



# Management Liability Insurance Policy



## ABOUT THIS POLICY

This Policy is made up of this document, the Schedule, the Proposal Form and any Endorsements and they should all be read as one document.

This Policy is a package policy including the following Coverage Sections:

<b>1. Directors and Officers Liability</b>	<b>Pages</b>	<b>3 – 14</b>
<b>2. Corporate Liability</b>	<b>Pages</b>	<b>15 – 21</b>
<b>3. Employment Practices Liability</b>	<b>Pages</b>	<b>22 – 28</b>
<b>4. Crime</b>	<b>Pages</b>	<b>29 – 43</b>

In addition, this Policy also has the following General Terms and Conditions:

<b>5. General Terms and Conditions</b>	<b>Pages</b>	<b>44 – 57</b>
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You are only insured for those Coverage Sections that have details shown in the Schedule.

The terms and conditions of each Coverage Section apply only to such Coverage Section and should be read in conjunction with the General Terms and Conditions. Where terms defined within the Coverage Sections appear within the General Terms and Conditions, the definition contained in the Coverage Section shall apply for the purposes of determining coverage.

If the terms and conditions within a Coverage Sections conflict with the General Terms and Conditions, the terms and conditions of such Coverage Section take priority.

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**MANAGEMENT LIABILITY INSURANCE POLICY**  
**Directors and Officers Liability Coverage Section**

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The terms and conditions of this Coverage Section apply only to this Coverage Section and should be read in conjunction with the General Terms and Conditions. Where terms defined within this Coverage Section appear within the General Terms and Conditions, the definition contained herein shall apply for the purposes of determining coverage. If the terms and conditions within this Coverage Section conflict with the General Terms and Conditions, the terms of this Coverage Section take priority.

In consideration of the premium charged and subject to the General Terms and Conditions and this Coverage Section, the **Underwriters** and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

**SECTION 1: INSURING AGREEMENT**

- 1.1** The **Underwriters** shall pay on behalf of any **Insured Person** the **Loss** arising from a **Claim** first made during the **Policy Period** (or Extended Reporting Period, if applicable) against such **Insured Person** for any **Wrongful Act**, unless the **Company** is required or permitted to pay such **Loss** to or on behalf of the **Insured Person** as indemnification.
- 1.2** The **Underwriters** shall pay on behalf of the **Company** the **Loss** arising from a **Claim** first made during the **Policy Period** (or Extended Reporting Period, if applicable) against any **Insured Person** for any **Wrongful Act**, if the **Company** pays such **Loss** to or on behalf of the **Insured Person** as indemnification.

**SECTION 2: AUTOMATIC EXTENSIONS**

**2.1 Continuous Cover**

This Coverage Section extends cover for any **Claim** arising out of, based upon or attributable to a **Circumstance** which could have been, but was not, notified by the **Insured** under any prior policy provided by the **Underwriters** and which is first notified to the **Underwriters** during the **Policy Period**, provided that:

- (a) the failure by the **Insured** to notify such **Circumstance** under any such prior policy was not fraudulent; and
- (b) the **Underwriters** have the discretion to apply either the terms and conditions of this Policy or the terms and conditions of the prior policy in effect when the **Circumstance** first arose; and
- (c) the **Insured's** entitlement to indemnity will be reduced by the extent of any prejudice to the **Underwriters** as a result of the **Insured's** failure to notify such **Circumstance** under any such prior policy.

## 2.2 Loss Mitigation

- (a) If an **Insured Person** reasonably determines during the **Policy Period** (or Extended Reporting Period, if applicable), that urgent action is needed in order to avoid or minimise the risk of a **Claim** for which coverage under this Coverage Section would apply, the **Insured** shall be entitled to retain a loss mitigation advisor to provide services in connection with avoiding or minimising such risk.
- (b) The **Underwriters** shall pay the **Insured** for the reasonable fees, costs and expenses incurred by or on behalf of the **Insured**, with the **Underwriters'** prior written consent (such consent not to be unreasonably withheld or delayed), for such loss mitigation services.
- (c) All such fees, costs and expenses are subject to the Loss Mitigation Sublimit of Liability set forth in Item 5 of the Schedule.

## 2.3 Public Relations Costs

- (a) The **Underwriters** shall pay the **Reputation Costs** incurred by or on behalf of an **Insured Person**, with the **Underwriters'** prior written consent (such consent not to be unreasonably withheld or delayed), as a result of a negative public statement made about such **Insured Person** by any regulator during the **Policy Period** (or Extended Reporting Period, if applicable).
- (b) All **Reputation Costs** are subject to the Public Relations Sublimit of Liability set forth in Item 5 of the Schedule.

## 2.4 Emergency Costs

If the **Underwriters'** prior written consent cannot be obtained within a reasonable time prior to any **Defence Costs** or any **Reputation Costs** being incurred by or on behalf of an **Insured**, the **Underwriters** shall retrospectively approve such **Defence Costs** or **Reputation Costs**, up to any applicable Limit of Liability or Sublimit of Liability set forth in this Policy; however, such approval shall be provided only for those **Defence Costs** or **Reputation Costs** incurred during the forty-eight (48) hour period commencing from the time such costs are first incurred by an **Insured**.

## 2.5 Outside Directorship Extension

This Coverage Section affords coverage for **Claims** brought against an **Insured Person** who at the specific request or direction of a **Company** acts as a director, officer, trustee, governor or equivalent thereof of an **Outside Entity**, but only while that person is acting in their capacity as such. Any such person shall be referred to herein as an "**Outside Entity Insured Person**".

## 2.6 Extended Reporting Period: Retired Insured Persons

- (a) This Coverage Section affords an Extended Reporting Period, for a period equal to any applicable statute of limitations, to any **Insured Person** who retires or resigns during the **Policy Period**, provided that this Coverage Section is neither renewed nor replaced with any other directors and officers liability cover. This Extended Reporting Period shall apply solely to the coverage provided by Insuring Agreement 1.1, Automatic Extension 2.2 and Automatic Extension 2.3.

- (b) This Extended Reporting Period shall not be available to an **Insured Person**: (a) who retires or resigns due to an **Organisational Change**; or (b) who has been disqualified from holding his or her position with a **Company**.
- (c) No additional premium shall be charged or payable for this Extended Reporting Period.

## 2.7 Estate Extension

This Coverage Section affords coverage for any **Claim** for a **Wrongful Act** of an **Insured Person** if such **Claims** are made against the estates, heirs, legal representatives or assigns of a deceased **Insured Person** or the legal representatives or assigns of an **Insured Person** who is incompetent, insolvent or bankrupt. Such coverage is afforded only to the extent such **Claim**, if made against the **Insured Person**, would have been covered by this Coverage Section in the absence of such **Insured Person's** death, incompetence, insolvency or bankruptcy.

## 2.8 Marital and Domestic Partner

This Coverage Section affords coverage for any **Claim** for a **Wrongful Act** of an **Insured Person** if such **Claims** are made against such **Insured Person's** lawful spouse or domestic partner (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) solely by reason of such person's status as an **Insured Person's** lawful spouse or domestic partner, or such person's ownership interest in property which the claimant seeks as recovery for a **Wrongful Act** of such **Insured Person**. Accordingly, any amount which the **Insured Person's** lawful spouse or domestic partner becomes legally obligated to pay by reason of such **Claim** shall be treated as **Loss** which the **Insured Person** is legally obligated to pay.

## 2.9 Occupational Health and Safety

The **Underwriters** shall pay on behalf of an **Insured Person** any **Defence Costs** subject to the Occupational Health and Safety Sublimit of Liability set forth in Item 5 of the Schedule arising from:

- (a) an official investigation or enquiry alleging a breach of New Zealand's Health and Safety in Employment Act 1992 or any amendment thereto; or
- (b) **Corporate Manslaughter Proceedings**.

Exclusion 4.4 of this Coverage Section shall not apply to this Automatic Extension 2.9.

Section 4.4(i) of the General Terms and Conditions shall not apply to this Automatic Extension 2.9.

## 2.10 Superannuation Trustees

The **Underwriters** shall pay on behalf of an **Insured Person** any **Loss** arising from any **Claim** made against an **Insured Person** in their capacity as trustee of the **Company's** own superannuation fund, pension fund or employee benefits programme.

## 2.11 Compensation for Attendance

The **Underwriters** shall pay the **Insured** for the cost of attendance by any **Employee, Executive**, principal, partner or member of the **Named Insured** or any **Subsidiary** at a formal court hearing or formal interview conducted in connection with a **Claim** or **Circumstance** notified to the **Underwriters** where such attendance is considered by the **Underwriters** to be necessary or beneficial to reduce liability which may result in a payment under this Policy; provided that:

- (a) the **Underwriters** have given prior written consent to such attendance, such consent to be obtained from the **Underwriters** as a condition precedent to any entitlement to indemnity;
- (b) indemnity for such costs shall not exceed \$500 NZD per **Executive**, partner, partner or member per day and \$250 NZD per **Employee** per day; and
- (c) the total indemnity payable under this Automatic Extension 2.11 shall be subject to the Compensation for Attendance Sublimit of Liability in the set forth in Item 5 of the Schedule.

This Automatic Extension 2.11 is not subject to the Excess as set forth in Section 4. of the General Terms and Conditions.

## 2.12 Pecuniary Penalties

The **Underwriters** shall pay on behalf of an **Insured Person**, subject to the Pecuniary Penalties Sublimit of Liability set forth in Item 5 of the Schedule, to the extent permitted by law, any pecuniary penalties awarded against an **Insured Person** under the laws of the jurisdictions of Australia and New Zealand.

## 2.13 Investigation Costs

The **Underwriters** shall pay on behalf of an **Insured Person** any **Investigation Costs** in respect of any **Investigation**, subject to the Investigation Costs Sublimit of Liability set forth in Item 5 of the Schedule.

## 2.14 Extradition

The **Underwriters** shall pay on behalf of an **Insured Person** subject to the Extradition Sublimit of Liability set forth in Item 5 of the Schedule, to the extent permitted by law, **Extradition Costs** or **Civil or Bail Bond Expenses** in respect of an **Extradition**.

## 2.15 Pollution Defence Costs

Notwithstanding Exclusion 4.8, the **Underwriters** shall pay on behalf of an **Insured Person** subject to the Pollution Defence Costs Sublimit of Liability set forth in Item 5 of the Schedule, **Defence Costs** in respect of any **Claim** made against such **Insured Person** for any **Wrongful Act** in respect of the discharge, dispersal, release or escape of **Pollutants**.

## 2.16 Additional Limit of Liability for Non-Executive Directors

- (a) This Coverage Section affords an additional limit of liability for **Insured Persons** who are non-executive directors of the **Company** (the "Additional Limit of Liability") that shall apply to the

coverage provided by Insuring Agreement 1.1. The Additional Limit of Liability is set forth in Item 5 of the Schedule.

- (b) The Additional Limit of Liability shall apply only after:
- (i) the limit of liability for this Coverage Section, set forth in Item 3A of the Schedule, has been fully exhausted due to the payment of **Loss**; and
  - (ii) the **Insureds** have paid the full amount of any applicable Excess; and
  - (iii) any other valid and collectible insurance written as excess over the coverage provided by this Coverage Section has been fully exhausted due to the payment of loss thereunder.

### 2.17 Preservation of Right of Indemnity

In the event and to the extent that the **Company** or an **Outside Entity** is permitted or required to indemnify any **Insured Persons** for **Loss** covered by this Coverage Section, but for whatever reason fails or refuses to do so, then the **Underwriters** shall pay the **Loss** on behalf of the **Insured Persons**. In such event, the Excess applicable to Insuring Agreement 1.2, as specified Item 4 of the Schedule, shall be borne by the **Company**. In the event of the **Company** being placed in administration, receivership or liquidation (other than voluntary liquidation), no Excess amount shall apply.

## SECTION 3: DEFINITIONS

**3.1 “Civil or Bail Bond Expenses”** means a reasonable fee or premium necessary to obtain a bond or other similar form of financial guarantee, in respect of obligations as to a specific security or collateral placed upon the **Insured Person** by a civil or criminal court in connection with an **Extradition**, and excluding any form of actual security or collateral itself.

**3.2 “Claim”** means any:

- (a) written demand;
- (b) judicial, administrative or regulatory proceeding, whether civil or criminal;
- (c) arbitration or mediation proceeding commenced against an **Insured** by service of a demand for arbitration or mediation;
- (d) **Investigation**; or
- (e) official request for **Extradition**, or the execution of a warrant for the arrest of any **Insured Person** where such execution is an element of **Extradition**.

**3.3 “Corporate Manslaughter Proceeding”** means a formal criminal proceeding against an **Insured Person** for manslaughter in their capacity as an **Executive** and directly related to the business of the **Company**.

**3.4 “Defence Costs”** means any of the following amounts incurred by the **Insured** with the prior written consent of the **Underwriters** (such consent not to be unreasonably withheld or delayed):

- (a) reasonable fees, costs, charges or expenses resulting from the investigation, defence or appeal of a **Claim**; and
- (b) fees, costs, charges or expenses incurred by the **Insured** at the specific written request of the **Underwriters** to assist the **Underwriters** in the investigation, defence or appeal of a **Claim**.

**“Defence Costs”** does not include any:

- (i) compensation or benefits of any **Insured Person** or any overhead expenses of a **Company**; or
- (ii) fees, costs, charges or expenses incurred by the **Insured** prior to the date a **Claim** or any other matter or event for which coverage is provided by this Policy is first reported to the **Underwriters**, except as otherwise provided under Automatic Extension 2.4.

**3.5 “Employee”** means any natural person who was, now is or shall be a full-time, part-time, seasonal or temporary employee of the **Company**.

**“Employee”** shall not include any **Executive**, principal, partner or member of the **Company**.

**3.6 “Employment Practices Breach”** means any:

- (a) breach of employment laws or any other legal provisions or duties whether arising under statutory law, common law or otherwise, relating to any natural person’s actual or prospective employment relationship with a **Company**; or
- (b) discrimination or harassment of any natural person who is a customer, client, vendor, supplier, creditor, tenant or service provider or other business invitee of a **Company**.

**3.7 “Executive”** means any:

- (a) past, present or future director or officer of the **Company**; or
- (b) past, present or future chief legal officer, controller, “de facto” director, shadow director, risk manager, director of investor relations or member of a **Company** or any other person in a functionally equivalent or comparable position.

**3.8 “Extradition”** means any formal process under the Extradition Act 1999 or any amendments thereto requesting or seeking to extradite an **Insured Person** from one country to another country for trial or otherwise to answer any accusation, including but not limited to any related appeal, any judicial review applications challenging the designation of a territory for the purposes of extradition law, any challenge or appeal of any extradition decision by the responsible governmental authority or similar court.

**3.9 “Extradition Costs”** means any reasonable legal fees, costs and expenses incurred by an **Insured Person** with the prior written consent from the **Underwriters** (not to be unreasonably withheld) to obtain legal advice or to bring or defend proceedings including by way of judicial review or other challenge to the decision to order an **Insured Person’s Extradition** and to pursue appeals.

**3.10 “Insured”** means any **Company** and any **Insured Person**.

**3.11 “Insured Person”** means any:

- (a) **Executive**;
- (b) **Employee**, but only during such time as the **Claim** against such **Employee** is also made against an **Executive**;
- (c) natural person serving as a representative of an entity that serves as a director of a **Company**;
- (d) past, present or future trustee of a superannuation fund, pension fund or employee benefits programme established for the sole benefit of an **Employee**;
- (e) prospective director of a **Company** named in any listing particulars, prospectus or similar offering document; or
- (f) **Outside Entity Insured Person** in accordance with Automatic Extension 2.5.

**3.12 “Investigation”** means any formal civil, criminal, administrative or regulatory investigation into the conduct of an **Insured Person** in their capacity as an **Executive** of the **Company**, which is commenced by the filing or issuance of a notice of charges, subpoena or formal investigative order.

**3.13 “Investigation Costs”** means any reasonable fees, costs, charges and expenses (other than remuneration payable to any **Insured Person** or the cost of their time or the costs or overhead of any **Company**) incurred with **Underwriters’** written consent, such consent not to be unreasonably withheld or delayed, by or on behalf of an **Insured Person** directly in connection with such **Insured Person** preparing for an **Investigation**.

**3.14 “Loss”** means:

- (a) damages, settlements or judgments;
- (b) pre-judgment or post-judgment interest;
- (c) costs or fees awarded in favour of the claimant;
- (d) punitive or exemplary damages, but only to the extent that such damages are insurable under the applicable law most favourable to the insurability of such damages;
- (e) **Defence Costs**; and
- (f) any amounts for which cover is provided pursuant to Section 2, AUTOMATIC EXTENSIONS.  
“**Loss**” does not include:
  - (i) amounts for which the **Insureds** are not legally liable;
  - (ii) fines or penalties imposed by law, except as otherwise provided by (d) above and Automatic Extension 2.12;

- (iii) taxes, except as provided by Section 7.9 of the General Terms and Conditions;
- (iv) the multiple portion of any multiplied damage award; and
- (v) amounts deemed uninsurable under applicable law.

**3.15 “Outside Entity”** means any:

- (a) not-for-profit entity; and
- (b) other entity listed as such by endorsement to this Policy.

**“Outside Entity”** does not include any **Company**.

**3.16 “Reputation Costs”** means the reasonable fees, costs and expenses charged by any public relations firm, crisis management firm or law firm retained by or behalf of an **Insured Person**, to mitigate the adverse effects to such **Insured Person’s** reputation as a result of a negative public statement made about him or her by a regulator.

**3.17 “Securities Claim”** means a **Claim**, except any administrative or regulatory proceeding against, or investigation of, a **Company**, alleging a breach of any laws (statutory or common), rules or regulations regulating securities, including but not limited to, the purchase or sale, or offer or solicitation of an offer to purchase or sell securities which is brought:

- (a) by any person or entity alleging, arising out of, based upon or attributable to the purchase or sale, or offer or solicitation of an offer to purchase or sell, any securities of a **Company**;
- (b) by a security holder of a **Company** with respect to such security holder’s interest in securities of such **Company**; or
- (c) derivatively on behalf of a **Company** by a security holder of such **Company**.

Notwithstanding the foregoing, **“Securities Claim”** shall include any administrative or regulatory proceeding against a **Company**, but only if and only during the time that such proceeding is also commenced and continuously maintained against an **Insured Person**.

**3.18 “Wrongful Act”** means any:

- (a) actual or alleged act, error, omission, neglect, breach of duty, breach of trust, misstatement, or misleading statement by an **Insured Person** or in his or her capacity as such;
- (b) actual or alleged **Employment Practices Breach** by an **Insured Person** in his or her capacity as such; or
- (c) matter claimed against an **Insured Person** solely by reason of his or her status as such.

## SECTION 4: EXCLUSIONS

This Coverage Section shall not cover any **Loss** in connection with any **Claim**:

### 4.1 Personal Profit

arising out of, based upon or attributable to the gaining of any personal profit or financial advantage or improper or illegal remuneration by the **Insured**, if a final, non-appealable judgment or adjudication in the underlying action or any formal written admission by an **Insured Person** establishes that such **Insured** was not legally entitled to such profit or advantage or that such remuneration was improper or illegal.

### 4.2 Fraud

arising out of, based upon or attributable to any criminal or fraudulent act or any wilful breach of law by the **Insured**, if a final, judgment or adjudication or any formal written admission by an **Insured Person** establishes that such act or breach occurred.

In determining the applicability of Exclusions 4.1 and 4.2, the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, any **Insured Person** shall not be imputed to any other **Insured Person**.

### 4.3 Asbestos

arising out of, based upon or attributable to:

- (a) the actual, alleged or threatened presence, discharge, dispersal, release, migration or escape of asbestos; or
- (b) any direction, request or effort to: (i) test for, monitor, clean up, remove, contain, treat, detoxify or neutralise asbestos; or (ii) respond to or assess the effects of asbestos.

### 4.4 Bodily Injury/Property Damage

for bodily injury (other than emotional distress or mental anguish), sickness, disease, or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof; provided, however, that this Exclusion shall not apply to a **Securities Claim** or Automatic Extension 2.9.

### 4.5 Pending or Prior Litigation

arising out of, based upon or attributable to, as of the Continuity Date set forth in Item 7 of the Schedule, any pending or prior: (i) litigation; or (ii) civil, criminal, administrative or regulatory proceeding or investigation, of which any **Insured** had notice; or any **Claim** alleging or derived from the same or essentially the same facts or the same or related **Wrongful Act(s)** as alleged in such pending or prior litigation or civil, criminal, administrative or regulatory proceeding or investigation; provided, however, that this Exclusion shall not apply to Automatic Extension 2.1.

### 4.6 Prior Notice Exclusion

arising out of, based upon or attributable to the same or essentially the same facts alleged, or to the same or related **Wrongful Act(s)** alleged or contained, in any claim which has been reported, or in any

circumstances of which notice has been given prior to the Inception Date set forth in Item 2A of the Schedule, under any policy, whether excess or underlying, of which this Policy is a direct renewal or replacement.

#### 4.7 Insured vs Insured

brought by or on behalf of the **Company** against any **Insured**; provided, however, that this Exclusion shall not apply to:

- (a) a shareholder derivative action, but only if such action is brought and maintained without the solicitation, approval, assistance, active participation or intervention of any **Insured**;
- (b) any **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, receiver or similar official for the **Company** or any assignee of such trustee, examiner, receiver or similar official;
- (c) any **Claim** alleging an **Employment Practices Breach** brought by or maintain by an **Insured Person**; or
- (d) any **Defence Costs**.

#### 4.8 Pollution

arising out of, based upon or attributable to:

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

#### SECTION 5: EXCESS

No Excess amount is applicable to Insuring Agreement 1.1 or Automatic Extensions 2.2, 2.3 or 2.11.

#### SECTION 6: OTHER INSURANCE

- 6.1 In connection with any **Claim** made against an **Outside Entity Insured Person**, this Policy shall apply specifically excess of any indemnification from an **Outside Entity** and any other insurance coverage provided to an **Outside Entity** or its directors, officers, trustees or governors (or equivalent).
- 6.2 In the event such other insurance coverage provided to an **Outside Entity** or its directors, officers, trustees or governors (or equivalent) is provided by the **Underwriters** (or would be except for the application of any Excess, exhaustion of a limit of liability or failure to submit notice of a claim) then the maximum Limit of Liability under this Policy shall be reduced by the amount of the limit of liability of the other insurance provided to such **Outside Entity** or its directors, officers, trustees or governors (or equivalent) by the **Underwriters** as to any such **Claim**.

## SECTION 7: DEFENCE, SETTLEMENT AND ADVANCEMENT OF COSTS

- 7.1** The **Underwriters** do not assume any duty to defend any **Claim** under this Policy. However, the **Underwriters** shall have the right, but not the duty, to fully and effectively take conduct and control in the investigation, defence and settlement of any **Claim**, including but not limited to the right to appoint legal defence counsel on behalf of the **Insured**, investigate, conduct settlement negotiations, and enter into the settlement of any **Claim** that the **Underwriters** deems appropriate.
- 7.2** The **Insureds** shall defend and contest any **Claim** made against them. Except as otherwise provided by Automatic Extension 2.4, the **Insureds** shall not admit or assume any liability, incur any **Defence Costs**, incur any costs under Automatic Extension 2.2, make any settlement offers, enter into any settlement agreement or stipulate to any judgments without the prior written consent of the **Underwriters** (such consent not to be unreasonably withheld or delayed). However, the **Underwriters'** consent is not required for the **Insured** to settle a **Claim** if the total **Loss** (including **Defence Costs**) amount is within the applicable Excess, provided that such settlement fully resolves the **Claim** with respect to all **Insureds** and the **Underwriters**.
- 7.3** The **Underwriters** agree to advance payments for **Defence Costs** as they are incurred, and prior to the final disposition of a **Claim**. Such payments shall be made no later than sixty (60) days after the **Underwriters** has received proper documentation of such **Defence Costs**. In the event of any such payments by the **Underwriters**, the **Insureds** shall repay all such amounts to the **Underwriters**, severally according to their respective interests, in the event and to the extent that the **Insureds** are ultimately not entitled under the terms and conditions of this Policy to such payments.
- 7.4** Each and every **Insured** shall give the **Underwriters** full cooperation and such information as the **Underwriters** may reasonably require relating to: (a) the defence or settlement of any **Claim**; and (b) the prosecution of any counterclaim, cross-claim or third-party claim, including without limitation, the assertion of indemnification rights. The failure of any **Insured Person** to give the **Underwriters** such cooperation and information shall not impair the rights of any other **Insured Person** under this Policy.
- 7.5** This Policy shall cover the **Insured** only for covered **Loss**. In the event of a **Claim** which involves covered and non-covered matters or covered and non-covered parties, the **Insured** and the **Underwriters** agree to use their best efforts to determine a fair and proper allocation of **Loss** covered under this Policy, taking into account the relative legal and financial exposures, and the relative benefits obtained by such parties. In the event that a determination as to the amount of **Defence Costs** to be advanced under Section 7.3 cannot be agreed to, then the **Underwriters** shall advance **Defence Costs**, excess of any applicable Excess, which the **Underwriters** state to be fair and proper until a different amount shall be agreed upon or determined pursuant to the provisions of this Policy and applicable law.

## SECTION 8: ORDER OF PAYMENTS

- 8.1** The **Underwriters** shall pay **Loss** covered under this Policy in the order in which such **Loss** is presented to the **Underwriters** for payment. Should the **Underwriters** in their sole and absolute discretion, determine that the Limit of Liability set forth in Item 3A of the Schedule will not be sufficient to cover all such **Loss**, the **Underwriters** shall pay **Loss** in the following order:
- (a) first, pay **Loss** for which coverage is provided under Insuring Agreement 1.1; and

- (b) second, with respect to whatever remaining amount of the Limit of Liability is available after payment of such **Loss**, pay **Loss** for which coverage is provided under Insuring Agreement 1.2.

**8.2** The **Insolvency** of any **Company** shall not relieve the **Underwriters** of any of their obligations to prioritise payment of covered **Loss** under this Policy pursuant to this Section 8.

#### **SECTION 9: SUBROGATION**

The **Underwriters** shall not exercise their subrogation rights against an **Insured Person** unless and to the extent that Exclusion 4.1 or 4.2 of this Coverage Section applies to such **Insured Person**.

#### **SECTION 10: REPRESENTATIONS AND SEVERABILITY**

**10.1** This Policy shall be construed as a separate Policy covering each **Insured Person** for his or her own individual interest.

**10.2** Solely with respect to Insuring Agreement 1.1, under no circumstances shall the coverage provided by this Coverage Section be deemed void, whether by rescission or otherwise.

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**MANAGEMENT LIABILITY INSURANCE POLICY**  
**Corporate Liability Coverage Section**

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In consideration of the premium charged, and subject to the General Terms and Conditions and this Coverage Section, the **Underwriters** and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

**SECTION 1: INSURING AGREEMENT**

The **Underwriters** shall pay on behalf of a **Company** the **Loss** arising from a **Securities Claim** first made during the **Policy Period** (or Extended Reporting Period, if applicable) against such **Company** for a **Wrongful Act**.

**SECTION 2: AUTOMATIC EXTENSIONS**

**2.1 Public Relations Costs**

- (a) The **Underwriters** shall pay the **Crisis Response Costs** incurred by or on behalf of a **Company**, with the **Underwriters'** prior written consent (such consent not to be unreasonably withheld or delayed), as a result of a **Crisis Event** that occurs during the **Policy Period** (or Extended Reporting Period, if applicable).
- (b) All **Crisis Response Costs** are subject to the Public Relations Costs Sublimit of Liability set forth in Item 5 of the Schedule.

**2.2 Emergency Costs**

If the **Underwriters'** prior written consent cannot be obtained within a reasonable time prior to the **Defence Costs** or **Crisis Response Costs** being incurred by or on behalf of an **Insured**, the **Underwriters** shall retrospectively approve such **Defence Costs** or **Crisis Response Costs**, up to any applicable Limit of Liability or Sublimit of Liability set forth in this Policy; however, such approval shall be provided only for those **Defence Costs** or **Crisis Response Costs** incurred during the forty-eight (48) hour period commencing from the time such costs are first incurred by an **Insured**.

**2.3 Occupational Health and Safety**

The **Underwriters** shall pay on behalf of the **Company** the **Defence Costs**, subject to the Occupational Health and Safety Sublimit of Liability set forth in Item 5 of the Schedule, arising from an official investigation or enquiry alleging a breach of New Zealand's Health and Safety in Employment Act 1992 or any amendment thereto.

Exclusion 4.4 of this Coverage Section shall not apply to this Automatic Extension 2.3.

Section 4.4(i) of the General Terms and Conditions shall not apply to this Automatic Extension 2.3.

### SECTION 3: DEFINITIONS

#### 3.1 “Claim” means any:

- (a) written demand;
- (b) judicial, administrative or regulatory proceeding, whether civil or criminal; or
- (c) arbitration or mediation proceeding commenced by service of a demand for arbitration or mediation.

#### 3.2 “Crisis Event” means an event that, in the good faith opinion of an **Executive**, has or may result in:

- (a) **Loss** for which coverage would be provided under this Policy; and
- (b) significant adverse media coverage for a **Company**.

“**Crisis Event**” will include any of the following matters, but only if the requirements set forth in (a) and (b) above are met:

- (i) **Data Breach**: The threat, attempt or actual unauthorised intrusion into a **Company’s** computer systems for the purpose of obtaining confidential, private or secret information or any ‘cyber attacks’ leading to the denial of service to customers seeking to access such systems.
- (ii) **Mass Tort**: The public announcement or accusation that a **Company** has caused the bodily injury, sickness, disease, death or emotional distress of a group of persons, or widespread damage to or destruction of property, including the loss of use thereof.
- (iii) **Debt Default**: The public announcement that a **Company** has defaulted or intends to default on its debt, or intends to engage in a debt restructuring.
- (iv) **Insolvency**: The public announcement of the actual or anticipated liquidation, insolvency or bankruptcy of a **Company**.
- (v) **Loss of Key Personnel**: The public announcement of the death or resignation of one or more key **Executives**; or the lay-off or redundancy of a significant number of **Employees** (i.e., the elimination of multiple jobs within a **Company** without regard to employee performance).
- (vi) **Regulatory Crisis**: The public announcement of the commencement, or threatened commencement, of litigation, administrative or other proceedings against a **Company** by any governmental or regulatory body.

#### 3.3 “**Crisis Response Costs**” means the reasonable fees, costs and expenses charged by a public relations firm, crisis management firm or law firm retained by an **Executive** in performing **Crisis Response Services**.

**3.4 “Crisis Response Services”** means the services performed by a firm which the **Underwriters** at their sole discretion has provided prior written approval for the **Company** to retain in order to advise the **Company** on minimising potential harm to a **Company** arising from a **Crisis Event**, including but not limited to maintaining and restoring investor confidence in a **Company**.

**3.5 “Defence Costs”** means any of the following amounts incurred by the **Insured** with the prior written consent of the **Underwriters** (such consent not to be unreasonably withheld or delayed):

- (a) reasonable fees, costs, charges or expenses resulting from the investigation, defence or appeal of a **Claim**; and
- (b) fees, costs, charges or expenses incurred by the **Insured** at the specific written request of the **Underwriters** to assist the **Underwriters** in the investigation, defence or appeal of a **Claim**.

“**Defence Costs**” does not include any:

- (i) overhead expenses of any **Insured**; or
- (ii) fees, costs, charges or expenses incurred by the **Insured** prior to the date a **Claim** or any other matter or event for which coverage is provided by this Policy is first reported to the **Underwriters**, except as otherwise provided under Automatic Extension 2.2.

**3.6 “Employee”** means any natural person who was, now is or shall be a full-time, part-time, seasonal or temporary employee of the **Company**.

“**Employee**” shall not mean any **Executive**, principal, partner or member of the **Company**.

**3.7 “Executive”** means any:

- (c) past, present or future director or officer of the **Company**; and
- (d) past, present or future chief legal officer, controller, “de facto” director, shadow director, risk manager, director of investor relations or member of a **Company** or any other person in a functionally equivalent or comparable position.

**3.8 “Insured”** means any **Company**.

**3.9 “Loss”** means:

- (a) damages, settlements or judgments;
- (b) pre-judgment or post-judgment interest;
- (e) costs or fees awarded in favour of the claimant;
- (d) punitive or exemplary damages, but only to the extent that such damages are insurable under the applicable law most favourable to the insurability of such damages;

- (e) **Defence Costs**; and
- (f) any amounts for which cover is provided pursuant to Section 2, AUTOMATIC EXTENSIONS.

**“Loss”** does not include:

- (i) amounts for which the **Insureds** are not legally liable;
- (ii) fines or penalties imposed by law, except as otherwise provided by (d) above;
- (iii) taxes, except as provided by Section 7.9 of the General Terms and Conditions;
- (iv) the multiple portion of any multiplied damage award; and
- (v) amounts deemed uninsurable under applicable law.

**3.10 “Securities Claim”** means a **Claim**, except any administrative or regulatory proceeding against, or investigation of, a **Company**, alleging a violation of any laws (statutory or common), rules or regulations regulating securities, including but not limited to, the purchase or sale, or offer or solicitation of an offer to purchase or sell securities which is brought:

- (a) by any person or entity alleging, arising out of, based upon or attributable to the purchase or sale, or offer or solicitation of an offer to purchase or sell, any securities of a **Company**;
- (b) by a security holder of a **Company** with respect to such security holder’s interest in securities of such **Company**; or
- (c) derivatively on behalf of a **Company** by a security holder of such **Company**.

Notwithstanding the foregoing, **“Securities Claim”** shall include any administrative or regulatory proceeding against a **Company**, but only if and only during the time that such proceeding is also commenced and continuously maintained against an **Executive**.

**3.11 “Wrongful Act”** means any actual or alleged act, error, omission, neglect, breach of duty, misstatement or misleading statement by a **Company**, but solely with respect to a **Securities Claim**.

#### **SECTION 4: EXCLUSIONS**

This Coverage Section shall not cover any **Loss** in connection with any **Claim**:

##### **4.1 Personal Profit**

arising out of, based upon or attributable to the gaining of any profit or financial advantage or improper or illegal remuneration by the **Insured**, if a final, non-appealable judgment or adjudication in the underlying action or any formal written admission by an **Insured** establishes that such **Insured** was not legally entitled to such profit or advantage or that such remuneration was improper or illegal.

#### 4.2 Fraud

arising out of, based upon or attributable to any criminal or fraudulent act or any wilful violation of law by the **Insured**, if a final, judgment or adjudication or any formal written admission by an **Insured** establishes that such act or violation occurred.

#### 4.3 Asbestos

arising out of, based upon or attributable to:

- (a) the actual, alleged or threatened presence, discharge, dispersal, release, migration or escape of asbestos; or
- (b) any direction, request or effort to: (i) test for, monitor, clean up, remove, contain, treat, detoxify or neutralise asbestos; or (ii) respond to or assess the effects of asbestos.

#### 4.4 Bodily Injury/Property Damage

for bodily injury (other than emotional distress or mental anguish), sickness, disease, or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof; provided, however, that this Exclusion shall not apply to a **Securities Claim** or Automatic Extension 2.3.

#### 4.5 Pending or Prior Litigation

arising out of, based upon or attributable to, as of the Continuity Date set forth in Item 7 of the Schedule, any pending or prior: (a) litigation; or (b) civil, criminal, administrative or regulatory proceeding or investigation, of which any **Insured** had notice; or any **Claim** alleging or derived from the same or essentially the same facts or the same or related **Wrongful Act(s)** as alleged in such pending or prior litigation or civil, criminal, administrative or regulatory proceeding or investigation.

#### 4.6 Prior Notice Exclusion

arising out of, based upon or attributable to the same or essentially the same facts alleged, or to the same or related **Wrongful Act(s)** alleged or contained, in any claim which has been reported, or in any circumstances of which notice has been given prior to the Inception Date set forth in Item 2A of the Schedule, under any policy, whether excess or underlying, of which this Policy is a direct renewal or replacement.

#### 4.7 Insured vs Insured

brought by or on behalf of any **Insured** against any other **Insured**; provided, however, that this Exclusion shall not apply to:

- (a) any **Claim** brought by an **Insured** that is in the form of a cross-claim or third-party claim for contribution or indemnity which is part of, and results directly from, a **Claim** which is not otherwise excluded under the terms of this Coverage Section; or

- (b) any **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, receiver or similar official for the **Company** or any assignee of such trustee, examiner, receiver or similar official.

#### 4.8 Pollution

arising out of, based upon or attributable to:

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

#### 4.9 Intellectual Property

alleging, arising out of, based upon, or attributable to, or in consequence of any actual or alleged plagiarism, infringement or violation of any copyright, patent, trademark or service mark or the misappropriation of intellectual property, ideas or trade secrets.

#### 4.10 Anti-Trust

alleging, arising out of, based upon, or attributable to, or in consequence of any actual or alleged violation of any law, whether statutory, regulatory or common law, with respect to any of the following: anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationship(s).

#### 4.11 Breach of Contract

based upon, arising from, or in consequence of any actual or alleged liability of any **Insured** under any express contract or agreement; provided, however, that this Exclusion shall not apply to the extent that such **Insured** would have been liable in the absence of such contract or agreement.

### SECTION 5: EXCESS

No Excess amount is applicable to the coverage provided under Automatic Extension 2.1.

### SECTION 6: DEFENCE, SETTLEMENT AND ADVANCEMENT OF COSTS

**6.1** The **Underwriters** do not assume any duty to defend any **Claim** under this Policy. However, the **Underwriters** shall have the right, but not the duty, to fully and effectively associate with the **Insureds** in the control, investigation, defence and settlement of any **Claim**, including but not limited to the right to investigate, conduct settlement negotiations, and enter into the settlement of any **Claim** that the **Underwriters** deem appropriate.

**6.2** The **Insureds** shall defend and contest any **Claim** made against them. Except as otherwise provided by Automatic Extension 2.2, the **Insureds** shall not admit or assume any liability, incur any **Defence Costs**, incur any costs under Automatic Extension 2.1, make any settlement offers, enter into any settlement agreement or stipulate to any judgments without the prior written consent of the **Underwriters** (such consent not to

be unreasonably withheld or delayed). However, the **Underwriters'** consent is not required for the **Insured** to settle a **Claim** if the total **Loss** (including **Defence Costs**) amount is within the applicable Excess, provided that such settlement fully resolves the **Claim** with respect to all **Insureds** and the **Underwriters**.

- 6.3** The **Underwriters** agrees to advance payments for **Defence Costs** as they are incurred, and prior to the final disposition of a **Claim**. Such payments shall be made no later than sixty (60) days after the **Underwriters** has received proper documentation of such **Defence Costs**. In the event of any such payments by the **Underwriters**, the **Insureds** shall repay all such amounts to the **Underwriters**, severally according to their respective interests, in the event and to the extent that the **Insureds** are ultimately not entitled under the terms and conditions of this Policy to such payments.
- 6.4** Each and every **Insured** shall give the **Underwriters** full cooperation and such information as the **Underwriters** may reasonably require relating to: (a) the defence or settlement of any **Claim**; and (b) the prosecution of any counterclaim, cross-claim or third-party claim, including without limitation, the assertion of indemnification rights.
- 6.5** This Policy shall cover the **Insured** only for covered **Loss**. In the event of a **Claim** which involves covered and non-covered matters or covered and non-covered parties, the **Insured** and the **Underwriters** agree to use their best efforts to determine a fair and proper allocation of **Loss** covered under this Policy, taking into account the relative legal and financial exposures, and the relative benefits obtained by such parties. In the event that a determination as to the amount of **Defence Costs** to be advanced under Section 6.3 cannot be agreed to, then the **Underwriters** shall advance **Defence Costs**, excess of any applicable Excess, which the **Underwriters** state to be fair and proper until a different amount shall be agreed upon or determined pursuant to the provisions of this Policy and applicable law.

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**MANAGEMENT LIABILITY INSURANCE POLICY**  
**Employment Practices Liability Coverage Section**

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The terms and conditions of this Coverage Section apply only to this Coverage Section and should be read in conjunction with the General Terms and Conditions. Where terms defined within this Coverage Section appear within the General Terms and Conditions, the definition contained herein shall apply for the purposes of determining coverage. If the terms and conditions within this Coverage Section conflict with the General Terms and Conditions, the terms and conditions of this Coverage Section take priority.

In consideration of the premium charged, and subject to the General Terms and Conditions and this Coverage Section, the **Underwriters** and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

**SECTION 1: INSURING AGREEMENT**

The **Underwriters** shall pay on behalf of any **Insured**, the **Loss** arising from a **Claim** first made during the **Policy Period** (or Extended Reporting Period, if applicable) against such **Insured** for any **Wrongful Act**.

**SECTION 2: AUTOMATIC EXTENSIONS**

**2.1 Claims by Third Parties**

The **Underwriters** shall pay on behalf of any **Insured**, the **Loss** arising from a **Claim** first made during the **Policy Period** (or Extended Reporting Period, if applicable) against such **Insured** for a **Third Party Wrongful Act**, subject to the Third Party Loss Sublimit of Liability set forth in Item 5 of the Schedule

**2.2 Reinstatements and Injunctions**

The **Underwriters** will pay on behalf of the **Insured** any **Defence Costs** incurred by the **Insured** from a **Claim** brought by any **Employee** seeking either an Injunction, Reinstatement or an order from the Complaints Review Tribunal, Employment Relations Authority, Employment Court or any other Court or Tribunal authorised to make orders under the Human Rights Act 1993. However, the **Underwriters** will not pay the actual costs of complying with any Injunction, any order for Reinstatement or any order of any aforesaid Tribunal, Authority or Court.

**SECTION 3: DEFINITIONS**

**3.1 "Benefits"** means fringe benefits, deferred compensation or payments (including insurance premiums) in connection with any employee-related plan.

**"Benefits"** shall not include salary, wages, bonuses or non-deferred cash incentive compensation.

**3.2 "Claim"** means any:

- (a) written demand;

- (b) judicial, administrative or regulatory proceeding, whether civil or criminal; or
- (c) arbitration or mediation proceeding commenced by service of a demand for arbitration or mediation.

**“Claim”** shall not include any labour grievance, arbitration or other proceeding pursuant to a collective bargaining agreement.

**3.3 “Defence Costs”** means any of the following amounts incurred by the **Insured** with the prior written consent of the **Underwriters** (such consent not to be unreasonably withheld or delayed):

- (a) reasonable fees, costs, charges or expenses resulting from the investigation, defence or appeal of a **Claim**; and
- (b) fees, costs, charges or expenses incurred by the **Insured** at the specific written request of the **Underwriters** to assist the **Underwriters** in the investigation, defence or appeal of a **Claim**.

**“Defence Costs”** does not include any:

- (i) compensation or benefits of any **Insured Person** or any overhead expenses of a **Company**; or
- (ii) fees, costs, charges or expenses incurred by the **Insured** prior to the date a **Claim** or any other matter or event for which coverage is provided by this Policy is first reported to the **Underwriters**.

**3.4 “Discrimination”** means any violation of employment discrimination laws, including but not limited to any actual, alleged or constructive employment termination, dismissal, or discharge, employment demotion, denial of tenure, modification of any term or condition of employment, any failure or refusal to hire or promote, or any limitation or segregation of any **Employee** or applicant for employment by the **Company** in any way that would deprive any person of employment opportunities based on such person's race, colour, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, or any other status that is protected by law.

**3.5 “Employee”** means any natural person who was, now is or shall be a full-time, part-time, seasonal or temporary employee of the **Company**, as defined under the Employment Relations Act 2000.

**“Employee”** shall not mean any **Executive**, principal, partner, member or any person providing services for labour only under a contract for services to the **Insured**.

**3.6 “Executive”** means any past, present or future duly elected or appointed director, officer, trustee, governor, management committee member or member of the board of managers of the **Company**.

**3.7 “Harassment”** means:

- (a) sexual harassment, including unwelcome sexual advances, requests for sexual favours, or other conduct of a sexual nature that is made a condition of employment with, used as a basis for employment decisions by, interferes with performance or creates an intimidating, hostile or offensive working environment within the **Company**; or

- (b) workplace harassment, including work-related harassment of a non-sexual nature that interferes with performance or creates an intimidating, hostile or offensive working environment within the **Company**.

**3.8 “Insured”** means any **Company** and any **Insured Person**.

**3.9 “Insured Person”** means any:

- (a) **Executive**; or
- (b) **Employee**.

**3.10 “Loss”** means:

- (a) damages, settlements or judgments;
- (b) pre-judgment or post-judgment interest;
- (c) costs or fees awarded in favour of the claimant;
- (d) punitive or exemplary damages, but only to the extent that such damages are insurable under the applicable law most favourable to the insurability of such damages; and
- (e) **Defence Costs**.

**“Loss”** does not include:

- (i) amounts for which the **Insureds** are not legally liable;
- (ii) fines or penalties imposed by law, except as provided by (d) above;
- (iii) taxes, except as provided by Section 7.9 of the General Terms and Conditions;
- (iv) the multiple portion of any multiplied damage award;
- (v) amounts deemed uninsurable under applicable law;
- (vi) **Stock Benefits** due or to become due or the equivalent value of such **Stock Benefits**; and
- (vii) any future compensation, including any **Benefits**, for any person hired, promoted or reinstated pursuant to a judgment, settlement, order or other resolution of a **Claim**.

**3.11 “Retaliation”** means retaliatory treatment of an **Employee** alleged to be on account of such individual:

- (a) exercising his or her rights under law, including rights under worker’s compensation laws or any other law relating to employee rights;
- (b) refusing to violate any law or opposing any unlawful practice;

- (c) having assisted or testified in or cooperated with any legal proceeding or formal governmental investigation regarding alleged violations of law by any **Insured**;
- (d) disclosing or expressing an intent to disclose to a superior or to any governmental agency any alleged violations of law; or
- (e) filing or expressing an intent to file any claim against the **Company** under any “whistleblower” law.

**3.12 “Stock Benefits”** means any offering, plan or agreement between the **Company** and any **Insured Person** thereof, which grants stock or stock options or stock appreciation rights to such individual, including but not limited to stock options, restricted stock or any other stock grant, but not including employee stock ownership plans or employee stock purchase plans.

**3.13 “Third Party”** means any natural person who is a customer, vendor, service provider or other business invitee of the **Company**. “**Third Party**” shall not include an **Insured Person** or any applicant for employment with the **Company**.

**3.14 “Third Party Wrongful Act”** means any actual or alleged:

- (a) discrimination against a **Third Party** based upon such **Third Party's** race, colour, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, or any other status that is protected by law; or
- (b) harassment, directed against a **Third Party**, including sexual harassment, unwelcome sexual advances, requests for sexual favours or other misconduct of a sexual nature.

**3.15 “Workplace Tort”** means any employment related:

- (a) misrepresentation, defamation (including libel and slander), false arrest, detention, imprisonment, invasion of privacy, negligent evaluation, wrongful discipline or wrongful deprivation of a career opportunity; or
- (b) negligent retention, supervision, hiring or training, wrongful infliction of emotional distress, mental anguish or humiliation or failure to provide or enforce consistent employment-related corporate policies and procedures.

**3.16 “Wrongful Act”** means any actual or alleged:

- (a) **Discrimination**;
- (b) **Harassment**;
- (c) **Retaliation**; or
- (d) **Workplace Tort**,

committed by an **Insured** but only if alleged by or on behalf of an **Employee** or an applicant for employment with the **Company**.

“Wrongful Act” shall also include a **Third Party Wrongful Act** committed by an **Insured**, but solely with respect to the coverage provided under Automatic Extension 2.1.

## **SECTION 4: EXCLUSIONS**

This Coverage Section shall not cover any **Loss** in connection with any **Claim**:

### **4.1 Fraud**

arising out of, based upon or attributable to any criminal or fraudulent act or any wilful violation of law by the **Insured**, if a final, judgment or adjudication or any formal written admission by an **Insured Person** establishes that such act or violation occurred.

In determining the applicability of this Exclusion 4.1, the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, any **Insured Person** shall not be imputed to any other **Insured Person**.

### **4.2 Bodily Injury/Property Damage**

for bodily injury (other than emotional distress or mental anguish), sickness, disease, or death of any person, or damage to or destruction of any tangible property.

### **4.3 Pending or Prior Litigation**

arising out of, based upon or attributable to, as of the Continuity Date set forth in Item 7 of the Schedule, any pending or prior: (a) litigation; or (b) civil, criminal, administrative or regulatory proceeding or investigation, of which any **Insured** had notice; or any **Claim** alleging or derived from the same or essentially the same facts or the same or related **Wrongful Act(s)** as alleged in such pending or prior litigation or civil, criminal, administrative or regulatory proceeding or investigation.

### **4.4 Prior Notice Exclusion**

arising out of, based upon or attributable to the same or essentially the same facts alleged, or to the same or related **Wrongful Act(s)** alleged or contained, in any **Claim** which has been reported, or in any circumstances of which notice has been given prior to the Inception Date set forth in Item 2A of the Schedule, under any policy, whether excess or underlying, of which this Policy is a direct renewal or replacement.

### **4.5 Statutory Liability**

arising out of, based upon or attributable to any obligation pursuant to any worker’s compensation, disability benefits or occupational health and safety statute, law or regulation.

### **4.6 Labour Disputes**

alleging, arising out of, based upon or attributable to any lockout, strike, picket line, hiring of replacement workers, or other similar actions in connection with labour disputes or labour negotiations; provided, however, that this Exclusion shall not apply to any **Claim** for **Retaliation**.

#### 4.7 Employee Entitlements

arising out of, based upon or attributable to, resulting from or in connection with any payment to an **Employee** of any amount which the **Insured** was obligated (whether under any statute or any express or implied terms of any employment agreement, or otherwise) to pay such **Employee** prior to the **Wrongful Act** alleged in such **Claim** was committed.

#### SECTION 5: DEFENCE, SETTLEMENT AND ADVANCEMENT OF COSTS

- 5.1** The **Underwriters** do not assume any duty to defend any **Claim** under this Policy. However, the **Underwriters** shall have the right, but not the duty, to fully and effectively associate with the **Insureds** in the control, investigation, defence and settlement of any **Claim**, including but not limited to the right to investigate, conduct settlement negotiations, and enter into the settlement of any **Claim** that the **Underwriters** deems appropriate, subject to the consent of the **Insured** which shall not be unreasonably withheld.
- 5.2** The **Insureds** shall defend and contest any **Claim** made against them. The **Insureds** shall not admit or assume any liability, incur any **Defence Costs**, make any settlement offers, enter into any settlement agreement or stipulate to any judgments without the prior written consent of the **Underwriters** (such consent not to be unreasonably withheld or delayed). However, the **Underwriters** consent is not required for the **Insured** to settle a **Claim** if the total **Loss** (including **Defence Costs**) amount is within the applicable Excess, provided that such settlement fully resolves the **Claim** with respect to all **Insureds** and the **Underwriters**.
- 5.3** The **Underwriters** agrees to advance payments for **Defence Costs** as they are incurred, and prior to the final disposition of a **Claim**. Such payments shall be made no later than sixty (60) days after the **Underwriters** has received proper documentation of such **Defence Costs**. In the event of any such payments by the **Underwriters**, the **Insureds** shall repay all such amounts to the **Underwriters**, severally according to their respective interests, in the event and to the extent that the **Insureds** are ultimately not entitled under the terms and conditions of this Policy to such payments.
- 5.4** Each and every **Insured** shall give the **Underwriters** full cooperation and such information as the **Underwriters** may reasonably require relating to: (i) the defence of any **Claim**; and (ii) the prosecution of any counterclaim, cross-claim or third-party claim, including without limitation, the assertion of indemnification rights. The failure of any **Insured Person** to give the **Underwriters** such cooperation and information shall not impair the rights of any other **Insured Person** under this Policy.
- 5.5** This Policy shall cover the **Insured** only for covered **Loss**. In the event of a **Claim** which involves covered and non-covered matters or covered and non-covered parties, the **Insured** and the **Underwriters** agree to use their best efforts to determine a fair and proper allocation of **Loss** covered under this Policy, taking into account the relative legal and financial exposures, and the relative benefits obtained by such parties. In the event that a determination as to the amount of **Defence Costs** to be advanced under Section 5.3 cannot be agreed to, then the **Underwriters** shall advance **Defence Costs**, excess of any applicable Excess, which the **Underwriters** state to be fair and proper until a different amount shall be agreed upon or determined pursuant to the provisions of this Policy and applicable law.

## **SECTION 6: SUBROGATION**

The **Underwriters** shall not exercise their subrogation rights against an **Insured Person** unless and to the extent that Exclusion 4.1 applies to such **Insured Person**.

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**MANAGEMENT LIABILITY INSURANCE POLICY**  
**Crime Coverage Section**

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The terms and conditions of this Coverage Section apply only to this Coverage Section and should be read in conjunction with the General Terms and Conditions. Where terms defined within this Coverage Section appear within the General Terms and Conditions, the definition contained herein shall apply for the purposes of determining coverage. If the terms and conditions within this Coverage Section conflict with the General Terms and Conditions, the terms and conditions of this Coverage Section take priority.

In consideration of the premium charged, and subject to the General Terms and Conditions and this Coverage Section, the **Underwriters** and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

**SECTION 1: INSURING AGREEMENT**

**1.1 Employee Theft of Company Property**

The **Underwriters** shall reimburse the **Insured** for loss of, or for loss from damage to, **Money, Securities and Property**, resulting directly from **Theft** or **Forgery** committed by an **Employee**, whether identified or not, acting alone or in collusion with other persons.

**1.2 Employee Theft of Client Property**

The **Underwriters** shall reimburse the **Insured** for loss of, or for loss from damage to, **Money, Securities and Property** sustained by a **Client**, resulting directly from **Theft** or **Forgery** committed by an identified **Employee**.

**1.3 Fiduciary Theft of Plan Property**

The **Underwriters** shall reimburse the **Insured** for loss of, or for loss from damage to, **Money, Securities and Property** that belongs to a **Sponsored Plan**, resulting directly from **Theft** or **Forgery** committed by a **Fiduciary**, whether identified or not, acting alone or in collusion with other persons.

**1.4 Forgery or Alteration**

The **Underwriters** shall reimburse the **Insured** for loss resulting directly from **Forgery** or alteration of, on or in any written **Financial Instruments**, committed by a **Third Party**.

**1.5 Inside the Premises Coverage**

(a) The **Underwriters** shall reimburse the **Insured** for loss resulting directly from:

- (i) **Robbery, Safe Burglary**, or unlawful taking of **Money** or **Securities**, committed by a **Third Party**;  
or
- (ii) actual destruction or disappearance of **Money** or **Securities**;

within the **Premises** or **Banking Premises** of an **Insured**.

- (b) The **Underwriters** shall reimburse the **Insured** for loss resulting directly from:
- (i) loss of or damage to **Property** by **Robbery** or attempted **Robbery** within the **Premises**;
  - (ii) loss of or damage to **Property** contained within any safe which results from **Safe Burglary** or attempted **Safe Burglary** within the **Premises**;
  - (iii) damage to a locked safe, cash drawer, cash box or cash register within the **Premises** by felonious entry or attempted felonious entry or loss by felonious abstraction of such container from within the **Premises**; or
  - (iv) damage to the **Premises** resulting from **Safe Burglary** or **Robbery**;
- committed by a **Third Party**.

### 1.6 In Transit Coverage

- (a) The **Underwriters** shall reimburse the **Insured** for loss resulting directly from:
- (i) **Robbery**; or unlawful taking of **Money** or **Securities**, committed by a **Third Party**; or
  - (ii) actual destruction or disappearance of **Money** or **Securities**;
- while **In Transit**, or while temporarily within the home of an **Employee**.
- (2) The **Underwriters** shall reimburse the **Insured** for loss resulting directly from:
- (i) damage to **Property** by **Robbery** while **In Transit**; or
  - (ii) loss by the unlawful taking of **Property** temporarily within the home of an **Employee** or a partner of the **Insured**;
- committed by a **Third Party**.

### 1.7 Computer Fraud

The **Underwriters** shall reimburse the **Insured** for an **Insured's** loss of, or an **Insured's** loss from damage to, **Money**, **Securities** or **Property**, resulting directly from **Computer Fraud** committed by a **Third Party**.

### 1.8 Funds Transfer Fraud

The **Underwriters** shall reimburse the **Insured** for loss of **Money** and **Securities** contained in an **Insured's Transfer Account** on deposit at a financial institution resulting directly from **Funds Transfer Fraud** committed by a **Third Party**.

## 1.9 Money Orders and Counterfeit Currency Fraud

The **Underwriters** shall reimburse the **Insured** for loss sustained by an **Insured** resulting directly from **Money Orders and Counterfeit Currency Fraud** committed by a **Third Party**.

## 1.10 Credit Card Fraud

The **Underwriters** shall reimburse the **Insured** for loss sustained by an **Insured** resulting directly from **Credit Card Fraud** committed by a **Third Party**.

## SECTION 2: AUTOMATIC EXTENSIONS

### 2.1 Restoration Expenses

The **Underwriters** shall reimburse the **Insured**, subject to the applicable Sublimit of Liability set forth in Item 5 of the Schedule, for **Restoration Expenses** that an **Insured** incurs to **Restore** its **Computer System** if damaged or destroyed by a **Computer Violation**. Such damage or destruction must be **Discovered** during the **Policy Period** and resulting directly from a **Computer Violation** which occurs as part of a **Single Loss** which is otherwise covered under Insuring Agreements 1.1, 1.2, 1.3 or 1.7.

Reimbursement of **Restoration Expenses** will be made to the **Insured** once all processes have been completed to **Restore** the **Insured's Computer System**, and the **Insured** has provided the **Underwriters**, in writing, of a description and accounting of all **Restoration Expenses**, together with such detail as the **Underwriters** may require.

### 2.2 Contractual Penalties

The **Underwriters** shall indemnify the **Insured**, subject to the applicable Sublimit of Liability set forth in Item 5 of the Schedule, for any contractual penalty assumed by and enforced against the **Insured** under a written contract resulting directly from loss covered by this Coverage Section, provided that the maximum aggregate amount payable for all contractual penalties under this Extension is limited to 10% of the Single Loss Limit.

### 2.3 Investigation Costs

The **Underwriters** shall reimburse the **Insured**, subject to the applicable Sublimit of Liability set forth in Item 5 of the Schedule, for the **Investigation Costs** which are directly related to a loss under this Coverage Section.

### 2.4 Extortion

The **Underwriters** shall indemnify the **Insured**, subject to the applicable SubLimit of Liability set forth in Item 5 of the Schedule, for any loss resulting directly from **Extortion** committed by an **Employee** of the **Insured**.

## 2.5 Interest Receivable or Payable

The **Underwriters** shall reimburse the **Insured**, subject to the applicable Sublimit of Liability set forth in Item 5 of the Schedule, for any interest actually lost or paid by the **Insured** directly resulting from loss covered by this Coverage Section provided that the **Underwriters'** liability under this Extension shall be calculated by applying the average of the Reserve Bank of New Zealand base rate in force between the time that the loss was sustained and the date of **Discovery** of the loss.

## SECTION 3: DEFINITIONS

**3.1 "Banking Premises"** means the interior portion of a building occupied by, or the night depository chute or safe maintained by any bank, trust company or similar depository institution.

**3.2 "Client"** means a customer of an **Insured** to whom an **Insured** provides goods or services under a written contract or for a fee.

**3.3 "Computer Fraud"** means the use of any computer to fraudulently cause a transfer of **Money, Securities or Property**, from inside the **Premises or Banking Premises**:

(a) to a person (other than a **Messenger**) outside the **Premises or Banking Premises**; or

(b) to a place outside the **Premises or Banking Premises**.

**3.4 "Computer Program"** means a set of related electronic instructions which direct the operations and functions of a **Computer System**, which enables the **Computer System** to receive, process, store, retrieve, send, create or otherwise act upon **Electronic Data**.

**3.5 "Computer System"** means a computer, including all input, output, processing, storage and communication equipment which is connected to such computer, and which the operating system or application software used by the **Insured** are under the direct operational control of the **Insured**. Off-line libraries are deemed to be part of such **Computer System**.

**3.6 "Computer Violation"** means an unauthorised:

(a) entry into or deletion of **Electronic Data** from a **Computer System**;

(b) change to data elements or program logic of a **Computer System**, which is kept in machine readable format; or

(c) introduction of instructions, programmatic or otherwise, which propagate themselves through a **Computer System**;

by a natural person and directed against an **Insured**, designed to damage or destroy a **Computer System**.

**3.7 "Counterfeit"** means an imitation of **Money** that is intended to deceive and to be taken as genuine.

**3.8 "Credit Card Fraud"** means the **Forgery** or alteration of, on or in, any written instrument required in connection with any credit card which is issued to any **Employee** of the **Insured** at the request of the **Insured**, other than a credit card issued by any **Insured**.

**3.9 “Data”** means facts or information contained in records, accounts, microfilms, tapes or other records, whether or not contained in a **Computer System**.

**3.10 “Discover,” “Discovers,” “Discovery” or “Discovered”** means the point in time at which knowledge is acquired by an **Executive**, which would cause a reasonable person to believe that a covered loss has been sustained or an event has occurred that may subsequently result in a covered loss, even though the exact amount or details of such loss or event are unknown; provided that it shall not include knowledge acquired by an **Executive**, acting alone or in collusion with an **Employee**, who is a participant in the **Theft or Forgery**.

**3.11 “Electronic Data”** means facts or information converted to a form:

- (a) usable in a **Computer System**;
- (b) which does not provide instructions or directions to a **Computer System**; and
- (c) which is stored on electronic processing media for use by a **Computer Program**.

**3.12 “Employee”** means any:

- (a) natural person regularly performing services for an **Insured** in the ordinary course of such **Insured's** business, who is compensated by the **Insured** directly by salary, wages or commissions, and whose performance is controlled and directed by such **Insured**, including any part-time, seasonal, and temporary employee;
- (b) natural person who is a volunteer and whose performance is controlled and directed by the **Insured** but only whilst performing acts within the scope of what would be an employee’s usual duties;
- (c) natural person who is a trustee, fiduciary, administrator or officer of a **Sponsored Plan**; or
- (d) **Executive**, while performing acts within the scope of the usual duties of an employee of the **Insured**.

“**Employee**” does not mean any broker, partner, investment advisor or investment manager, factor, commission merchant, consignee, contractor or other agent or representative of the same general character.

**3.13 “Executive”** means any natural person who is a duly elected or appointed director, officer, general counsel, risk manager, partner, general partner, owner (in the case of a sole proprietorship), member of the board of managers or a management committee member of the **Insured**; or any natural person holding a functionally equivalent position in any **Insured** chartered in any other jurisdiction anywhere in the world.

**3.14 “Extortion”** means any threat to personally injure **Employees** or **Executives** or their family members, or to damage or destroy any **Property**, including any **Computer System**, owned by the **Insured** or for which the **Insured** is legally liable, provided that prior to surrender of any **Money, Securities** or **Property** the person receiving the threat has made a reasonable effort to report the threat to another **Employee** or **Executive**, and the **Insured** has made a reasonable effort to report the threat to the relevant authority.

**3.15 “Fiduciary”** means any natural person who is a trustee, an officer, or an administrator of any **Sponsored Plan**; and any other natural person, including an **Employee** who is authorised to handle **Money, Securities** or **Property** that belongs to a **Sponsored Plan**.

**3.16 “Financial Instrument”** means cheques, drafts or similar written promises, orders or directions to pay a sum certain in **Money**, that are made, drawn by or drawn upon an **Insured** or by anyone acting as an **Insured's** agent, or that are purported to have been so made or drawn.

**3.17 “Forgery”** means the signing of the name of another natural person with the intent to deceive, but does not mean a signature that includes one's own name, with or without authority, in any capacity for any purpose. Mechanically or electronically produced or reproduced signatures shall be treated as hand-written signatures.

**3.18 “Funds Transfer Fraud”** means fraudulent written, electronic, telegraphic, cable, teletype or telephone instructions issued to a financial institution directing such institution to transfer, pay or deliver **Money** or **Securities** from any account maintained by the **Insured** at such institution, without the **Insured's** knowledge or consent. **Funds Transfer Fraud** shall not include a **Forgery**.

**3.19 “Insured”** means:

- (a) the **Named Insured**;
- (b) any **Subsidiary** of the **Named Insured**; and
- (c) a **Sponsored Plan**, solely under Insuring Agreement 1.3.

**3.20 “In Transit”** means being conveyed outside the **Premises**, from one person or place to another, by the **Insured** within the custody of an **Employee** or a partner of the **Insured**, or a person authorised by the **Insured** to have custody of **Money**, **Securities** or **Property**. **In Transit** ends immediately upon delivery to the designated recipient or its agent.

**3.21 “Investigation Costs”** means the reasonable and necessary fees and expenses incurred by the **Insured** to establish the amount of a loss (other than the remuneration payable to an **Employee** or **Executive** of the **Insured**, cost of their time or the overhead of any **Insured**) with the prior written consent of the **Underwriters** in connection with a covered loss to be paid under this Coverage Section where the loss is in excess of the applicable Excess.

**3.22 “Messenger”** means any **Executive**, or relative thereof, or any **Employee**, duly authorised, while having care and custody of covered property outside the **Premises**.

**3.23 “Money”** means currency, coins, bank notes and bullion.

**3.24 “Money Orders and Counterfeit Currency Fraud”** means the good faith acceptance:

- (a) in exchange for merchandise, **Money** or services, of any post office or express money order, issued or purporting to have been issued by any post office or express Insured, if such money order is not paid upon presentation; or
- (b) in the regular course of business, of **Counterfeit** New Zealand currency.

**3.25 “Premises”** means the interior portion of a building which is occupied by the **Insured** in conducting its business.

**3.26 “Property”** means tangible property, other than **Money** or **Securities**, that has intrinsic value.

**3.27 “Restore”** means to complete the restoration or reproduction of **Computer Programs** and **Electronic Data** within the **Insured’s Computer System**, to bring such **Computer System** back to the level of operational capability that existed immediately preceding a **Computer Violation**.

**3.28 “Restoration Expenses”** means reasonable costs incurred by an **Insured** to **Restore** its **Computer System**.

Reimbursement of **Restoration Expenses** applies only:

- (a) with respect to **Computer Programs** and **Electronic Data** which an **Insured** owns or for which an **Insured** is legally liable; and
- (b) if an **Insured** is unable to reproduce such **Computer Programs** or **Electronic Data**, either from back-up data copies or from some other form of back-up technology.

**3.29 “Robbery”** means the unlawful taking of **Money**, **Securities** or **Property** from the custody of an **Employee**, or other person (except a person acting as a watchman, porter or janitor) authorised by the **Insured** to have custody of such **Money**, **Securities** or **Property**, by violence or threat of violence, committed in the presence and cognisance of such person.

**3.30 “Safe Burglary”** means the unlawful taking of **Money**, **Securities** or **Property** by forcible or violent entry evidenced by visible marks, from a locked vault or safe located within the **Premises**.

**3.31 “Securities”** means negotiable and non-negotiable instruments representing either **Money** or **Property**.

**3.32 “Single Loss”** means:

- (a) with respect to Insuring Agreements 1.1, 1.2 and 1.3, all loss resulting from:

- (i) an individual act;
- (ii) the combined total of all separate acts, whether or not related; or
- (iii) a series of acts whether or not related;

committed by the same **Employee**, acting alone or in collusion with other persons, and regardless of whether or not such act or acts occurred during or before the **Policy Period**;

- (b) with respect to all other Insuring Agreements, all loss resulting from:

- (i) an individual act or event; or
- (ii) a series of related acts or events;

committed by the same **Third Party**, acting alone or in collusion with other persons, or in which the same **Third party** is implicated or involved;

whether or not such **Third Party** or **Third Parties** are identified, and regardless of whether or not such act(s) or event(s) occurred during or before the **Policy Period**; and further

with regard to both paragraphs (a) and (b) above, regardless of the amount or number of losses, the number of **Insureds** incurring loss, or the number of **Financial Instruments** or documents or electronic transactions involved over any period of time.

**3.33 “Sponsored Plan”** means:

- (a) a superannuation fund, pension fund or employee benefits programme which is solely sponsored by the **Insured**;
- (b) superannuation fund, pension fund or employee benefits programme which is operated solely by the **Insured** or jointly by the **Insured** and a labor organisation for the benefit of the **Employees** of the **Insured**, located anywhere in the world, and which existed on or before the Inception Date set forth in Item 2A of the Schedule or which is created or acquired after such Inception Date; or
- (b) any other plan, fund, or program specifically included as a **Sponsored Plan** by Endorsement to this Coverage Section.

“**Sponsored Plan**” shall not include any multi-employer plan.

**3.34 “Theft”** means the unlawful taking of **Money, Securities** or **Property**.

**3.35 “Third Party”** means a natural person, other than an **Employee**.

**3.36 “Transfer Account”** means an account maintained by an **Insured** at a financial institution from which an **Insured** can initiate the transfer, payment or delivery of **Money** or **Securities**.

**SECTION 4: EXCLUSIONS**

No coverage is afforded under this Coverage Section for:

**4.1 Trading Exclusion**

loss resulting directly or indirectly from any authorised or unauthorised trading of **Money, Securities** or **Property**, whether or not in the name of the **Insured** and whether or not in a genuine or fictitious account; provided, however, that this Exclusion shall not apply to loss caused by **Theft** or **Forgery** which results in an improper financial gain to an **Employee**. Such improper financial gain shall not include salary, bonuses, commissions, incentive payments, fees or other compensation, including but not limited to promotions and raises associated with employment, earned time off including vacations, and the costs of any retirement benefits.

**4.2 Partner Exclusion**

loss resulting directly or indirectly from any **Theft, Forgery**, fraudulent, dishonest or criminal action committed by an **Insured**, or by an owner if the **Insured** is a sole-proprietorship, a partner if the **Insured** is a partnership, or by a member or manager if the **Insured** is a limited liability company or corporation, whether acting alone or in collusion with others; provided, however, that this Exclusion shall not apply to loss otherwise provided under Insuring Agreement 1.2.

#### 4.3 Collusion Exclusion

loss sustained by a **Client** due to **Theft** or **Forgery** committed by an **Employee** acting in collusion with the **Client** or the **Client's** employee.

#### 4.4 Proprietary Information Exclusion

loss resulting directly or indirectly from the unauthorised use or disclosure of trade secrets, patents or other intellectual property, confidential processing methods, customer lists, or other confidential information of any kind; provided however, that this Exclusion does not apply to loss otherwise covered under Insuring Agreements 1.1, 1.2, 1.3 and 1.7.

#### 4.5 Consequential Loss Exclusion

indirect or consequential loss of any kind, provided, however, that this Exclusion shall not apply to otherwise covered **Restoration Expenses** under Automatic Extension 2.1.

#### 4.6 Income Exclusion

loss of income, whether or not earned or accrued, including interest and dividends, not realised as the result of a loss covered under this Coverage Section.

#### 4.7 Fine and Penalties Exclusion

finer or penalties, or for multiplied or punitive damages.

#### 4.8 Post Knowledge Exclusion

loss caused by an **Employee**, which is sustained by an **Insured** after any other **Employee** with managerial or supervisory responsibility, or an **Executive**, not in collusion with the **Employee** becomes aware of a **Theft**, **Forgery**, or other fraudulent or dishonest act committed by such **Employee** while employed with the **Insured** or prior to the inception of the **Employee's** employment with the **Insured**, involving **Money**, **Securities** or **Property** in an amount in excess of one thousand dollars (\$1,000 NZD).

#### 4.9 Fire Exclusion

loss resulting directly or indirectly from fire; provided, however, that this Exclusion shall not apply to:

- (a) loss of **Money** or **Securities**; or
- (b) damage to any safe or vault caused by the application of fire thereto for the purposes of **Safe Burglary**.

#### 4.10 Voluntary Surrender Exclusion

loss due to the **Insured** knowingly having given or surrendered **Money**, **Securities** or **Property** in any exchange or purchase with a **Third Party** not in collusion with an **Employee**; provided, however, that this Exclusion shall not apply to **Money Orders** and **Counterfeit Currency Fraud**.

#### 4.11 Custody Exclusion

loss of or damage to **Money, Securities or Property** while in the custody of any bank, trust company, similar recognised place of safe deposit, armored motor vehicle company or any person who is duly authorised by the **Insured** to have custody of the property.

#### 4.12 Pending and Prior Exclusion

loss that the **Insured** is aware of prior to the Inception Date of this Coverage Section.

#### 4.13 Discovery Exclusion

loss sustained by the **Insured** prior to the termination of this Coverage Section unless such loss is first **Discovered** during the **Policy Period** and the **Insured** provides written notice thereof to the **Underwriters** within the time limitations provided in Section 10 of this Coverage Section.

#### 4.14 Inventory & Computation Exclusion

loss, or that portion of any loss, sustained by the **Insured** which results from an unexplained inventory shortage, including loss, the proof of which its existence or amount is dependent upon an inventory computation or a profit and loss computation; provided however, that if the **Insured** can establish, wholly apart from such computations, that it has sustained a loss, then the **Insured** may offer its inventory records and actual physical count of inventory in support of the amount of loss claimed.

#### 4.15 Credit Card Forgery and Alteration

loss under Insuring Agreement 1.10 for loss caused by any forgery or alteration of, on or in any written instrument; provided, however, that this Exclusion shall not apply if:

- (a) the provisions, conditions and other terms under which the involved credit card was issued were fully complied with; and
- (b) the **Insured** is legally liable to the issuer of such credit card for such loss.

#### 4.16 Data Expenses

expenses incurred:

- (a) as a result of the reconstitution of **Data** if the **Insured** knowingly used or uses illegal copies of programs; or
- (b) to render the **Data** usable by replacement processing equipment; or
- (c) to design, update or improve software or programs or to perfect their operation or performance; or
- (d) as a result of an alteration in **Data** held on magnetic media due to the effect of magnetic fields, their incorrect use or the obsolescence of the **Computer System**.

#### 4.17 Forgery and Alteration Collusion Exclusion

loss under Insuring Agreement 1.4 for loss due to **Forgery or Alteration** of:

- (a) any **Financial Instrument** committed by any **Third Party** in collusion with any **Employee**; or
- (b) any registered or coupon obligations issued or purported to have been issued by the **Insured**, or any coupons whether attached or detached.

## SECTION 5: OWNERSHIP

- 5.1** The **Underwriters'** liability under this Coverage Section will apply only to the **Money, Securities or Property** owned by the **Insured** or for which the **Insured** is legally liable, or held by the **Insured** in any capacity whether or not the **Insured** is liable; provided that:
- (a) the **Underwriters** will not be liable for damage to the **Premises** unless the **Insured** is the owner of the **Premises** or is liable for such damage; or
  - (b) except solely with respect to Insuring Agreement 1.2, the **Underwriters'** liability will not apply to **Money, Securities or Property** of a **Client**.
- 5.2** For the purposes of Insuring Agreement 1.2, the **Underwriters'** liability under this Coverage Section will apply only to the **Money, Securities or Property** of a **Client**, which is held by the **Insured** in any capacity or for which the **Insured** is legally liable.

## SECTION 6: SPONSORED PLAN

- 6.1** Solely with respect to any **Sponsored Plan**, payment by the **Underwriters** for covered loss to the **Insured** shall be held by the **Insured** for the use and benefit of the **Sponsored Plan** incurring such loss.
- 6.2** The Limit of Liability applicable to any **Sponsored Plan** shall equal either ten percent (10%) of the **Sponsored Plan's** assets as of the beginning of such **Sponsored Plan's** fiscal year, or \$500,000 NZD, whichever is less ("Amended Limit of Liability"); provided, however, that the following additional conditions shall also apply with respect to such coverage:
- (a) Loss Involving One Sponsored Plan:
    - (i) if the applicable Limit of Liability as set forth in Item 3A of the Schedule is less than the Amended Limit of Liability, then the applicable Limit of Liability shall be the Amended Limit of Liability; or
    - (ii) if the applicable Limit of Liability as set forth in Item 3A of the Schedule equals or exceeds the Amended Limit of Liability, then the applicable Limit of Liability shall be the Limit of Liability as set forth in Item 3A of the Schedule of this Coverage Section; or
  - (b) Loss Involving More Than One Sponsored Plan:
    - (i) if the applicable Limit of Liability as set forth in Item 3A of the Schedule is less than the Amended Limit of Liability as calculated for each **Sponsored Plan**, then the applicable Limit of Liability for each **Sponsored Plan** shall be the Amended Limit of Liability as calculated for each **Sponsored Plan**; or
    - (ii) if the applicable Limit of Liability as set forth in Item 3A of the Schedule equals or exceeds the Amended Limit of Liability as calculated for all such **Sponsored Plans**, then the applicable Limit of Liability for all such **Sponsored Plans** combined shall be the Limit of Liability as set forth in Item 3A of the Schedule.

**6.3** Solely with respect to loss sustained by a **Sponsored Plan**, no Excess shall apply to such loss.

#### **SECTION 7: LIMITS OF LIABILITY**

**7.1** The **Underwriters'** maximum liability for a **Single Loss** shall not exceed the Limit of Liability applicable to such loss, as set forth in Item 3A of the Schedule, regardless of the number of **Insureds** who have incurred loss.

**7.2** If a **Single Loss** is covered under more than one Insuring Agreement of this Coverage Section, the maximum amount payable under this Coverage Section shall not exceed the largest applicable Limit of Liability of any one such Insuring Agreement.

**7.3** If a **Single Loss** is covered under both Insuring Agreement 1.7 and Automatic Extension 2.1, then only one Excess and one Limit of Liability shall apply, that being the Excess and Limit of Liability under Insuring Agreement 1.7.

**7.4** Aggregate Limit of Liability

(a) If Item 3A of the Schedule indicates an Aggregate Limit of Liability for this Coverage Section, then the **Underwriters'** maximum aggregate liability for all loss under this Coverage Section which is **Discovered** during the **Policy Period** and all **Restoration Expenses**, shall not exceed such Aggregate Limit of Liability. If the Aggregate Limit of Liability is exhausted by the payment of loss or **Restoration Expenses** by the **Underwriters**, the **Underwriters** will have no further liability to make any payments under this Coverage Section.

(b) If Item 3A of the Schedule does not indicate an Aggregate Limit of Liability for this Coverage Section, then the payment of loss under any one Insuring Agreement by the **Underwriters** shall not reduce or exhaust the Single Loss Limit of Liability under any other Insuring Agreement. However, in no event shall the **Underwriters** be liable to reimburse the **Insured**, in total, more than the amount set forth in Item 5 of the Schedule for **Restoration Expenses**, under Automatic Extension 2.1.

**7.5** Section 4. of the General Terms and Conditions shall not apply to this Coverage Section.

#### **SECTION 8: EXCESS**

**8.1** The **Underwriters** will not reimburse the **Insured** for loss resulting directly from a **Single Loss** unless the amount of loss exceeds the applicable Excess shown in Item 4 of the Schedule. The **Underwriters** will then reimburse the amount of loss in excess of the Excess, up to the applicable Limit of Liability.

**8.2** If a **Single Loss** is covered under more than one Insuring Agreement of this Coverage Section, then only the highest **Single Loss** Excess shall be applied.

**8.3** If a **Single Loss** is covered under both Insuring Agreement 1.7 and Automatic Extension 2.1, then only one Excess and one Limit of Liability shall apply, that being the Excess and Limit of Liability under Insuring Agreement 1.7.

**8.4** Section 5. of the General Terms and Conditions shall not apply to this Coverage Section.

## SECTION 9: NON-ACCUMULATION OF LIABILITY

- 9.1** When there is more than one **Insured**, the maximum liability of the **Underwriters** for loss sustained by one or all **Insureds** shall not exceed the amount for which the **Underwriters** would be liable if all losses were sustained by any one **Insured**.
- 9.2** Regardless of the number of years this Coverage Section remains in effect and the total premium amounts due or paid, neither the Limits of Liability nor the amount the **Underwriters** shall reimburse for any loss shall be cumulative from year-to-year or from **Policy Period-to-Policy Period**.

## SECTION 10: PROOF OF LOSS

**10.1** It is a condition precedent to coverage hereunder that, upon **Discovery**, the **Insured** shall:

- (a) provide written notice to the **Underwriters** as soon as practicable and in no event later than ninety (90) days after such **Discovery**;
- (b) furnish sworn Proof of Loss with full particulars to the **Underwriters** within six (6) months of such **Discovery**, including:
  - (i) production of all relevant records and documents as the **Underwriters** shall request; and
  - (ii) submit to examination under oath at the **Underwriters'** request; and
- (c) cooperate completely with the **Underwriters** in all matters pertaining to the claim.

**10.2** The **Insured** may offer a comparison between the **Insured's** inventory records and actual physical count of its inventory to prove the amount of loss, but only where the **Insured** establishes wholly apart from such comparison that it has sustained a covered loss, caused by an identified **Employee**.

**10.3** Section 6. of the General Terms and Conditions shall not apply to this Coverage Section.

## SECTION 11: VALUATION AND FOREIGN CURRENCY

The **Underwriters** shall reimburse:

**11.1** loss of **Money** but only up to and including its face value, and at the **Insured's** option, reimburse for loss of **Money** issued by any country other New Zealand:

- (a) at face value in the **Money** issued by that country; or
- (b) in New Zealand equivalent determined by the rate of exchange published in the Wall Street Journal on the day the loss was **Discovered**.

**11.2** loss of **Securities** but only up to and including their value at the close of business on the day the loss was **Discovered**. The **Underwriters** may, at the **Underwriters** option:

- (a) reimburse the market value of such **Securities** or replace them in kind, in which event the **Insured** must assign to the **Underwriters** all the **Insured's** rights, title and interest in and to those **Securities**;  
or

- (b) reimburse the cost of any Lost Securities Bond required in connection with issuing duplicates of the **Securities**. However, the **Underwriters** will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of the value of the **Securities** at the close of business on the day the loss was **Discovered**.

**11.3** loss of, or loss from damage to, **Property** or **Premises** including its exterior for the replacement cost without deduction for depreciation; provided the **Underwriters** will not reimburse more than the least of the following:

- (a) the cost to replace the lost or damaged **Property** with **Property** of comparable material and quality and used for the same purpose;
- (b) the amount the **Insured** must actually spend that is necessary to repair or replace the lost or damaged **Property**; or
- (c) the Single Loss Limit of Liability applicable to the lost or damaged **Property**.

The **Underwriters** will not reimburse the **Insured** on a replacement cost basis for any loss or damage until such **Property** is actually repaired or replaced, and unless the repairs or replacement are made as soon as reasonably possible after the loss or damage. If the lost or damaged **Property** is not repaired or replaced, the **Underwriters** will reimburse the **Insured** the actual cash value of the **Property** on the day the loss was **Discovered**.

## **SECTION 12: OTHER INSURANCE**

**12.1** If the **Insured** or any other party in interest in any loss covered by this Coverage Section has any bond, indemnity or other insurance which would cover such loss in whole or in part in the absence of this Coverage Section, then this Coverage Section shall be null and void to the extent of the amount recoverable or received under such other bond, indemnity, or insurance; but this Coverage Section shall cover such loss, subject to its exclusions, conditions and other terms, only to the extent of the amount of such loss in excess of the amount recoverable or received under such other bond, indemnity or insurance.

**12.2** Section 7.7.1 of the General Terms and Conditions shall not apply to this Coverage Section.

## **SECTION 13: CONCEALMENT, MISREPRESENTATION OR FRAUD**

**13.1** This Coverage Section is void in any case of fraud by the **Insured** as it relates to this Coverage Section at any time. This Coverage Section is also void if the **Named Insured** or any other **Insured**, or any person authorised to act on its behalf, at any time intentionally conceals or misrepresents a material fact concerning:

- (a) this Coverage Section, in the **Proposal Form** for this Coverage Section or in any materials submitted therewith;
- (b) **Money, Securities or Property**;
- (c) the **Insured's** interest in **Money, Securities or Property**; or
- (d) a claim under this Coverage Section.

**13.2** Section 7.17 of the General Terms and Conditions shall not apply to this Coverage Section.

**SECTION 14: RECORDS**

The **Insured** must keep records of all **Money, Securities, and Property** under this Coverage Section so the **Underwriters** can verify the amount of any loss.

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**MANAGEMENT LIABILITY INSURANCE POLICY**  
**General Terms and Conditions**

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

**SECTION 1: TERMS AND CONDITIONS**

- 1.1** The definitions, terms and conditions set forth in these General Terms and Conditions apply to all purchased Coverage Sections of this Policy.
- 1.2** The terms in these General Terms and Conditions, which are defined in a specific Coverage Section, shall have the meaning provided for such terms in such Coverage Section for purposes of determining coverage.
- 1.3** If any of the definitions, terms or conditions in these General Terms and Conditions are inconsistent or in conflict with the definitions, terms and conditions of any specific Coverage Section, the definitions, terms and conditions of such Coverage Section shall take priority.
- 1.4** The **Insureds** agree that these General Terms and Conditions, the Policy (for each and every purchased Coverage Section together with any appendices), including the **Proposal Form** and any endorsements, and the Schedule constitutes the entire agreement between them and the **Underwriters** or any of their agents relating to this insurance.

**SECTION 2: GENERAL DEFINITIONS**

- 2.1** **“Circumstance”** means an incident, occurrence, fact, matter, act, error or omission which is likely to give rise to a **Claim** against the **Insured**.
- 2.2** **“Company”** means:
  - (a) the **Named Insured**; and
  - (b) any **Subsidiary**.
- 2.3** **“Insolvency”** means the appointment of an administrator, receiver, liquidator, trustee or similar official to control, supervise, manage or liquidate an entity.
- 2.4** **“Management Control”** means:
  - (a) controlling the composition of the board of directors of an entity;
  - (b) controlling more than half of the shareholder or equity voting power of an entity; or
  - (c) holding more than half of the issued share or equity capital of an entity.

**2.5 “Named Insured”** means the entity named in Item 1A of the Schedule.

**2.6 “Organisational Change”** means:

- (a) the **Named Insured** consolidates with, merges into, or sells more than fifty percent (50%) of its assets to any other person or entity or group of persons or entities acting in concert such that the **Named Insured** is not the surviving entity;
- (b) any person or entity, or group of persons or entities, acting in concert acquire more than fifty percent (50%) of the assets or voting rights of the **Named Insured**; or
- (c) the **Insolvency** of the **Named Insured**.

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

**2.8 “Pollutants”** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fibres, mould, spores, fungus, fumes, acids, alkalis, chemicals and waste. Waste includes, but is not limited to, materials to be recycled, reconditioned or reclaimed.

**2.9 “Proposal Form”** means the written proposal form submitted by the **Insured** to the **Underwriters**, including any related documents and statements that have been submitted or provided by the **Insured** to the **Underwriters** in connection with the underwriting of this Policy.

**2.10 “Related Claims”** means all **Claims** arising out of, based upon or attributable to:

- (a) the same acts, errors or omissions;
- (b) a series of related acts, errors or omissions; or
- (c) the same matter or transaction.

**2.11 “Subsidiary”** means any entity of which, prior to the Inception Date set forth in Item 2A of the Schedule, the **Company** has **Management Control**.

**2.12 “Underwriters”** means the underwriter(s) named in Item 13 of the Schedule.

### **SECTION 3: GENERAL EXCLUSIONS**

#### **3.1 Sanctions**

No **Underwriter** shall be deemed to provide cover and no (re)insurer shall be liable to pay any **Claim** or provide any benefit hereunder to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit would expose that **Underwriter** or (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

### 3.2 Terrorism

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto, it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this Exclusion, an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This Exclusion also excludes loss, damage, cost or expense of 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 any act of terrorism.

If the **Underwriters** allege that by reason of this Exclusion, any loss, damage, cost or expense is not covered by this insurance, the burden of proving the contrary shall be upon the **Insured**.

In the event any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

### 3.3 War and Civil War

Notwithstanding anything to the contrary contained herein, this Policy does not cover directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of, or damage to, property by or under the order of any government or public or local authority.

### 3.4 Radioactive Contamination and Explosive Nuclear Assemblies

This Policy does not cover:

- (a) loss or destruction of, or damage to, any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss; or
- (b) any legal liability of whatsoever nature,

directly or indirectly caused by or contributed to by or arising from:

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

## SECTION 4: LIMITS OF LIABILITY

- 4.1** The Separate Limit of Liability for each Coverage Section, as set forth in Item 3A of the Schedule, is the maximum liability of the **Underwriters** for all **Loss** for each respective Coverage Section.
- 4.2** The Shared Limit of Liability for any Coverage Sections, as set forth in Item 3A of the Schedule, is the **Underwriters'** maximum liability for all **Loss** under all such Coverage Sections to which such Shared Limit of Liability applies.
- 4.3** The Aggregate Limit of Liability, as set forth in Item 3A of the Schedule, is the maximum liability of the **Underwriters** for all **Loss** for all purchased Coverage Sections, regardless of whether or not the Limit of Liability for any such Coverage Sections are shared.
- 4.4** Any Sublimit of Liability of this Policy: (i) shall be part of, and not in addition to, the applicable Separate Limit of Liability or the Shared Limit of Liability for the respective Coverage Section(s); and (ii) is the maximum liability of the **Underwriters** for all **Loss** to which the Sublimit of Liability applies.
- 4.5** Any Additional Limit of Liability of this Policy: (i) shall not be part of, and is in addition to, the Aggregate Limit of Liability set forth in Item 3A of the Schedule; and (ii) is the maximum liability of the **Underwriters** for all **Loss** to which the Additional Limit of Liability applies.
- 4.6** If any Separate Limit of Liability for an individual Coverage Section is exhausted by the payment of **Loss**, all obligations of the **Underwriters** under this Policy with respect to the individual Coverage Section, including any obligation to pay any further **Defence Costs**, will be completely fulfilled, and the **Underwriters** will have no further obligations under this Policy of any kind with respect to the individual Coverage Section. In such event, the premium for the individual Coverage Section will be fully earned.
- 4.7** If any Shared Limit of Liability for any Coverage Sections is exhausted by the payment of **Loss** under this Policy, all obligations of the **Underwriters** under this Policy with respect to such Coverage Sections will be completely fulfilled, and the **Underwriters** will have no further obligations under this Policy of any kind with respect to such Coverage Sections including any obligation to pay any further **Defence Costs**. In such event, the premium for all such Coverage Sections will be fully earned.
- 4.8** If any Additional Limit of Liability for any Coverage Sections is exhausted by the payment of **Loss** under this Policy, all obligations of the **Underwriters** under this Policy with respect to the matters to which such Additional Limit of Liability applies will be completely fulfilled, and the **Underwriters** will have no further obligations under this Policy of any kind with respect to such matters, including any obligation to pay any further **Defence Costs**.
- 4.9** Any payment of **Loss** under any Limit of Liability for an individual Coverage Section shall reduce and may exhaust the Aggregate Limit of Liability set forth in Item 3A of the Schedule. If the Aggregate Limit of Liability and all Additional Limits of Liability are exhausted by the payment of **Loss**, the **Underwriters** will have no further obligations of any kind with respect to this Policy, including any obligation to pay any further **Defence Costs**, and the Premium set forth in Item 14 of the Schedule will be fully earned.
- 4.10** **Defence Costs** are not part of, and are in addition to, the Limits of Liability, Sublimits of Liability and Additional Limits of Liability of this Policy and payment by the **Underwriters** of **Defence Costs** shall not reduce any such Limits of Liability, Sublimits of Liability and Additional Limits of Liability.

4.11 The purchase of an Extended Reporting Period pursuant to Section 7.19 of these General Terms and Conditions, shall neither increase nor reinstate any Limits of Liability of this Policy.

## SECTION 5: EXCESS

5.1 Where a Coverage Section requires payment of an Excess as set forth in Item 4 of the Schedule:

- (a) The **Underwriters** shall only pay the **Loss** which exceeds the applicable Excess. The Excess is to be borne by the **Insured** and remain uninsured.
- (b) The **Underwriters** shall only be liable for the amount of **Loss** arising from a **Claim**, which exceeds the applicable Excess amount. A single Excess amount shall apply to all **Loss** from all **Related Claims**.

The application of the Excess to **Loss** under one Coverage Section shall not reduce the Excess that applies to **Loss** under any other Coverage Section. If different Excess amounts apply to different parts of a **Claim**, the applicable Excess amount shall be applied separately to each part of the **Claim**, and the sum of such Excess amounts shall not exceed the largest single Excess amount which applies to such **Claim**.

5.2 If the **Company** is legally required or permitted to indemnify an **Insured Person** for any **Loss**, and does not do so for any reason, the **Underwriters** shall not require payment of the applicable Excess by the **Insured Person**. However, the **Company** hereby agrees to reimburse the **Underwriters** for the full amount of such Excess immediately upon request, unless the **Company** is unable to do so solely by reason of **Insolvency**.

## SECTION 6: CLAIMS CONDITIONS

### 6.1 Notification

- 6.1.1 The **Insured(s)** shall, as a condition precedent to the obligations of the **Underwriters** under this Policy, give written notice to the **Underwriters** of a **Claim** made against an **Insured** as soon as practicable after the finance director, risk manager or general counsel (or individuals with equivalent responsibilities) of the **Company** or, in the case of the Employment Practices Liability Coverage Section (if purchased), the head of human resources (or individuals with equivalent responsibilities) of the **Company** becomes aware of the **Claim**. In all events, notice must be given no later than thirty (30) days after Expiration Date of this Policy.
- 6.1.2 In the event an **Insured** fails to provide notice as soon as practicable of a **Claim** in accordance with Section 6.1.1, the **Underwriters** shall not be entitled to deny coverage for such **Claim** based solely upon late notice, unless the **Underwriters** can establish that their interests were materially prejudiced by reason of such late notice.
- 6.1.3 If during the **Policy Period** an **Insured** becomes aware of a **Circumstance** and shall give written notice to the **Underwriters** of the **Circumstance**, including the **Wrongful Act** allegations anticipated and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, then any **Claim** that is subsequently made against an **Insured** alleging, arising out of, based upon or attributable to such **Circumstance**, shall be considered made at the time written notice of such **Circumstance** was given to the **Underwriters**.

6.1.4 The **Insured(s)** shall, as a condition precedent to the obligations of the **Underwriters** under this Policy, give written notice of a **Claim** or a **Circumstance** to the **Underwriters** at the physical posting address or the e-mail address indicated in the Schedule. All other notices to the **Underwriters** under this Policy shall be given to the postal or e-mail address indicated in the Schedule.

## 6.2 Cooperation

6.2.1 As a condition precedent to the right to be indemnified under this Policy, the **Insured** must provide to the **Underwriters** (or its their appointed agent) promptly, and in any event within fourteen (14) days of any request made by the **Underwriters** (or their appointed agent), the full details together with any other information requested regarding any matter for which the **Insured** has requested to be indemnified. The **Insured** must also provide such cooperation and assistance as the **Underwriters** (or their legal advisers or appointed agents) may require, including but not limited to:

- (a) providing all documentation;
- (b) providing detailed comments on any claim document;
- (c) providing detailed signed statements of fact;
- (d) ensuring access to any and all information;
- (e) providing information, assistance and signed statements of fact in respect of any subrogation proceeding commenced by the **Underwriters**; and
- (f) providing all other information and assistance,

within the time period requested.

6.2.2 All **Insureds** and all persons, firms and companies acting for or on the **Insured's** behalf shall ensure that all documents that may be relevant to any **Claim, Circumstance** or other matter for which coverage may be provided under this Policy shall not be intentionally destroyed or otherwise intentionally disposed of.

## 6.3 Subrogation

6.3.1 Upon payment of any **Loss** under this Policy by the **Underwriters** including any amounts paid under the Crime Coverage Section (if purchased), the **Underwriters** shall be subrogated to the extent of such payment to all of the **Insured(s)'** rights of recovery, including but not limited to any of the **Insured Person(s)'** rights of recovery against a **Company** for indemnification.

6.3.2 The **Insured(s)** shall execute all papers required (including those documents necessary for the **Underwriters** to bring suit or other form of proceeding in their name) and do everything that may be necessary to pursue and secure such rights.

6.3.3 All recoveries for payments made under any Coverage Section, whether made by the **Underwriters** or the **Insured**, shall be applied net of the expense of such recovery:

- (a) first, to the **Insured** in satisfaction of the **Insured's** covered loss in excess of the amount paid under that Coverage Section;
  - (b) second, to the **Underwriters** in satisfaction of amounts paid in settlement of the **Insured's** claim;
  - (c) third, to the **Insured** in satisfaction of any Excess; and
  - (d) fourth, to the **Insured** in satisfaction of any loss not covered under a Coverage Section.
- 6.3.4 Recoveries do not include any recovery: (a) for insurance, suretyship, reinsurance, security or indemnity taken for the **Underwriters'** benefit; or (b) solely as respects the Crime Coverage Section (if purchased), of original **Securities** after duplicates of them have been issued.

## 6.4 Territory

This Policy applies to:

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

## SECTION 7: GENERAL CONDITIONS

### 7.1 Alteration of Risk

- 7.1.1 The **Insured** must notify the **Underwriters** in writing as soon as practicable of any material alteration to the risk covered by this Policy that occurs during the **Policy Period**.
- 7.1.2 Following the receipt of such notice, the **Underwriters** shall have the right to either:
  - (a) exclude coverage for this additional exposure by issuing an endorsement to this Policy specifically excluding such exposure; or
  - (b) offer to provide coverage for this additional exposure by issuing a quote to the **Named Insured** for such coverage.
- 7.1.3 Coverage for any such additional exposure shall be provided by the **Underwriters** only if the **Named Insured**:
  - (a) provides the **Underwriters** with full particulars of the event(s), as requested by the **Underwriters**, that materially alter the risk covered by this Policy;
  - (b) accepts in writing the terms, conditions and additional premium required by the **Underwriters** for such coverage; and

- (c) pays such additional premium when due.

## 7.2 Assignment

This Policy and any and all rights hereunder are not assignable without the prior written consent of the **Underwriters**.

## 7.3 Authorisation

Except as otherwise specifically provided under any other provision of this Policy, the **Named Insured** shall act on behalf of all **Insureds** with respect to all matters under this Policy including:

- (a) giving of notice of a **Claim** or **Circumstance**;
- (b) defending or settling a **Claim**;
- (c) giving and receiving all correspondence and information;
- (d) giving and receiving notice of cancellation;
- (e) paying any premium;
- (f) receiving any return premium;
- (g) receiving and accepting any endorsements issued to form a part of this Policy; and
- (h) exercising any right to an Extended Reporting Period.

## 7.4 Confidentiality

The **Insured** shall not disclose to any third party the terms, conditions, exclusions, or Limits of Liability of this Policy or the amount of the premium paid, except to the extent that they are required by law to do so or receive written consent from the **Underwriters** to make such disclosure.

## 7.5 Underwriters' Rights

In the event that the **Underwriters** are entitled to avoid or repudiate this Policy ab initio, the **Underwriters** may instead at their election give written notice to the **Insured** that they regard this Policy as of full force and effect, except that the Policy shall exclude coverage for any **Claim** for **Loss** which has arisen or which may arise and which is related to the circumstances which entitle the **Underwriters** to avoid or repudiate this Policy. This Policy shall then continue in full force and effect and such applicable exclusion shall be added to this Policy by endorsement attached hereto.

## 7.6 Late Notice, Innocent Non-Disclosure and Material Non-Disclosure

7.6.1 The **Underwriters** shall not exercise their right to avoid this Policy, nor will the **Underwriters** reject a request for indemnity, solely on the grounds of non-disclosure in the **Proposal Form** or a breach of the notice provisions set forth in Section 6.1 (or more particularly set out in a Coverage Section), provided that:

- (a) the **Insured** shall establish to the **Underwriters'** reasonable satisfaction that such non-disclosure or breach was free of any fraudulent conduct or intent to deceive;
- (b) if the **Insured** was aware, prior to the Inception Date set forth in Item 2A of the Schedule, of any **Claim, Circumstance** or any matter for which cover is provided under this Policy, then if the indemnity available under this Policy is greater or wider in scope than that which would have been available, if any, to the **Insured** prior to such Inception Date, the **Underwriters** shall only be liable to indemnify the **Insured** for such amount and on such terms as would have been available to the **Insured** prior to such Inception Date, except that nothing in this provision shall entitle the **Insured** to any indemnity wider or more extensive than is otherwise available under this Policy;
- (c) if such non-disclosure or breach has resulted in prejudice to the **Underwriters** in the handling or settlement of any **Claim** or request for indemnity, the indemnity afforded by this Policy in respect of such **Claim** or request for indemnity shall be reduced by such sum as would have been payable, in the **Underwriters'** reasonable opinion, by the **Underwriters** in the absence of such prejudice; and
- (d) no indemnity shall be available for any matter for which the **Insured** fails to provide notice of a **Claim** within thirty (30) days after the Expiration Date of this Policy as specified in Section 6.1.1 (or more particularly set out in a Coverage Section).

7.6.2 In consideration of the **Underwriters** waiving their right to avoid this Policy in accordance with Section 7.6.1 above, and in the event of a material non-disclosure in the **Proposal Form**, the **Underwriters** shall be entitled in their sole discretion: (i) to determine the amount of any additional premium to be paid by the **Insured**; and (ii) to charge such additional premium to the **Insured**.

## 7.7 Other Insurance

7.7.1 The insurance provided by this Policy, other than the Employment Practices Liability Coverage Section (if purchased), shall apply only as excess over any other valid and collectible insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically as excess insurance over the applicable Limit of Liability provided by this Policy. This Policy shall specifically be excess of any other valid and collectible insurance pursuant to which any other underwriter or insurer has a duty to defend a **Claim** for which this Policy may be obligated to pay **Loss**. This Policy shall not be subject to the terms and conditions of any other insurance policy.

7.7.2 The coverage provided under the Employment Practices Liability Coverage Section (if purchased) shall be primary, unless expressly written to be excess over other applicable insurance.

7.7.3 Upon giving notice of any **Claim** or **Circumstance**, the **Insured** agrees to provide to the **Underwriters** written details of any other insurance that may cover or partially cover such **Claim** or **Circumstance**.

7.7.4 When coverage is provided under more than one Coverage Section:

- (a) the **Insured** shall be entitled to elect which Coverage Section responds to the **Claim** provided such election is made within a reasonable time frame; and

- (b) in no circumstance is the **Insured** entitled to seek an indemnity or an advance of **Defence Costs** under more than one Coverage Section for any one **Claim**.

## 7.8 Related Claims

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

## 7.9 GST

Where the **Insured** is liable to pay tax under section 5 (13) of the Goods and Services Tax Act 1985 (or any statutory amendment or re-enactment of the section or Act) upon receiving any indemnity payment under this Policy, the **Underwriters** will indemnify the **Insured** for the costs of that tax. The indemnity under this Section 7.9 is payable by the **Underwriters** in addition to the Limit of Liability for each Coverage Section set forth in Item 3A of the Schedule.

## 7.10 Organisational Change

7.10.1 If an **Organisational Change** occurs during the **Policy Period**, then this Policy shall continue in full force and effect as to any **Wrongful Act** occurring prior to the effective date of the **Organisational Change**; however, there shall be no coverage afforded by this Policy for any **Wrongful Act** occurring after the effective date of the **Organisational Change**.

7.10.2 The **Named Insured** shall give the **Underwriters** written notice of the **Organisational Change** as soon as practicable, but no later than thirty (30) days after the effective date of the **Organisational Change**.

## 7.11 Subsidiaries Acquired During the Policy Period

7.11.1 The term **Subsidiary** shall automatically include any entity of which the **Named Insured** first has **Management Control** ("Controlled Entity") during the **Policy Period**, either directly or indirectly through one or more other Controlled Entities, as long as:

- (a) such acquired entity is not formed as a partnership; and
- (b) such acquired entity's total consolidated assets are less than thirty-five percent (35%) of the consolidated gross assets of the **Named Insured** at the Inception Date set forth in Item 2A of the Schedule; and
- (c) such acquired entity does not have any of its securities listed on any exchange or market anywhere in the world;

provided, however, that the **Insured** gives written notice to the **Underwriters** of such acquired entity prior to the end of the **Policy Period**.

7.11.2 Any entity acquired during the **Policy Period** by the **Named Insured**, other than any entity described in Section 7.11.1 above, shall automatically be covered for a period of ninety (90) days from the effective date of the acquisition, but only in respect of **Wrongful Acts** which occur after

such date. The **Underwriters** may extend such coverage beyond ninety (90) days if the **Named Insured** submits a written request to the **Underwriters** within ninety (90) days from the effective date of the acquisition with full details regarding such entity. This extension of coverage is conditioned upon the **Insured** paying when due any additional premium required by the **Underwriters** and accepting any amended terms and conditions of this Policy.

- 7.11.3 Coverage afforded under this Policy for a **Claim** made against any **Insured** relating to a **Wrongful Act** of a **Subsidiary**, or any **Insured Person** thereof, shall only apply to **Wrongful Acts** committed or allegedly committed during the time such entity is a **Subsidiary**.

## 7.12 Cancellation

7.12.1 The **Insured** shall have the right to cancel any Coverage Section at any time by giving thirty (30) days written notice to the **Underwriters**. If such an event occurs, the premium shall be adjusted on the basis of the **Underwriters** retaining the short rate portion of the premium. The **Underwriters** will release such premium following the receipt of a No Claims Declaration from the **Insured**.

7.12.2 The **Underwriters** shall have the right to cancel this Policy should the **Named Insured** become insolvent or enter liquidation or administration. If such an event occurs, the **Underwriters** shall provide the **Named Insured** with thirty (30) days prior written notice of such cancellation. In the event that prior to the effective date of such cancellation the **Insured** has not provided notice to the **Underwriters** of any **Claim** or **Circumstance**, the **Underwriters** shall return a pro rata portion of the premium to the **Insured**. However, if such notice has been provided to the **Underwriters**, the premium shall be deemed fully earned as of the Inception Date set forth in Item 2A of the Schedule.

7.12.3 The **Underwriters** shall have the right to cancel this Policy if the premium has not been paid by the **Insured** within sixty (60) days after the Inception Date set forth in Item 2A of the Schedule. In the event of such non-payment, the **Underwriters** may cancel this Policy as if it had never been in existence and shall provide the **Named Insured** with not less than ten (10) days prior written notice of such cancellation. In the event of such cancellation, the Policy will be deemed terminated as of the date indicated in the **Underwriters'** written notice of cancellation to the **Named Insured**.

7.12.4 Any notice provided to the **Named Insured** under this Section 7.12 shall be delivered or posted to the **Named Insured** at the address specified in Item 1B of the Schedule. The posting of such notice as aforesaid shall be sufficient proof of notice.

## 7.13 Reinstatement of Limit

In the event the **Underwriters** recover amounts they have paid under this Policy, the **Underwriters** will reinstate the Limit of Liability as set forth in Item 3A of the Schedule to the extent of such recovery, less costs incurred by the **Underwriters** in administering and obtaining such recovery. The **Underwriters**, in their sole and absolute discretion, shall determine the amounts to be credited, if any, toward a reinstatement of such Limit of Liability. The **Underwriters** assume no duty to seek a recovery of any amounts they have paid under this Policy.

## 7.14 Several Liability

- 7.14.1 The liability of an **Underwriter** under this Policy is several and not joint with other **Underwriters** party to this Policy. An **Underwriter** is liable only for the proportion of liability it has underwritten. An **Underwriter** is not jointly liable for the proportion of liability underwritten by any other **Underwriter**; nor is an **Underwriter** otherwise responsible for any liability of any other **Underwriter** that may underwrite this Policy.
- 7.14.2 The proportion of liability under this Policy underwritten by an **Underwriter** (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.
- 7.14.3 In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an **Underwriter**. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion; nor is any member otherwise responsible for any liability of any other Underwriter that may underwrite this Policy. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.
- 7.14.4 Although reference is made at various points in this Section 7.14 to "this Policy" in the singular, where the circumstances so require this should be read as a reference to Policies in the plural.

## 7.15 Valuation and Currency

All amounts stated in this Policy are expressed in New Zealand dollars and all amounts payable under this Policy are payable in New Zealand dollars. If a judgment rendered or settlement entered into under this Policy is stated in a currency other than New Zealand dollars, then payment under this Policy shall be made in New Zealand dollars at the rate of exchange published in the *National Business Review* on the date the final judgment is rendered or the settlement payment is established.

## 7.16 Insured's Right to Contest a Claim

If the **Insured** does not agree with a decision by the **Underwriters** to settle a **Claim**, the **Insured** can elect to contest the **Claim** at its own expense but the liability of the **Underwriters** will not exceed the amount for which the **Claim** could have been settled in the opinion of a senior legal counsel (to be mutually agreed upon by the **Insured** and the **Underwriters** or in the absence of agreement by determination of the President of the New Zealand Law Society). The **Underwriters** shall pay all **Defence Costs** incurred up to the date the **Insured** notifies the **Underwriters** in writing of its election under this Section 7.16, and shall pay the **Insured** (subject to the Excess) the amount for which the **Claim** could have been so settled. The **Insured** expressly agrees that the **Underwriters'** liability in respect of such **Claim** shall then be at an end.

## 7.17 Representations and Severability

- 7.17.1 It is agreed between the **Insured** and the **Underwriters** that the **Proposal Form** shall be deemed to be incorporated into and forms the basis of this Policy and the **Insured** warrants the truth of all statements made therein. All such statements and representations shall be deemed to be the basis of this Policy and are to be considered as incorporated into this Policy.
- 7.17.2 No statements or representations made by, information or knowledge possessed by an **Insured Person** or any conduct of any **Insured Person** shall be imputed to any other **Insured Person** for the purpose of determining whether coverage is available under this Policy for any **Claim** made against such **Insured Person**. However, the knowledge possessed by any **Insured Person** who is a past or current chief executive officer, president or chief financial officer of the **Company** shall be imputed to such **Company** for the purpose of determining whether coverage is available under this Policy for any **Claim** made against the **Company**.

## 7.18 Governing Law and Disputes

This Policy and any issue, including all and any disputes, relating to its formation, construction, validity or operation shall be determined by the laws of New Zealand whose courts shall have exclusive jurisdiction to hear any dispute.

## 7.19 Extended Reporting Period

- 7.19.1 If this Policy or any Coverage Section of this Policy (except the Crime Coverage Section) is non-renewed by the **Underwriters**, the **Insured** shall have the right to:
- (a) an automatic Extended Reporting Period of sixty (60) days, commencing on the effective date of such non-renewal; and
  - (b) purchase an Extended Reporting Period of twelve (12) months, commencing upon the expiration of the automatic Extended Reporting Period,
- only with respect to the Policy, or Coverage Sections, that have been non-renewed.
- 7.19.2 The **Insured's** right to purchase an Extended Reporting Period, as described in Section 7.19.1 (b), shall lapse unless written notice of election to purchase such Extended Reporting Period and the applicable additional premium is received by the **Underwriters** within sixty (60) days after non-renewal of this Policy or any Coverage Section. The **Insured** shall not have any right to an Extended Reporting Period as described Section 7.19.1 in the event of an **Organisational Change**.
- 7.19.3 The additional premium for an Extended Reporting Period, as described in Section 7.19.1 (b), shall be determined by multiplying the percentage set forth in Item 8 of the Schedule by the Premium set forth in Item 14 of the Schedule. Such premium shall be fully earned at the inception of the Extended Reporting Period.
- 7.19.4 During any Extended Reporting Period, the **Insured** may provide the **Underwriters** with notice, pursuant to Section 6.1, of any **Claim** first made against an **Insured** during the Extended Reporting Period, for any **Wrongful Act** occurring prior to the effective date of the non-renewal of this Policy or any Coverage Section.

7.19.5 Any Extended Reporting Period provided under this Policy: (a) shall not increase or reinstate any Limit of Liability of this Policy; and (b) is non-cancellable.

## 7.20 Third Parties

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

## 7.21 Address For Service

Delta Insurance New Zealand Limited, as agent for and on behalf of certain Underwriters at Lloyd's, will accept notification of any **Claims** or **Circumstances** upon presentation to the address set forth in the Schedule.

## 7.22 Complaints Procedure

7.22.1 Any enquiry or complaint relating to this Policy should be referred to Delta Insurance New Zealand Limited in the first instance.

7.22.2 If this does not resolve the matter or the **Insured** is not satisfied with the way the complaint has been dealt with, the **Insured** should write to:

Lloyd's General Representative in New Zealand  
C/O Hazelton Law  
Level 3  
101 Molesworth Street  
P O Box 5639  
Wellington New Zealand

## 7.23 Headings

The descriptions in the headings and any subheading of this Policy (including any titles given to Coverage Sections or any endorsement attached hereto) are inserted solely for convenience and do not constitute any part of this Policy's terms or conditions.