

# GSI DIRECT

## COMBINED LIABILITY WORDING

### IMPORTANT NOTICES

#### A. YOUR DUTY OF DISCLOSURE

Before you enter into a contract of general insurance with an insurer, you have a duty to disclose to the insurer every matter that you know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, on what terms.

You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance.

Your duty however does not require disclosure of any matter:

- that diminishes the risk to be undertaken by the insurer;
- that is of common knowledge;
- that your insurer knows or, in the ordinary course of his business, ought to know; or
- as to which compliance with your duty is waived by the insurer.

Non-disclosure

If you fail to comply with your duty of disclosure, the **underwriter** may refuse to pay your **claim** or avoid the contract from its beginning.

#### B. CLAIMS MADE AND NOTIFIED POLICY

Sections 1, 3, 4 and 5 of this **policy**, being the Professional Indemnity, Directors and Officers Indemnity, Statutory Liability and Employers Liability sections, apply on a claims made and notified basis.

This means that Section 1, Section 3, Section 4 and Section 5 of the **policy** respond to:

- 1) any **claim** first made against you during the **period of insurance** and notified to the **underwriter** during the **period of insurance**, provided that you were not aware at any time prior to the **policy** inception of circumstances which would have put a reasonable person in your position on notice that a **claim** may be made against him/her; and
- 2) any **claim** made against you after the expiration of the **policy** provided such **claims** arise out of facts that you have notified to the **underwriter** in writing during the **period of insurance**. The facts that you may decide to notify are those which might give rise to a **claim** against you. Such notification must be given as soon as reasonably practicable after you become aware of the facts and prior to the time at which the **policy** expires.

#### C. RETROACTIVE DATE

Section 1 (Professional Indemnity), Section 4 (Statutory Liability) and Section 5 (Employers Liability) of the **policy** contain a **retroactive date**. This means that cover is excluded for any claim arising from a **wrongful act** occurring or committed prior to the **retroactive date**.

#### D. PRIOR AND PENDING LITIGATION DATE

Section 3 (Directors and Officers Indemnity) of the **policy** contains a **prior and pending litigation date**. This means that cover is excluded for any **claim** arising from any **wrongful act** relating to any prior and/or pending litigation committed prior to the **prior and pending litigation date**.

**E. PRESERVATION OF INSURER'S RIGHTS OF RECOVERY/SUBROGATION**

The **policy** contains provisions to the effect that the **insured** shall not surrender any right of recovery that it may have against another party without the **underwriter's** written consent. Failure to comply with this condition may permit the **underwriter** to reduce its liability in respect of a loss under the **policy**.

**F. INSURING CLAUSE**

This **policy** and the **schedule** have been prepared in accordance with the **named insured's** instructions. The **named insured** is required to read it carefully to ensure that it meets its requirements.

Alterations in the insurance required after the issue of the **policy** and the **schedule** will only be effective when a new **policy** or an **endorsement** has been issued which contains those alterations.

All material facts must be disclosed to the **underwriter**. Failure to do so may affect the rights of the **insured** under the **policy** as outlined in clause A. Your Duty of Disclosure on page 1 of this **policy**. A material fact is a fact likely to influence the **underwriter** in the acceptance or assessment of this insurance.

The **underwriter** and the **named insured** agree that:

- 1) this **policy**, the **schedule** (including any **schedule** issued by the **underwriter** in substitution) and any **endorsements** shall be considered one document;
- 2) the **proposal** shall be incorporated in and form the basis of this **policy**; and
- 3) the **underwriter** will provide the insurance described in this **policy** subject to its terms, conditions and exclusions for the **period of insurance** shown in the **schedule** and any subsequent period for which the **named insured** shall pay, and the **underwriter** shall agree to accept, the premium.

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## DEFINITIONS

A defined word, term or phrase will be shown in bold each time it appears in the **policy** except where incorporated in headings and titles.

Each time one of the following defined words, terms or phrases is used, it will have the same meaning wherever it appears in the **policy** whether expressed in the singular, the plural, male, female or neutral, unless an alternative definition is stated to apply.

### 1) **Act of Parliament**

Any Act of the New Zealand Parliament, including any amendments, enactments or Statutory Regulations of such Act and any replacing legislation.

### 2) **airside liability**

Liability in connection with any area of airport premises which has restricted rights of access, including manoeuvring areas, aprons, taxiways, runways and service roads, which are directly associated therewith.

### 3) **business**

- a) The professional advice and professional services provided by the **insured** as declared in the **proposal** and stated in the **schedule** as the Profession and Sub-Professions;
- b) In respect of Section 2 (Public and Products Liability) only, business shall also include:
  - i) engagement of subcontractors for performance of work on behalf of the **insured**;
  - ii) organisation of and participation in exhibitions, trade fairs and conferences;
  - iii) the **insured's** activities as property owners, lessors and lessees including repair, refurbishment and maintenance of such property;
  - iv) provision and management for the benefit of any **employee** of canteen, social, sports, welfare, fire, first aid, rescue and ambulance services;
  - v) provision for the benefit of any **employee** of nursery, crèche or child or baby care facilities;
  - vi) private work undertaken by any **employee** for any director, partner or executive of the **insured**;
  - vii) the activities of security organisations for the benefit of the **insured**;
  - viii) the organisation or sponsorship of charitable events or similar fund-raising activities;
  - ix) sponsorship of events, organisations, entities and individuals;
  - x) repair, maintenance and servicing of the **insured's** mechanically propelled vehicles;
  - xi) sale or disposal of owned property and goods, including owned mechanically propelled vehicles;
  - xii) provision of gifts and promotional material incidental to the business.

#### 4) **claim**

- a) In respect of Sections 1 – 3 and 5 (Professional Indemnity, Public and Products Liability, Directors and Officers Indemnity and Employers Liability), claim shall mean:
- i) The receipt by the **insured** of any written or verbal notice of demand for compensation made by a third party against the **insured**;
  - ii) Any writ, statement of claim, claim form, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon the **insured**;
  - iii) Any notice of intention, whether orally or in writing, to commence legal or arbitral proceedings against the **insured**.
- b) In respect of Section 4 (Statutory Liability) only, claim shall mean:
- i) Any threatened or actual prosecution, investigation or inquiry regarding an **event**;
  - ii) Any circumstances of which the **insured** shall become aware, which could reasonably be expected to give rise to a prosecution, investigation or inquiry regarding an **event**.

#### 5) **cladding**

Any cladding or facade system, including but not limited to the panels, lining, core, filler, insulation, attachment, fixing method or other elements used to affix the panels, whether or not insulated or made of composite materials, that is applied to any of a building's or structure's external walls or to another external area of a building.

#### 6) **Communicable disease**

Any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

- a) the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not;
- b) the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms;
- c) the disease, substance or agent can cause or threaten **injury**, emotional distress, or **damage**.

#### 7) **computer network**

A group of **computer systems** and other electronic devices or network facilities connected via a form of communications technology, including the internet, intranet and virtual private networks (VPN), allowing the networked computing devices to exchange Data

#### 8) **computer system**

Any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller, including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the **insured** or any other party.

#### 9) **continuity date**

The inception date of the first policy issued by the **underwriter** to the **named insured** where the **named insured** can demonstrate that it has been continually indemnified by the **underwriter** without interruption subsequent to such date.

#### 10) **cyber act**

An unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **computer system**.

#### 11) **cyber incident**

- a) Any error or omission, or series of related errors or omissions, involving access to, processing of, use of or

operation of any **computer system**; or

- b) Any partial or total unavailability failure or series of related partial or total unavailability or failures to access, process, use or operate any **computer system**.

**12) data**

Information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **computer system**.

**13) data protection law**

Any applicable data protection and privacy legislation or regulations in any country, province, state, territory or jurisdiction which govern the use, confidentiality, integrity, security and protection of personal data or any guidance or codes of practice relating to personal data issued by any data protection regulator or authority from time to time (all as amended, updated or re-enacted from time to time).

**14) damage**

Physical loss, physical destruction or physical damage to material property.

**15) deductible**

The first part of each and every **claim** borne by the **insured** as stated in the **schedule**.

**16) defence costs**

Reasonable legal costs and legal expenses incurred by or on behalf of the **insured** with the prior written and continuing consent of the **underwriter** in relation to the investigation and defence of any **claim** covered under this **policy**, including any appeal issued in connection with a **claim**. Defence costs shall not include the **insured's** own costs and expenses, salaries, remuneration for **employees** or any other internal expenses, overheads, fees or benefit of the **insured**.

**17) documents**

All paper documents directly connected with the **business** belonging to the **insured** or for which the **insured** is legally responsible whilst in the custody of the **insured**, in the ordinary course of the **business**.

Documents shall not include stamps, currency, coins, bank notes and bullion, travellers' cheques, cheques, postal orders, money orders, securities or any other negotiable instrument.

**18) employee**

- a) Any person under a contract of service or apprenticeship with the **named insured**;
- b) In respect of Section 2 (Public and Products Liability) only, **employee** shall also include:
  - i) any labour master or labour only sub-contractor or persons supplied by them whilst under the direct control and supervision of the **named insured**;
  - ii) self-employed persons engaged by the **named insured**;
  - iii) persons engaged by the **named insured** under work experience, training, study or similar schemes;
  - iv) any person hired to borrowed by or supplied to the **named insured** from any other employer;
  - v) voluntary workers for the **named insured**;
  - vi) outworkers and home workers for the **named insured**;
  - vii) any prospective **employee** who is being assessed by the **named insured** as to his or her suitability for employment;

whilst employed by or engaged by and under the control of the **named insured** in connection with the **business**.

**19) employment practices dispute**

Any **claim** brought by any past, present, or potential **employee** which alleges any breach of any employment agreement; wrongful dismissal or termination of employment whether actual or constructive; unfair dismissal;

unequal pay; unlawful deduction from wages; discrimination including on grounds of sex, sexual orientation, pregnancy, age, religion, race, disability; sexual or other harassment in the workplace; victimisation in the workplace; employment related misrepresentations; wrongful deprivation of any career opportunity, employment or promotion and any wrongful discipline, evaluation or failure to adopt adequate employment or workplace policies or procedures.

**20) endorsement**

Any amendments to the wording attaching to and forming part of this **policy**.

**21) event**

Any act or omission by the **insured** in connection with the **business** that may result in an allegation that the **insured** has committed an offence under an **Act of Parliament** punishable by conviction.

**22) fine**

Any monetary penalty or costs for which the **named insured** and/or **insured persons** are liable on conviction of any offence under an **Act of Parliament**.

**23) injury**

- a) Bodily injury, death, disease and illness which shall include psychiatric illness.
- b) In respect of Section 2 (Public and Products Liability) only, **injury** shall also include:
  - i) False arrest, false detention, false imprisonment or wrongful eviction; and
  - ii) Nuisance, trespass or interference with any easement, right of air, light, water or way.

**24) inquiry**

Any official investigation, examination, inquiry or other proceedings ordered or commissioned by any official body or institution empowered by law to investigate the conduct of the **business**.

**25) insured**

- a) In respect of Sections 1 – 3 and 5 of this **policy**, insured shall mean:
  - i) The **named insured**;
  - ii) Any person who is or who becomes, during the **period of insurance**, a partner, director, principal or member of the **named insured**;
  - iii) Any former partners, directors, principals or members of the **named insured**;
  - iv) Any **employee**;
  - v) In the event of the death or bankruptcy of any person insured under this **policy**, such person's estate, heirs, legal representatives or assignees, for legal liabilities incurred due to any act, error or omission of such deceased or bankrupt person.

Provided always that such parties requiring indemnity shall observe, fulfil and be subject to the terms, conditions, exclusions, extensions and **endorsements** of this **policy**.

- b) In respect of Section 4 (Statutory Liability) of this **policy**, insured shall mean:
  - i) the **named insured**;
  - ii) the **insured persons**.

**26) insured person**

- a) In respect of Section 3 (Directors and Officers Indemnity) only, insured person shall mean any natural person who is, or was, or may during the **period of insurance** become a director or officer of the **named insured** and any natural person who is construed to be a director or officer within the meaning of any applicable law or regulation governing such matters;
- b) In respect of Section 4 (Statutory Liability) only, insured person shall mean any person who is currently, or

was at the date of any **event**, or becomes during the **period of insurance**, a sole trader, partner, director, officer or **employee** of the **named insured**.

**27) intellectual property rights**

Intellectual property rights including copyright, design right, registered design or trademark. Intellectual property rights shall not include any patent or trade secret.

**28) limit of indemnity**

The amount stated in the **schedule** for each Section of the **policy** being the total amount payable by the **underwriter** under such Section.

**29) loss**

The legal liability of the **insured** to pay for:

- a) **defence costs**;
- b) awards of costs, including claimant's legal costs and expenses;
- c) settlements entered into with the prior written consent of the **underwriter**;
- d) compensatory damages.

**30) named insured**

The person, company, firm, partnership, organisation or other entity stated in the schedule as the Insured.

**31) occurrence**

An accident or event, including continuous or repeated exposure to the same conditions which results in **injury** or **damage** neither expected, nor intended by the **insured**.

**32) offshore**

From the time of embarkation onto a conveyance at the point of final departure to an offshore rig, offshore platform or support or accommodation vessel, until disembarkation from such offshore rig, offshore platform or support or accommodation vessel.

**33) Order for Reparation under the HSE Act**

An order for reparation imposed by the Court on sentencing following conviction of the **named insured** and/or **insured persons** for an offence under the Health and Safety at Work Act 2015.

**34) paparazzi**

A freelance photographer who pursues celebrities in order to obtain photographs, for subsequent sale to newspapers, magazines and/or for publishing via the internet.

**35) period of insurance**

The period stated in the **schedule**.

**36) policy**

- a) All terms conditions, exclusions, extensions and the **schedule** comprising this document;
- b) All other schedules, notices, appendices, subjectivity notices and other **documents** agreed by the **underwriter** and the **insured** attaching from time to time;
- c) All **endorsements** for incorporation in this document;
- d) The **proposal**

all of which shall be read together and constitute the contract of insurance between the **named insured** and the **underwriter**.



**37) pollution**

Discharge, dispersal, seepage, migration, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste.

**38) pollution incident**

Sudden, unexpected and unintended **pollution** that takes place in its entirety at a specific time and place during the **period of insurance**.

**39) prior and pending litigation date**

The inception date of the first **policy** issued by the **underwriter** to the **named insured** where the **named insured** can demonstrate that it has been continually indemnified by the **underwriter** without interruption subsequent to such date.

**40) products**

Goods or products (after they have ceased to be in the possession or under the control of the **insured**) manufactured, constructed, altered, repaired, serviced, treated, sold, supplied, or distributed by the **insured**, including any container.

**41) proposal**

Any information provided by the **insured** or the **insured's** broker or agent on behalf of the **insured** in connection with this insurance.

**42) punitive or exemplary damages**

Any monies ordered to be paid as punitive or exemplary damages pursuant to a judgement by a court of New Zealand in respect of a common law action brought by an **employee** against the **named insured** in relation to **injury**.

**43) principal**

Any party, other than a director, partner or **employee** of the **named insured**, with whom the **named insured** has entered into a contract in the course of the **business**, but only to the extent that the contract between the **principal** and the **named insured** requires such additional party to be indemnified in a like manner to the **named insured**.

**44) retroactive date**

Section 1 (Professional Indemnity) – The date specified as the retroactive date in the **schedule**.

Section 4 (Statutory Liability) – The establishment date of the company, firm, partnership, organisation or other entity stated in the **schedule** as the Insured.

However, where the **named insured** is a person, retroactive date shall mean the date from which such person started operating as a business.

**45) schedule**

The **schedule** of insurance attaching to and forming part of this **policy** together with any renewal **schedule**.

**46) subsidiary**

Any entity in which the **named insured**:

- a) Holds 50% or more of the share capital;
- b) Controls more than 50% of the voting power;
- c) Controls the composition of the board of directors.

**47) territorial limits**

The **territorial limits** stated in the **schedule**.

**48) terrorism**

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

**49) toxic mould**

Fungi including, but not limited to, any form or type of mould, mildew, mushroom, yeast, bio-contaminant and/or spore including but not limited to any substance produced by, emanating from, or arising out of any fungi.

**50) underground resources**

- a) Oil gas water or other mineral substances which have not been reduced to physical possession above the surface of the earth or above the surface of the sea;
- b) Any well hole shaft underground or undersea pipeline (including process transportation and storage facilities);
- c) Any geological formation stratum reservoir or area in or through which exploration for or production of any substance is carried on;
- d) Any casing pipe bit tool pump or other drilling or well servicing machinery or equipment located beneath the surface of the earth in any such well hole or shaft.

**51) underwriter**

GSI Insurance Brokers (Auckland) Ltd on behalf of certain Underwriters at Lloyd's led by MS Amlin Syndicate 2001.

**52) war**

War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not) civil war, rebellion, revolution, insurrection or military or usurped power.

**53) wrongful act**

- a) Any actual or alleged negligent act, negligent error or negligent omission;
- b) Any actual or alleged breach of New Zealand Consumer Law, the Fair Trading Act 1986 or any similar legislation enacted in New Zealand;
- c) Any actual or alleged defamation, libel, slander, product disparagement or other tort-related disparagement or harm to character or reputation;
- d) Any actual or alleged breach of privacy, breach of confidentiality, invasion of privacy or misuse of information which is either confidential or subject to statutory restrictions on its use;
- e) Any actual or alleged infringement of any **intellectual property rights**, including any act of passing off;
- f) Any other act or omission giving rise to a civil liability not excluded elsewhere in this **policy**.

## SECTION 1 – PROFESSIONAL INDEMNITY

Section 1 of this **policy** operates on a 'claims-made and notified' basis. This means that indemnity shall only be provided for **claims** made against the **insured** and notified to the **underwriter** during the **period of insurance**.

### INSURING CLAUSE

The **underwriter** shall, subject to the terms, conditions, exclusions, extensions and **endorsements** contained in this **policy**, indemnify the **insured** in respect of:

#### 1) Wrongful Acts

Compensatory damages and claimants' costs for which the **insured** shall become legally liable to pay in connection with any **claim** first made and notified to the **underwriter** during the **period of insurance** arising out of any actual or alleged **wrongful act**:

- a) committed after the **retroactive date** by the **insured**;
- b) committed after the **retroactive date** by any party acting on behalf of the **insured** for whom the **insured** are legally liable,

in the course of the **business**.

#### 2) Defence costs

All **defence costs** incurred in connection with a **claim** covered under Insuring Clause 1) (Wrongful Acts) of this Section.

### AUTOMATIC EXTENSIONS OF COVER UNDER SECTION 1

Subject otherwise to the terms, conditions and exclusions of this **policy**, in so far as they can apply, the **underwriter** shall provide indemnity in respect of the following extensions:

#### 1) Attendance at Inquiries

The **underwriter** shall, subject to the terms, conditions, extensions, exclusions and **endorsements** contained in this **policy**, indemnify the **insured** in respect of all reasonable legal costs and expenses incurred with the prior written consent of the **underwriter**, for representation of the **insured** at any **inquiry**.

Provided always that:

- a) the **inquiry** is ordered or commissioned during the **period of insurance**; and
- b) notice of such **inquiry** is provided to the **underwriter** during the **period of insurance**; and
- c) the maximum amount payable by the **underwriter** under this clause during the **period of insurance** for all **inquiries** shall not exceed NZD250,000 in the aggregate.

#### 2) Continuous Cover

The **underwriter** shall indemnify the **insured** in respect of any **claim** that would otherwise be excluded by Exclusion 6) (Known Claims and Circumstances) of this Section.

Provided always that:

- a) there has been no fraudulent non-disclosure or fraudulent misrepresentation; and
- b) the **insured** first became aware of the facts or circumstances giving rise to the **claim** after the **continuity date**.

#### 3) Loss of Documents

The **underwriter** shall indemnify the **insured** in respect of the reasonable and necessary costs of repair, replacement and/or reconstitution of any **document** which has been unintentionally erased, destroyed, damaged beyond reasonable use, lost or mislaid during the **period of insurance** and which after diligent

search cannot be found.

Provided always that:

- a) such loss or **damage** is suffered, first discovered and notified to the **underwriter** during the **period of insurance** and in any event within 30 days of discovery; and
  - b) the **document** was in the physical custody or control of the insured or any other person whom the insured entrusted, lodged or deposited such **document** in the ordinary course of **business**; and
  - c) the **insured** shall provide the **underwriter** with bills and accounts substantiating the expenses incurred by the **insured** in repairing, replacing and/or reconstituting such **documents**; and
  - d) no expense shall be incurred without the prior written consent of the **underwriter**; and
  - e) the maximum amount payable by the **underwriter** under this clause shall not exceed NZD500,000 in the aggregate.
- 4) **Dishonesty**

The **underwriter** shall indemnify the **insured** in respect of any **claim** arising out of any dishonest or fraudulent act or omission committed by any **insured** in the conduct of the **business**.

Provided always that:

- a) the **insured** shall give all necessary information and assistance to enable the **underwriter** to endeavour to obtain reimbursement for such **claim**; and
- b) any monies which, but for the dishonest or fraudulent act or omission would be due from the **insured** to the dishonest or fraudulent person shall be deducted from the indemnity afforded under this clause; and
- c) no indemnity shall be afforded to any **insured** or any other person or party who commits, condones or ignores such dishonest or fraudulent act or omission; and
- d) nothing in this extension shall preclude the **underwriter** from exercising any right of subrogation against any person or party committing or condoning such dishonest or fraudulent act or omission; and
- e) the **insured** shall bear the burden of providing satisfactory proof to substantiate a loss under this extension (including any costs incurred in such process) and the **underwriter** shall be under no obligation to provide indemnity to the **insured** until such time as it is satisfied that such loss has in fact been sustained; and
- f) the **underwriter** shall not be liable for any loss sustained in consequence of any act or omission occurring after the date of the discovery of, or reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the **insured** concerned.

5) **Fidelity**

The **underwriter** shall indemnify the **insured** in respect of financial loss suffered by the **insured** and notified to the **underwriter** during the **period of insurance** resulting from the loss of any:

- a) money, currency, coins, bank notes, cheques, postal orders, money orders or bullion;
- b) negotiable or non-negotiable instruments, or contracts representing money or other property including shares, stocks, debentures, warrants, options, bonds, promissory notes or other equity or debt security;

due to any dishonest or fraudulent act or omission of any **employee**.

Provided always that:

- i) no indemnity shall be afforded in respect of any loss directly or indirectly caused by or contributed to by, or arising from the access or dissemination of any confidential information including any trade secret, computer program, customer information, patent or copyright;
- ii) no indemnity shall be afforded in respect of any loss directly or indirectly caused by or contributed to by, or arising from any fraudulent or dishonest act or omission of any Partner, Principal or Director of the **insured**;
- iii) no indemnity shall be afforded to any **insured** or any other person or party who commits, condones or ignores such dishonest or fraudulent act or omission;

- iv) the **underwriter** shall not be liable for any loss sustained in consequence of any act or omission occurring after the date of the discovery of, or reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the person concerned;
  - v) the **insured** shall bear the burden of providing satisfactory proof to substantiate a loss under this extension (including any costs incurred in such process) and the **underwriter** shall be under no obligation to provide indemnity to the **insured** until such time as it is satisfied that such loss has in fact been sustained;
  - vi) the maximum amount payable by the **underwriter** under this clause shall be NZD100,000 in the aggregate.
- 6) **Reinstatement of Liability**

In the event the **limit of indemnity** under Section 1 of this **policy** has been entirely exhausted during the **period of insurance**, the **limit of indemnity**, shall be reinstated in the same amount, twice only.

Provided always that:

- a) the reinstated **limit of indemnity** shall only apply to **claims** which are not caused by, contributed to by, or arising out of the same source or originating cause of any of the **claims** already paid or payable under the original **limit of indemnity**; and
- b) all terms, conditions, extensions, exclusions and **endorsements** contained in this **policy** shall continue to apply in the same manner to the reinstated **limit of indemnity**; and
- c) there shall be no reinstatement of any sub-limit of indemnity provided under any Extension of Cover; and
- d) the reinstated **limit of indemnity** shall only apply following the exhaustion of the indemnity limit of any policy of insurance which operates in excess of the original **limit of indemnity**.

#### LIMIT OF LIABILITY UNDER SECTION 1

- 1) Subject to the Reinstatement of Liability clause the total amount payable by the underwriter under this Section of the **policy** for all **claims** in any one period of insurance shall not exceed the **limit of indemnity** irrespective of the number of claimants and/or the number of parties against whom such **claims** are made.
- 2) The indemnity provided under Insuring Clause 2) (Defence Costs) of this **policy** shall be in addition to the **limit of indemnity**, provided always that if the amount paid or payable to dispose of any **claim** is greater than the **limit of indemnity**, then the total amount payable by the **underwriter** for **defence costs** shall be limited to the proportion of the **defence costs** as the **limit of indemnity** under this **policy** bears to the amount paid or payable in respect of such **claim**.
- 3) All **claims** arising out of or in connection with, consequent upon or attributable to one source or originating cause shall be deemed to be one **claim** and only one **limit of indemnity** and one **deductible** shall apply.
- 4) Any applicable sub-limit of indemnity available under any Extension of Cover or any **endorsement** shall be deemed to be part of and not in addition to the **limit of indemnity**.

#### DEDUCTIBLE APPLICABLE UNDER SECTION 1

- 1) The **underwriter** shall only be liable to indemnify the **insured** for that part of the **insured's** liability for each **claim** that is greater than the **deductible**.
- 2) The **deductible** shall be inclusive of **defence costs**.
- 3) The full **limit of indemnity** shall apply over and above the **deductible**.
- 4) Where the **underwriter** has paid on the **insured's** behalf part or all of the **deductible**, the **insured** shall reimburse the **underwriter** immediately upon request.

#### EXCLUSIONS APPLICABLE TO SECTION 1

The indemnity provided by this Section of the **policy** shall not apply to:

##### 1) **Cyber and Data Protection Law**

- a) loss, damage, liability, claim, costs, expense, fines, penalties, mitigation costs or any other amount directly caused by, directly resulting from or directly arising out of:

- i) a **cyber act**; or
- ii) denial of service of or denial of access to any **computer system**;

provided the **computer system** is owned or controlled by the **insured** or any other party acting on behalf of the **insured** in either case; or

- b) the receipt or transmission of malware, malicious code or similar by the **insured** or any other party acting on behalf of the **insured**, provided always that this exclusion 1) b) shall not apply to any **claim** arising directly from a negligent act, negligent error or negligent omission committed by the **insured**, or by any party acting on behalf of the **insured** for whom the **insured** is legally liable in the course of the **business**.
- c) any of the **insured's** own loss, damage, costs (other than legal costs incurred in the defence of actual or potential liability), expense, fines, penalties or mitigation costs directly caused by, directly resulting from or directly arising out of any partial or total unavailability or failure of any **computer system** owned or controlled by the **insured** or any other party acting on behalf of the **insured**.
- d) any loss, damage, liability, claim, costs, expense, fines, penalties, mitigation costs or any other amount directly or indirectly caused by, directly or indirectly resulting from or directly or indirectly arising out of any failure or interruption of service provided:
  - i) to the **insured** or any other party acting on behalf of the **insured** by an internet service provider, telecommunications provider or cloud provider but not including the hosting of hardware and software owned by the **insured**;
  - ii) by any utility provider, but only where such failure or interruption of service impacts a **computer system** owned or controlled by the **insured** or any other party acting on behalf of the **insured**.
- e) any loss, damage, liability, claim, costs, expense, fines, penalties, mitigation costs or any other amount for actual or alleged breach of **Data Protection Law** by the **insured** or any other party acting on behalf of the **insured**.

Save as expressly provided in this exclusion, or by other restrictions in this Section specifically relating to the use of, or inability to use, a **computer system**, no cover otherwise provided under this Section shall be restricted solely due to the use of, or inability to use, a **computer system**.

## 2) Injury and Damage

any **claim** directly or indirectly caused by or contributed to by, or arising from:

- a) **injury**; or
- b) **damage** other than as provided for under Automatic Extension of Cover 3) (Loss of Documents);

unless arising directly from a negligent act, negligent error or negligent omission in the course of the **business**.

## 3) Investment and Financial

any **claim** directly or indirectly caused by or contributed to by, or arising from:

- a) the sale of any financial product or investment;
- b) the provision of any financial planning or investment advice by, or on behalf of the **insured**, including but not limited to the provision of any advice or recommendation as to valuation or performance of any financial product or investment;
- c) any advice or other service provided by, or on behalf of the **insured**, in respect of which there is a requirement to hold a licence pursuant to the Financial Markets Conduct Act 2013, Securities Act 1978 or any similar legislation in order to provide such advice or service;
- d) the arrangement of any finance or credit by the **insured**;
- e) any virtual currency including but not limited to crypto-currency, including any fluctuation in value.

## 4) Joint Ventures and Consortia

any joint venture or consortium of which the **insured** is a member.

#### 5) Intellectual Property

any **claim** directly or indirectly caused by, contributed to by or arising from infringement of any patent or trade secret.

#### 6) Known Claims or Circumstances

- a) any **claim** which has been or ought to have been notified under any other policy of insurance in force prior to the inception of this **policy**;
- b) any **claim** which is based upon, arising from or in consequence of:
  - i) any circumstance which could reasonably be foreseen to give rise to a **claim** if written notice of such circumstance has been given, or ought to have been given under any other **policy**;
  - ii) any circumstance which could reasonably be foreseen to give rise to a **claim** of which the **insured** was actually aware, or ought reasonably to have been aware, prior to the inception date of this **policy**.

#### 7) Licensing Inquires

any prosecution, **inquiry** or other investigation in relation to the **insured** failing to be properly licenced, registered or accredited to provide services in the course of the business as required by law or other regulation.

#### 8) Retroactive Date

any actual or alleged act, error, omission or event committed or occurring wholly or in part prior to the **retroactive date**.

#### 9) Trade Specific

any **claim** directly or indirectly caused by or contributed to by, or arising from:

- a) any valuation of any residential or commercial property other than where such valuation is undertaken for establishing a price for the sole purpose of marketing a property for sale;
- b) any pre-purchase property inspection report, whether oral or written;
- c) the provision of any legal advice or legal services where such advice or services should only be provided by a fully qualified legal practitioner or barrister. However, this exclusion shall not apply to legal services provided by any paralegal or legal secretary where such work is undertaken under the direct supervision of a qualified legal practitioner;
- d) the issuance of any audit opinion;
- e) any advice provided on, or the arrangement of, corporate finance;
- f) any bankruptcy services, insolvency services or any form of legal administration;
- g) any business valuation;
- h) the issuance of any construction or development certificate in connection with any building.

#### 10) Trading Debts

any **claim** directly or indirectly caused by or contributed to by, or arising from:

- a) any trading loss or trading liability incurred by the **insured** or any business managed or carried on by or on behalf of the **insured** (including the loss of any client account or business);
- b) the actual or alleged overcharging or improper receipt of fees by the **insured** or any business managed or carried on by the **insured**.

### SECTION 2 – PUBLIC AND PRODUCTS LIABILITY

Section 2 of this **policy** operates on a 'losses occurring' basis. This means that indemnity shall only be provided for **damage** or **injury** that first occurs during the **period of insurance**.

## INSURING CLAUSES

The **underwriter** shall, subject to the terms, conditions, extensions, exclusions and **endorsements** contained in this **policy**, indemnify the **insured** in respect of:

### 1) Injury and Damage

compensatory damages and claimant's costs for which the **insured** shall become legally liable to pay in connection with any **loss** for or arising out of:

- a) **injury**; and/or
- b) **damage**;

happening during the **period of insurance** within the **territorial limits** from an **occurrence** in connection with the **business** or **products**.

### 2) Defence costs

**defence costs** incurred in connection with a **loss** covered under Insuring Clause 1) (Injury and Damage) of this Section and all reasonable legal costs and expenses incurred with the prior written consent of the **underwriter** for representation of the insured at proceedings in any court of summary jurisdiction arising out of any alleged breach of statutory duty resulting in **injury**.

## AUTOMATIC EXTENSIONS OF COVER UNDER SECTION 2

Subject otherwise to the terms, conditions and exclusions of this **policy**, in so far as they can apply, the **underwriter** shall provide indemnity in respect of the following extensions:

### 1) Contingent Motor Liability

Notwithstanding Exclusion 6) a) (Vehicles) of this Section, the **underwriter** shall indemnify the **insured** in respect of damages and claimants costs for which the **insured** shall become legally liable to pay in connection with any **claim** arising out of or consequent upon **injury** to any person and/or **damage** occurring in connection with the use, in the course of conduct of the **business**, of any mechanically propelled vehicle not the property of, nor provided by the **insured**.

Provided always that no indemnity shall be afforded in respect of any **claim** arising out of or consequent upon:

- a) **damage** to such vehicle or to property conveyed therein; or
- b) **injury** or **damage** arising while such vehicle is being driven by the **insured** or any person who, to the knowledge of the **insured** or his representative, does not hold a licence to drive such vehicle, unless such person has held and is not disqualified from holding or obtaining such a licence; or
- c) **injury** or **damage** in respect of which the **insured** is entitled to payment or indemnity under any other insurance or pursuant to the Accident Compensation Act 2001 or equivalent statute.

### 2) Sudden and Accidental Pollution

Notwithstanding General Policy Exclusion 19) (Pollution), the **underwriter** shall indemnify the **insured** in respect of damages and claimant's costs arising out of any **claim** in respect of **injury** or **damage** caused solely by a **pollution incident**.

Provided always that:

- a) all **pollution**, which arises out of any one **pollution incident**, shall be deemed to have occurred at the time such incident takes place; and
- b) the **underwriter** shall not indemnify the **insured** under this Extension in respect of any liability directly or indirectly caused by or contributed by or arising from **pollution** happening anywhere in United States of America or Canada or any territory within their jurisdictions.
- c) no indemnity shall be afforded in respect of any **claim** directly or indirectly arising from **pollution** (including any costs and expenses incurred in the prevention thereof) emanating from **underground resources**.

The maximum amount payable by the **underwriter** under this Extension shall be the **limit of indemnity** and nothing in this clause shall increase the liability of the **underwriter** to pay any amount in excess of such **limit of indemnity**.



Any sum the **underwriter** pays under this Extension shall reduce the amount of the aggregate **limit of indemnity** available for any other payment under this section in respect of **claims** arising out of **products**.

The remaining amount of such aggregate **limit of indemnity** is the most that will be available for any other payment.

### 3) Cross Liabilities

If the **insured** comprises more than one party, the **underwriter** shall provide indemnity to each such **insured**, in the same manner and to the same extent, as if a separate **policy** had been issued to each, provided always that the cumulative total amount payable under this **policy** to all such **insureds** shall not exceed the **limit of indemnity**.

### 4) Indemnity to Principals

Notwithstanding General Policy Exclusion 8) (Contractual Liability), to the extent that any contract or agreement entered into by the **insured** with any **principal** so requires, the **underwriter** shall, subject to the **limit of indemnity**:

- a) indemnify the **insured** against liability assumed by the **insured**; and
- b) indemnify the **principal** in like manner to the **insured** in respect of the liability of the **principal** arising out of the performance by the **insured** of such contract or agreement.

Provided always that:

- i) the conduct and control of **claims** is vested in the **underwriter**; and
- ii) the **principal** shall observe, fulfil and be subject to the terms, exclusions, conditions and **endorsements** of this **policy**; and
- iii) Indemnity to any **principal** shall only apply in respect of any **claim** for which indemnity would otherwise have been provided under this **policy** if the **claim** had been made directly against the **insured**.

### 5) Care, Custody or Control

Notwithstanding Exclusion 5) (Property) of this Section, the **underwriter** shall indemnify the **insured** for liability for **damage** to property in its care, custody or control in connection with the **business**.

The maximum amount payable under this extension for all occurrences that happen during the **period of insurance** shall not exceed NZD100,000 and the **deductible** shall be NZD1,000.

### 6) Lost or Stolen Keys

Notwithstanding Exclusion 5) (Property) of this Section, the **underwriter** shall indemnify the insured for liability for altering or replacing locks and key or combinations if they are stolen or believed on reasonable grounds to have been duplicated without proper authority. Provided that the keys or combinations must be in connection with the **business** and the **insured** does not own, hire, lease or rent the property relating to them.

The maximum amount payable under this extension for all occurrences that happen during the period of insurance shall not exceed NZD100,000 and the **deductible** shall be NZD1,000.

## LIMIT OF LIABILITY UNDER SECTION 2

- 1) In respect of public liability, the maximum amount payable by the **underwriter** shall not exceed the **limit of indemnity** for any one **occurrence**.
- 2) In respect of **products** liability, the maximum amount payable by the **underwriter** shall not exceed the **limit of indemnity** for any one **occurrence** or all **occurrences** during any one **period of insurance**.
- 3) Where the **underwriter** is required to indemnify more than one party, the total amount payable under the **policy** shall not exceed the **limit of indemnity**.
- 4) Any applicable sub-limit of indemnity available under any Extension of Cover specified in Section 2 (Public and Products Liability) of this **policy** shall be deemed to be part of and not in addition to the **limit of indemnity** which applies in respect of **products** liability.

- 5) The indemnity provided under Insuring Clause 2) (Defence Costs) of this **policy** shall be in addition to the **limit of indemnity**, provided always that if the amount paid or payable to dispose of any **loss** is greater than the **limit of indemnity**, then the total amount payable by the **underwriter** for **defence costs** shall be limited to the proportion of the **defence costs** as the **limit of indemnity** under this **policy** bears to the amount paid or payable in respect of such **loss**.

### DEDUCTIBLE APPLICABLE UNDER SECTION 2

- 1) The **underwriter** shall only be liable to indemnify the **insured** for that part of the **insured's** liability for each **loss** that is greater than the **deductible**.
- 2) The **deductible** shall be inclusive of **defence costs**.
- 3) The full **limit of indemnity** shall apply over and above the **deductible**.
- 4) Where the **underwriter** has paid on the **insured's** behalf part or all of the **deductible**, the **insured** shall reimburse the **underwriter** immediately upon request.

### EXCLUSIONS APPLICABLE TO SECTION 2

The indemnity provided by this Section of the **policy** shall not apply to:

#### 1) **Airside liability**

any **claim** directly or indirectly arising from or in connection with **airside liability**.

#### 2) **Cyber and Data**

any loss, damage, liability, **claim**, fines, penalties, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any:

- i) **cyber act** or **cyber incident** including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any **cyber act** or **cyber incident**; or
- ii) loss of use, reduction in functionality, repair, replacement, restoration, reproduction, loss or theft of any **data**, including any amount pertaining to the value of such **data**;

regardless of any other cause or event contributing concurrently or in any other sequence thereto.

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

This exclusion supersedes any other wording in the Policy or any endorsement thereto having a bearing on a **cyber act**, **cyber incident** or **data**, and, if in conflict with such wording, replaces it.

If the **underwriter** alleges that by reason of this exclusion that loss sustained by the **insured** is not covered by this **policy**, the burden of proving the contrary shall be upon the **insured**.

#### 3) **Damage to products**

any **claim** directly or indirectly caused by contributed by or arising from **damage** to any **products** caused by any defect therein or the unsuitability thereof for their intended purpose.

This exclusion does not apply to **damage** to any property other than the **product** itself.

#### 4) **Product Repair, Replacement or Recall**

any costs and/or expenses in relation to the repair of or recall of, or the provision of any refund in respect of **products**.

#### 5) **Property**

- a) any **claim** directly or indirectly caused by contributed by or arising from **damage** to any property which, at the time of the **occurrence** giving rise to such **claim**, is owned by or held in trust by or in the custody or control of the **insured** other than:
  - i) **employees'**, directors', partners', guests', customers', clients' or visitors' personal effects including vehicles and their contents;

- ii) premises, including fixtures, fittings and contents not owned by or leased to or rented to the **insured**, where the **insured** is undertaking work in connection with the **business**;
  - iii) premises and their fixtures and fittings, hired, leased, rented or lent to the **insured** other than **damage** in circumstances where liability is assumed by the **insured** under a tenancy or other agreement and would not have attached in the absence of such agreement;
  - iv) any vehicle, craft, container or railway rolling stock, including contents and accessories not owned by or leased to the **insured**, for the purpose of or whilst being loaded or unloaded by the **insured**;
  - v) food or beverages for consumption on the premises of the **insured** or at any other premises where the **insured** is carrying on the **business**.
- b) **damage** to that part of any property on which the **insured** or any servant or agent of the **insured** is or has been working.

**6) US Product Sales**

any **loss** directly or indirectly caused by contributed by or arising from **products** or services which to the knowledge of the **insured** are sold, supplied, erected, repaired, altered, treated or installed by the **insured**, in or for delivery or use in the United States of America or Canada.

**7) Vehicles**

any **loss** directly or indirectly caused by contributed by or arising from the ownership possession or use by or on behalf of the **insured** of any:

- a) mechanically propelled vehicle or mobile plant, other than any **loss** arising out of:
  - i) the use of plant as a tool of trade on site; and
  - ii) the use of plant at the premises of the **insured**; and
  - iii) the loading or unloading of any vehicle, trailer or container; and
  - iv) the unauthorised movement on the **insured's** premises or contract site.

Provided always that:

- (a) indemnity is not provided by any motor insurance contract; or
  - (b) compulsory motor insurance is not required by law; or
  - (c) there is not more specific insurance applying.
- b) aircraft or aerospace device; or
  - c) hovercraft or hydrofoil; or
  - d) water-borne craft, other than:
    - i) hand propelled or sailing craft in inland territorial waters; or
    - ii) water-borne craft not owned by the **insured**, but used by the **insured** for business entertainment; or
    - iii) mechanically propelled water-borne craft not exceeding 22 feet in length in inland or territorial waters.

**8) Professional Advice and Services**

any **loss** directly or indirectly arising from, or in connection with:

- a) advice;
- b) designs;
- c) formulae;

- d) specifications;
  - e) professional services;
- provided solely for a fee.

### SECTION 3 – DIRECTORS AND OFFICERS INDEMNITY

Section 3 of this **policy** operates on a 'claims made and notified' basis. This means that indemnity shall only be provided for **claims** made against the **insured** and notified to the **underwriter** during the **period of insurance**.

#### INSURING CLAUSE

Notwithstanding General Exclusion 10) (Directors and Officers) the **underwriter** shall, subject to the terms, conditions, exclusions, extensions and **endorsements** contained in this **policy**, indemnify:

- a) **any insured person** in respect of **loss** arising from any **claim** first made against them during the **period of insurance**;
- b) the **named insured** in respect of **loss** arising from any **claim** first made against any **insured person** when and to the extent that the **named insured** has indemnified that **insured person**;

where such **claim** arises from a **wrongful act** committed by an **insured person** in the course of the performance of the **insured person's** duties solely in their capacity as a director or officer of the **insured**.

#### LIMIT OF LIABILITY UNDER SECTION 3

The maximum amount payable by the **underwriter** under this Section during the **period of insurance** for all **claims** shall not exceed NZD250,000 in the aggregate during the **period of insurance**.

#### DEDUCTIBLE APPLICABLE UNDER SECTION 3

- 1) The **underwriter** shall only be liable to indemnify the **insured** for that part of the **insured's** liability for each **claim** that is greater than the **deductible**.
- 2) The **deductible** shall be inclusive of **defence costs**.
- 3) The full **limit of indemnity** shall apply over and above the **deductible**.
- 4) Where the **underwriter** has paid on the **insured's** behalf part or all of the **deductible**, the **insured** shall reimburse the **underwriter** immediately upon request.

#### EXCLUSIONS APPLICABLE TO SECTION 3

The indemnity provided by this Section of the **policy** shall not apply to:

##### 1) Bodily Injury and Property Damage

any **claim for injury or damage**.

##### 2) Employment Claims

any **claim** directly or indirectly arising out of any obligation owed by the **insured** as employer to any current or former or prospective **employee**, including any **claim** directly or indirectly arising out of any **employment practice dispute**.

##### 3) Fraudulent, Dishonest and Wilful Conduct

any **claim** directly or indirectly caused by, contributed to by, or arising from:

- a) the gaining of any financial advantage to which the **insured** or any **insured person** was not entitled, including the repayment of any wrongfully received monies;
- b) any conduct which involves wilful breach of duty in relation to the **insured**;
- c) any dishonest, fraudulent, criminal or malicious act.

tribunal or by formal admission by an **insured**.

#### 4) Known Circumstances and Prior Litigation

- a) any **claim** based upon, attributable to or arising out of any prior or pending litigation or proceedings, commenced before the **prior and pending litigation date**, including allegations deriving from the same or essentially the same facts, involving an **insured person** or the **named insured** which has been or should have been the subject of notice given under any prior insurance;
- b) any **claim** which has been or ought to have been notified under any other policy of insurance in force prior to the inception of this **policy**; or
- c) any **claim** which is based upon, arising from or in consequence of:
  - i) any circumstance which could reasonably be foreseen to give rise to a **claim** if written notice of such circumstance has been given, or ought to have been given under any other policy; or
  - ii) any circumstance which could reasonably be foreseen to give rise to a **claim** of which the **insured** or any **insured person** was actually aware, or ought reasonably to have been aware, prior to the inception date of this **policy**.

#### 5) Pension Schemes

any **claim** directly or indirectly caused by any **insured person** acting in the capacity of trustee, fiduciary or administrator of any employer-sponsored pension or superannuation scheme or superannuation programme.

#### 6) Professional Services

any **claim** directly or indirectly caused by, contributed to by, or arising from any breach of, or failure to provide professional services.

#### 7) Shareholders

any **claim** brought by or on behalf of any company owning 15% or more of the **insured's** issued share capital.

#### 8) Share Offerings

any **claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving a **wrongful act** committed by any **insured person** in relation to any actual public offering of the **insured's** share capital.

### SECTION 4 – STATUTORY LIABILITY

Section 4 of this **policy** operates on a 'claims made and notified' basis. This means that indemnity shall only be provided for **claims** made against the **insured** and notified to the **underwriter** during the **period of insurance**.

The **underwriter** shall, subject to the terms, conditions, extensions, exclusions and endorsements contained in this **policy**, pay on behalf of the **insured**:

#### 1) Statutory Liability

any **fine** under any **Act of Parliament** or any **Order for Reparation under the HSE Act** arising out of a **claim** made against the **insured** provided always that the **insured** first became aware of, or ought to have been aware of, the **claim** during the **period of insurance** and such **claim** is notified to the **underwriter** during the **period of insurance**.

#### 2) Defence Costs

**defence costs** incurred in connection with a **claim** covered under Insuring Clause 1) (Statutory Liability) of this Section.

### AUTOMATIC EXTENSIONS OF COVER UNDER SECTION 4

#### 1) Previous subsidiaries of the Named Entity

The definition of **named insured** shall include any entity that ceased to be a **subsidiary** before or during the **period of insurance**, provided always that the **underwriter** shall not pay on behalf of the **insured** any **fine** or **Order for Reparation under the HSE Act** arising from an **event** occurring after it ceased to be a subsidiary, nor shall the **underwriter** pay on behalf of the **insured** any **fine** or **Order for Reparation under the HSE Act**

arising from an **event** occurring before it became a **subsidiary**.

#### LIMIT OF LIABILITY UNDER SECTION 4

The maximum amount payable by the **underwriter** under this Section for all **claims** and **defence costs** shall not exceed in the aggregate the **limit of indemnity**.

#### DEDUCTIBLE APPLICABLE UNDER SECTION 4

- 1) The **underwriter** shall only be liable to indemnify the **insured** for that part of the **insured's** liability for each **claim** that is greater than the **deductible**.
- 2) The **deductible** shall be inclusive of **defence costs**.
- 3) The full **limit of indemnity** shall apply over and above the **deductible**.
- 4) Where the **underwriter** has paid on the **insured's** behalf part or all of the **deductible**, the **insured** shall reimburse the **underwriter** immediately upon request.

#### EXCLUSIONS APPLICABLE TO SECTION 4

The indemnity provided by this Section of the **policy** shall not apply to:

##### 1) Known Claims and Events

any **claim**

- a) made against, or intimated to, the **insured** prior to the commencement of the **period of insurance**;
- b) notified under any previous policy;
- c) arising out of or connected with any **event** that:
  - i) the **insured** was aware of prior to commencement of the **period of insurance**; and
  - ii) a reasonable person in the position of the **insured** would have considered may give rise to a **claim**.

##### 2) Other activities

any **claim** arising out of activities otherwise than in the course of or in connection with the **insured's** **business**.

##### 3) Retroactive date

any **claim** that arose out of any **event** that occurred prior to the **retroactive date**.

##### 4) Excluded acts

any **claim** arising out of, based upon, attributable to, or in any way involving directly or indirectly the following **Acts of Parliament**:

- a) Arms Act 1983;
- b) Aviation Crimes Act 1972;
- c) Crimes Act 1961;
- d) Criminal Investigations (Blood Samples) Act 1995;
- e) Land Transport Act 1998;
- f) Misuse of Drug Act 1975;
- g) Proceeds of Crime Act 1991;
- h) Summary Offences Act 1981;

and any other **Act of Parliament** specified in an **endorsement** as an excluded **Act of Parliament**.

**5) Damages and non-criminal penalties**

any **claim** for payment of money arising from a breach of a legal obligation (including an obligation owed pursuant to an **Act of Parliament**) other than consequent upon the **insured's** conviction for an offence. In particular (but without limitation) this **policy** does not cover any proceeding seeking:

- a) damages, including punitive, aggravated, liquidated, multiple or exemplary damages;
- b) compensation for injury suffered, including physical or mental injury, humiliation, distress or damage to reputation;
- c) penalties provided by an **Act of Parliament**.

**6) Reparation**

any **claim** for any monetary amount ordered to be paid by the **named insured** and/or **insured persons** by way of an order for reparation imposed by a Court following conviction under any **Act of Parliament**, except an **Order for Reparation under the HSE Act**.

**7) Commerce Act**

any **claim** for any pecuniary penalty, restitution, compensation or order for payment imposed by a court upon the **named insured** or **insured person** pursuant to Part 6 of the Commerce Act 1986.

**8) Health and Safety at Work Act 2015**

any **claim** for any fine or infringement fee (other than Reparation) ordered to be paid by **named insured** and/or **insured persons** following conviction under the Health and Safety at Work Act 2015.

**9) Monetary Amounts Paid or Offered before Sentence**

any **claim** for any sum paid, or offered to be paid, by the **named insured** and/or **insured persons** without the prior written consent of the **underwriter** to or for a complainant prior to imposition of sentence by the Court, as reparation or otherwise, following an occurrence under any **Act of Parliament**.

**10) Dishonesty and Fraud**

any **claim** resulting from or contributed to by any dishonest, fraudulent, criminal or malicious act or omission of any **insured person**, provided always that this exclusion shall not apply to any **insured** who has not committed or condoned the dishonest, fraudulent, criminal or malicious act or omission.

**11) Taxes**

any **claim** for the payment of any tax, including any **fine** or penalty resulting from the failure to pay any tax.

**12) Continuing Fine**

any **claim** for payment of any **fine** (or part of a **fine**) which is imposed in relation to a period of time after the **named insured** or **insured person** first received notice from the prosecuting body of the intention to commence a prosecution in relation to the offence.

**15) Compliance costs**

any **claim**:

- a) for payment of any **fine** (or part of a **fine**) which is a penalty imposed for failing to comply with any enforcement order or remedial order;
- b) for the cost incurred by the insured in complying with any enforcement or remedial order.

**SECTION 5 – EMPLOYERS LIABILITY**

Section 5 of this **policy** operates on a 'claims made and notified' basis. This means that indemnity shall only be provided for **claims** made against the **insured** and notified to the **underwriter** during the **period of insurance**.

The **underwriter** shall, subject to the terms, conditions, extensions, exclusions and endorsements contained in this **policy**, pay on behalf of the **insured**:

## 1) Employers Liability

- a) damages as a result of a **claim** by an **employee** sustaining **injury** in New Zealand that occurred as a consequence of the **employee's** employment in the **business**; or
- b) **punitive or exemplary damages** as a result of a **claim** by an **employee** sustaining **injury** in New Zealand that occurred as a consequence of the employee's employment in the **business**;

provided always that

- i) the **injury** is not covered to any extent under the Accident Compensation Act 2001; and
- ii) the **insured** first became aware of, or ought to have been aware of, the **claim** during the **period of insurance** and such **claim** is notified to the **underwriter** during the **period of insurance**.

## 2) Defence Costs

**defence costs** incurred in connection with a **claim** covered under Insuring Clause 1) (Employers Liability) of this Section.

## AUTOMATIC EXTENSIONS OF COVER UNDER SECTION 5

### 1) Previous subsidiaries of the Named Insured

The definition of **named insured** shall include any entity that ceased to be a **subsidiary** before or during the **period of insurance**.

### LIMIT OF LIABILITY UNDER SECTION 5

The maximum amount payable by the **underwriter** under this Section for all **claims** and **defence costs** shall not exceed in the aggregate the **limit of indemnity**.

### DEDUCTIBLE APPLICABLE UNDER SECTION 5

- 1) The **underwriter** shall only be liable to indemnify the **insured** for that part of the **insured's** liability for each **claim** that is greater than the **deductible**.
- 2) The **deductible** shall be inclusive of **defence costs**.
- 3) The full **limit of indemnity** shall apply over and above the **deductible**.
- 4) Where the **underwriter** has paid on the **insured's** behalf part or all of the **deductible**, the **insured** shall reimburse the **underwriter** immediately upon request.

### EXCLUSIONS APPLICABLE TO SECTION 5

The indemnity provided by this Section of the **policy** shall not apply to:

#### 1) Known Claims and Events

any **claim**:

- a) made against, or intimated to, the **insured** prior to the commencement of the **period of insurance**;
- b) notified under any previous policy;
- c) arising out of or connected with any **event** that:
  - i) the **insured** was aware of prior to commencement of the **period of insurance**; and
  - ii) a reasonable person in the position of the **insured** would have considered may give rise to a **claim**.



**2) Other activities**

any **claim** arising out of activities otherwise than in the course of or in connection with the **business**.

**3) Retroactive date**

any **claim** that arose out of any **event** that occurred prior to the **retroactive date**.

**4) Health and Safety at Work Act 2015**

any **injury** that arose out of the failure of the **insured** to comply with any improvement, prohibition or suspension notice issued to the **insured** under the Health and Safety at Work Act 2015.

**5) Monetary Amounts Paid or Offered**

any **claim** for any sum paid, or offered to be paid, by the **named insured** and/or **insured** persons without the prior written consent of the **underwriter**.

**6) Dishonesty and Fraud**

any **claim** resulting from or contributed to by any dishonest, fraudulent, criminal or malicious act or omission of any **insured** person, provided always that this exclusion shall not apply to any **insured** who has not committed or condoned the dishonest, fraudulent, criminal or malicious act or omission.

**7) Intentional or Deliberate Acts**

any **injury** that arose out of any intentional or deliberate act or omission of the **insured** where it was known or should have been known could cause injury. This includes but is not limited to causes of action alleging intentional infliction of harm, trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse.

**8) Punitive and Exemplary Damages, Fines and Wages**

any **claim** for punitive or exemplary damages except for those in respect of **injury** under Insuring Clause 1) (Employer's Liability); or fines, penalties, reparation, courts, defence costs and any other expense arising from conviction of an offence; or for unpaid wages or other employee benefits due to any **employee**.

## GENERAL POLICY EXCLUSIONS

The following exclusions shall apply to all sections of this policy.

The indemnity provided by this **policy** shall not apply to:

**1) Abuse**

any **claim** directly or indirectly arising from or in connection with:

- a) any act of hurting or injuring mentally or physically by maltreatment or ill use;
- b) repeated or continuing contemptuous, coarse or insulting words and/or behaviour;
- c) actual or attempted sexual relations, sexual conduct or sexual intimacy, sexual harassment or sexual exploitation, or any act for the purpose of obtaining sexual gratification;

**2) Cladding/Facades**

any **claim** or liability, whether actual or alleged directly or indirectly caused by, contributed to by, arising from or in any way connected with:

- a) the actual or alleged fire resistance, fire safety, combustibility, flammability, fire-spread or ignitability of any **cladding**;
- b) the actual or alleged non-compliance or non-conformity of any **cladding** with any relevant legislation, regulation, instruction or building standard.

**3) Asbestos**

any **claim** directly or indirectly caused by or contributed to by, or arising from asbestos or any material containing asbestos in whatever form or quantity.

#### 4) Associated Companies

any **claim** brought by or on behalf of:

- a) any **insured**;
- b) any parent or **subsidiary**;
- c) any person having a financial, executive or controlling interest in the **insured** (unless the financial interest is less than 5%); or
- d) any entity controlled or managed by any **insured**; or where the **insured** has greater than a 5% interest, or where the **insured** has accepted a financial interest, irrespective of the amount, in the entity in exchange for fees incurred,

unless such **claim** is brought against the **insured** by an independent third party.

#### 5) Avionics and Marine Products

any **claim** directly or indirectly caused by or contributed to by, or arising from **products** (including hardware, software, firmware and cabling) or electronic equipment used in connection with:

- a) the safety, communication, navigation, control of flight or maintenance of orbit of any aircraft, spacecraft or other aerial device; or
- b) the safety, communication, navigation or propulsion of any hovercraft or watercraft.

#### 6) Communicable Disease

any liability based upon, arising out of, resulting from, in any way involving, related to (whether directly or indirectly), or in any way associated with any actual, alleged, threatened, perceived, or suspected direct or indirect transmission of, contact with, exposure to, or impact from any **communicable disease** including, but not limited to, any actual, alleged, or perceived fear or threat of any such transmission, contact, exposure, or impact.

This exclusion shall include any actual or alleged negligence or other wrongdoing in the:

- a) supervision, hiring, employing, training or monitoring of others that may be infected with and spread a **communicable disease**;
- b) testing for a **communicable disease**;
- c) failure to prevent the spread of the disease;
- d) failure to report the disease to authorities.

#### 7) Construction and Erection

any liability directly or indirectly caused by, contributed to by, or arising from any construction or erection work undertaken by the **insured**, or for which the **insured** are responsible for, as a building or engineering contractor.

#### 8) Contractual Liability

any liability or obligation assumed by the **insured** under the terms of a contract agreement or warranty unless the **insured** would have been liable to the same extent in the absence of such contract, agreement or warranty.

#### 9) Deliberate Acts

any **claim** directly or indirectly caused by or contributed to by, or arising from any intentional act or omission committed or condoned by the **insured** or any wilful breach of or in reckless disregard of any statute, regulation, contract or duty by the **insured**, provided always that this exclusion shall not apply in respect of the indemnity afforded under Automatic Extension of Cover 5) (Fidelity) under Section 1. (Professional Indemnity).

#### 10) Directors and Officers

any **claim** made against any of the **insured's** directors, trustees or officers arising from any unlawful or negligent act, error or omission, actual or alleged breach of trust, breach of warranty of authority, or breach of duty committed or attempted by such director or officer where such **claim** is made solely by reason of his holding the position of director or officer and having acted in that capacity, including but not limited to any

**claim** arising from any statement, representation or information regarding the business contained within any accounts, reports or financial statements. This exclusion shall not apply in respect of the indemnity afforded under Section 3 – (Directors and Officers Indemnity).

#### 11) Employment Liability

any **claim** directly or indirectly caused by or contributed to by, or arising from:

- a) **injury** to any **employee**;
- b) any breach of any contract of service or of any obligation owed by or any liability of the **insured** as an employer or potential employer to any **employee** or prospective **employee** including any **employment practices dispute**.

This exclusion shall not apply to Section 5 Employers Liability.

#### 12) Fines and Penalties

any fine or penalty or any liquidated, punitive, exemplary, non-compensatory, multiple, or aggravated damages or any **claim** deemed uninsurable by law. This exclusion shall not apply where and to the extent that indemnity for any **fine** is afforded under Section 4 (Statutory Liability).

#### 13) Insolvency and Insurance

any **claim** directly or indirectly caused by, contributed to by or arising from:

- a) the insolvency or bankruptcy of the **insured** or any supplier to or licensor to the **insured**;
- b) any failure to maintain or obtain adequate insurance or finance;
- c) any lost profit, any mark up or any tax.

#### 14) Jurisdiction and Territorial limits

- a) legal proceedings brought in a Court of Law outside the Jurisdiction stated in the **schedule** or brought in a Court of Law within that Jurisdiction to enforce a judgment or order made in any Court of Law outside that Jurisdiction;
- b) any **claim** directly or indirectly caused by or contributed to by, or arising from **business** undertaken outside the **territorial limits**.

#### 15) Medical Malpractice

any **claim** directly or indirectly caused by or contributed to by, or arising from the provision of medical services by any professional (including but not limited to surgical, medical and dental practitioners, nurses and midwives, ambulance personnel and paramedics) but shall not include the provision of advice by social workers or healthcare workers.

#### 16) Nuclear Risks

any **claim** directly or indirectly caused by or contributed to by, or arising from:

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

#### 17) Oil and Gas Conditions

- a) any **claim** directly or indirectly caused by, contributed to by, or arising from loss of or **damage** to any underground resources;
- b) any costs and expenses incurred in restoring the place of exploration and/or exploitation to a safe and workable condition;
- c) any costs and expenses incurred in the removal of tangible property from the place of exploration and/or exploitation.

**18) Paparazzi**

any **claim** directly or indirectly caused by or contributed to by, or arising out of the actions of any **paparazzi**.

**19) Pollution**

any actual alleged or threatened **pollution** (other than as provided for under Automatic Extension of Cover 2) (Sudden and Accidental Pollution) in Section 2 (Public and Products Liability).

**20) Toxic mould**

any **claim** directly or indirectly caused by or contributed to by, or arising from **toxic mould**.

**21) Sanction Limitation and Exclusion Clause**

any claim or any benefit to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the underwriter 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, Australia, or United States of America.

**22) United States of America and/or Canada**

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

**23) War and Terrorism**

any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the **claim** or loss:

- a) **war**; or
- b) **terrorism**

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

## GENERAL POLICY CONDITIONS

The following General Conditions shall apply to the **policy**.

### 1) Alteration

The **insured** must give immediate written notice to the **underwriter** of any alteration during the **period of insurance** which materially affects the risk. Such notice should be provided to GSI Insurance Brokers (Auckland) Ltd at the address stated in the **schedule**. On receipt of such notice the **underwriter** may:

- a) vary the terms of the **policy** and/or charge such additional amount as it may determine appropriate; or
- b) elect to terminate the **policy**.

### 2) Adjustment – Directors and Officers Indemnity

- a) If after the inception of this **policy** and during the **period of insurance** the **named insured** acquires or creates a **subsidiary**, the indemnity afforded under Section 3 (Directors and Officers Indemnity) in relation to such **subsidiary** shall attach from the date of acquisition or creation for subsequent acts, provided that if the **subsidiary**:

- i) exceeds 25% of the consolidated assets of the **named insured**; or
- ii) is listed on any stock exchange anywhere in the world

then no indemnity shall be afforded in relation to such **subsidiary** without the prior written consent of the **underwriter**. In this event the **underwriter** reserves the right to review the terms and conditions of this **policy**.

- b) If during the **period of insurance** an entity ceases to be a **subsidiary**, or ceases to be a **subsidiary** during any insurance of which this is a renewal, the following provisions apply:
  - i) there shall be no coverage for subsequent **wrongful acts** relating to that **subsidiary**;
  - ii) the indemnity afforded to that **subsidiary** shall continue for the remainder of the **period of insurance** in respect of any claim arising from a **wrongful act** committed prior to the date the entity ceased to be a **subsidiary**.

### 3) Assignment

The **insured** cannot assign this **policy** or any rights under it without the prior written consent of the **underwriter** by way of **endorsement**.

### 4) Cancellation

This **policy** may be cancelled:

- a) by the **named insured** at any time by notice in writing to GSI Insurance Brokers (Auckland) Ltd;
- b) by the **underwriter** at any time by giving 30 days written notice to the **named insured** of the date from which cancellation is to take effect. Such notice is to be delivered personally or posted by registered mail to the **named insured** at the address last notified to the **underwriter**. Proof of mailing is sufficient proof of notice of cancellation.

If the **policy** is cancelled, the **named insured** shall be entitled to a rebate equal to the proportionate part of the premium corresponding to the unexpired portion of the **period of insurance**.

### 5) Changes to Policy

The terms of the **policy** shall not be waived or amended except by **endorsement** issued by the **underwriter**.

## 6) Confidentiality

The **insured** shall not disclose the terms of this **policy** or the amount of premium paid to any third party:

- a) except to the extent that the **insured** is required by law to do so or by any regulatory authority as may be necessary to demonstrate to such regulatory authority that any mandatory insurance requirements of such authority have been satisfied; or
- b) except that the existence of the **policy** and the **limit of indemnity** may be disclosed to an insurer, to a client or a prospective client or broker where this is necessary to maintain agency facilities, provided that no such disclosure shall be permitted in circumstances where the **insured** is aware or should have reasonably been aware that the person to whom disclosure is going to be made, had made or is likely to make a **claim**; or
- c) except to the extent that the **underwriter** consents in writing to such disclosure.

## 7) Enforceability

If any portion of the **policy** is found to be invalid or unenforceable the remainder shall remain in full force and effect.

## 8) Interpretation

The **policy** and the **schedule** shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this **policy** or the **schedule** shall bear such specific meaning wherever it may appear.

## 9) Law and Jurisdiction

The meaning, validity and effect of this **policy** will be interpreted in accordance with the law of the Commonwealth of New Zealand, and the Courts of the Commonwealth of New Zealand will have exclusive jurisdiction in any dispute under this **policy**.

## 10) Reasonable Precautions

The **insured** shall:

- a) take reasonable precautions to:
  - i) prevent any circumstances or to cease any activity which may give rise to liability under this **policy**; and
  - ii) maintain all buildings, furnishings, ways, works, machinery, plant and vehicles in sound condition; and
- b) as soon as possible after discovery cause any defect or danger in respect of **products**, buildings, fittings, furnishings, plant, or machinery to be made good or remedied and in the meantime shall cause such additional precautions to be taken as the circumstances require.

#### 11) Service of Suit

In the event of a dispute arising under this **policy**, the **underwriter** and any other insurers identified in the **schedule** will, at the **insured's** request, submit to the exclusive jurisdiction of any competent Court in the Commonwealth of New Zealand.

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

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

Tel: +64 4 472 7582  
Fax: +64 4 472 7571

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

#### 12) Several Liability of Insurers

The obligations of the subscribing insurers where there is more than one insurer named in the **schedule** subscribing to this **policy** are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reasons does not satisfy part or all of its obligations.

#### 13) Titles and Headings

Titles and Headings are descriptive and are used solely for convenience of reference and shall not be deemed to limit or affect the provisions to which they relate in any way.

#### 14) Waiver of Subrogation Rights

The **insured** shall not surrender any right of recovery that it may have against another party without the **underwriter's** prior written consent. Failure to comply with this condition may permit the **underwriter** to reduce any payment under this **policy** to the extent that prejudice has been suffered.

## GENERAL CLAIMS CONDITIONS

### 1) Action by the Insured

#### a) Section 1 – Professional Indemnity

The **insured** shall give written notice to the **underwriter** via GSI Insurance Brokers (Auckland) Ltd as soon as reasonably practicable within the **period of insurance** of any:

- i) **claim**;
- ii) discovery of any cause for suspicion of any dishonest or fraudulent act or omission;
- iii) loss of **documents**;
- iv) **inquiry**;

regardless of any **deductible** that may apply.

The **insured** shall also give written notice to the **underwriter** via GSI Insurance Brokers (Auckland) Ltd as soon as reasonably practicable with full particulars of any circumstances of which the **insured** shall become aware, which could reasonably be expected to give rise to a **claim**. The notice shall include the reasons for the belief that the circumstance is reasonably expected to give rise to a **claim**.

Any **claim** subsequently arising from a circumstance notified to the **underwriter** shall be deemed to have been made during the **period of insurance** in which notice of such circumstance was first received by the **underwriter**.

#### b) Section 2 – Public and Products Liability

The **insured** shall give written notice to the **underwriter** via GSI Insurance Brokers (Auckland) Ltd as soon as reasonably practicable of any:

- i) **claim**;
- ii) **occurrence**;

regardless of any **deductible** that may apply.

#### c) Section 3 – Directors and Officers Indemnity

The **insured** shall give written notice to the **underwriter** via GSI Insurance Brokers (Auckland) Ltd as soon as reasonably practicable within the **period of insurance** of any:

- i) **claim** or threatened **claim**;
- ii) **wrongful act**.

The **insured** shall also give written notice to the **underwriter** via GSI Insurance Brokers (Auckland) Ltd as soon as reasonably practicable with full particulars of any circumstances of which the **insured** shall become aware, which could reasonably be expected to give rise to a **claim**. The notice shall include the reasons for the belief that the circumstance is reasonably expected to give rise to a **claim**.

Any **claim** subsequently arising from a circumstance notified to the **underwriter** shall be deemed to have been made during the **period of insurance** in which notice of such circumstance was first received by the **underwriter**.

#### d) Section 4 – Statutory Liability

The **insured** shall give written notice to the **underwriter** via GSI Insurance Brokers (Auckland) Ltd as soon as reasonably practicable within the **period of insurance** of any:

- i) **claim**;



- ii) the receipt of notice from, or information as to any intention by any party to make a **claim** against the **insured**;
- iii) any **event** that a reasonable insured in the position of the **insured** would have considered may give rise to a **claim**.

Where such notice is provided by the **insured** to the **underwriter**, any **claim** subsequently made against the **insured** shall be deemed to have been made during the **period of insurance**.

e) **Section 5 – Employers Liability**

The **insured** shall give written notice to the **underwriter** via GSI Insurance Brokers (Auckland) Ltd as soon as reasonably practicable within the **period of insurance** of any:

- i) **claim**;

regardless of any **deductible** that may apply.

The **insured** shall also give written notice to the **underwriter** via GSI Insurance Brokers (Auckland) Ltd as soon as reasonably practicable with full particulars of any circumstances of which the **insured** shall become aware, which could reasonably be expected to give rise to a **claim**. The notice shall include the reasons for the belief that the circumstance is reasonably expected to give rise to a **claim**.

Any **claim** subsequently arising from a circumstance notified to the **underwriter** shall be deemed to have been made during the **period of insurance** in which notice of such circumstance was first received by the **underwriter**.

Such notice required under clauses 1) a) to 1) e) above shall be provided to GSI Insurance Brokers (Auckland) Ltd at the address stated in the **schedule**.

2) **Assistance to the Underwriter**

- a) Any notice provided by the insured in accordance with Claim Condition 1 above, must include full particulars, including the identity of the claimant or potential claimant, details of the allegations and potential allegations against the **insured**, identification of the project and services giving rise to the **claim** or potential **claim** and the potential quantum, if known, involved in the **claim**.
- b) Every letter, **claim**, writ, summons and process in connection with any matter which may form the subject of a request for indemnity under this **policy** shall be forwarded to the **underwriter** via GSI Insurance Brokers (Auckland) Ltd immediately on receipt.
- c) No admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the **insured** without the prior written consent of the **underwriter**.
- d) The **insured** shall not surrender any right to, or settle any **claim** for, contribution, recovery or indemnity from any other party without the written consent of the **underwriter**.
- e) The **insured** shall give all assistance as the **underwriter** and its representatives may reasonably require.
- f) The **insured** shall use due diligence and shall ensure that all reasonable and practicable steps are taken to avoid or diminish any liability which may give rise to, or has given rise to, a **claim** or loss.

Compliance with these conditions shall be at the **insured's** own cost.

3) **Conduct of the Claim**

- a) The **underwriter** shall be entitled but not obliged to take over and conduct in the name of the **insured** for its own benefit and shall have full discretion in the conduct of any proceedings and in the settlement of any **claim**.
- b) The **underwriter** shall be entitled to select and appoint lawyers or other parties that will defend and represent the **insured** in respect of any **claim**.
- c) Subject to General Claims Condition 8) (Right to Contest), the **underwriter** shall be entitled to settle a **claim** at its sole discretion.
- d) If the **underwriter** is of the opinion that a **claim** will not exceed the **deductible**, it may require the **insured** to conduct the defence of the **claim** at its own expense.
- e) The **underwriter** shall be entitled but not obliged to tender any remaining amount of the **limit of indemnity**

to the **insured** at any time, whereupon the **underwriter's** liability for **defence costs** incurred after the date of tender shall cease.

#### 4) **Payment of Deductible**

Where the **underwriter** has paid on the **insured's** behalf part or all of the **deductible**, the **insured** shall reimburse the **underwriter** immediately upon request.

#### 5) **Interlocking Clause**

No request for indemnity shall be made under more than one section of this **policy** in respect of any one claim, loss or occurrence.

Furthermore, it is agreed that if, in the event that any **claim**, loss or **occurrence** triggers indemnity under more than one section of the **policy**, the only right to indemnity shall be under that section with the highest remaining **limit of indemnity**.

#### 6) **GST**

Where the **insured** is liable to pay tax under section 5(1) of the Goods and Services Act 1985 upon receiving any payment under this policy the **underwriter** will indemnify the **insured** for the costs of that tax. The indemnity under this clause is payable in addition to the limit of indemnity.

#### 7) **Other Insurance**

In the event that the **insured** holds other insurance cover with another insurer that provides cover in respect of any **claim** or **loss** or other amount payable under this **policy**, the indemnity payable under this **policy** shall not be available until the limit of indemnity under any other policy has been exhausted, unless this policy is the more specific cover, in which case it will respond first.

#### 8) **Right to Contest**

If the **underwriter** recommends settlement in respect of any **claim** and the **insured** does not agree that such **claim** should be settled, then the **insured** may elect to contest the **claim** provided that the maximum amount payable by the **underwriter** in respect of such **claim** shall not exceed the amount for which the **claim** could have been settled plus the **defence costs** incurred up to the date of such election.

#### 9) **Rights of the Underwriter**

In the event that the **underwriter** is entitled to avoid or repudiate the **policy** ab initio, the **underwriter** may instead, at its election, give notice in writing to the **insured** that it regards the **policy** as of full force and effect save that there shall be excluded from any insurance afforded hereunder any **claim** which has arisen or which may arise and which is related to the circumstances which entitle the **underwriter** to avoid or repudiate the **policy**. This **policy** shall then continue in full force and effect but shall be deemed to exclude the particular **claim** referred to in the said notice.

#### 10) **Senior Counsel**

a) The **underwriter** shall not require the **insured** to contest a **claim** unless a Senior Counsel (agreed upon by the **insured** and the **underwriter** or failing such agreement to be nominated by the President of the New Zealand Law Society) advises that the **claim** should be contested taking into account all likely costs, prospects of success and the damages and costs likely to be recovered by the third party claimant.

b) The cost of Senior Counsel's advice shall be regarded as part of the **defence costs**.

#### 11) **Subrogation and Waiver of Rights**

The **underwriter** shall be subrogated to all the rights of recovery of the **insured** against any third party before and after any indemnity is given under this **policy**, provided always that the **underwriter** shall not exercise any such rights against any **employee** unless the **claim** in respect of which the indemnity is afforded under this **policy** was caused by or contributed to by serious or wilful misconduct by the **employee** or former **employee**.

The **insured** shall, without charge, provide such assistance as the **underwriter** may require in any subrogation.

In the event that any amount is recovered by the **underwriter**, it shall first be allocated against any amount previously incurred by the **underwriter** with any surplus thereafter being payable to the **insured**.

**12) Defence costs and charge under section 9 Law Reform Act 1936**

Where a charge arises under section 9 of the Law Reform Act 1936 and the **underwriter** is unable or unwilling to pay **defence costs** under any section of this **policy** to any **insured** due to such a charge:

- (i) The **underwriter** will pay, separate and in addition to the relevant **limit of indemnity** shown in the **schedule, defence costs** for any claim against such insured;
- (ii) The **underwriter's** maximum aggregate liability for all **defence costs** under this clause for all **insureds** is 25% of the relevant **limit of indemnity**.



## COMPLAINTS PROCEDURE

If you have any questions or concerns about your **policy** or the handling of a **claim** you should in the first instance, contact your broker or agent.

We are dedicated to providing clients with a high-quality service and we want to ensure that this is maintained at all times.

If you feel that we have not offered you a first-class service please write and tell us and we will do our best to resolve the problem.

In the event that you remain dissatisfied and wish to make a complaint, it may be possible in certain circumstances for you to refer the matter to the Complaints department at Lloyd's.

Their address is:

Lloyd's General Representative in New Zealand  
Level 29  
Plimmer Towers 2–  
6 Gilmer Terrace  
Wellington  
New Zealand

Tel: +64 4 472 7582  
Fax: +64 4 472 7571



**GSI DIRECT**

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Waitakere 0640, New Zealand  
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