied to the issue of any of them in that action is that of a country outside the **Territorial Limits**.

5.15 Loss of Use

Loss of use of tangible property which has not been physically damaged or destroyed resulting from:

- a.** a delay in or lack of performance by or on behalf of the **Insured** of any contract or agreement; or
- b.** the failure of the **Insured's Products** to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the **Insured**; however, this Exclusion 5.14 (b) does not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of the **Insured's Products** after such Products have been put to use by any person or entity other than the **Insured**.

5.16 Pollution

Personal Injury or Property Damage directly or indirectly caused by or arising out of the discharge, dispersal, release or escape of **Pollutants** into or upon land, the atmosphere or any watercourse or body of water. In addition, the **Underwriters** shall not be liable to pay any expenses incurred in the prevention, removal or clean-up of such **Pollutants**; provided, however, that, except with respect to the United States of America or Canada (including those territories to which the legal jurisdiction of the United States of America or Canada extends or applies), this exclusion shall not apply if such discharge, dispersal, release or escape is caused by a sudden, identifiable, unexpected and unintended happening and takes place in its entirety at a specific time and place.

5.17 Professional Advice

The rendering of or failure to render advice or service by the **Insured** or any error or omission connected therewith.

5.18 Property in the Insured's Care, Custody or Control

Property Damage to:

- a.** real property, or property owned, hired, leased or rented by or to the **Insured**; or
- b.** property in the physical or legal control of the **Insured**.

5.19 Recall of Products

Damages, costs or refunds claimed for the recall, withdrawal, removal, inspection, repair, modification, replacement or loss of use of the **Insured's Products**, or of any property of which such Products form a part, or work undertaken by or for the **Insured**, if such Products or property are withdrawn from the market or from use, or such work is required because of any defect or deficiency therein or because of any Government or statutory ban, order or notice.

5.20 Territorial Limits

Personal Injury or Property Damage:

- a.** occurring in any **Non-Territorial Country**;



- b. caused by or arising out of the **Insured's Products** that have been knowingly exported by the **Insured** or their agents to any **Non-Territorial Country**;
- c. where claims are made upon the **Insured** outside the **Territorial Limits** in any country where the **Insured** is represented by a branch or company or firm or individual holding the **Insured's** power of attorney; or
- d. where claims arise out of any contract entered into by the **Insured** under the terms of which work is to be performed outside the **Territorial Limits**.

5.21 Vehicles

Subject to Coverage Extension 2.2 (Care, Custody or Control), **Personal Injury** or **Property Damage** caused by or arising out of the ownership, possession, use of or operation by the **Insured** of any **Vehicle** which is registered or in respect of which insurance is required by virtue of any legislation.

Provided, however, that this exclusion shall not apply to the **Insured's** liability for **Personal Injury** or **Property Damage** arising from:

- a. the actual, loading, unloading, delivery or collection of goods to or from any **Vehicle**; or
- b. the use of any Tool of Trade either on any site where the **Insured** is undertaking work or at the **Insured's** premises.

The proviso (b) above does not extend cover to the use of any **Tool of Trade**, whilst in transit or whilst being used for transport or haulage.

5.22 Weathertightness

Personal Injury or **Property Damage** which is directly or indirectly caused by or contributed to or arises from:

- a. moisture or water or the penetration of external moisture or water (save where the **Personal Injury** or **Property Damage** is caused by a sudden, identifiable, unexpected and unintended happening and takes place in its entirety at a specific time and place); or
- b. the action or effects of mould, fungi, mildew, rot, decay, micro-organisms, bacteria, protozoa or any similar or like forms.

In addition the **Underwriters** shall not be liable for any costs or expenses arising out of 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, micro-organisms, bacteria, protozoa or any similar or like forms.

Section 6

Notice

- 6.1 Irrespective of the quantum, the **Insured** shall give the **Underwriters** immediate notice in writing of every **Occurrence**, claim, summons, proceedings, impending prosecution or inquest and all information in relation thereto in respect of which a claim may result under this Policy, irrespective of whether the **Insured** believes that no claim will proceed or that any claim would be groundless.
- 6.2 The **Insured** shall, as a condition precedent to the obligations of the **Underwriters** under this Policy, give notice of any matter described in Section 6.1 above at the physical posting address or the e-mail address indicated in the Schedule. All other notices to the **Underwriters** under this Policy shall be given to the postal address indicated in the Schedule.
- 6.3 As a condition precedent to the right to be indemnified under this Policy, the **Insured** must provide to the **Underwriters** (or the **Underwriters'** appointed agent) promptly, and in any event within fourteen (14) days of any request made by the **Underwriters** (or the **Underwriters'** appointed agent), the full details together with any other information requested regarding any matter for which the **Insured** has requested to be indemnified. The **Insured** must also provide such cooperation and assistance as the **Underwriters** (or its legal advisers or appointed agents) may require, including but not limited to:
 - a. providing all documentation;
 - b. providing detailed comments on any claim document;
 - c. providing detailed signed statements of fact;
 - d. ensuring access to any and all information;
 - e. providing information, assistance and signed statements of fact in respect of any subrogation proceeding commenced by the **Underwriters**; and
 - f. providing all other information and assistance,

within the time period requested by the **Underwriters**.

All **Insureds** and all persons, firms and companies acting for or on the **Underwriters'** behalf shall ensure that all documents that may be relevant to any **Occurrence** or other matter for which coverage may be provided under this Policy shall not be intentionally destroyed or otherwise intentionally disposed of.

Section 7

Defence And Settlement

- 7.1 The **Underwriters** do not assume any duty to defend any claim brought against the **Insured** under this Policy. However, the **Underwriters** shall have the right, but not the duty, to fully and effectively associate with the **Insureds** in the control, investigation, defence and settlement of any claim, including but not limited to, the right to investigate, conduct settlement negotiations, and enter into the settlement of any claim that the **Underwriters** deems appropriate
- 7.2 The **Insureds** shall not admit or assume any liability, incur any **Defence Costs**, make any settlement offers, enter into any settlement agreement or stipulate to any judgments without the prior written consent of the **Underwriters** (such consent not to be unreasonably withheld or delayed). However, the **Underwriters'** consent is not required for the **Insured** to settle a claim if the total settlement amount



(including **Defence Costs**) is within the applicable Excess, provided that such settlement fully resolves the claim with respect to all **Insureds** and the **Underwriters**.

- 7.3 Each and every **Insured** shall give the **Underwriters** full cooperation and such information as the **Underwriters** may reasonably require relating to: (i) the investigation and defence of any claim; and (ii) the prosecution of any counterclaim, cross-claim or third-party claim. The failure of any insured natural person to give the **Underwriters** such cooperation and information shall not impair the rights of any other insured natural person under this Policy.
- 7.4 This Coverage Section shall cover the **Insured** only for **Loss**. In the event of a claim which involves covered and non-covered matters or covered and non-covered parties, the **Insured** and the **Underwriters** agree to use their best efforts to determine a fair and proper allocation of **Loss** covered under this Policy, taking into account the relative legal and financial exposures, and the relative benefits obtained by such parties.

Section 8

Adjustment of Premium

Where premium has been calculated on estimates furnished by the **Insured**, the **Insured** shall, within 30 days after the expiry of each **Policy Period**, furnish to the **Underwriters** such information as the **Underwriters** may require to adjust the premium for the expired **Policy Period**. Any difference in premium shall be paid by, or allowed, to the **Insured**. The **Insured** shall allow the **Underwriters** to inspect the **Insured's** records of such information.

Section 9

Inspection of Property

The **Underwriters** shall be permitted but not obligated to inspect the **Insured's** property and operations at any time. Neither the **Underwriters'** right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of, or for the benefit of, the **Insured**, or others, to determine or warrant that such property or operations are safe.

Employers Liability Insurance Policy

Employers Liability Coverage Section

The terms and conditions of this Coverage Section apply only to this Coverage Section and should be read in conjunction with the General Terms and Conditions. Where terms defined within this Coverage Section appear within the General Terms and Conditions, the definition contained herein shall apply for the purposes of determining coverage. If the terms and conditions within this Coverage section conflict with the General Terms and Conditions, the terms and conditions of this Coverage Section take priority.

In consideration of the premium charged, and subject to the General Terms and Conditions and this Coverage Section, the **Underwriters** and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

Section 1:

Insuring Agreement

- 1.1 The **Underwriters** shall indemnify the **Insured** for the **Damages** the **Insured** becomes legally liable to pay for a **Claim** by an **Employee**:
- a. for **Personal Injury** sustained by such **Employee** in New Zealand and that arose out of, and in the course of, such **Employee's** employment in the **Insured's Business**; and
 - b. for which the **Employee** is not covered under the Injury Prevention, Rehabilitation, and Compensation Act 2001, provided always that:
 - i the **Claim** is first made during the **Policy Period**;
 - ii the **Claim** is reported to the **Underwriters** in accordance with Section 5 of this Coverage Section; and
 - iii the **Personal Injury** arose out of an event, circumstance or accident that occurred on or after the **Retroactive Date** and before the expiry of the **Policy Period**.
- 1.2 The **Underwriters** shall pay the **Defence Costs** arising out of any **Claim** covered by this Policy.

Section 2.

Automatic Extensions

2.1 Continuous Cover

Notwithstanding Exclusion 4.11 (a) and (c) (Known **Claims** and Circumstances), this Coverage Section extends cover for any **Claim** arising out of, based upon or attributable to a circumstance which could have been, but was not, notified by the **Insured** under any prior policy issued by the **Underwriters** and which is first notified to the **Underwriters** during the **Policy Period**, provided always that:

- a. the failure by the **Insured** to notify such circumstance under such prior policy was not fraudulent; and
- b. the **Underwriters** have the discretion to apply either the terms and conditions of this Policy or the terms and conditions of the prior policy that was in effect when the circumstance first arose; and
- c. the **Insured's** entitlement to indemnity will be reduced by the extent of any prejudice to the **Underwriters** as a result of the **Insured's** failure to notify such circumstance under such prior policy.



2.2 Compensation for Attendance

The **Underwriters** will indemnify the **Insured** for the cost of attendance by any **Employee**, director, principal, partner or member of the **Company** at a formal court hearing or formal interview conducted in connection with a **Claim** notified to the **Underwriters** where such attendance is considered by the **Underwriters** to be necessary or beneficial to reduce liability which may result in a payment under this Policy, provided that:

- a. the **Underwriters** have given prior written consent to such attendance, such consent to be obtained from the **Underwriters** as a condition precedent to any entitlement to indemnity;
- b. indemnity for such costs shall not exceed NZD 500 per partner, director, principal or member per day and NZD 250 per **Employee** per day; and
- c. the total indemnity payable under this extension shall be subject to a Compensation for Attendance Sublimit of Liability in the set forth in Item 5 of the Schedule.

No Excess amount is applicable to this Automatic Extension 2.2.

Section 3:

Definitions

3.1 "**Claim**" means any:

- a. judicial, administrative or regulatory proceeding instituted against, and served upon, the **Insured**;
- b. threat or intimation that a judicial, administrative or regulatory proceeding will be instituted against the **Insured**; or
- c. circumstance that an **Insured** may reasonably believe may give rise to a **Claim** against the **Insured**.

3.2 "**Company**" means:

- a. the **Named Insured**; and
- b. any **Subsidiary**;

provided, however, that any such entity shall be a "**Company**" only if domiciled in the **Territorial Limits**.

3.3 "**Damages**" means monetary compensation ordered to be paid or agreed to be paid pursuant to a judgment or settlement of any common law action brought, or capable of being brought, in a New Zealand court. "**Damages**" includes **Punitive and Exemplary Damages**.

"**Damages**" does not include any compensation payable pursuant to any remedy, relief or penalty provided pursuant to any New Zealand statute, whether by way of damages, fine, reparation or other order.

3.4 "**Defence Costs**" means the reasonable fees, costs, charges or expenses (including lawyers' fees and experts' fees) incurred by the **Insured** with the prior written consent of the **Underwriters** (such consent not to be unreasonably withheld or delayed) and resulting from:

- a. the handling, investigation, defence, compromise or appeal of a **Claim**; and
- b. an application by the **Insured** to the Court to determine whether a **Personal Injury** is properly the subject of coverage under the Injury Prevention, Rehabilitation, and Compensation Act 2001, or any amendment thereto;

"**Defence Costs**" also means any amount required to be paid by the **Insured** as security for costs in any legal proceeding covered by this Policy.

"**Defence Costs**" does not include any charges for time spent by directors, officers, partners or employees of the **Insured** or reimbursement of any remuneration for such people.

3.5 "**Employee**" means any person who is employed by the **Insured** in connection with the **Insured's Business** and in respect of whose remuneration the **Insured** deducts pay-as-you-earn (PAYE) tax at source.

3.6 "**Insured**" means any **Company** and any directors thereof.

3.7 "**Insured's Business**" means the business and undertakings of the **Insured**, as stated in Item 1C of the Schedule, including any change in the activities undertaken by the **Insured** provided that the **Insured** has given prior written notice of such activities and has received confirmation of coverage from the **Underwriters**.

3.8 "**Personal Injury**" means bodily injury, sickness, disease or infection, including death resulting therefrom, and shall include disability, shock, fright, mental anguish or mental injury if arising therefrom.

3.9 "**Punitive and Exemplary Damages**" means monies ordered to be paid as punitive or exemplary damages pursuant to a judgment of a New Zealand court in respect of a common law action brought by an **Employee** against the **Insured** in relation to **Personal Injury**.

Section 4:

Exclusions

This Coverage Section shall not cover any **Damages** or **Defence Costs** in connection with any **Claim**:

4.1 Asbestos

arising directly or indirectly out of, based upon or attributable to:

- a. the actual, alleged or threatened presence, discharge, dispersal, release, migration or escape of asbestos; or



- b. any direction, request or effort to: (i) test for, monitor, clean up, remove, contain, treat, detoxify or neutralise asbestos; or (ii) respond to or assess the effects of asbestos.

4.2 Defamation

for liability based on or in any way arising out of a cause of action based on defamation or injurious falsehood;

4.3 Dishonesty and Fraud

arising directly or indirectly out of, based upon or attributable to any dishonest, criminal or fraudulent act by any **Insured** or by any officer in control of the **Insured**;

4.4 Health and Safety in Employment Act

as a result of an **Employee** sustaining **Personal Injury** that arose out of the failure by the **Insured** to comply with any improvement, prohibition or suspension notice issued to the **Insured** or its **Employees** under the Health and Safety at Work Act 2015 or any amending or replacing legislation;

4.5 Intentional Torts

based on or in any way arising out of a cause of action alleging intentional wrongdoing or conscious recklessness on the part of the **Insured**, including (but not limited to) causes of action alleging intentional infliction of harm, trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse;

4.6 Jurisdictional Limits

arising directly or indirectly out of, based upon or attributable to any legal proceeding brought in any country, territory or jurisdiction outside the **Territorial Limits** or any legal proceeding brought to enforce a judgment obtained in any such country, territory or jurisdiction.

4.7 Known Claims and Circumstances

- a. made against, or intimated to, the **Insured** prior to the commencement of the **Policy Period**; or
- b. notified under any previous policy; or
- c. arising out of or connected with any facts or circumstances that:
 - i the **Insured** was aware of prior to commencement of the **Policy Period**; and
 - ii a reasonable person in the position of the **Insured** would have considered may give rise to a **Claim**.

4.8 Other Activities

made as a result of the **Insured** directing an **Employee** to undertake activities otherwise than in the course of, or in connection with, the usual activities of the **Insured's Business**;

4.9 Fines, Wages and Contractual Obligations

- a. for fines, penalties, reparation, court costs, prosecution witness expenses or solicitors' costs ordered to be paid by the **Insured** upon conviction of an offence;
- b. for unpaid wages or other benefits due to any **Employee**; or
- c. for any contractual obligation in the nature of a performance warranty or claim for liquidated damages.

Section 5 :

Notice

- 5.1 Irrespective of the quantum, the **Insured** must give the **Underwriters** immediate notice in writing of:
- a. any **Claim** made against the **Insured**; or
 - b. the receipt of notice from, or information as to any intention by any party, to make a **Claim** against them; or
 - c. any circumstance that a reasonable insured in the position of the **Insured** would have considered may give rise to a **Claim**. Where notice of such circumstance is given to the **Underwriters** by the **Insured**, any **Claim** that may subsequently be made shall be deemed to be a **Claim** made against the **Insured** during the **Policy Period**;
 - d. provided that in order to qualify as a **Claim** capable of being covered by this Policy, the **Insured's** notice must:
 - i relate to a **Claim** that occurred during the **Policy Period**; and
 - ii be given during the **Policy Period** or within thirty (30) days after its expiry.
- 5.2 The **Insured** shall, as a condition precedent to the obligations of the **Underwriters** under this Policy, give notice of any matter described in Section 5.1 above at the physical posting address or the e-mail address indicated in the Schedule. All other notices to the **Underwriters** under this Policy shall be given to the postal address indicated in the Schedule.
- 5.3 As a condition precedent to the right to be indemnified under this Policy, the **Insured** must provide to the **Underwriters** (or the **Underwriters'** appointed agent) promptly, and in any event within fourteen (14) days of any request made by the **Underwriters** (or the **Underwriters'** appointed agent), the full details together with any other information requested regarding any matter for which the **Insured** has requested to be indemnified. The **Insured** must also provide such cooperation and assistance as the **Underwriters** (or its legal advisers or appointed agents) may require, including but not limited to:
- a. providing all documentation;



- b. providing detailed comments on any claim document;
 - c. providing detailed signed statements of fact;
 - d. ensuring access to any and all information;
 - e. providing information, assistance and signed statements of fact in respect of any subrogation proceeding commenced by the **Underwriters**; and
 - f. providing all other information and assistance,
- within the time period requested by the **Underwriters**.

All **Insureds** and all persons, firms and companies acting for or on the **Insureds'** behalf shall ensure that all documents that may be relevant to any **Claim** or other matter for which coverage may be provided under this Policy shall not be intentionally destroyed or otherwise intentionally disposed of.

Section 6 :

Defence and Settlement

- 6.1 The **Underwriters** do not assume any duty to defend any **Claim** under this Policy. However, the **Underwriters** shall have the right, but not the duty, to fully and effectively associate with the **Insureds** in the control, investigation, defence and settlement of any **Claim**, including but not limited to the right to investigate, conduct settlement negotiations, and enter into the settlement of any **Claim** that the **Underwriters** deems appropriate.
- 6.2 The **Insureds** shall defend and contest any **Claim** made against them. The **Insureds** shall not admit or assume any liability, incur any **Defence Costs**, incur any costs under Section 2.2, make any settlement offers, enter into any settlement agreement or stipulate to any judgments without the prior written consent of the **Underwriters** (such consent not to be unreasonably withheld or delayed). However, the **Underwriters'** consent is not required for the **Insured** to settle a **Claim** if the total settlement (including **Defence Costs**) amount is within the applicable Excess, provided that such settlement fully resolves the **Claim** with respect to all **Insureds** and the **Underwriters**.
- 6.3 Each and every **Insured** shall give the **Underwriters** full cooperation and such information as the **Underwriters** may reasonably require relating to: (i) the defence of any **Claim**; and (ii) the prosecution of any counterclaim, cross-claim or third-party claim. The failure of any insured natural person to give the **Underwriters** such cooperation and information shall not impair the rights of any other insured natural person under this Policy.
- 6.4 This Policy shall cover the **Insured** only for covered **Damages** and **Defence Costs**. In the event of a **Claim** which involves covered and non-covered matters or covered and non-covered parties, the **Insured** and the **Underwriters** agree to use their best efforts to determine a fair and proper allocation of **Damages** and **Defence Costs** covered under this Policy, taking into account the relative legal and financial exposures, and the relative benefits obtained by such parties.

Statutory Liability Insurance Policy

Statutory Liability Coverage Section

The terms and conditions of this Coverage Section apply only to this Coverage Section and should be read in conjunction with the General Terms and Conditions. Where terms defined within this Coverage Section appear within the General Terms and Conditions, the definition contained herein shall apply for the purposes of determining coverage. If the terms and conditions within this Coverage section conflict with the General Terms and Conditions, the terms and conditions of this Coverage Section take priority.

In consideration of the premium charged, and subject to the General Terms and Conditions and this Coverage Section, the **Underwriters** and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

Section 1:

Insuring Agreement

The **Underwriters** shall pay on behalf of the **Insured** any **Fine** under any **Act of Parliament**, any **Order for Reparation under the HSE Act**, and any **Defence Costs** arising out of a **Claim** made against the **Insured**; provided always that:

- a. the **Insured** first became aware of the **Claim** during the **Policy Period**; and
- b. the **Claim** is reported to the **Underwriters** in accordance with Section 5 of this Coverage Section; and
- c. the **Event** giving rise to the **Claim** occurred on or after the **Retroactive Date**.

Section 2:

Automatic Extension

2.1. Compensation for Attendance

The **Underwriters** will indemnify the **Insured** for the cost of attendance by any employee, director, principal, partner or member of the **Company** at a formal court hearing or formal interview conducted in connection with a **Claim** notified to the **Underwriters** where such



attendance is considered by the **Underwriters** to be necessary or beneficial to reduce liability which may result in a payment under this Policy, provided that:

- a. the **Underwriters** have given prior written consent to such attendance, such consent to be obtained from the **Underwriters** as a condition precedent to any entitlement to indemnity;
- b. indemnity for such costs shall not exceed NZD 500 per partner, director, principal or member per day and NZD 250 per employee per day; and
- c. the total indemnity payable under this extension shall be subject to a Compensation for Attendance Sublimit of Liability set forth in Item 5 of the Schedule.

No Excess amount is applicable to this Automatic Extension 2.1.

Section 3:

Definitions

- 3.1. "**Act of Parliament**" means any Act of the New Zealand Parliament, including any amendments, re-enactments, replacements or Statutory Regulations of such Act.
- 3.2. "**Claim**" means any:
 - a. judicial, administrative or regulatory proceeding instituted against, and served upon, the **Insured**;
 - b. threat or intimation that a judicial, administrative or regulatory proceeding will be instituted against the **Insured**; or
 - c. circumstance that an **Insured** may reasonably believe may give rise to a **Claim** against the **Insured**.All **Claims** connected to a single **Event** shall be considered a single **Claim** for the purposes of the Policy.
- 3.3. "**Company**" means:
 - a. the **Named Insured**; and
 - b. any **Subsidiary**;provided, however, that any such entity shall be a "**Company**" only if domiciled in the **Territorial Limits**.
- 3.4. "**Defence Costs**" means the reasonable fees, costs, charges or expenses (including lawyers' fees and experts' fees) incurred by the **Insured** with the prior written consent of the **Underwriters** (such consent not to be unreasonably withheld or delayed) and resulting from the handling, investigation, defence, compromise or appeal of a **Claim**. "**Defence Costs**" does not include any compensation or benefits of any **Insured Person** or any overhead expenses of a **Company**.
- 3.5. "**Event**" means any act or omission done or omitted to be done by the **Insured** in connection with the **Insured's Business** that may result in an allegation that the **Insured** has committed an offence under an **Act of Parliament** punishable by conviction.
- 3.6. "**Fine**" means any monetary pecuniary penalty or costs for which any **Insured** is liable on conviction of any offence under an **Act of Parliament**. **Fine** does not include the cost or payment of any enforcement order, or compliance order, or any value of property subject to confiscation orders or forfeiture.
- 3.7. "**Insured**" means any **Company** and any **Insured Person**.
- 3.8. "**Insured's Business**" means the business and undertakings of the **Insured**, as stated in Item 1C of the Schedule, including any change in the activities undertaken by the **Insured** provided that the **Insured** has given prior written notice of such activities and has received confirmation of coverage from the **Underwriters**.
- 3.9. "**Insured Person**" means any person who is currently, or was at the date of any **Event**, or becomes during the **Policy Period**, a partner, director, officer or employee of the **Company**.
- 3.10. "**Order for Reparation under the HSW Act**" means an order for reparation imposed by the Court on sentencing following conviction of an **Insured** for an offence under the Health and Safety Health at Work Act 2015.

Section 4:

Exclusions

This Coverage Section shall not cover any **Fine** or **Defence Costs** in connection with any **Claim**:

4.1. Asbestos

arising directly or indirectly out of, based upon or attributable to:

- a. the actual, alleged or threatened presence, discharge, dispersal, release, migration or escape of asbestos; or
- b. any direction, request or effort to: (i) test for, monitor, clean up, remove, contain, treat, detoxify or neutralise asbestos; or (ii) respond to or assess the effects of asbestos.

4.2 Commerce Act

for any pecuniary penalty, restitution, compensation or order for payment imposed by a court upon the **Insured** pursuant to Part 6 of the Commerce Act 1986.



4.3 Compliance costs

- a. for payment of any **Fine** (or part of a **Fine**) which is a penalty imposed for failing to comply with any enforcement order or remedial order; or
- b. for the cost incurred by the **Insured** in complying with any enforcement or remedial order.

4.4 Continuing Fine

for payment of any **Fine** (or part of a **Fine**) which is imposed in relation to a period of time after the **Insured** first received notice from the prosecuting body of the intention to commence a prosecution in relation to the offence.

4.5 Damages and Non-criminal Penalties

for payment of money arising directly or indirectly from a breach of a legal obligation (including an obligation owed pursuant to an **Act of Parliament**) other than consequent upon the **Insured's** conviction for an offence. In particular, but without limitation, this Policy does not cover any proceeding seeking:

- a. damages, including punitive, aggravated, liquidated, multiple or exemplary damages;
- b. compensation for injury suffered, including physical or mental injury, humiliation, distress or damage to reputation; or
- c. penalties provided by an **Act of Parliament**.

4.6 Dishonesty and Fraud

arising directly or indirectly out of, based upon or attributable to any dishonest, criminal or fraudulent act by any **Insured** or by any officer in control of the **Insured**; however, this exclusion shall not apply to any **Insured** who has not committed or condoned the dishonest, fraudulent, criminal or malicious act or omission.

4.7 Excluded Acts

arising out of, based upon, attributable to, or in any way involving, directly or indirectly, any of the following **Acts of Parliament**:

- a. Arms Act 1983;
- b. Aviation Crimes Act 1972;
- c. Crimes Act 1961;
- d. Criminal Investigations (Bodily Samples) Act 1995;
- e. Misuse of Drugs Act 1975;
- f. Criminal Proceeds (Recovery) Act 2009;
- g. Summary Offences Act 1981; or
- h. Land Transport Act 1998.

4.8 Health and Safety in Employment Act

for any fine or infringement fee (other than Reparation) ordered to be paid by the **Company** and/or the **Insured** Persons following conviction under the Health and Safety at Work Act 2015.

4.9 Intentional or Deliberate Disregard

arising out of or based upon, attributable to, or in any way involving any **Insured's** intentional or reckless disregard of the provisions of any **Act of Parliament**.

4.10 Territorial Limits

arising out of, based upon or attributable to any legal proceeding brought in any country, territory or jurisdiction outside of the **Territorial Limits** or any legal proceeding brought to enforce a judgement obtained in any such country, territory or jurisdiction.

4.11 Known Claims and Circumstances

- a. made against, or intimated to, the **Insured** prior to the commencement of the **Policy Period**; or
- b. notified under any previous policy; or
- c. arising out of or connected with any facts or circumstances that:
 - i the **Insured** was aware of prior to commencement of the **Policy Period**; and
 - ii a reasonable person in the position of the **Insured** would have considered may give rise to a **Claim**.

4.12 Monetary Amounts Paid or Offered before Sentence

for any sum paid, or offered to be paid, by the **Insured** without the prior written consent of the **Underwriters**, to or for a complainant prior to imposition of sentence by the Court, as reparation or otherwise, following an occurrence under any **Act of Parliament**.

4.13 Other Activities

arising directly or indirectly out of activities that are not in the course of, or in connection with, the **Insured's Business**.

4.14 Reparation

for any monetary amount ordered to be paid by the **Insured** by way of an order for reparation imposed by a Court following conviction under any **Act of Parliament**, except an **Order for Reparation under the HSW Act**.



4.15 Retroactive Date

that arose directly or indirectly out of any event, circumstances or accident that occurred prior to the **Retroactive Date**.

4.16 Taxes

for the payment of any tax, including any Fine or penalty resulting from the failure to pay any tax.

4.17 Resource Management Act

for any **Fine** or infringement fee ordered to be paid by the **Company** and/or the **Insured Persons** following conviction under the Resource Management Act 1991.

Section 5 :

Notice

5.1 Irrespective of the quantum, the **Insured** must give the **Underwriters** immediate notice in writing of:

- a. any **Claim** made against them; or
- b. the receipt of notice from, or information as to any intention by any party, to make a **Claim** against them; or
- c. any circumstance that a reasonable insured in the position of the **Insured** would have considered may give rise to a **Claim**. Where notice of such circumstance is given to the **Underwriters** by the **Insured**, any **Claim** that may subsequently be made shall be deemed to be a **Claim** made against the **Insured** during the **Policy Period**;

provided that in order to qualify as a **Claim** capable of being covered by this Policy, the **Insured's** notice must:

- i relate to a **Claim** that occurred during the **Policy Period**; and
- ii be given during the **Policy Period** or within thirty (30) days after its expiry.

5.2 The **Insured** shall, as a condition precedent to the obligations of the **Underwriters** under this Policy, give notice of any matter described in Section 5.1 above at the physical posting address or the e-mail address indicated in the Schedule. All other notices to the **Underwriters** under this Policy shall be given to the postal address indicated in the Schedule.

5.3 As a condition precedent to the right to be indemnified under this Policy, the **Insured** must provide to the **Underwriters** (or the **Underwriters'** appointed agent) promptly, and in any event within fourteen (14) days of any request made by the **Underwriters** (or the **Underwriters'** appointed agent), the full details together with any other information requested regarding any matter for which the **Insured** has requested to be indemnified. The **Insured** must also provide such cooperation and assistance as the **Underwriters** (or its legal advisers or appointed agents) may require, including but not limited to:

- a. providing all documentation;
- b. providing detailed comments on any claim document;
- c. providing detailed signed statements of fact;
- d. ensuring access to any and all information;
- e. providing information, assistance and signed statements of fact in respect of any subrogation proceeding commenced by the **Underwriters**; and
- f. providing all other information and assistance,

within the time period requested by the **Underwriters**.

All **Insureds** and all persons, firms and companies acting for or on the **Insured's** behalf shall ensure that all documents that may be relevant to any **Claim** or other matter for which coverage may be provided under this Policy shall not be intentionally destroyed or otherwise intentionally disposed of.

Section 6 :

Defence And Settlement

6.1 The **Underwriters** do not assume any duty to defend any **Claim** under this Policy. However, the **Underwriters** shall have the right, but not the duty, to fully and effectively take conduct and control in the investigation, defence and settlement of any **Claim**, including but not limited to, the right to appoint legal defence counsel behalf of the **Insured**, investigate, conduct settlement negotiations, and enter into the settlement of any **Claim** that the **Underwriters** deems appropriate.

6.2 The **Insureds** shall defend and contest any **Claim** made against them. The **Insureds** shall not admit or assume any liability, incur any **Defence Costs**, incur any costs under Section 2.1, make any settlement offers, enter into any settlement agreement or stipulate to any judgments without the prior written consent of the **Underwriters** (such consent not to be unreasonably withheld or delayed). However, the **Underwriters'** consent is not required for the **Insured** to settle a **Claim** if the total settlement amount (including all **Defence Costs**) is within the applicable Excess, provided that such settlement fully resolves the **Claim** with respect to all **Insureds** and the **Underwriters**.

6.3 Each and every **Insured** shall give the **Underwriters** full cooperation and such information as the **Underwriters** may reasonably require relating to: (a) the defence of any **Claim**; and (b) the prosecution of any counterclaim, cross-claim or third-party claim. The failure of any **Insured Person** to give the **Underwriters** such cooperation and information shall not impair the rights of any other **Insured Person** under this Policy.

6.4 This Policy shall cover the **Insured** only for covered **Fines** and **Defence Costs**. In the event of a **Claim** which involves covered and non-covered matters or covered and non-covered parties, the **Insured** and the **Underwriters** agree to use their best efforts to determine a fair and proper allocation of **Fines** and **Defence Costs** covered under this Policy, taking into account the relative legal and financial exposures, and the relative benefits obtained by such parties.



General Terms and Conditions

In consideration of the premium charged, the **Underwriters** and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

Section 1:

Terms and Conditions

- 1.1 The definitions, terms and conditions set forth in these General Terms and Conditions apply to all purchased Coverage Sections of this Policy.
- 1.2 The terms in these General Terms and Conditions, which are defined in a specific Coverage Section, shall have the meaning provided for such terms in such Coverage Section for purposes of determining coverage.
- 1.3 If any of the definitions, terms or conditions in these General Terms and Conditions are inconsistent or in conflict with the definitions, terms and conditions of any specific Coverage Section, the definitions, terms and conditions of such Coverage Section shall take priority.
- 1.4 The **Insured** agrees that these General Terms and Conditions, the Policy (for each and every purchased Coverage Section together with any appendices), including the **Proposal Form** and any Endorsements, and the Schedule constitutes the entire agreement between them and the **Underwriters** or any of their agents relating to this insurance.

Section 2:

General Definitions

- 2.1 **"Insolvency"** means the appointment of an administrator, receiver, liquidator, trustee or similar official to control, supervise, manage or liquidate an entity.
- 2.2 **"Management Control"** means:
 - A controlling the composition of the board of directors of an entity;
 - B controlling more than half of the shareholder or equity voting power of an entity; or
 - C holding more than half of the issued share or equity capital of an entity.
- 2.3 **"Named Insured"** means the entity named in Item 1A of the Schedule.
- 2.4 **"Organisational Change"** means:
 - A the **Named Insured** consolidates with, merges into, or sells all or sells more than fifty percent (50%) of its assets to any other person or entity or group of persons or entities acting in concert such that the **Named Insured** is not the surviving entity;
 - B any person or entity, or group of persons or entities, acting in concert acquire more than fifty percent (50%) of the assets or voting rights of the **Named Insured**; or
 - C the Insolvency of the **Named Insured**.
- 2.5 **"Policy Period"** means the period of time from the Inception Date set forth in Item 2A of the Schedule to the Expiration Date set forth in Item 2B of the Schedule or the effective date of cancellation of this Policy.
- 2.6 **"Proposal Form"** means the written proposal form submitted by the **Insured** to the **Underwriters**, including any related documents and statements that have been submitted or provided by the **Insured** to the **Underwriters**.
- 2.7 **"Related Claims"** means all **Claims** arising out of, based upon or attributable to:
 - A the same acts, errors or omissions;
 - B a series of related acts, errors or omissions; or
 - C the same matter or transaction,shall be considered a single **Claim** for the purposes of this Policy.

All such **Claims** shall be considered first made at the earliest time that any such **Claim** is first made against the **Insured**.

This Definition 2.7 shall not apply to the General Liability Coverage Section.
- 2.8 **"Retroactive Date"** means the date set forth in Item 6 of the Schedule.

This Definition 2.8 shall not apply to the General Liability Coverage Section.
- 2.9 **"Subsidiary"** means any entity of which, prior to the Inception Date set forth in Item 2A of the Schedule, the **Company** has **Management Control**.
- 2.10 **"Territorial Limits"** means New Zealand, Micronesia, Melanesia and Polynesia.
- 2.11 **"Underwriters"** means the underwriter(s) named in Item 13 of the Schedule.

Section 3:

General Exclusions

3.1. Sanctions

The **Underwriters** shall not:

- a. be required to provide any cover; or



- b. be liable to pay any claim or provide any benefit,

under this Policy to the extent that doing so would expose the **Underwriters** to any legally enforceable sanction, prohibition, restriction, measure, ban or imposition under the laws or regulations of New Zealand, Australia, the United Kingdom, the European Union, the United States of America and/or the United Nations.

3.2. Terrorism

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto, it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this Exclusion, an act of 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.

This Exclusion also applies to loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

If the **Underwriters** allege that by reason of this Exclusion, any loss, damage, cost or expense is not covered by this insurance, the burden of proving the contrary shall be upon the **Insured**.

In the event any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

3.3. War and Civil War

Notwithstanding anything to the contrary contained herein, this Policy does not cover any loss directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of, or damage to, property by or under the order of any government or public or local authority.

3.4. Radioactive Contamination and Explosive Nuclear Assemblies

This Policy does not cover:

- a. loss or destruction of, or damage to, any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss; or
- b. any legal liability of whatsoever nature,

directly or indirectly caused by or contributed to by or arising from:

- i. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- ii. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof

Section 4:

Limits of Liability

- 4.1 The Per **Occurrence** Limit of Liability for the General Liability Coverage Section, as set forth in Item 3A of the Schedule, is the maximum liability of the **Underwriters** for each **Occurrence** covered by such Coverage Section.
- 4.2 The Per Claim Limit of Liability for the Statutory Liability Coverage Section and the Employers Liability Coverage Sections, as set forth in Item 3A of the Schedule, is the maximum liability of the **Underwriters** for each **Claim** covered by each such Coverage Section.
- 4.3 The Limit of Liability for the Statutory Liability Coverage Section and the Employers Liability Coverage Section, as set forth in Item 3A of the Schedule, is the maximum liability of the **Underwriters** under each such Coverage Section for all amounts covered by such Coverage Sections.
- 4.4 Any Sublimit of Liability of this Policy: (i) shall be part of, and not in addition to, the applicable Limit of Liability set forth in Item 3A of the Schedule; and (ii) is the maximum liability of the **Underwriters** for all amounts covered by such Sublimit of Liability.
- 4.5 If the Limit of Liability for either the Statutory Liability Coverage Section or the Employers Liability Coverage Section is exhausted by the payment of any amounts covered under any such Coverage Section, the **Underwriters** will have no further obligations of any kind with respect to such Coverage Section, including any obligation to pay any further **Defence Costs**, and the Premium for such Coverage Section will be fully earned.
- 4.6 **Defence Costs** are not part of, and are in addition to, the Limits of Liability and Sub-limits of Liability of this Policy and payment by the **Underwriters** of **Defence Costs** shall not reduce any such Limits of Liability or Sublimits of Liability.
- 4.7 The purchase of an Extended Reporting Period, pursuant to Section 8 of these General Terms and Conditions, shall neither increase nor reinstate any Limits of Liability of this Policy.

Section 5:

Excess

- 5.1 Where a Coverage Section requires payment of an Excess as set forth in Item 4 or 5 of the Schedule:
 - a. The **Underwriters** shall only pay the amounts covered by such Coverage Section that exceed the applicable Excess. The Excess is to be borne by the **Insured** and remain uninsured.



- b. The **Underwriters** shall only be liable for the amounts covered by such Coverage Section from a **Claim** or an **Occurrence** which exceeds the applicable Excess amount. Solely as respects the Statutory Liability Coverage Section and the Employers Liability Coverage Section, a single Excess amount shall apply to all amounts covered by such Coverage Sections that arise from all **Related Claims**.
- 5.2 The application of the Excess to any amounts covered under one Coverage Section shall not reduce the Excess that applies to any amounts covered under any other Coverage Section. If different Excess amounts apply to different parts of a **Claim** or **Occurrence**, the applicable Excess amount shall be applied separately to each part of the **Claim** or **Occurrence**, and the sum of such Excess amounts shall not exceed the largest single Excess amount which applies to such **Claim** or **Occurrence**.
- 5.3 If the **Company** is legally required or permitted to indemnify an insured natural person for any amounts covered by this Policy, and does not do so for any reason, the **Underwriters** shall not require payment of the applicable Excess by an insured natural person. However, the **Company** hereby agrees to reimburse the **Underwriters** for the full amount of such Excess immediately upon request, unless the **Company** is unable to do so solely by reason of **Insolvency**.

Section 6:

Claims Conditions

6.1. Fraudulent Claims or Occurrences

If the **Insured** shall give any notice or make any request in respect of any **Claim** or **Occurrence**, knowing such notice or request to be false or fraudulent as regards amount or otherwise, this Policy shall become void and all entitlements to any indemnity under this Policy shall be forfeited.

6.2. Subrogation

- 6.2.1 Upon payment by the **Underwriters** of any amounts covered under this Policy, the **Underwriters** shall be subrogated to the extent of such payment to all of the **Insureds'** rights of recovery, including but not limited to any of the insured natural person's rights of recovery against a Company for indemnification.
- 6.2.2 The **Insureds** shall execute all papers required (including those documents necessary for the **Underwriters** to bring suit or other form of proceeding in their name) and do everything that may be necessary to pursue and secure such rights.
- 6.2.3 All recoveries for payments made under any Coverage Section, whether made by the **Underwriters** or the **Insured**, shall be applied net of the expense of such recovery:
- a. first, to the **Insured** in satisfaction of the **Insured's** covered loss in excess of the amount paid under that Coverage Section;
 - b. second, to the **Underwriters** in satisfaction of amounts paid in settlement of the **Insured's** claim;
 - c. third, to the **Insured** in satisfaction of any Excess; and
 - d. fourth, to the **Insured** in satisfaction of any loss not covered under a Coverage Section.
- 6.2.4 Recoveries do not include any recovery for insurance, suretyship, reinsurance, security or indemnity taken for the **Underwriters'** benefit.

Section 7:

General Conditions

7.1. Alteration of Risk

- 7.1.1 The **Insured** must notify the **Underwriters** in writing as soon as practicable of any material alteration to the risk covered by this Policy that occurs during the **Policy Period**.
- 7.1.2 Following the receipt of such notice, the **Underwriters** shall have the right to either:
- a. exclude coverage for this additional exposure by issuing an endorsement to this Policy specifically excluding such exposure; or
 - b. offer to provide coverage for this additional exposure by issuing a quote to the **Named Insured** for such coverage.
- 7.1.3 Coverage for any such additional exposure shall be provided by the **Underwriters** only if the **Named Insured**:
- a. provides the **Underwriters** with full particulars of the event(s), as requested by the **Underwriters**, that materially alter the risk covered by this Policy;
 - b. accepts in writing the terms, conditions and additional premium required by the **Underwriters** for such coverage; and
 - c. pays such additional premium when due.

7.2. Assignment

This Policy and any and all rights hereunder are not assignable without the prior written consent of the **Underwriters**.

7.3. Authorisation

Except as otherwise specifically provided under any other provision of this Policy, the **Named Insured** shall act on behalf of all **Insureds** with respect to all matters under this Policy including:

- a. giving of notice of a **Claim**, **Occurrence** or circumstance;
- b. defending or settling a **Claim**;
- c. giving and receiving all correspondence and information;
- d. giving and receiving notice of cancellation;
- e. paying any premium;



- f. receiving any return premium;
- g. receiving and accepting any endorsements issued to form a part of this Policy; and
- h. exercising any right to an Extended Reporting Period.

7.4. Confidentiality

The **Insured** shall not disclose to any third-party the terms, conditions, exclusions, or Limits of Liability of this Policy or the amount of the premium paid, except to the extent that they are required by law to do so or receive written consent from the **Underwriters** to make such disclosure.

7.5. Cross Liability

In respect of the General Liability Coverage Section only, where the **Insured** is comprised of more than one entity the words "the **Insured**" shall be considered as applying to each such entity, other than the partners in a partnership, in the same manner as if that entity was the only **Named Insured**.

7.6. Third Parties

No person or entity other than the **Insured** shall have any rights under this Policy whether pursuant to statute or otherwise.

7.7. Underwriters' Rights

In the event that the **Underwriters** are entitled to avoid or repudiate this Policy ab initio, the **Underwriters** may instead at their election give written notice to the **Insured** that they regard this Policy as of full force and effect, except that the Policy shall exclude coverage for any amounts arising from a **Claim** or an **Occurrence** that has arisen or that may arise and that is related to the circumstances which entitle the **Underwriters** to avoid or repudiate this Policy. This Policy shall then continue in full force and effect and such applicable exclusion shall be added to this Policy by endorsement attached hereto.

7.8. Late Notice, Innocent Non-Disclosure and Material Non-Disclosure

- 7.8.1** The **Underwriters** shall not exercise their right to avoid this Policy, nor will the **Underwriters** reject a request for indemnity, solely on the grounds of non-disclosure in the **Proposal Form** or a breach of the applicable notice provisions set forth in a Coverage Section), provided that:
- a. the **Insured** shall establish to the **Underwriters'** reasonable satisfaction that such non-disclosure or breach was free of any fraudulent conduct or intent to deceive;
 - b. if the **Insured** was aware, prior to the Inception Date set forth in Item 2A of the Schedule, of any **Claim**, circumstance or any matter for which cover is provided under this Policy, then if the indemnity available under this Policy is greater or wider in scope than that which would have been available, if any, to the **Insured** prior to such Inception Date, the **Underwriters** shall only be liable to indemnify the **Insured** for such amount and on such terms as would have been available to the **Insured** prior to such Inception Date, except that nothing in this provision shall entitle the **Insured** to any indemnity wider or more extensive than is otherwise available under this Policy;
 - c. if such non-disclosure or breach has resulted in prejudice to the **Underwriters** in the handling or settlement of any **Claim** or request for indemnity, the indemnity afforded by this Policy in respect of such **Claim** or request for indemnity shall be reduced by such sum as would have been payable, in the **Underwriters'** reasonable opinion, by the **Underwriters** in the absence of such prejudice; and
 - d. no indemnity shall be available for **Claim** for which the **Insured** fails to provide notice during the **Policy Period** or within thirty (30) days after its expiry, as specified in the applicable Coverage Section.
- 7.8.2** In consideration of the **Underwriters** waiving their right to avoid this Policy in accordance with Section 7.7.1 above, and in the event of a material non-disclosure in the **Proposal Form**, the **Underwriters** shall be entitled in their sole discretion: (i) to determine the amount of any additional premium to be paid by the **Insured**; and (ii) to charge such additional premium to the **Insured**.

7.9. Other Insurance

- 7.9.1** The insurance provided by this Policy shall apply only as excess over any other valid and collectible insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically as excess insurance over the applicable Limit of Liability provided by this Policy. Solely as respects the Statutory Liability Coverage Section and the Employers Liability Coverage Section, this Policy shall specifically be excess of any other valid and collectible insurance pursuant to which any other underwriter has a duty to defend a **Claim** for which this Policy may be obligated to pay any amounts covered by such coverage sections. This Policy shall not be subject to the terms and conditions of any other insurance policy.
- 7.9.2** Upon giving notice of any **Claim** or circumstance or (with respect to the General Liability Coverage Section) **Personal Injury** or **Property Damage**, the **Insured** agrees to provide to the **Underwriters** written details of any other insurance that may cover or partially cover such **Claim**, circumstance, **Personal Injury** or **Property Damage**.
- 7.9.3** Where coverage is provided under more than one Coverage Section then:
- i. if the Statutory Liability Coverage Section applies to a **Claim**, cover will be provided solely under that coverage section;
 - ii. in all other circumstances, the **Insured** shall be entitled to elect which Coverage Section responds to the act, matter or event covered by this Policy provided such election is made within a reasonable time frame; and
 - iii. in no circumstance is the **Insured** entitled to seek an indemnity or an advance of **Defence Costs** under more than one Coverage Section for any one **Claim** or other matter covered by this Policy.

7.10. Related Claims

- 7.10.1** All **Related Claims** shall be considered a single **Claim**. All such **Claims** shall be considered first made at the earliest time that any such **Claim** is first made against an **Insured**.

This Section 7.10 shall not apply to the General Liability Coverage Section



7.11. GST

- 7.11.1** Where the **Insured** is liable to pay tax under section 5 (13) of the Goods and Services Tax Act 1985 (or any statutory amendment or re-enactment of the section or Act) upon receiving any indemnity payment under this Policy, the **Underwriters** will indemnify the **Insured** for the costs of that tax. The indemnity under this Section 7.10 is payable by the **Underwriters** in addition to the Limit of Liability for each Coverage Section set forth in Item 3A of the Schedule.

This Section 7.11 shall not apply to the General Liability Coverage Section (if purchased)

7.12. Organisational Change

- 7.12.1** If an **Organisational Change** occurs during the **Policy Period**, then this Policy shall continue in full force and effect as to any acts, events or matters covered by this Policy that occur prior to the effective date of the **Organisational Change**; however, there shall be no coverage afforded by this Policy for any acts, events or matters covered by this Policy occurring after the effective date of the **Organisational Change**.
- 7.12.2** The **Named Insured** shall give the **Underwriters** written notice of the **Organisational Change** as soon as practicable, but no later than thirty (30) days after the effective date of the **Organisational Change**.

7.13. Subsidiaries Acquired During the Policy Period

- 7.13.1** The term **Subsidiary** shall automatically include any entity of which the **Named Insured** first has **Management Control** ("Controlled Entity") during the **Policy Period**, either directly or indirectly through one or more other Controlled Entities, as long as:

- a. such acquired entity is not formed as a partnership; and
- b. such acquired entity's total consolidated assets are less than thirty-five percent (35%) of the consolidated gross assets of the **Named Insured** at the Inception Date set forth in Item 2A of the Schedule;

provided, however, that the **Insured** gives written notice to the **Underwriters** of such acquired entity prior to the end of the **Policy Period**.

- 7.13.2** Any entity acquired during the **Policy Period** by the **Named Insured**, other than any entity described in Section 7.12.1 above, shall automatically be covered for a period of ninety (90) days from the effective date of the acquisition, but only in respect of any acts, events or matters covered by this Policy which occur after such date. The **Underwriters** may extend such coverage beyond ninety (90) days if the **Named Insured** submits a written request to the **Underwriters** within ninety (90) days from the effective date of the acquisition with full details regarding such entity. This extension of coverage is conditioned upon the **Insured** paying when due any additional premium required by the **Underwriters** and accepting any amended terms and conditions of this Policy.

- 7.13.3** Coverage afforded under this Policy for any acts, events or matters relating to a **Subsidiary**, or any natural person insured thereof, shall only apply to acts, events or matters committed or allegedly committed or occurring during the time such entity is a **Subsidiary**.

7.14. Cancellation

- 7.14.1** The **Insured** shall have the right to cancel any Coverage Section at any time by giving thirty (30) days written notice to the **Underwriters**. If such an event occurs, the premium shall be adjusted on the basis of the **Underwriters** retaining the short rate portion of the premium. The **Underwriters** will release such premium following the receipt of a No **Claims Declaration** from the **Insured**.
- 7.14.2** The **Underwriters** shall have the right to cancel this Policy should the **Named Insured** become insolvent or enter liquidation or administration. If such an event occurs, the **Underwriters** shall provide the **Named Insured** with thirty (30) days prior written notice of such cancellation. In the event that prior to the effective date of such cancellation the **Insured** has not provided notice to the **Underwriters** of any **Claim** or **Circumstance**, the **Underwriters** shall return a pro rata portion of the premium to the **Insured**. However, if such notice has been provided to the **Underwriters**, the premium shall be deemed fully earned as of the Inception Date set forth in Item 2A of the Schedule.
- 7.14.3** The **Underwriters** shall have the right to cancel this Policy if the premium has not been paid by the **Insured** within sixty (60) days after the Inception Date set forth in Item 2A of the Schedule. In the event of such non-payment, the **Underwriters** may cancel this Policy as if it had never been in existence and shall provide the **Named Insured** with not less than ten (10) days prior written notice of such cancellation. In the event of such cancellation, the Policy will be deemed terminated as of the date indicated in the **Underwriters**' written notice of cancellation to the **Named Insured**.
- 7.14.4** Any notice provided to the **Named Insured** under this Section 7.14 shall be delivered or posted to the **Named Insured** at the address specified in Item 1B of the Schedule. The posting of such notice as aforesaid shall be sufficient proof of notice.

7.15. Reinstatement of Limit

In the event the **Underwriters** recover amounts they have paid under this Policy, the **Underwriters** will reinstate the Limit of Liability as set forth in Item 3A of the Schedule to the extent of such recovery, less costs incurred by the **Underwriters** in administering and obtaining such recovery. The **Underwriters**, in their sole and absolute discretion, shall determine the amounts to be credited, if any, toward a reinstatement of such Limit of Liability. The **Underwriters** assume no duty to seek a recovery of any amounts they have paid under this Policy.

7.16. Several Liability

- 7.16.1** The liability of an Underwriter under this Policy is several and not joint with other Underwriters party to this Policy. An Underwriter is liable only for the proportion of liability it has underwritten. An Underwriter is not jointly liable for the proportion of liability underwritten by any other Underwriter; nor is an Underwriter otherwise responsible for any liability of any other Underwriter that may underwrite this Policy.
- 7.16.2** The proportion of liability under this Policy underwritten by an Underwriter (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.
- 7.16.3** In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an **Underwriter**. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion; nor is any member otherwise responsible for any liability of any other Underwriter that may underwrite this Policy. The business address of each member is



Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

7.16.4 Although reference is made at various points in this Section 7.16 to "this Policy" in the singular, where the circumstances so require this should be read as a reference to Policies in the plural.

7.17. Valuation and Currency

All amounts stated in this Policy are expressed in New Zealand dollars and all amounts payable under this Policy are payable in New Zealand dollars. If a judgment rendered or settlement entered into under this Policy is stated in a currency other than New Zealand dollars, then payment under this Policy shall be made in New Zealand dollars at the rate of exchange published in the Reserve Bank of New Zealand on the date the final judgment is rendered or the settlement payment is established.

7.18. Insured's Right to Contest a Claim

If the **Insured** does not agree with a decision by the **Underwriters** to settle a **Claim**, the **Insured** can elect to contest the **Claim** at its own expense but the liability of the **Underwriters** will not exceed the amount for which the **Claim** could have been settled in the opinion of a senior legal counsel (to be mutually agreed upon by the **Insured** and the **Underwriters** or in the absence of agreement by determination of the President of New Zealand Law Society). The **Underwriters** shall pay all **Defence Costs** incurred up to the date the **Insured** notifies the **Underwriters** in writing of its election under this Section 7.18 and shall pay the **Insured** (subject to the Excess) the amount for which the **Claim** could have been so settled. The **Insured** expressly agrees that the **Underwriters'** liability in respect of such **Claim** shall then be at an end.

7.19. Representations and Severability

7.19.1 It is agreed between the **Insured** and the **Underwriters** that the written proposal provided by the **Insured** and any other underwriting information shall be deemed to be incorporated into and forms the basis of this Policy and the **Insured** warrants the truth of all statements made therein. All such statements and representations shall be deemed to be the basis of this Policy and are to be considered as incorporated into this Policy.

7.19.2 No statements or representations made by, information or knowledge possessed by an insured natural person or any conduct of any insured natural person shall be imputed to any other insured natural person for the purpose of determining whether coverage is available under this Policy for any **Claim** made against such insured natural person. However, the knowledge possessed by any insured natural person who is a past or current chief executive officer, president or chief financial officer of the **Company** shall be imputed to such **Company** for the purpose of determining whether coverage is available under this Policy for any **Claim** made against the **Company**.

7.20. Governing Law and Jurisdiction

This Policy and any issue, including all and any disputes, relating to its formation, construction, validity or operation shall be determined by the laws of New Zealand whose Courts shall have exclusive jurisdiction to hear any dispute.

7.21. Address for Service

Delta Insurance New Zealand Limited as agent for and on behalf of certain Underwriters at Lloyd's will accept notification of any claims or circumstances upon presentation to the address set forth in the Schedule.

7.22. Complaints Procedure

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact Delta Insurance New Zealand Limited in the first instance:

Complaints officer

Delta Insurance New Zealand Limited

complaints@deltainsurance.co.nz

Auckland +64 9 300 3079

Level 22 48 Shortland Street

Auckland Central

Auckland 1010

PO Box 106 276

Auckland 1143

We will acknowledge receipt of your complaint within 5 business days and do our utmost to resolve the complaint to your satisfaction within 10 business days, unless we require further information in which case, we will agree an alternate time frame with you.

If we cannot resolve your complaint to your satisfaction, you can escalate the matter to Lloyd's General Representative in New Zealand:

Lloyd's General Representative in New Zealand

Email: IDRNewZealand@lloyds.com

Telephone: +64 4 472 7582

Post: PO Box 5639

Wellington

New Zealand

Following receipt of your complaint, you will be advised whether your dispute will be handled by the Complaints team at Lloyd's Australia or the Lloyd's Complaints team in the UK, or what other avenues are available to you.

A final decision will be provided to you within two months of the date on which you first made the complaint unless certain exceptions apply.



If your complaint is not resolved in a manner satisfactory to you or we do not resolve your complaint within two months of originally receiving it, you may refer the matter to the Insurance and Financial Services Ombudsman (IFSO Scheme).

Telephone: 0800 888 202 or +64 4 499 7612

Email: info@ifso.nz or via their website www.ifso.nz.

Post: PO Box 10-845 Wellington New Zealand

Your complaint must be referred to IFSO Scheme within 3 months of the final decision, unless IFSO Scheme considers special circumstances apply. If your complaint is not eligible for consideration by IFSO Scheme, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

Section 8:

Extended Reporting Period

8.1 If the **Insured** purchases this extension under this Policy and pays the additional premium, and one or more Coverage Sections of this Policy, is non-renewed by the **Underwriters**, the **Insured** shall have the right to:

- a.** an automatic Extended Reporting Period of sixty (60) days, commencing on the effective date of such non-renewal; and
- b.** purchase an Extended Reporting Period of twelve (12) months, commencing upon the expiration of the automatic Extended Reporting Period,

only with respect to the Policy, or Coverage Sections, that have been non-renewed.

8.2 The **Insured's** right to purchase an Extended Reporting Period, as described in Section 8.1(b), shall lapse unless written notice of election to purchase such Extended Reporting Period and the applicable additional premium is received by the **Underwriters** within sixty (60) days after non-renewal of this Policy. The **Insured** shall not have any right to an Extended Reporting Period as described Section 8.1 in the event of an **Organisational Change** or in the event of cancellation or non-renewal for non-payment of premium.

8.3 The additional premium for an Extended Reporting Period, as described in Section 8.1(b), shall be determined by multiplying the percentage set forth in Item 8 of the Schedule by the Premium set forth in Item 14 of the Schedule. Such premium shall be fully earned at the inception of the Extended Reporting Period.

During any Extended Reporting Period, the **Insured** may provide the **Underwriters** with notice, pursuant to notice provisions of the applicable Coverage Section, of any **Claim** first made against an **Insured** during the Extended Reporting Period, for any act, event or matter occurring prior to the effective date of the non-renewal of this Policy or any Coverage Section.

8.4 Any Extended Reporting Period provided under this Policy: (i) shall not increase or reinstate any Limit of Liability of this Policy; and (ii) is non-cancellable.

This Section 8 shall not apply to the General Liability Coverage Section (if purchased).

Section 9:

Headings

The descriptions in the headings and any subheading of this Policy (including any titles given to Coverage Sections or any endorsement attached hereto) are inserted solely for convenience and do not constitute any part of this Policy's terms or conditions.





**Embrace
Change.**

Delta Insurance New Zealand Limited

Level 22 48 Shortland Street

Auckland Central

Auckland 1010

