



Technology Liability Insurance Policy

TECHNOLOGY LIABILITY INSURANCE POLICY

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

SECTION 1: ERRORS AND OMISSIONS

1.1 INSURING AGREEMENT

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from any **Claim** for civil liability arising from:

- (a) a **Wrongful Act**; or
- (b) the failure of any **Technology Product** to perform the function or serve the purpose intended after installation or after testing by the **Insured** and arising out of a **Wrongful Act** by the **Insured**.

1.2 AUTOMATIC EXTENSIONS

The following Coverage Extensions are included automatically, and only apply to cover provided under Coverage Section 1 (Errors and Omissions), provided always that each extension is to be read in conjunction with Section 1.1, and is subject to the **Conditions**, unless otherwise stated.

1.2.1 Breach of Contract Extension

Notwithstanding part (b) of Exclusion 4.6 (Contractual Liability), the **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from any contractual liability or obligation arising from the following warranties or guarantees made by the **Insured** that:

- (a) the **Insured** will use reasonable care and skill in the performance of **Technology Products** or **Technology Services**;
- (b) the **Technology Products** or **Technology Services** will not infringe upon any **Intellectual Property Rights**; or
- (c) the **Technology Products** or **Technology Services** will substantially conform to all material, written specifications.

1.2.2 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** or **Circumstance** notified to the **Underwriters** in accordance with the **Conditions**, 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 for 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 \$250 NZD per **Employee** per day and \$500 NZD per director, principal, partner or member per day; and

- (c) this coverage is subject to a Sublimit of Liability of \$500,000 NZD unless otherwise specified in Item 5 of the Schedule.

This Automatic Extension is not subject to the Excess as set forth in Section 6.3.

1.2.3 Claims Preparation Costs

The **Underwriters** will indemnify the **Insured** for all reasonable and necessary out-of-pocket costs incurred by the **Insured** (however, such costs shall not include any wages, salaries, commissions, fees, charges or other form of remuneration or profit to be repaid, lost or forgone by the **Insured**) at the **Underwriters'** request in the preparation of a defence to a **Claim**.

This coverage is subject to a Sublimit of Liability of \$25,000 NZD unless otherwise specified in Item 5 of the Schedule.

This Automatic Extension is not subject to the Excess as set forth in Section 6.3.

1.2.4 Continuous Cover

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from 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** provided by the **Underwriters** and which is first notified to the **Underwriters** during the **Policy Period**, provided that:

- (a) the failure by the **Insured** to notify such **Circumstance** under any **Prior Policy** was not fraudulent; and
- (b) the **Underwriters** have the discretion to apply either the **Conditions** or the terms and conditions of the **Prior Policy** in effect when the **Circumstance** first arose; and
- (c) the **Insured's** entitlement to indemnity under this Policy 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 any **Prior Policy**; and
- (d) the **Underwriters** were the **Insured's** technology liability or professional indemnity insurer at the primary level from the time when the **Insured** first became aware of the **Circumstance** which subsequently gave rise to the **Claim**.

1.2.5 Cyber Liability

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from any **Claim** for any **Privacy Wrongful Act** or **Network Security Wrongful Act**.

This coverage is subject to a Sublimit of Liability as specified in Item 5 of the Schedule.

1.2.6 Defamation

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from any **Claim** for any libel, slander or defamation by the **Insured**.

1.2.7 Dishonest or Fraudulent Employees

Notwithstanding Exclusion 4.16 (Fraud and Dishonesty), the **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from any **Claim** for any dishonest or fraudulent act or omission committed by any **Employee**, provided that:

- (a) such conduct has not been knowingly permitted or condoned by any other **Insured** who is un-connected with such **Claim**; and

- (b) there is no such indemnity for the person(s) who carried out, or was alleged to have carried out, the conduct or condoned the conduct.

1.2.8 Emergency Defence Costs

If it is not possible for the **Insured** to obtain the **Underwriters'** consent prior to incurring **Defence Costs** in relation to a covered **Claim**, then the **Underwriters** will waive their requirement for consent, provided that such consent is sought within fourteen (14) days of the first of such **Defence Costs** being incurred.

This coverage is subject to a Sublimit of Liability of \$25,000 NZD unless otherwise specified in Item 5 of the Schedule.

1.2.9 Estate Extension

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from any **Claim** made against the:

- (a) estates, heirs, legal representatives or assigns of a natural person **Insured** who is deceased; or
- (b) the legal representatives or assigns of a natural person **Insured** who is incompetent, insolvent or bankrupt.

Such indemnity is afforded only to the extent such **Claim**, if made against such **Insured**, would have been covered by this Policy in the absence of such **Insured's** death, incompetence, insolvency or bankruptcy.

1.2.10 Extended Reporting Period

If 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 Expiration Date set forth in Item 2B of the Schedule; and
- (b) purchase an Extended Reporting Period of twelve (12) months, commencing upon the expiration of the automatic Extended Reporting Period.

The **Insured's** right to purchase an Extended Reporting Period as described in part (b) above 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 the Expiration Date set forth in Item 2B of the Schedule. The **Insured** shall not have any right to purchase an Extended Reporting Period as described in part (b) above in the event of a Change in Control as described in Section 6.14.

The additional premium for an Extended Reporting Period as described in part (b) above shall be seventy-five percent (75%) of the last annual premium paid to the **Underwriters** for this Policy. Such premium shall be fully earned at the inception of such Extended Reporting Period.

During any Extended Reporting Period, the **Insured** may provide the **Underwriters** with notice of any **Claim** covered under Coverage Section 1 and first made against an **Insured** during the Extended Reporting Period.

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

This Automatic Extension shall apply solely to Coverage Section 1.

1.2.11 Fair Trading Act

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from any **Claim** under the terms of the Fair Trading Act 1986 (sections 9 to 14) or any similar fair trading legislation.

1.2.12 Fee Refund / Contractual Fees

Notwithstanding Exclusion 4.13 (Fees), the **Underwriters** will indemnify the **Insured** for **Unpaid Fees**, provided:

- (a) the **Insured** satisfies the **Underwriters** that ceasing to pursue recovery of **Unpaid Fees** from the **Insured's** client will prevent a **Claim** by such client, which if made would likely result in covered **Damages** greater than the amount of **Unpaid Fees**; and
- (b) the **Insured** provides the **Underwriters** a written release from the client who is refusing to pay the **Unpaid Fees**, subject to the **Insured** agreeing not to pursue its claim against the client for the **Unpaid Fees**.

If a **Claim** is subsequently made against the **Insured** following payment by the **Underwriters** of outstanding fees, then any **Damages** and **Defence Costs** resulting from such **Claim** will be reduced by the amount previously paid by the **Underwriters**.

This coverage is subject to a Sublimit of Liability of \$100,000 unless otherwise specified in Item 5 of the Schedule.

1.2.13 Intellectual Property

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from any **Claim** for the unintentional infringement of **Intellectual Property Rights** by the **Insured**.

1.2.14 Joint Ventures and Partnerships

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** in connection with a Joint Venture or Partnership in which the **Insured** has an economic interest; provided, however, that the **Underwriters** will only be liable for the proportion of any **Damages** and **Defence Costs** corresponding to the **Insured's** economic interest in such Joint Venture or Partnership. No cover is provided to any of the **Insured's** Joint Venture partners or other partners in any Partnership.

For the purposes of this Automatic Extension: (a) "Joint Venture" means a contractual business undertaking between two or more parties for the purpose of co-operating on a single business transaction or economic activity that is subject to joint control; and (b) "Partnership" has the meaning ascribed to it in the Partnership Act 1908.

1.2.15 Licensee Intellectual Property Rights

Notwithstanding Exclusion 4.6 (Contractual Liability), the **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from any **Claim** by a licensee under any warranty of indemnity given by the **Insured** in respect of the **Insured's** ownership or ability to license any **Intellectual Property Rights**.

1.2.16 Loss of Information

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from any **Claim** arising as a consequence of **Information** having been lost, damaged, destroyed, mislaid, distorted or erased by the **Insured**, provided that:

- (a) the **Information** was entrusted to or deposited with the **Insured** in the ordinary course of the **Insured's Business**; and
- (b) where **Information** is damaged, destroyed, distorted or erased, the **Insured** shall have made all reasonable attempts to rectify or recreate the **Information**.

1.2.17 Loss Mitigation

- (a) If the **Named Insured** reasonably determines during the **Policy Period** that urgent action is needed in order to avoid or minimise the risk of a **Circumstance** or **Claim** for which coverage under this Policy would apply, the **Insured** shall be entitled to retain a loss mitigation advisor to provide services in connection with avoiding or minimising such risk.

- (b) The **Underwriters** shall pay the **Insured** for the reasonable fees, costs and expenses incurred by or on behalf of the **Insured**, with the **Underwriters'** prior written consent (such consent not to be unreasonably withheld or delayed), for such loss mitigation services. This Automatic Extension shall not cover the **Insured's** own time spent in mitigating any such risk.
- (c) This coverage is subject to a Sublimit of Liability of \$250,000 unless otherwise specified in Item 5 of the Schedule.

1.2.18 Marital and Domestic Partner

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from any **Claim** made against any natural person **Insured's** lawful spouse or domestic partner (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) solely by reason of such person's status as the lawful spouse or domestic partner of such **Insured**, or such person's ownership interest in property of such **Insured** which the claimant seeks as recovery under any **Claim**. Accordingly, any amount which a natural person **Insured's** lawful spouse or domestic partner becomes legally obligated to pay by reason of such **Claim** shall be treated as **Damages** and **Defence Costs** which such **Insured** is legally obligated to pay.

1.2.19 Patent Extension

Notwithstanding Exclusion 4.20 (Patent), the **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from any **Claim** for compensation from unintentional infringement of a third-party registered patent, provided that this coverage is subject to a Sublimit of Liability of \$1,000,000 unless otherwise specified in Item 5 of the Schedule.

1.2.20 Project Delay

Notwithstanding part (d) of Exclusion 4.6 (Contractual Liability), the **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from any **Claim** arising from the delay in the provision of **Technology Products** or **Technology Services**, but only if such delay or failure arises directly from a **Wrongful Act** by the **Insured**.

1.2.21 Public Relations Expenses

The **Underwriters** will reimburse the **Insured** the **Public Relations Expenses** incurred by the **Insured** in connection with a **Public Relations Event**, which first takes place, or is reasonably anticipated to take place, during the **Policy Period** and is reported to the **Underwriters** in accordance with **Conditions**.

This coverage is subject to a Sublimit of Liability of \$50,000 unless otherwise specified in Item 5 of the Schedule.

1.2.22 Quasi-Judicial

The **Underwriters** will indemnify the **Insured** for:

- (a) all orders or determinations of compensation against the **Insured**; and
- (b) any **Defence Costs**,

in relation to any complaint or investigation against the **Insured** by a professional or statutory body which has jurisdiction to investigate and adjudicate in such a situation.

This coverage is subject to a Sublimit of Liability of \$100,000 unless otherwise specified in Item 5 of the Schedule.

In addition to the applicable Sublimit of Liability, **Defence Costs** are payable under this Automatic Extension in an amount up to \$100,000 NZD unless otherwise specified in Item 5 of the Schedule.

1.2.23 Technology Product Recall Costs

Notwithstanding Exclusion 4.24 (Recall of Products), the **Underwriters** will indemnify the **Insured** for the costs reasonably incurred in the withdrawal or recalling from use in New Zealand and/or Australia any **Technology Products** that have the same defect as a product that has already given rise to a **Claim** or **Circumstance** in respect of which the **Insured** is entitled to indemnity under this Policy.

Provided that:

- (a) indemnity for such costs shall not exceed \$500,000 NZD any one **Policy Period** unless otherwise specified in Item 5 of the Schedule; and
- (b) an Excess of \$2,500 NZD shall apply to each such withdrawal or recall unless otherwise specified in Item 5 of the Schedule.

1.2.24 Vicarious Liability for Contractors

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from any **Claim** arising from any act, error or omission committed or omitted by a **Contractor** in providing **Technology Products** or **Technology Services** to others for the purpose of the **Insured's Business**.

SECTION 2: PERSONAL INJURY AND PROPERTY DAMAGE:

2.1 INSURING AGREEMENT

The **Underwriters** will indemnify the **Insured** for **Damages** and **Defence Costs** arising from any **Personal Injury** or **Property Damage** that:

- (a) occurs within the **Territorial Limits**; and
- (b) happens during the **Policy Period**; and
- (c) is caused by an **Occurrence** in connection with the **Insured's Business**.

2.2 AUTOMATIC EXTENSIONS

The following Coverage Extensions are included automatically, and only apply to cover provided under Coverage Section 2 (Personal Injury and Property Damage), provided always that each extension is to be read in conjunction with Section 2.1, and is subject to the **Conditions**, unless otherwise stated.

2.2.1 Care, Custody or Control

Notwithstanding Exclusion 4.12 (Faulty Workmanship and Computer Equipment) and Exclusion 4.23 (Property in the Insured's Care, Custody or Control), the **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** 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 coverage is subject to a Sublimit of Liability of \$250,000 NZD any one **Policy Period** unless otherwise specified in Item 5 of the Schedule and an Excess of \$1,000 NZD unless otherwise specified in Item 5 of the Schedule.

2.2.2 Forest and Rural Fires Act

Notwithstanding Exclusion 4.15 (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 coverage is subject to a Sublimit of Liability of \$250,000 NZD any one **Policy Period** unless otherwise specified in Item 5 of the Schedule and an Excess of \$1,000 NZD unless otherwise specified in Item 5 of the Schedule.

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

2.2.3 Joint Venture Liability

The **Underwriters** will indemnify for the **Damages** and **Defence Costs** which the **Insured** shall become legally liable to pay as a consequence of a claim for **Personal Injury** and/or **Property Damage** in connection with a Joint Venture or Partnership in which the **Insured** has an economic interest; provided, however, that the **Underwriters** will only be liable for the proportion of any **Damages** and **Defence Costs** corresponding to the **Insured's** economic interest in such Joint Venture or Partnership. No cover is provided to any of the **Insured's** Joint Venture partners or other partners in any Partnership.

For the purposes of this Automatic Extension: (a) "Joint Venture" means a contractual business undertaking between two or more parties for the purpose of co-operating on a single business transaction or economic activity that is subject to joint control; and (b) "Partnership" has the meaning ascribed to it in the Partnership Act 1908.

2.2.4 Landlord's Liability

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

2.2.5 Lessor's Liability

Where the **Insured** is under an obligation to insure any principal party (lessor) to any lease agreement entered into by the **Insured**, then, to the extent required by that lease agreement, the lessor is deemed to be included as a **Named Insured** and the lessor's business as a property owner or manager (or both) is deemed to be included in the **Insured's Business** to which the insurance applies.

2.2.6 Punitive or Exemplary Damages

Notwithstanding Exclusion 4.14 (Fines and Penalties), the **Underwriters** will indemnify the **Insured** for all **Damages** that are 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) a Sublimit of Liability of \$1,000,000 NZD any one **Policy Period** shall apply unless otherwise specified in Item 5 of the Schedule;
- (d) **Defence Costs** related to punitive or exemplary damages will not reduce or exhaust the Sublimit of Liability in part (c) above, but such **Defence Costs** are subject to a separate sublimit of \$200,000 NZD unless otherwise specified in Item 5 of the Schedule; and
- (e) an Excess of \$1,000 NZD shall apply.

2.2.7 Tenant's Liability

Notwithstanding Exclusion 4.23 (Property in the Insured's Care, Custody or Control), the **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** in respect of **Property Damage** to premises (including landlord's fixtures and fittings) leased or rented, but not owned, by the **Insured**.

This coverage is subject to a Sublimit of Liability of \$1,000,000 NZD any one **Policy Period** unless otherwise specified in Item 5 of the Schedule.

2.2.8 Underground Services

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** 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, cables, pipes or equipment; 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) this coverage is subject to the Sublimit of Liability specified in Item 5 of the Schedule.
- (f) an Excess of \$5,000 NZD shall apply unless otherwise specified in Item 5 of the Schedule.

2.2.9 Vehicle and Watercraft Service/Repair

Notwithstanding Exclusion 4.23 (Property in the Insured's Care, Custody or Control), and Exclusion 4.29 (Vehicle), the **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** in respect of **Personal Injury** or **Property Damage** in New Zealand arising from the service, repair, modification or installation 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) a Sublimit of Liability of \$250,000 NZD any one **Policy Period** shall apply unless otherwise specified in Item 5 of the Schedule; and
- (e) an Excess of \$2,500 NZD shall apply unless otherwise specified in Item 5 of the Schedule.

2.2.10 Vibration and Removal of Support

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** 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) a Sublimit of Liability of \$250,000 NZD any one **Policy Period** shall apply unless otherwise specified in Item 5 of the Schedule; and
- (d) an Excess of \$5,000 NZD shall apply unless otherwise specified in Item 5 of the Schedule.

2.2.11 Vicarious Liability For Contractors

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** in respect of **Personal Injury** and/or **Property Damage** arising from or allegedly committed by any **Consultant** for whose **Wrongful Act** the **Insured** are legally liable.

2.2.12 Visits to any Non-Territorial Country

Notwithstanding Clause 5.8 (Territorial Limits), the **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** 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 **Non-Territorial Country**, the following additional provisions shall apply to this Extension:

- (i) a Sublimit of Liability of \$1,000,000 NZD shall apply in the aggregate any one **Policy Period** unless otherwise specified in Item 5 of the Schedule; and
- (ii) **Defence Costs** related to **Personal Injury** or **Property Damage** occurring in the **Non-Territorial Country** will not reduce or exhaust the Sublimit of Liability in 2.2.12 (i) above, but they are subject to a separate Sublimit of Liability of \$200,000 NZD unless otherwise specified 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** **"Circumstance"** means an incident, occurrence, fact, matter, act, error or omission which may give rise to a **Claim** against the **Insured**.
- 3.3** **"Claim"** means any:
 - (a) written or oral demand for monetary or non-monetary relief made against the **Insured**; or

- (b) civil, administrative, arbitration or any other adjudicative proceeding, including any cross-claim or counter claim, made against the **Insured**.

3.4 “Company” means:

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

3.5 “Conditions” means the terms and conditions of this Policy.

3.6 “Contractor” means any consultant, sub-contractor, agent or person acting for and on behalf of the **Insured and in accordance with a written contract.**

3.7 “Damages” means:

- (a) damages, settlements or judgments;
- (b) pre-judgment or post-judgment interest; and
- (c) cost or fees awarded in favour of the claimant,

which an **Insured** is legally liable to pay to a third-party.

“Damages” does not mean wages, salaries, commissions, fees, charges or other form of remuneration or profit to be repaid, lost or forgone by the **Insured** as a result of a **Claim**.

3.8 “Defence Costs” means:

- (a) in respect of Coverage Section 1, the reasonable fees, costs and expense incurred by or on behalf of the **Insured**, with the **Underwriters’** prior written consent, in the investigation, defence, adjustment, settlement or appeal of any **Claim** or **Circumstance** for which the **Insured** is legally liable to pay to a third-party; and
- (b) in respect of Coverage Section 2, the reasonable fees, costs and expense incurred by or on behalf of the **Insured**, with the **Underwriters’** prior written consent, in the investigation, defence, adjustment, settlement or appeal of any claim or **Occurrence** for which the **Insured** is legally liable to pay to a third-party.

“Defence Costs” shall not include internal or overhead expenses of the **Insured** or the cost of any **Insured’s** time.

3.9 “Employee” means any person who was or presently is:

- (a) under a contract of service or apprenticeship with the **Insured**;
- (b) supplied to, hired by or borrowed by the **Insured**; or
- (c) under any work experience or similar scheme with the **Insured**, while employed or engaged by, and under the control of, the **Insured**.

3.10 “Identity Theft” means the misappropriation of **Personal Information or any other confidential information which has resulted in the wrongful or fraudulent use of such **Personal Information** or any other confidential information, including, but not limited to, fraudulently emulating the identity of an individual or entity.**

3.11 “Information” means any documents, digitised data, micro-code or information stored in written, machine-readable or any other form but shall not include bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

3.12 “Insured” means:

- (a) the **Company**;

- (b) any past present or future director, executive officer, **Employee**, principal, member or partner of the **Company** but only whilst acting within the scope of their duties in such capacity;
- (c) in respect of Coverage Section 2 only, 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) in respect of Coverage Section 2 only, any office bearer or member of any social or sporting clubs or welfare organisations formed with the consent of the **Insured**, other than an **Insured** designated in part (c) above, in respect of claims arising from duties connected with activities of any such club or organisation.

3.13 “**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 cover from the **Underwriters**.

3.14 “**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 or doubt, buildings constructed or whose construction is supervised or managed by the **Insured**.

3.15 “**Intellectual Property Rights**” means any intellectual property right of a third-party, except any patents and trade secrets.

3.16 “**Limit of Liability**” means the amount specified in Item 3A of the Schedule for each Coverage Section.

3.17 “**Malicious Code**” means any unauthorised and either corrupting or harmful software code, including but not limited to computer viruses, Trojan horses, worms, logic bombs, spy ware or spider ware.

3.18 “**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.

3.19 “**Named Insured**” means the person or entity named in Item 1A of the Schedule.

3.20 “**Network**” means any computer hardware, software, firmware, and components thereof, including software and electronic data stored on or within the **Insured’s** network, which are connected through computers, including such networks accessible through the Internet, intranets, extranets or virtual private networks.

3.21 “**Network Security**” means the use of hardware, software and firmware, including, without limitation, firewalls, filters, routers, intrusion detection software, antivirus software, automated password management applications and other authentication mechanisms, which are designed to control or restrict the access to a **Network**, or any portion thereof. “**Network Security**” shall also include the use of third-party service providers which provide, or assist in the provisioning, of such hardware, software and firmware.

3.22 “**Network Security Wrongful Act**” means any actual or alleged act, error, misstatement, misleading statement, omission, neglect or breach of duty committed by an **Insured**, which results in a breach of the **Insured’s Network Security**, the consequences of which are:

- (a) unauthorised access to, use of or tampering with a third-party's **Network**;
- (b) the inability of an authorised third-party to gain access to the **Insured's** services;
- (c) denial or disruption of Internet service to a third-party;
- (d) **Identity Theft**;
- (e) the transmission of **Malicious Code**;
- (f) the unauthorised release of a third-party's confidential and proprietary business information; or
- (g) the physical theft of the **Insured's** hardware by a third-party.

3.23 "**Non-Territorial Country**" means the United States of America, Canada or any possession or territory of either such country.

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

3.25 "**Personal Information**" means:

- (a) information from which a natural person may be uniquely and reliably identified, including, but not limited to a person's name, address, telephone number, email address, in combination with their account relationships, account numbers, passwords, PIN numbers, credit card numbers or biometric information; or
- (b) personal information as defined in any privacy protection law or regulation governing the control and use of a natural person's personal and confidential information.

3.26 "**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.

3.27 "**Policy Period**" means the period from the Inception Date shown in Item 2A of the Schedule to the Expiration Date shown in Item 2B of the Schedule, or to any earlier cancellation date.

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

3.29 "**Prior Policy**" means any technology liability or professional indemnity insurance policy issued to the **Company** prior to the commencement of the **Policy Period**.

3.30 "**Privacy Wrongful Act**" means any actual or alleged act, error, misstatement, misleading statement, omission, neglect or breach of duty committed by any **Insured**, which results in:

- (a) the misappropriation, mishandling, loss or disclosure of **Personal Information**;
- (b) a breach or violation of any law or regulation associated with the control and use of **Personal Information**;
- (c) **Identity Theft**; or
- (d) the unauthorised release of a third-party's confidential and proprietary business information.

3.31 "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.

3.32 "Proposal Form" means the proposal form the **Insured** has completed, and any other underwriting information the **Insured** has provided the **Underwriters** for this Policy.

3.33 "Public Relations Event" means the publication of unfavourable information relating to the **Wrongful Acts** of an **Insured**, which can be reasonably considered to lessen public confidence in the competence, integrity or viability of the **Insured** to conduct business.

3.34 "Public Relations Expenses" means the following amounts, when incurred during the pendency of, and in anticipation of, a **Public Relations Event**:

- (a) amounts for which the **Insured** incurs for those services performed by a public relations firm, crisis management firm or law firm selected by the **Insured** and approved in advance in writing by the **Underwriters**, to minimise potential harm to the **Insured** arising from a **Public Relations Event**, including, without limitation, maintaining and restoring public confidence in the **Insured**, and providing advice to the **Company** or any of its directors, executive officers, partners, members or **Employees**; and
- (b) amounts for which the **Insured** becomes legally liable for the reasonable and necessary printing, advertising, mailing of materials, or travel by the **Company's** directors, officers, partners or **Employees** or the firm rendering services as referenced in (a) above.

"Public Relations Expenses" shall not include compensation, fees, benefits or overhead of any **Insured**.

3.35 "Retroactive Date" means the date set forth in Item 6 of the Schedule.

3.36 "Subsidiary" means any entity of which, prior to the Inception Date set forth in Item 2A of the Schedule, the **Company** has **Management Control**.

3.37 "Technology" means the use of technologies from computing, electronics, and telecommunications to process and distribute information in digital and other forms.

3.38 "Technology Products" means **Technology**-related products supplied to others in the ordinary course of the **Insured's Business**, including, but not limited to: electronic equipment or computer hardware or software developed, manufactured, distributed, marketed or sold by or for the **Insured**.

3.39 "Technology Services" means any **Technology**-related services, advice or work provided by the **Insured** in connection with the **Insured's Business** and includes, but not limited to: the provision of consulting, training, data processing, programming, software development, distribution, outsourcing, telecommunication and data communication services, maintenance or repair or systems analysis or design programmed or provided by the **Insured** in the ordinary course of the **Insured's Business**.

- 3.40** “**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.
- 3.41** “**Underwriters**” means the Underwriter(s) named in Item 13 of the Schedule.
- 3.42** “**Unpaid Fees**” means any fee that a third-party client is contractually obliged to pay to an **Insured** in return for **Technology Services** but which the third-party client refuses to pay because it is dissatisfied with the service provided. “**Unpaid Fees**” does not include any element of profit, mark-up or liability for taxes.
- 3.43** “**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.
- 3.44** “**Watercraft**” means any vessel, hovercraft, craft or thing made or intended to float on or in or travel on or through the water.
- 3.45** “**Wrongful Act**” means any act, error or omission committed or omitted by the **Insured** in providing **Technology Products** or **Technology Services** to others for the purpose of the **Insured’s Business**.

SECTION 4: EXCLUSIONS

The **Underwriters** shall not be liable to make any payment under this Policy in respect of any **Claim** or **Circumstance** or **Occurrence** alleging, arising out of, based upon or attributable to, or in any way involving, directly or indirectly:

4.1 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 any:

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

4.2 Aircraft Products

Technology Products or **Technology Services** relating to any **Aircraft** including missiles or spacecraft and any ground support or control equipment used in association with them, and the **Insured’s Technology Products** or **Technology Services** which to the **Insured’s** knowledge are installed in **Aircraft** or used in connection with **Aircraft** or for spare parts for **Aircraft** or tooling used for manufacturing them, including ground handling tools and equipment, training aids, instruction manuals, blueprints, engineering or other data engineering or other advice and **Technology Services** and labour relating to such **Aircraft**.

4.3 Asbestos

- (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.

4.4 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.

4.5 Associates

any **Claim** made by or on behalf of:

- (a) the **Insured**; or
- (b) any firm, partnership or entity in which any **Insured** (except an **Employee**) has a financial or executive interest.

4.6 Contractual Liability

any:

- (a) contractual liability or other obligation assumed by the **Insured**, that goes beyond the duty to use such reasonable skill and care as is ordinarily applied in providing **Technology Products** or **Technology Services**; or
- (b) performance warranty (including but not limited to a fitness for purpose warranty) or guarantee; or
- (c) penalty clause or liquidated damages clause; or
- (d) delay in performing, failing to perform or failing to complete any **Technology Products** or **Technology Services**, unless such delay or failure arises from a breach of professional duty by an **Insured**,

however, this Exclusion shall not apply to the extent that liability would have attached to the **Insured** in the absence of any contract or clause thereof.

Part (b) of this Exclusion shall not apply to Automatic Extension 1.2.1.

Part (d) of this Exclusion shall not apply to Automatic Extension 1.2.20.

This Exclusion shall not apply to Automatic Extension 1.2.15.

4.7 Damage to Insured's Technology Products

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

4.8 Directors and Officers Liability

the **Insured's** duties in acting as a director or officer of any company.

4.9 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.

4.10 Estimation

the failure by the **Insured** to make an accurate pre-assessment of the costs of the **Insured's Technology Products** or **Technology Service**.

4.11 Expected or Intended

Personal Injury or **Property Damage** expected or intended from the standpoint of the **Insured**; provided, however, that this Exclusion shall 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**.

4.12 Faulty Workmanship and Computer Equipment

- (a) **Property Damage** to that part of any property upon which the **Insured** is or has been working where such **Property Damage** arises from the work performed by the **Insured**; and
- (b) the cost of rectifying, repairing or replacing defective materials or remedying defective workmanship or performing, correcting or improving any work undertaken by the **Insured**.

However, this Exclusion shall apply only to Coverage Section 2 (Personal Injury and Property Damage).

4.13 Fees

the refund of professional fees.

This Exclusion shall not apply to Automatic Extension 1.2.12.

4.14 Fines and Penalties

- (a) taxes, fines or penalties;
- (b) punitive, aggravated, multiple, exemplary or other non-compensatory damages;
- (c) the consequences of non-payment; or
- (d) any amounts resulting from any **Claim** deemed uninsurable by law;

however, part (a) of this Exclusion shall not apply to any taxes payable under Section 6.15.

4.15 Forest and Rural Fires Act

the **Insured's** liability under the Forest and Rural Fires Act 1977.

4.16 Fraud and Dishonesty

- (a) any actual or alleged dishonest, fraudulent, criminal or malicious act or omission of any **Insured** or any consultant, sub-contractor, agent or person acting on the **Insured's** behalf; or
- (b) any actual or alleged act, error or omission of any **Insured** or any consultant, sub-contractor, agent or person acting on the **Insured's** behalf, committed or alleged to have been committed intentionally or with reckless disregard for the consequences.

Exclusion 4.16(a) shall apply to Automatic Extension 1.2.7 but only to dishonest or fraudulent acts or omissions occurring after discovery by the **Insured** of reasonable cause for suspicion of any such act or omission.

Exclusion 4.16(a) shall not apply to any **Insured** who is innocent of committing or condoning any such dishonest or fraudulent act or omission.

4.17 Infrastructure

- (a) mechanical failure;
- (b) electrical failure, including any electrical power interruption, surge, brown out or black out; or
- (c) telecommunications or satellite systems failure;

however, this Exclusion shall not apply if such failure arises solely from an act, error or omission committed in the performance of **Technology Services**.

4.18 Insolvency / Financial Condition

the insolvency, voluntary administration, receivership, statutory management, liquidation or bankruptcy of any **Insured**.

4.19 Nuclear

- (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.

4.20 Patent

the infringement, use or misappropriation of a patent.

This Exclusion shall not apply to Automatic Extension 1.2.19.

4.21 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**. However, except with respect to **Non-Territorial Country(ies)**, this Exclusion shall not apply if **Personal Injury, Property Damage** or expenses incurred in the removal or clean-up of **Pollutants** is directly or indirectly caused by or arises out of a sudden, identifiable, unexpected and unintended discharge, dispersal, release or escape of **Pollutants** and takes place in its entirety at a specific time and place.

4.22 Prior Claims, Knowledge and Notice

- (a) any **Claim** first made, threatened or intimated against the **Insured**;
- (b) any **Circumstance** of which the **Insured** is aware, or ought reasonably to have been aware; or
- (c) any **Claim, Circumstance** or other matter which has been notified or ought reasonably to have been notified to any insurance policy,

prior to the Inception Date set forth in Item 2A of the Schedule; provided, however, that this Exclusion shall not apply to Automatic Extension 1.2.4.

4.23 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**.

4.24 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** including **Technology Products**, or of any property of which such **Products** form a part, or work undertaken by or for the **Insured**, if such **Products** or **Technology Products** 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.

This Exclusion shall not apply to Automatic Extension 1.2.23.

4.25 Retroactive Date

any event, act, error or omission occurring or alleged to have occurred prior to the **Retroactive Date**; provided that this Exclusion shall apply only to Coverage Section 1 (Errors and Omissions).

4.26 Statutory Liability

any actual or alleged breach by an **Insured** of:

- (a) the Health and Safety in Employment Act 1992; or
- (b) any other Act of the New Zealand Parliament, including any amendments, re-enactments, replacements or Statutory Regulations of such Act.

4.27 Terrorism

any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss or any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism; provided, however, that:

- (a) this Exclusion shall not apply to cyber terrorism;
- (b) if the **Underwriters** allege that by reason of this Exclusion, any loss, damage, cost or expense is not covered by this Policy, the burden of proving the contrary shall be upon the **Insured**; and
- (c) in the event any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

For the purposes 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 of persons, whether acting alone or on behalf of or in connection with any organisation or government, 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.

4.28 Trade and Economic Sanctions

any coverage, payment or benefit hereunder to the extent that the providing of such coverage, payment or benefit would expose the **Underwriters** to any sanction, prohibition or restriction under the trade or economic sanctions, laws or regulations of New Zealand, the United Kingdom, the European Union or the United States of America or under any United Nations resolutions.

4.29 Vehicle

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, subject to Automatic Extension 2.2.1 (Care, Custody or Control).

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.

However, part (b) of this Exclusion does not extend cover to the use of any Tool of Trade, whilst in transit or whilst being used for transport or haulage.

4.30 War and Civil War

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.

SECTION 5: CLAIMS CONDITIONS

5.1 Notification Under Coverage Section 1

5.1.1 As a condition precedent to the right to be indemnified, the **Insured** shall provide the **Underwriters** with written notice as soon as practicable, but no later than the end of the **Policy Period**, of any:

- (a) **Claim** first made against an **Insured** during the **Policy Period**;
- (b) **Circumstance** occurring during the **Policy Period**; or
- (c) any other matter for which coverage is provided under this Policy;

however, in the event the **Insured** first becomes aware of any **Claim** or **Circumstance** or other matter within the last seven (7) days of the **Policy Period**, notice shall be provided as soon as practicable, but in no event later than seven (7) days after the Expiration Date set forth in Item 2B of the Schedule.

5.1.2 The notification of such **Claim** or **Circumstance** must include full particulars, including the identity of the claimant or potential claimant, details of the allegations and potential allegations against an **Insured**, identification of the project and services giving rise to the **Claim** or **Circumstance**, the potential quantum involved in the **Claim** and, in the case of a **Circumstance**, the notification must also include the reasons for believing that a **Claim** is likely to be made.

5.1.3 If notification of any **Circumstance** is provided to the **Underwriters** in accordance with Sections 5.1.1 and 5.1.2 above, any **Claim** that is subsequently made against an **Insured** alleging, arising out of, based upon or attributable to such **Circumstance**, shall be considered made at the time notice of such **Circumstance** was provided.

5.2 Notification Under Coverage Section 2

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, irrespective of whether the **Insured** believes that no claim will proceed or that any claim would be groundless.

5.3 Notification Under All Coverage Sections

Any notice to be provided to the **Underwriters** under Section 5.1 or Section 5.2 shall be given to the **Underwriters** at the physical posting address or the e-mail address set forth in the Schedule. The posting of such notice as aforesaid shall be sufficient proof of notice. All other notices to the **Underwriters** under this Policy shall be given to the postal or e-mail address indicated in the Schedule.

5.4 Legal Defence, Settlement and Allocation

5.4.1 As a condition precedent to the right to be indemnified under this Policy, the **Insured** (and any person, firm, or company acting for or on the **Insured's** behalf) must not incur any **Defence Costs**, admit liability for, compromise, settle or make any offer or payment in respect of any **Claim, Circumstance, Occurrence** or other matter for which coverage is provided under this Policy without the **Underwriters'** prior written consent, such consent not to be unreasonably withheld or delayed. However, the **Underwriters'** consent is not required for the **Insured** to settle such **Claim, Circumstance, Occurrence** or other matter if the total settlement amount (including **Defence Costs**) is within the applicable Excess, provided that such settlement fully resolves such **Claim, Circumstance, Occurrence** or other matter with respect to all **Insureds** and the **Underwriters**.

5.4.2 The **Insured** shall defend any **Claim**, or other matter for which coverage is provided under this Policy, that is brought against the **Insured**; however, the **Underwriters** shall have the right but not the duty to take over the investigation, defence and settlement of any **Claim** or other matter for which coverage may be provided under this Policy, and the **Underwriters** shall have full discretion in the handling thereof (notwithstanding that a dispute may have arisen between the **Insured** and **Underwriters**).

5.4.3 The **Insured** shall not be required by the **Underwriters** to contest any legal proceedings unless a Senior Counsel (to be mutually agreed upon by the **Underwriters** and **Insured** and in the absence of such agreement to be determined by the President of the New Zealand Law Society), shall advise that such proceedings can be contested with a reasonable prospect of success. The cost of such advice shall be regarded as part of the **Defence Costs**.

5.4.4 If the **Insured** does not agree with a decision by the **Underwriters** to settle a **Claim** or any other matter for which coverage is provided under this Policy, the **Insured** can elect to contest the **Claim** or other such matter at its own expense but the liability of the **Underwriters** will not exceed the amount for which the **Claim** or other such matter could have been settled in the opinion of a senior legal counsel (to be mutually agreed upon by the **Insured** and the **Underwriters** and in the absence of such agreement to be determined by the President of the 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 5.4.4, and shall pay the **Insured** (subject to the Excess) the amount for which the **Claim** or other such matter could have been so settled. The **Insured** expressly agrees that the **Underwriters'** liability in respect of such **Claim** or other such matter shall then be at an end.

5.4.5 This Policy shall provide coverage only for covered matters and parties. In the event of a **Claim, Circumstance** or **Occurrence** 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 amounts covered under this Policy, taking into account the relative legal and financial exposures of the parties to this Policy.

5.4.6 The **Underwriters** may investigate, negotiate and settle any **Claim, Circumstance, Occurrence** or other matter for which coverage is provided under this Policy, as they deem expedient; however, the **Underwriters** shall not be obligated to pay any claim or judgment or to defend any suit under a Coverage Section after the **Limit of Liability** of such Coverage Section has been exhausted by payment of judgments or settlements;

provided that:

- (a) in the event that the **Underwriters** have paid the **Limit of Liability** of such Coverage Section in respect of any judgment or settlement, the **Underwriters'** liability in respect of any further **Defence Costs** under such Coverage Section shall cease; and
- (b) if the amount of compensation the **Insured** is legally required to pay to dispose of a **Claim, Circumstance, Occurrence** or other matter for which coverage is provided under this Policy exceeds the **Limit of Liability** of such Coverage Section, the liability of the **Underwriters** to pay **Defence Costs** in connection with such

Claim, Circumstance, Occurrence or other matter shall be limited to the same proportion of the **Defence Costs** as the **Limit of Liability** of such Coverage Section bears to the total amount of compensation paid to dispose of the **Claim, Circumstance, Occurrence** or other matter.

5.5 Cooperation

5.5.1 As a condition precedent to the right to be indemnified under this Policy, the **Insured** must provide to the **Underwriters** (or their appointed agent) promptly, and in any event within fourteen (14) days of any request made by the **Underwriters** (or their 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 their 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.

5.5.2 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 matter for which coverage may be provided under this Policy shall not be intentionally destroyed or otherwise intentionally disposed of.

5.6 Fraudulent Claims

If the **Insured** shall give any notice or make any request in respect of any matter for which coverage may be provided under this Policy 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.

5.7 Subrogation

The **Underwriters** shall be subrogated to all of an **Insured's** rights of recovery against any third-party that may exist before and after any indemnity is provided under this Policy. However, the **Underwriters** shall not exercise any such rights against any **Employee** or any director, principal, partner or member of the **Company**, except if the matter for which indemnity is provided under this Policy was contributed to, or caused by, a fraudulent, dishonest or malicious act or omission by such person. The **Insured** shall, without charge, provide such assistance as the **Underwriters** require in any subrogation proceeding.

5.8 Territorial Limits

This Policy applies to:

- (a) **Technology Services** performed, or **Technology Products** supplied, or any other matters which give rise to coverage under the Policy which take place, anywhere in the world except any **Non-Territorial Country** or as otherwise specified in Item 9 in the Schedule; and
- (b) **Claims** brought against the **Insured** anywhere in the world except any such **Claim** brought in any **Non-Territorial Country** or any legal proceeding brought to enforce a judgment obtained in any **Non-Territorial Country** or as otherwise specified in Item 10 in the Schedule; and

- (c) legal proceedings brought against the **Insured** anywhere in the world, except in any **Non-Territorial Country** or as otherwise specified in Item 10 in the Schedule.

SECTION 6: GENERAL CONDITIONS

6.1 Limits of Liability - Errors and Omissions (Coverage Section 1)

- 6.1.1 The **Limit of Liability** for Coverage Section 1 is the **Underwriters'** maximum liability under this Policy.
- 6.1.2 Any Sublimit of Liability under Coverage Section 1: (i) shall be part of, and not in addition to, the **Limit of Liability** for Coverage Section 1; and (ii) is the maximum liability of the **Underwriters** for all amounts to which the Sublimit of Liability applies.
- 6.1.3 Any payment by the **Insurer** of **Damages** or other amounts under Coverage Section 1 shall reduce and may exhaust the **Limit of Liability** for Coverage Section 1. If such **Limit of Liability** is exhausted by the payment of **Damages** or other amounts under this Policy, the **Underwriters** will have no further obligations of any kind with respect to under Coverage Section 1, including any obligation to pay any further **Defence Costs**.
- 6.1.4 The payment of any amounts covered under Coverage Section 1 (except **Defence Costs**) shall reduce and may exhaust any applicable Sublimit of Liability of this Policy. If any such Sublimit of Liability is exhausted by the payment of such amounts, the **Underwriters** shall have no further obligations under this Policy with respect to any matter to which such Sublimit of Liability applies, including any obligation to pay any further **Defence Costs**.
- 6.1.5 **Defence Costs** are not part of, and are in addition to, the **Limit of Liability** and any Sublimit of Liability under Coverage Section 1. Payment by the **Underwriters** of **Defence Costs** shall not reduce any such **Limit of Liability** or Sublimit of Liability.

6.2 Limits of Liability – Personal Injury and Property Damage (Coverage Section 2)

- 6.2.1 The **Limit of Liability** for Coverage Section 2 is the **Underwriters'** maximum liability in respect of any one **Occurrence**, irrespective of the number of claims arising therefrom. 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**.
- 6.2.2 The **Underwriters'** total aggregate liability (excluding **Defence Costs**) during any one **Policy Period** for all claims arising out of the **Insured's Products** shall not exceed the **Limit of Liability** for Coverage Section 2.
- 6.2.3 Any payment of by the **Insurer** of **Damages** or other amounts under this Policy shall reduce and may exhaust the **Limit of Liability** for Coverage Section 2. If such **Limit of Liability** is exhausted by the payment of **Damages** or other amounts under this Policy, the **Underwriters** will have no further obligations of any kind with respect such **Occurrence** or claim, including any obligation to pay any further **Defence Costs**.
- 6.2.4 Any Sublimit of Liability under Coverage Section 2: (i) shall be part of, and not in addition to, the **Limit of Liability** for Coverage Section 2; and (ii) is the maximum liability of the **Underwriters** for all amounts to which the Sublimit of Liability applies.
- 6.2.5 **Defence Costs** are not part of, and are in addition to, the **Limit of Liability** and any Sublimit of Liability of this Policy. Payment by the **Underwriters** of **Defence Costs** shall not reduce any such **Limit of Liability** or Sublimit of Liability.

6.3 Excess

- 6.3.1 The **Underwriters** shall only be liable to pay or reimburse the **Insured** for amounts covered under this Policy that exceed the applicable Excess. The Excess shall be borne by the **Insureds** and remain uninsured. The applicable Excess shall apply to each and every **Claim** or **Occurrence** or other matter giving rise to coverage under this Policy. Solely with respect to Coverage Section 1, a single Excess amount shall apply to all amounts covered by this Policy that arise from all Related Claims as described in Section 6.4.

6.3.2 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** or other matter giving rise to coverage under this Policy, the applicable Excess amount shall be applied separately to each part of such **Claim** or **Occurrence** or matter, and the sum of such Excess amounts shall not exceed the largest single Excess amount which applies to such **Claim** or **Occurrence** or matter.

6.3.3 If the **Company** is legally required or permitted to indemnify a natural person **Insured** 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 such **Insured**. 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 having becoming insolvent or entering into liquidation or administration.

6.3.4 The Excess shall not apply to **Defence Costs** and Section 1.2.2 and Section 1.2.3.

6.4 Related Claims (Coverage Section 1)

6.4.1 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**.

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

6.5 Alteration to Risk

6.5.1 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**, including but not limited to any change in the nature of or cessation of the **Insured's Business**.

6.5.2 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.

6.5.3 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.

6.6 Authorisation

The **Named Insured** shall act as agent on behalf of all **Insureds** with respect to all matters under this Policy, including: (a) the giving and receiving of all correspondence regarding this Policy; (b) the giving of notice of any

Claim, Circumstance or other matter; (c) giving and receiving notice of cancellation; (d) the payment of the premium; and (e) the receiving and accepting any endorsements issued to form a part of this Policy.

6.7 Changes

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the **Underwriters** will not effect a waiver or change in any part of this Policy or stop the **Underwriters** from asserting any right under the **Conditions**. The **Conditions** can be waived or changed only by written endorsement issued by the **Underwriters**.

6.8 Confidentiality

The **Insured** shall not disclose to any third-party the terms, conditions, exclusions, or **Limits of Liability** 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.

6.9 Third-Parties

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

6.10 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 **Claim** or **Occurrence** or any other matter for which cover is provided under this Policy, which has arisen or which may arise and which 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.

6.11 Late Notice, Innocent Non-Disclosure and Material Non-Disclosure

6.11.1 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 notice provisions set forth in this Policy, 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; and
- (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, provided, however, that this subparagraph (b) shall not apply to Automatic Extension 1.2.4; and
- (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 any matter for which the **Insured** fails to provide notice in accordance with the seven (7) day period set forth in Section 5.1.1.

6.11.2 In consideration of the **Underwriters** waiving their right to avoid this Policy in accordance with Section 6.11.1 above, and in the event of a material non-disclosure in the **Proposal Form**, the **Underwriters** shall be entitled in their sole

discretion: (a) to determine the amount of any additional premium to be paid by the **Insured**; and (b) to charge such additional premium to the **Insured**.

6.12 New Subsidiaries

6.12.1 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**.

6.12.2 Any entity acquired during the **Policy Period** by the **Named Insured**, other than any entity described in Section 6.12.1 above, shall automatically be covered for a period of ninety (90) days from the effective date of the acquisition, but only in respect of acts, events or matters actually or allegedly committed or occurring 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.

6.12.3 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 actually or allegedly committed or occurring during the time such entity is a **Subsidiary**.

6.13 Other Insurance

6.13.1 This Policy shall apply only in excess of any other valid and collectable insurance, whether or not such insurance is collected, unless such other insurance is specifically stated to be in excess of this Policy. This Policy will not be subject to the terms of any other insurance.

6.13.2 When coverage is provided under more than one Coverage Section of this Policy:

- (a) the **Insured** shall be entitled to elect which Coverage Section responds to the act, matter or event covered by this Policy, provided that such election is made within a reasonable time frame; and
- (b) 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 the act, matter or event covered by this Policy.

6.14 Change in Control

6.14.1 In the event the **Named Insured** is sold or is involved in a merger with, or acquisition by, another entity such that the **Named Insured** is not the surviving entity and no longer:

- (a) controls the composition of its board of directors, management committee, partnership executives, partnership board or similar governing body;
- (b) controls more than half its voting power; or
- (c) holds more than half of its issued share capital,

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 such transaction; 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 such transaction.

6.14.2 The **Named Insured** shall give the **Underwriters** written notice of such transaction as soon as practicable, but no later than thirty (30) days after the effective date of such transaction.

6.15 GST

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 6.15 is payable by the **Underwriters** in addition to the **Limit of Liability**.

6.16 Cancellation

6.16.1 The **Insured** may cancel this Policy at any time by giving the **Underwriters** written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. In such event, the **Underwriters** shall retain the short rate proportion of the premium herein. The **Underwriters** will release any such premium to the **Insured** after receipt of a No Claims Declaration from the **Insured**.

6.16.2 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** or **Occurrence** or any other matter for which coverage may be provided by this Policy, the **Underwriters** shall return a pro rata portion of the premium to the **Insured**. However, if such notice has been provided, the premium shall be deemed fully earned as of the Inception Date set forth in Item 2A of the Schedule.

6.16.3 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**.

6.16.4 Any notice provided to the **Named Insured** under this Section 6.16 shall be delivered or posted to the **Named Insured** at the address set forth in Item 1B of the Schedule. The posting of such notice as aforesaid shall be sufficient proof of notice.

6.17 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.

6.18 Assignment

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

6.19 Entire Agreement

The **Insured** agrees that this Policy, including the **Proposal Form** and any endorsements, constitutes the entire agreement between them and the **Underwriters** or any of their agents relating to this insurance.

6.20 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 **Claim**, **Circumstance**, **Occurrence** or any other matter for which cover may be provided by this Policy upon presentation to the address set forth in the Schedule.

6.21 Complaints Procedure

6.21.1 Any enquiry or complaint relating to this Policy should be referred to Delta Insurance New Zealand Limited in the first instance.

6.21.2 If this does not resolve the matter or the **Insured** is not satisfied with the way the complaint has been dealt with, the **Insured** should write to:

Lloyd's General Representative in New Zealand
C/O Hazelton Law
Level 3
101 Molesworth Street
P O Box 5639
Wellington New Zealand

6.22 Headings

The descriptions in the headings and any subheadings of this Policy (including any titles given to any endorsements attached hereto) are inserted solely for convenience and do not constitute any part of the **Conditions**.

6.23 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.