

## preamble

Whereas Vero Liability Insurance Limited (hereinafter called "the Company") has received a written proposal bearing the date stated in the Schedule and containing particulars and statements, the Company witnesses that in consideration of the payment of premium, the Company will provide indemnity in accordance with, and subject to, the terms of this Policy.

## insuring clauses

### OFFICER BEARERS / TRUSTEES INSURING CLAUSE

1.1 The Company will pay on behalf of each Insured Person all Loss for which the Insured Person does not receive an indemnity by the Insured Entity arising from any Claim by reason of any Wrongful Act committed, attempted or allegedly committed or attempted by them in their capacity as an Insured Person, first made against such Insured Person during the Period of Insurance, and which is notified to the Company during the Period of Insurance and which arises out of any Wrongful Act which occurred subsequent to the Retroactive Date.

### ASSOCIATION / TRUST REIMBURSEMENT INSURING CLAUSE

1.2 The Company agrees to indemnify the Insured Entity for all Loss arising from a Wrongful Act for which the Insured Entity grants indemnity to an Insured Person, as permitted or required by law, arising from any Claim first made against such Insured Person, individually or otherwise, during the Period of Insurance, and which is notified to the Company during the Period of Insurance and which arises out of any Wrongful Act which occurred subsequent to the Retroactive Date.

### PROFESSIONAL INDEMNITY INSURING CLAUSE

1.3 The Company agrees to indemnify the Insured against all Loss arising from a Wrongful Act for which the Insured shall become legally liable to pay on account of any Claim against such Insured for breach of professional duty first made during the Period of Insurance, and which is notified to the Company during the Period of Insurance and which arises out of any Wrongful Act which occurred subsequent to the Retroactive Date.

## automatic extensions

### DEFAMATION

The Company will pay on behalf of the Insured all Loss arising from any Claim made against an Insured Person alleging defamation.

### ADVANCEMENT OF DEFENCE COSTS

In respect of any Claim under this Policy:

- (a) where indemnity has been confirmed in writing by the Company, then the Company will pay Defence Costs arising from such Claim.
- (b) where indemnity has not been confirmed in writing by the Company then:
  - (i) where the Company elects to conduct the defence or settlement of such Claim, the Company will pay Defence Costs arising from such Claim.
  - (ii) in any other case the Company may, at its discretion, pay Defence Costs arising from such Claim.

Provided always that in the event the Claim is withdrawn or indemnity under this Policy is subsequently withdrawn or denied, the Company shall cease to advance Defence Costs and the Insured shall refund any Defence Costs advanced by the Company, to the extent that the Company is satisfied that the Insured was not entitled to such Defence Costs, unless the Company agrees in writing to waive recovery of such Defence Costs.

### LOSS OF DOCUMENTS

The Company will pay on behalf of the Insured all legal liability for Loss arising from any Claim for Loss of any Documents which have been destroyed, damaged, lost or mislaid, PROVIDED ALWAYS THAT:

- (a) the Documents were in the physical custody or control of the Insured or any other person to whom the Insured entrusted, lodged or deposited such Documents in the ordinary course of business;
- (b) the Loss has occurred within the territorial limits of New Zealand.

### COMMITTEES

The Company will pay on behalf of the Insured all Loss arising from any Claim made against any member of any Committee established by the Insured, in respect of any legal liability arising out of the conduct of the business or activities of such Committee.

For the purpose of this Extension, "Committee" shall mean:

- (a) any auxiliary committee, foundation, trust (other than a superannuation trust), or fund raising committee;
- (b) any disciplinary, examining or research body or committee;
- (c) any sporting or social club committee.

### AMALGAMATION / MERGER

If the Insured Entity should merge with or amalgamate with any other entity and such other entity becomes a part of the Insured Entity subsequent to the inception date of this Policy the Company shall indemnify such entity and its members as if they were an Insured under this Policy, PROVIDED ALWAYS THAT notice of the acquisition or merger has been given to the Company within sixty (60) days and the Company shall be entitled to such additional information as they may require and shall have the right to charge an additional premium. Cover provided to the entity shall be limited to Loss arising from Claims made relating to Wrongful Acts committed on or after the date of merger or amalgamation.

### ADDITIONAL NOTIFICATION PERIOD

The Company will pay on behalf of the Insured all Loss arising from any Claim notified (in accordance with Condition 5.1 Reporting and Notice) either during the Period of Insurance or within thirty (30) days after its expiry. PROVIDED ALWAYS THAT such Claim was made against the Insured during the Period of Insurance.

#### EXTENDED REPORTING .

If the Company or the Insured refuses to renew this Policy, then the Insured shall have the right, upon payment of an additional premium of 50% of the full annual premium, to an Extension of cover provided by this Policy, against Loss arising from any Claim first made against them during the period of twelve (12) months after the date of such non-renewal.

#### PROVIDED ALWAYS THAT:

- (a) the right to such Extension of cover is exercised within thirty (30) days of the date of such non-renewal; and
- (b) the Extension of cover shall only apply in respect of a Wrongful Act occurring prior to the date of non-renewal; and
- (c) the Limit of Indemnity available under such Extension of cover is part of and not in addition to the Limit of Indemnity stated in the Schedule.

#### OFFICIAL INVESTIGATIONS AND INQUIRIES

The Company agrees to pay Defence Costs arising out of any legally compellable attendance by an Insured Person at any official investigation, examination or inquiry in relation to the affairs of the Insured where such official investigation, examination or inquiry may lead to a Claim under this Policy.

#### PROVIDED ALWAYS THAT:

- (a) the Company shall be entitled, at its discretion, to appoint legal counsel to represent the Insured Person involved in the investigation, examination or inquiry;
- (b) the investigation, examination or inquiry, or notice of intended investigation, examination or inquiry is made during the Period of Insurance and is notified to the Company during the same Period of Insurance;
- (c) in the event that a Claim for payment of Defence Costs is withdrawn or the indemnity under this policy is subsequently withdrawn or denied, the Company shall cease to advance Defence Costs and the Insured shall refund any Defence Costs advanced by the Company to the extent that the Company is satisfied that the Insured was not entitled to such Defence Costs, unless the Company agrees in writing to waive recovery of such Defence Costs;
- (d) the liability of the Company under this Extension shall not exceed \$250,000 in the aggregate.

#### ALLOCATION

If both Loss covered by this Policy and loss not covered by this Policy are incurred, either because of:

- (a) a Claim, investigation or inquiry against any Insured includes both covered and uncovered matters; or
- (b) a Claim, investigation or inquiry is made against any Insured, and others are included as a party to the Claim, investigation or inquiry;

then the Insured and the Company shall use their best efforts to agree upon a fair and proper allocation of such amount between covered Loss and uncovered loss.

If the Insured and the Company agree upon an allocation of Defence Costs, the Company shall, subject to Clause 2.3 (Advancement of Defence Costs) of this Policy, advance Defence Costs allocated to the covered Loss as and when they are incurred.

If the Insured and the Company cannot agree upon an allocation of Defence Costs, then the Company shall, subject to Clause 2.3 (Advancement of Defence Costs) of this Policy, advance such Defence Costs which the Company believes to be covered under this Policy until a final allocation is negotiated, arbitrated or judicially determined.

#### ESTATE AND LEGAL REPRESENTATIVES / SPOUSAL LIABILITY

The estate heirs legal representatives or assigns of any deceased incompetent insolvent or bankrupt Insured Person shall be indemnified in like manner to such Insured Person.

This Extension shall also cover Loss arising from a Claim made against the lawful spouse of any Insured Person arising solely out of his or her status as such, which seeks damages recoverable from:

- (a) matrimonial property;
- (b) property jointly held by any Insured Person and the spouse;
- (c) property transferred from any Insured Person to the spouse;

in respect of a Claim arising from a Wrongful Act of any Insured Person that would otherwise be covered under this Policy.

PROVIDED ALWAYS THAT any estate heirs legal representatives assigns or spouse shall observe and be subject to all the provisions of this Policy insofar as they can apply.

#### OUTSIDE DIRECTORSHIPS

If any Insured Person has been, now is or becomes, at the specific request of the Insured Entity, a director or officer of an Outside Entity, this Policy extends, subject to the provisions of the Policy, coverage to those Insured Persons serving on such Outside Entity for any Wrongful Acts in their respective capacity as a director or officer of such Outside Entity.

#### PROVIDED ALWAYS THAT:

- (a) cover provided by this Extension shall be specifically in excess of any other applicable insurance in force in respect of the Outside Entity and any indemnity provided by such Outside Entity.
- (b) if any other insurance in force in respect of such Outside Entity is provided by the Company then the Limit of Indemnity for all Loss covered by this Extension shall be reduced by the Limit of Indemnity of such other insurance provided by the Company.
- (c) cover provided by this Extension shall not apply in respect of any Claim brought by the Outside Entity. However, this proviso shall not apply to any Claim brought in the name of the Outside Entity by any legally authorised individual or entity, other than the Outside Entity itself, provided that they are acting without any direct or indirect solicitation, enticement or co-operation from the Outside Entity or from any Insured Person.
- (d) cover shall not be construed to extend to the Outside Entity or to any of the other directors, officers or employees of the Outside Entity.

#### PRESERVATION OF INDEMNITY

If any Insured Person is unable to satisfy a right to indemnity against the Insured Entity to which he or she is entitled, whether at common law, under statute or otherwise, by reason only of the Insured Entity being placed in liquidation (other than voluntary liquidation) and having insufficient funds

available so 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 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 Insured Entity's assets and liabilities and any official statements issued by the liquidator.

#### SEVERABILITY AND NON IMPUTATION

It is agreed that the written Proposal Form bearing the date stated in the Schedule shall be construed to be a separate Proposal for indemnity under this Policy in respect of each Insured Person and any fact or misstatement in the Proposal pertaining to or knowledge by any Insured Person shall not be imputed to any other Insured Person for the purpose of determining the application of indemnity or the exclusions stated in this Policy.

It is acknowledged that failure by one Insured Person to observe and fulfil the terms of this Policy will not prejudice this insurance in relation to any other Insured Person.

#### CONTINUOUS COVER

The Company agrees that if a Claim should have been notified, or a fact or circumstance which should have been notified to the Company under any previous Association and Charitable Trusts Liability insurance policy issued by the Company, is now notified during the Period of Insurance, then the Company will accept the notification of such Claim, fact or circumstances under this Policy, PROVIDED ALWAYS THAT:

- (a) the Company has continuously been the insurer under an Associations and Charitable Trusts Liability insurance policy between the date when such notification should have been given and the date when such notification was, in fact, given; and
- (b) the policy wording applicable to this Clause and to that notification shall be the policy wording (including the Limit of Indemnity and the amount of Excess) applicable to the Company's Association Liability insurance policy under which the notification should have been given.

#### INNOCENT NON-DISCLOSURE

In the event the Company is entitled to avoid this Policy due to any non-disclosure or misrepresentation, the Company will waive its right to avoid this Policy.

#### PROVIDED ALWAYS THAT:

- (a) the Insured Persons can establish to the satisfaction of the Company that such non-disclosure or misrepresentation was innocent and free from any fraudulent conduct or intent to deceive.
- (b) if such disclosure or representation should have been made during a preceding Period of Insurance and the indemnity or cover to which the Insured Person would have been entitled was more restrictive than the indemnity or cover provided at the time of notification, then the Company shall only be liable to the extent applicable during such preceding Period of Insurance.
- (c) the premiums and terms of the current Period of Insurance shall be adjusted at the discretion of the Company to those which would have applied had such disclosure or representation been made at the appropriate time.
- (d) amount payable in respect of such Claim shall be reduced to the sum the Company believes would have been payable in the absence of such prejudice.

### optional extensions

#### AUTOMATIC REINSTATEMENT

If this Section is specified as insured in the Schedule the Company agrees to increase the Limit of Indemnity only under Insuring Clause 1.3 of this Policy by an amount equal to the Limit of Indemnity. PROVIDED ALWAYS THAT the Company's total liability under this Policy shall not exceed;

- (a) in respect of any one Claim, the Limit of Indemnity as specified in the Schedule; and
- (b) in respect of all Claims, an amount equal to twice such Limit of Indemnity.

#### FAIR TRADING ACT

If this Section is specified as insured in the Schedule the Company agrees to indemnify the Insured for any Claim for compensation made against the Insured caused by or alleged to be caused by conduct on the part of the Insured (not being deliberate or fraudulent conduct), which is misleading or deceptive or likely to mislead or deceive, by or on behalf of the Insured, which is contrary or alleged to be contrary to the Fair Trading Act 1986 (sections 9 to 14).

PROVIDED ALWAYS THAT this Extension shall only apply to Insuring Clause 1.3.

#### EXEMPLARY DAMAGES

If this Section is specified as insured in the Schedule, notwithstanding exclusions for Bodily Injury and Punitive Damages the Company agrees to indemnify the Insured for any Loss arising out of Claims made against the Insured for exemplary damages arising from the provision of medical, welfare, counselling and other social services. The Limit of Indemnity available under this Extension shall be \$1,000,000 in the aggregate. The Excess applicable to claims under this Extension shall be \$10,000 each and every claim, inclusive of costs and expenses.

#### FRAUD AND DISHONESTY

The Company will pay on behalf of the Insured all Losses arising from any Claim brought about or contributed to by any dishonest, fraudulent, criminal or malicious act or omission of an Insured Person PROVIDED ALWAYS THAT:

- (a) for any Claim involving theft or misappropriation of funds for which the Insured is legally liable to account, the liability of the Company is conditional upon:
  - (i) the Insured maintaining a separate trust account for such funds, which account shall be subject to independent audit by a duly qualified accountant at least annually; and
  - (ii) all cheques drawn by an Insured Person on such trust account being signed by two authorised persons.
- (b) any moneys which but for an Insured Person's fraud and dishonesty or criminal or malicious act or omission would have been payable to him by the Insured, and any moneys of the Insured Person in the hands of the Insured shall, except where the Insured is prohibited by statute from retaining such moneys, be deducted from the amount otherwise payable under this Extension.

PROVIDED ALWAYS THAT this Extension shall only apply to Insuring Clause 1.3

#### INTELLECTUAL PROPERTY

If this Section is specified as insured un the Schedule, the Company will pay on behalf of the Insured all Loss arising from any Claim made against the Insured for infringement of any copyright, trademark, registered design or patent, or any plagiarism, or breach of confidentiality. The Limit of Indemnity available under this Extension shall be \$250,000 in the aggregate.

#### exclusions

The Company shall not be liable under this Policy to make any payment for Loss arising from any Claim against any Insured:

##### PRIOR OR PENDING

- (a) made, threatened or intimated against such Insured prior to the Period of Insurance;
- (b) directly or indirectly based upon, attributable to, in consequence of any fact or circumstance;
  - (i) of which written notice has been given, or ought reasonably to have been given, under any previous policy; or
  - (ii) of which any Insured first became aware prior to the Period of Insurance, and which the Insured knew or ought reasonably to have known had the potential to give rise to a Claim under this Policy.
- (c) any litigation in existence at the commencement of the Period of Insurance.

##### POLLUTION AND NUCLEAR RISK

directly or indirectly based upon, attributable to, or in consequence of:

- (a) (i) the actual, alleged or threatened discharge, release, escape or dispersal of Pollutants into or upon land, the atmosphere, or any watercourse or body of water; or
  - (ii) any enforcement, action or proceeding in connection with the containment, clean up, removal or treatment of such Pollutants;
- (b) atomic energy operations employing the process of nuclear fission or fusion or handling radioactive material which operations include but are not limited to:
  - (i) the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices; or
  - (ii) the use, handling or transportation of radioactive materials; or
  - (iii) the use, handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion.

PROVIDED ALWAYS THAT this exclusion (b) shall not apply to any Claim arising from radioisotopes or radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits.

##### WAR / TERRORISM

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

- (a) War, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, insurrection, 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;
- (b) any act of terrorism.

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

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

##### BODILY INJURY AND PROPERTY DAMAGE

- (a) for bodily injury, sickness, disease or death of any person;
- (b) for physical loss of, damage to, or destruction of, any tangible property including loss of use thereof or any consequential loss.

##### FRAUD AND DISHONESTY OF EMPLOYEES

subject to the operation of the Extension for Fraud & Dishonesty of this Policy, brought about or contributed to by any dishonest, fraudulent, criminal or malicious or deliberate act or omission of or on behalf of any Insured Person.

##### JURISDICTION

- (a) brought against the Insured in a Court outside New Zealand unless the judgement of such court is enforceable in New Zealand.
- (b) in respect of any liability incurred directly or indirectly pursuant to the judgement of any court, or other body, exercising jurisdiction under the laws of the United States of America or Canada (including any dependency, protectorate, colony, state or territory of either of those countries).

##### RETROACTIVE DATE

in respect of Wrongful Acts committed or alleged to have been committed before the Retroactive Date specified in the Schedule.

##### PUNITIVE DAMAGES

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

##### WARRANTY OR GUARANTEE

- (a) in respect of liability assumed by the Insured by express warranty or guarantee unless such liability would have attached to the Insured notwithstanding such express warranty or guarantee.
- (b) within the scope of this Policy in relation to which the Insured has, without the written consent of the Company surrendered or waived any right of contribution or indemnity to which the Insured might otherwise have been entitled or, arising partly or wholly out of any work performed or

services rendered by some third party for or on behalf of the Insured pursuant to an agreement which by its terms has the effect in relation to such Claim of limiting or abrogating or excluding any right of contribution or indemnity to which the Insured would, save for those terms, have become entitled in either contract or in tort or by the operation of any statute.

#### YEAR 2000

arising directly or indirectly from, or in any way connected with the failure of any Computer Equipment to meet Year 2000 Conformity

In this Exclusion the following definition shall apply:

"Computer Equipment" means all computer equipment which includes but is not limited to any, or any combination or part of, data, computer hardware, operation system, application, software, and computer chip including microprocessor chip or embedded control logic.

"Year 2000 Conformity" means that neither performance nor functionality is affected by dates prior to, during or after the year 2000 and in particular but without limitation:

- (a) no value for current date will cause any interruption in operation;
- (b) date based functionality must behave consistently for dates prior to, during and after year 2000;
- (c) in all interfaces and data storage, the century in any date must be specified either explicitly or by ambiguous algorithms or inferencing rules;
- (d) year 2000 must be recognised as a leap year in terms of handling both 29 February and day 366;
- (e) 9 September 1999 must be recognised as that date.

The above definition of "Year 2000 Conformity" is based on a definition contained in a document published by Standards Australia and Standards New Zealand under reference no. SAA/SNZ MP77:1998.

#### ASBESTOS

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.

#### WET BUILDINGS

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

#### CAPITAL RAISING

arising out of:

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

#### INSURED VS INSURED

by or on behalf of any Insured.

#### CRIMINAL ACTIONS

in respect of any action, proceeding, inquiry, investigation or prosecution taken against any Insured Person by the New Zealand Police.

### claims conditions

#### REPORTING AND NOTICE

The Insured shall give to the Company written notice as soon as practicable of any Claim made against the Insured PROVIDED ALWAYS THAT such written notice is given to the Company during the same Period of Insurance or within thirty (30) days after its expiry.

#### NOTIFICATION OF CIRCUMSTANCE

If, during the Period of Insurance, the Insured becomes aware of any fact or circumstance that might give rise to a Claim under this Policy and gives notice in writing to the Company of such fact or circumstance, then any Claim which may subsequently arise out of such fact or circumstance shall be deemed to be a Claim made during the Period of Insurance. PROVIDED ALWAYS THAT such written notice is given to the Company during the same Period of Insurance or within thirty (30) days after its expiry.

#### DEFENCE AND SETTLEMENT

- (a) The Insured shall not admit liability for or settle any Claim or incur any costs or expenses offer payment or otherwise assume any contractual obligation with respect to any Claim without the Company's written consent, such consent not to be unreasonably withheld. The Company shall not be liable for any settlement, costs or expenses, admission, offer, payment or assumed obligation to which it has not consented.
- (b) The Company shall be entitled at any time to conduct, in the name of the Insured, the defence or settlement of any Claim (which shall be a condition precedent to the Insured's right to be covered under this Policy). Any amount incurred by the Company on behalf of the Insured shall be deemed to be part of the Loss.

#### INSURED'S RIGHT TO CONTEST

In the event that the Company 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 such Claim. PROVIDED ALWAYS THAT the Company's liability in connection with such Claim shall not exceed the amount for which the Claim could have been so settled plus the Defence Costs incurred with the Company's written consent up to the date of such election.

#### LEGAL COUNSEL

- (a) The Company shall not require the Insured to contest any Claim unless a legal counsel (to be mutually agreed upon by the Insured and the Company) shall advise that such Claim should be contested.

- (b) In formulating such advice the legal counsel shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely Defence Costs and the prospects of the Insured successfully defending the Claim.
- (c) The cost of such legal opinion shall be regarded as part of the Defence Costs.

#### CLAIMS MITIGATION AND CO-OPERATION

- (a) The Insured shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any Loss hereunder.
- (b) The Insured shall disclose to the Company all relevant information and, in addition, shall provide assistance to the Company as it may require to enable it to investigate and to defend any Claim under this Policy and/or to enable the Company to determine its liability under this Policy.
- (c) Other than costs and expenses incurred to enable the Company to determine its liability under this Policy, compliance with this Condition shall be at the Insured's own cost, unless otherwise agreed in writing by the Company.

## general conditions

#### LIMIT OF INDEMNITY

- (a) The Company's total liability under this Policy for Loss in respect of any one Claim and in the aggregate in respect of all Claims shall not exceed the Limit of Indemnity as specified in the Schedule. This shall be the total limit of the Company's liability for all Loss under all provisions of this Policy arising out of Claims first made or deemed to have been made to the Company during the Period of Insurance.
- (b) Where the Company has agreed to provide an Automatic Reinstatement in accordance with Optional Extension 3.1 (Automatic Reinstatement), then the Company's total liability under this Policy in respect of all claims shall not exceed twice the aggregate Limit of Indemnity specified in the Schedule.

#### EXCESS

- (a) The Company's liability under Insuring Clauses 1.1, 1.2 or 1.3 shall only apply to that part of each Loss in respect of each Claim which is greater than the Excess as specified in the Schedule and such Excess shall be borne by the Insured at their own risk.
- (b) Any costs and expenses incurred by the Company to determine whether the Company has a liability to indemnify the Insured under this Policy shall be subject to the Excess and shall be borne by the Insured at their own risk.

#### MULTIPLE CLAIMS

All causally connected or interrelated Wrongful Acts shall jointly constitute a single Wrongful Act under this Policy. Where a single Wrongful Act gives rise to more than one Claim, all such Claims shall jointly constitute one Claim under this Policy, and only one Excess shall be applicable in respect of such Claim.

#### POLICY INTERPRETATION

This Policy shall be governed by the law of New Zealand whose courts shall have jurisdiction in any dispute arising hereunder.

#### CANCELLATION

- (a) The Insured may cancel this Policy at any time by notifying the Company in writing.
- (b) The Company may cancel this Policy at any time by giving thirty (30) days notice in writing to the Insured Entity of the date from which cancellation is to take effect. Such notification is to be posted by registered mail or sent by facsimile to the Insured Entity at the address last notified to the Company. Proof of mailing or facsimile is sufficient proof of notification.
- (c) After cancellation by the Insured or the Company the Insured is entitled to a pro rata refund of the premium.

#### GST

Where the Insured is liable to pay tax under section 5(13) of the Goods and Services Act 1985 (or any statutory amendment or re-enactment of this section or Act) upon receiving any payment under this Policy the Company will indemnify the Insured for the costs of that tax. The indemnity under this Clause is payable by the Company in addition to the Limit of Indemnity.

#### HEADINGS

- (a) The paragraph headings in this Policy are included for descriptive purposes only and do not form part of this Policy for the purpose of its construction or interpretation.
- (b) Under this Policy, the masculine includes the feminine, and the singular includes the plural and vice versa.

#### WAIVER OF PRIVILEGE

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

## definitions

#### CLAIM

"Claim" shall mean:

- (a) any written or verbal allegation of any Wrongful Act communicated to any Insured; or
- (b) any civil proceeding commenced by the service of a complaint, summons, statement of claim or similar pleading against any Insured alleging any Wrongful Act; or
- (c) any circumstance which could reasonably give rise to an allegation of a Wrongful Act.

#### DEFENCE COSTS

"Defence Costs" shall mean all reasonable costs, charges and expenses (other than regular or overtime wages, salaries or fees of any Insured Person) incurred by the Company or with the prior written consent of the Company (such consent not to be unreasonably withheld), in defending, investigating



or monitoring any Claim, or proceedings and appeals therefrom. Defence Costs are part of, and not in addition to, the Limit of Indemnity, and payment by the Company of Defence Costs reduces the Limit of Indemnity by the amount of any such payment.

#### DOCUMENTS

"Documents" shall mean valuation and survey reports, leases, certificates of title, accounting documents, deeds, wills, agreements, maps, plans, records, books, letters, certificates, forms and documents of any nature whatsoever (other than bearer bonds, coupons, bank notes, currency notes and negotiable instruments), whether written or printed or reproduced by any method and/or magnetic tape or other like means of recording information for use with any computer recording system.

#### EXCESS

"Excess" shall mean the amount of excess as specified in the Schedule.

#### INSURED

"Insured" shall mean the Insured Entity and any Insured Person.

#### INSURED ENTITY

"Insured Entity" shall mean the entity specified in the Schedule.

#### INSURED PERSON

"Insured Person" shall mean any past, present, or future director, secretary, officer, trustee, committee member or employee of the Insured Entity (whether salaried or not), or any other natural person acting on behalf of the Insured Entity at the direction of an officer or board of directors or board of trustees or committee of management of the Insured Entity.

#### LIMIT OF INDEMNITY

"Limit of Indemnity" shall mean the limit of the Company's total liability under this Policy as specified in the Schedule.

#### LOSS

"Loss" shall mean the total amount which an Insured becomes legally liable to pay in respect of a Claim made against such Insured for a Wrongful Act and shall include damages, judgements, settlements, Defence Costs, legal costs and expenses awarded against the Insured to any claimant.

#### OUTSIDE ENTITY

"Outside Entity" shall mean any non-profit organisation or other entity which is listed in the Special Conditions.

#### PERIOD OF INSURANCE

"Period of Insurance" shall mean the period specified in the Schedule.

#### POLICY

"Policy" shall mean:

- (a) the terms contained herein; and
- (b) the special conditions referred to in the Schedule, if any; and
- (c) any endorsement attaching to and forming part of this Policy either at inception or during the Period of Insurance; and
- (d) the Proposal.

#### POLLUTANTS

"Pollutants" shall mean, but is not limited to:

- (a) any solid, liquid, gaseous or thermal irritant or contaminant, whether occurring naturally or otherwise, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, radioactive material of any sort, chemicals; or
- (b) any waste material including material to be recycled, reconditioned or reclaimed; or
- (c) any other air emission, odour, waste water, oil, oil products, infectious or medical waste, asbestos, asbestos products, or any noise emission.

#### PROPOSAL

"Proposal" shall mean the written proposal made by the Insured to the Company containing particulars and statements which together with the accounts and other information relating to the Insured Entity are the basis of this Policy and are considered as incorporated herein.

#### SCHEDULE

"Schedule" shall mean the schedule to this Policy.

#### WRONGFUL ACT

- (a) In respect of indemnity provided under Insuring Clause 1.1 and 1.2, "Wrongful Act" shall mean any actual or alleged breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, or other act committed or attempted by an Insured Person, individually or otherwise, in the course of his duties to the Insured Entity;
- (b) In respect of Insuring Clause 1.3, "Wrongful Act" shall mean any negligent act, error or omission committed, attempted or allegedly committed or attempted, by the Insured in course of rendering (or failure to render) services and/or advice.

Vero Liability Insurance Limited

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