



Professional Indemnity Insurance Policy

PROFESSIONAL INDEMNITY INSURANCE POLICY

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

SECTION 1: INSURING AGREEMENT

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from any **Claim** first made against the **Insured** and notified to the **Underwriters** during the **Policy Period** for civil liability for compensation in the performance of **Professional Business Services**.

SECTION 2: AUTOMATIC EXTENSIONS

2.1 Vicarious Liability

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from any **Claim** made against the **Insured** arising from any act, error or omission committed or alleged to have been committed by any consultant, sub-contractor, agent or person acting on behalf of the **Insured**.

2.2 Defamation

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

2.3 Intellectual Property

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

2.4 Dishonest or Fraudulent Employees

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from any **Claim** made against the **Insured** arising from 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 indemnity for the person(s) who carried out, or was alleged to have carried out, the conduct or condoned the conduct.

2.5 Loss of Documents

The **Underwriters** will indemnify the **Insured** for the reasonable and necessary costs and expenses incurred in replacing and restoring **Documents** that after a diligent search cannot be located or that have been destroyed, damaged, or distorted beyond reasonable use, provided that:

- (a) the **Documents** belong to the **Insured**, or the **Insured** is legally responsible for such **Documents**;
- (b) the **Documents** are in the custody of the **Insured**, or of any person to whom, or with whom, they have been entrusted, lodged or deposited by the **Insured**;
- (c) the **Documents** are used in connection with, or are related to, the performance of **Professional Business Services**;
- (d) the loss, destruction, damage or distortion of **Documents** is first discovered by the **Insured** during the **Policy Period**; and
- (e) the **Insured** provides the **Underwriters** with bills and accounts substantiating such costs and expenses, which shall be subject to approval by the **Underwriters** or by a competent person nominated by the **Underwriters** with the **Insured's** consent.

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

This Automatic Extension 2.5 is not subject to the Excess as set forth in Section 6.2.

2.6 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** 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** has given prior written consent to such attendance, such consent to be obtained from the **Underwriters** as a condition precedent to any entitlement to indemnity; and
- (b) indemnity for such costs shall not exceed \$500 NZD per director, principal, partner or member per day and \$250 NZD per **Employee** per day.

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

This Automatic Extension 2.6 is not subject to the Excess as set forth in Section 6.2.

2.7 Quasi-Judicial

The **Underwriters** will indemnify the **Insured** 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, provided that any such investigation or complaint has been notified to the **Underwriters** during the **Policy Period**, for:

- (a) all orders or determinations of compensation against the **Insured**; and
- (b) any **Defence Costs** incurred by or on behalf of the **Insured**.

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

In addition to the applicable Sublimit of Liability, **Defence Costs** are payable under this Automatic Extension 2.7 in an amount up to \$100,000 NZD.

2.8 Fair Trading Act 1986

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from any **Claim** made against the **Insured** under the terms of the Fair Trading Act 1986 (sections 9 to 14) or any similar fair trading legislation enacted by the Dominion of New Zealand or the States or Territories of the Commonwealth of Australia.

2.9 Continuous Cover

This Policy extends cover 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 such **Prior Policy** was not fraudulent; and
- (b) the **Underwriters** has the discretion to apply either the **Conditions** or the terms and conditions of such **Prior Policy** 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**.

2.10 Estate Extension

This Policy extends cover for 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 coverage 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, incompetency, insolvency or bankruptcy.

2.11 Marital and Domestic Partner

This Policy extends cover for any **Claim** made against any natural person **Insured's** lawful spouse or domestic partner of any (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.

2.12 Loss Mitigation

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 **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.

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 2.12 does not extend to cover the **Insured's** own time spent in mitigating any such risk.

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

2.13 Joint Ventures and Partnerships

The **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from any **Claim** for civil liability of the **Insured** in connection with a Joint Venture or Partnership in which the **Insured** has an economic interest; provided, however, that the **Underwriters** shall only be liable for the proportion of any **Damages** 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 2.13: (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.

2.14 Contractual Liability

Notwithstanding Exclusion 4.5, the **Underwriters** will indemnify the **Insured** for the **Damages** and **Defence Costs** resulting from any **Claim** for any contractual liability or obligation arising from the following warranties or guarantees made by the **Insured**:

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

SECTION 3: DEFINITIONS

3.1 “**Circumstance**” means an incident, occurrence, fact, matter, act, error or omission which may give rise to a **Claim** against the **Insured**.

3.2 “**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**.

3.3 “**Company**” means:

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

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

3.5 “**Damages**” means:

- (a) damages, settlements or judgments;
- (b) pre-judgment or post-judgment interest; and
- (c) costs or fees awarded in favour of the claimant, which an **Insured** is legally liable to pay to a third party.

“**Damages**” also means any amounts payable under any Automatic Extension of this Policy.

“**Damages**” does not include 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**.

3.6 “**Defence Costs**” means reasonable fees, costs and expenses 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** 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.

3.7 “Documents” means deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature, whether printed, written or reproduced by any method including computer records and electronically stored data.

“Documents” does not include bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

3.8 “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**.

“Employee” shall include any director, principal, partner or member.

3.9 “Insured” means:

- (a) the **Company**;
- (b) any past, present or future director, principal, partner or member of the **Company**;
- (c) any **Employee**; and
- (d) any person, partnership, company, corporation or other entity specified as such in an endorsement attached to this Policy.

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

3.11 “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.

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

3.13 “Policy Period” means the period of time from the Inception Date set forth in Item 2A of the Schedule to the earlier of the Expiration Date set forth in Item 2B of the Schedule or the effective date of cancellation of this Policy.

3.14 “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.

- 3.15** “**Prior Policy**” means any professional liability insurance policy issued to the **Company** prior to the commencement of the **Policy Period**.
- 3.16** “**Professional Business Services**” means the performance by, or on behalf of, the **Insured** of professional services or professional activities:
- (a) as specified in Item 1C of the Schedule; and/or
 - (b) as declared by the **Insured** in the **Proposal Form**.
- 3.17** “**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** in connection with the underwriting of this Policy.
- 3.18** “**Subsidiary**” means any entity of which, prior to the Inception Date set forth in Item 2A of the Schedule, the **Company** has **Management Control**.
- 3.19** “**Underwriters**” means the underwriter(s) named in Item 13 of the Schedule.

SECTION 4: EXCLUSIONS

The **Underwriters** shall not be liable to make any payment under this Policy for any liability:

4.1 Asbestos

arising 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 Associates

arising out of, based upon or attributable to 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;
provided, however, that this Exclusion shall not apply to any **Claim** brought by an independent third party.

4.3 Assumed Duty or Obligation

arising out of, based upon or attributable to any duty, obligation or liability incurred or assumed by an **Insured** which is not incurred or assumed in the normal conduct of performing **Professional Business Services**.

4.4 Bodily Injury/Property Damage

arising out of, based upon or attributable to any bodily injury, mental injury, sickness, disease or death or destruction of or damage to any property; provided, however, that this Exclusion shall not apply if such injury, sickness, disease, death, destruction or damage results from a breach of professional duty in performing **Professional Business Services**.

4.5 Contractual Liability

arising out of, based upon or attributable to 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 performing **Professional Business Services**;
- (b) performance warranty (including but not limited to a fitness for purpose warranty), guarantee, penalty clause or liquidated damages clause; or
- (c) delay in performing, failing to perform or failing to complete any **Professional Business Services**, unless such delay or failure arises from a breach of professional duty by an **Insured**;

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

4.6 Fines and Penalties

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

however, Exclusion 4.6(a) shall not apply to any taxes payable under Section 6.14.

4.7 Fraud and Dishonesty

- (a) arising out of, based upon or attributable to 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) arising out of, based upon or attributable to 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 4.7(a) shall apply to Automatic Extension 2.4 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 4.7(a) shall not apply to any **Insured** who is innocent of committing or condoning any such dishonest or fraudulent act or omission.

4.8 Infrastructure

arising out of, based upon or attributable to:

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

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

4.9 Insolvency

arising out of, based upon or attributable to, or which results directly or indirectly from, the insolvency or bankruptcy of any **Insured**.

4.10 Investment Advice

arising out of, based upon or attributable to any investment advice provided by the **Insured**, including but not limited to any advice given, services performed or recommendation made as to the valuation, tax implications or performance of any investment.

4.11 Land, Building, Transport

arising out of, based upon or attributable to any ownership, possession or use by or on behalf of an **Insured** of any land, building, aircraft, vessel or mechanically propelled vehicle.

4.12 Pollution

arising out of, based upon or attributable to:

- (a) the actual, alleged or threatened presence, discharge, dispersal, release or escape of **Pollutants**; or
- (b) the testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralising **Pollutants**, whether or not any of the foregoing are or should be performed by the **Insured** or by others.

4.13 Prior Claims, Knowledge and Notice

arising out of, based upon or attributable to:

- (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 2.9.

4.14 Products

arising out of, based upon or attributable to any **Insured**, or any party for whom the **Insured** is responsible, having supplied, manufactured, constructed, altered, repaired, treated, sold, recalled, fabricated, distributed, installed or maintained any goods or products.

4.15 Radioactive Contamination and Explosive Nuclear Assemblies

- (a) for 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) for 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.

4.16 Retroactive Date

arising out of, based upon or attributable to any event, act, error or omission occurring or alleged to have occurred prior to the Retroactive Date stated in Item 6 of the Schedule.

4.17 Sanctions

arising out of, based upon or attributable to, any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

4.18 Terrorism

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 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.

4.19 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

5.1.1 As a condition precedent to the right to be indemnified under this Policy for any **Claim** or **Circumstance**, 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**; or
- (b) **Circumstance** occurring during the **Policy Period**;

however, in the event the **Insured** first becomes aware of any **Claim** or **Circumstance** 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 potential **Claim**, the potential quantum if known 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.
- 5.1.4 As a condition precedent to the right to be indemnified under Automatic Extension 2.5, the **Insured** shall provide the **Underwriters** with written notice within thirty (30) days of discovering that any **Document** cannot be located or has been destroyed, damaged or distorted beyond reasonable use, but in no event later than the Expiration Date set forth in Item 2B of the Schedule. However, in the event the **Insured** makes such discovery during the last seven (7) days of the **Policy Period**, notice shall be provided as soon as practicable, but no later than seven (7) days after the Expiration Date set forth in Item 2B of the Schedule.
- 5.1.5 Any notice provided to the **Underwriters** under this Section 5.1 shall be delivered, posted or emailed to the **Underwriters** at the address(es) specified in the Schedule. The posting of such notice as aforesaid shall be sufficient proof of notice. Any notice provided to the **Underwriters** under any other section of this Policy shall be posted or emailed to the **Underwriters** at the address(es) specified in the Schedule.

5.2 Legal Defence, Settlement and Allocation

- 5.2.1 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** 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.
- 5.2.2 The **Insured** shall defend any **Claim** 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 **Circumstance**, and the **Underwriters** shall have full discretion in the handling thereof (notwithstanding that a dispute may have arisen between the **Insured** and the **Underwriters**).
- 5.2.3 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**.
- 5.2.4 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 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, 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.

5.2.5 This Policy shall provide coverage 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.

5.3 Cooperation

5.3.1 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.

5.3.2 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 **Claim**, **Circumstance** or other matter for which coverage may be provided under this Policy shall not be intentionally destroyed or otherwise intentionally disposed of.

5.4 Fraudulent Claims

If the **Insured** shall give any notice or make any request in respect of any **Claim**, 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.

5.5 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**, director, principal, partner or member, except if the **Claim** 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.

5.6 Territory

This Policy applies to:

- (a) **Professional Business Services** performed, or any other matters which give rise to coverage under this Policy which take place, anywhere in the world; and
- (b) **Claims** brought against the **Insured** anywhere in the world except any such **Claim** brought in the United States of America, Canada or any possession or territory of either such country or any legal proceeding brought to enforce a judgment obtained in any such country, possession or territory.

SECTION 6: GENERAL CONDITIONS

6.1 Limits of Liability

- 6.1.1 The Limit of Liability for this Policy, as set forth in Item 3A of the Schedule, is the Underwriters' maximum liability under this Policy.
- 6.1.2 Any Sublimit of Liability for this Policy as set forth in Item 5 of the Schedule: (a) shall be part of, and not in addition to, the Limit of Liability of this Policy; and (b) is the maximum liability of the **Underwriters** for all amounts to which the Sublimit of Liability applies.
- 6.1.3 Any payment of **Damages** under this Policy shall reduce and may exhaust the Limit of Liability of this Policy set forth in Item 3A of the Schedule. If the Limit of Liability of this Policy is exhausted by the payment of **Damages**, the **Underwriters** will have no further obligations of any kind with respect to this Policy, including any obligation to pay any further **Defence Costs**, and the Premium set forth in Item 14 of the Schedule will be fully earned.
- 6.1.4 Any payment of **Damages** under this Policy shall reduce and may exhaust the applicable Sublimit of Liability set forth in Item 5 of the Schedule. If any Sublimit of Liability of this Policy is exhausted by the payment of **Damages**, 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 of this Policy. Payment by the **Underwriters** of **Defence Costs** shall not reduce any such Limit of Liability or Sublimit of Liability.

6.2 Excess

6.2.1 The **Underwriters** shall only be liable to pay or reimburse the **Insured** for any **Damages** that exceed the applicable Excess set forth in Item 4 of the Schedule. The Excess shall be borne by the **Insureds** and remain uninsured. The applicable Excess shall apply to each and every **Claim** or other matter giving rise to coverage under this Policy. A single Excess amount shall apply to all **Damages** from all **Related Claims**.

6.2.2 The Excess shall not apply to Automatic Extension 2.5, Automatic Extension 2.6 or **Defence Costs**.

6.3 Related Claims

6.3.1 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** for the purposes of this Policy.

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

6.4 Alteration to Risk

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 **Professional Business Services**. 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. However, such coverage shall be provided 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.

6.5 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) the sending or receiving of notice of cancellation; (d) the payment of the premium; and (e) the receipt and acceptance of any endorsements attaching to and forming part of this Policy.

6.6 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**.

6.7 Confidentiality

The **Insured** shall not disclose to any third party the **Conditions** 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.

6.8 Third Parties

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

6.9 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 it regards this Policy as of full force and effect, except that the Policy shall exclude coverage for any **Claim** or loss 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.

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

6.10.1 The **Underwriters** shall not exercise its 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 Section 5.1, 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 subsection (b) shall not apply to Automatic Extension 2.9; 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 within the applicable time frames specified in Section 5.1.1 (no later than the end of the **Policy Period** or no later than seven (7) days after the Expiration Date as set in Item 2B of the Schedule).

6.10.2 In consideration of the **Underwriters** waiving its right to avoid this Policy in accordance with Section 6.10.1, 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**.

6.11 New Subsidiaries

6.11.1 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**.

6.11.2 Any entity acquired during the **Policy Period** by the **Named Insured**, other than any entity described in Section 6.11.1 above, shall automatically be covered for a period of ninety (90) days from the effective date of the acquisition, but only with respect to **Professional Business Services** performed 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 **Conditions**.

6.11.3 Coverage afforded under this Policy for a **Claim** made against any **Insured** relating to a **Subsidiary** shall only apply to **Professional Business Services** performed or allegedly performed during the time such entity is a **Subsidiary**.

6.12 Other Insurance

This Policy shall apply only in excess of any other valid and collectable insurance, whether or not such insurance is collected.

6.13 Change in Control

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 apply only to any **Claim** arising from **Professional Business Services** performed prior to the effective date of such transaction, unless otherwise agreed in writing by the **Underwriters**.

6.14 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 6.14 is payable by the **Underwriters** in addition to the Limit of Liability and any Sublimit of Liability set forth in Items 3A and 5 of the Schedule, respectively.

6.15 Cancellation

6.15.1 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**.

6.15.2 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, the premium shall be deemed fully earned as of the Inception Date set forth in Item 2A of the Schedule.

- 6.15.3 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**.
- 6.15.4 Any notice provided to the **Named Insured** under this Section 6.15 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.

6.16 Several Liability

- 6.16.1 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.
- 6.16.2 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.
- 6.16.3 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.
- 6.16.4 Although reference is made at various points in this clause to "this Policy" in the singular, where the circumstances so require this should be read as a reference to Policies in the plural.

6.17 Governing Law and Disputes

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 **Claims** or **Circumstance** 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 enquiry or 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**.