



# UK Liability Wording



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[360uw.co.nz](http://360uw.co.nz)

# UK Liability Wording



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# Important Information

## About the Policy

Your policy is a legal contract between **you** and the **Insurer**. The policy is made up of this policy wording, the schedule, any endorsements and the application/proposal **you** complete; they should all be read together.

Please read this policy wording together with any endorsements and the schedule very carefully. **Your** schedule will show what optional insuring sections **you** have purchased and the limits of indemnity as well as any special limits of indemnity. If anything is not correct or **you** need to change anything, **you** should ask **your** insurance intermediary to tell the **Insurer**.

There are specific conditions, specific exclusions and specific definitions that only apply to a specific insuring section. In addition, there are general conditions, general exclusions, general claims conditions and general definitions that are part of this policy and apply to each Policy Section. Words shown in **bold** are defined terms.

### Important information

In this section, “**we**”, “**our**” and “**us**” means the **Insurer** (and 360 Commercial Limited on their behalf to administer this insurance).

“**You**” and “**your**” means the person(s) or **entity** named in the schedule as ‘**Insured**’ including any new **entity** or **subsidiary** companies or subsidiaries thereof or any controlled or managed **entity** now or hereafter formed or acquired. **We** may also use the word ‘**Insured**’ to describe **you**.

### Claims made and notified coverage

*Policy Section B – Statutory Liability* and *Policy Section C – Employer’s Liability* of this policy contains coverage on a claims-made and notified basis.

This means that this section of the policy only covers **claims** first made during the **policy period** and notified to the **Insurer** in writing during the **policy period**.

This policy does not provide cover for any **claims** made against **you** during the **policy period** if at any time prior to the commencement of the **policy period** **you** became aware of facts which might give rise to those **claims** being made against **you**.

## Duty of Disclosure

### Your duty of disclosure

Before entering into a contract of insurance with **us**, each prospective **insured** has a duty to disclose to **us** information that is material to **our** decision whether to accept the insurance and, if so, on what terms. This includes material information about the **insured**, any other people and all **property** and risks insured under the policy. Information may be material whether or not a specific question is asked.

There is the same duty to disclose material information to **us** before renewal, extension, variation or reinstatement of a contract of insurance with **us**. **You** should also provide all material information when **you** make a **claim** or if circumstances change during the term of the contract of insurance.

It is important that each prospective **insured** understands all information provided in support of the application for insurance and that it is correct, as each prospective **insured** will be bound by the answers and by the information it has provided.

The duty of disclosure continues after the application for insurance has been completed up until the time the contract of insurance is entered into.

### Consequences of non-disclosure

If an **insured** fails to comply with its duty of disclosure, **we** may be entitled, without prejudice to its other rights, to reduce its liability under the contract in respect of a **claim** or refuse to pay the entire **claim**. **We** may also have the right to avoid the contract from its beginning. This means the contract will be treated as if it never existed and no **claims** will be payable.

## Fair Insurance Code

Lloyd’s is a member of the Insurance Council of New Zealand (ICNZ) and a signatory to ICNZ’s Fair Insurance Code (**the Code**). The Code and information about the Code is available at [www.icnz.org.nz](http://www.icnz.org.nz) and on request.



## Financial Strength Rating

At the time of print, Lloyd’s has an AA- financial strength rating given by S&P Global Ratings.

The rating scale is:

<b>AAA</b> Extremely Strong	<b>AA</b> Very Strong	<b>A</b> Strong
<b>BBB</b> Good	<b>BB</b> Marginal	<b>B</b> Weak
<b>CCC</b> Very Weak	<b>CC</b> Extremely Weak	
<b>SD or D</b> Selective Default or Default	<b>R</b> Regulatory Action	<b>NR</b> Not Rated

The rating from ‘AAA’ to ‘CC’ may be modified by the addition of a plus (+) or minus (-) sign to show relative standings within the major rating categories. A full description of the rating scale is available on the S&P Global Ratings [www.spglobal.com](http://www.spglobal.com).

## Privacy Statement

This statement is a summary of **our** privacy policy and provides an overview of how **we** collect, disclose and handle **your** personal information.

**We** are committed to protecting **your** privacy. **We** collect, uses and retain **your** personal information in accordance with the requirements of *New Zealand's Privacy Act*, as amended or replaced from time to time.

## Personal information handling practices

### When do we collect your personal information?

**We** collect **your** personal information (which may include health information) from **you** when **you** interact with **us**, including when **you** are applying for, changing or renewing an insurance policy with **us** or when **we** are processing a **claim**, complaint or dispute. **We** may also (and **you** authorise **us** to) collect **your** personal information from other parties such as brokers or service providers, as detailed in **our** privacy policy.

### Purpose of Collection

**We** collect and hold the information to offer products and services to **you**, including to assess applications for insurance, to provide and administer insurance products and services, and to handle any **claim**, complaint or dispute that may be made under a policy.

If **you** do not provide **us** with this information, **we** may not be able to provide **you** or **your** organisation with insurance or to respond to any **claim**, complaint or dispute, or offer other products and services to **you** or **your** organisation.

Sometimes, **we** may also use **your** personal information for **our** marketing campaigns and research, to improve **our** services or in relation to new products, services or information that may be of interest to **you**.

### Recipients of the Information and Disclosure

The **Insurer** may disclose the information they collect to third parties, including:

- + contractors and contracted service providers engaged by **us** to deliver **our** services or carry out certain business activities on **our** behalf (such as actuaries, loss adjusters, claims investigators, claims handlers, professional advisers including lawyers, doctors and other medical service providers, credit reference bureaus and call centres);

- + intermediaries and service providers engaged by **you** (such as current or previous brokers, travel agencies and airlines);
- + other companies in the 360 Underwriting Solutions Group;
- + the policyholder (where the **insured person** is not the policyholder);
- + insurance and reinsurance intermediaries, other insurers, **our** reinsurers, marketing agencies; and
- + government agencies or organisations (where **we** are required to by law or otherwise).

These third parties may be located outside New Zealand. In such circumstances **we** also take steps to ensure **your** personal information remains adequately protected.

From time to time, **we** may use **your** personal information to send **you** offers or information regarding **our** products that may be of interest to **you**. If **you** do not wish to receive such information, please contact **our** Privacy Officer using the contact details provided below.

### Rights of Access to, and Correction of Information

If **you** would like to access a copy of **your** personal information, or to correct or update **your** personal information, want to withdraw **your** consent to receiving offers of products or services from **us** or persons **we** have an association with, please contact the Privacy Officer by posting correspondence to:

Email. [admin@360commercial.co.nz](mailto:admin@360commercial.co.nz)  
Telephone. 0800 867 677  
Post: 360 Commercial Limited  
PO Box 9521, Waikato Mail Centre, Hamilton 3240

### How to Make a Complaint

If **you** have a complaint or would like more information about how **we** manage **your** Personal Information, please review **our** Privacy Policy for more details, or contact **our** Privacy Officer at the details above.

**You** also have a right to address **your** complaint directly to the Privacy Commissioner by telephoning 0800 803 909, emailing [enquiries@privacy.org.nz](mailto:enquiries@privacy.org.nz) or using the online form available on the Privacy Commissioner's website at [www.privacy.org.nz](http://www.privacy.org.nz).

## Complaints and Dispute Resolution

### Complaint handling arrangements

We take the concerns of its customers very seriously and has detailed complaint handling and dispute resolution procedures that **you** may access, at no cost to **you**. To assist **us** with **your** enquiries, please provide **us** with **your claim** or policy number (if applicable) and as much information as **you** can about the reason for **your** complaint or dispute.

The complaints and dispute procedures are as follows:

### Stage 1 – Complaint handling procedure

If **you** have a complaint in respect of this Policy, including any **claim** made on this Policy, the complaint may be addressed to:

Email. [admin@360commercial.co.nz](mailto:admin@360commercial.co.nz)  
Telephone. 0800 867 677  
Post: 360 Commercial Limited  
PO Box 9521, Waikato Mail Centre, Hamilton 3240

We will acknowledge **your** complaint within five business days, provide **you** with the name and contact details of the person handling the complaint, have the matter fully investigated by a suitably experienced person not previously involved in the case, and inform **you** of the progress or outcome of the matter within 10 business days.

Where further information, assessment or investigation is required We will agree reasonable time frames with **you** for its completion.

We will update **you** at least once every 20 business days, or at another interval agreed with **you**, until the complaint is resolved.

### Stage 2 – Dispute resolution procedure

In the **event** We do not resolve the matter **you** may request a stage two review. This will be conducted by Lloyd's Australia on behalf of Lloyd's in New Zealand. They can be contacted at:

Email. [ldmz@lloyds.com](mailto:ldmz@lloyds.com)  
Telephone. 04 472 7582  
Post. Lloyd's General Representative New Zealand  
c/- Hazelton Law  
PO Box 5639, Wellington 6143

### Stage 3 – External dispute resolution

Should **you** remain dissatisfied with the response from the above, **you** may be eligible to refer **your** complaint to the Insurance and Financial Services Ombudsman (IFSO) in New Zealand. The contact details are as follows:

Email: [info@ifso.nz](mailto:info@ifso.nz)  
Freephone: 0800 888 202  
Telephone: 04 499 7612  
Post: Insurance and Financial Services Ombudsman (IFSO)  
PO Box 10-845, Wellington 6143

The IFSO Scheme will require a "deadlock" to be reached before considering a complaint. If **your** complaint is not resolved to **your** satisfaction within two months of notification **you** will be provided a "deadlock" letter explaining why the matter has not been resolved.

If **you** feel **your** human rights have been breached **you** can contact the Human Rights Commission on 0800 496 877 or through its website: [www.hrc.co.nz](http://www.hrc.co.nz).

The complaints handling arrangements above are without prejudice to **your** rights in law.

# Definitions

In this policy the following words in **bold** shall have the definitions that follow under all Policy Sections unless stated otherwise. The definitions apply to the plural and any derivatives of the bolded words. For example, the definition of 'insured' also applies to the word 'insureds'.

**Accidental Death** means:

Death resulting from an accident caused by sudden, violent, external and visible means and occurring solely and directly and independently of any other cause including any pre-existing physical or congenital condition; or exposure to the elements. **Accidental death** does not include death as a result of a sickness or disease.

**Advisory panel** means:

The solicitors appointed from time to time by the **Insurer** or 360 Commercial Limited as currently listed in Appendix 1.

**Aircraft** means:

A **vehicle** designed to be used primarily in the air and to be supported by the dynamic reaction of the air upon the **vehicle's** wings or rotor-blades, and/or by the **vehicle's** buoyancy in the air, but excludes missiles, spacecraft and the ground support or control equipment used therewith.

**Aircraft Products** means:

1. **aircraft** and any ground support or control equipment used therewith;
2. any **Entity's product** installed in **aircraft** or used in connection with **aircraft**;
3. any tooling used for the manufacture of 1. or 2. above;
4. any ground handling tools and equipment used in connection with 1. or 2. above including training aids, navigational aids, instruction or manuals;
5. blueprints, engineering or other data furnished by the **Insured** in connection with the above; and
6. any advice, service and/or labour furnished by the **Insured** in connection with the above.

**Applicable Courts** means:

The courts of competent jurisdiction in those countries stated as the **applicable courts** in the schedule.

**Asset and Liberty Proceeding** means:

Any proceeding brought against any **Insured Person** by any **Official Body** seeking:

1. confiscation, assumption of ownership or control, suspension or freezing of rights of ownership of real **property** or personal assets of an **Insured Person**;
2. a **charge** over real **property** or personal assets of such **Insured Person**;
3. a temporary or permanent prohibition on such **Insured Person** from holding the office of or performing the function of a **Governor**;

4. a restriction of such **Insured Person's** liberty to a specified domestic residence or an official detention; or
5. deportation of an **Insured Person** following revocation of otherwise proper, current and valid immigration status for any reason other than such **Insured Person's** conviction of a crime.

**Bail Bond and Civil Bond Premium** means:

The reasonable premium (but not collateral) for any bond or other financial instrument to guarantee an **Insured Person's** contingent obligation for a specified amount required by a court hearing a **claim**.

**Bodily Injury and/or Property Damage** means:

**Bodily injury**, sickness, disease, death or emotional distress of any natural person; or damage to, destruction, impairment or **loss** of use of any **property**.

This definition does not apply to sections *Policy A – General Liability*, and *C – Employers Liability*.

**Breach of Duty** means:

Any actual or alleged **breach of duty**, negligent act, error, misstatement, breach of confidentiality or omission in the performance or failure to perform **professional services**.

**Business** means:

All of the usual activities and operations of the **Entity** as stated in the schedule and:

1. the ownership, tenancy or occupation of **premises** of the **Entity**;
2. private work carried out with the consent of the **Entity** for any **Governor** of the **Entity** by an **Employee**;
3. the provision or management by or on behalf of the **Entity** of canteen, social or sports organisations for the **Employees**; and
4. the provision of the **Entity's** own internal fire, first aid, medical, security and ambulance services.

**Charge** means:

A **charge** arising under section 9 of the *Law Reform Act 1936 (New Zealand)*, section 6 of the *Law Reform (Miscellaneous Provisions) Act 1946 (New South Wales)*, section 206 of the *Civil Wrongs Act 2002 (ACT)*, sections 26 to 29 of the *Law Reform (Miscellaneous Provisions) Act 1956 (Northern Territory)* and/or any other legislative provision of similar effect.

**Cheque Forgery** means:

The **forgery** or **fraudulent alteration** of any cheque or similar written promise by the **Entity** to pay a sum representing **money** drawn upon the **Entity's** account at any bank at which the **Entity** maintains a current or savings account;

1. the **fraudulent alteration** of, on or in any cheque or draft:
  - a. drawn upon by any bank; or
  - b. drawn upon by any corporation upon itself;

2. the **fraudulent alteration** of, on or in any cheque or written order or direction to pay a sum representing **money** drawn by any public body upon itself, or any warrant drawn by any public body which the **Entity** shall receive at any of its **premises** in payment or purported payment for:

- a. tangible **property** sold and delivered; or
- b. services rendered.

**Claim** means:

1. a. a written demand;
- b. a civil, regulatory, mediation, administrative or arbitration proceeding, including a counter-claim, seeking compensation or other legal remedy; or
- c. a criminal proceeding

for a specified act, error or omission;

2. an **investigation** or **critical regulatory event**;
3. an extradition proceeding; or
4. an **asset and liberty proceeding**.

**Cloud Provider** means:

Any **Entity** providing hardware or software services to the **Entity** over the **internet**, including the provision of software as a service, infrastructure as a service or platform as a service.

**Computer** means:

Any **computer**, data processing equipment, media or part thereof, or system of data storage and retrieval, or communications system, network, protocol or part thereof, or storage device, microchip, integrated circuit, real-time clock system, or similar device or any **computer** software, firmware or microcode.

**Computer** shall also include its components available to its users, including but not limited to memory, bandwidth, processor time, use of communication facilities and any other **computer**-connected equipment.

**Computer Fraud** means:

The **theft** of the **Entity's** assets under the direct or indirect control of a **computer** by manipulation of **computer** hardware or software programmes or systems by any **third party** who is not authorised by the **Entity** to access that **computer**.

**Computer System** means:

Any **computer** network, hardware, software, information technology and communications system, including any email, intranet, extranet or website.

**Computer Virus** means:

Any programme or code that causes **loss** or damage to any **computer system** and/or prevents or impairs any **computer system** from performing and/or functioning accurately and/or properly.

**Continuity Date** means:

The applicable date specified as such in the schedule.

**Control** means:

The securing of the affairs of the **Entity** by means of:

1. controlling the composition of the board of directors or management board of the **Entity**;
2. controlling more than half of the shareholder or equity voting power of the **Entity**;
3. holding more than half of the issued share or equity capital of the **Entity**; or
4. any event or circumstance analogous to the matters described at 1. to 3. above.

**Corporate Card Fraud** means:

The fraudulent use of any corporate credit, debit or charge card issued to the **Entity** or any **Insured Person** for **business** purposes where such card is **forged** or is the subject of **fraudulent alteration** provided that the **Entity** or **Insured Person** has complied fully with the provisions, conditions and other terms under which the card was issued and provided the **Entity** is legally liable for such **direct financial loss**.

**Counterfeit or Counterfeiting** means:

The imitation of an authentic negotiable instrument such that the **Entity** is deceived on the basis of the quality of the imitation to believe that the said item is the authentic original negotiable instrument.

Fictitious instruments which merely contain fraudulent misrepresentations of fact and are genuinely signed or endorsed are not **counterfeit**.

**Credit Arrangement** means:

Any credit agreement, extension of credit or hire purchase agreement, loan or **transaction** in the nature of a loan, lease or rental agreement, invoice, account, agreement or other evidence of debt, payments made or withdrawals from any customer's account involving items which are not finally paid for any reason.

**Criminal Damage** means:

Any violent or forcible act which results in destruction or damage to **property** (excluding safes and vaults) which constitutes a criminal offence in the jurisdiction where the offence was committed.

**Crisis Event** means:

Any of the following unforeseen events occurring during the **policy period** where, in the reasonable opinion of the chief **Governor** officer of the **Entity**, the event has the potential to make a material impact on the consolidated annual revenues or the reputation of the **Entity** if left unmanaged:

1. the sudden, unexpected death or disability of any **Governor**;



2. the criminal conviction of any **Governor**;
3. **loss** of a major customer, contract or credit facility;
4. **Employee** workplace violence;
5. the first apparent unauthorised intrusion into the **Entity's computer** facilities;
6. a recall or boycott of any product;
7. a man-made disaster; or
8. any criminal or fraud **investigation**.

**Crisis Event** does not include an event that affects the **Entity's** industry or geography in general; rather than the **Entity**, specifically.

**Critical Regulatory Event** means:

1. a raid on, or on-site visit to, the **Entity** which first takes place during the **policy period** by any regulator that involves the production, review, copying or confiscation of files or interviews of any **Insured Person**; or
2. a public announcement relating to the foregoing.

**Cyber Threat** means:

Any threat from a **third party** to:

1. damage, destroy or corrupt the **Entity's computer system**, programmes or data the **Entity** holds electronically, or any programmes or data for which the **Entity** is responsible, including by specifically introducing a virus; or
2. disseminate, divulge or use any electronically held commercial information which:
  - a. the **Entity** is responsible for;
  - b. is not in the public domain; and
  - c. will cause commercial harm if made public;

following any unauthorised external electronic access by that **third party**.

**Data Subject** means:

Any natural person who is the subject of **personal data**.

**Defamation** means:

**Defamation** including but not limited to belittling of a product or work (whether completed or not) of others.

**Defence Costs** means:

1. reasonable fees, costs and expenses incurred by or on behalf of an **Insured** either as emergency costs under *General Conditions applying to all Insuring Sections – Extension 4 'Emergency Costs'*, or with the **Insurer's** prior written consent, after a **claim** is made in the **investigation**, defence, settlement or appeal of such **claim**; or
2. reasonable fees, costs and expenses of accredited experts retained through defence counsel to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in respect of a **claim** specified in **1.** above.

**Direct Financial Loss** means:

**Direct financial loss**, including but not limited to **loss of money, negotiable instruments** or other **property**, sustained by the **Entity** or a **third party** or other organisation.

**Discovered** means:

Knowledge of any act, omission or event which could reasonably be seen to give rise to a **direct financial loss** by any of the **Entity's responsible persons**.

**Discovery Period** means:

A period immediately following expiry of the **policy period** during which written notice may be given to the **Insurer** of:

1. any **direct financial loss discovered** during such period of time in connection with any act committed prior to the end of the **policy period**, provided any applicable additional premium required by the **Insurer** is paid within 30 days of expiry of the **policy period**; or
2. a **claim** first made during such period or the **policy period**;
  - a. with respect to an act, error or omission occurring prior to the expiry of the **policy period**; or
  - b. in the case of an **investigation**, extradition proceedings or **asset and liberty proceedings**, matters which occurred prior to the expiry of the **policy period**.

**Documents** means:

All **documents** of any nature whatsoever including **computer records** and electronic or digitised data; but does not include any currency, **negotiable instruments** or records.

**Electronic and Computer Crime** means:

Any one of the following:

1. **computer fraud**; or
2. **funds transfer fraud**.

**Employee** means:

1. any natural person full-time, part-time, seasonal or temporary worker of the **Entity** who works under a contract of service with the **Entity**, or who is undertaking work experience, whom such **Entity** has the right to govern and direct in the performance of such services, and whom the **Entity** compensates by way of salary, wages and/or commissions;
2. any natural person independent contractor, natural person volunteer or any natural person seconded to the **Entity**, if such individual is under the direction and supervision of the **Entity** and the **Entity** provides indemnification to such individual in the same manner as is provided to the **Employees** referred to in **1.** above.

**Employment Practices Liability** means:

Any liability arising from any actual or alleged act, error or omission with respect to:

1. any employment of any past, present or future **Employee** or **Insured Person** of the **Entity**; or
2. any prospective employment of any person.

**Employment-Related Benefits** means:

1. perquisites and fringe benefits;
2. payments due under any employee benefit plan or superannuation scheme;
3. stock or share options or any other right to purchase, acquire or sell stock or shares of the **Entity** or analogous rights or interests; or
4. incentive or deferred compensation.

**Entity** means:

The organisation specified in the schedule.

**Entity Contract** means:

That part of any contract or agreement pertaining to the **Entity's business** under which the **Entity** assumes the tort liability of another party to pay for **personal injury** or **property damage** to a third person or organisation arising out of the performance by the **Entity** of such contract and for which that other party is vicariously liable. However, the **personal injury** or **property damage** must arise out of an **occurrence** that takes place subsequent to the execution of the **Entity contract**. Tort liability means a liability that would be imposed by law upon the other party in the absence of any contract or agreement.

**Entity Liability** means:

Any liability arising from any actual or alleged act, error or omission of an **Entity**, except with respect to any **Employment practices liability** or **third party discrimination**.

**Entity's Product** means:

Any goods or products (after they have ceased to be in the **Entity's** possession or under the **Entity's** control) which is or is deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, treated, imported, exported, produced, processed, assembled, erected, installed, repaired, serviced, sold, supplied or distributed by the **Entity**. **Entity's products** includes any packaging or containers, designs, formulae or specifications thereof, directions, instructions or advice given or omitted to be given in connection with such things other than a **vehicle** or vending machine.

**Forgery or Forged** means:

The signing or endorsing of the name of a genuine person or a copy of the said person's signature without authority and with intent to deceive. A signature may be hand-written or mechanically or electronically produced or reproduced. It does not include the signing in whole or in part of one's own name, with or without authority, in any capacity, for any purpose.

**Fraudulent Act** means:

1. **cheque forgery**;
2. **corporate card fraud**; or
3. **imitation fraud**.

**Fraudulent Alteration** means:

A material alteration to an instrument for a fraudulent purpose.

**Funds Transfer Fraud** means:

The **theft** of the **Entity's** funds from an account maintained by the **Entity** at a financial institution (from which the **Entity** or a person or organisation authorised by the **Entity** may request the transfer, payment or delivery of funds), following fraudulent electronic, telegraphic, telex, facsimile, telex, telephone or written instructions to debit such account and to transfer, pay or deliver funds from such account and which instructions purport to have come from the **Entity** or a person or organisation authorised by the **Entity** to issue such instructions, but which are fraudulently transmitted, issued, or are **forged** or have been the subject of **fraudulent alteration** by any **third party**.

**Fungus(i)** means:

Any plants or organisms belonging to the major group fungi, lacking chlorophyll, and including **moulds**, **rusts**, **mildews**, **smuts** and **mushrooms**.

**Governor** means:

A duly elected or validly appointed director or trustee (other than a trustee of an insolvent **Entity**) or **Governor** or **Governor** officer of the **Entity** in each case appointed to the management board of the **Entity** or person with duties equivalent with any of the foregoing but not an external auditor or insolvency office-holder of the **Entity**.

**Grounding** means:

The withdrawal of one or more **aircraft** from flight operations or the imposition of speed, passenger or load restrictions on such **aircraft**, by reason of the existence of or alleged or suspected existence of any defect, fault or condition in such **aircraft** or any part thereof sold, handled or distributed by the **Insured** or manufactured, assembled or processed by any other person or organisation according to the **Insured's** specifications, plans, suggestions, orders or drawings or with tools, machinery or other equipment furnished to such persons organisations by the **Insured**, whether such **aircraft** so withdrawn are owned or operated by the same or different persons, organisations or corporations.

A **grounding** will be deemed to commence on the date of an **occurrence** which discloses such condition or on the date an **aircraft** is first withdrawn from service on account of such.

**Hacker** means:

Anyone, including an **Employee**, who maliciously targets the **Entity** and gains unauthorised access to or unauthorised use of the **Entity's computer system** or data held electronically by the **Entity** or on the **Entity's** behalf, solely by circumventing electronically the security systems in place to protect against such unauthorised access or unauthorised use.

**Hacker event** means:

A **hacker**:

1. damaging, destroying, altering, corrupting, or misusing the **Entity's computer system**, programmes or data the **Entity** holds electronically, or any programmes or data for which the **Entity** is responsible; or
2. copying or stealing any programme or data the **Entity** holds electronically or for which the **Entity** is responsible.

**Hovercraft** means:

Any vessel, craft or device made to float on or in or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.

**Imitation Fraud** means:

1. the **forgery or fraudulent alteration** of any **money** or **negotiable instruments** or instruction; or
2. the **counterfeiting** of any **money** or **negotiable instruments**, upon which the **Entity** has acted or relied.

**Infringement** means:

An **infringement** of any intellectual **property** right of a **third party**, other than patents and **trade secrets**.

**Insured** means:

The **Entity**, or any **subsidiary** named by way, and to the extent, of a Deemed **Insured** Endorsement and/or **Insured Person**.

**Insured Executive** means:

Any natural person who is, at the time of his or her **accidental death**:

1. aged between 18 years and 70 years; and
2. was duly elected or validly appointed director or trustee (other than a trustee of an insolvent **Entity**) or **Governor** or **Governor** officer of the **Entity** in each case appointed to the management board of the **Entity** or person with duties equivalent with any of the foregoing.

**Insured Person** means:

Any natural person who was, is or during the **policy period** becomes:

1. a **Governor** or **Insured Executive**;
2. an **Employee** or natural person committee member of the **Entity**;
3. a shadow director or de facto director of the **Entity**; or
4. an **Outside Entity Director**;

but only when and to the extent that such **Insured Person** is acting for and on behalf of the **Entity** in any of the capacities referred to in

1. to 4. above.

**Insured Person** is extended to include:

- a. the spouse or domestic partner (including same sex relationship civil partnerships, if applicable); and
- b. the administrator, heirs, legal representatives, or executor of a deceased, incompetent insolvent or bankrupt estate;

of the **Insured Person** referred to in a. to b. above with respect to the acts, errors or omissions of such **Insured Person**.

**Insurer** means:

The **insurer** named in the schedule.

**Internet** means:

Via the **Entity's** website or via use of the world wide web, **internet** or electronic mail from the **Entity's** controlled **computer**, mobile device or network.

**Investigation** means:

Any hearing, examination, **investigation** or inquiry by an **official body** into the affairs of the **Entity** or **Outside Entity**, or an **Insured Person** of such **Entity**, once an **Insured Person** receives written documentation during the **policy period**:

1. requiring them to attend before or produce **documents** to, or answer questions by or attend interviews with, the **official body**; or
2. identifying them as a target in writing by an investigating **official body** as a target of the hearing, examination, **investigation** or inquiry.

An **investigation** shall be deemed to be first made when the **Insured Person** is first so required or so identified.

**Investigation Costs** means:

The reasonable fees, costs and expenses incurred by or on behalf of an **Insured Person** with the **Insurer's** prior written consent for the principal purpose of preparing for, responding to, or attending an **investigation**. However, **investigation costs** shall not include the remuneration of any **Insured Person**, cost of their time or costs or overheads of the **Entity**.

**Limit of Liability** means:

The applicable sum specified in the policy schedule.

**Loss** means:

1. in all cases, any amount which the **Insured** is legally liable to pay resulting from a **claim** made against an **Insured**, including **defence costs**, **investigation costs** and all other costs and expenses payable under this policy, awards of damages (including punitive and exemplary damages), awards of costs or settlements (including claimant's legal costs and expenses), pre- and post- judgment interest on a covered judgment or award, and the multiplied portion of multiple damages. **Loss** includes any amount covered under any Extension applicable to the Cover purchased. Provided that with respect to **Policy Section A – General Liability** only, **loss** shall not include **investigation costs** or punitive or exemplary damages.

**loss** shall not include:

- a. any fines and penalties except to the extent covered under *Policy Section B – Statutory Liability*;
- b. taxes;
- c. remuneration, cost of the time of any **Insured Person**, or costs or overheads of the **Entity**, except with respect to *General Conditions applying to all Insuring Sections Extension 1 ‘Court Attendance’*; or
- d. amounts which are uninsurable under the applicable law of the **claim**.

Additionally, with respect to any **claim** in connection with **third party discrimination** only, **loss** shall not include:

- I. compensation payable in respect of contractual or statutory notice periods;
- II. amounts payable in respect of a specified contractual obligation, except to the extent such obligation would have attached in the absence of such contract;
- III. **employment-related benefits**;
- IV. any liability or costs incurred by any **Insured** to modify any building or **property** in order to make the building or **property** more accessible or accommodating to a disabled person; or
- V. any liability or costs incurred in connection with any educational, sensitivity or other corporate programme, policy or seminar relating to an **employment practices liability** or **third party discrimination claim** or the costs of reinstatement of any **Employee**.

**Management Liability** means:

Any liability arising from any actual or alleged act, error or omission of any **Insured Person**.

or arising solely because of any person’s status as an **Insured Person**.

**Media Liability** means:

A **claim** against the **Entity** for an **Insured’s**:

1. **infringement** of any intellectual **property** rights;
2. **defamation**, including libel, slander, trade libel, product disparagement or malicious falsehood; or
3. negligent transmission of a **virus**.

Provided that the **claim** arises directly from the content of an **Insured’s** email, or the **Entity’s** intranet, extranet or website, including alterations or additions made by a **hacker**.

**Misleading or Deceptive Conduct** means:

Any actual or alleged **misleading or deceptive conduct** at law or under the *Fair Trading Act 1986* or the *Consumer Guarantees Act 1993*.

**Money** means:

Currency, coins, bank notes and bullion, cheques, travellers’ cheques, registered cheques, postal orders and **money** orders.

**Mould(s)** means:

Means any superficial growth produced on damp or decaying organic matter or on living organisms, and fungi that produce **moulds**.

**Negotiable Instruments** means:

All **securities**, instruments or contracts, including any note, stock, bond, debenture, evidence of indebtedness, share or other equity or debt security, representing either **money** or **property**, but does not include **money**.

**Occupational Health & Safety Incident** means:

Any actual or alleged breach of an occupational health and safety law or regulation, including a law or regulation dealing with industrial or workplace deaths.

**Occurrence** means:

An event, including continuous or repeated exposure to substantially the same general conditions, which results in **personal injury** or **property damage** neither expected nor intended from the **Insured’s** standpoint.

All events of a series consequent on or attributable to one source or original cause shall be deemed one **occurrence**.

**Official Body** means:

Any regulator, disciplinary body, criminal authority, government body, government agency, official trade body, or any other person or body having legal authority to conduct an **investigation**.

**Outside Entity** means:

Any **Entity**, including any not for profit **Entity**, but other than an **Entity** that:

1. is a **subsidiary**;
2. is incorporated or domiciled in the United States of America;
3. is a bank, clearing house, credit institution, undertaking for collective investment in **securities**, investment firm, investment advisor/manager, investment fund or mutual fund, private equity or venture capital company, stock brokerage firm, insurance company or similar **Entity**; or
4. has its **securities** listed on any securities exchange;

unless listed by endorsement to this policy as an **Outside Entity**.

**Outside Entity Director** means:

A natural person who did or does, or during the **policy period** begins to serve, at the specific request of the **Entity** as a director, officer, trustee, **Governor** or equivalent of an **Outside Entity**.

**Personal Data** means:

Any non-public individually identifiable information about a **data subject**.

**Personal Injury** means:

Subject to the proviso below:

1. death sickness or disease and shall include mental injury, mental anguish and shock;
2. false arrest, false imprisonment, wrongful eviction, wrongful detention, malicious prosecution and humiliation;
3. libel, slander, **defamation** of character or invasion of privacy; and
4. injury, sickness or disease or death sustained by a person resulting from such injury;
5. assault and battery not committed by or at the direction of the **Insured** unless committed for the purpose of preventing or eliminating danger to persons or **property**.

and provided that in respect of *Policy Section C – Employers Liability* only, **personal injury** shall be limited to paragraph 1. above and furthermore, disease shall be sustained only when the **Employee** is first exposed to conditions in New Zealand out of which the disease arose.

**Policy Period** means:

The period from the inception date to the expiry date specified in the schedule.

**Pollutant** means:

Any solid, liquid, biological, radiological, gaseous or thermal irritant or contaminant whether occurring naturally or otherwise, including but not limited to, smoke, vapour, soot, fibres, **mould**, **spore(s)**, **fungus**, germs, fumes, acids or alkalis of any sort, chemicals and waste. Waste includes but is not limited to, material to be recycled, reconditioned or reclaimed.

**Pollution Condition** means:

Any actual, alleged or threatened discharge, dispersal, release or escape of a **pollutant**; or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **pollutants**, nuclear material or nuclear waste.

**Premises** means:

The interior portion of any building owned or occupied by the **Entity** and in which it conducts its **business**.

**Privacy Breach**

1. breach of confidentiality or **infringement** of any right to privacy, including any alleged breach of the terms of the *Privacy Act 2020*; or
2. the unauthorised acquisition, access, use or disclosure of, or the **loss** or **theft** of **personal data**, which compromises the security or privacy of that information such that it poses a significant risk of financial harm to the **data subject**; or

3. any unauthorised acquisition, access, use or disclosure of **personal data** which triggers the **Entity's** obligations under any **statute**, law or regulation to make any notification of such unauthorised acquisition, access, use or disclosure.

**Privacy Forensic Costs** means:

The reasonable and necessary costs incurred by the **Entity** with **Insurers** prior written consent for forensic services conducted by outside forensic experts.

**Privacy Liability** means:

A **claim** against the **Entity** for an **Insured's**:

1. breach, violation or **infringement** of any right to privacy, consumer data protection law, or other legal protection for **personal data**;
2. **breach of duty** to maintain the security or confidentiality of **personal data**;
3. breach of any duty of confidence, including in respect of any commercial information; or
4. breach of any contractual duty to maintain the security or confidentiality of **personal data**, including under a payment card processing agreement with any bank or payment processor or the **Entity's** privacy policy.

**Property** means:

Physical **property**, excluding the **Entity's** building and its fixtures and fittings, **money** and **negotiable instruments**.

**Property Damage** means:

1. physical damage to, destruction of or **loss** of tangible **property** including the **loss** of use thereof at any time resulting therefrom; or
2. **loss** of use of tangible **property** which has not been physically injured or destroyed, provided such **loss** of use is caused by physical damage to other tangible **property**.

**Prosecution Costs** means:

Reasonable fees, costs and expenses incurred, with the **Insurer's** prior written consent, by an **Insured Person**, to bring legal proceedings for a declaration and/or an injunction in connection with any **asset and liberty proceedings**.

**Public Relations Consultants** means:

**Public relations consultants** retained by the **Insured** with the **Insurer's** prior written consent.

**Public Relations Costs** means:

The reasonable fees, costs and expenses incurred and paid by the **Entity**, with the **Insurer's** prior written consent, to procure **public relations services** to redress adverse publicity or reputational injury resulting directly from a **direct financial loss** covered under this policy.

**Public Relations Services** means:

Services provided by the **Public Relations Consultants** to an **Insured Person** directly to mitigate the adverse effect or potential adverse effect on an **Insured Person's** reputation.

**Registered Person** means:

A person registered by the **Entity** as a member of a professional body as part of the **Entity's professional services**.

**Responsible Person** means:

Any **Employee** acting in a directorial, managerial or supervisory capacity other than any person who has committed any acts of fraud or dishonesty.

**Retention** means:

The sum specified in the schedule.

**Retroactive Date** means:

The date stated as the **retroactive date** in the schedule. For any **subsidiary**, the **retroactive date** shall mean the later of the **retroactive date** shown in the schedule and the date the **Entity** first took control of such **Entity**, unless otherwise agreed by **us** in writing.

**Securities** means:

Any security representing debt of or equity interests.

**Senior Counsel** means:

A senior lawyer to be mutually agreed upon by the parties, or in the absence of agreement, to be appointed by the head of the bar entity/law society (or equivalent organisation) in the jurisdiction in which the **loss** was incurred.

**Sexual Misconduct Claim** means:

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

1. any actual or alleged sexual molestation or abuse, including any alleged direct sexual activity; or
2. any related allegation that the **Entity** negligently employed, investigated, supervised or retained a person who has committed or is alleged to have committed an act of sexual molestation or abuse; or
3. an alleged practice, custom or policy including without limitation, any allegation that the violation of a civil right caused or contributed to a **Sexual Misconduct Claim**.

**Spore(s)** means:

Any dormant or reproductive body produced by or arising or emanating out of any **fungus(i)**, **mould(s)**, mildew, plants, organisms or micro-organisms.

**Statute** means:

An Act of the New Zealand Parliament and any subordinate legislation thereto.

**Statutory liability** means:

Any fine, pecuniary penalty or reparation order made by a Court pursuant to any **statute** which an **Insured** is legally liable to pay resulting from a **claim** made against the **Insured**. **Statutory liability** shall not include:

1. any amounts representing damages or compensation or reparation save for orders for reparation arising from a breach of the *Health and Safety at Work Act 2015* which are made under the *Sentencing Act 2002* or *Sentencing Amendment Act 2014*;
2. any compliance costs; or
3. any amount which the **Insurer** is prohibited from paying by law.

**Subsidiary** means:

Any entity which the **Entity** has **control** either directly or indirectly through one or more other entities on or before the inception date of this policy.

**Superannuation Fund** means:

Any **superannuation fund**, pension plan, employee benefit, welfare benefit, share save or share option plan or charitable fund or foundation established and maintained by the **Entity** for the benefit of the past, present or future **Employees** of the **Entity** or their respective beneficiaries, on or prior to the inception date of this policy.

Cover for any **Entity's Superannuation Fund** shall only apply in respect of **direct financial loss** arising out of any act covered under this policy committed while such **Entity** is a fund maintained by the **Entity**.

**Tax Status Costs** means:

Reasonable and necessary fees, costs and expenses incurred by or on behalf of the **Entity** with the **Insurer's** prior written consent to exercise any right of review or available remedy in connection with a New Zealand Inland Revenue audit or Department of Internal Affairs or Charities Registration Board decision concerning the **Entity's** tax or charitable status.

**Terrorism** means:

The use or threatened use of force or violence against person or **property**, or commission of an act dangerous to human life or **property**, or commission of an act that interferes with or disrupts an electronic or communication system, undertaken by any person or group, whether or not acting on behalf of or in connection with any organisation, government, power, authority or military force, when the effect is to intimidate or coerce a government, the civilian population or any segment thereof, or to disrupt any segment of the economy.

**Terrorism** shall also include any act which is verified or recognised by the government of any country in which the **Entity** operates or exports products into, as an act of **terrorism**.

**Theft** means:

The unlawful taking of the **Entity's Money, Negotiable Instruments or Property** occurring:

1. within the ownership, tenancy or occupation of **premises** of the **Entity**;
2. within the interior of any banking **premises** or similar recognised place of safe deposit;
3. while in transit and in the care, custody and control of an **Insured Person** or **Governor** of the **Entity**
4. following the actual or threatened use of force or violence; or
5. while in the care, custody and control of any security company or armoured motor vehicle company, duly authorised by the **Entity** to retain such care, custody and control and provided that the **Insurer** shall only be liable for the amount that is in excess of the amount of any other valid and collectible insurance or indemnity, contractual or otherwise, available to the security company or armoured motor vehicle company.

**Third Party** means:

Any **Entity** or natural person; provided, however, **third party** does not mean:

1. any **Insured**; or
2. any other **entity** or natural person having a financial interest in the operation of the **Entity** or a **Governor** of the **Entity**;
3. someone who is acting in collusion with any **Insured**;
4. any natural person providing services under any contract for services, written or implied, with any **Insured**.

**Third Party Discrimination** means:

Any liability arising from any actual or alleged act, error or omission with respect to any harassment of or discrimination against any natural person **third party** who is not and has not been an **Employee**.

**Tools of Trade** means:

Any **vehicle** which has attached as an integral part of such **vehicle** any equipment for mechanical digging, scraping, grading, slashing, mowing, drilling, lifting or levelling, whilst such equipment is being used for the purpose for which it was designed.

**Trade Secrets** means:

Information that derives independent economic value, actual or potential, from not being generally known and not being readily ascertainable through proper means by other persons who can obtain economic advantage from its disclosure or use.

**Transaction** means:

Any one of the following events:

1. the **Entity** consolidates with or merges into or sells or transfers all or substantially all of its assets to any other person or **Entity** or group of persons and/or entities acting in concert; or
2. any person or **Entity**, or persons or entities acting in concert acquires **control** of the **Entity**.

**Unauthorised Material Use** means:

Unauthorised taking for use of any advertising idea, material, slogan, style or title of others; and unauthorised use of names, domain names, trade names, trade addresses, service marks, service names, titles, slogans, formats, characters, character names, characterisations, plots, musical compositions, performances, logos, artwork, graphics, photographs or program materials.

**Underground Services** means:

All underground electricity, gas, water, steam, waste water (sewer, storm water), telecommunications plant, and liquid petroleum services and oil pipelines.

**Vehicle** means:

Any type of machine on wheels or on caterpillar tracks made or intended to be propelled other than by manual or animal power.

**War** means:

Any **war**, whether or not declared, or any act or condition incident to **war**. **War** includes civil **war**, insurrection, invasion, act of foreign enemy, civil commotion, factional civil commotion, military or usurped power, rebellion or revolution.

**Watercraft** means:

Any vessel or **watercraft** made to or intended to float on or in or travel on or through or under water.

**Workmanship** means:

Work done in the process of manufacturing, constructing, erecting installing, servicing, repairing or treating **property**.

# Reserved Costs and Expenses

If any **loss** or liability covered by this policy is or may be subject to a **charge** then:

1. the **Insurer** shall not be obligated to advance any **defence costs** or **investigation costs** under any other section of this policy; and
2. the **Insurer** will indemnify the **Insured** for any **defence costs** or **investigation costs** solely under this Section.

## Conditions

1. Whether or not any **loss** or liability covered by this policy is or may be subject to a **charge** is at the sole and absolute discretion of the **Insurer**.
2. All **defence costs** or **investigation costs** paid, or to be paid, under this Section – *Reserved Costs and Expenses* shall:
  - a. be subject to the same terms, conditions and exclusions which would have applied had the **Insurer** made payment under the applicable section of this policy;
  - b. be subject to the **limit of liability** stated in the schedule; and
  - c. not include taxes other than an amount of GST for which an **Insured** is not entitled to an input tax credit.
3. The **limit of liability** that has been eroded by the payment of **defence costs** or **investigation costs** under this Section – *Reserved Costs and Expenses* shall be reinstated (without deduction or set-off) by an amount equivalent to such payment where:
  - a. upon the final determination of the existence and extent of any **charge** the **loss** (or any part of the **loss**) is determined not to be, or to have been, any longer subject to any **charge** and could, prior to any reinstatement, have been paid to the **Insured** under any other section of this policy; or
  - b. if, prior to the final determination of the existence and extent of any **charge**, the **Insurer** (in its sole and absolute discretion) determines that any **loss** paid to the **Insured** under this Section – *Reserved Costs and Expenses* could, prior to any reinstatement, have been paid under any other section of this policy.
4. Where the **limit of liability** has been reinstated in accordance with *Condition 2* of this Section, the **limit of liability** of the section under which **defence costs** or **investigation costs** could have been paid in the absence of any charge shall be reduced by the amount of the sum reinstated.



# Policy Section A – General Liability



In consideration of the payment of the premium or agreement to pay the premium, the **Insurer** and the **Entity** agree as follows:

## Cover

### 1. General liability

The **Insurer** will indemnify the **Insured** for **loss** arising from **personal injury** or **property damage** occurring within the policy territory during the **policy period** in connection with the **business**.

For the purposes of this clause, the policy **territory** means New Zealand including the overseas activities of travelling **Governors**, executives and salespeople on the **Entity's business** who are non- resident in such countries.

## Extensions

### 1. Care, custody and control

The **Insurer** will indemnify the **Insured** for **loss** arising from **property damage** occurring during the **policy period** in connection with the **business** to:

1. tangible **property** not owned by the **Insured**, but in the physical or legal control of the **Insured**; and
2. **vehicles** and their contents (not belonging to or used by or on behalf of the **Insured**) in the **Insured's** physical or legal control where such **property damage** occurs while any such **vehicle** is in a car park owned or operated by the **Insured** unless the **Insured** owns or operates a car park for reward.

Provided that:

- a. *Exclusion 12 – 'Property Owned or in the Entity's Physical or Legal control'* and *Exclusion 13 – 'Vehicles'* of this insuring section shall not apply to this extension;
- b. the total amount payable under this extension is for any one **occurrence** and in the aggregate during the **policy period** as described in the schedule; and
- c. a **retention** as described in the schedule shall apply for each **occurrence**.

### 2. Innkeeper's liability

The **Insurer** will indemnify the **Insured** for any liability incurred by the **Insured** under the *Innkeepers Act 1962* for **loss** of **property** or **property damage** occurring during the **policy period** in connection with the **business**.

Provided that:

1. *Exclusion 12 – 'Property Owned or in the Entity's Physical or Legal Control'* of this insuring section, shall not apply to this extension; and

2. cover under this extension is limited to:

- a. guests' **property** in safe custody: \$20,000 per **occurrence**; and
- b. guests' **property** not in safe custody: \$5,000 per **occurrence**.

### 3. Indemnity to principals and others

The **Insurer** will indemnify any person or organisation to whom the **Entity** is obligated by a written **Entity contract** to provide such insurance as is afforded by this *Policy Section A – General Liability*, but only for the vicarious liability of such person or organisation arising out of the performance by the **Entity** of such written contract and for such coverage and **limit of liability** as provided by this *Policy Section A – General Liability*.

Provided that this extension only covers **loss** arising out of operations conducted by the **Insured** or on their behalf and shall not apply to any greater extent than required by the **Entity contract**.

### 4. Landlord's liability

The **Insurer** will indemnify the **Insured** for **loss** arising from **personal injury** or **property damage** occurring during the **policy period** for **personal injury** and/or **property damage** in connection with the legal ownership, but not physical occupation, of any **premises** owned by the **Insured**.

*Exclusion 12 'Property Owned or in the Entity's Physical or Legal control'* of this insuring section shall not apply to this extension.

### 5. Product withdrawal expenses

The **Insurer** will indemnify the **Entity** for 80% of the costs of recalling or withdrawing the **Entity's products** from use in New Zealand, which have already given rise to a valid **claim** for **personal injury** or **property damage** under this *Policy Section A – General Liability*.

Provided that:

1. the prior approval of the **Insurer** was obtained prior to the recall or withdrawal of the **Entity's products**;
2. the costs are incurred with the **Insurer's** written agreement;
3. *Exclusion 11 'Product Recall'* of this Insuring Section shall not apply to this Extension;
4. the total amount payable under this extension is for any one **occurrence** and in the aggregate during the **policy period** as described in the schedule; and
5. a **retention** as described in the schedule shall apply for each product withdrawal. The product withdrawal **retention** shall be paid in addition to any **retention** with respect to any **loss** or **claim** covered by this policy.

## 6. Punitive or exemplary damages

The **Insurer** will indemnify the **Insured** for punitive and/or exemplary damages which the **Insured** is legally obliged to pay as a result of a **claim** for **personal injury** in New Zealand that is covered under this *Policy Section A – General Liability*, in connection with the **business** of the **Insured**, or the **Insured's** ownership, occupancy or tenancy of a building, structure or land.

Provided that:

1. the **claim** is made against the **Insured** and reported to the **Insurer** during the **policy period**;
2. any punitive or exemplary damages awarded by any court outside of New Zealand are excluded;
3. the total amount payable under this extension is for any one **claim** and in the aggregate during the **policy period** as described in the schedule;
4. a **retention**, as described in the schedule shall apply to each and every **claim**;
5. *Exclusion 19 – 'Fines, Penalties and Damages'* shall not apply to this extension.

## 7. Service, repair & storage liability – motor vehicles & watercraft

The **Insurer** will indemnify the **Insured** for **loss** in respect of:

1. **loss** of or damage to the **vehicle** or **watercraft** being serviced or repaired;
2. **personal injury** or **property damage** arising from service and/or repair to a **vehicle** or **watercraft**; and
3. **personal injury** or **property damage** as a result of an accident whilst the **vehicle** is being driven on any public or private road or thoroughfare.

Provided that:

- a. the **loss, damage, property damage** or **personal injury** occurs during the **policy period** in connection with the **business**; and
- b. the **vehicle** or **watercraft** is or has been in the care, custody or control of the **Insured** for the purposes of service and/or repair;
- c. the **watercraft** does not exceed eight (8) metres in length;
- d. the total amount payable under this extension shall not exceed the sum described in the schedule for any one **occurrence** and in the aggregate during the **policy period**; and
- e. a **retention** as described in the schedule shall apply for each **occurrence**.

This extension of cover does not apply to:

- I. **personal injury** or **property damage** resulting from towing the **vehicle** or **watercraft**, except where it is

being towed for the reason that it is either mechanically disabled or is designed to be towed in the course of its normal use;

- II. the cost of rectifying any defective **workmanship** in respect of the actual part or parts worked on by the **Insured**. However, liability for **personal injury** or **property damage** resulting from defective **workmanship** is not excluded;
- III. liability arising out of any **occurrence** resulting from a **vehicle** or **watercraft** engaged in or being tested in preparation for racing, pace making speed testing, or any **occurrence** resulting from a **vehicle** engaged in any hill climbing test or being driven on any racetrack or speedway;
- IV. liability arising out of any **occurrence** resulting from the **vehicle** or **watercraft** being driven by a person with the **Insured's** consent, who is under the influence of intoxicating liquor or drugs to the extent that an offence is committed under New Zealand law; or
- V. liability arising out of any **occurrence** resulting from a **vehicle** or **watercraft** being operated by a person with the **Insured's** consent, who does not have the appropriate licence to operate the **vehicle** or **watercraft**.

## 8. Tenant's liability

The **Insurer** will indemnify the **Insured** for **loss** arising from **property damage** occurring during the **policy period** in connection with the **business** to:

1. **premises** (including the **Insured's** fixtures and fittings) leased or rented by the **Insured**; or
2. **property** in the **Insured's** custody or control but not owned by the **Insured**; or
3. **premises** that the **Insured** temporarily occupy.

Provided that this extension does not cover:

- a. **loss insured** by the care custody and control extension of this insuring section; or
- b. legal liability arising in connection with the failure of the **Insured** to arrange insurance on the **property**.

## 9. Travelling in USA or Canada

The *General Conditions applying to all Insuring Sections – Exclusion 16 – USA or Canada* exclusion shall not apply to travelling **Governors, Employees** and sales people retained by or on behalf of the **Entity**.

## 10. Underground property warranty

The **Insurer** will indemnify the **Insured** for **loss** arising from **personal injury** or **property damage** occurring during the **policy period** in connection with the **business** in New Zealand to **property** or **underground services**.

Provided that:

1. prior to the commencement of any work the **Insured** enquired of the relevant authority, corporation or company as to the location of such services;
2. the **Insured** took all reasonable precautions to prevent **personal injury** or **property damage**;
3. the total amount payable under this extension shall not exceed the sum described in the schedule for any one **occurrence** and in the aggregate during the **policy period**;
4. a **retention** as described in the schedule shall apply for each **occurrence**.

### 11. Vibration and removal of support

The **Insurer** will indemnify the **Insured** for **loss** arising from **personal injury** or **property damage** occurring during the **policy period** in connection with the **business** in New Zealand and arising from the actions of the **Insured** in removing, weakening or interfering with the support of land or buildings, other than those owned or occupied by the **Insured**.

Provided that:

1. the total amount payable under this extension shall not exceed the sum described in the schedule for any one **occurrence** and in the aggregate during any one **policy period**; and
2. a **retention** as described in the schedule shall apply for each **occurrence**.

### 12. Advertising Injury

Notwithstanding **Personal Injury** Definition 3., the **Insurer** agrees to indemnify the **insured** in respect of liability for **Personal Injury** from any unintentional:

1. libel;
2. slander;
3. **defamation**; or
4. invasion of rights of privacy,

arising out of the **Insured's** advertising activities.

## Optional Extensions

### 1. Defective workmanship

The **Insurer** will indemnify the **Insured** for liability for the costs of rectifying defective or faulty **workmanship** including materials, consequent upon accidental damage to **property** on which the **Insured** was working, where the **damage** is caused by the **insured's** faulty **workmanship**.

Provided that:

1. **Exclusion 17 – 'Faulty Workmanship'** and **Exclusion 18 – 'Property Worked on'** of this insuring section shall not apply to this extension;

2. the faulty **workmanship** is done or undertaken in New Zealand by any of the persons **insured** during the **policy period**; and
3. the total amount payable under this extension is for any one **occurrence** and in the aggregate during the **policy period** as described in the schedule; and
4. a **retention** as described in the schedule shall apply for each **occurrence**.

## Exclusions

The **Insurer** shall not be liable for **loss** under **Policy Section A – General Liability** or the extensions of this insuring section:

### 1. Aircraft, hovercraft and watercraft

arising out of the ownership, possession, maintenance, operation or use by or on behalf of the **Insured**:

1. of any **aircraft** or **hovercraft**; or
2. of any **watercraft** or vessel exceeding eight (8) metres in length unless such **watercraft** is in New Zealand territorial or inland waters and:
  - a. not owned by the **Insured** but being used by the **Insured** for **business** entertainment; or
  - b. hand propelled or sailing craft.

### 2. Aircraft products

for the supply, distribution, sale or manufacture of **aircraft products** or reliance upon any representations or warranties made by the **Insured** with respect to **aircraft products** or arising out of the **grounding** of any **aircraft**.

### 3. Contractual liability

arising out of, based upon or attributable to any liability of the **Insured** under any contract or agreement. This exclusion shall not apply to:

1. the **Insured's** liability that would have attached in the absence of such contract;
2. liability under any warranty of goods implied by law or liability assumed under a warranty of fitness or quality as regards to the **Entity's products**;
3. any written agreement for lease of real or personal **property** which does not impose upon the **Insured** an obligation to insure such **property** or any liability regardless of fault;
4. any written contract with any **entity** for the supply of water, gas or electricity but only to the extent of indemnifying any such **entity** in respect of liability arising out of the **business** other than contracts for the performance of work or provision of services by the **Insured**;

- any written **Entity contract** under which the **Entity** is obligated to provide to any person or organisation such insurance as is afforded by this **Policy Section A – General Liability**, but only for the vicarious liability of such person or organisation arising out of the performance by the **Entity** of such written contract and for such coverage and **limit of liability** as provided by this **Policy Section A – General Liability**.

#### 4. Expected or intended

for **personal injury** or **property damage** expected or intended by the **Insured**. However, this exclusion does not apply to:

- loss** caused by the use of reasonable force to protect persons or **property**; or
- liability of the **Insured** for **loss** arising out of an act committed by an **Employee** which results in **personal injury** or **property damage** expected or intended from the standpoint of the **Employee**, provided such act was not committed at the direction of the **Entity** or a **Governor**.

#### 5. Internet operations exclusion

for **personal injury** or **property damage** arising directly or indirectly out of or caused by or in connection with the **Insured's internet** operations, including but not limited to **business** conducted and/or transacted via the **internet**, intranet, extranet and/or via the **Insured's** own website, **internet** site, web address and/or via the transmission of electronic mail or **documents** by electronic means.

#### 6. Libel & slander

arising out of a libel or slander:

- made prior to the **policy period**;
- made by or at the **Insured's** direction with knowledge of the falsity or defamatory character of the statement; or
- related to advertising, broadcasting, publishing or telecasting activities including **internet** activity, conducted by the **Insured** or on the **Insured's** behalf.

#### 7. Loss due to virus or bacteria

**loss** or damage directly or indirectly caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease. This exclusion applies regardless of any other cause or event contributing to the **loss** concurrently or in any other sequence.

The terms of the exclusion above, or the inapplicability of this exclusion to a particular **loss**, do not serve to create coverage for any **loss** that would otherwise be excluded by this policy.

#### 8. Loss of use

for **loss** of use of any tangible **property** which has not been physically injured or destroyed resulting from:

- a delay in or lack of performance by the **Insured** or on the **Insured's** behalf of any contract or agreement; or
- the failure of the **Entity's products** to meet the level of performance, quality, fitness or durability express or implied, warranted or represented by the **Insured**.

Provided that this exclusion does not apply to **loss** of use of other tangible **property** resulting from the sudden and accidental physical injury to or destruction of the **Entity's products** after such products have been put to use by any person or organisation other than the **Insured**.

#### 9. Mould / building defect

for liability for any **personal injury** or **property damage** or any other **loss**, injury, damage, cost or expense, including, but not limited to, **losses**, costs or expenses related to, arising from or associated with clean-up, remediation, containment, removal or abatement, caused directly or indirectly, in whole or in part, by:

- any **fungus(i)**, **mould(s)**, mildew or yeast;
- any **spore(s)** or toxins created or produced by or emanating from such **fungus(i)**, **mould(s)**, mildew or yeast;
- any substance, vapour, gas, or other emission or organic or inorganic body or substance produced by or arising out of any **fungus(i)**, **mould(s)**, mildew or yeast, or
- any material, product, building component, building or structure, or any concentration of moisture, water or other liquid within such material, product, building component, building or structure, that contains, harbours, nurtures or acts as a medium for any **fungus(i)**, **mould(s)**, mildew, yeast, or **spore(s)** or toxins emanating there from,

regardless of any other cause, **event**, material, product and/or building component that contributed concurrently or in any sequence to that **loss**, injury, **damage**, cost or expense.

#### 10. Product defect

for **property damage** to the **Entity's products** arising out of such products or any part of such products.

#### 11. Product recall

for any cost or expense incurred or claimed for the withdrawal, inspection, repair, replacement, or **loss** of use of the **Entity's products** or of any property of which such products form a part, if such products, or property are withdrawn from the market or from use because of any known or suspected defect or deficiency in the **Entity's products**.

However, this exclusion does not apply to *Extension 5 'Product Withdrawal Expenses'* of this insuring section.

## 12. Property owned or in the insured's physical or legal control

for **property damage** to:

1. **property** owned by, leased or rented to the **Insured**;
2. **property** belonging to the **Insured** or in the care, custody or control of the **Insured** or any **Employee** of the **Insured**; or
3. that particular part of any real **property** on which the **Insured** or any contractors working directly or indirectly on the **Insured's** behalf are performing operations if the **loss** or **property damage** arises out of those operations.

However, exclusion 1. and 2. above shall not apply with respect to *Policy Section A – General Liability*:

- a. *Extension 1 – Care, Custody and Control*;
- b. *Extension 2 – Innkeeper's Liability*;
- c. *Extension 7 – Service, Repair and Storage Liability – Motor Vehicles and Watercraft*;
- d. *Extension 9 – Tenant's Liability*.

## 13. Vehicles

for **personal injury** or **property damage** caused by or arising out of the ownership, possession, use of or operation by the **Insured** of any **vehicle** which is registered or in respect of which insurance is required by virtue of any legislation.

Provided that this exclusion shall not apply to the **Insured's** liability for **personal injury** or **property damage** arising from:

1. the actual loading, unloading, delivery or collection of goods to or from any **vehicle**; or
2. the use of any **tools of trade** either on any site where the **Insured** is undertaking work or at the **Insured's premises**, but not whilst in transit or otherwise being used for transport or haulage.

This exclusion shall not apply with respect to *Policy Section A – General Liability – Extension 1 – 2. – 'Care, Custody and Control'*.

## 14. Workers compensation, employer's liability and matters insured elsewhere

for liability or **loss**:

1. for **personal injury** sustained by an **Employee** which arises out of or in the course of their employment by the **Insured**; or
2. for liability imposed by industrial award, agreement or determination, or the provisions of any, workers' compensation legislation, accident compensation legislation or any similar legislation; or

3. **insured** under any other insuring section of this policy.

## 15. Professional liability

arising from the rendering of or failure to render professional advice or services by the **Insured** or any error or omission connected therewith. This exclusion shall not apply to the **Insured's** liability for **personal injury** or **property damage** arising out of:

1. the rendering of, or failure to render, medical advice or service by medical persons employed by the **Insured** to provide first aid on the **Insured's premises**; or
2. other professional advice or service not given for a fee.

## 16. Efficacy

arising out of or in any way connected with the failure of any of the **Entity's Products** to fulfil a particular purpose or intended function or meet a particular level of performance, where the **Insured** has expressly or impliedly warranted or represented that the **Entity's Products** will fulfil such purpose, function or meet such level of performance, and where that purpose, function or level of performance is curing, alleviating, preventing, monitoring, detecting, eliminating or retarding **personal injury** or **property damage**.

## 17. Faulty workmanship

in respect of the cost to rectify faulty **workmanship**, provided that this exclusion shall not apply to **personal injury** or **property damage** resulting from such faulty **workmanship**.

## 18. Property worked upon

for **property damage** to **property** on which the **Insured** is or has been working if the **property damage** is caused directly by that work.

This exclusion shall not apply with respect to *Policy Section A – General Liability Extension 7 – Service, Repair and Storage Liability – Motor Vehicles and Watercraft*.

## 19. Fines, penalties and damages

in respect of fines, penalties, punitive, exemplary, liquidated or aggravated damages.

## 20. Waiver of rights

where the **Insured** has agreed with another person or company, who would otherwise be liable to compensate the **Insured** for the **loss** or contribute towards any **loss**, that the **Insured** will not seek to recover such **loss** or contribution to **loss** from that person or company, except where the **Insurer** has approved in writing such agreement.

# Policy Section B – Statutory Liability

In consideration of the payment of the premium or agreement to pay the premium, the **Insurer** and the **Entity** agree as follows:

## Cover

### 1. Statutory Liability

The **Insurer** will indemnify the **Insured** for any **loss** due to a **claim** first made against the **Insured** during the **policy period** or any **discovery period** for **Statutory Liability**.

## Exclusions

The **Insurer** shall not be liable for any **loss** under *Policy Section B – Statutory Liability* for:

### 1. Deliberate or Intentional Conduct

an act or omission that is alleged to have been deliberate, intentional or reckless, unless the **Insured** is subsequently acquitted in direct relation to this act or omission.

### 2. Specific Acts

1. any of the following statutes: *Arms Act 1983; Aviation Crimes Act 1972; Crimes Act 1961; Land Transfer Act 2017; Land Transport Act 1988; Proceeds of Crime Act 1991; Summary Offences Act 1981; Transport Act 1962; Transport (Vehicle and Driver Registration and Licensing) Act 1986;*
2. any violation of any law or regulation with respect to vehicular, air or marine traffic;
3. any violation of any law or regulation with respect to tax, rate, duty, levy, **charge**, fee or any other revenue **charge** or impost; or
4. any violation of any law or regulation with respect to any anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships.

### 3. Defence costs

**Defence Costs** arising from appealing, or otherwise challenging, an infringement notice given under the *Health and Safety at Work Act 2015*.

### 4. Business

any **claim** relating to acts or omissions which do not directly arise out of the **business**.

### 5. Territorial limit

any **claim** arising out of an act or omission which takes place outside the territory of New Zealand.

# Policy Section C – Employer's Liability

In consideration of the payment of the premium or agreement to pay the premium, the **Insurer** and the **Entity** agree as follows:

## Cover

### 1. Employers Liability

The **Insurer** will indemnify the **Entity** for **loss** due to a **claim** first made against the **Insured** during the **policy period** or any **discovery period** for **personal injury** sustained by an **Employee**.

## Exclusions

The **Insurer** shall not be liable for **loss** under *Policy Section C – Employers Liability* for:

### 1. Fine or penalty

any fine or penalty levied against the **Entity**, except by way of punitive or exemplary damages.

### 2. Indirect activities

any **claim** arising from an **Employee** engaged in any activity or occupation not directly part of the **business** of the **Entity**.

### 3. Jurisdiction

any **claim** as a result of any judgment entered in any court other than a New Zealand court having jurisdiction to deal with the dispute and applying the law of New Zealand, or any debt incurred by the **Entity** as the result of such a judgment.

### 4. Non Compliance

any **claim** directly or indirectly caused by or alleged to be caused by or contributed to, in whole or in part, by the **Entity** failing to take all reasonably practicable precautions to comply with all statutory obligations to prevent **personal injury**.

### 5. Defence costs

**Defence Costs** arising from appealing, or otherwise challenging, an **infringement** notice given under the *Health and Safety at Work Act 2015*.

### 6. Business

any **claim** relating to acts or omissions which do not directly arise out of the **business**.

### 7. Territorial limit

any **claim** arising out of an act or omission which takes place outside the territory of New Zealand.

### 8. Termination of employment or unlawful discrimination

any **claim** arising out of any termination of employment or unlawful discrimination against an **Employee**.

### 9. Prosecutions

any **claim** arising out of any prosecution or proceeding for breach of any **statute** or the law of any country.

# General Conditions applying to all Insuring Sections

In consideration of the payment of the premium the **Insurer** and the **Entity** agree as follows:

## Extensions

### 1. Court attendance

The **Insurer** shall pay the following rates per day for each day on which attendance in a court by an **Insured Person** is required in connection with any covered **claim**, up to an aggregate amount of \$100,000:

1. for any **Governor; Outside Entity Director**; or any **Employee**; of the **Entity** acting in a managerial or supervisory capacity: \$500; and
2. for any other **Insured Person** not referred to in 1. above: \$250.

### 2. Discovery period

The **Entity** shall be entitled to a **discovery period** either:

1. automatically of sixty (60) days if this policy is not renewed or replaced with a similar policy;
2. 12 months at 100% of the full annual premium in effect at the expiry of the **policy period**; or
3. 24 months at 150% of the full annual premium in effect at the expiry of the **policy period**.

Provided that the **Entity**:

- a. makes a request for such **discovery period** in writing prior to the expiry of the **policy period**;
- b. pays the additional premium required, no later than thirty (30) days after the expiry of the **discovery period**.

A **discovery period** is non-cancellable and shall not apply if a **transaction** occurs.

However, upon written request of the **Entity**, the **Insurer** may quote a run-off **discovery period**. In considering such request, the **Insurer** shall be entitled to fully underwrite the exposure and to extend such offer on whatever terms, conditions and limitations that the **Insurer** reasonably deems appropriate.

### 3. Emergency costs

If the **Insurer's** written consent cannot be obtained within a reasonable time before **defence costs** or **investigation costs** are incurred with respect to any **claim**, or costs are incurred with respect to a **crisis event**, then the **Insurer** shall allow retrospective approval for such costs up to a maximum, in the aggregate, of \$50,000.

### 4. Regulatory crisis response

In addition to **defence costs** and **investigation costs**, the **Insurer** will pay, up to an aggregate amount as stated in the schedule, for the reasonable fees, costs and expenses incurred by or on behalf of any **Insured** in retaining legal advisers for the principal purpose of responding to a **critical regulatory event**.

## Exclusions

The **Insurer** shall not be liable under any Policy Section:

### 1. Anti-competitive practices

in connection with any **claim** made for any actual violation of any law, whether statutory, regulatory or common law, with respect to any of the following activities: anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships.

Provided that this exclusion does not apply to any **claim** made under the *Fair Trading Act 1986* or the *Consumer Guarantees Act 1993*.

### 2. Asbestos

for mesothelioma, asbestosis or for any death, disease, **loss** of use of **property**, damage to **property** (including consequential **loss**) arising directly or indirectly out of or in connection with or in consequence of:

1. inhaling, ingesting or physical exposure to asbestos or goods or products containing asbestos;
2. the use of asbestos in constructing or manufacturing any good, product or structure;
3. the removal of asbestos from any good, product or structure;
4. the manufacture, sale, transportation, storage or disposal of asbestos or goods or products containing asbestos; or the presence of asbestos in any building.

### 3. Benefits

arising out of, based upon or attributable to any law or obligation pursuant to any workers' compensation, disability benefits, redundancy or unemployment benefits or compensation, unemployment insurance, retirement benefits, social security benefits, superannuation benefits or any similar law or obligation whatsoever.

### 4. Bodily injury and/or property damage

for **bodily injury** and/or **property damage**. This exclusion shall not apply to:

1. any **claim** for emotional distress with respect to **third party discrimination**; or
2. mental anguish or distress where such damages solely stem from a covered **claim** for **defamation** or breach of privacy; or
3. Policy Sections:
  - a. *Policy Section A – General Liability*;
  - b. *General Conditions applying to all Insuring Sections – Extension 3 'Emergency Costs', Extension 4 'Regulatory Crisis Response'*.



## 5. Claims brought by a related party

for any **claim** brought by any person or **Entity** within the definition of **Insured** or any party with a financial, **Governor** or managerial interest in the **Entity**, including any parent company or any party in which any **Insured** have a financial, **Governor** or managerial interest.

## 6. Conduct

arising out of, based upon or attributable to:

1. the gaining of profit or advantage to which the **Insured** was not legally entitled; or
2. the committing of any dishonest or **fraudulent act**; or
3. a deliberate, intentional or reckless act or omission

in the event that any of the above is established by final adjudication of a judicial or arbitral tribunal or by any formal written admission by the **Insured**.

## 7. Defamatory statements

for or any statement a **Governor** knew, or ought reasonably to have known, was defamatory at the time of publication.

## 8. Insolvency

arising out of the insolvency of the **Entity**.

## 9. Major shareholders

for **claims** brought against any **Insured** by, at the instigation of, or on behalf of, any past or present shareholder who had or has direct or indirect ownership of, or control over, 15% or more of the voting share capital of:

1. the **Entity**; or
2. in the case of an **Outside Entity Director**, any **Outside Entity**.

## 10. Nuclear liability

for any **loss** or **claim** of whatsoever nature, directly or indirectly, caused by or contributed by or arising from:

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

## 11. Personal injury legislation

for any **claim** for any costs or compensation for which cover, to any extent is, provided by the *Accident Compensation Act 2001*, the *Accident Insurance Act 1998* or the *Accident Rehabilitation and Compensation Insurance Act 1992* or any amendment to or re-enactment of those Acts or would be provided by those Acts but for the **Entity** being an exempt employer under the Acts.

## 12. Pollution

arising out of, based upon or attributable to a **pollution condition** except where the **claim** arises from a sudden identifiable, unintended and unexpected event or **occurrence** which takes place in its entirety at a specific time and place and occurs outside of the United States of America, Canada and their respective protectorates and territories.

## 13. Prior claims, circumstances and notifications

1. for **loss** or **direct financial loss** arising out of, based upon or attributable to any fact, matter, circumstance, **claim** or **occurrence**:
  - a. which has or ought to have been notified to any **insurer** under any other policy of insurance effected prior to the inception date of this policy;
  - b. of which the **Entity** or its **responsible persons** were aware prior to the inception date of this policy; or
  - c. occurring prior to the date upon which a subsidiary became an **Insured**.
2. for any pending or prior civil, criminal, administrative or regulatory proceeding, **investigation**, arbitration or adjudication as of the **continuity date**, or alleging or deriving from the same or essentially the same facts as alleged in such actions.

## 14. Sexual misconduct exclusion

for any **Sexual Misconduct Claim**.

## 15. Silica

**loss** directly or indirectly caused by or alleged to be caused by or contributed to, in whole or in part, by or arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibres, silica dust or silica in any form, or to any obligation of the **Entity** to indemnify any party because of **bodily injury**, and/ or **property damage personal injury** arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibres, silica dust or silica in any form.

## 16. USA or Canada

acts or omissions committed or allegedly committed within Canada or the United States of America, or any legal action or litigation brought within Canada or the United States of America, its states, localities, territories or possessions or under any laws thereof.

## 17. War or terrorism

acts arising out of, based upon, attributed to or in any way connected with **war** or **terrorism**.

## Claims

### 1. When to notify claims, circumstances, and direct financial loss

Cover under *Policy Section B – Statutory Liability* and *Policy Section C – Employer’s Liability* is provided on a **claims** made and notified basis.

Any **claim**, **direct financial loss**, or other event covered in the extensions to *Policy Section B – Statutory Liability* or *Policy Section C – Employer’s Liability* must be notified to the **Insurer** as soon as practicable after any **Governor** or **responsible person** (or equivalent position) first becomes aware of such **claim**, **direct financial loss** or other event.

In all situations notification must be made to the **Insurer** in writing:

1. during the **policy period** or **discovery period**; or
2. within sixty (60) days after the end of the **policy period** or **discovery period** as long as notice is given to the **Insurer** within sixty (60) days after such **claim** was first made against the **Insured** or such **direct financial loss** is first **discovered** by the **Entity**.

Any **Insured** may, during the **policy period** or **discovery period**, notify the **Insurer** of any circumstance reasonably expected to give rise to a **claim**. The notice must include the reasons for anticipating that **claim** and full relevant particulars as to dates, acts and the potential **Insured** and claimant concerned.

If the **Entity** notifies a **direct financial loss** to the **Insurer** the **Entity** must provide to the **Insurer** as soon as practicable but no later than six (6) months after such **loss** is first **discovered**:

1. affirmative proof of **direct financial loss**; and
2. all requested information and **documents** and co-operation in all matters pertaining to **direct financial loss**.

### 2. When to notify an occurrence

Cover under *Policy Section A – General Liability* is provided on an **occurrence** basis.

Any **occurrence**, or other event covered in the extensions to *Policy Section A – General Liability* must be notified to the **Insurer** in writing as soon as practicable after the **Governor** or **responsible person** (or equivalent position) first becomes aware of such **occurrence** or other event.

### 3. Related claims and circumstances

If a **claim** or circumstance is notified under this policy, then any subsequent **claim**, alleging, arising out of, based upon or attributable to the facts or acts, errors or omissions alleged in that **claim** or described in or connected with that circumstance, shall be deemed to:

1. have first been made at the same time as that **claim** was first made or circumstance notified; and
2. notified to the **Insurer** on the date the notices were first provided.

Any **claim** arising out of, based upon or attributable to any **claim** or series of **claims** arising out of, based upon or attributable to continuous, repeated or related acts, errors or omissions, whether or not committed by more than one **Insured** and whether directed to or affecting one or more person or **Entity**, shall be considered a single **claim** for the purposes of this policy.

For the purpose of the **limit of liability** and applying the **retention**, any **direct financial loss** resulting from any single act, single omission, or single **event**, or series of related or continuous acts, omissions or events shall be considered a single **direct financial loss**.

### 4. Defence and settlement

The **Insured** must, at their own cost, render all reasonable assistance to the **Insurer** and take all reasonable measures to mitigate **loss** or potential payment under this policy.

The **Insurer** may undertake **investigations**, conduct negotiations and with the written consent of the **Entity** settle any **claim** where settlement has been agreed to by the parties being indemnified or in the absence of agreement has been recommended by a **senior counsel**.

The **Insured** shall have the obligation to defend and contest any **claim** made against them.

The **Insurer** shall have the right, but not the obligation to participate fully in the defence and in the negotiation of any settlement that involves or appears reasonably likely to involve the **Insurer**.

Notwithstanding the foregoing, the **Insured** shall have the right to tender the defence of the **claim** to the **Insurer**, which right shall be exercised in writing solely by the **Entity** on behalf of all **Insureds**:

1. This right shall terminate if not exercised within thirty (30) days of the date the **claim** is first made against an **Insured**.
2. The **Insurer** shall confirm the assumption of the defence of such **claim** to the **Entity** in writing.
3. Pending such acceptance by the **Insurer**, the **Insureds** shall take no action, or fail to take any required action, that prejudices the rights of any **Insured** or **Insurer** with respect to such **claim**.
4. The **Insurer** shall be obligated to assume the defence of such **claim** provided the **Insureds** have complied with the foregoing.
5. The **Insurer** shall have no obligation to continue to defend such **claim** once the **limit of liability** has been exhausted.

The **Insured** consents to the appointment of any **Advisory Panel** member firm to act on behalf of the **Insured** in respect of any **claim** defended in accordance with this policy.

All **Insureds** shall at their own cost, render all reasonable assistance to and cooperate with the **Insurer** in the **investigation**, defence, settlement or appeal of a **claim** or circumstance, and provide the **Insurer** with all relevant information pertaining to any **claim** or circumstance, as the **Insurer** may reasonably require.

The **Insurer** will accept as necessary the **retention** of separate legal representation to the extent required by a material conflict of interest between any **Insureds**.

If a **claim** is made against an **Insured Person** by the **Entity** or **Outside Entity**, the **Insurer** shall have no duty or obligation to communicate with any other **Insured Person** or the **Entity** in relation to that **claim**.

The applicable **Insured** shall reimburse the **Insurer** for any payments which are ultimately determined not to be covered by this policy.

## 5. Consent

Only those settlements, judgments, and costs and expenses which have been consented to by the **Insurer** (which shall not be unreasonably delayed or withheld) shall be payable as **loss** under this policy.

Where there is a dispute between the **Insured** and the **Insurer** as to whether a **claim** should be settled or should continue to be defended, within thirty (30) days after notice of such dispute, the **Insurer**, at its expense, shall refer the matter to a **senior counsel** who shall determine whether the **Insured** is likely to succeed in defending the **claim** to final resolution or whether the **claim** should be settled.

If the **senior counsel** determines that the **claim** should be settled, the **Insured** may elect to continue the defence of that **claim** without the **Insurer's** prior written consent provided that the **Insurer's** liability for all **loss** arising from that **claim** shall not exceed the amount for which that **claim** could have been settled plus the **defence costs** incurred to the date such determination was provided in writing to the **Insured**.

The **senior counsel** shall determine the amount for which that **claim** could have been settled at the **Insurer's** expense, taking into account the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely costs of defence and the prospects of the **Insured** successfully defending the action.

## 6. Allocation

The **Insurer** will be liable only for **loss** to the extent it arises from a covered **claim**. If a **claim** involves both covered and uncovered matters or persons under this policy, then the **Entity** or **Insured Person**, and the **Insurer** shall use commercially reasonable efforts to determine a fair and equitable allocation of **loss** covered under

this policy, on the basis of established judicial allocation principles which take into account the legal and financial exposures, and the relative benefits obtained by the relevant parties.

If the **Insurer** and the **Entity** or **Insured Person** cannot agree on allocation in accordance with this clause within fourteen (14) days of any allocation issue first notified in writing to the **Insured** by the **Insurer**, then they agree to refer the determination to a **senior counsel**, whose decision shall be final and binding on all parties.

The **senior counsel** is to determine the fair and equitable allocation as an expert, not as an arbitrator. The relevant **Insured** and the **Insurer** shall be entitled to make written submissions to **senior counsel**. The **senior counsel** is to take account of the parties' submissions, but the **senior counsel** is not to be fettered by such submissions and is to determine the fair and equitable allocation in accordance with his or her own judgment and opinion. The **senior counsel's** expenses in providing such determination will be paid by the **Insurer** and any such payments will not erode the **limit of liability**.

## 7. Advance payment of costs

Where the **Insurer** has not assumed the defence of a **claim** in accordance with *General Conditions applying to all Insuring Sections Claims Condition 4 'Defence and Settlement'*, the **Insurer** shall advance all **defence costs** and all other costs and expenses payable under this policy, within 21 days after sufficiently detailed invoices for those costs are received and accepted for payment by the **Insurer**.

The **Insurer** may not refuse to advance **defence costs** or other costs and expenses payable under this policy by reason only that the **Insurer** considers that conduct specified in the *'Conduct' Exclusion* has occurred, until such time as the condition to that exclusion is satisfied.

## 8. Subrogation

In the event of any payment under this policy, the **Insurer** shall be subrogated to the extent of such payment to all of the **Insureds'** rights of recovery, contribution and indemnity and the **Insured** will provide all reasonable assistance and will do nothing to prejudice such rights.

The **Insurer** will not exercise its rights of subrogation against an **Insured Person** in connection with a **claim**, unless it can establish that the *'Conduct' Exclusion* applies to that **claim** and that **Insured Person**.

## 9. Continuity

Notwithstanding *Exclusion 13 – Prior Claims and Circumstances, Notifications*, cover is provided under this policy for any **claim**, or circumstance, which could or should have been notified under any earlier policy, provided always:

1. the **claim**, or circumstance, could and should have been notified after the **continuity date**; and
2. the **claim** shall be dealt with in accordance with all terms, conditions, exclusions and limitations of the policy under which the **claim**, or circumstance, could and should have been notified but only where such earlier policy affords no broader cover in respect of the **claim** than the provisions of the policy, including the **limit of liability** after reduction by any payment for any **claim** that could or should have been notified under the earlier policy; and
3. if the **Insurer** is the **insurer** on risk for the policy in 2. above, the **Insured** agrees to **claim** on this policy only and to make no **claim** on such earlier policy.

## Limit & Retention

### 1. Limit of liability

If the schedule specifies an 'Aggregate **limit of liability**', the total amount payable by the **Insurer** under this policy shall not exceed this amount, other than with respect to *Policy Section A – General Liability*.

If the schedule specifies 'separate limits of liability', a separate aggregate **limit of liability** shall apply to each Policy Section. Each such **limit of liability** is the aggregate limit of the **Insurer's** liability with respect to all **loss / direct financial loss** arising under such Policy Section.

The **Insurer** shall have no further liability in excess of all such limits, irrespective of the number of **Insureds** or amount of any **loss** or **direct financial loss**, including with respect to any **claim** as specified in *General Conditions applying to all Insuring Sections – Claims Condition 3 'Related claims and Circumstances'*.

Extensions only apply to **loss** or **direct financial loss** under each Policy Section shown as 'Yes' under 'Insuring Sections' in the schedule. Any amount specified in the policy or the schedule for any cover or extension is the most the **Insurer** will pay in the aggregate under this policy:

1. as **loss** under such cover or extension; or
2. regarding any single **direct financial loss** under such cover or extension.

Any sub-limits identified in the schedule apply to the applicable extension and those sub-limits form part of, and are not in addition to, the **limit of liability**, except where expressly indicated.

All provisions of this policy apply to the extensions, except where expressly indicated.

The **limit of liability** under *Policy Section A – General Liability* applies to each **occurrence**. In respect of the **Entity's** products the **limit of liability** is in the Aggregate any one **Policy Period**.

The **Insurer's** liability in respect of any one **occurrence** shall not

exceed the **limit of liability**. All **personal injury** and **property damage** arising out of continuous or repeated exposure to substantially the same general conditions shall be construed as arising out of one **occurrence**.

With respect to *Policy Section A – General Liability* only, expenses incurred to defend or investigate any **claim** will be in addition to the applicable **limit of liability** provided that:

1. the **Insurer's** liability to pay these expenses shall cease upon the **limit of liability** having been exhausted by payment of judgements of settlements; and
2. in the event of any **claim** being made against the **Entity** in any court or before any other legally constituted body in North America, the **limit of liability** shall apply to such **claim** inclusive of expenses to defend or investigate any **claim**.

Regardless of the number of years this policy shall continue in force, the number of premiums paid and irrespective of whether it is or may be renewed, the **limits of liability** as specified in the Schedule shall not accumulate from year to year or from **policy period** to **policy period**.

### 2. A single retention shall apply to all:

1. **loss** arising from any **claim** as specified in *General Conditions applying to all Insuring Sections Claims Condition 3 'Related Claims and Circumstances'* (regardless of whether the **loss** or any part of it is payable under *Section A* or *B* of this policy; or
2. **direct financial loss** as specified in *General Conditions applying to all Insuring Sections Claims Condition 3 'Related Claims and Circumstances'*.

## General Provisions

### 1. Assignment

Neither this policy nor any rights under it may be assigned without the prior written consent of the **Insurer**.

### 2. Cancellation

The **Entity** may cancel this policy by providing 14 days written notice to the **Insurer** in which case the **Insurer** shall retain the pro-rata proportion of the premium plus 20% of that pro-rata proportion.

The **Insurer** may cancel this policy, or any Policy Section, by sending written notice to the **Entity**, at the last address in the **Insurer's** records. The cancellation will take effect at 4 pm on the 30th day after the letter or email has been sent. The **Insurer** shall be entitled to retain the pro-rata proportion of the premium.

### 3. Changes in risk

The **Insurer** shall not be liable for **loss** or **direct financial loss** arising out of, based upon or attributable to any:

1. **occurrence**, act, error or omission committed or allegedly committed; or
2. a matter which is the subject of an **investigation**, extradition proceeding or **asset and liberty proceeding**, occurring or arising;

after the effective date of a **transaction**.

Cover shall only apply to an **Insured** for any covered acts, errors or omissions occurring after that date on which such **Insured** became a covered **Insured**.

The **Entity** shall notify the **Insurer** in writing within thirty (30) days of any material change to the **business** description as stated in the submission, application for insurance or the schedule. The **Insurer** reserves the right to accept or deny coverage at or after the time of such notification and to establish a separate rate and premium for any such change in the **business**.

### 4. Confidentiality

The **Insureds** shall make all reasonable efforts not to disclose the existence of this policy to any person except to professional advisers or as required by law or court order and shall only state within the **Entity's** annual report that the **Entity** has agreed, or otherwise, to pay a premium for this policy but shall not publish the nature of the liability covered by this policy, the name of the **Insurer**, the **limit of liability** or the premium paid for this policy.

### 5. Governing law

Any interpretation of this policy or issue relating to its construction, validity or operation shall be determined by the laws of New Zealand. Except as otherwise provided herein, the parties will submit to the exclusive jurisdiction of the New Zealand courts.

### 6. GST

All amounts indicated in this policy and the attached schedule are exclusive of Goods and Services Tax where payable by law.

However, all **Retentions** are inclusive of GST where payable by law.

### 7. Headings and titles and other references

The descriptions in the headings and titles of this policy are solely for reference and convenience and do not lend any meaning to this policy.

Words and expressions in the singular shall include the plural and vice versa.

In this policy, words in **bold** typeface shall have special meaning and are defined.

References to legislation shall include any subsequent amendments or re-enactments and the equivalent legislation in other jurisdictions.

A reference to "this policy" shall mean a reference only to those covers which are shown on the schedule as purchased.

### 8. Inspection

The **Insurer** (or its agents, representatives, **Employees** or consultants) may inspect the **Entity's premises** and operations at any time.

The **Insurer** will use reasonable endeavours to give the **Entity** reasonable notice of any intended inspection.

The **Entity** shall provide all reasonable cooperation and assistance as the **Insurer** may require and provide access to its **premises** and other places of **business**, as well as facilitate enquiries and interviews of any **Employee**.

The **Insurer** may give the **Entity** reports on the conditions that the **Insurer** finds, including recommendations. However, such inspections are merely as to the insurability of the risk and the premium to be charged and are not safety inspections.

### 9. Non-avoidance

In respect of *Policy Sections A – General Liability* and *B – Statutory Liability* and *C – Employers Liability* the **Insurer** retains all of its legal rights for any pre-inception misrepresentation or pre-inception non-disclosure by any **Insured Person** in respect of that Policy Section.

### 10. Notice and authority

The **Entity** shall act on behalf of each and every **Insured** with respect to the giving of notice of any **claim** or **direct financial loss**, the payment of premiums and the receiving of any return premiums that may become due under this policy, the receipt and acceptance of any endorsements issued to form a part of this policy and the exercising or declining of any right to a **discovery period**.

### 11. Other insurance and indemnification

This policy shall always apply excess over any other valid and collectible insurance available to the **Insured** (including without limitation any policy specified in an endorsement to this policy).

With respect to **Outside Entities**, insurance provided by this policy applies excess over

1. any indemnification provided by an **Outside Entity**, and
2. any other collectible insurance issued to an **Outside Entity** for the benefit of its directors, officers, or **Employees** (including without limitation any **Outside Entity** insurance policy specified to the **Insurer**).

## 12. Sanctions clause

The **Insurer** shall not be deemed to provide cover and the **Insurer** shall not be liable to 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 the **Insurer**, or its parent to any sanction, prohibition or restriction implemented pursuant to resolutions of the United Nations or the trade and economic sanctions, laws or regulations of the European Union, United Kingdom, Australia, New Zealand or United States of America.

## 13. Severable nature of the policy

Except in respect of *Policy Sections A – General Liability, B – Statutory Liability* and *C – Employers Liability*, this policy is a severable policy covering each **Insured** for their own individual interest and:

with respect to the *'Conduct' Exclusion* and the contents of any proposal form or declaration submitted, or statements, warranties and representations made to the **Insurer** in connection with this policy, or any policy of which this policy is a renewal or replacement;

1. with respect to any **Insured Person**: no statements made by or on behalf of an **Insured Person**, or information or knowledge possessed by an **Insured Person**; nor any act, error or omission of an **Insured Person**, shall be imputed to any other **Insured Person**, for the purpose of determining whether any **Insured Person** is covered under this policy; and
2. with respect to the **Entity**: only the statements and knowledge of any **Governor** or **responsible person** of the **Entity**, or any person who signed the declaration or proposal form in connection with this policy or any policy of which this policy is a renewal or replacement; will be imputed to all **Insureds**.

## 14. Terms and conditions of each section

Unless otherwise stated:

1. the definitions, terms, conditions and exclusions set out in the *General Conditions applying to all Insuring Sections* apply to all Sections; and
2. the definitions, terms, conditions and exclusions of each Policy Section apply only to each respective section.

In the case of inconsistency or conflict, the specific insuring sections override the *General Conditions applying to all Insuring Sections*.





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