



# **PROFESSIONAL INDEMNITY POLICY WORDING – RECRUITMENT**

THIS **POLICY** IS WRITTEN ON A CLAIMS MADE AND REPORTED BASIS. COVERAGE APPLIES ONLY TO THOSE **CLAIMS** THAT ARE FIRST MADE AGAINST **YOU** AND REPORTED TO **US** IN WRITING DURING THE **PERIOD OF INSURANCE**, OR WITHIN THIRTY (30) DAYS FOLLOWING THE END OF THE **PERIOD OF INSURANCE**. COVERAGE DOES NOT APPLY TO ANY ACTS OR OMISSIONS BEFORE THE **RETROACTIVE DATE**.

## 1. INSURING AGREEMENT

### 1.1 Civil Liability

In consideration of the payment of the premium **We** shall, subject to all the terms and conditions of this **Policy**, indemnify **You** in respect of all sums for which **You** shall become legally liable to pay for a **Valid Claim**.

### 1.2 Defence Costs

In addition, **We** agree to pay all **Defence Costs** incurred with **Our** prior written consent in respect of the settlement or defence of any **Valid Claim** covered by Section 1.1 of this **Policy**.

### Optional Extension

### 1.3 Vicarious Liability

Notwithstanding Exclusion 3.6 (Contractual Liability), and subject otherwise to the terms and conditions of this **Policy**, the indemnity provided under Cover Clause 1.1 (Civil Liability) above shall also apply in respect of any **Valid Claim** arising as a result of liability assumed by **You** for the negligent acts, errors or omissions committed by **Agency Workers**, under the terms of any contract or agreement under which such **Agency Workers** are supplied.

## 2. AUTOMATIC EXTENSIONS

The following Extensions are subject to the terms and conditions of this **Policy**.

### 2.1 Acquisitions and creations

**We** shall indemnify any subsidiary acquired by the **Named Insured** during the **Period of Insurance** but only for any act, error or omission occurring after the date of acquisition, provided that:

- i. the new subsidiary does not represent more than a twenty percent increase in the **Named Insured's** total gross fees/revenue as of the date of acquisition;
- ii. within thirty days of any entity becoming a subsidiary **We** are provided with full particulars of that new subsidiary. **We** reserve the right to amend the provision of this **Policy** and/or charge any additional premium relating to such new subsidiary.

### 2.2 Automatic reinstatement

Following payment under this **Policy** of a **Valid Claim**, the Limit of Liability shall be reinstated automatically, without additional premium, for the amount paid in respect of that **Valid Claim**, provided that:

- i. the total amount payable by Us for any one **Valid Claim** shall not exceed the Limit of Liability as stated in Item 5 of the **Schedule**;
- ii. in respect of all **Valid Claims**, the total amount payable shall not exceed an amount equal to twice the Limit of Liability as stated in Item 5 of the **Schedule**;
- iii. this Extension does not apply until **You** have exhausted the limits of any policy which is in excess of this **Policy**.

For the avoidance of doubt only a single Limit of Liability as stated in Item 5 of the **Schedule** shall apply to **Valid Claims** arising out of the same act, error or omission, or related series of acts, errors or omissions, regardless of the number of **You** or the number of civil suits or arbitration proceedings in which the **Claims** are made.

### 2.3 Breach of professional confidentiality

**We** shall indemnify **You** in respect of all sums for which **You** shall become legally liable to pay for a **Valid Claim** arising out of a breach of professional confidentiality.

## 2.4 Continuous Cover Clause

**We** shall indemnify **You** in respect of any **Claims** that would be covered under this **Policy** but are excluded by Exclusion 3.3 (Circumstances Known at Inception), subject to the following additional conditions:

- i. **You** held professional indemnity insurance at the primary level under a policy (“the former policy”) at the time when **You** first became aware of the circumstances that subsequently gave rise to the **Claim**; and
- ii. **You** continued, without interruption, to hold professional indemnity insurance at the primary level from the time when **You** first became aware of the circumstances up until such time as the **Claim** was made against **You** and notified to **Us**; and
- iii. **Our** liability is limited to the amount for which **We** would have been liable at the time referred to in 2.4 i. in accordance with the terms and conditions of the former policy; and
- iv. **Our** liability will be reduced by the amount that fairly represents the extent to which liability for the **Claim** could have been reduced had the circumstances been duly reported under the former policy.

## 2.5 Court attendance costs

**We** shall reimburse **You** for time and expenses incurred by an **Employee** for attendance at an examination for discovery or arbitration, and any trial or hearing to determine **Your** liability for a **Valid Claim**. Reimbursement for time shall be for actual hours in attendance at such examination for discovery or arbitration and trial, and shall be limited to 70% of the customary hourly billing rate or NZD 100.00 per hour, whichever is less. Reimbursement for expenses shall be limited to those amounts reasonably incurred for travel, accommodation and meals for the actual attendance at such examination for discovery or arbitration and trial.

## 2.6 Cyber liability (Claims made by a Third Party)

Notwithstanding sub-clause i. of Exclusion 3.6 (Cyber and Data) **We** shall indemnify **You** in respect of all sums for which **You** shall become legally liability to pay for a **Valid Claim** arising out of a **Cyber Incident** where such **Valid Claim** arises out of an actual or alleged breach of professional duty by **You**.

The maximum amount that **We** will pay under this Extension during any one **Period of Insurance** in respect of all **Valid Claims** and including all **Defence Costs** shall be NZD 1,000,000

## 2.7 Defamation

**We** shall indemnify **You** in respect of all sums for which **You** shall become legally liable to pay for a **Valid Claim** arising out of unintentional defamation by reason of words written or uttered. It is a condition precedent to **Your** right to be defended or indemnified that in the event of a **Valid Claim** **You** shall, upon the reasonable request by **Us**, issue an apology, the form and content of which to be approved by **Us**. If **You** refuse such request then **We** shall not be liable to indemnify or defend **You**.

## 2.8 Dishonesty of Employees

Notwithstanding Exclusion 3.7 (Deliberate Acts) **We** shall indemnify **You** in respect of all sums for which **You** shall become legally liable to pay for a **Valid Claim** arising out of financial loss suffered by a third party and caused by the dishonest, fraudulent, criminal or malicious acts or omissions of any **Employee** or **Candidate** provided that:

- i. **We** shall not indemnify **You** in respect of any **Claim** arising from any such act or omission which does not occur in the conduct of the **Professional Business**;
- ii. **We** shall not indemnify any person committing or condoning any such act or omission;
- iii. **We** shall not indemnify **You** in respect of any **Claim** arising directly or indirectly out of, or in respect of the dishonest, fraudulent, criminal or malicious acts or omissions of any **Agency Worker**;
- iv. **We** shall not indemnify **You** in respect of any **Claim** brought by any parent, subsidiary or associated company unless the original **Claim** emanates from an independent third party;
- v. **We** shall not indemnify **You** in respect of any losses which arise after the act or omission has been discovered, or reasonably should have been discovered, by **You**;

- vi. **We** shall not indemnify **You** in respect of any act or omission that is for the personal reward of a director, partner or principal of the **Named Insured**;
- vii. **We** shall not indemnify **You** in respect of any **Claim** arising directly or indirectly out of, or in respect of the dishonest, fraudulent, criminal or malicious acts or omissions on the part of any **Candidate**, unless such liability arises directly from **Your** failure to exercise reasonable care and skill in the selection and supply such **Candidate**.

## 2.9 Extended Reporting Period

**You** shall have the right to extend the insurance afforded by this **Policy** to apply to **Valid Claims** first made against **You** during the period of 30 days following immediately upon the effective date of termination, but only in respect of any act, error or omission committed before such termination date and otherwise covered by this **Policy**.

The Limit of Liability, as stated in Item 5 of the **Schedule**, shall not in any way be increased by virtue of this Extended Reporting Period. The Extended Reporting Period shall immediately terminate on the effective date of any other insurance which replaces the coverage afforded by such reporting period. The premium is deemed to be earned fully once the right is exercised and no refund shall be given in the event of termination.

It is noted and agreed that this Extension shall not apply if the **Policy** was cancelled for non-payment of premium.

## 2.10 Fair Trading Act

**We** shall indemnify **You** in respect of all sums for which **You** shall become legally liable to pay for a **Valid Claim** arising out of a breach of the Fair Trading Act 1986 (sections 9 – 14) or any replacement legislation.

## 2.11 Fee Waiver

Where **We** require **You** to waive all or part of any outstanding fee properly due to **You**, to assist in the settlement of any **Valid Claim**, then the amount of such fee shall be taken into account in determining the amount of **Excess** payable by **You**. If the amount of the waived fee is greater than the **Excess**, then 50% of the difference will be paid by **Us** to **You**.

## 2.12 Infringement of Copyright

**We** shall indemnify **You** in respect of all sums for which **You** shall become legally liable to pay for a **Valid Claim** arising out of any inadvertent infringement of copyright, registered designs, trademarks or passing off.

## 2.13 Investigations

**We** shall reimburse **You** for legal fees and expenses incurred with **Our** prior written consent in responding to a complaint to, or regulatory or administrative action brought directly against **You** by, a government agency, statutory registration board, professional body or similar regulatory authority, provided that the regulatory or administrative action:

- i. is first commenced during the **Period of Insurance**; and
- ii. is reported to **Us** during the **Period of Insurance** and before **You** incur any legal fees or expenses.

**We** shall not reimburse **You** for any fines, taxes or penalties.

The maximum amount that **We** will pay under this Extension is NZD 100,000.

## 2.14 Joint Venture Liability

**We** shall indemnify **You** in respect of all sums for which **You** shall become legally liable to pay for a **Valid Claim** arising out of **Your** involvement in any Joint Venture or partnership arrangement, but only where such **Claim** arises out of the performance of **Professional Services** by **You** whilst working within the Joint Venture. This Extension shall only apply if the Joint Venture or partnership is specifically disclosed, including all fees earned by the **Named Insured**, in the **Application**.

This Extension shall not extend to indemnify the Joint Venture, partnership or partner.

## 2.15 Loss Mitigation

**We** shall indemnify **You** in respect of any reasonable costs and expenses **You** incur in taking action to rectify, or to mitigate the effects of, any act, error or omission made by **You** in the conduct of **Professional Business** which would otherwise result in a **Valid Claim**, provided that:

- i. **You** provide written notice to **Us** of the act, error or omission and the actions required to mitigate it prior to incurring any costs;
- ii. **You** satisfy **Us** that the costs and expenses are reasonable and necessary to prevent or reduce the amount of any **Valid Claim** resulting from the act, error or omission (if not rectified or mitigated);
- iii. any costs and expenses are incurred after obtaining prior written consent from **Us**;
- iv. the **Excess** shall apply to these costs;
- v. the maximum amount that **We** shall be liable for under this Extension is NZD 250,000;
- vi. direct costs and expenses covered by this Extension shall not include:
  - a. any element of profit, loss or loss of margin; or
  - b. overheads; or
  - c. remuneration of **You** and or **Employees**, consultants, sub-contractors or agents; or
  - d. liquidated damages.

## 2.16 Loss of Documents

Notwithstanding Exclusion 3.3 (Care, Custody and Control) and Exclusion 3.17 (Property Damage), **We** shall indemnify **You** in respect of all sums for which **You** become legally liable to pay for a **Valid Claim** arising out of loss of, damage to or destruction of any **Document** which is **Your** property, or in **Your** custody or control, and which is first discovered during the **Period of Insurance**.

**We** shall also indemnify **You** in respect of all reasonable costs and expenses incurred by **You** in replacing or restoring such **Documents**, provided that the costs and expenses shall be supported by bills or accounts which shall be subject to approval by **Us**.

## 2.17 Public Relations Expenses

**We** shall pay the reasonable costs and expenses incurred by **You** with our prior written consent to mitigate damage to **Your** reputation following a **Valid Claim** that is covered by this **Policy**, provided that:

- i. **You** must request this cover during the **Period of Insurance**;
- ii. the maximum amount that **We** shall be liable for under this Extension is NZD 100,000.

Payments under this Extension shall be part of the **Defence Costs**.

## 2.18 Severability

Notwithstanding Exclusion 3.5 (Deliberate Acts), where one of **You** fails to comply with **Your** duty of disclosure or makes a misrepresentation, **We** will not deny indemnity to any other of **You** on these grounds if the rest of **You** were unaware of the matter not disclosed or the fact of the misrepresentation. This Extension shall not apply in the case of an application for indemnity made by any of **You** knowing that such application is false or fraudulent.

## 3. EXCLUSIONS

**We** shall not indemnify **You** in respect of any **Claim** arising directly or indirectly out of, or in respect of:

### 3.1. Asbestos

asbestos howsoever occurring.

### 3.2. Bodily Injury

the death of or any bodily or mental injury or disease suffered by anyone, unless such **Claim** arises directly from **Your** failure to exercise reasonable care and skill in the selection and supply of any **Candidate** or **Agency Worker**.

### **3.3. Care Custody or Control**

any damage caused to property in **Your** care, custody or control or property over which **You** are, for any purpose, exercising control.

### **3.4. Circumstances Known at Inception**

any circumstance which **You** were aware of, or ought reasonably to have been aware of, at or prior to the inception date of this **Policy**, whether notified under any other insurance or not.

### **3.5. Contractual Liability**

any liability assumed by **You** under any liquidated damage, penalty or forfeiture clause, express warranty, contract, agreement or guarantee other than to the extent that such liability would have attached to **You** in the absence of such clause, warranty, contract, agreement or guarantee.

### **3.6. Cyber and Data**

i. a **Cyber Incident**;

ii. a **Cyber Act**; or

iii. a breach of **Data Protection Law** by **You**, or parties acting for **You**, involving access to, processing of, use of or operation of any **Computer System** or **Data**, including notification costs, crisis consultancy costs, credit monitoring expenses, replacement of actual credit or payment cards, forensic expenses, public relations expenses or legal advice and services.

### **3.7. Deliberate Acts**

any wilful, criminal, malicious or dishonest act, error or omission.

### **3.8. Directors and Officers**

any person acting solely in their capacity as a director or officer of the **Named Insured** or of any other firm or company.

### **3.9. Employers Liability**

i. death, bodily injury, illness or disease of or to any person in the course of his or her employment by **You** under any contract of service or apprenticeship;

ii. any breach of any obligation owed by **You** as an employer to any **Employee**.

iii. any allegation made by any current, former or prospective **Employee** or any **Candidate** or applicant for employment for actual or alleged wrongful, unfair or constructive dismissal, discharge or termination of employment, breach of written or implied contract, employment-related misrepresentation, wrongful deprivation of a career opportunity, failure to grant tenure, negligent employee evaluation, harassment, unlawful discrimination, failure to provide adequate employee procedures and policies, retaliation, defamation, invasion of privacy or any other claim arising solely as a result of the employment or non-employment by **You**.

### **3.10. Fines, Penalties and Punitive Damages**

awards or damages of a punitive or exemplary nature whether in the form of fines, penalties, multiplication of compensation awards or damages or aggravated damages or in any other form whatsoever.

### **3.11. Insolvency or Bankruptcy**

**Your** administration, receivership, insolvency or bankruptcy.

### **3.12. Insured vs Insured**

i. any other person or entity included under the definition of **You**; or

ii. any entity financially associated with **You**,

unless the **Claim** originally emanates from an independent third party.

### **3.13. Nuclear**

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

### **3.14. Patents and Trade Secrets**

any actual or alleged infringement, use or disclosure of any patent, or any use, disclosure or misappropriation of any trade secret.

### **3.15. Pollution and Contamination**

any **Pollution**.

### **3.16. Products**

the manufacture, construction, installation, sale, supply, distribution, treatment, service, alteration or repair of any goods or products.

### **3.17. Property Damage**

the physical loss of, destruction of or damage to material property.

### **3.18. Property**

the ownership, possession or use by **You**, or on **Your** behalf, of any land, buildings, aircraft, watercraft, vessel or mechanically-propelled vehicle.

### **3.19. Refund of Fees**

- i. any request or requirement by **You** to provide a refund, by way of damages or otherwise, of professional fees; or
- ii. any allegation or assertion that **You** are not entitled to professional fees.

### **3.20. Retroactive Date**

any actual or alleged act, error, omission or circumstance which occurred or commenced before the **Retroactive Date**.

### **3.21. Specific Activities**

- i. any survey or valuation of any physical property;
- ii. any construction or erection work;
- iii. legal advice or legal services;
- iv. the investment of, or any advice in connection with the investment of client funds

### **3.22. Trading Losses**

any trading losses or trading liabilities incurred by **You**, or any loss of profit arising from the loss of any client, account or business.

### **3.23. USA Jurisdiction**

any action brought in a court of law in, or any judgement, award, payment, settlement or proceedings made within territories which operate under the laws of the United States of America or where any order or proceedings are made anywhere in the world to enforce such judgement, award, payment or settlement either in whole or in part.

### **3.24. War or Terrorism**

- i. war, terrorist act, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power;
- ii. any act including, but not limited to, the use of force or violence 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.

This exclusion also excludes loss, damage, cost or expense of any nature whatsoever directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to the above.

If **We** 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 **You**.

## 4. DEFINITIONS

- 4.1. Agency Workers** shall mean any person or group of persons supplied by You under a temporary contract or assignment to a Client.
- 4.2. Application** shall mean a written Application made to **Us** by **You** or on **Your** behalf for the insurance evidenced by this **Policy**, including any statements, declarations, warranties or information upon which **We** have relied and, where a special form or presentation has been used for the purpose, bearing the date stated in Item 11 of the **Schedule**.
- 4.3. Candidate** shall mean a person who has sought or obtained placement for permanent employment with a **Client**.
- 4.4. Claim** shall mean:
- i. the receipt by **You** of any written or oral notice of demand for compensation made by a third party against **You**;
  - ii. any notice of intention in writing to commence legal proceedings for compensation against **You**.
- All **Claims** arising from a single act, error or omission or related series of acts, errors or omissions shall be considered a single Claim regardless of the number of **You** or the number of civil suits or arbitration proceedings in which the Claims are made.
- 4.5. Client** shall mean any person, company or other entity with whom **You** have a written contract in place for the performance of **Professional Services** in return for a fee. **Client** shall not include any person, company or entity included within the definition of **You**.
- 4.6. Computer System** shall mean any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by You or any other party.
- 4.7. Cyber Act** shall mean an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **Computer System**.
- 4.8. Cyber Incident** shall mean:
- i. any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any **Computer System**; or
  - ii. any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **Computer System**.
- 4.9. Data** shall mean information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **Computer System**.
- 4.10. Data Protection Law** shall mean all applicable data protection and privacy legislation, regulations in any country, province, state, territory or jurisdiction which governs the use, confidentiality, integrity, security and protection of personal data, and any guidance or codes of practice issued by any data protection regulator or authority from time to time (all as amended, updated or re-enacted from time to time).
- 4.11. Defence Costs** shall mean reasonable costs and expenses incurred by **You** with **Our** prior consent in the investigation, defence or settlement of any **Valid Claim** made against **You** or the investigation of any circumstances of which **You** shall become aware which might reasonably be expected to give rise to a



**Valid Claim**, providing such **Valid Claim** is afforded coverage under this **Policy**. Costs incurred by **Us** to determine indemnity under the **Policy** are not included as part of Defence Costs.

Defence Costs shall include all premiums on bonds to release attachments, all premiums on appeal bonds required in any such defended action, but without any obligation to apply for or furnish and such bonds.

Defence Costs also includes all pre-judgement and post-judgement interest.

**4.12. Documents** shall mean written or printed deeds, wills, maps, plans, records, books, letters, certificates, forms and documents of any nature (but shall not include bearer bonds or coupons, stamps, bank currency notes or other negotiable instruments).

Documents shall not include **Data**.

**4.13. Employee** shall mean any person under a contract of service or apprenticeship with the **Named Insured** whilst employed or engaged by the **Named Insured** and under **Your** control and acting in the conduct of **Professional Business**.

**4.14. Excess** shall mean the first part of each and every **Valid Claim** borne by **You** as stated in Item 6 of the **Schedule**.

**4.15. Named Insured** shall mean the individual, company, partnership or firm as stated in Item 1 of the **Schedule**.

**4.16. Period of Insurance** shall mean the period of time between the effective date and the expiration date specified in Item 4 of the **Schedule** or the earlier termination date, if any, but shall specifically exclude any Extended Reporting Period.

**4.17. Policy** shall mean this wording and the **Schedule** and all endorsement appended hereto.

**4.18. Pollution** shall mean any contamination of the atmosphere or of any water, land, or other tangible property arising out of the actual, alleged or threatened discharge, dispersal, or release or escape of **Pollutants**.

**4.19. Pollutants** shall mean any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste.

**4.20. Professional Services** shall mean the following professional services and activities performed by **You**, or on **Your** behalf:

- i. Placement of **Candidates** in permanent positions (whether on a full or part-time basis) in the role of a recruitment agent;
- ii. Temporary placement of **Agency Workers**;
- iii. Employment consulting services in the areas of occupational health, human resources, employee relations, outsourcing, and psychometric testing;
- iv. Training and development;
- v. Payroll services.

**Professional Services** does not include any service or activity performed by any **Agency Worker**.

**4.21. Retroactive Date** shall mean the date shown in the **Schedule**.

**4.22. Schedule** shall mean the document so-entitled which is appended to this **Policy**.

**4.23. Valid Claim** shall mean any **Claim** that is:

- i. First made against **You** during the **Period of Insurance**; and
- ii. Notified in writing to **Us** by **You** during the **Period of Insurance** or Extended Reporting Period; and
- iii. Arising out of any act, error or omission by **You**, or any act, error or omission by others for whom **You** are legally liable, in connection with the performance of **Professional Services** that occurred after the **Retroactive Date**.

**Claims** that do not accord with all of i, ii and iii of this definition shall not be covered under this **Policy**.

**4.24. You/Your** shall mean:

- i. The **Named Insured**;
- ii. any past, present or future **Employee**, officer or director of, or any stockholder or any partner in the **Named Insured** but only in respect of work performed while an **Employee**, or officer, director, stockholder or partner of the **Named Insured**;
- iii. Any heir, executor, administrator, marital or domestic partner and/or legal representative of any person included in ii. above, in the event of their death, incapacity or bankruptcy, but only as respects liability arising out of the performance of **Professional Services** prior to such death, incapacity or bankruptcy;
- iv. Any individuals or personal corporations who, from time to time, have been retained under personal services contracts or personal services agreements; employees on loan from others, but only while acting within the scope of their duties for **You**; contract employees for work completed on **Your** behalf. All fees for the above services and or activities must be declared in the **Application**;
- v. Any subsidiary of the **Named Insured**. Subsidiaries are defined as any entity/ies of which the **Named Insured** controls the composition of the board of directors and/or controls more than half the voting power and/or holds more than half of the issued share capital, on or before the commencement of this **Policy**;
- vi. Any predecessor in business of the **Named Insured**.

**4.25 We/Us/Our** shall mean the underwriters named in Item 12 of the **Schedule**.

## 5. CONDITIONS

### 5.1. Assignment

Assignment or transfer of any interest under this **Policy** shall not bind **Us** without **Our** prior written consent.

### 5.2. Cancellation

Method of cancellation:

- i. The **Named Insured** may cancel this **Policy** at any time by notifying **Us** in writing;
- ii. **We** may cancel this **Policy** at any time by giving 30 days notice in writing to the **Named Insured** of the date from which the cancellation is to take effect. Such notification is to be delivered personally or posted by registered mail to the **Named Insured** at the address last notified to **Us**. Proof of mailing is sufficient proof of notification.

Adjustment of premium:

- i. After cancellation by the **Named Insured**, **We** will retain or be entitled to the premium for the period during which this **Policy** has been in force based on **Our** cancellation rates;
- ii. After cancellation by **Us**, the **Named Insured** is entitled to a pro-rata refund of the premium.

### 5.3. Changes

Notice to any authorized representative of **Us** or knowledge possessed by an authorized representative of **Us** or by any other person shall not effect a waiver or a change in any part of this **Policy** or stop **Us** from asserting any right under the terms of this **Policy**, nor shall the terms of this insurance be waived or changed, except by endorsement issued to form part of this **Policy**, signed by the authorized representative of **Us**.

### 5.4. Claim in Excess of the Limit

If any payment, settlement or judgement in excess of the Limit of Liability has to be made to settle or dispose of any **Valid Claim**, **Our** liability for **Defence Costs** is limited to such proportion as the Limit of Liability bears to the amount payable to dispose of the **Valid Claim**.

Where **We** have paid or incurred **Defence Costs** in excess of **Our** proportionate liability, **You** shall, upon demand from **Us**, pay to **Us** the amount of that excess. **We** may set off against any amount payable by **Us** to **You**, or on **Your** behalf, any amount that is payable by **You** to **Us** pursuant to this condition.

### 5.5. **Claims Handling**

No admission, offer, promise or payment shall be made or given by **You** or on **Your** behalf, nor shall any costs be incurred by **You** without the written consent of **Us**; and **We** shall be entitled to take over and conduct, in **Your** name, the defence or settlement of any **Claim** or to prosecute in **Your** name for **Our** own benefit any **Claim** for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings in the defence or settlement of any **Claim**.

**You** agree to use **Your** best endeavours to avoid or diminish a **Claim** and shall at all times give **Us** such information and co-operation as **We** may reasonably require.

### 5.6. **Declarations**

By acceptance of this **Policy**, the **Named Insured** agrees that the statements in the **Application** for this insurance, which is signed on behalf of the **Named Insured**, are its agreements and representations that this **Policy** is issued in reliance upon the truth of such representations and that this embodies all agreements existing between itself and **Us** or any of **Our** representatives relating to this insurance.

### 5.7. **Dispute**

This **Policy** shall be governed by and construed in accordance with the laws of New Zealand and each party agrees to submit to the exclusive jurisdiction of the Courts of New Zealand.

If any dispute arises in connection with the formulation, validity or interpretation of this **Policy**, it is understood and agreed by both **You** and **Us** that the dispute will be referred to non-binding Mediation at a convenient venue for both parties. Mediation shall be initiated by the delivery of a written notice of request for Mediation by one party to the other. Each party shall bear the expenses of its own presentation and shall jointly and equally bear with the other party the expenses of the Mediation. Failing mutual agreement on a suitable Mediator, a Mediator shall be appointed by application to the President of the provincial Law Society where the **Named Insured** is situated.

### 5.8. **Excess**

In respect of each and every **Valid Claim** against **You** the amount of the **Excess** must be paid by **You**. Where a **Valid Claim** does not exceed the **Excess** **You** must also pay the **Defence Costs** incurred in investigating, defending and settling that **Valid Claim**.

The **Excess** does not apply to any **Defence Costs** incurred with **Our** prior written consent in the defence or settlement of any **Valid Claim**, or by **Us** to determine indemnity under the **Policy**.

Where more than one **Valid Claim** arises out of the same act or omission or is causally connected or arises from interrelated acts, errors or omissions, all of those **Valid Claims** will, together, constitute one **Valid Claim** for the purposes of determining the **Excess**.

### 5.9. **Fraudulent Claims**

If **You** shall make a **Claim** under this **Policy** which is in any respect fraudulent this **Policy** shall become void ab-initio.

### 5.10. **Goods and Services Tax**

Where **You** are liable to pay tax under section 5(13) of the Goods and Services Tax Act 1985 (or any statutory amendment of the section of the Act) upon receiving any indemnity payment under this **Policy**, **We** will indemnify **You** for the costs of that tax. The indemnity under this clause is in addition to the Limit of Liability.

### 5.11. **Limit of Liability**

Our total liability under this **Policy**, excluding **Defence Costs**, shall not exceed the Limit of Liability as stated in Item 5 of the **Schedule** for any one **Valid Claim**. **Our** aggregate liability in respect of all **Claims** shall not exceed twice the Limit of Liability as stated in Item 5 of the **Schedule**.

If **You** have additional cover in excess of this **Policy** then any reinstatement of the Limit of Liability shall only be made upon exhaustion of such additional cover.

#### **5.12. Limit of Liability - Defence Costs**

**Our** total liability in respect of **Defence Costs** under Insuring Agreement 1.2 and extension 2.2 (Automatic Reinstatement) shall not exceed the Limit of Liability in the aggregate.

#### **5.13. Material Information**

In the event of **Us** being at any time entitled to void this **Policy** by reason of any inaccurate or misleading information given by **You** in the **Application**, **We** may, at **Our** election, instead of voiding this **Policy**, give notice in writing to the **Named Insured** that **We** regard this **Policy** as of full force and effect, save there shall be excluded from the indemnity afforded hereunder any **Claim** which has arisen or which may arise which is related to such inaccurate or misleading information.

**You** shall throughout the **Period of Insurance** give notice as soon as reasonably practicable of any material change in any fact, activity or circumstance as described in the **Application**. In the event **We** are at any time entitled to void this **Policy** by reason of **You** failing to give notice in accordance with this Condition, **We** may, at **Our** election, instead of voiding this **Policy**, give notice in writing to **You** that there shall be excluded from the indemnity afforded hereunder any **Claim** which has arisen or may arise which is related to such facts, activities or circumstances.

#### **5.14. New Zealand Currency**

Unless otherwise noted in the **Schedule**, all Limits of Liability, Premiums and other amounts as expressed in this **Policy** are in New Zealand dollars.

#### **5.15. Notification of Circumstance**

If, during the **Period of Insurance**, **You** become aware of any circumstance that may (in the opinion of a reasonable practitioner of the **Professional Business**) give rise to a **Claim** and give notice to **Us** of such circumstance during the **Period of Insurance**, then any **Claim** that subsequently arises from such circumstances shall be deemed to have been made during the **Period of Insurance** in which the circumstances were first reported to **Us**.

#### **5.16. Other Insurance**

This **Policy** is in excess of all other valid and collectible insurance and shall not be called upon in contribution.

#### **5.17. Relinquishment**

**We** may at any time pay to **You** in connection with any **Claim** or series of **Claims** under this **Policy** the amount of the Limit of Liability remaining under this **Policy**, or any lesser amount for which such **Claim** or **Claims** can be settled. Where **Defence Costs** are inclusive within the Limit of Liability then any associated **Defence Costs** already paid shall reduce the Limit of Liability available to settle the **Claim**. Upon such payment being made, **We** shall relinquish the conduct and control of and be under no further liability in connection with such **Claims** or associated **Defence Costs** incurred after the date of such relinquishment.

However, if **We** exercise the above option and the total amount required to dispose of any **Claim** or series of **Claims** exceeds the Limit of Liability and **Defence Costs** are payable in addition to the Limit of Liability under this **Policy** then **We** will pay **Our** proportion of **Defence Costs** incurred up to the date of relinquishment in such proportion as the amount of the indemnity available under this **Policy** bears to the total amount which in **Our** opinion at the time of relinquishment will be necessary to dispose of the **Claim**.

#### **5.18. Sanctions**

**We** shall not be deemed to provide any cover, pay any **Claim** or provide any benefit hereunder to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit would expose **Us** to any sanction, prohibition or restriction under United Nations resolutions or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

## 5.19. Settlement

**We** shall not settle any **Claim** without the consent of the **Named Insured**. If, however, the **Named Insured** shall refuse to consent to any settlement recommended by **Us** and shall elect to contest the **Claim** or continue any legal proceedings in connection with such **Claim**, then **Our** liability for the **Claim** shall not exceed the amount for which the **Claim** could have been so settled plus the **Defence Costs** incurred with **Our** consent up to the date of such refusal.

## 5.20. Service of Suit

In the event of a dispute arising under this **Policy We** will, at **Your** request, submit to the exclusive jurisdiction of any competent Court in the Commonwealth of New Zealand. Such dispute shall be determined in accordance with the law and practice applicable in such Court

Any summons, notice or process to be served on Us and any other insurers identified in the **Schedule** may be served upon Lloyd's General Representative in New Zealand.

Lloyd's General Representative in New Zealand c/o Hazelton Law  
Level 29 Plimmer Towers  
2-6 Gilmer Terrace  
Wellington  
New Zealand

Tel: +64 4 472 7582

Fax: +64 4 472 7571

who has authority to accept service and to enter an appearance on **Our** behalf and on behalf of any other insurers identified in the **Schedule**.

## 5.21. Subrogation

**We** shall become subrogated to all **Your** rights of recourse and remedies, before as well as after any payment by Us to the extent of any such payment and **You** shall take all reasonable steps to preserve such rights and remedies.

Notwithstanding the above, if any payment is made or may be made under this **Policy** and **We** are thereupon subrogated to **Your** rights of recovery in relation thereto, **We** agree not to exercise any such rights against any of **Your** directors or **Employees** unless the **Claim** is brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the director or **Employee**.

**You** shall give all such assistance in the exercise of rights of recovery as **We** may reasonably require.

## 5.22. Terms of Policy Conformed to Statute

Any term, condition, limitation or exclusion of this **Policy** which is in conflict with the laws of the province or territory in which this **Policy** is delivered, are hereby amended to conform to such laws.

## DATA PRIVACY NOTICE

Your information has been, or will be, collected or received by MS Amlin. We will manage personal data in accordance with data protection law and data protection principles. We require personal data in order to provide good-quality insurance and ancillary services and will collect the personal data required to do this. This may be personal information such as name, address, contact details, identification details, financial information and risk details. The full Data Privacy Notice can be found on [www.msamlin.com/en/site-services/data-privacy-notice.html](http://www.msamlin.com/en/site-services/data-privacy-notice.html). A paper copy of the Data Privacy.

Notice can be obtained by contacting the Data Protection Officer by email ([dataprotectionofficer@msamlin.com](mailto:dataprotectionofficer@msamlin.com)) or at the below address:

Data Protection Officer  
MS Amlin  
MS Amlin Corporate Services  
The Leadenhall Building  
122 Leadenhall Street  
London  
EC3V 4AG

## COMPLAINTS PROCEDURE

**Our** aim is to ensure that all aspects of **your** insurance are dealt with promptly, efficiently and fairly. At all times **we** are committed to providing **you** with the highest standard of service.

If **you** have any questions or concerns about **your** policy or the handling of a claim **you** should, in the first instance, contact **us** or **your** broker where applicable. In the event that **you** remain dissatisfied and wish to make a complaint, **you** can do so at any time. Making a complaint does not affect any of **your** legal rights.

**Our** contact details are:

**Post:** Complaints  
MS Amlin Underwriting Limited  
The Leadenhall Building  
122 Leadenhall Street  
London  
EC3V 4AG

**Telephone:** +44 (0) 20 7746 1300

**Fax:** +44 (0) 20 7746 1001

**Email:** complaints@msamlin.com

If **your** complaint cannot be resolved by the Complaints Department within two weeks, or if **you** have not received a response within two weeks **you** are entitled to refer the matter to Lloyd's. Lloyd's will then conduct a full investigation of **your** complaint and provide **you** with a written final response.

Lloyd's contact details are:

**Post:** Lloyd's General Representative in New Zealand  
c/o Hazelton Law  
Level 29 Plimmer Towers  
2-6 Gilmer Terrace  
Wellington  
New Zealand

**Telephone:** +64 4 472 7582

**Fax:** +64 4 472 7571

Details of Lloyd's complaints procedures are set out in a leaflet "Your Complaint – How We Can Help" available at [www.lloyds.com/complaints](http://www.lloyds.com/complaints) and are also available from the above address.

Lloyd's is a member of the Insurance Council of New Zealand and its New Zealand Coverholders adhere to the Fair Insurance Code, which provides you with assurance that we have high standards of service for our customers.

