



# **LIABILITY POLICY – TECHNOLOGY**

**Certificate of Insurance Wording**

## SECTION 1 – ERRORS & OMISSIONS

NOTICE TO THE INSURED: the Insurance provided by this Section is written on a Claims Made basis and covers only **Valid Claims** that are first made against You during the **Period of Insurance** and notified to **Us** in accordance with the terms and conditions of the **Policy**.

### 1.1 Insuring Agreement

#### 1.1.1 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**.

#### 1.1.2 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 1.1.1 of this **Policy**.

### 1.2 Automatic Extensions

Subject to all the provisions, terms and conditions of this **Policy**, **We** shall extend the cover under Insuring Agreement 1.1 as stated in each of the following extensions. However, the inclusion of the following extensions does not increase the **Limit of Liability** and any limit specified is part of and not be in addition to the Limit of Liability unless specifically stated otherwise.

#### 1.2.1 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**.

#### 1.2.2 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 most **We** will pay in respect any one **Valid Claim** shall be the **Limit of Liability**;
- ii. the most **We** will pay in respect of all **Valid Claims**, shall be an amount equal to twice the **Limit of Liability**;
- 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** 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.

#### 1.2.3 Breach of Contract

Notwithstanding Exclusion 3.5(Contractual 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 a breach, by **You**, of any contractual agreement that:

- i. **Your Technology Services** or **Technology Products** will substantially conform to all material, written specifications;
- ii. **You** will use reasonable skill and care in the provision of **Your Technology Services** or **Technology Products**.

#### 1.2.4 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.

### 1.2.5 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 technology liability 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 technology liability 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 i. above 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.

### 1.2.6 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.

### 1.2.7 Cyber Liability (Third Party)

**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 Act** or **Cyber Incident**.

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

### 1.2.8 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 by **You** in the performance of **Technology Services**. 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**.

### 1.2.9 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**, 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 performance of **Technology Services**;
- ii. no indemnity shall be provided to any person committing or condoning any such act or omission;
- iii. **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;
- iv. **We** shall not indemnify **You** in respect of any losses which arise after the dishonest, fraudulent or criminal act or omission has been discovered, or reasonably should have been discovered, by **You**;
- v. **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**.

### 1.2.10 Extended Reporting Period

In the event of the cancellation or non-renewal of this **Policy** by **You** or **Us**, then the **Named Insured** shall have the right to an extended reporting period of 30 days immediately following the expiry date of the **Period of Insurance** provided that this extended reporting period shall only apply:

- i. to any **Claim** first made against **You** during this extended reporting period arising from any act, error or omission first occurring on or after the **Retroactive Date** and before the end of the **Period of Insurance**; and

- ii. if the **Policy** premium and any additional premium has been paid in full, and cancellation by **Us** was not due to the non-payment of the premium, or amounts within the applicable **Excess** in accordance with Condition 5.9 (Excess).

The **Limit of Liability** shall not in any way be increased by virtue of this extended reporting period.

### 1.2.11 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.

### 1.2.12 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**.

### 1.2.13 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.

### 1.2.14 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; and
- iii. arises out of the performance of **Technology Services**.

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

The maximum amount that **We** will pay under this Automatic Extension during any one **Period of Insurance** in total shall be NZD 100,000.

### 1.2.15 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 **Technology Services** carried out 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 Automatic Extension shall not extend to indemnify the Joint Venture, partnership or partner.

### 1.2.16 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 **Technology Services** 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 only after obtaining prior written consent from **Us**;
- iv. the **Excess** shall apply to these costs;
- v. the maximum amount that **We** will pay under this Automatic Extension during any one **Period of Insurance** shall be NZD 250,000;
- vi. costs and expenses covered by this Automatic Extension shall not include:
  - a. any element of profit, loss or loss of margin; or
  - b. overheads; or
  - c. **Your** remuneration, or the remuneration of any of **Your** consultants, sub-contractors or agents; or
  - d. liquidated damages; or

e. any amounts incurred in taking action to rectify, or to mitigate the effects of any partial or total unavailability or failure of any **Computer System** owned or controlled by **You** or any other party acting on **Your** behalf.

### 1.2.17 Loss of Information

Notwithstanding Exclusion 3.22 (Property in Your Care, Custody and Control), **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 **Information** which is in **Your** custody or control, and which was entrusted to or deposited with **You** in the ordinary performance of **Technology Services**, provided that **You** must take all reasonable steps to back-up such **Information** prior to performing **Technology Services**.

### 1.2.18 Patent Extension

Notwithstanding Exclusion 3.17 (Patents and Trade Secrets) **We** shall indemnify **You** for a **Valid Claim** arising out of unintentional infringement of a third-party registered patent.

The maximum amount that **We** will pay under this Automatic Extension during any one **Period of Insurance** in respect of all **Valid Claims** and including **Defence Costs** shall be NZD 100,000.

### 1.2.19 Project Delay

**We** shall indemnify **You** for a **Valid Claim** arising out of the delay in the provision of **Technology Services** or **Technology Products** provided that the delay is caused directly by **Your** act, error or omission.

### 1.2.20 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** will pay under this Automatic Extension during any one **Period of Insurance** shall be NZD 100,000.

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

### 1.2.21 Technology Product Withdrawal Costs

Notwithstanding Exclusion 3.20 (Product Recall) **We** shall indemnify **You** in respect of 80% of the costs reasonably and necessarily incurred for the withdrawal or recall, during the **Period of Insurance**, of **Technology Products** in New Zealand where those **Technology Products** have the same defect as a **Technology Product** that has already given rise to a **Valid Claim**.

The maximum amount that **We** will pay under this Automatic Extension during any one **Period of Insurance** in respect of all **Valid Claims** shall be the sub-limit specified in Item 12.21 of the **Schedule** and the **Excess** specified in Item 12.21 for this Automatic Extension shall apply.

## SECTION 2: PERSONAL INJURY AND PROPERTY DAMAGE

### 2.1 Insuring Agreement

#### 2.1.1 General & Products 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 legal liability for **Personal Injury** or **Property Damage** that:

- i. results from or arises out of an **Occurrence** that takes place in the **Territorial Limits** in connection with **Your Business**; and
- ii. happens during the **Period of Insurance**.

#### 2.1.2 Defence Costs

In addition, **We** agree to pay **Defence Costs** incurred with **Our** prior written consent in respect of the settlement or defence of a civil legal action for **Personal Injury** or **Property Damage**, provided that **We** may investigate, negotiate and settle any claim or suit against **You**.

### 2.2 Automatic Extensions

Subject to all the provisions, terms and conditions of this **Policy**, **We** shall extend the cover under Insuring Agreement 2.1 as stated in each of the following extensions. However, the inclusion of the following extensions does not increase the **Limit of Liability** and any limit specified is part of and not be in addition to the **Limit** of Liability unless specifically stated otherwise.

### 2.2.1 Business Travel to a Non-Territorial Country

**We** shall indemnify **You** in respect of **Your** liability for **Personal Injury** or **Property Damage** occurring in any **Non-Territorial Country** during the **Period of Insurance** arising out of or from **Your** directors, executives or salespersons travelling to or in the **Non-Territorial Country** in the course of **Your Business**, provided that they are temporarily visiting and not normally resident in the **Non-Territorial Country**. Provided that:

- i. **You** do not have a place of business in that **Non-Territorial Country** and are not represented by any parent or subsidiary company or joint venture in that **Non-Territorial Country**; and
- ii. any work performed in connection with the manufacture, assembly, repair, servicing, maintenance, amendment, alteration or enhancement of any product or property is excluded; and
- iii. the ownership, possession, control, maintenance or use of any **Vehicle** or **Watercraft** is excluded.

### 2.2.2 Care, Custody or Control

Notwithstanding Exclusion 3.22, ii. (Property in your Care, Custody or Control) **We** shall indemnify **You** in respect of **Your** liability for **Property Damage** occurring during the **Period of Insurance** to property, including **Employees'** property, while the property is in Your care, custody or control in connection with **Your Business**.

The maximum amount that **We** will pay under this Automatic Extension during any one **Period of Insurance** in respect of all **Occurrences** shall be the sub-limit specified in Item 15.2 of the **Schedule** and the **Excess** specified in Item 15.2 for this Automatic Extension shall apply.

### 2.2.3 Forest and Rural Fires Act

Notwithstanding Exclusions 3.12 (Forest and Rural Fires Act) and 3.28, i. (Vehicles) **We** shall indemnify **You** for **Your** liability arising from a fire (or threat of fire) during the **Period of Insurance**, in New Zealand for:

- i. costs and expenses recoverable from **You** under section 43 of the Forest and Rural Fires Act 1977; and
- ii. levies imposed by a Fire Authority and apportioned to **You** under sections 46 and 46A of the Forest and Rural Fires Act 1977 .

Cover under this Automatic Extension is available regardless of whether or not **Property Damage** has occurred.

The maximum amount that **We** will pay under this Automatic Extension during the **Period of Insurance** in respect of all **Occurrences** shall be the sub-limit specified in Item 15.3 of the **Schedule** and the **Excess** specified in Item 15.3 for this Automatic Extension shall apply.

### 2.2.4 Landlord's Liability

**We** shall indemnify **You** in respect of **Your** liability for **Personal Injury** or **Property** Damage arising from **Your** legal ownership, but not physical occupation of, any premises during the **Period of Insurance**.

### 2.2.5 Lost or Stolen Keys

Notwithstanding Exclusion 3.22, ii. (Property in your Care, Custody or Control) **We** shall indemnify **You** in respect of the costs reasonably and necessarily incurred in altering or replacing locks and their keys or combinations if the keys or combinations are stolen or believed, on reasonable grounds, to have been duplicated without proper authority. Provided that:

- i. the keys or combinations are in **Your** possession in connection with **Your Business**; and
- ii. **You** do not own, hire, lease or rent such property.

The maximum amount that **We** will pay under this Automatic Extension during the **Period of Insurance** in respect of all **Occurrences** shall be the sub-limit specified in Item 15.5 of the **Schedule** and the **Excess** specified in Item 15.5 for this Automatic Extension shall apply.

### 2.2.6 Punitive or Exemplary Damages

Notwithstanding Exclusion 3.11 (Fines and Exemplary Damages) **We** shall indemnify **You** in respect of **Your** liability to pay punitive or exemplary damages awarded by a New Zealand Court arising out of an **Occurrence** in connection with **Your Business** during the **Period of Insurance**. Provided that:

- i. any liability arising from trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse is excluded;
- ii. there is no cover for any punitive or exemplary damages connected with any dishonest or fraudulent act or omission by **You**.

The maximum amount that **We** will pay under this Automatic Extension during the **Period of Insurance** in respect of all **Occurrences** shall be the sub-limit specified in Item 15.6 of the **Schedule** and the **Excess** specified in Item 15.6 the **Schedule** for this Automatic Extension shall apply.

### 2.2.7 Service/Repair - Vehicle and Watercraft

Notwithstanding Exclusions 3.10 (Faulty Workmanship and Equipment), 3.22, ii. (Property in your Care, Custody or Control), 3.24 (Reinstatement, Repair or Replacement of Your Technology Products) and 3.28,i. (Vehicles) **We** shall indemnify **You** in respect of **Your** liability for **Personal Injury** or **Property Damage** that arises out of an **Occurrence** in New Zealand in connection with **Your Business** during the **Period of Insurance** and arising from:

- i. the service, repair, modification or installation by **You** of or to a **Vehicle** or **Watercraft** not exceeding ten metres in length; or
- ii. **Property Damage** to a **Vehicle** or **Watercraft** not exceeding ten metres in length, which is in **Your** care, custody or control for the purposes of service, repair, modification or installation, including while it is being driven or operated by **You**.

Provided that:

- a. the **Vehicle** or **Watercraft** is not, and has not been, owned, hired, leased, or rented by **You**.
- b. The most that **We** will pay under this Automatic Extension for an **Occurrence** resulting in **Property Damage** to a **Vehicle** or **Watercraft** shall not exceed the sub-limit specified in the **Schedule**. This sub-limit does not apply to any resultant **Property Damage** to other property.
- c. The **Excess** for this Automatic Extension shall apply.

The most that **We** will pay under this Automatic Extension for all **Occurrences** during the **Period of Insurance** shall be the sub-limit specified in Item 15.7 of the **Schedule** and the **Excess** specified in Item 15.7 for this Automatic Extension shall apply.

### 2.2.8 Tenant's Liability

Notwithstanding Exclusion 3. 22, ii. (Property in your Care, Custody or Control) **We** shall indemnify **You** in respect of **Your** liability for **Property Damage** to premises (including landlord's fixtures and fittings) occupied, but not owned, by **You** and arising out of an **Occurrence** during the **Period of Insurance**.

### 2.2.9 Underground Services

**We** shall indemnify **You** in respect of **Your** liability for **Property Damage** arising out of an **Occurrence** in New Zealand in connection with **Your Business** during the **Period of Insurance**, to existing underground services, cables, pipes or equipment. Provided that **You**:

- i. made enquiries with the appropriate authorities or owners to verify the existence of the underground services prior to the commencement of any work; and
- ii. sighted a plan of their location; and
- iii. took all reasonable precautions to prevent **Property Damage**.

The maximum amount that **We** will pay under this Automatic Extension during the **Period of Insurance** in respect of all **Occurrences** shall be the sub-limit specified in Item 15.9 of the **Schedule** and the **Excess** specified in Item 15.9 for this Automatic Extension shall apply.

### 2.2.10 Vehicles/Mobile Mechanical Plant Liability

Notwithstanding Exclusion 3.28, i. (Vehicles) **We** shall indemnify **You** in respect of **Your** liability for **Personal Injury** or **Property Damage** arising out of an **Occurrence** in New Zealand in connection with **Your Business**, during the **Period of Insurance** and arising from:

- i. loading or unloading or bringing to or removal of a load from a **Vehicle**;
- ii. the use of any **Vehicle** while it is being operated or used by **You** as mobile mechanical plant or machinery and not being driven as a **Vehicle**;

- iii. **Property Damage** to a **Vehicle** (not belonging to **You** or used by or on **Your** behalf) in **Your** physical or legal control where such **Property Damage** occurs whilst the **Vehicle** is in a car park owned or operated by **You**. Exclusion 3.22, ii. (Property in your Care, Custody or Control) does not apply to Occurrences under this paragraph iii;
- iv. **Property Damage** to a bridge, viaduct, culvert, weigh bridge or road beneath a **Vehicle**, where the **Property Damage** is caused by vibration or by the weight of the Vehicle and/or its load, provided that any designated weight restrictions were not exceeded.

The maximum amount that **We** will pay under this Automatic Extension during the **Period of Insurance** in respect of all **Occurrences** shall be the sub-limit specified in Item 15.10 of the **Schedule** and the **Excess** specified in Item 15.10 for this Automatic Extension shall apply.

### 2.2.11 Vibration and Removal of Support

**We** shall indemnify **You** in respect of **Your** liability for **Personal Injury** or **Property Damage** arising out of an **Occurrence** in New Zealand in connection with **Your Business**, during the **Period of Insurance**, and arising from vibration, or removing, weakening or interfering with, the support of land or buildings. Provided that:

- i. the land or buildings are not owned or occupied by **You**; and
- ii. the **Personal Injury** or **Property Damage** arises from **Your** actions.
- iii. The most that **We** will pay under this Automatic Extension for all **Occurrences** that happen during the Period of Insurance shall not exceed the sub-limit specified in the **Schedule** and the **Excess** for this Automatic Extension shall apply.

The maximum amount that **We** will pay under this Automatic Extension during the **Period of Insurance** in respect of all **Occurrences** shall be the sub-limit specified in Item 15.11 of the **Schedule** and the **Excess** specified in Item 15.11 for this Automatic Extension shall apply.

## SECTION 3: EXCLUSIONS

This Policy does not apply and **We** shall have no liability or obligation for any Claim, Occurrence or loss, or for the payment of any amounts arising out of, resulting from, or attributable to:

### 3.1 Aircraft

- i. the ownership, possession, control, service, repair, maintenance, operation, loading, unloading or use of an **Aircraft**;
- ii. **Technology Products** that are knowingly incorporated in any Aircraft or aerial device.

### 3.2 Asbestos

asbestos howsoever occurring.

### 3.3 Circumstances Known at Inception

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

### 3.4 Communicable Disease

any **Communicable Disease** or the fear or threat (whether actual or perceived) of a **Communicable Disease**.

### 3.5 Contractual Liability

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. Applicable to Section 1 (Errors and Omissions) only:
  - a. a **Cyber Act**, but only in respect of **Computer Systems** owned or controlled by **You** or any other party acting on **Your** behalf;



- b. the denial of service of or denial of access to any **Computer System** owned or controlled by **You** or any other party acting on **Your** behalf;
- c. the receipt or transmission of malware, malicious code or similar by **You** or any other party acting on **Your** behalf;
- d. any actual or alleged breach of **Data Protection Law** by **You** or any other party acting on **Your** behalf.

Save as expressly provided in this exclusion, or by other restrictions in this **Policy** specifically relating to the use of, or inability to use, a **Computer System**, no cover otherwise provided under Section 1 (Errors and Omissions) of this **Policy** shall be restricted solely due to the use of, or inability to use, a **Computer System**.

ii. Applicable to Section 2 (General and Products Liability) only:

- a. any **Cyber Act** or **Cyber Incident** including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any **Cyber Act** or **Cyber Incident**;
  - b. loss of use, reduction in functionality, repair, replacement, restoration, reproduction, loss or theft of any data, including any amount pertaining to the value of such data;
- regardless of any other cause or event contributing concurrently or in any other sequence thereto.

For the avoidance of doubt, this **Policy** does not apply to and **We** shall have no liability or obligation for **Your** own loss, damage, costs (other than **Defence Costs** incurred in the defence of actual or potential **Valid Claim**) directly or indirectly resulting from or directly or indirectly arising out of any partial or total unavailability or failure of any **Computer System** owned or controlled by **You** or any other party acting on **Your** behalf.

### **3.7 Deliberate Acts**

any wilful, criminal, malicious or dishonest act, error or omission as determined by final adjudication or written admission.

### **3.8 Directors & Officers Liability**

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**

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

### **3.10 Faulty Workmanship – Applicable to Section 2 (General and Products Liability) only**

the cost of performing, completing, repairing, correcting or improving any work undertaken by **You** or on **Your** behalf.

### **3.11 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.

### **3.12 Forest & Rural Fires Act**

the Forest and Rural Fires Act 1977, unless **You** are (or would be) otherwise legally liable for such sums.

### **3.13 Infrastructure**

any failure or interruption of service provided:

- i. to **You** or any other party acting on **Your** behalf by an internet service provider, telecommunications provider or cloud provider but not including the hosting of hardware and software owned by **You**;
- ii. by any utility provider, but only where such failure or interruption of service impacts a **Computer System** owned or controlled by **You** or any other party acting on **Your** behalf.

### **3.14 Insolvency or Bankruptcy**

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

### 3.15 Insured v Insured

Any **Claim** brought by or on behalf of:

- 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.

### 3.16 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.

### 3.17 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.

### 3.18 Pollution

**Pollution**, including for the prevention, removal or clean-up of any **Pollutants**.

However, this Exclusion shall not apply to Section 2 (General and Products Liability) if the **Pollution** is caused by a sudden, identifiable, unexpected and unintended event and takes place in its entirety at a specific time and place.

### 3.19 Product Liability – Applicable to Section 1 (Errors and Omissions) only

- i. accidental death or accidental bodily injury including sickness, disease, disability, shock, fright, mental anguish and mental injury;

- ii. **Property Damage**

arising out of **Technology Products**.

### 3.20 Product Recall

the recall, withdrawal, removal, inspection, repair, modification, replacement or loss of use of **Technology Products**, or of any property which **Technology Products** form a part of, if such products or property are withdrawn from the market or from use because of any known, or suspected defect or deficiency therein, or because of any Government or statutory ban, order or notice.

### 3.21 Professional Obligations

- i. the breach of a promise or guarantee of cost savings, future profits or a return on investment;
- ii. any cost guarantee, cost estimate, cost representation being exceeded or any agreement to perform or deliver Technology Services within a specified period of time or to a specified standard if You could not have reasonably expected to meet such guarantee, estimate, representation or agreement at the time at which it was made;

### 3.22 Property in Your Care, Custody or Control

**Property Damage** to:

- i. property owned by **You**;
- ii. property in **Your** physical or legal control.

### 3.23 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.

### 3.24 Reinstatement, Repair or Replacement of Your Technology Products

**Property Damage** to any of **Technology Products** caused by any defect therein or the unsuitability thereof for their intended purpose.

### 3.25 Retroactive Date

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

### 3.26 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.

### 3.27 USA and Canada

- i. any legal proceedings brought against **You** in the courts of the United States of America and/or Canada and/or any territories which come within the jurisdiction of the United States of America and/or Canada or elsewhere under the laws of those countries, or any arbitration or other award entered against **You** under the laws of those countries;
- ii. any judgment or order wherever obtained for the enforcement of any judgment of the courts of the United States of America or Canada or under the laws of those countries (whether by way of reciprocal agreements or otherwise), or for the enforcement of any arbitration or other award entered against **You** under the laws of those countries.

### 3.28 Vehicles

- i. the ownership, maintenance, service, repair, possession, operation, use or legal control by **You** of any **Vehicle**;
- ii. any **Vehicle** being used or driven by **You** when **You**:
  - a. do not hold an appropriate driver's licence or do not comply with the conditions of **Your** driver's licence;
  - b. have a proportion of alcohol in **Your** breath or blood that exceeds the legal limit;
  - c. are under the influence of any other intoxicating substance or drug;
  - d. fail or refuse to supply a breath or blood sample as required by law;
  - e. fail or refuse to stop, or remain at the scene, following an accident (as required by law);
  - f. are using the **Vehicle** outside the manufacturer's recommended specifications;
- iii. driving a **Vehicle** in an unsafe condition if:
  - a. the condition of the **Vehicle** causes or contributes to, the **Personal Injury** and/or **Property Damage**; and
  - b. You were aware, or ought to have been aware, of the unsafe condition of the **Vehicle**.

### 3.29 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 clause shall also exclude 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.

### 3.30 Watercraft

Liability arising out of or in connection with the:

- i. ownership, possession, repair or use of any **Watercraft** that exceeds ten metres in length;
- ii. operation of any **Watercraft**:
  - a. while under the influence of alcohol or any other intoxicating substance or drug; or
  - b. outside the manufacturer's recommended specifications.

## SECTION 4: DEFINITIONS

- 4.1 Aircraft** shall mean any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.
- 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 8 of the **Schedule**.
- 4.3 Claim** shall mean in respect of Section 1 (Errors and Omissions):
- the receipt by **You** of any written or oral notice of demand for compensation made by a third party against **You**;
  - 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.
- 4.4 Communicable Disease** shall mean any disease which can be transmitted by means of any substance or agent from any organism to another organism where:
- the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
  - the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
  - the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage.
- 4.5 Computer System** means 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.
- 4.6 Cyber Act** means 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**.
- 4.7 Cyber Incident** means:
- 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
  - 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**.
- 4.8 Data** means 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**.
- 4.9 Data Protection Law** means any applicable data protection and privacy legislation or regulations in any country, province, state, territory or jurisdiction which govern the use, confidentiality, integrity, security and protection of personal data or any guidance or codes of practice relating to personal data issued by any data protection regulator or authority from time to time (all as amended, updated or re-enacted from time to time).
- 4.10 Defence Costs** shall mean
- In respect of Section 1: (Errors and Omissions):  
The 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.

ii. In respect of Section 2: (General and Products Liability):

Legal costs and disbursements, witnesses' costs, assessors' or adjustors' costs or expert's costs that relate directly to the investigation, defence, compromise or handling of any claim, incurred by **Us**, or by **You** with **Our** prior written consent.

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.

Defence Costs do not include any cost of **Your** time, including any time spent in assisting **Us** or **Our** appointed solicitors with the conduct of any claim, including any time spent by directors, officers, partners or **Employees** or reimbursement of any remuneration for such people.

**4.11 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 **Your Business**.

**4.12 Excess** shall mean the first part of each and every **Valid Claim** borne by **You** as follows:

i. In respect of Section 1 (Errors and Omissions), the amount stated in Item 11 of the **Schedule**.

ii. In respect of Section 2 (General and Products Liability), the amount stated in Item 14 of the **Schedule**.

**4.13 Information** shall mean deeds, wills, maps, plans, records, books, letters, certificates, forms and tangible documents of any nature, whether written, printed, or reproduced by any method (but shall not include bearer bonds or coupons, stamps, bank currency notes or other negotiable instruments or **Data**).

**4.14 Limit of Liability** shall mean:

i. In respect of Section 1 (Errors and Omissions), the amount stated in Item 10 of the **Schedule**.

ii. In respect of Section 2 (General and Products Liability), the amount stated in Item 13 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 Non-Territorial Country** shall mean any country other than the **Territorial Limits**.

**4.17 Occurrence** shall mean an event, including continuous or repeated exposure to substantially the same general conditions or liability, which results in **Personal Injury** or **Property Damage** that is neither expected nor intended by **You**.

All **Personal Injury** or **Property Damage** consequent upon or attributable to one source or originating cause shall be deemed to be one occurrence irrespective of the period of time after the commencement of the Period of Insurance or the number of persons or organisations who sustain **Personal Injury** or **Property Damage**.

**4.18 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.

**4.19 Personal Injury** shall mean:

i. accidental death or accidental bodily injury including sickness, disease, disability, shock, fright, mental anguish and mental injury;

ii. false arrest, false imprisonment, wrongful entry or wrongful eviction and wrongful detention;

iii. invasion of rights of privacy;

iv. assault and battery not committed by **You** or at **Your** direction unless committed for the purpose of preventing or eliminating danger to persons or property.

**4.20 Policy** shall mean the following:

i. The Application and any oral or written supporting statements or documents supplied; and

ii. this policy wording (including any amending endorsements); and

iii. the **Schedule**.

- 4.21 Pollution** shall mean the discharge, dispersal, release or escape of **Pollutants** into or upon land, the atmosphere or any watercourse or body of water.
- 4.22 Pollutants** shall mean any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.
- 4.23 Property Damage** shall mean:
- i. accidental physical damage to, or destruction of, or accidental physical loss of, tangible property including the loss of use thereof, resulting from such accidental physical damage;
  - ii. accidental loss of use of tangible property, which has not been physically damaged or destroyed, provided such loss of use arises out of physical damage to, or destruction or loss of other tangible property.
  - iii. accidental loss of use of tangible property, which has not been physically damaged or destroyed, provided such loss of use is neither expected nor intended from **Your** standpoint and arises out of **Your Business**.
- 4.24 Retroactive Date** shall mean the date shown in the **Schedule**.
- 4.25 Schedule** shall mean the most recent **Policy** schedule issued by **Us**.
- 4.26 Subsidiary** shall mean 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**;
- 4.27 Technology Products** shall mean any tangible technology-related products supplied by **You** to others in the ordinary course of **Your Business**, including, but not limited to electronic equipment or computer hardware developed, manufactured, distributed, marketed or sold by or for **You**.
- 4.28 Technology Services** shall mean any technology-related services, advice or work including, but not limited to software development, software installation and maintenance, hardware design, data processing, internet services, data and application hosting, computer systems analysis, consulting, training, programming, systems integration, IT support and network management provided by **You**.
- 4.29 Territorial Limits** shall mean the territory or location specified in Item 5 of the **Schedule**.
- 4.30 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, that takes place in the **Territorial Limits** in connection with **Your Technology Services** and that occurred after the **Retroactive Date**.
- 4.31 Vehicle** shall mean any type of machine on wheels or on self-laid tracks made or intended to be propelled other than by manual or animal power, including attachments designed to be drawn by any such machine and includes its accessories, tools, specialised equipment and spare parts.
- 4.32 Watercraft** shall mean any vessel, hovercraft, craft or thing made or intended to float on or in, or travel on or through the water.
- 4.33 We/Us/Our** shall mean the underwriters named in Item 9 of the **Schedule**.
- 4.34 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 **Professional Business** rendered 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**.
- vi. Any predecessor in business of the **Named Insured**.

In respect of Section 2 (General and Products Liability), **Your/Your/Yours** shall also include:

- i. any principal who is a party to a contract with an entity referred to in i, ii or iii above, but only in respect of the principal's liability arising as a result of that principals acts or omissions under the contract and limited to the coverage provided by this **Policy**;
- ii. any office bearer or member of a social or sporting club, welfare organisation or an employee superannuation fund formed with the consent of an entity referred to in i, ii, or iii, but only in respect of claims arising from duties connected with activities of such club or organisation;
- iii. contractors or sub-contractors but only while they are engaged by, and working in New Zealand for an entity referred to in i, ii or iii above, provided that they are not otherwise insured. Policy Condition 5.6 (Cross Liability) does not apply in respect of such contractors or sub-contractors.

#### 4.35 **Your Business** shall mean:

- i. Technology Services:
- ii. any other business activities, as stated in Item 3 of the Schedule, including any change in the activities undertaken by You provided that You have given prior written notice of such activities to Us and have received Our written confirmation of coverage of those activities.

## SECTION 5: POLICY 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 **Our** authorized representative or knowledge possessed by **Our** authorized representative 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 **Our** authorized representative.

### 5.4. **Claim in Excess of the Limit**

In respect of Section 1 (Errors and Omissions):

- i. 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**.

- ii. Where **We** have paid or incurred **Defence Costs** in excess of **Our** proportionate liability, **You** shall, upon **Our** demand, 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.

In respect of Section 2 (Property Damage and Personal Injury):

- i. if **We** have paid the **Limit of Liability** in respect of any claim, judgement or settlement, or series of claims, judgements or settlements arising from an **Occurrence**, **Our** liability in respect of any further **Defence Costs** shall cease; and
- ii. if a payment exceeding the **Limit of Liability** has to be made to dispose of a claim, **Our** liability to pay **Defence Costs** shall be limited to such proportion of the **Defence Costs** as the **Limit of Indemnity** bears to the amount paid to dispose of the claim.

## 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 **Our** written consent; 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. Cross Liability

In respect of Section 2 (General and Products Liability).

Where the **Named Insured** and/or any **Subsidiary** consists of more than one legal entity, the word “**You**” shall apply to each as if a separate **Policy** had been issued to each. However this Condition shall not apply to entities that are deemed insured due to being contractors or sub-contractors.

Nothing contained in this Condition shall increase the **Limit of Liability** in respect of any claim, **Occurrence** or **Period of Insurance**.

## 5.7. 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.

## 5.8. 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.

## 5.9. 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**.

In respect of Section 1 Errors and Omissions

- i. 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.
- ii. 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**.



## 5.10. Fraudulent Claims

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

## 5.11. 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**.

## 5.12. Limit of Liability

In respect of Section 1 (Errors and Omissions):

- i. The maximum amount **We** will pay under this **Policy**, excluding **Defence Costs**, in respect of any one **Valid Claim** shall be the **Limit of Liability**. The maximum amount **We** will pay under this **Policy** during any one **Period of Insurance** in respect of all **Claims** shall not exceed twice the **Limit of Liability**.
- ii. 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.

In respect of Section 2 (General and Products Liability):

- i. The maximum amount that **We** will pay in respect of any claim or any series of claims arising out of an **Occurrence** shall be:
  - a. the **Limit of Liability**; or
  - b. where one or more Extensions apply, the sub-limit for those Extensions;whichever is lesser.
- ii. The maximum amount that **We** will pay during any one **Period of Insurance** in respect of all claims arising out of **Technology Products** shall not exceed the Products **Limit of Liability** stated in the **Schedule**.

## 5.13. Limit of Liability - Defence Costs

The maximum amount **We** will pay in respect of **Defence Costs** under Insuring Agreement 1.1.2 and extension 1.2.2 (Automatic Reinstatement) in total shall be the **Limit of Liability**.

## 5.14. 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.

## 5.15. 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.

## 5.16. Notification of Circumstance or claim

Irrespective of the quantum, **You** must give **Us** immediate notice in writing of:

- i. every **Claim**, **Occurrence**, summons, proceedings, impending prosecution or inquest or other matter which may give rise to a payment under this **Policy**;
- ii. the receipt of notice, or information as to any intention by any party to make a claim against **You**;

iii. any act, error, circumstance or event that a reasonable person in **Your** position would have considered may give rise to a **Claim** or payment under this **Policy**.

In respect of Section 1 (Errors and Omissions):

- a. Such notice must be given during the **Period of Insurance** or the Extended Reporting Period;
- b. Any **Claim** subsequently arising out of an act, error or omission notified in accordance with this clause shall be deemed to have been made at the time such notice was first received by **Us**.

#### 5.17. Other Insurance

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

#### 5.18. 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**.

#### 5.19. 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.

#### 5.20. 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. 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.

## 5.21 Severability

Notwithstanding Exclusion 3.7 (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.

## 5.22 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.

## 5.23 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](mailto: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  
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Details of Lloyd's complaints procedures are set out in a leaflet "Your Complaint – How We Can Help" available at [www.loyds.com/complaints](http://www.loyds.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.

