



**Policy** Wording

# Defence Costs



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## Insuring Clause

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

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

Provided that the alleged:

- (i) event; or
- (ii) wrongful act; or
- (iii) act, error, omission or conduct

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

## Limit of Indemnity

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

- (i) during the Period of Insurance; and
- (ii) over all Underlying Policies

shall be the Limit of Indemnity stated in the Schedule.

## Conditions

### 1. Underlying Policies – Exhaustion

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

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

### 2. Underlying Policies – Excess Layers

In the event that:

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

Policy from such Underlying Policy and any excess layer policy(ies) up to the aggregate limit of indemnity from both or all of such policies and the Limit of Indemnity under this Policy shall be restored to the extent of such recovery or

- (b) exceeds the aggregate limit of indemnity under the Underlying Policy and any excess layers then this Policy stands to indemnify such Defence Costs as if it were a primary Defence Costs indemnity.

### 3. Underlying Policies – Excess/Deductible

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

### 4. Claims Notification

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

### 5. Claims Conduct

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

### 6. Policy Priority

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

### 7. Jurisdiction

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

### 8. Cancellation

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

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

## Definitions

### 1. Defence Costs

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

of any claim and which would be indemnified under the Underlying Policy.

**2. Hung Claim**

means any claim in respect of which the Insured has indemnity for Defence Costs under the Underlying Policy(ies), but because such Policy(ies) is/are subject to a charge under Section 9 of the Law Reform Act 1936 the Company is prevented from paying Defence Costs under that/these Policy(ies) due solely to the existence of the charge.

**3. Insured**

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

**4. Insured Claim**

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

**5. Underlying Policy(ies)**

means the policy(ies) specified in the Schedule of this Policy or renewals or replacements thereof, which shall be maintained in full effect during the currency of this Policy.

