



**turbo**

# SAFETY NET<sup>®</sup>

Combined Liability  
Insurance Policy

specialised insurance for heavy machinery



This Combined Liability Insurance Package contains the following policies. The coverage under each policy is briefly outlined below. The Policy Schedule indicates which policies have been selected.

**Section 1 – Public & Products Liability**

VL POL PL-052016

Claims made against the Insured for compensation and the costs to defend such claims, in respect of unexpected or unintended personal injury or property damage arising in the course of the Business described in the Policy Schedule.

**Section 2 – Employers Liability**

VL POL EL-052016

Claims for damages made against the Insured by employees and the costs to defend such claims, in respect of personal injury to employees sustained in the course of employment and not covered by the Accident Compensation Act 2001.

**Section 3 – Statutory Liability**

VL POL STAT-052016

Defence costs and penalties in respect of prosecutions brought by regulatory authorities under various acts of parliament for alleged statutory breaches which may result in criminal conviction with accompanying financial penalties and/or awards.

**Section 4 – Fidelity**

VL POL FIDELITY PKG-052016

Claims made arising from the fraudulent or dishonest acts of employees.

**Section 5 – Directors & Officers Liability**

VL POL D&O PKG-052016

Claims made against directors and senior management for wrongful acts committed whilst carrying out their duties associated with the management of the company.

**Section 6 – LawSafe @ Work**

VL POL WORK LAWSAFE PKG-052016

Legal costs for employee's personal liability which arises whilst performing their work duties.

**Section 7 – Internet Liability**

VL POL INTERNET-052016

Claims made for errors or omissions committed or omitted while using the internet.

**Section 8 – Defence Costs**

VL POL DEFENCE COSTS PKG-052016

Defence Costs only in respect of sections of this policy which are subject to a charge under Section 9 of the Law Reform Act 1936 where Defence Costs cannot be indemnified under those sections.

**Section 9 – Employment Disputes (Optional)**

VL POL ED-052016

Claims made by employees alleging breaches of employment agreements, Privacy Act or Human Rights Act.

SECTION 1

# Public & Products Liability

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## Insuring Clauses

1. In consideration of the payment of the premium, in reliance on the written proposal and declaration and any other underwriting information provided (which shall be deemed to be the basis of this Policy), and subject to its terms, conditions, exclusions, memoranda and endorsements, Vero Liability Insurance Limited ("the Company") will indemnify the Insured for all amounts which the Insured shall become legally liable to pay as Compensation in respect of:

- (a) Personal Injury; or
- (b) Property Damage; or
- (c) Completed Operations Hazards; or
- (d) Products Hazards,

happening within the Policy territory during the Period of Insurance caused by an Occurrence in connection with the Business of the Insured.

2. In addition to the applicable Limit of Indemnity, in respect of any valid claim under this Policy, the Company will:

- (a) pay all defence costs, the costs of any investigations or negotiations incurred by the Company or by the Insured with the prior written consent of the Company provided that the Limit of Indemnity under the Policy or any Sub-Limit has not previously been exhausted;
- (b) pay the Insured's expenses for first aid to others in respect of Personal Injury.

## Limit of Indemnity and Excess

1. For the purpose of determining the limit of the Company's liability, all Personal Injury and Property Damage arising out of continued or repeated exposure to substantially the same general conditions shall be considered as arising out of one Occurrence.
2. The limit of the Company's liability in respect of any one Occurrence shall not exceed the Limit of Indemnity stated in the Schedule.
3. The total aggregate liability of the Company during any one Period of Insurance for all claims arising out of the Completed Operations Hazard and/or Products Hazard as defined shall not exceed the Limit of Indemnity stated in the Schedule.
4. In respect of all claims made against the Insured arising from any one Occurrence the amount of the Excess stated in the Schedule or in any memorandum shall be borne by the Insured at their own risk and the Company shall only be liable to indemnify the Insured in excess of such amount.

## Memoranda

These memoranda are subject to the terms, conditions and exclusions of the Policy, unless otherwise stated.

Any Sub-Limit of Indemnity stated in a memorandum shall form part of and not be additional to the Limit of Indemnity stated in the Policy Schedule.

Any Excess stated in a memorandum shall apply in lieu of the Excess stated in the Schedule.

### 1. Advertising Liability

Notwithstanding Exclusion 5 - Defamation, the Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation in respect of claims for:

- (a) defamation; and/or
- (b) infringement of copyright, infringement of title, infringement of slogan; and/or
- (c) unfair competition, misappropriation of advertising ideas, misappropriation of style of doing business; and/or
- (d) invasion of privacy committed or alleged to have been committed in any advertisement and arising out of any advertising activities conducted by the Insured or on the Insured's behalf,

all happening during the Period of Insurance in connection with the Business of the Insured.

The Company will not indemnify the Insured for any claim in respect of or alleging or arising out of:

- (a) statements made at the Insured's direction with knowledge that such statements are false;
- (b) the failure of performance of contract. However this limitation will not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract;
- (c) incorrect description of the Insured's Products or services;
- (d) mistakes in advertised price of the Insured's Products or services;
- (e) the failure of the Insured's Products or services to conform with advertised performance, quality, fitness or durability;
- (f) any liability incurred by the Insured if the Business of the Insured includes advertising, broadcasting, publishing or telecasting.

The Sub-Limit of Indemnity is as stated in the Schedule for any one claim under this memorandum and in the aggregate during any one Period of Insurance.

The Excess is as stated in the Schedule.

### 2. Contractors or Sub-contractors

The definition of Insured is extended to include 'labour only' contractors or 'labour only' sub-contractors employed by the Insured named in the Schedule or its subsidiaries.

Provided that this memorandum only applies while such contractors or sub-contractors are undertaking work in the course of the Business of the Insured and:

- (a) such contractors or sub-contractors are not otherwise insured under any other policy;
- (b) such contractors or sub-contractors are excluded from the indemnity provided by the provisions of Condition 4 - Cross Liability.

### 3. Defective Workmanship

Notwithstanding Exclusion 8 - Insured's Products, the Company will indemnify the Insured for all sums that the Insured is legally liable to pay for the costs arising out of Defective Workmanship happening during the Period of Insurance in connection with the Business of the Insured.

Provided that this memorandum will not indemnify the Insured in respect of liability:

- (a) for the costs resulting from or remedying a defect in any design, plan or specification;
- (b) indemnified under the Service and Repair memorandum.

The Sub-Limit of Indemnity is as stated in the Schedule for any one Occurrence and in the aggregate during any one Period of Insurance.

The Excess is as stated in the Schedule.

For the purposes of this memorandum 'Defective Workmanship' means physical injury to or destruction of tangible property neither expected nor intended from the standpoint of the Insured which necessitates rectifying, remedying, removing, repairing, altering, treating or replacing the Insured's Products or part thereof which have proven to be defective or harmful or fail to perform the function for which they were sold, supplied, manufactured or installed.

For the avoidance of doubt this memorandum is subject to Exclusion 9 – "Leaky Buildings" – Moisture or Water Penetration, Building Defects.

#### 4. Forest and Rural Fires Act

The Company will indemnify the Insured for all sums that the Insured shall become legally liable to pay for:

- (a) costs incurred and levied by any Fire Authority under Sections 43, 46 and 46A of the Forest and Rural Fires Act 1977 but excluding any fines and penalties; and
- (b) costs claimed by any other party in order to protect their property from fire,

all arising during the Period of Insurance and in connection with the Business of the Insured.

This memorandum applies:

- (a) whether or not Property Damage has occurred;
- (b) to machinery, plant, trailers or mechanically propelled vehicles (in so far as liability covered under this memorandum is not otherwise insured).

The Sub-Limit of Indemnity is as stated in the Schedule for any one Occurrence and in the aggregate during any one Period of Insurance for all costs incurred and/or for all sums payable to any claimant or any number of claimants in respect of or arising out of any Occurrence or in respect of or arising out of all Occurrences of a series consequent on or attributed to one source or original cause.

The Excess is as stated in the Schedule.

#### 5. Goods on Hook

Notwithstanding Exclusion 4 - Care, Custody or Control, the Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation for Property Damage to property whilst it is slung on or on the hook of any crane or similar apparatus which is being utilised by and under the control of the Insured and arising in connection with the Business of the Insured.

The Sub-Limit of Indemnity is as stated in the Schedule for any one Occurrence.

The Excess is as stated in the Schedule.

#### 6. Hazardous Substances Emergency - Fire Services Act

The Company will indemnify the Insured in respect of any charge imposed upon the Insured under Section 47C(2)(a) of the Fire Services Act 1975 in respect of any attendance at any hazardous substances emergency incident arising during the Period of Insurance and in connection with the Business of the Insured at any of the Insured's premises or any work site under the Insured's control.

The Sub-Limit of Indemnity is as stated in the Schedule for any one incident and in the aggregate during any one Period of Insurance.

The Excess is as stated in the Schedule.

#### 7. Innkeeper's Liability

Notwithstanding Exclusion 4 - Care, Custody or Control, the Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation under the Innkeepers Act 1962 for loss of or damage to property happening during the Period of Insurance and in connection with the Business of the Insured.

The Sub-Limit of Indemnity is as stated in the Schedule for any one Occurrence.

The Excess is as stated in the Schedule.

#### 8. Keys and Locks

The Company will indemnify the Insured for all sums that the Insured is legally liable to pay for the reasonable cost of re-cutting keys and/or the replacement of locks, where keys, locks or security codes have been lost by or stolen from the Insured during the Period of Insurance in the course of the Business of the Insured.

The Sub-Limit of Indemnity is as stated in the Schedule for any one Occurrence and in the aggregate during any one Period of Insurance.

The Excess is as stated in the Schedule.

#### 9. Product Recall

Notwithstanding Exclusion 13 - Product Recall, the Company will indemnify the Insured for an amount not exceeding 90% of costs and expenses above the Excess reasonably incurred with the Company's consent in the recall or withdrawal from sale or use of any of the Insured's Products happening during the Period of Insurance within the Policy Territory.

Provided that the Insured's Products:

- (a) are defective or alleged to be defective; and
- (b) may cause Personal Injury or Property Damage which may result in a valid claim under the Policy and it is reasonably foreseeable that such Personal Injury or Property Damage is/are likely to arise if no such recall or withdrawal is undertaken.

The Sub-Limit of Indemnity is as stated in the Schedule for any one recall or withdrawal and in the aggregate during any one Period of Insurance.

The Excess is as stated in the Schedule.

#### 10. Property in Care, Custody or Control

Notwithstanding Exclusion 4 - Care Custody or Control, the Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation in respect of Property Damage to property including employees' property whilst such property is in its care, custody or control in connection with the Business of the Insured.

The Sub-Limit of Indemnity is as stated in the Schedule for any one Occurrence.

The Excess is as stated in the Schedule.

This memorandum does not apply to real property, property owned by or premises leased or rented to or by the Insured.

#### 11. Property Owner's Liability

The Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation in respect of Personal Injury or Property Damage happening during the Period of Insurance in connection with the Business of the Insured arising out of or in connection

with the Insured's legal ownership, but not physical occupation of any premises.

## 12. Punitive or Exemplary Damages

The Company will indemnify the Insured for all sums that the Insured is legally liable to pay as punitive or exemplary damages awarded by a court in New Zealand for claims for Personal Injury arising out of an Occurrence and in connection with the Business of the Insured during the Period of Insurance within New Zealand.

Provided that any such claim or the Occurrence giving rise to the claim are notified to the Company within the Period of Insurance or within 60 days of its expiry.

The Sub-Limit of Indemnity is as stated in the Schedule for any one Occurrence and in the aggregate during any one Period of Insurance.

The Excess is as stated in the Schedule.

## 13. Service and Repair

Notwithstanding Exclusion 2 - Aircraft, Watercraft and Vehicles, Exclusion 4 - Care, Custody or Control and Exclusion 8 - Insured's Products, the Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation in respect of Property Damage happening during the Period of Insurance in connection with the Business of the Insured and arising from the service or repair by the Insured or whilst in the care custody or control of the Insured for the purposes of service or repair of any:

- (a) Vehicle; or
- (b) watercraft not exceeding ten (10) metres in length including its engine, motor, machinery, accessories or fittings or equipment; or
- (c) machinery or equipment.

Provided that this memorandum does not apply to:

- (a) any Vehicle or watercraft, machinery or equipment owned, hired, leased or rented by the Insured;
- (b) the cost of rectifying, repairing or remedying defective workmanship in respect of the actual part or parts worked on but resultant Property Damage arising from defective materials or workmanship is not excluded;
- (c) liability indemnified under Memorandum 3 - Defective Workmanship.

The Sub-Limit of Indemnity is as stated in the Schedule for any one Occurrence.

The Excess is as stated in the Schedule.

For the avoidance of doubt, the Company will indemnify the Insured under Products Hazard for all sums that the Insured is legally liable to pay in respect of Property Damage to any property (other than to the Vehicle or watercraft, equipment or machinery serviced or repaired) or Personal Injury arising from or in connection with any service or repair.

## 14. Tenant's Liability

The Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation in respect of Property Damage happening during the Period of Insurance in connection with the Business of the Insured to premises (including landlord's fixtures and fittings) leased or rented, but not owned, by the Insured always subject to the Property Law Act 2007.

## 15. Trade Advice or Services

Notwithstanding Exclusion 14 - Professional Liability, the Company will indemnify the Insured for all sums that the

Insured is legally liable to pay as Compensation in respect of claims for Personal Injury or Property Damage happening during the Period of Insurance in connection with the Business of the Insured and arising out of an error or omission in:

- (a) advice or services;
- (b) product training and/or demonstrations,

rendered by the Insured without charge.

For the avoidance of doubt this memorandum is subject to Exclusion 9 - "Leaky Buildings" - Moisture or Water Penetration, Building Defects.

## 16. Underground Services

The Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation in respect of Property Damage to existing underground services, reticulation or property happening during the Period of Insurance in connection with the Business of the Insured provided that:

- (a) prior to the commencement of any excavation work the Insured has obtained from the relevant authority, corporation or company plans or other appropriate information on the existence and location of such services; and
- (b) the Insured took all reasonable precautions to prevent Property Damage.

## 17. Unmanned Aerial Vehicles

Notwithstanding Exclusion 2 - Aircraft, Watercraft and Vehicles, the Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation in respect of Personal Injury or Property Damage happening during the Period of Insurance in connection with the Business of the Insured arising out of the ownership, operation or use of any unmanned aerial vehicle (UAV), remotely piloted aerial systems (RPAS) or drone, (howsoever called) any of which has a gross take-off weight not exceeding 15 kilograms.

The Sub-Limit of Indemnity is as stated in the Schedule for any one Occurrence.

The Excess is as stated in the Schedule.

## 18. USA/Canada Coverage (Products only)

Where Products Territory is stated in the Policy Schedule as Worldwide then the following limitation shall apply:

In respect of any judgment, award or settlement made within the legal jurisdiction of the United States of America and/or Canada and/or their protectorates, this extension shall only apply in respect of the Insured's Products exported into the United States of America and/or Canada and/or their protectorates.

Provided that this memorandum shall not apply to claims in respect of:

- (a) punitive and/or exemplary damages;
- (b) contamination or pollution by the harmful nature of any substance discharged, dispersed, released or escaping into or upon land, the atmosphere or any watercourse or body of water. It is further agreed that expenses for the prevention and clean up of such contamination or pollution shall also form part of this exception and shall not be recoverable under this Extension.
- (c) the operation by the Insured or any agents of them within the United States of America, and/or Canada of any premises or plant for the manufacturing,

processing, treating, distribution and/or storage of the Insured's Products.

In respect of all claims which fall under the terms of this memorandum:

- (i) the Limit of Indemnity is inclusive of costs.
- (ii) should any dispute arise between the Insured and the Company over the application of this memorandum, such dispute shall be determined in accordance with New Zealand law and practice and by a court of competent jurisdiction in New Zealand.
- (iii) the Excess as stated in the Policy Schedule is inclusive of costs.

## 19. USA/Canada Visits

Notwithstanding Condition 18 - Territory and Jurisdiction, the Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation for Personal Injury or Property Damage happening during the Period of Insurance arising out of any Occurrence in the United States of America and Canada and territories under their legal jurisdiction (USA/Canada) resulting from the actions of any non-resident Insured temporarily visiting USA/Canada in the course of the Business of the Insured.

Provided that:

- (a) in respect of this memorandum cover granted under Memorandum 12 - Punitive or Exemplary Damages, does not apply;
- (b) the Insured has no subsidiary operation, branch or premises in USA/Canada;
- (c) any work performed in, on, or in connection with the Insured's Products is excluded;
- (d) the ownership, possession, control or maintenance or use of any Vehicle or watercraft is excluded.

Notwithstanding Insuring Clause 2 the Limit of Indemnity in respect of this memorandum is inclusive of costs and expenses and applies in the aggregate in any one Period of Insurance.

## 20. Vehicles – Additional Provisions

Notwithstanding Exclusion 2 - Aircraft, Watercraft and Vehicles and Exclusion 4 - Care, Custody or Control the Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation in respect of Personal Injury or Property Damage happening during the Period of Insurance in connection with the Business of the Insured:

1. Vehicles - Loading & Unloading arising from loading or unloading any Vehicle used by or on behalf of the Insured but not in its care, custody or control;
2. Vehicles - "Tool of Trade" Functions arising from any Vehicle while it is being operated for its specialised function or purpose, and not as a Vehicle;
3. Vehicles in Insured's Car Parks in respect of Vehicles, other than Vehicles owned or used by or on behalf of the Insured, in the care, custody or control of the Insured, only whilst such Vehicles are in a car park owned or operated by the Insured, other than for income or reward as a car park operator;
4. Vehicles' Weight/Vibration Damage to any bridge, viaduct, weigh bridge, road or anything beneath the Vehicle caused by vibration or

by the weight of any Vehicle and/or its load provided that such Vehicle was not being driven or operated in breach of any regulatory weight restrictions.

## 21. Vehicle Inspection Certification

The Company will indemnify the Insured against all claims made within the Period of Insurance for which the Insured is legally liable to pay as Compensation and which arise by reason of any negligent act, error or omission on the part of the Insured in the conduct of the Business of the Insured which, for the purposes of this memorandum, is deemed to be:

"The inspection and certification of Vehicles for the purpose of issuing warrants of fitness or certificates of fitness as may be required under any road transport legislation, rules or regulations",

provided that the Insured and/or its employees are duly authorised to issue such inspection certificates.

The Sub-Limit of Indemnity is as stated in the Schedule and in the aggregate during any one Period of Insurance.

The Excess is as stated in the Schedule.

This memorandum does not apply to the valuation or pre-purchase appraisal of any Vehicle, motorcycle, watercraft and/or any other property whatsoever.

## 22. Vibration or Removal of Support

The Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation in respect of Personal Injury or Property Damage happening during the Period of Insurance in connection with the Business of the Insured and arising from vibration of, underpinning of, removal of, weakening of, or interfering with the support of land or buildings.

## Exclusions

This Policy does not apply to:

### 1. Accident Compensation

claims for payment under any Accident Compensation Act, Workers or Workmen's Compensation legislation by any person in the service of any contractor or sub-contractor to the Insured or any dependant of such person.

### 2. Aircraft, Watercraft and Vehicles

Personal Injury or Property Damage arising out of ownership, maintenance, operation, use, loading or unloading by the Insured, or by any person in the course of his/her employment by any Insured, of:

- (a) any aircraft;
- (b) any watercraft exceeding ten (10) metres in length;
- (c) any Motor Vehicle which is required by law to be registered for road use.

### 3. Asbestos

any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses, including defence costs and expenses, directly or indirectly arising out of, resulting from or in consequence of, asbestos in whatever form or quantity.

### 4. Care, Custody or Control

Property Damage to property which is in the Insured's care, custody or control.



## 5. Defamation

liability resulting from a defamatory statement published at the Insured's direction knowing its falsity; or resulting from publishing, advertising, broadcasting or television activities of or on behalf of the Insured.

## 6. Employees Personal Injury

claims in respect of Personal Injury to any person arising out of or in the course of employment of such person in the service of the Insured. But this Exclusion does not apply with respect to liability of others assumed by the Insured under written contract.

## 7. Fines Penalties etc

liability for any fines, penalties, performance warranty or liquidated damages.

## 8. Insured's Products

Property Damage to the Insured's Products arising out of such products or any part of such products.

## 9. 'Leaky Buildings' - Moisture or Water Penetration, Building Defects

any liability for, or to fulfil any obligation in respect of Personal Injury or Property Damage which is directly or indirectly caused or contributed to or arises from:

- (a) moisture or water or the penetration of external moisture or water; or
- (b) the action or effects of mould, fungi, mildew, rot, decay, micro-organisms, bacteria, protozoa or any similar or like forms; or
- (c) the failure of any building or structure to comply with or perform to the requirements of any building code or to meet the level of performance, quality, fitness or durability of its intended purpose.

In addition, the Company shall not be liable for any costs or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposal of, or in any way responding to or assessing the effects of mould, fungi, mildew, rot, decay, micro-organisms, bacteria, protozoa or similar or like forms.

This exclusion shall not apply to any claim for Personal Injury or Property Damage that is caused by or arises out of leakage from internal water pipes or cisterns.

## 10. Loss of Use

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

- (a) a delay in or lack of performance by or on behalf of the Insured of any contract or agreement;
- (b) the failure of the Insured's Products or work performed by or on behalf of the Insured to meet the level of performance, quality, fitness or durability warranted or represented by the Insured.

But this exclusion does not apply to loss of use of other tangible property resulting from sudden and accidental physical injury to or destruction of the Insured's Products or work performed by or on behalf of the Insured after such products or work have been put to use by any person or organisation, other than an Insured.

## 11. Pollution

Personal Injury or Property Damage arising out of discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the

atmosphere or any water course or body of water. But this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental but also takes place in its entirety at a specific time and place.

## 12. Products Contractual Liability

for Products Hazard only, liability assumed by the Insured under any agreement, other than written contracts approved by the Company. But this exclusion does not apply to a warranty of fitness or quality of the Insured's Product, or a warranty that work performed by or on behalf of the Insured will be done in a workmanlike manner.

## 13. Product Recall

Compensation claimed for the withdrawal, inspection, repair, replacement or loss of use of the Insured's Products, or work completed by or for the Insured, or of any property of which such products or work form a part, if such products, work or property are recalled or withdrawn from the market or from use because of any known or suspected defect or deficiency.

## 14. Professional Liability

breach of a duty owed in a professional capacity by the Insured and/or persons for whose breaches of such duty the Insured may be legally liable. But this exclusion does not apply to the provision of or failure to provide, professional medical treatment and/or advice by medical practitioners, nurses, dentists and first aid attendants employed by the Insured to provide services on the Insured's premises.

## 15. Radioactivity

Personal Injury or Property Damage directly or indirectly caused by or contributed to by or arising from ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

## 16. War, Terrorism

death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property under the order of any government or public or local authority; or
- (b) any Act of Terrorism.

Definition: "Act of Terrorism" means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic, or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This exclusion also excludes death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing,

suppressing or in any way relating to (a) and/or (b) above.

## Conditions

### 1. Assignment

No assignment of interest under this policy shall bind the Company unless its written consent is endorsed on this policy.

### 2. Cancellation

This Policy may be cancelled by the Insured by sending to the Company written notice stating the date on which the cancellation shall be effective. This Policy may be cancelled by the Company, by sending to the Insured at the address shown in this Policy written notice stating the date on which, being not less than thirty (30) days, the cancellation shall be effective. The effective date and time of cancellation, stated in the notice shall become the end of the Period of Insurance.

If the Insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium shall be computed pro rata. Any applicable premium adjustment may be made either at the time cancellation is effected or as soon as practicable thereafter. Refund of unearned premium is not a condition of cancellation.

### 3. Claims

In the event of an Occurrence, written notice containing particulars sufficient to identify the Insured and also reasonably obtainable information with respect to the time, place and circumstances, and the names and addresses of the Insured and of available witnesses, shall be given by or for the Insured to the Company or any of its authorised agents as soon as practicable.

If a claim is made or suit is brought against the Insured the Insured shall immediately forward to the Company every demand, notice, summons or other process received by it or its representative.

The Insured shall co-operate with the Company and, upon the Company's request, assist in making settlements in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organisation, who may be liable to the Insured because of injury or damage with respect to which insurance is afforded under this Policy, and the Insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

The Insured shall not admit liability for or settle any claim, or incur any costs or expenses in connection with a claim, without the prior written consent of the Company which shall be entitled to take over and to conduct in the name of the Insured (which shall be a condition precedent to the Insured's right to be covered under this Policy) the defence or settlement of any claim, and any counterclaim. Nevertheless, neither the Insured nor the Company shall be required to contest any legal proceedings unless a Queen's Counsel (to be mutually agreed) shall advise that such proceedings should be contested.

If the Insured shall refuse to consent to any settlement recommended by the Company, and shall elect to contest or continue any legal proceedings, the Company's liability for the claim shall not exceed the amount for which the claim could have been so settled

(less the Excess stated in the Schedule), plus the costs and expenses incurred up to the date of such refusal.

### 4. Compliance

Compliance by or for the Insured with the obligations in Conditions 3, 6, 7 & 16 shall be a condition precedent to the Company's liability in respect of any claim.

### 5. Cross Liability

Where the Insured is comprised of more than one entity the words "the Insured" shall be considered as applying to each such entity, other than partners in a partnership, in the same manner as if that entity was the only named Insured.

### 6. Declarations

By acceptance of this Policy, the Insured agrees that the statements in the declarations are its agreements and representations, that this Policy is issued in reliance upon the accuracy of such representations and that this Policy embodies all agreements existing between itself and the Company or any of its authorised agents relating to this insurance.

### 7. Fraud

If any claim under this Policy shall be in any respect fraudulent, or if any fraudulent means or devices are used by the Insured or anyone acting on the Insured's behalf, to obtain any benefit under this Policy, all benefits under this Policy shall be forfeited.

### 8. Goods and Services Tax

If on receipt of any payment for indemnity under this Policy the Insured is liable to pay tax under Section 5(13) of the Goods and Services Tax Act 1985 or its equivalent, re-enactment or substitution the Company will indemnify the Insured for the cost of that tax over and above the Limit of Indemnity otherwise stated in the Policy.

### 9. Inspection and Audit

The Company shall be permitted, but not obligated, to inspect the Insured's records, property and operations at any time. Neither the Company's rights of inspection, actual inspections, nor any report following inspection shall constitute an undertaking on behalf of or for the benefit of the Insured or others, to determine or warrant that such property or operations are safe, healthful or in compliance with any law, rule or regulation.

### 10. Interpretation

This Policy and the Schedule shall be read together as one contract, and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such meaning wherever it shall appear.

The paragraph headings in this Policy are included for illustrative purposes only and do not form part of the Policy for the purposes of construction or interpretation.

Defined terms are capitalised.

### 11. Joint Insureds

Where the Insured is comprised of more than one entity, the proposal for this insurance shall be deemed to have been furnished by and on behalf of all such entities, and any information supplied to the Company, or any omission or non-disclosure in relation to any renewal or extension, shall also be deemed to have been furnished, omitted or withheld (as the case may be) on behalf of all such entities.

## 12. Other Insurance

If, at the time of an Occurrence under this Policy, there is, or would be but for the existence of this Policy, any other policy applicable to such Occurrence and effected in favour of the Insured, this Policy shall be insurance in excess of the amount of liability covered under such other policy and the Limit of Indemnity under this Policy shall be reduced by the amount of the limit of indemnity afforded under such other policy. This condition applies, even if the other policy has a condition to similar effect.

## 13. Policy Jurisdiction

This Policy shall be governed by the laws of New Zealand whose courts shall have exclusive jurisdiction.

## 14. Premium

If the first or renewal premium for this Policy, or any part of it, shall have been calculated on estimates furnished by the Insured, then the Insured shall keep an accurate record containing all relevant particulars, and shall at all times allow the Company to inspect such a record. The Insured shall within thirty (30) days after the expiry of each Period of Insurance furnish to the Company such particulars and information as the Company may require. The premium for such Period of Insurance shall then be adjusted, and any difference shall be paid by or allowed to the Insured, as the case may be, subject to receipt and retention of the minimum premium charged by the Company.

## 15. Priority of Clauses and Memoranda

Where the Insured may be indemnified under:

- (a) more than one insuring clause, then cover will be provided under the insuring clause that provides for an aggregate liability of the Company in accordance with paragraph 3 of Limit of Indemnity and Excess clause;
- (b) more than one memorandum then the memorandum most favourable to the Insured will apply;
- (c) one or more of the memoranda and one or more of the insuring clauses then cover will be provided under the memorandum most favourable to the Insured and not under the insuring clause(s).

## 16. Reasonable Care

The Insured shall:

- (a) exercise reasonable care that only competent employees be employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;
- (b) take all reasonable precautions to:
  - (i) prevent Personal Injury and Property Damage;
  - (ii) prevent the manufacture, sale or supply of defective products;
  - (iii) comply and ensure that the Insured's employees, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority, including for the safety of persons or property;
- (c) at the Insured's own expense take reasonable action to trace, recall or modify any of the Insured's Products containing any defect or deficiency which defect or deficiency the Insured has knowledge of or has reason to suspect.

## 17. Subrogation

The Company, in agreeing to indemnify the Insured in respect of any claim, shall be subrogated to all of the Insured's rights of recovery against any person or entity

and shall be entitled to pursue and enforce such rights in the name of the Insured.

The Insured shall:

- (a) provide the Company with all reasonable assistance and co-operation including executing and delivering instruments or papers and take any necessary steps to secure such rights of recovery; and
- (b) shall in no way prejudice such rights of recovery.

Any monies recovered shall be applied for the benefit of the Company to the extent of the amount paid by it including costs and expenses and any remaining shall be the property of the Insured.

## 18. Territory and Jurisdiction

The Insurance afforded by this Policy shall apply:

- (a) with respect to the premises and operations of the Insured within the Territory stated in the Schedule;
- (b) with respect to the Products Hazard and Products Recall within the Products Territory stated in the Schedule;
- (c) with respect to incidental travel anywhere in the world.

Provided that this insurance does not apply to any claim, judgment, award or settlement made outside the Jurisdiction stated in the Schedule or to any order made outside those Jurisdictions to enforce such claim judgment award or settlement either in whole or in part.

## 19. Waiver of Privilege

If the Company instructs any lawyer to investigate or defend any claim against the Insured, the Insured authorises the lawyer to provide to the Company any documents, information or advice in respect of the claim, including in relation to indemnity, and the Insured waives any privilege to the extent necessary to give full effect to the Company's entitlement in this respect.

## Definitions

### 1. Business of the Insured

means the business conducted by the Insured described in the Schedule but including the following related ancillary activities:

- (a) staff room facilities, social, sports, welfare and similar activities;
- (b) fire & disaster response; first aid and medical services;
- (c) exhibitions, trade fairs, conferences;
- (d) sponsorships, charitable or fundraising activities;
- (e) property owners, lessors, lessees and tenants;
- (f) any other activity undertaken by the Insured for which prior written approval has been given by the Company.

### 2. Compensation

means any amount payable as compensation and includes interest, claimant's costs and disbursements.

### 3. Completed Operations Hazard

means Personal Injury and Property Damage arising out of Operations, or reliance upon a representation or warranty made at any time with respect to Operations, but only if the Personal Injury or Property Damage occurs after such Operations have been completed or abandoned and occurs away from premises owned by or rented to the Insured.

"Operations" means the task(s), job(s) or contract to be performed by the Insured and includes materials, parts or equipment furnished in connection with them.

Operations shall be deemed completed at the earliest of the following times:

- (a) when all Operations to be performed by or on behalf of the Insured under the contract have been completed;
- (b) when all Operations to be performed by or on behalf of the Insured at the site of the Operations have been completed;
- (c) when the portion of work out of which the injury or damage arises has been put to its intended use by any person or organisation, other than another contractor or subcontractor engaged in performing Operations for a principal as a part of the same project.

The Completed Operations Hazard does not include Personal Injury or Property Damage arising out of:

- (a) Operations in connection with the transportation of property, unless the Personal Injury or Property Damage arises out of a condition in or on a Vehicle created by its loading or unloading;
- (b) the existence of tools, uninstalled equipment or abandoned or unused materials.

#### 4. Excess

means the amount stated in the Schedule and as described in paragraph 4 of Limit of Indemnity and Excess clause.

#### 5. Insured

means the Insured stated in the Schedule, and:

- (a) any Subsidiary Company (including its subsidiaries) of the Insured, and any other organisation under the control of the Insured and over which it is exercising active management;
- (b) any director, employee, partner or shareholder of the Insured, but only whilst acting within the scope of their duties in such capacity;
- (c) any person, principal, organisation, trustee or estate to whom or to which the Insured is obligated by virtue of a written contract to provide insurance as is afforded by this Policy, but only to the extent required by such contract and, in any event, only for such coverage and limit of indemnity as provided in this Policy;
- (d) any social and/or sporting club formed with the consent of the Insured, including any office bearer or member in their capacity as such;
- (e) any new organisation acquired by the Insured during the Period of Insurance through consolidation, merger, purchase of the assets of or assumption of control and active management, provided such acquisition or assumption is reported to the Company within ninety (90) days after it is effected and provided further that such acquisition is endorsed on this Policy.

#### 6. Insured's Products

means any thing (after it has ceased to be in the possession or under the control of the Insured) manufactured, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by the Insured (including any container, other than a vehicle).

#### 7. Limit of Indemnity

means the amount of the Limit of Indemnity stated in the Schedule.

#### 8. Occurrence

means an event, including a continuous or repeated exposure to conditions, which results in Personal Injury or Property Damage neither expected nor intended from the standpoint of the Insured.

#### 9. Period of Insurance

means the period stated in the Schedule unless terminated earlier under Condition 2 - Cancellation.

#### 10. Personal Injury

means:

- (a) bodily injury, sickness or disease including death resulting at any time; disability, shock, mental anguish or injury and humiliation;
- (b) false or wrongful arrest, imprisonment, detention or eviction;
- (c) defamation;
- (d) invasion of privacy;
- (e) assault or battery not committed by or at the direction of the Insured,

occurring during the Period of Insurance.

#### 11. Policy

means this document, its Schedule and any endorsements subsequently issued.

#### 12. Products Hazard

means Personal Injury or Property Damage arising out of the Insured's Products, or reliance upon a representation or warranty made at any time with respect to such Products, but only if the Personal Injury or Property Damage occurs away from premises owned by or leased or rented to the Insured and after physical possession of such products has been relinquished to others.

#### 13. Property Damage

means:

- (a) physical injury to or destruction of tangible property which occurs during the Period of Insurance including resulting loss of use at any time;
- (b) loss of use of tangible property, which has not been physically injured or destroyed, which occurs during the Period of Insurance, provided such loss of use is caused by an event including a continuous or repeated exposure to conditions neither expected or intended by the Insured.

#### 14. Schedule

means the current Schedule attaching to this Policy duly signed by an authorised officer of the Company.

#### 15. Sub-Limit of Indemnity

means the sub-limit of indemnity stated in the Schedule.

#### 16. Subsidiary Company

means any company that is or was:

- (a) controlled by the Insured through legal or beneficial ownership of more than 50% of the issued voting stock; or
- (b) deemed a subsidiary of the Insured by virtue of any applicable legislation or law, including companies held either directly or indirectly through one or more subsidiaries (ie, subsidiaries of subsidiaries).

### 17. Vehicle or Motor Vehicle

means any type of machine as defined under the Land Transport Act 1998 and its amendments, or under the laws of the country in which the machine is operated (as the case may be).

SECTION 2

# Employers Liability

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## Insuring Clause

In consideration of payment of the premium, in reliance on the proposal and declarations (which shall be deemed to be the basis of this policy) and subject to its terms, conditions, exclusions, warranties and endorsements, Vero Liability Insurance Limited ("the Company") will indemnify the Insured against all claims for Damages, and all Defence Costs, which the Insured shall become legally liable to pay as a result of any employee (including any temporary or part-time employee) of the Insured sustaining Personal Injury arising out of or in the course of their employment and which is notified to the Company during the Period of Insurance stated in the Schedule or within 30 days after its expiry, or, if exercised, the Extended Reporting Period.

Provided that:

- (a) the Personal Injury has taken place on or after the Retroactive Date;
- (b) the maximum amount payable by the Company for Damages and Defence Costs for all claims under this policy shall not exceed the Limit of Indemnity stated in the Schedule.

## Limit of Indemnity and Excess

All claims for Damages and Defence Costs arising out of any one Personal Injury or inter-related Personal Injuries are deemed to be one claim. Any claim arising from inter-related Personal Injuries is deemed to have originated in the earliest period of insurance in which any of the Personal Injuries is first notified to the Company.

The Company's liability under this policy applies only to that part of such claims exceeding the Excess stated in the Schedule.

Subject to Extension 2 - Goods and Services Tax of this policy, the Company's aggregate liability under this policy in respect of claims arising out of Personal Injuries will not exceed the Limit of Indemnity stated in the Schedule.

## Extended Reporting Period

If the Company terminates or refuses to renew this policy, the Insured is entitled to an extension of the cover granted under this policy for a further period of twelve (12) months immediately following termination or non-renewal of the policy, but only in respect of any Personal Injury taking place both before the effective date of termination or non-renewal and after the Retroactive Date. If this right is exercised, then this further period shall be part of the last Period of Insurance and not an additional period.

The entitlement to this extension must be exercised by written notice to the Company prior to the effective date of termination or within 30 days following the effective date of non-renewal.

## Extensions

The terms of this policy apply to each extension to this policy unless expressly stated otherwise. The terms of each extension apply only to that extension and not to the rest of the policy unless expressly stated otherwise.

### 1. Health and Safety at Work Act 2015

If this extension is stated as INCLUDED in the Schedule, then this policy extends to cover the Insured and any Officer against Defence Costs and Penalties arising out

of any Personal Injury which is connected with the business or affairs of the Insured and which is notified to the Company during the Period of Insurance stated in the Schedule or within 30 days after its expiry, or if exercised, during the Extended Reporting Period, provided that the Personal Injury was suffered on or after the Retroactive Date. Exclusion 4 – Fines Penalties etc and Exclusion 5 – Health & Safety Act, do not apply to this extension.

Provided that this extension shall not cover the Insured nor any Officer:

- (a) for any deliberate failure to comply with the Health and Safety in Employment Act 1992 or the Health and Safety at Work Act 2015;
- (b) if the Insured or any Officer has a Statutory Liability Defence and Penalties Insurance Policy with the Company or any other Insurer for the same Personal Injury.

For the purpose of this extension each Officer will be treated as having been issued with a separate policy.

### 2. Goods and Services Tax

- (a) Where the Insured is liable to pay tax under the Goods and Services Tax Act 1985 (or any statutory amendment or re-enactment of the Act) on receiving any payment under this policy, the Company will indemnify the Insured for the cost of that tax.
- (b) The amount payable under this extension is payable by the Company in addition to the stated Limit of Indemnity.

### 3. Newly Created or Acquired Subsidiary Company

If any Subsidiary Company is created or acquired by the Insured after the inception of this policy such Subsidiary Company shall be included as an Insured provided that:

- (a) written notice of such creation or acquisition is given to the Company together with appropriate underwriting information and the payment of any additional premium required at the next renewal date;
- (b) in respect of acquisitions, cover granted under this policy shall only apply to Personal Injuries both discovered by the Insured after the date of such acquisition and suffered after the Retroactive Date, and where the Insured has agreed to cover any such Subsidiary Company.

### 4. Subsidiary Company Change of Ownership

- (a) In the event that an entity ceases to be a Subsidiary Company prior to or during the Period of Insurance, cover under this policy with respect to such Subsidiary Company and the Insured shall continue until the expiry date of the Period of Insurance, provided that such cover shall only apply in respect of a Personal Injury suffered after the Retroactive Date or the date of creation or acquisition by the Insured (whichever is the later), and until the date such entity ceased to be a Subsidiary Company.
- (b) Where the entity has ceased to be a Subsidiary Company because it is acquired by a third party, then this extension shall only apply where the Insured has agreed to retain a continuing obligation to indemnify the third party for claims for Damages and Defence Costs against the Insured arising out



of any Personal Injury that has been suffered whilst it is a Subsidiary Company.

(ii) either durability or protection from external water or moisture entering that building or structure, or the effects thereof.

## Exclusions

The Company shall not indemnify the Insured:

### 1. Accident Compensation

for any costs or compensation for which cover to any extent is provided by the Accident Compensation Act 2001 or any other Workers Compensation legislation.

### 2. Asbestos

for any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from or in consequence of, asbestos in whatever form or quantity.

### 3. Employment

in respect of any claim which is or should properly be brought in the Employment Tribunal or Employment Court, or for any personal grievance.

### 4. Fines Penalties etc

for any fine or penalty levied against the Insured, provided that this exclusion shall not apply to any punitive or exemplary damages.

### 5. Health & Safety Act

for any Personal Injury which has resulted from any breach or contravention of any provisions of the Health and Safety in Employment Act 1992 or Health and Safety at Work Act 2015 or any Regulations or other subordinate legislation made under the Act.

### 6. Known Circumstances

for any circumstance or Personal Injury of which, at the commencement of the Period of Insurance or, if this policy is renewed, the effective date of renewal, the Insured is aware or ought reasonably to be aware and may give rise to a claim against the Insured.

### 7. "Leaky Buildings" – Moisture or Water Penetration, Building Defects

against any liability for, or fulfil any obligation in respect of any claim or defence costs, which are directly or indirectly caused by or contributed to, or arises directly or indirectly out of:

- (a) the action or effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure; or
- (b) any cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposal of, or in anyway responding to or assessing the effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or similar or like forms, in any building or structure; or
- (c) the failure of any building or structure to meet or perform to the requirements of the New Zealand Building Code contained in the first schedule to the Building Regulations 1992 (or any amendment or substitution thereof) in relation to:
  - (i) external water or moisture; or

### 8. Outside New Zealand

for any judgment entered in any Court other than a New Zealand Court, or any debt incurred by the Insured as the result of such a judgment.

### 9. Prior Claims

in respect of any claim made, threatened or in any way intimated against the Insured and not notified to the Company prior to the commencement of the Period of Insurance or, if this policy is renewed, prior to the effective date of renewal.

### 10. Prior Litigation

for any liability arising out of any litigation in existence at the commencement of the Period of Insurance.

### 11. Radioactivity

for Personal Injury directly or indirectly caused by or contributed to by or arising from ionising radiation or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel or the radioactive toxic explosive or other hazardous properties or any explosive nuclear assembly or nuclear component thereof.

### 12. Retroactive Date

for any Personal Injury which has taken place or allegedly taken place prior to the Retroactive Date stated in the Schedule.

### 13. War, Terrorism

for death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

(a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property under the order of any government or public or local authority; or

(b) any Act of Terrorism.

Definition: "Act of Terrorism" means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic, or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This Exclusion also excludes death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (a) and/or (b) above.

In respect of the Exclusions no fact pertaining to, knowledge possessed by, nor Personal Injury committed by any Insured, shall be imputed to any other Insured for the purpose of determining the availability of cover.

## Conditions

### 1. Assignment

No assignment of interest under this policy shall bind the Company unless its written consent is endorsed on this policy.

### 2. Authorisation

By acceptance of this policy, the Insured agrees to act on behalf of any Subsidiary Company with respect to giving or receiving any notice of claim or termination, payment of premiums and receiving any return premiums that may become due under this policy, acceptance of endorsements, and giving or receiving of any other notice provided for in this policy, and each Subsidiary Company agrees that the Insured shall act on its behalf.

### 3. Cancellation

This policy may be cancelled by the Company at any time by giving written notice by registered mail to the last known address of the Insured. Cancellation will be effective at 4.00pm on the 30<sup>th</sup> day after posting of the written notice. In the event of such cancellation the Company will refund premium pro rated for the unexpired period of insurance.

The policy may be cancelled by the Insured at any time from the date of receipt by the Company of the Insured's written instructions and the Company will refund 80% of the premium pro rated for the unexpired period of insurance.

### 4. Claims

(a) The Insured shall as a condition precedent to its right to be indemnified under this policy give the Company notice in writing as soon as practicable of:

- (i) any claim made against them or any of them;
- (ii) the receipt of notice from any person or party of any intention to hold the Insured responsible for any Personal Injury for which this policy provides cover;
- (iii) any circumstance which the Insured shall become aware which may give rise to a claim or claims under this policy,

irrespective of whether the claim is considered justified and/or the quantum is likely to be within the Excess stated in the Schedule.

(b) The insurance provided by this policy ceases absolutely at the expiry of the Period of Insurance. However, provided that the notice referred to in 4(a) has been given to the Company prior to the expiration of the Period of Insurance, within thirty (30) days after its expiry or, if exercised, during the Extended Reporting Period, any claim arising from the notified circumstances, which is subsequently made after the expiration of the Period of Insurance, shall be deemed to have been made during the subsistence of this policy.

(c) The Insured shall give to the Company or its authorised representatives all such information and assistance as they may reasonably require. The

Company may assume control and conduct of any claim, and any counterclaim (which shall be a condition precedent to the Insured's right to indemnity under this Policy).

(d) The Insured shall not in relation to any claim under this policy:

- (i) make any admission of liability;
- (ii) incur any expense;
- (iii) make any payment or settlement of liability,

without the prior written consent of the Company. Such consent shall not be unreasonably withheld. The Company is not liable for any admissions, expenses, payments or settlements made without its prior written consent.

(e) If the Insured shall refuse to consent to any settlement recommended by the Company, and shall elect to contest or continue any legal proceedings, the Company's liability for the claim shall not exceed the amount for which the claim could have been so settled (over and above the Excess stated in the Schedule), including Defence Costs incurred up to the date of such refusal.

(f) The Insured shall not be required to contest any legal proceedings unless a Queen's Counsel (to be mutually agreed upon by the Insured and the Company) shall advise such proceedings should be contested by the Insured.

### 5. Consolidation or Merger

If the Insured acquires by merger, consolidates with, is merged into or acquired by any other entity after the inception of the Period of Insurance, written notice shall be given to the Company as soon as practicable together with such information as the Company may require. The Company shall be paid any reasonable premium that may be required.

### 6. Fraud

If any claim is in any respect fraudulent, if any false declaration is made or used in support of any claim, or if any fraudulent means or devices are used by the Insured or any one acting on its behalf to obtain any benefit under this policy, all benefits will be forfeited.

### 7. Jurisdiction

This policy shall be governed by the law of New Zealand, the Courts of which shall have exclusive jurisdiction over any dispute.

### 8. Other Insurance

If, at the time of any claim arising under this policy, there is any other valid and collectable insurance covering all or part of the same Personal Injury, this policy will apply to the amount in excess of that recoverable or in fact recovered under the other insurance, whether such insurance is stated to be primary or excess, unless such other insurance is written only as specific excess insurance over the Limit of Indemnity under this policy.

### 9. Subrogation

(a) The Company shall be entitled to use the name of the Insured in any proceedings to enforce, for the benefit of the Company, any order made for costs or otherwise, and shall have the right of subrogation in respect of all rights which the Insured may have against any person or entity who may be

responsible to the Insured in respect of any claim for any Personal Injury covered by this policy, and the Insured shall do everything necessary to secure and preserve such rights including executing any necessary documents for the purpose of vesting such rights in the Company. Any monies recovered pursuant to the exercise of such rights shall be applied firstly for the benefit of the Company to the extent of the amount paid by it in respect of that claim (including related costs and expenses), and the remaining monies shall become the property of the Insured.

- (b) If no recovery is made as a result of proceedings conducted solely by the Company, then it shall bear the expenses.

Provided that the Company waives all rights of subrogation against any Officer, unless the right of subrogation arises from the dishonest or intentional criminal conduct of the Officer.

## 10. Territory

This policy only provides cover for Damages and Defence Costs arising both out of Personal Injuries suffered in New Zealand and from proceedings brought in New Zealand courts.

## 11. Waiver of Privilege

If the Company instructs any lawyer to investigate or defend any claim against the Insured, the Insured authorises the lawyer to provide to the Company any documents, information or advice in respect of the claim, including in relation to indemnity; and the Insured waives any privilege to the extent necessary to give full effect to the Company's entitlement in this respect.

## Definitions

### 1. Damages

means the total amount which the Insured or any Officer becomes legally obligated to pay on account of all claims, investigations, inquiries, administrative or regulatory proceedings, suits, legal actions, summons, writs, examinations made or commenced against them (including any written demands communicated to the Insured or any Officer alleging a Personal Injury by whatever means) for any Personal Injury to which cover under this policy applies, including but not limited to damages, judgments, settlements, interest, claimant costs and claimant expenses, but not including Defence Costs.

### 2. Defence Costs

means:

- (a) the costs and expenses (including defence witness costs and expenses and defence expert costs and expenses) of being represented at any hearing, prosecution, inquiry, investigation, proceeding, settlement negotiation or review, relating to any Personal Injury;
- (b) the costs of applying to set aside a Court order or conviction, or conducting an appeal of any action or proceeding, relating to any Personal Injury;
- (c) the costs of applying to a Court to determine whether an employee's claim for Personal Injury is properly covered by the Accident Compensation Act

2001 or any amendment to or re-enactment of that Act.

### 3. Insured

means the company or other entity named in the Schedule and any Subsidiary Company.

### 4. Officer

means any person who, at the time of an offence or alleged offence under the Act, holds the position of director, officer, trustee, manager or secretary of the Insured, trust or other organisation, or who performs the duties of director, officer, manager or secretary under any other name, or who holds any other position as an employee (whether full time, part-time or temporary) of the Insured, trust or other organisation, and includes any such person who has subsequently relinquished that position.

### 5. Penalties

means any:

- (a) court costs,  
(b) reparation order,  
(c) prosecution witness costs and expenses,  
(d) prosecution solicitors' costs,  
(e) regulators' costs awarded under Section 152 of the Health and Safety at Work Act 2015 (or any amendment to or re-enactment of the act or regulations or other subordinate legislation made under the Act),

imposed by the Court on the Insured upon conviction for an offence under the Health and Safety In Employment Act 1992 or the Health & Safety at Work Act 2015, and does not include any fine or infringement fee.

### 6. Period of Insurance

means the period stated in the Schedule.

### 7. Personal Injury

means bodily injury, sickness, disease or infection, including resulting death, and disability, shock, fright or mental anguish or injury. For the purposes of this insurance, disease shall be sustained when the employee is first exposed to conditions in New Zealand out of which the disease the subject of the claim arose.

### 8. Subsidiary Company

means any company that is or was:

- (a) controlled by the Insured through legal or beneficial ownership of more than 50% of the issued voting stock;
- (b) deemed a subsidiary of the Insured by virtue of any applicable legislation or law, including companies held either directly or indirectly through one or more subsidiaries (ie, subsidiaries of subsidiaries).

SECTION 3

# Statutory Liability

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## Insuring Clause

In consideration of payment of the premium, in reliance on the proposal and declarations (which shall be deemed to be the basis of this policy) and subject to its terms, conditions, exclusions, warranties and endorsements, Vero Liability Insurance Limited ("the Company") agrees to pay on behalf of:

- (a) the Insured, its Defence Costs and Penalties;
- (b) the Insured, Defence Costs and Penalties for which it grants indemnity to any Officer as permitted or required by law;
- (c) any Officer, Defence Costs and Penalties for which he/she does not receive an indemnity from the Insured,

arising out of any Occurrence which is connected with the business or affairs of the Insured and notified to the Company during the Period of Insurance stated in the schedule or within thirty (30) days after its expiry, or if exercised, during the Extended Reporting Period.

Provided that the:

- (i) Occurrence has taken place on or after the Retroactive Date;
- (ii) maximum amount payable by the Company for Defence Costs and Penalties for all claims under this policy shall not exceed the Limit of Indemnity stated in the Schedule.

## Limit of Indemnity and Excess

1. All Defence Costs and Penalties arising out of any one Occurrence or inter-related Occurrences are deemed to be one claim. Any claim arising from inter-related Occurrences is deemed to have originated in the earliest period of insurance in which any of the Occurrences is first notified to the Company.
2. The Company's liability under this policy applies only to that part of Defence Costs and Penalties exceeding the Excess stated in the Schedule.
3. Subject to the Goods and Services Tax extension of this policy, the Company's aggregate liability under this policy in respect of Defence Costs and Penalties arising out of Occurrences will not exceed the Limit of Indemnity stated in the Schedule.
4. Where the Defence Costs and Penalties exceed the Limit of Indemnity, then it shall be applied in the following priority:
  - (i) to the Insured, in respect of its own Defence Costs and Penalties;
  - (ii) to the Insured, in respect of Defence Costs and Penalties for which the Insured grants indemnity to any Officer;
  - (iii) to the Insured's Officers, in respect of Defence Costs and Penalties,or as stated in the Schedule.

## Extended Reporting Period

If the Company terminates this policy or refuses to grant a new policy, the Insured will have the right to an extension of the cover granted under this policy for a further period of twelve (12) months immediately following the effective date of termination or the date of refusal, but only in respect of any Occurrence taking place both before that termination or refusal date and after the Retroactive Date. If this right is exercised then this further period shall be part of the last Period of Insurance and not an additional period.

The right to this extension must be exercised by written notice to the Company prior to the effective date of termination or within 30 days following the date of refusal.

## Extensions

The terms of this policy apply to each extension to this policy unless expressly stated otherwise. The terms of each extension apply only to that extension and not to the rest of the policy unless expressly stated otherwise.

### 1. Goods and Services Tax

- (a) Where the Insured or any Officer is liable to pay tax under the Goods and Services Tax Act 1985 (or any statutory amendment or re-enactment of the Act) on receiving any payment under this policy, the Company will indemnify the Insured or the Officer for the cost of that tax.
- (b) The amount payable under this extension is payable by the Company in addition to the stated Limit of Indemnity.

### 2. Newly Created or Acquired Subsidiary Company

If any Subsidiary Company is created or acquired by the Insured after the inception of this policy, such Subsidiary Company shall be included as an Insured provided that:

- (a) written notice of such creation or acquisition is given to the Company together with appropriate underwriting information and the payment of any additional premium required at the next renewal date;
- (b) in respect of acquisitions, cover granted under this policy shall only apply to any Occurrence both discovered by the Insured after the date of such acquisition and which took place after the Retroactive Date, and where the Insured has agreed to indemnify any such Subsidiary Company.

### 3. Subsidiary Company Change of Ownership

- (a) In the event that an entity ceases to be a Subsidiary Company prior to or during the Period of Insurance, cover under this policy with respect to such Subsidiary Company, the Insured and each Officer shall continue until the expiry date of the Period of Insurance, provided that such cover shall only apply in respect of an Occurrence committed after the Retroactive Date or the date of creation or acquisition by the Insured (whichever is the later) and until the date such entity ceased to be a Subsidiary Company.
- (b) Where the entity has ceased to be a Subsidiary Company because it is acquired by a third party, then this extension shall only apply where the Insured has agreed to retain a continuing obligation to indemnify the third party for Defence Costs and Penalties arising out of any Occurrence that has taken place whilst it is a Subsidiary Company.

## Exclusions

This policy shall not indemnify the Insured or the Officers for Defence Costs or Penalties arising out of:

### 1. Asbestos

any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly

arising out of, resulting from or in consequence of, asbestos in whatever form or quantity.

## 2. Commerce Act

- (a) any Occurrence in connection with the Commerce Act 1986 but this exclusion shall only apply to Insuring Clause (a);
- (b) any application brought by the Commerce Commission under sections 81, 84 or 87 Commerce Act 1986.

## 3. Contractors

the engagement by the Insured of any contractor to dispose of or handle materials, unless the Insured has taken reasonable steps to ensure that the materials will be disposed of or handled in a lawful manner.

## 4. Deliberate Breach

any Occurrence which has resulted from any deliberate:

- (a) breach or contravention of any provisions of the Acts or any Regulations or other subordinate legislation made under the Acts;
- (b) failure to comply with any lawful order, demand, notice, requirement or determination made by any statutory authority or enforcement agency under any of the Acts.

## 5. Employee Claims

any contract of service, or any intended contract of service, with any current, former or prospective employee. But nothing in this Exclusion shall apply to any investigation, inquiry or prosecution pursuant to the Health & Safety in Employment Act 1992 or the Health & Safety at Work Act 2015 or any amendment to or re-enactment of those acts or regulations or other subordinate legislation made under those Acts.

## 6. Inland Revenue Department

the investigation and defence of any action, proceeding, inquiry, investigation or prosecution taken against the Insured by the Inland Revenue Department or any other revenue-collecting statutory authority.

## 7. Known Circumstances

any circumstance or Occurrence of which, at the commencement of the Period of Insurance stated in the Schedule, the Insured or any Officer is aware or ought reasonably to be aware may result in an allegation of breach or contravention of an Act against the Insured or any Officer.

## 8. "Leaky Buildings" – Moisture or Water Penetration, Building Defects

any liability for, or to fulfil any obligation in respect of any claim, Defence Costs or Penalties, which are directly or indirectly caused by or contributed to, or arises directly or indirectly out of:

- (a) the action or effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure; or
- (b) any cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposal of, or in anyway responding to or assessing the effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms,

bacteria, protozoa or similar or like forms, in any building or structure; or

- (c) the failure of any building or structure to meet or perform to the requirements of the New Zealand Building Code contained in the first schedule to the Building Regulations 1992 (or any amendment or substitution thereof) in relation to:
  - (i) external water or moisture; or
  - (ii) either durability or protection from external water or moisture entering that building or structure, or the effects thereof.

## 9. Non-Statutory Prosecutions

the investigation of and defence of any action, proceeding, inquiry, investigation or prosecution taken against the Insured by a person, other than the statutory authority or enforcement agency given that responsibility under the Act.

However this Exclusion shall not apply to private prosecutions brought under the Health & Safety in Employment Act 1992 or the Health & Safety at Work Act 2015 or any amendment to or re-enactment of those acts or regulations or other subordinate legislation made under those Acts. The Excess shall be the greater of \$1,000 or the Excess stated in the Schedule.

## 10. Outside New Zealand

any judgment entered in any Court other than a New Zealand Court, or any debt incurred by the Insured as the result of such a judgment.

## 11. Police Proceedings

the investigation of and defence of any action, proceeding, inquiry, investigation or prosecution taken against the Insured by the New Zealand Police. However this Exclusion does not apply to the Sale of Liquor Act.

## 12. Prior Claims

any allegation of breach or contravention of an Act made, threatened or in any way intimated against the Insured or any Officer, and not notified to the Company, prior to the commencement of the Period of Insurance stated in the Schedule.

## 13. Prior Litigation

any liability arising out of any litigation in existence at the commencement of the Period of Insurance.

## 14. Radioactivity

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

## 15. Retroactive Date

any Occurrence which has taken place or allegedly taken place prior to the retroactive date stated in the Schedule.

## 16. War, Terrorism

death, injury, illness, loss, damage, any cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, insurrection, riot, civil commotion

assuming the proportions of or amounting to an uprising, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property under the order of any government or public or local authority; or

- (b) any Act of Terrorism.

Definition: "Act of Terrorism" means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic, or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This Exclusion also excludes death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (a) and/or (b) above.

In respect of the Exclusions no fact pertaining to, knowledge possessed by, nor any Occurrence by any Officer shall be imputed to any other Officer for the purpose of determining the availability of cover.

## Conditions

### 1. Assignment

No assignment of interest under this policy shall bind the Company unless its written consent is endorsed on this policy.

### 2. Authorisation

By acceptance of this policy, the Officer who signs the proposal (or his/her replacement) agrees to act on behalf of all Officers and the Insured with respect to giving or receiving notice of claim or termination, payment of premiums and receiving any return premiums that may become due under this policy, and acceptance of endorsements and any other notice provided for in this policy, and the Officers and the Insured agree that the Officer so nominated shall act on their behalf. Provided always that the above authorisation is in addition to and not in derogation of the rights, powers and obligations of each of the Officers and the Insured under this policy and the authorisation conferred imposes no additional obligation upon the Officer so nominated with respect to any of the matters set out whether towards the Company or the Officers or any of them.

### 3. Authorisation – Subsidiary Companies

By acceptance of this policy, the Insured agrees to act on behalf of any Subsidiary Company with respect to giving or receiving notices of claim or termination, payment of premiums and receiving of any return premiums that may become due under this policy, acceptance of endorsements, and giving or receiving of any other notice provided for in this policy, and each Subsidiary Company agrees that the Insured shall act on its behalf.

### 4. Cancellation

This policy may be cancelled by the Company at any time by giving written notice by registered mail to the last known address of the Insured. Cancellation will be

effective at 4.00pm on the 30<sup>th</sup> day after posting of the written notice. In the event of such cancellation the Company will refund premium pro rated for the unexpired period of insurance.

The policy may be cancelled by the Insured at any time from the date of receipt by the Company of the Insured's written instructions and the Company will refund 80% of the premium pro rated for the unexpired period of insurance.

## 5. Claims

- (a) The Insured and the Officers shall as a condition precedent to their right to be covered under this policy give to the Company notice in writing as soon as practicable of:

- (i) any allegation of breach or contravention of an Act made against them or any of them;
- (ii) the receipt of notice from any person or party of any intention to hold the Insured or any Officer responsible for the results of an alleged Occurrence;
- (iii) any circumstance which the Insured or any Officer shall become aware which may give rise to a claim or claims under this policy,

irrespective of whether the claim is considered justified and/or the quantum is likely to be within the Excess stated in the Schedule.

- (b) The insurance provided by this policy ceases absolutely at the expiry of the Period of Insurance. However, provided that notice referred to in condition 5(a) above has been given to the Company prior to the expiration of the Period of Insurance or within thirty (30) days after its expiry or if exercised, during the Extended Reporting Period, any claim arising from the circumstances notified, which is subsequently made after the expiration of the Period of Insurance, shall be deemed to have been made during the subsistence of this policy.
- (c) The Insured and the Officers shall give to the Company or its authorised representatives all such information and assistance as they may reasonably require. The Company may assume control and conduct of any claim, and any counterclaim (which shall be a condition precedent to the Insured's right to be covered under this Policy).
- (d) Neither the Insured nor the Officer shall in relation to any claim under this policy:
- (i) make any admission of liability or guilt; nor
  - (ii) incur any expense; nor
  - (iii) make any payment or settlement of liability,

without the prior written consent of the Company. Such consent shall not be unreasonably withheld. The Company is not liable for any admissions, expenses, payments or settlements made without its written consent.

- (e) If the Insured or any Officer shall refuse to consent to any guilty plea or settlement recommended by the Company, and shall elect to contest or continue any legal proceedings, the Company's liability for the claim shall not exceed the amount for which the claim could have been so settled (over and above the Excess stated in the Schedule), including



Defence Costs incurred up to the date of such refusal.

- (f) Neither the Insured nor any Officer shall be required to contest any legal proceedings unless a Queen's Counsel (mutually agreed upon by the Insured, the particular Officer and the Company) shall advise such proceedings should be contested by the Insured or Officer.

## 6. Consolidation or Merger

If the Insured acquires by merger, consolidates with, is merged into or acquired by any other entity after the inception of the Period of Insurance, written notice shall be given to the Company as soon as practicable together with such information as the Company may require. The Company shall be paid any reasonable premium that may be required.

## 7. Fraud

- (a) If any claim is in any respect fraudulent, if any false declaration is made or used in support of any claim, or if any fraudulent means or devices are used by the Insured, or by any of the Officers or anyone acting on behalf of any of them, to obtain any benefit under this policy, all benefits will be forfeited.
- (b) For the purpose of this condition, the Insured and each Officer will be treated as having been issued with a separate policy.

## 8. Jurisdiction

This policy shall be governed by the law of New Zealand, the Courts of which shall have exclusive jurisdiction over any dispute.

## 9. Other Insurance

If, at the time of any claim arising under this policy, there is any other valid and collectable insurance covering all or part of the same Occurrence, this policy will apply to the amount in excess of that recoverable or in fact recovered under the other insurance, whether such insurance is stated to be primary or excess, unless such other insurance is written only as specific excess insurance over the Limit of Indemnity under this policy.

## 10. Severability

- (a) In granting cover under this policy to the Insured and any Officer, the Company has relied upon the declarations and statements contained within and attached to the proposal. All such declarations and statements are the basis of such cover and shall be considered as incorporated in and constituting part of this policy.
- (b) The proposal shall be construed as a separate application for cover by each Insured and each Officer. With respect to the declarations and statements contained within or attached to the proposal for cover, no statement in the proposal or knowledge possessed by any Insured or any Officer shall be imputed to any other Insured or other Officer for the purposes of determining the availability of cover with respect to claims made against any Insured or Officer.
- (c) The terms of this policy apply to the Insured and to each Officer, provided that the failure by any Insured or any Officer to observe and fulfil the terms of this policy will not prejudice this insurance in relation to any other Insured or other Officer.

## 11. Subrogation

- (a) The Company shall be entitled to use the name of the Insured and any Officer in any proceedings to enforce, for the benefit of the Company, any order made for costs or otherwise and shall have the right of subrogation in respect of all rights which the Insured and any Officer may have against any person or entity who may be responsible to the Insured or any Officer in respect of any claim for any Occurrence covered by this policy, and the Insured and any Officer shall do everything necessary to secure and preserve such rights including executing any necessary documents for the purpose of vesting such rights in the Company. Any assets recovered pursuant to the exercise of such rights shall be applied firstly for the benefit of the Company to the extent of the amount paid by it in respect of that claim (including related costs and expenses), and the remaining assets shall become the property of the Insured.
- (b) If no recovery is made as a result of proceedings conducted solely by the Company, then it shall bear the expenses.

Provided that the Company waives all rights of subrogation against any Officer and the Insured, unless the right of subrogation arises from the dishonest or intentional criminal conduct of the Officer or the Insured.

## 12. Territory

This policy only provides cover for Defence Costs and Penalties arising out of Occurrences which take place in New Zealand.

## 13. Waiver of Privilege

If the Company instructs any lawyer to investigate or defend any claim against the Insured, the Insured authorises the lawyer to provide to the Company any documents, information or advice in respect of the claim, including in relation to indemnity; and the Insured waives any privilege to the extent necessary to give full effect to the Company's entitlement in this respect.

## Definitions

### 1. Act or Acts

means, as the context requires, any Act of the New Zealand Parliament or any amendment to or re-enactment of any of those Acts, and any Code or Regulations or other subordinate legislation made under those Acts.

### 2. Defence Costs

means:

- (a) the costs and expenses (including witness and expert costs and expenses) of being represented at any investigation, inquiry, prosecution, proceeding, hearing, settlement negotiation, review or appeal, arising out of an Occurrence;
- (b) the costs of applying to set aside a Court order or conviction arising out of an Occurrence.

### 3. Insured

means the company, trust or other entity named in the Schedule and any Subsidiary Company.

## 4. Occurrence

means any event, act, omission or circumstance, neither expected nor intended, which may result in an allegation of breach or contravention of the Act or which results in an investigation, inquiry, prosecution, proceeding, hearing, settlement negotiation, review or appeal in respect of such allegation.

In relation to the Consumer Guarantees Act 1993, Occurrence shall also mean any purported contracting out of any of the provisions of the Act (other than in accordance with section 43(2) of the Act) where that purported contracting out may result in an allegation of breach of the Fair Trading Act 1986.

## 5. Officer

means any person who, at the time of an offence or alleged offence under the Act, holds the position of director, officer, trustee, manager or secretary of the Insured, or who performs the duties of director, officer, manager or secretary under any other name, or who holds any other position as an employee (whether full time, part-time or temporary) of the Insured, and includes any such person who has subsequently relinquished that position. "Officers" shall have the same meaning.

## 6. Penalties

means any fine or other cash penalty (including court costs) payable by the Insured upon conviction of an offence under the Act in connection with an Occurrence, including:

- (a) prosecution witness costs and expenses,
- (b) prosecution solicitors' costs,
- (c) regulators' costs awarded under Section 152 of the Health and Safety at Work Act 2015 (or any amendment to or re-enactment of the act or regulations or other subordinate legislation made under the Act)

Provided that Penalties shall not include:

- (a) the cost or payment of any enforcement order, remedial order or compliance order.
- (b) any tax (including any fine or penalty resulting from the failure to pay any tax), rate, duty, or interest on such tax, rate, or duty, except as provided in Extension 1.
- (c) any damages, restitution, compensation or reparation imposed by a tribunal or court of competent jurisdiction, except a reparation order imposed by the Court on the Insured upon conviction for an offence under the Health and Safety in Employment Act 1992 or the Health & Safety at Work Act 2015;
- (d) the value of any property subject to confiscation or forfeiture;
- (e) any fine or infringement fee imposed by the Court on the Insured upon conviction for an offence under the Health and Safety in Employment Act 1992 or the Health & Safety at Work Act 2015 or any amendment to or re-enactment of those acts or regulations or other subordinate legislation made under those Acts;
- (f) any other monetary payment, penalty or fine for which the Company may not lawfully indemnify the Insured.

## 7. Period of Insurance

means the period stated in the Schedule.

## 8. Subsidiary Company

means any company that is or was:

- (a) controlled by the Insured through legal or beneficial ownership of more than 50% of the issued voting stock; or
- (b) deemed a subsidiary of the Insured by virtue of any applicable legislation or law, including companies held either directly or indirectly through one or more subsidiaries (ie, subsidiaries of subsidiaries).

SECTION 4

# Fidelity

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## Insuring Clause

In consideration of the payment of the premium, in reliance on the written proposal and declaration and any other underwriting information provided (which shall be deemed to be the basis of this Policy), and subject to its terms, conditions, exclusions, memoranda and endorsements, Vero Liability Insurance Limited ("the Company") will indemnify the Insured for all claims for any loss of money or other property belonging to the Insured, which the Insured shall, during the Period of Insurance stated in the Schedule, discover that they have sustained in consequence of any dishonest or fraudulent act or omission amounting to a criminal offence of any person at any time employed by the Insured.

## Limit of Indemnity and Excess

The Company's liability under this Policy shall not exceed in the aggregate the Limit of Indemnity stated in the Schedule.

The Excess stated in the Schedule will apply to each and every individual act of dishonesty, but in no case more than twice in respect of any person's dishonesty.

## Exclusions

The Company shall not indemnify the Insured for any loss sustained or arising out of:

### 1. Asbestos

or resulting from or in consequence of, asbestos in whatever form or quantity.

### 2. Outside New Zealand

acts of dishonesty outside New Zealand.

### 3. Radioactivity

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

### 4. Retroactive Date

acts of dishonesty prior to the Retroactive Date stated in the Schedule.

### 5. War, Terrorism

death, injury, illness, loss, damage, any cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property under the order of any government or public or local authority; or
- (b) any Act of Terrorism.

Definition: "Act of Terrorism" means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any

organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic, or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This Exclusion also excludes death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (a) and/or (b) above.

## Conditions

### 1. Assignment

No assignment of interest under this policy shall bind the Company unless its written consent is endorsed on this policy.

### 2. Cancellation

This policy may be cancelled by the Company at any time by giving written notice by registered mail to the last known address of the Insured. Cancellation will be effective at 4.00pm on the 30<sup>th</sup> day after posting of the written notice. In the event of such cancellation the Company will refund premium pro rated for the unexpired period of insurance.

The policy may be cancelled by the Insured at any time from the date of receipt by the Company of the Insured's written instructions and the Company will refund 80% of the premium pro rated for the unexpired period of insurance.

### 3. Condition Precedent

As a condition precedent to the Company's liability to indemnify the Insured for any loss the Insured must provide satisfactory proof of loss to the Company. Further, the Insured must report the loss in writing to the Police. The report must contain sufficient information to enable the Police to consider prosecution of the person or persons responsible for such loss.

### 4. Costs

All costs incurred by the Insured to substantiate its loss are to be borne by the Insured.

### 5. Subrogation

If any payment is made under this Policy, the Company is subrogated to all the Insured's rights of recovery. The Insured shall give all such assistance in the exercise of rights of recovery as the Company may reasonably require.

### 6. Policy Jurisdiction

This policy shall be governed by the law of New Zealand, the Courts of which shall have exclusive jurisdiction over any dispute.

### 7. Prior Loss

All loss arising from the dishonest or fraudulent acts of the same person or persons or from such acts committed prior to the current Period of Insurance will be a single loss and the Company's liability shall not exceed in the aggregate the Limit of Indemnity stated in the Schedule.

### 8. Waiver of Privilege

If the Company instructs any lawyer to investigate or defend any claim against the Insured, the Insured authorises the lawyer to provide to the Company any documents, information or advice in respect of the claim, including in relation to indemnity; and the Insured waives any privilege to the extent necessary to give full effect to the Company's entitlement in this respect.

SECTION 5

# Directors & Officers

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## Insuring Clause

1. In consideration of the payment of the premium, in reliance on the written proposal, declarations, statements and information (which are the basis of this Policy) and subject to its terms, conditions, exclusions, warranties and endorsements, Vero Liability Insurance Limited ("the Company") will indemnify each of the Insured Person(s), or the Insured Organisation if the Insured Person(s) is/are entitled to receive an indemnity from it, for all amounts which they shall become legally liable to pay on account of any claims alleging a Wrongful Act first made against the Insured Person(s), individually or otherwise, during the Period of Insurance stated in the Schedule and notified to the Company during the same period.
2. The Company will also pay all expenses incurred by the Company, Insured Person(s) or Insured Organisation with the prior written consent of the Company in the defence, investigation and/or settlement of any claim payable under this Policy, other than regular or overtime wages, salaries or fees of any Insured Person(s) or of any employee of the Insured Organisation.

## Limit of Indemnity and Excess

1. The limit of the Company's liability in respect of any one claim, including costs incurred pursuant to the Insuring Clause, or the total of all claims for any interrelated Wrongful Acts including costs incurred pursuant to the Insuring Clause, shall not exceed the Limit of Indemnity stated in the Schedule.
2. Each of the Insured Person(s) and the Insured Organisation shall be liable for the amount of the Excess stated in the Schedule, inclusive of all costs and expenses, in respect of each claim for a Wrongful Act made against them.

## Exclusions

This insurance does not apply to claims in respect of or alleging:

- 1. Asbestos**  
any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from or in consequence of, asbestos in whatever form or quantity.
- 2. Assumed Liability**  
liability assumed by the Insured Person(s) under any agreement, other than written agreements stated in the Schedule;
- 3. Breach of Duty**  
any breach of duty owed in the Insured Person(s)' professional capacity other than as a Professional Director;
- 4. Dishonesty**  
dishonest, fraudulent, criminal or malicious act or omission by or on behalf of any Insured Person(s);
- 5. Failure to Maintain Insurance**  
any failure or omission to effect or maintain insurance;
- 6. Fines, Penalties**  
liability for any fine or penalty;

## 7. Insider Trading

insider trading in terms of the Securities Amendment Act 1988, or any similar statute or regulation;

## 8. Jurisdiction Limits

any claims, suits, actions or demands brought in Courts of Law outside the Jurisdiction Limits stated in the Schedule or heard in accordance with or subject to the law outside those Jurisdiction Limits.

## 9. "Leaky Buildings" – Moisture or Water Penetration, Building Defects

any liability for, or fulfil any obligation in respect of any claim or defence costs, which are directly or indirectly caused by or contributed to, or arises directly or indirectly out of:

- (a) the action or effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure; or
- (b) any cost or expense arising out to the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposal of, or in anyway responding to or assessing the effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or similar or like forms, in any building or structure; or
- (c) the failure of any building or structure to meet or perform to the requirements of the New Zealand Building Code contained in the first schedule to the Building Regulations 1992 (or any amendment or substitution thereof) in relation to:
  - (i) external water or moisture; or
  - (ii) either durability or protection from external water or moisture entering that building or structure, or the effects thereof.

## 10. Outside Directorship

liability arising out of any Outside Directorship;

## 11. Personal Injury

Personal Injury or Property Damage;

## 12. Personal Profit

or based upon or attributable to any Insured Person(s) having gained a personal profit or advantage to which she/he was not legally entitled;

## 13. Pollution

seepage, pollution or contamination or the breach of any statute, regulation, by-law or ordinance prohibiting or controlling emissions or effluents of any kind or from any enforcement action or proceeding brought under or pursuant to any statute, regulation, by-law or ordinance;

## 14. Prior Claims

any claim made, threatened, or in any way intimated against any Insured Person(s), prior to the commencement of the Period of Insurance stated in the Schedule, or in respect of any circumstance or occurrence which any Insured Person(s) is aware or ought reasonably to have been aware at the commencement of the Period of Insurance may give rise to a claim against any Insured Person(s), whether notified under any other insurance or not.

## 15. Prior Litigation

liability arising out of any litigation in existence at the commencement of the Period of Insurance stated in the Schedule;

## 16. Prospectus

- (a) any public or private issue of shares, preference shares (redeemable or otherwise), debentures of whatever kind, promissory notes or any other form of negotiable or non negotiable security for the raising of capital by equity, debt or any other means;
- (b) the issue of any prospectus or similar document or the making of any written or oral representation, in connection with (a) above.

## 17. Radioactivity

Personal Injury or Property Damage directly or indirectly caused by or contributed to by or arising from ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component;

## 18. Remuneration

liability for the return by any Insured Person(s) of any remuneration to which such Insured Person(s) is not entitled;

## 19. Retroactive Date

any Wrongful Act prior to the retroactive date stated in the Schedule.

## 20. Spouses, Dependents

any claims or allegations made against the Insured by:

- (a) any Insured Person(s), the Insured Organisation or the Parent Organisation, except a claim made on behalf of the Insured Organisation or Parent Organisation by any claimant(s) who is/are not Insured Persons or by any receiver or liquidator;
- (b) any spouse, dependant or relative of any Insured Person(s) or any of their employees, directors or principals, or any entity operated or controlled by or on behalf of any of them, or in which they have a direct or indirect interest collectively or individually.

## 21. War, Terrorism

resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property under the order of any government or public or local authority; or
- (b) any Act of Terrorism.

Definition: "Act of Terrorism" means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or governments(s) which from its nature or context is done for, or in connection with, political, religious,

ideological, ethnic, or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This exclusion also excludes death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (a) and/or (b) above.

## Conditions

### 1. Agency

All persons and organisations entitled to any benefit under this Policy irrevocably appoint the Insured Organisation as their agent for all purposes in relation to this insurance.

### 2. Cancellation

This Policy may be cancelled by the Company at any time by giving written notice by registered mail to the last known address of the Insured Person(s) and/or Insured Organisation. Cancellation will be effective at 4.00pm on the 30<sup>th</sup> day after posting of the written notice. In the event of such cancellation the Company will refund premium pro rated for the unexpired period of insurance.

The Policy may be cancelled by the Insured Person(s) and/or Insured Organisation at any time from the date of receipt by the Company of the Insured's written instructions and the Company will refund 80% of the premium pro rated for the unexpired period of insurance.

### 3. Claims

(a) The Insured Person(s) and/or the Insured Organisation shall give immediate notice in writing to the Company of any:

- (i) circumstance of which the Insured Person(s) first becomes aware during the Period of Insurance stated in the Schedule that might give rise to a claim;
- (ii) notice of any intimation by any person or organisation of possible intention to make a claim against the Insured Person(s);
- (iii) demand, threat or claim against the Insured Person(s);
- (iv) legal proceeding or process alleging a loss and/or liability for which there might be indemnity under this Policy.

(b) The Insured Person(s), the Insured Organisation or anyone acting on their behalf, shall not admit liability for, or offer to pay or compromise any claim, or incur any costs or expenses, without the prior written consent of the Company.

(c) The Company is entitled at any time to take over and conduct in the name of the Insured Person(s) and/or the Insured Organisation the defence or settlement of any claim and any counterclaim (which shall be a condition precedent to the Insured Person(s) and/or the Insured Organisation's right to be covered under this Policy), provided that no legal proceeding shall be defended unless a Queen's Counsel (to be mutually agreed) advises that the proceeding should be defended.

(d) If the Company agrees or is found liable to indemnify the Insured Person(s) and/or the Insured

Organisation, the Company shall be subrogated to all their rights.

- (e) The Insured Person(s) and the Insured Organisation shall give to the Company or its authorised representatives all information, assistance and co-operation as it may reasonably require in considering, accepting or defending any claim under this Policy or any proceeding relating to it, including the execution of whatever documents may be necessary to enable the Company to effectively exercise any subrogation or other rights granted by this Policy, and shall upon the Company's request assist in making settlements, the conduct of suits and enforcing any right of contribution or indemnity against any person or organisation who may be liable because of injury or damage with respect to which insurance is afforded under this Policy, and shall attend mediations, hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.
- (f) If the Insured Person(s) and/or the Insured Organisation refuses to consent to or co-operate in any settlement recommended by the Company, the Company may relinquish conduct of the claim, including any legal proceedings, and the Company's liability for the claim shall not exceed the amount for which the claim could have been so settled, including costs and expenses incurred up to the date of such refusal, subject to the Excess stated in the Schedule.

#### 4. Cessation of Insurance

The insurance provided by this Policy ceases absolutely at the time and date stated in the Schedule. However, provided notice referred to in Condition 3(a) has been given to the Company prior to the expiry date stated in the Schedule, any claim or loss arising from the notified circumstances, which is subsequently made after the expiry date stated in the Schedule, shall be deemed to have been made during the Period of Insurance stated in the Schedule.

#### 5. Jurisdiction

This Policy shall be governed by the law of New Zealand, the courts of which shall have exclusive jurisdiction.

#### 6. Merger

If after the commencement of this Policy the Insured Organisation creates, acquires, consolidates or amalgamates with, is merged into or acquired by, any other organisation, the Insured Person(s) and/or the Insured Organisation shall give to the Company:

- (a) immediate written notice;
- (b) any further information that the Company may require;
- (c) any additional premium that the Company may require.

#### 7. Other Insurance

If, at the time of a claim first made against any Insured Person(s), there is any other applicable policy, this Policy shall only provide insurance in excess of such other policy and the limit of indemnity under this Policy shall be reduced to the extent of the indemnity afforded under such other policy, even if that other policy has a condition to the same or similar effect as above.

#### 8. Waiver of Privilege

If the Company instructs any lawyer to investigate or defend any claim against the Insured Person(s) and/or the Insured Organisation, the Insured Person(s) and/or the Insured Organisation authorise(s) the lawyer to provide to the Company any documents, information or advice in respect of the claim, including in relation to indemnity; and the Insured Person(s) and/or the Insured Organisation waive(s) any privilege to the extent necessary to give full effect to the Company's entitlement in this respect.

### Definitions

#### 1. Insured Organisation

means the Insured designated in the Schedule and includes any Subsidiary Company(ies).

#### 2. Insured Person(s)

means any Officer(s) of the Insured Organisation, including those named in the Schedule and those who have retired or relinquished their positions. For the purpose of this Definition, "Officer":

- (a) means any natural person occupying at the relevant time the position of director (by whatever name called) including employees who may be deemed to be directors pursuant to s.126(1)(a) Companies Act 1993;
- (b) excludes any person referred to in s.126(1)(b)-(d), (2) & (3) Companies Act 1993 or s.180(1)(b)-(d) Companies Act 1955, other than employees referred to in paragraph (a) above;
- (c) excludes any external auditor, external professional adviser or shareholder.

Each insured person(s) or organisation is insured jointly.

#### 3. Outside Directorship

means an executive position held by an Insured Person at the specific request of the Insured Organisation in any other corporation, joint venture, trust or other enterprise, other than the Insured Organisation.

#### 4. Parent Organisation

means any organisation which holds directly or indirectly more than 50% of the voting shares of the Insured Organisation.

#### 5. Period of Insurance

means the period in the current Schedule.

#### 6. Personal Injury

means

- (a) bodily injury, sickness, disability or disease, including death whenever resulting;
- (b) nervous shock, mental anguish, mental injury and humiliation;
- (c) false or wrongful arrest, imprisonment, detention or eviction.

#### 7. Policy

means the proposal, any declaration, this wording including any endorsements, and the current schedule, being the schedule issued at inception or the renewal schedule (whichever presently applies). Collectively they constitute a separate contract of insurance.

### 8. Property Damage

means physical injury to or destruction of tangible property, including the loss of use of any tangible property at any time resulting from physical injury or destruction.

### 9. Subsidiary Company

means any company that is or was:

- (a) controlled by the Insured through legal or beneficial ownership of more than 50% of the issued voting stock; or
- (b) deemed a subsidiary of the Insured by virtue of any applicable legislation or law, including companies held either directly or indirectly through one or more subsidiaries (ie, subsidiaries of subsidiaries).

### 10. Wrongful Act

means any error, misstatement or misleading statement, act or omission, or neglect or breach of duty allegedly made or committed within the Territorial Limits stated in the Schedule by any Insured Person, individually or otherwise, in the course of her/his duties to the Insured Organisation, including anything claimed against her/him solely by reason of her/him serving the Insured Organisation. All causally connected errors, statements, acts, omissions, neglects, breaches of duty or other things claimed against one or more Insured Person(s) will be treated as interrelated.

"Wrongful Act" does not mean any act, error or omission involving conflict between any entities within the definitions of Insured Organisation or Parent Organisation, or preferring the interests of any such entity over those of any other such entity.

SECTION 6

# LawSafe @ Work

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## Insuring Clause

In consideration of the payment of the premium, in reliance on the written proposal, declarations, statements and information (which are the basis of this Policy) and subject to its terms, conditions, exclusions, warranties and endorsements, Vero Liability Insurance Limited ("the Company") will pay the Insured up to the limit of indemnity as contained in the Policy Schedule for all Legal Action(s) commenced against the Insured during the Policy Year for:

### 1. Work Place Protection

any alleged offence under any statute arising in the course of the Insured's employment. But:

- (a) the Insured must not have been charged with any similar offence in the 7 years before the Insured obtained this policy; and
- (b) the Insured must be intending to plead not guilty; and
- (c) the Insured's plea of not guilty must be reasonable, based on the evidence and the law; and
- (d) the Insured must not have cover under any other policy, or otherwise be entitled to indemnity from any other source; and
- (e) in relation to any traffic prosecution:
  - (i) the Insured must have been charged with an alleged offence or infringement under the Land Transport Act 1998, or Transport Act 1962, or their amendments; but
  - (ii) the Insured must not have been charged with any of the following types of offences; alcohol/drug-related, log book, overloading, road user charges, or speeding including dangerous or excessive speed;
  - (iii) the Insured must be liable to be disqualified from driving; and
  - (iv) if the Insured is under 24 years old at the date of the alleged offence, the Insured must be at risk of being imprisoned for more than 3 months

### 2. Other actions (at the Company's discretion)

any other action against the Insured, which at the Company's sole option and in the Company's absolute discretion, the Company elects to treat as covered by this policy.

## Exclusions

The Company will not be liable in relation to Legal Action arising from any:

### 1. Assumed Liability

agreement under which the Insured has agreed to accept a liability which the Insured would not have otherwise had;

### 2. Acts excluded

offence alleged to have been committed:

- (a) whilst in breach of any order made under the Domestic Violence Act 1995 or its amendments;
- (b) under Fisheries legislation.

### 3. Deliberate Events

Legal Action which the Insured has intentionally encouraged.

### 4. Domestic Problems

Legal Action:

- (a) between the Insured and their spouse, ex-spouse, domestic partner or ex-domestic partner;
- (b) by way of criminal prosecution in which a spouse, ex-spouse, domestic partner or ex-domestic partner, or any relative of them or of the Insured, is a complainant/victim
- (c) in relation to dissolution, maintenance, custody, access or property disputes.
- (d) in which more than one person within the definition of the Insured:
  - (i) is involved; and
  - (ii) have conflicting positions and interests.

### 5. Employment Disputes

employment disputes.

### 6. Family Disputes/Wills

dispute concerning a will, bequest, devise, contract to leave assets in a will, probate, Testamentary Promises claim, Family Protection claim, inheritance or gift.

### 7. Fines/Penalties/Damages

finer, penalties, damages of any type or any other form of compensation payment, and interest.

### 8. Government Disputes

by or on behalf of any state agency involving any state-funded grant, income, revenue collecting, income-support, aid, subsidy, surcharge or assistance, including liable parent contributions.

### 9. Prior Costs

Legal Expenses for which the Insured did not first get the Company's written consent.

### 10. Prior Events

Legal Action arising from anything which, as at the date on which the Insured first bought continuous LawSafe insurance from the Company, had already happened or is alleged to have already happened and/or was still happening or is alleged to have still been happening.

### 11. Professional Duties

alleged breach of professional duty, or duty as a director, trustee, or power of attorney;

## Conditions

### 1. Advancement of Costs

If cover has been confirmed in writing then the Company may advance the Insured's Legal Expenses as and when they are incurred.

The Company can immediately stop reimbursing the Insured's Legal Expenses if:

- (a) the Insured unreasonably refuse to follow the Insured's Solicitor's advice about how the Legal Action should be conducted, including advice about making or accepting any offer, compromise or payment, or discontinuing the Legal Action or any step in it; or
- (b) the Insured does not give the Company or the Insured's Solicitor full co-operation and assistance; or
- (c) a barrister of at least 15 years experience advises the Company that the Insured's defence to the Legal Action has no reasonable prospect of being actually or economically successful (including, if the likely Legal Expenses are out of reasonable proportion to the likely outcome): and the Insured declines to accept the Company's written instructions on how to resolve or terminate the Legal Action.

## 2. Appeals

The Company will not be liable for Legal Expenses in relation to any appeal unless the Company:

- (a) receive written notice of the Insured's intention to appeal at least 5 clear days before any time limit for bringing the appeal expires; and
- (b) have given the Company's prior written consent to the appeal.

## 3. Appointing a Solicitor

The Insured must not appoint a Solicitor to defend any Legal Action without first getting the Company's written consent, except in an emergency in which case the Insured should use the Company's emergency assistance service. The Company can:

- (a) withhold or withdraw the Company's consent to any Solicitor whom the Insured proposes to appoint or have appointed;
- (b) require the Insured to appoint a Solicitor from the Company's preferred panel

## 4. Cancelling the Policy

The Insured may cancel this policy at any time by sending the Company written notice. The Company may cancel this policy on the expiry of 14 days written notice sent to the Insured at the address in the Policy Schedule or any other address which the Insured has notified to the Company in writing to replace the address in the Policy Schedule.

Unless the Insured notifies the Company and the Company agree in writing to continue the Insured's cover under this policy, the Insured immediately stops being insured under this policy if the Insured:

- (a) commit any act of bankruptcy; or
- (b) are made bankrupt; or
- (c) make any arrangement with creditors, including a compromise or assignment.

## 5. Correspondence Address

The Insured appoint the person who signed the proposal for this policy as the Insured's agent for the purpose of receiving any Policy Schedule, paying the premium, and receiving or giving notices under this policy, including any notice of cancellation or endorsement. The Company may deal with him/her as if the Company were dealing with the Insured personally, unless the Insured gives the

Company written notice, including full contact details, appointing someone else in his/her place.

## 6. Good Faith

If the Insured put forward a claim which is any way intentionally exaggerated or fraudulent, or if the Insured used any fraudulent means or devices to obtain a benefit under this policy, the Insured will lose the entire benefit of this policy.

## 7. Information Required

In relation to any Legal Action, the Insured must:

- (a) give the Company all information and documents which the Company asks for;
- (b) keep the Company fully and continually informed of all significant developments;
- (c) advise the Company immediately of any offers of compromise, proposals, or recommendations to make any offers or compromise proposals;
- (d) authorise and instruct the Insured's Solicitor to do (a) to (c) above on the Insured's behalf.

## 8. Notice

The Insured must give us immediate notice in writing of any:

- (a) circumstances which might give rise to a claim under this policy, as soon as the Insured becomes aware of them. It does not matter whether or not the Insured believes that:
  - (i) a claim is justified; or
  - (ii) Legal Action is likely.
- (b) notice of any indication that someone intends or may intend to make a claim against the Insured which might result in Legal Action. It does not matter whether or not the Insured believes that:
  - (i) a claim is justified; or
  - (ii) Legal Action is likely.
- (c) claim against the Insured which might result in Legal Action. It does not matter whether or not the Insured believes that:
  - (i) a claim is justified; or
  - (ii) Legal Action is likely.
- (d) document served on the Insured in relation to Legal Action.

## 9. Other Insurance

If at the date on which the Legal Action commenced, the Insured had Legal Expenses cover under another policy, or the Insured is otherwise entitled to indemnity from any other source, (even if an excess applies) the Company does not have to reimburse the Insured's Legal Expenses, even if the other policy has a condition to the same or similar effect, but the Company will provide cover to the Insured until the availability of such other insurance or indemnity is determined provided the Insured co-operates with the Company in reviewing other insurance or indemnity entitlements.

## 10. Recovering Costs

The Insured must;

- (a) let the Company have any amounts which the Insured recovers on account of Legal Expenses; and



- (b) co-operate with and assist the Company in any steps which the Company wants to take at their own cost to recover these amounts.

## 11. Reimbursement

If the Insured is charged with one or more offences arising out of the same general circumstances and are convicted of at least one such offence, and the Company has reimbursed/paid any Legal Expenses relating to the offences, the Company has the right to claim all the Legal Expenses from the Insured.

## 12. Reviewing costs

If the Company instructs the Insured in writing to so do, the Insured must direct their Solicitor to have any account or fee referred to any appropriate officer, authority or body to be taxed, assessed or audited.

## 13. Reasonable Care

The Insured must take all reasonable care and precautions to avoid any circumstances which might give rise to a claim under this policy.

## Definitions

### 1. Legal Action

means any legal proceedings, including appeals, of the type in Section 2 above, in any court, authority or tribunal in New Zealand. But:

- (a) the alleged conduct must have taken place in New Zealand; and
- (b) the Insured must have been first threatened with the legal action during the Policy Year; and
- (c) the Insured must also have notified the Company of the legal action during the Policy Year or within 28 days of its expiry.

### 2. Legal Expenses

means the amount(s) which the Insured had to spend and which it was reasonable for the Insured to spend on Legal Action in relation to Solicitors' fees, expenses and disbursements;

### 3. Policy Schedule

means the current or latest policy schedule for this policy

### 4. Policy Year

means the period in the Policy Schedule.

### 5. Solicitor

means any solicitor, firm of solicitors, barrister or Queens Counsel appointed to act for the Insured in relation to any Legal Action.

### 6. Insured

means employees of the entity named in the Schedule.

SECTION 7

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## Insuring Clause

In consideration of the payment of the premium, in reliance on the written proposal and declaration and any other underwriting information provided (which shall be deemed to be the basis of this Policy), and subject to its terms, conditions, exclusions, memoranda and endorsements, Vero Liability Insurance Limited ("the Company") will indemnify the Insured for legal liability arising from any claim made against the Insured, and notified to the Company during the Period of Insurance stated in the Policy Schedule, in respect of any act, error or omission committed or omitted by the Insured while using the internet, electronic email, intranet or worldwide web or providing internet services for the purpose of the conduct of the Insured's Business as described in the Policy Schedule for:

- (a) infringement or unauthorised use of intellectual property rights or alleged intellectual property rights; or
- (b) defamation; or
- (c) unauthorised use of names (including domain names), trade names, trade address, service marks, service names, titles, slogans, formats, characters, character names, characterisations, plots, musical compositions, performances, logos, artwork, graphics, photographs or programme materials; or
- (d) passing off; or
- (e) breach of confidence or infringement of any right to privacy, including alleged breach of the terms of the Privacy Act 1993; or
- (f) misuse of information which is either confidential or subject to statutory restrictions on use; or
- (g) transmission of any computer virus or 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; or
- (h) any act that belittles the product or work (whether completed or not) of others; or
- (i) unauthorised taking for use of any advertising idea, material, slogan, style or title of others not otherwise insured under the Section.

## Limit of Indemnity and Excess

The Company's total liability including cost and expenses under this Section shall not exceed the Limit of Indemnity stated in the Policy Schedule for any one claim and in the aggregate during the Period of Insurance.

The Insured shall bear the amount of the Excess stated in the Policy Schedule in respect of each and every claim including costs and expenses.

Where more than one claim arises out of the same act or omission or causally connected or interrelated acts or omissions, all of those claims will together constitute one claim for the purposes of determining the Excess.

## Exclusions

The Company will not indemnify the Insured in respect of any claim arising out of or connected with or:

- 1. Asbestos**  
resulting from or in consequence of, asbestos in whatever form or quantity.
- 2. Breach of Patent**  
any alleged breach of Patent.
- 3. Chatrooms**  
any chat rooms, electronic bulletin boards or the Insured's obligations to its employees;
- 4. Fraud**
  - (a) any actual or alleged dishonest, fraudulent, criminal or malicious act by the Insured; or
  - (b) any wilful breach of duty including any breach of statute, contract or duty, or act committed or alleged to have been committed deliberately or with a reckless disregard for the consequences by the Insured or their consultants, contractors, sub-contractors or agents; or
  - (c) any application for indemnity which is false or fraudulent;
- 5. Fines, Penalties**  
punitive, aggravated, liquidated, multiple or exemplary damages, or fines or penalties imposed by law;
- 6. Known Circumstances**  
claims or circumstances:
  - (a) made against, or intimated to the Insured prior to the commencement of the Period of Insurance;
  - (b) notified under any previous Internet Liability policy; or
  - (c) arising out of or connected with any facts or circumstances which:
    - (i) the Insured was aware of prior to commencement of the Period of Insurance, and
    - (ii) a reasonable person would have considered might give rise to a Claim against the Insured;
- 7. Obscene Matter**  
relating to obscene matter of any kind;
- 8. Personal Injury**  
Personal Injury;
- 9. Professional Services**  
brought by or on behalf of any client or customer of the Insured in connection with professional services provided by the Insured;
- 10. Property Damage**  
Property Damage not covered under Insuring Clause (g)
- 11. Radioactivity**  
ionising radiations or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel or the radioactive toxic

explosive or other hazardous properties or any explosive nuclear assembly or nuclear component thereof.

## 12. Retroactive Date

any act, error or omission which occurred prior to the Retroactive Date stated in the Policy Schedule;

## 13. War, Terrorism

death, injury, illness, loss, damage, any cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property under the order of any government or public or local authority; or
- (b) any Act of Terrorism.

Definition: "Act of Terrorism" means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic, or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This Exclusion also excludes death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (a) and/or (b) above.

## Conditions

### 1. Assignment

No assignment of interest under this policy shall bind the Company unless its written consent is endorsed on this policy.

### 2. Cancellation

This policy may be cancelled by the Company at any time by giving written notice by registered mail to the last known address of the Insured. Cancellation will be effective at 4.00pm on the 30<sup>th</sup> day after posting of the written notice. In the event of such cancellation the Company will refund premium pro rated for the unexpired period of insurance.

The policy may be cancelled by the Insured at any time from the date of receipt by the Company of the Insured's written instructions and the Company will refund 80% of the premium pro rated for the unexpired period of insurance.

### 3. Claims

The Insured shall not admit liability for or settle any claim, or incur any costs or expenses, without the prior written consent of the Company which shall be entitled to take

over and to conduct in the name of the Insured (which shall be a condition precedent to the Insured's right to be covered under this Section) the defence or settlement of any claim, including to compromise any counterclaim. Nevertheless neither the Insured nor the Company shall be required to contest any legal proceedings unless a Queen's Counsel (to be mutually agreed upon by the Insured and the Company) shall advise that such proceedings should be contested.

If the Insured shall refuse to consent to any settlement recommended by the Company, and shall elect to contest or continue any legal proceedings, the Company's liability for the claim shall not exceed the amount for which the claim could have been so settled (less the excess stated in the Policy Schedule), plus the costs and expenses incurred up to the date of such refusal.

The Insured shall as a condition precedent to its right to be covered under this Section give to the Company immediate notice in writing of:

- (a) any claim made against the Insured;
- (b) the receipt of notice from any person of any intention to hold the Insured responsible for the results of an alleged negligent act, error or omission;
- (c) any circumstance which the Insured shall become aware which may give rise to a claim or claims under this Section;

irrespective of whether the claim is considered justified and/or the quantum is likely to be within the Excess stated in the Policy Schedule.

### 4. Policy Jurisdiction

This policy shall be governed by the law of New Zealand, the Courts of which shall have exclusive jurisdiction over any dispute.

### 5. Waiver of Privilege

If the Company instructs any lawyer to investigate or defend any claim against the Insured, the Insured authorises the lawyer to provide to the Company any documents, information or advice in respect of the claim, including in relation to indemnity; and the Insured waives any privilege to the extent necessary to give full effect to the Company's entitlement in this respect.

## Definitions

### 1. Insured

means the person, company or other entity named in the Policy Schedule and any Subsidiary Company.

### 2. Subsidiary Company

means any company that is or was:

- (a) controlled by the Insured through legal or beneficial ownership of more than 50% of the issued voting stock; or
- (b) deemed a subsidiary of the Insured by virtue of any applicable legislation or law, including companies held either directly or indirectly through one or more subsidiaries (ie, subsidiaries of subsidiaries).

SECTION 8

# Defence Costs

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## Insuring Clause

In consideration of the payment of the premium, and in reliance on the proposal, declarations, statements and information provided by or on behalf of the Insured (which shall be deemed to be the basis of this Policy) and subject to the terms, conditions and limitations of the Underlying Policy(ies) except where any of these may be over-ridden by the express terms of this Policy, including any endorsement attached to this Policy, Vero Liability Insurance Limited ('the Company') hereby agrees to indemnify the Insured for Defence Costs only in respect of:

- (a) any Hung Claim made against the Insured and reported to the Company during the Period of Insurance; or
- (b) any Insured Claim made against the Insured and reported to the Company during the Period of Insurance where indemnity granted under the Underlying Policy has resulted in its exhaustion or partial exhaustion.

Provided that the alleged:

- (a) event; or
- (b) wrongful act; or
- (c) act, error, omission or conduct

giving rise to the claim against the Insured has occurred on or after the Retroactive Date in the relevant Underlying Policy(ies).

## Limit of Indemnity

The maximum amount payable for any one claim and in the aggregate:

- (a) during the Period of Insurance ; and
- (b) over all Underlying Policies

shall be the Limit of Indemnity stated in the Schedule.

## Conditions

### 1. Cancellation

This policy may be cancelled by the Company at any time by giving written notice by registered mail to the last known address of the Insured. Cancellation will be effective at 4.00pm on the 30<sup>th</sup> day after posting of the written notice. In the event of such cancellation the Company will refund premium pro rated for the unexpired period of insurance.

The policy may be cancelled by the Insured at any time from the date of receipt by the Company of the Insured's written instructions and the Company will refund 80% of the premium pro rated for the unexpired period of insurance.

### 2. Claims Conduct

For the avoidance of doubt, the Company's rights and the Insured's obligations in relation to the conduct and settlement of any Hung Claim or Insured Claim indemnified under this Policy shall be the same as those prevailing under the relevant Underlying Policy(ies).

### 3. Claims Notification

As a condition precedent to its right to be covered under this Policy, the Insured must give notice to the Company in writing as soon as practicable of any claim, notice, information or circumstance which it is obliged to notify

as a condition precedent to its right to be covered under any Underlying Policy(ies).

### 4. Jurisdiction

This Policy shall be governed by the law of New Zealand whose courts shall have exclusive jurisdiction.

### 5. Policy Priority

Indemnity under this Policy is secondary to any indemnity available under an Underlying Policy. In the event that Defence Costs are paid under this Policy in respect of a Hung Claim and the relevant charge on the Underlying Policy under Section 9 of the Law Reform Act 1936 is subsequently released, then the Company shall recover the Defence Costs paid under this Policy from that Underlying Policy up to its limit of indemnity and the Limit of Indemnity under this Policy shall be restored to the extent of such recovery.

### 6. Underlying Policies – Exhaustion

In the event of the partial or total exhaustion of the indemnity, including any automatic or optional reinstatement of limits, available under the Underlying Policy(ies) by reason of the payment of a claim or claims thereunder this Policy shall, in the case of:

- (a) partial exhaustion, pay in excess of the reduced indemnity in the Underlying Policy but only in respect of Defence Costs;
- (b) total exhaustion, remain in force as if it were the Underlying Policy subject to the terms, conditions and exclusions of the Underlying Policy except where any of these may be over-ridden by the express terms of this Policy, including any endorsement attached to this Policy, but only in respect of Defence Costs.

### 7. Underlying Policies –Excess Layers

In the event that:

- (a) the Insured is entitled to indemnity under any excess layer policy or policies above an Underlying Policy then indemnity under this Policy shall only be available upon the exhaustion of each and all such policies except that:
- (b) for any Hung Claim where the Insured is entitled to indemnity under any excess layer policy or policies above an Underlying Policy this Policy shall indemnify Defence Costs up to its Limit of Indemnity until final adjudication on or determination of such claim whereupon, if the amount of the claim established by such adjudication or determination:
  - (i) falls within the aggregate limit of indemnity from both or all such policies and the charge under Section 9 of the Law Reform Act 1936 is consequently released, the Company shall recover the Defence Costs paid under this Policy from such Underlying Policy and any excess layer policy(ies) up to the aggregate limit of indemnity from both or all of such policies and the Limit of Indemnity under this Policy shall be restored to the extent of such recovery or
  - (ii) exceeds the aggregate limit of indemnity under the Underlying Policy and any excess layers then this Policy stands to indemnify such Defence Costs as if it were a primary Defence Costs indemnity.



## 8. Underlying Policies – Excess/Deductible

Any claim under this Policy is subject to the excess or deductible or self insured retention, howsoever described, of the Underlying Policy(ies), provided that where the Insured has reimbursed the Company for any part of such retention under the Underlying Policy(ies) the Insured's liability for such retention under this Policy shall be reduced accordingly.

## Definitions

### 1. Defence Costs

means Any costs and expenses which are necessarily and reasonably incurred by or on behalf of the Insured with the prior written consent of the Company (but shall not include wages, salaries or other remuneration of any Insured) in the investigation, defence, settlement or appeal of any claim and which would be indemnified under the Underlying Policy.

### 2. Hung Claim

means Any claim in respect of which the Insured has indemnity for Defence Costs under the Underlying Policy(ies), but because such Policy(ies) is/are subject to a charge under Section 9 of the Law Reform Act 1936 Defence Costs cannot be indemnified under that/these Policy(ies).

### 3. Insured

means the Insured as defined in the Underlying Policy(ies).

### 4. Insured Claim

means Any claim in respect of which the Insured has indemnity for Defence Costs under the Underlying Policy(ies).

### 5. Underlying Policy(ies)

means the policies which may be subject to a charge that are included in this Combined Liability Package.

SECTION 9

# Employment Disputes

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## Insuring Clause

In consideration of payment of the premium, in reliance on the proposal and declarations (which shall be deemed to be the basis of this policy) and subject to its terms, conditions, exclusions, warranties and endorsements, Vero Liability Insurance Limited ("the Company") will pay:

- (a) on behalf of the Insured all claims for Damages made against the Insured by any current, former or prospective Employee alleging any breach by the Insured, or any person now or previously employed by the Insured, of any Employment Agreement, the Privacy Act 1993 and/or the Human Rights Act 1993; and
- (b) Defence Costs;

Provided that:

- (a) all such claims are notified to the Company during the Period of Insurance stated in the Schedule, or within 60 days of the it's expiry, or for any subsequent period for which the policy is renewed or extended; and
- (b) any such breach has taken place or is alleged to have taken place on or after the Retroactive Date stated in the Schedule.

## Limit of Indemnity and Excess

- 1. The Company's liability under this policy applies only to that part of each claim which exceeds the Excess stated in the Schedule.
- 2. The Company's aggregate liability under this policy in respect of Damages and Defence Costs, howsoever arising, will not exceed the Limit of Indemnity stated in the Schedule.
- 3. All claims arising out of any one breach or inter-related breaches are deemed to be one claim. Any claim arising from inter-related breaches is deemed to have originated in the earliest Period of Insurance in which any breach is first notified to the Company.

## Extensions

The terms of this policy apply to each extension to this policy unless expressly stated otherwise.

### 1. Innocent Non-disclosure

In the event the Company is entitled to avoid this policy from inception or from the time of any variation in cover, the Company may maintain this policy in force, provided that:

- (a) the consequences of any matter which ought to have been disclosed at inception or at the time of any variation in cover are excluded from cover;
- (b) the Insured can establish to the satisfaction of the Company that such non-disclosure or misrepresentation was innocent;
- (c) the terms of the current Period of Insurance shall be adjusted, at the discretion of the Company, to those which would have applied had such notification or representation been made at inception or at the time of variation.

### 2. Injunctions and Reinstatement Defence Costs

The Company will also indemnify the Insured for reasonable legal costs and legal expenses incurred with its prior written consent in the defence or settlement of any claim against the Insured by any current, former or prospective Employee seeking either an Injunction,

Reinstatement, or an order from the Human Rights Review Tribunal, Employment Relations Authority, Employment Court or any other Court or Tribunal authorised to make orders under the Human Rights Act 1993 or the Privacy Act 1993 or the Employment Relations Act 2000, provided that:

- (a) the Company's liability for any such legal costs and legal expenses shall form part of and not be in addition to the Limit of Indemnity stated in the Schedule;
- (b) the Company will not indemnify the Insured for the costs of complying with any injunction, any order for Reinstatement or any order of the Human Rights Review Tribunal, Employment Relations Authority, Employment Court or any other Court or Tribunal that is authorised to make orders under the Human Rights Act 1993 or the Privacy Act 1993 or the Employment Relations Act 2000.

### 3. Fines and Penalties

Notwithstanding Exclusion 6 – Costs of Complying and Exclusion 8 – Fine. Penalty of this policy, the Company will also indemnify the Insured for Defence Costs and any fine or penalty arising out of a breach of any of the following sections of the Employment Relations Act 2000:

- (a) Section 34: Providing information in bargaining for collective agreement;
- (b) Section 62: Employer's obligations in respect of new employee who is not a member of union;
- (c) Section 63A: Bargaining for individual employment agreement or individual terms and conditions in employment agreement;
- (d) Section 98: Record of strikes and lockouts;
- (e) Section 130: Wages and time records;

provided that the Company's liability under this Extension shall form part of and not be in addition to the Limit of Indemnity stated in the Schedule.

## Exclusions

The Company shall not pay any claim:

### 1. Accident Compensation

for any costs or compensation for which cover to any extent is provided by the accident compensation legislation, or would be so provided but for the Insured either being an Exempt Employer in terms of any such legislation or having taken out any contract of insurance pursuant to such legislation;

### 2. Asbestos

resulting from asbestosis and/or related diseases, or for any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from or in consequence of, asbestos in whatever form or quantity;

### 3. Bodily Injury

for bodily injury, sickness, disease or death of any person, or for damage to or destruction of any tangible property, including loss of use.

### 4. Company's Advice

directly or indirectly caused or contributed to by or arising from the dismissal, disciplining, or manner of

dealing with any Employee unless before such dismissal, disciplining, or dealing, the Insured obtained and acted in accordance with the Company's advice or the advice of an employment law practitioner whose engagement to act in that matter has been approved by the Company in writing;

## 5. Copyright

for breach of copyright, design, trademark, confidential information or patent;

## 6. Cost of Complying

for costs incurred in complying with any Injunction or any order for Reinstatement of any Employee or with any order of the Employment Relations Authority, Employment Court, Human Rights Review Tribunal, or any other Court or Tribunal authorised to make orders under the Human Rights Act 1993, the Employment Relations Act 2000 or the Privacy Act 1993;

## 7. Defamation

resulting from defamation or alleged defamation;

## 8. Fine, Penalty

for any fine or penalty;

## 9. Employment Agreement

for any Remuneration payable under an Employment Agreement, including any failure to pay compensation or adequate compensation on termination of employment;

## 10. Fraud

for any alleged deliberate, fraudulent or intentionally criminal act or omission of the Insured, or of any person or entity which has a beneficial interest in the Insured or its stated predecessors in business, other than any person at any time employed by the Insured;

## 11. Harassment

arising from allegations of harassment, whether sexual or otherwise, oppression, duress, intimidation, criminal conduct or deliberate breach of the provisions of the Employment Relations Act 2000 committed or condoned by a shareholder, partner, director, officer or proprietor of the Insured;

## 12. "Leaky Buildings" – Moisture or Water Penetration, Building Defects

arising from any liability for, or to fulfil any obligation in respect of any claim or defence costs, which are directly or indirectly caused by or contributed to, or arises directly or indirectly out of:

- (a) the action or effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure; or
- (b) any cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposal of, or in anyway responding to or assessing the effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or similar or like forms, in any building or structure; or
- (c) the failure of any building or structure to meet or perform to the requirements of the New Zealand Building Code contained in the first schedule to the Building Regulations 1992 (or any amendment or substitution thereof) in relation to:

- (i) external water or moisture; or
- (ii) either durability or protection from external water or moisture entering that building or structure, or the effects thereof.

## 13. Prior Circumstances

for any matter of which the Insured is aware, or ought reasonably to be aware, prior to the commencement of the Period of Insurance, and which may give rise to a claim against it;

## 14. Prior Claims

made, threatened or in any way intimated against the Insured prior to the commencement of the Period of Insurance;

## 15. Prior Legal Advice

for any legal fees or related expenses incurred as a result of obtaining legal advice prior to the submission of a grievance to or the issue of proceedings against the Insured (whichever shall be first);

## 16. Prior Litigation

for any liability arising out of any litigation in existence at the commencement of the Period of Insurance.

## 17. Profit or Advantage

for the return by the Insured of any remuneration, profit or advantage to which it was not legally entitled;

## 18. Radioactivity

directly or indirectly occasioned by, happening through or in consequence of ionising radiations or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel or the radioactive toxic explosive or other hazardous properties or any explosive nuclear assembly or nuclear component thereof;

## 19. Suspension

arising from allegations that the Insured has locked any Employee out, suspended the employment of any striking or non-striking Employee, or employed any other person to perform the work of a striking or locked out Employee;

## 20. Union Access

arising from allegations that the Employer has refused any Union access to any Employee, failed to deal with a Union in good faith, refused to bargain with a Union, failed to bargain with a Union or any Employee in good faith, bargained unfairly with any Employee, refused to allow any Employee to join a Union, refused to deduct Union membership fees from any Employee's pay, or refused to allow any Employee to attend a Union meeting or take employment relations education leave;

## 21. War, Terrorism

for death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power or confiscation or nationalisation or requisition or destruction of or

damage to property under the order of any government or public or local authority; or

- (b) any act of terrorism.

Definition: "act of terrorism" means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic, or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This exclusion also excludes death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (i) and/or (ii) above.

For the purpose of determining the applicability of the exclusions, no fact pertaining to, knowledge possessed by, conduct of, dishonesty of or breach by any Insured, shall be imputed to any other Insured.

## Conditions

### 1. Assignment

No assignment of interest under this policy shall bind the Company unless its written consent is endorsed on this policy.

### 2. Authorisation

By acceptance of this policy, the party which signs the proposal agrees to act on behalf of the Insured with respect to giving or receiving of notice of claim or termination, payment of premiums and receiving of any return premiums that may become due under this policy, and acceptance of endorsements and any other notice provided for in this policy, and the Insured agrees that the party so nominated shall act on its behalf.

Provided always that the above authorisation is in addition to and not in derogation of the rights, powers and obligations of the Insured under this policy and the authorisation conferred imposes no additional obligation upon the party so nominated with respect to any of the matters set out.

### 3. Cancellation

This policy may be cancelled by the Company at any time by giving written notice by registered mail to the last known address of the Insured. Cancellation will be effective at 4.00pm on the 30<sup>th</sup> day after posting of the written notice. In the event of such cancellation the Company will refund premium pro rated for the unexpired period of insurance.

The policy may be cancelled by the Insured at any time from the date of receipt by the Company of the Insured's written instructions and the Company will refund 80% of the premium pro rated for the unexpired period of insurance.

### 4. Claims

- (a) The Insured shall as a condition precedent to its right to be covered under this policy give to the

Company notice in writing as soon as practicable of:

- (i) any claim made against the Insured; or
- (ii) the receipt of notice from any person or party of any intention to hold the Insured responsible for any matter which may give rise to a claim or claims under this policy; or
- (iii) any circumstance which the Insured shall become aware which may give rise to a claim or claims under this policy;

irrespective of whether the claim is considered justified and/or the quantum is likely to be within the Excess stated in the Schedule.

- (b) The insurance provided by this policy ceases absolutely at the expiry of the Period of Insurance. However, provided that notice referred to in 4(a) above has been given to the Company prior to the expiration of the Period of Insurance, any claim arising from the notified circumstances, which is subsequently made after the expiration of the Period of Insurance, shall be deemed to have been made during the subsistence of this policy.

- (c) The Insured shall do, and concur in doing, all things reasonably practicable to avoid or diminish any claim under this policy at its cost and, on request, give to the Company or its authorised representatives all such information and assistance as they may reasonably require. The Company shall have the right to assume the conduct and control of the defence or settlement of any claim, and any counterclaim (which shall be a condition precedent to the Insured's right to be covered under this Policy).

- (d) The Insured shall not in relation to any claim under this policy:

- (i) make any admission of liability;
- (ii) incur any expense;
- (iii) make any payment or settlement of liability;

without the prior written consent of the Company. Such consent shall not be unreasonably withheld. The Company shall not be liable for any admissions, expenses, payments or settlements made without its consent.

- (e) If the Insured shall refuse to consent to any settlement recommended by the Company, and shall elect to contest or continue any legal proceedings, the Company's liability for the claim shall not exceed the amount for which the claim could have been so settled (over and above the Excess stated in the Schedule), including Defence Costs incurred up to the date of such refusal.

### 5. Fraud

If any claim is in any respect fraudulent, if any false declaration is made or used in support of any claim, or if any fraudulent means or devices are used by the Insured or by anyone acting on its behalf to obtain any benefit under this policy, all benefits will be forfeited.

### 6. Jurisdiction

This policy shall be governed by the law of New Zealand, the Courts of which shall have exclusive jurisdiction over any dispute.

### 7. Other Insurance

If, at the time of any claim arising under this policy, there is any other valid and collectable insurance covering all

or part of the same claim, this policy will apply to the amount in excess of that recoverable or in fact recovered, whether such insurance is stated to be primary or excess, unless written only as specific excess insurance over the Limit of Indemnity under this policy.

## 8. Territory

This policy only provides cover for breaches occurring anywhere in New Zealand.

## 9. Waiver of Privilege

If the Company instructs any lawyer to investigate or defend any claim against the Insured, the Insured authorises the lawyer to provide to the Company any documents, information or advice in respect of the claim, including in relation to indemnity; and the Insured waives any privilege to the extent necessary to give full effect to the Company's entitlement in this respect.

## Definitions

Words or phrases given special meaning in the Schedule attaching to this policy have the same meaning wherever they appear in the policy. In addition:

### 1. Damages

means compensation pursuant to the:

- (a) Employment Relations Act 2000;
- (b) Privacy Act 1993;
- (c) Human Rights Act 1993;

but shall not mean any fine, penalty, or injunctive remedy or costs awarded or incurred in relation to any fine, penalty or injunctive remedy.

### 2. Defence Costs

means costs, charges and expenses incurred in preparation for, attendance at, and representation at:

- (a) investigations, inquiries, hearings, conferences, administrative proceedings, regulatory proceedings, commissions, examinations, prosecutions, reviews, complaint or disciplinary hearings, or other proceedings;
- (b) defence and settlement of legal actions, claims, or proceedings and appeals therefrom; the cost of appeal, attachment or similar bonds; and legal counsels' fees and experts' fees;

relating to any breach or alleged breach to which this insurance applies. However, Defence Costs shall not include regular or overtime wages, salaries or fees of the Insured.

### 3. Employee

shall mean a person deemed to be employed by the Insured pursuant to the terms of the Employment Relations Act 2000.

### 4. Employment Agreement

shall mean any contract of service between the Insured and any Employee.

### 5. Injunction

shall mean an interim or permanent order of the Employment Relations Authority, Employment Court, District Court or High Court:

- (a) that an Employee be reinstated to a position with the Insured that he or she formerly occupied;
- (b) restraining the Insured from instituting or continuing disciplinary or dismissal procedures.

### 6. Insured

means:

- (a) the entity stated in the Schedule and, if a partnership, each of the partners;
- (b) any Subsidiary Company of the Insured;
- (c) in respect of any partner entitled to cover under this policy as described in (a) above who is deceased, incompetent, insolvent or bankrupt, the:
  - (i) estates, heirs, legal representatives or assigns;
  - (ii) current or former spouses, de facto spouses or same sex partners;

but only in relation to alleged negligence on the part of any such partner.

Each person or entity is insured jointly.

### 7. Period of Insurance

means the period stated in the Schedule.

### 8. Reinstatement

shall mean the restoration of an Employee to a position pursuant to an order under the Employment Relations Act 2000.

### 9. Remuneration

shall mean wages, salary, holiday pay, allowances (whether reimbursing or otherwise) benefits and all other emoluments.

### 10. Subsidiary Company

means any company that is or was:

- (a) controlled by the Insured through legal or beneficial ownership of more than 50% of the issued voting stock; or
- (b) deemed a subsidiary of the Insured by virtue of any applicable legislation or law, including companies held either directly or indirectly through one or more subsidiaries (ie, subsidiaries of subsidiaries).

### 11. Union

shall mean any society registered with the Registrar of Unions or any society which has applied to the Registrar of Unions for registration.



## **Complaint handling process**

If You are not happy, We want to know so that We can help.

Our goal is to have loyal and happy customers. We want our customers to be completely satisfied in all dealings with Us.

TLC is committed to:

- (a) listening to what Our customers and brokers tell Us
- (b) being accurate and honest in telling customers and brokers about Our products and services
- (c) communicating clearly with Our customers and brokers, and
- (d) resolving any customer complaints or concerns.

This is part of Our commitment to the General Insurance Code of Practice.

Customers are encouraged to contact Us with the following messages:

### **By Phone**

"If You have a complaint please preferably phone the number on the back of Your Policy wording or call 0800 852 467 weekdays 8.30am to 5.00pm. Here You can discuss Your concern with one of Our team members."

### **In Writing**

"Send Us the full details of Your complaint, including any support documents and explain what You would like Us to do."

Mail to: P O Box 7006, Tauranga, New Zealand.

### **In Person**

If You would like to come in to talk to us face to face, please call and We will arrange an appointment for a meeting.

Phone 0800 852 467 for an appointment.

### **For Further Information**

Our knowledge, expertise and experience are always available to Your broker and You. If You need any further information about this Policy, or any other product or service We provide, then contact Your broker or TLC at:

Address:	PO Box 7006, Tauranga, New Zealand
Office Phone:	+64 7 544 6686
Facsimile:	+64 7 544 6687
Freephone:	0800 TLC INS (0800 852 467)
Email:	info@tlcinsurance.co.nz
Website:	www.tlcinsurance.co.nz



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