

insuring clause

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

- (a) each Insured Person against all Loss, for which such Insured Person does not receive an indemnity from the Trust;
- (b) the Trust against all Loss, for which the Trust indemnifies any Insured Person as permitted or required by law,

and which such Insured Person became legally obliged to pay on account of any claim(s) made against him/her individually or otherwise, during the Period of Insurance and reported to the Company, in accordance with the Reporting and Notice section, during the same period or, if exercised, the Extended Reporting Period, for a Wrongful Act allegedly committed by such Insured Person at any time.

limit of indemnity and excess

1. For the purpose of this Policy, all Loss arising out of all interrelated Wrongful Acts of any Insured Person(s) will be treated as one claim, and such claim, will be treated as reported to the Company in the Period of Insurance in which the relevant notice is given as required by the Reporting and Notice section.
2. The limit of the Company's liability during the Period of Insurance under this Policy is the Limit of Indemnity in the Schedule.
3. The Company's liability in respect of each and every claim is for Loss to the Insured Person exceeding the Excess in the Schedule.

automatic extensions

1. ADVANCEMENT OF DEFENCE COSTS

The Company will advance on behalf of the Insured Person(s) or the Trust, Defence Costs that the Insured Person(s) or the Trust have incurred in connection with claims made against the Insured Person in relation to Wrongful Acts, prior to disposition of such claims. Provided that to the extent it is finally established by judgment, settlement or other final adjudication that any such Defence Costs are not covered under this Policy the Insured Person(s) or the Trust, severally according to their interests, agree to repay the Company such Defence Costs.

2. APPORTIONMENT

If the allegations against an Insured Person, or an investigation or inquiry:

- (a) include both insured and uninsured allegations, and/or
- (b) are also directed at uninsured parties (including the Trust itself);

then the Company shall:

- (i) pay only those Defence Costs which are solely attributable to the Insured Person's defence of the insured allegations;
- (ii) not be liable to pay any of the costs or expenses solely attributable to the Insured Person's defence of uninsured allegations and/or to the defence of insured and uninsured parties;
- (iii) pay 70% of those costs which are attributable to the Insured Person's defence of both insured and uninsured allegations and/or to the defence of insured and uninsured parties.

In respect of any particular claim the Insured Person and the Trust and the Company may agree on an apportionment of costs and expenses in a manner that fairly reflects the allocations in (i) to (iii) above. But, in the absence of such agreement, the separate allocations in (i) to (iii) above shall apply.

The Company shall, subject to Automatic Extension 1 - Advancement of Defence Costs, pay the Defence Costs, and its allocated share of the common costs or expenses as and when they are incurred.

3. COMPENSATION FOR COURT ATTENDANCE

If an Insured Person is required to attend court as a witness in connection with a claim under this Policy, the Company will pay that Insured Person \$300 for each day or part day on which attendance is required. The cover provided under this extension shall be subject to a sub-limit of \$10,000 in the aggregate and shall be part of and not in addition to the Limit of Indemnity on the Schedule.

4. CONTINUOUS COVER

This Policy is extended to cover Loss arising out of any claim, fact, matter or circumstance that was not notified, but that could or should have been notified, to the Company under the terms of any previous insurance provided that:

- (a) the failure to notify was innocent;
- (b) the previous insurance, under which the claim, fact, matter or circumstance could or should have been notified was issued by the Company;
- (c) cover under this extension will be subject to the terms of this insurance or to the terms of the previous insurance, whichever the Company at its sole discretion decides; and

(d) the amount payable under this extension will be reduced by the amount that fairly represents the extent to which the Company's interests were prejudiced by the failure to notify.

5. EMPLOYMENT PRACTICES LIABILITY COVER FOR INSURED PERSONS

Notwithstanding Exclusion 1(h), the Company shall indemnify any Insured Person for Loss arising from an Employment Related Wrongful Act.

6. ESTATES & LEGAL REPRESENTATIVES

This Policy extends to claims for Wrongful Acts of any Insured Person made against the estates, heirs, legal representatives or assigns of any Insured Person who is incompetent, insolvent or bankrupt.

7. EXTENDED REPORTING PERIOD

If the Company terminates this Policy or refuses to issue a new policy on its termination, the Insured Person(s) and/or the Trust have the right, upon payment of an additional premium of 50% of the current annual premium, to elect an extension of this insurance for a further period of 12 months immediately following the effective date of such termination, but only with respect to any Wrongful Act allegedly committed prior to the effective date of such termination. This right of extension lapses unless written notice of such election is given to the Company prior to or within 30 days following the effective date of termination of this Policy.

If the Insured Person(s) and/or the Trust terminates this Policy or declines to accept a new Policy, the Company may at its sole option, grant a similar Extended Reporting Period. The Company's liability under the Extended Reporting Period for Loss is specifically in excess of, and reduced by the amount of any payments on account of the Loss received by the Insured Person(s) and/or the Trust under any other insurance.

8. GOODS & SERVICES TAX

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

9. INNOCENT NON-DISCLOSURE

The Company waives its right to avoid the Policy for material non-disclosure or misrepresentation, provided always that:

- (a) the Company has continuously been the insurer of the Insured Persons under a Trustees Liability Insurance Policy between the date when such disclosure or representation should have been given and the date when it was, in fact, given; and
- (b) the Insured Persons establish to the satisfaction of the Company that such non-disclosure or misrepresentation was innocent and free from any dishonesty or intent to deceive; and
- (c) cover under this extension will be subject to the terms of this Policy or the terms of the previous insurance, whichever the Company at its sole discretion decides; and
- (d) the premium and terms of the current Policy shall be adjusted at the discretion of the Company to those which would have applied had such disclosure or representation been made at the correct time; and
- (e) the Company's liability to indemnify will be no greater than the indemnity for which the Company would have been liable had the proper disclosure or representation been made at the correct time.

10. INSURED VERSUS INSURED

Notwithstanding Exclusion 1(h) and Extension 5, the Policy is extended to include claims made against an Insured Person or the Trust by another Insured Person or the Trust but only where the claim is:

- (a) brought or maintained by any Insured Person for contribution or indemnity if the claim directly results from another claim covered under this Policy; or
- (b) brought by or on behalf of the Trust by any regulatory authority, receiver, receiver and manager, administrator, statutory manager or liquidator.

11. OFFICIAL INVESTIGATIONS & INQUIRIES

The Company agrees to pay Defence Costs arising out of any legally compellable attendance by any Insured Person(s) at any official investigation, examination or inquiry in relation to the affairs of the Trust where such official investigation, examination or inquiry may lead to a claim under this Policy. Provided that the maximum aggregate amount payable under this extension shall be \$250,000, which is part of and not in addition to the Limit of Indemnity stated in the Schedule.

12. OUTSIDE POSITION LIABILITY

If an Insured Person holds any Outside Position solely for the purpose of representing the Trust, this Policy provides indemnity for claims resulting from the Outside Position, as if the Wrongful Act was in the course of his/her duties to the Trust, provided that:

- (a) this indemnity is restricted to such Insured Person;
- (b) this indemnity is in excess of any other indemnity or insurance available and is only provided to such Insured Person by reason of serving in such Outside Position;
- (c) this indemnity only applies if such Outside Position is in existence at the commencement of the Period of Insurance. However, this cover will extend to new Outside Positions undertaken during the Period of Insurance, subject to written notice within 14 days of appointment to the Company and provision of any underwriting information required as well as payment of any additional premium required. For former Outside Positions, there will be indemnity only if previously notified and agreed to by the Company in writing.
- (d) this indemnity does not apply to any Outside Position in any company or entity incorporated or resident in USA or Canada or their protectorates.

13. PRESERVATION OF INDEMNITY

If any Insured Person is unable to obtain the full benefit of a right to indemnity against the Trust to which he or she is entitled, by reason only of the Trust being placed in liquidation (other than voluntary liquidation) and having insufficient funds available so as to indemnify the Insured Person, then it is hereby agreed that the Company shall indemnify the Insured Person against Loss arising from any claim. The Excess applicable to Insuring Clause (b) shall apply. The burden of adducing satisfactory proof to obtain the benefit of this Extension shall rest entirely with the Insured Person and shall include the production of documentary evidence of the Trust's assets and liabilities and any official statements issued by the liquidator, receiver, statutory manager or compromise manager.

14. SEVERABILITY & NON-IMPUTATION

With respect to Exclusions 1(a) – 1(n) of the Policy, no fact pertaining to, nor knowledge possessed by, or any Wrongful Act committed by any Insured Person(s) will be imputed to any other Insured Person(s) for the purpose of determining the availability of coverage for or with respect to claims made against any Insured Person(s).

15. SPOUSAL LIABILITY

This Policy extends to claims for Wrongful Acts of any Insured Person made against the lawful spouse of any Insured Person solely by reason of such spouse's:

- (a) legal status as a spouse of the Insured Person; or
- (b) ownership or interest in property which the claimant seeks as recovery for alleged Wrongful Acts of the Insured Person, all loss which such spouse becomes legally obligated to pay by reason of such claim will be treated for purposes of this Policy as Loss which the Insured Person becomes legally obligated to pay on account of the claim made against the Insured Person. All terms and conditions of this Policy, including without limitation the retention amount, applicable to Loss incurred by such Insured Person in the claim will also apply to such spousal loss.

The cover provided by this Extension does not apply to the extent the claim alleges any act or omission by the Insured Person's spouse.

16. SUCCESSFUL DEFENCE OF CRIMINAL PROSECUTION

The Company will indemnify any Insured Person(s) for Defence Costs arising out of any criminal prosecution in which they are Acquitted by a court.

Provided that:

- (a) no Defence Costs other than those incurred with the prior written consent of the Company shall be payable under this Extension; and
- (b) the Company shall not be under any obligation to advance Defence Costs as they are incurred, but may advance Defence Costs at its sole and absolute discretion; and
- (c) the Insured Person(s), according to their respective interests, shall repay any payments advanced by the Company back to the Company in the event that they are not entitled to such payment under this Policy; and
- (d) the indemnity available under this extension shall only be available where the criminal prosecution arises directly from the Insured Person's duties as a trustee of the Trust.

exclusions

The Company will not indemnify any Insured Person(s) or the Trust for any claim:

1. (a) arising out of any circumstances which any Insured Person was aware or ought reasonably to have been aware before the Period of Insurance might give rise to a claim;
- (b) alleging bodily injury, sickness, disease or death, or loss of or damage to tangible property, including loss of use;
- (c) arising out of or alleging seepage, pollution or contamination or the breach of any statute, regulation or ordinance prohibiting or controlling emissions or effluents of any kind or from any enforcement action or proceeding brought under or pursuant to any statute, regulation or ordinance;
- (d) brought about or contributed to by the dishonesty of any Insured Person, if a judgment or other final determination establishes that there was dishonesty by such Insured Person and the dishonesty was material to the finding of liability;
- (e) based upon or attributable to any Insured Person having gained any personal profit, remuneration or advantage to which he/she was not legally entitled, regardless of whether:
 - (i) a judgment or other final determination establishes that such Insured Person in fact gained such personal profit or other advantage;
 - (ii) the Insured Person entered into a settlement agreement to repay such personal profit or relinquish such advantage to the Trust;
- (f) arising out of any litigation in existence at the commencement of the Period of Insurance;
- (g) for any fine or penalty;
- (h) by or on behalf of an Insured Person or the Trust;
- (i) arising out of any failure or omission to effect or maintain insurance;
- (j) by or on behalf of a client or customer of the Trust in connection with products or services provided by the Trust;
- (k) arising out of or in connection with any pension, profit sharing, employee benefit or welfare programme or any share option, share incentive scheme or trust established in whole or in part for the benefit of any of the trustees, officers or employees of the Trust;

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

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

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

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

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

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

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

(iii) the failure of any building or structure to meet or perform to the requirements of the New Zealand Building Code contained in the first schedule to the Building Regulations 1992 (or any amendment or substitution thereof) in relation to:

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

2. in respect of any Wrongful Act committed or alleged to have been committed prior to the Retroactive Date stated in the Schedule.

conditions

1. AGENCY CLAUSE

In relation to all aspects of this Policy, the Insured Person(s) appoint each signatory of the proposal (or his/her appointed replacement) as their agent, provided that, by notice in writing to the Company at any time and with the Company's written acknowledgement, any Insured Person may revoke or limit such agency in respect of himself/herself without prejudice to any other rights he/she may have.

2. ALTERATION AND ASSIGNMENT

No change in, modification of, or assignment of interest under this Policy will be effective unless it is by written endorsement to this Policy signed by an authorised employee of the Company.

3. CLAIMS

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

(b) If the Insured Person(s) and/or the Trust shall refuse to consent to any settlement recommended by the Company, and shall elect to contest or continue any legal proceedings, the Company's liability for the claim shall not exceed the amount for which the claim could be so settled (less the Excess specified in the Schedule), plus the costs and expenses incurred up to the date of such refusal.

(c) The Insured Person(s) and/or the Trust shall use due diligence, and do and concur in doing all things reasonably practicable, to avoid or diminish any claim and, on request, give to the Company or its authorised representatives all such information and assistance as they may require.

4. REPORTING AND NOTICE

(a) A specific Wrongful Act will be treated as first reported to the Company when the Insured Person gives written notice to the Company of the first of the following:

- (i) a claim made against any Insured Person for such Wrongful Act;
- (ii) the material facts or circumstances relating to such Wrongful Act, or facts or circumstances having the potential to give rise to a claim being made against any Insured Person;
- (iii) the receipt of written or oral notice from any party of an intention to hold any Insured Person responsible for such Wrongful Act.

(b) The Insured Person(s) and/or the Trust shall, as a condition precedent to the Company's liability under this Policy, give to the Company written notice as soon as practicable of any claim made against any Insured Person for any Wrongful Act, and shall give the Company such information and co-operation as it may reasonably require.

(c) Any notice required by this Policy will be given to the Company at Auckland, New Zealand.

5. EXTENT OF INDEMNIFICATION

For the purposes of Insuring Clause (b), the extent to which the Trust is required or permitted to indemnify any Insured Person will be determined by reference to statute or common law or duly effective charter, by-law, resolution or other written agreement. If there is any dispute between the parties about the existence or validity of any indemnity, it shall be resolved by an opinion from an independent counsel to be mutually agreed upon by the Company and the Trust.

6. OTHER INSURANCE

If any Insured Person is insured under any other valid policy(ies), prior or current, then this Policy only covers Loss, to the extent not insured by such other insurance.

7. SUBROGATION

If the Company makes payment under this Policy, it will be subrogated to all the Insured Person(s)' and/or the Trust's rights of recovery. The Insured Person(s) and/or the Trust will execute all papers required, and do everything necessary, to secure and preserve such rights, including the execution of such documents necessary to enable the Company effectively to bring legal proceedings in the name of the Insured Person(s) and/or the Trust.

The Company waives all rights of subrogation against all Insured Persons, unless the right of subrogation arises from the dishonest or criminal conduct of the particular Insured Person.

8. TERMINATION OF POLICY

This Policy terminates in its entirety at the earliest of the following times:

- (a) 60 days after sending to the address in the Schedule of a written notice of termination from the Company or, if a later time is specified in such notice, at such later time;
- (b) upon receipt by the Company of written notice of termination from the Trust or, if a later time is specified in such notice, at such later time;
- (c) at such time as may be agreed upon by the Company and the Trust;
- (d) upon expiration of the Period of Insurance noted in the Schedule.

The Company will refund any unearned premium computed at customary short rates, if the Policy is terminated in its entirety by the Trust. Under any other circumstances, the refund will be computed pro-rata.

9. WAIVER OF PRIVILEGE

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

10. TERRITORY AND JURISDICTION

This Policy extends to claims made against Insured Person(s) within the Jurisdictional Limits stated in the Schedule for Wrongful Acts allegedly committed within the Territorial Limits stated in the Schedule.

definitions

When used in this Policy:

1. "Acquitted" means dismissal of charges prior to a hearing or, upon completion of a defended hearing of a prosecution of any Insured Person(s), the delivery by a presiding judge of either: a dismissal of the charges at the conclusion of the prosecution case, or a verdict of Not Guilty at the conclusion of the defended hearing (but shall not include a dismissal pursuant to a plea bargain).
2. "Defence Costs" means that part of Loss consisting of costs, charges and expenses (other than regular or overtime wages, salaries or fees of the directors, Insured Persons or employees of the Trust) incurred in the defence of legal actions (whether criminal or civil), claims, proceedings and appeals and the cost of enforcement processes.
3. "Employment Related Wrongful Act" means any actual or alleged:
 - (a) personal grievance or wrongful dismissal;
 - (b) defamation directly related to a personal grievance or wrongful dismissal;
 - (c) sexual harassment;
 - (d) discrimination or breach of privacy;
 in relation to actual or proposed employment.

4. "Insured Person" means:

- (i) any one or more persons who were, now are or will be a trustee, secretary, officer, or employee of the Trust; and
- (ii) any person who by virtue of any applicable legislation or law is deemed to be a trustee of the Trust;

Provided that the term Insured Person does not include any externally appointed officers such as receivers, statutory managers, liquidators, mortgagees in possession or the like.

5. "Loss" means the total amount of Defence Costs, damages, judgments and costs for which an Insured Person is legally obligated to pay on account of all claims made against them for Wrongful Acts to which this Policy applies.

However Loss does not include:

- (i) any amount for which the Insured Persons and/or the Trust are absolved from payment; or
- (ii) taxes, fines or penalties imposed by law; or
- (iii) the multiple portion of any multiplied damage award; or
- (iv) punitive or exemplary damages; or
- (v) any other amount which is uninsurable under the law pursuant to which this Policy is construed.

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

7. "Period of Insurance" means the period noted in the Schedule, unless earlier terminated, in accordance with Condition 8.

8. "Trust" means the entity named in the Schedule.

9. "Wrongful Act" means any error, misstatement or misleading statement, act or omission, or neglect or breach of duty allegedly made, or committed by any Insured Person, individually or otherwise, in the course of his/her duties to the Trust or any matter claimed against him/her solely by reason of his/her serving the Trust. All causally connected errors, statements, acts, omissions, neglects or breaches of duty or other such matters alleged against one or more Insured Persons will be treated as interrelated Wrongful Acts. Wrongful Act does not include any act or omission in conflict between any entities within the definition of Trust or Parent Organisation, or to prefer the interests of any such entity over any other such entity.

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