

## preamble

In consideration of payment of the Premium, Vero Liability Insurance Limited (hereinafter referred to as the Company) will provide indemnity in accordance with and subject to, the terms of this Policy.

## section a : errors and omissions

### INSURING CLAUSE A

#### ACT, ERROR OR OMISSION

- 1.1 The Company agrees to indemnify the Insured against legal liability for all claims in respect of acts, errors or omissions whatsoever and howsoever incurred in the provision of Information and Communication Technology which are:
- first made against the Insured during the Period of Insurance; and
  - notified to the Company during the notification period; and
  - not excluded under Section C (Exclusions).

### INSURING CLAUSE B

#### DEFENCE COSTS

- 1.2 In respect of a claim, the Company agrees to pay defence costs, incurred with its prior written consent in the defence or settlement of any indemnifiable claim. Provided that the payment of such costs and expenses shall form part of and not be in addition to the Limit of Indemnity specified in the Schedule.

#### RETROACTIVE DATE

- 1.3 Where a Retroactive Date is specified in the Schedule, then this policy will only provide cover in respect of acts, errors or omissions committed or alleged to have been committed after the Retroactive Date.

#### LIMIT OF INDEMNITY

- 1.4 Subject to Insuring Clause 1.2 (Defence Costs), the Company's total liability under this policy for any one claim and in the aggregate in respect of all claims will not exceed the Limit of Indemnity specified in the Schedule or where the Company has agreed to provide an Increased Aggregate Limit of Indemnity in accordance with Optional Extension 3.2, the Aggregate Limit of Indemnity specified in the Schedule.

#### MULTIPLE CLAIMS

- 1.5.1 All causally connected or interrelated acts, errors or omissions will jointly constitute a single act, error or omission under this policy.
- 1.5.2 Where a single act, error or omission gives rise to more than one claim, all such claims will jointly constitute one claim under the policy, and only one Deductible or Limit of Indemnity will be applicable in respect of such claim.

## section a : automatic extensions

### PREAMBLE

- 2.1 The Company will provide indemnity as in available under the Automatic Extensions in Section A for nil additional premium. PROVIDED ALWAYS THAT:
- each Extension is subject to the Schedule, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this policy (unless otherwise stated); and
  - the inclusion of any Extension will not increase the Limit of Indemnity.

### CONTINUOUS COVER

- 2.2 The Company agrees that, notwithstanding Exclusion 5.7 (Prior or Pending), if the Insured gives notice to the Company during the Period of Insurance of a claim which should have been notified, or a fact or circumstance which could have been notified, to the Company under an earlier Information and Communication Technology Liability Insurance policy issued by the Company, then the Company will accept the notification of such claim, fact or circumstance under this policy.
- PROVIDED ALWAYS THAT:
- this Automatic Extension 2.2 will only apply if the Company has continuously been the insurer under an Information and Communication Technology Liability Insurance policy between the date when such notification should have, or could have been given and the date when such notification was in fact given; and
  - the terms and conditions applicable to this Extension and to that notification will not be those of this Policy but will be the terms and conditions (including the Limit of Indemnity and Deductible) applicable to the Company's Information and Communication Technology Liability Insurance policy under which the notification should have, or could have been given.

### SEVERABILITY AND NON-IMPUTATION

- 2.3 The Company agrees that where this policy insurers more than one party, any conduct on the part of any party or parties whereby such party or parties:
- made a misrepresentation to the Company before this contract of insurance was entered into; or
  - failed to comply with any terms or conditions of the policy;
- will not prejudice the right of the remaining parties to indemnity as may be provided by this policy.
- PROVIDED ALWAYS THAT such remaining parties must:
- be entirely innocent of and have had no prior knowledge of any such conduct; and
  - as soon as in reasonably practicable upon becoming aware of any such conduct, have advised the Company in writing of all known facts in relation to such conduct.

### FAIR TRADING ACT 1986

- 2.4 The Company agrees to provide coverage in respect of any claim for compensation made against the Insured, alleging breach of Sections 9 to 15 of the Fair Trading Act 1986.

### LIBEL AND SLANDER

- 2.5 The Company agrees to provide coverage in respect of any claim made against the Insured for libel or slander by reason of words written or spoken in any form and via any medium.

#### FRAUD AND DISHONESTY

- 2.6 The Company agrees to provide coverage in respect of any claim, which would otherwise be excluded by reason of Exclusion 5.14 (Fraud and Dishonesty).
- PROVIDED ALWAYS THAT:
- such coverage will not be provided to any person committing or condoning any act, error or omission or breach excluded by reason for Exclusion 5.14 (Fraud and Dishonesty); and
  - such coverage will not apply to loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.

#### OUTGOING PRINCIPALS

- 2.7 The Company agrees to provide coverage in respect of the Insured's legal liability for acts, errors or omissions of any former principal, partner, director or employee of the Insured in the conduct of the business.

#### CONSULTANTS, SUB-CONTRACTORS AND AGENTS

- 2.8 The Company agrees to provide coverage in respect of the Insured's legal liability for acts, errors or omissions of any consultant, sub-contractor or agent. PROVIDED ALWAYS THAT such coverage will not extend to any liability of such consultant, sub-contractor or agent.

#### INTELLECTUAL PROPERTY

- 2.9 The Company agrees to provide coverage in respect of any claim made against the Insured for any infringement of copyright, trademarks, registered designs, circuit layout rights, or patents or any plagiarism or breach of confidentiality.

#### JOINT VENTURE

- 2.10 The Company agrees to provide coverage in respect of any legal liability of the Insured for a claim made against the Insured, singly or with others, arising out of any activities in which the Insured is engaged as a joint venturer, or as a partner.

#### LOSS OF DATA

- 2.11 The Company agrees to provide coverage in respect of the Insured's legal liability arising from the loss of any Data which have been:
- destroyed, erased, damaged or corrupted; or
  - lost or mislaid and, after diligent search, cannot be found.
- PROVIDED ALWAYS THAT:
- the discovery of such Loss of Data occurred during the Period of Insurance and was notified in writing to the Company within twenty-eight (28) days after discovery; and
  - coverage will be limited to the costs, charges and expenses of whatsoever nature incurred by the Insured in replacing and/or restoring the Data and any Claim for those costs, charges and expenses must be supported by bills and/or accounts which will be subject to approval by a competent person nominated by the Company and with the approval of the Insured; and
  - coverage will be limited to the loss of any Data:
    - which were in the physical custody or control of the Insured or any other person to whom the Insured entrusted, lodged or deposited such Data in the ordinary course of business; and
    - which occurred within the territorial limits specified in the Schedule.

#### DEFENCE COSTS FOR BREACH OF CONTRACT

- 2.12 Notwithstanding Exclusion 5.2 (Assumed Liability), the Company agrees to provide up to \$100,000 during any one Period of Insurance for Defence Costs incurred by the Insured in respect of any claim made against the Insured arising from any alleged breach of the Insured's contractual obligations in respect of the provisions of Information and Communication Technology. PROVIDED ALWAYS THAT the Company will only pay such Defence Costs incurred up to the time that the claim is proven (to the Company's reasonable satisfaction) or accepted by the insured.

### optional extensions

#### PREAMBLE

- 3.1 The Company agrees to provide indemnity as may be available under the Optional Extensions in Section A, PROVIDED ALWAYS THAT:
- each Extension is subject to the Schedule, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of the Policy (unless otherwise stated herein); and
  - where an Extension is not specified in the Schedule then this policy will not provide coverage under such Extensions; and
  - the granting of any Extension is at the sole and absolute discretion of the Company who reserves the right to charge any additional premium as it may require.

#### INCREASED AGGREGATE LIMIT OF INDEMNITY

- 3.2 The Company agrees to increase the Limit of Indemnity under this policy by an amount equal to the Limit of Indemnity. PROVIDED ALWAYS THAT the Company's total liability under this policy will not exceed:
- in respect of any one claim, the Limit of Indemnity as specified in the Schedule; and
  - in respect of all claims, an amount equal to twice such Limit of Indemnity.

#### LICENSEE INTELLECTUAL PROPERTY RIGHTS

- 3.3 The Company agrees to provide coverage which would otherwise be excluded by reason 5.2 (Assumed Liability) in respect of any claim made against the Insured by a Licensee of the Insured under any warranty or indemnity given by the Insured in respect of the Insured's ownership or ability to license any intellectual property rights.

### section b : personal injury and property damage

#### INSURING CLAUSE A

##### PERSONAL INJURY AND PROPERTY DAMAGE

- 4.1 The Company agrees to indemnify the Insured against all amounts which the Insured becomes legally liable to pay by way of compensation in respect of:
- Personal Injury; or
  - Property Damage;
- occurring during the Period of Insurance and caused by an Occurrence in connection with the Business of the Insured.

#### INSURING CLAUSE B

##### DEFENCE COSTS

- 4.2 With respect to the indemnity provided by Insuring Clause 4.1, in respect of any Claim, the Company will:

- a. pay all Defence Costs incurred by the Company, all costs awarded against the Insured and all interest accruing after entry of judgement until the Company has paid, tendered or deposited in court such part of the judgement as does not exceed the limit of Indemnity; and
- b. reimburse the insured for all reasonable Defence Costs, other than loss of earnings, incurred with the consent of the Company, in connection with the defence of the claim; and  
PROVIDED ALWAYS THAT:
  - a. the amount payable by the Company, except payments in settlement of the claim or any judgement and all costs awarded against the Insured, is in addition to the Limit of Indemnity; and
  - b. the Company will not be obliged to pay the claim, any judgement, Defence Costs, after the Limit of Indemnity has been exhausted by payment of judgments or settlements; and
  - c. if a payment in excess of the amount of indemnity available under this policy is made to dispose of a claim, the Company's liability for those Defence Costs will be such proportion of those Defence Costs as the amount of indemnity available under this policy bears to the amount paid to dispose of the claim.

#### LIMIT OF INDEMNITY

- 4.3.1 The maximum liability of the Company in respect of any claim or series of claims for Personal Injury or Property Damage caused by or arising out of one Occurrence will not exceed the Limit of Indemnity.
- 4.3.2 The total aggregate liability of the Company during any one Period of Insurance for all claims in respect of Personal Injury or Property Damage arising out of the provision of Information and Communication Technology will not exceed the Limit of Indemnity.

#### MULTIPLE CLAIMS

- 4.4 Where one Occurrence gives rise to more than one claim, all such claims will jointly constitute one claim under the policy and ONLY one Deductible and Limit of Indemnity will be applicable in respect of that claim.

### section c : exclusions

Notwithstanding anything to the contrary in this Policy, the Company will not be liable under this policy to provide indemnity in respect of any claim against the Insured for or in respect of:

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- 5.1 Any:
  - a. claim;
  - b. Defence Costs; or
  - c. any loss, costs, charges or expenses of whatsoever kind;arising directly or indirectly from, or in any way connected with, the fact that the performance or functionality of any Computer Equipment has been or may be affected because that Computer Equipment does not meet Year 2000 Conformity.

#### ASSUMED LIABILITY

- 5.2 Any obligation assumed by the Insured under any agreement, EXCEPT THAT this Exclusion does not apply to:
  - a. any liability which is, or would have been implied by law in such agreement or would have arisen separately from it; or
  - b. in relation to Section B (Personal Injury and Property Damage), the liability which arises from a provision in a contract for lease of real or personal property other than a provision which obliges the Insured to effect insurance or provide indemnity in respect of the subject matter of that contract; or
  - c. any liability which is under an implied warranty of fitness or quality with regard to the Insured's Information and Communication Technology; or
  - d. any liability which is in respect of the treatment or use of confidential information.

#### PROPERTY IN CUSTODY AND CONTROL

- 5.3 Property Damage to:
  - a. property owned by, or leased to, or rented to the Insured; or
  - b. property in the physical or legal control of the Insured.  
EXCEPT THAT this Exclusion does not apply to liability for Property Damage to:
    - a. premises (including landlord's fixtures and fittings) which are leased or rented to the Insured for the purposes of the Business; or
    - b. premises (or their contents) not owned, leased to, or rented to the Insured but temporarily occupied by the Insured for the purposes of the Business; or
    - c. Vehicles (not belongings to, or used by or on behalf of the Insured) in the physical or legal control of the Insured where the Property Damage occurs while the Vehicles are in a car park owned or operated by the Insured, unless the Insured owns or operates a car part for reward; or
    - d. Property (excluding any Vehicle which is registered or which is required under any legislation to be registered) in the physical or legal control of the Insured for the purpose of repair, service, maintenance or alteration or which is on temporary hire or loan, subject to a maximum indemnity of \$50,000 for any one Occurrence and in the aggregate in any one Period of Insurance.

#### INFORMATION AND COMMUNICATION TECHNOLOGY RECALL

- 5.4 Claims arising out of or resulting from the withdrawal, inspection, repair, upgrade, replacement or loss of use of the Insured's Information and Communication Technology or any property of which they form a part, if such Information and Communication Technology or property is withdrawn from the market or from use because of any known or suspected defect or deficiency in that Information or Communication Technology.

#### AIRCRAFT AND WATERCRAFT

- 5.5 Claims arising out of:
  - a. the ownership, maintenance, operation or use by the Insured of:
    - i. any Aircraft; or
    - ii. any Watercraft exceeding 10 metres in length; or
  - b. the Insured's Information and Communication Technology that are Aircraft component parts used in maintaining an Aircraft in flight or moving upon the ground or used in the construction of an Aircraft hull or machinery or Computer Equipment which, to the knowledge of the Insured, is incorporated in an Aircraft.

#### VEHICLES

- 5.6
  - a. Personal Injury or Property Damage arising out of the ownership, possession, operation, maintenance or use by the Insured of any Vehicle;
  - b. Property Damage arising out of and during the loading and unloading of goods to or from any Vehicle.

PRIOR OR PENDING

- 5.7 In relation only to Section A (Errors and Omissions) any claim:
- a. first made, threatened or intimated against the Insured prior to the Period of Insurance; or
  - b. directly or indirectly based upon attributable to, or 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 the 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.

TRADING DEBTS

- 5.8 Directly or indirectly based upon, attributable to, or in consequence of any trading debt incurred by the Insured or any guarantee given by the Insured for a debt.

RELATED PARTIES

- 5.9 Any matter where the claim is brought or maintained by or on behalf of:
- a. any Insured or any Subsidiary of any Insured; or
  - b. any person who at the time of the act, error or omission giving rise to the claim is a Family Member unless such person is acting without any prior direct or indirect solicitation or co-operation of any Insured.
- For the purpose of this Exclusion, 'Family Member' means:
- a. any spouse, domestic partner or companion; or
  - b. any parent, or parent of the spouse, domestic partner or companion; or
  - c. any sibling or child;
- of the Insured who permanently resides with the Insured.  
EXCEPT THAT this Exclusion does not apply to Condition 6.1.

ASBESTOS

- 5.10 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.

EMPLOYMENT LIABILITY

- 5.11.1 Personal Injury to any Employee arising directly or indirectly out of or in the course of employment in the Business.  
5.11.2 Damage to or destruction of any property of any Employee, including loss of use, arising out of, or in the course of employment in the Business.

FAULTY WORKMANSHIP

- 5.12 The cost of performing, correcting or improving any work undertaken by the Insured.

FINES, PENALTIES AND PUNITIVE DAMAGES

- 5.13 Fines, penalties, liquidated damages, punitive damages, exemplary damages, aggravated damages and any additional damages resulting from the multiplication of compensatory damages.

FRAUD AND DISHONESTY

- 5.14 Directly or indirectly based upon, attributable to, or in consequence of:
- a. any actual or alleged dishonest, fraudulent, criminal, or malicious act, error or omission of any Insured or their consultants, sub-contractors, or agents; or
  - b. any act, error or omission of any Insured or their consultants, sub-contractors, or agents committed or alleged to have been committed with a reckless disregard for the consequences thereof; or
  - c. wilful breach of any statute, contract or duty by any insured or their consultants, sub-contractors or agents.

POLLUTION

- 5.15.1 Personal Injury or Property Damage caused by or arising out of the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere, or any water course or body of water. EXCEPT THAT this Exclusion does not apply if the discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place; or
- 5.15.2 Any costs and expenses incurred in the prevention, removing, nullifying or clean-up, removal or nullifying expenses which are consequent upon a sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place which results in Personal Injury and/or Property Damage.

RADIOACTIVITY

- 5.16.1 Ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this Exclusion, combustion will include any self-sustaining process of nuclear fission; or
- 5.16.2 Nuclear weapons material.

WAR & TERRORISM

- 5.17 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;

WET BUILDINGS

- 5.18 Any liability for, or 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:
- (a) 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

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

#### PRIOR LITIGATION

- 5.19 Any litigation in existence at the commencement of the Period of Insurance.

### section d : conditions

#### JOINT INSURED

- 6.1 Applying only to Section B (Bodily Injury and Property Damage): where more than one party comprises the Insured, each of the parties will be considered as a separate and distinct unit and the word 'Insured' will be considered as applying to each party in the same manner as if a separate policy had been issued to each of them. PROVIDED ALWAYS THAT nothing in this Condition will result in an increase of the Company's Limit of Indemnity in respect of any Occurrence or Period of Insurance.

#### REPORTING AND NOTICES

- 6.2.1 Applying only to Section A (Errors and Omissions):
- a. The Insured must give the Company written notice of any claim as soon as practicable after it is made against the Insured (this does not alter the requirement to notify during the Notification Period); and
  - b. 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 elects to give notice in writing to the Company of such fact or circumstance during the Notification Period, then any claim which may subsequently arise out of such fact or circumstance will be deemed to be a claim made during the Notification Period.
- 6.2.2 Applying only to Section B (Personal Injury and Property Damage); the Insured must as soon as practicable give to the Company notice in writing of every Occurrence, claim, proceeding, impending prosecution and inquest together with all relevant information which may result in a claim under this policy, whether or not the Insured believes that amount of any such claim might fall below the applicable Deductible.
- 6.2.3 Notice of claim or Occurrence must be given in writing to the Company.

#### ALTERATION TO RISK

- 6.3 The Insured must give to the Company written notice as soon as practicable of any matter which materially increases the risk during the Period of Insurance including:
- a. any material change made or permitted by the Insured in the Business or the nature of the Information and Communication Technology offered by the Insured; or
  - b. the Insured going into voluntary bankruptcy, receivership or liquidation or the Insured failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding up proceedings.

#### TERRITORIAL COVER

- 6.4 The coverage under this policy will extend to liability arising out of acts, errors or omissions committed anywhere in the world except that, subject to Condition 6.5.2, there will be no coverage:
- a. under this policy in respect of acts, errors or omissions which occur within the territorial limit of the United States of America or the Dominion of Canada or their territories or protectorates; or
  - b. arising out of the Insured's Information and Communication Technology knowingly exported, sold, licensed, shared by the Insured or the Insured's agents or servants to the United States of America or the Dominion of Canada or their territories or protectorates.

#### JURISDICTION COVER

- 6.5.1 Subject to Condition 6.5.2, the coverage provided under this policy will extend to any claims brought in a court of law anywhere in the world except where:
- a. such claim is brought in a court of law within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates; or
  - b. such claim arises out of the enforcement of any judgement, order or award obtained within, or determined pursuant to the laws of the United States of America or the Dominion of Canada or their territories or protectorates.
- 6.5.2 The exceptions in relation to the United States of America or the Dominion of Canada or their territories and protectorates in Conditions 6.4 and 6.5 do not apply to coverage under Section B (Personal Injury and Property Damage) of this policy in respect of claims and actions arising from the presence outside New Zealand of any person who is normally resident in New Zealand and who is not undertaking manual work or supervision of work of any kind whilst in the United States of America or the Dominion of Canada or their territories or protectorates.

PROVIDED ALWAYS THAT the Limit of Indemnity in respect of coverage provided under this Condition is inclusive of all Defence Costs as set out in Insuring Clause 4.2 of this policy.

#### RECORDS

- 6.6.1 The Company may examine and audit the Insured's books and records at any time during the Period of Insurance and within three (3) years thereafter but that examination and audit will be restricted to matters which in the opinion of the Company are relevant to the policy.
- 6.6.2 The Insured must keep records of all matters and information requested by the Company and must on reasonable notice allow the Company or its nominee to inspect and make copies of those records.

#### CANCELLATION

- 6.7.1 Method of 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 30 days notice in writing to the Insured of the date from which cancellation is to take effect. Such notification is to be delivered personally or posted by registered mail to the Insured at the address last notified to the Company. Proof of mailing is sufficient proof of notification.
- 6.7.2 Adjustment of Premium:
- a. After cancellation by the Insured the Company will retain or be entitled to the Premium for the period during which this policy has been in force based on the Company's cancellation rates.
  - b. After cancellation by the Company the Insured is entitled to a pro-rata refund of the Premium.

#### INSPECTION OF PROPERTY

6.8 The Company will be permitted but not obligated to inspect the Insured's property and operations at any time. Neither the Company's right to inspect nor its failure to inspect nor the making of any inspection nor any report of an inspection may be used by the Insured or others in any action or proceed involving the Company.

#### NEWLY CREATED OR ACQUIRED ENTITY OR SUBSIDIARY

6.9.1 The Company agrees to provide coverage to any entity subsidiary acquired or created by the Insured during the Period of Insurance for a period of up to fourteen (14) days (but never beyond the expiry date of the Period of Insurance) from the date of such acquisition or creation.

6.9.2 The Company, may, at its discretion, agree to provide further coverage beyond a period of fourteen (14) days (but never beyond the expiry of the Period of Insurance) where:

- a. the Insured has notified the Company of the acquisition or creation of the entity or Subsidiary and has provided all information request by the Company; and
- b. any terms imposed by the Company, including the charging of any additional premium considered appropriate, have been agreed by the Insured.

PROVIDED ALWAYS THAT any coverage provided under this Condition will only apply in respect of liability arising out of any act, error or omission occurring subsequent to the date of acquisition of creation, unless otherwise agreed in writing by the Company.

#### ESTATE AND LEGAL REPRESENTATIVES

6.10 The Company agrees to provide coverage to the estate, heirs, legal representative or assigns of any Insured in the event of the death or incapacity of such Insured. PROVIDED ALWAYS THAT such persons will be subject to all terms of this policy in so far as they can apply.

#### ASSIGNMENT OF INTEREST

6.11 No change in, or modification of, or assignment of interest under this policy will be effective except when made by written endorsement to this policy and signed by an authorised employee of the Company.

#### DEDUCTIBLE

6.12.1 In respect of each claim made against the Insured the amount of the Deductible will be borne by the Insured, at its own risk and the Company will only be liable to indemnify the Insured for the part of any claim which is in excess of the Deductible.

6.12.2 Where the Company has elected to pay all or part of the Deductible in respect of any claim, the Insured must, within seven (7) days from the date of such payment, reimburse the Company for that payment.

6.12.3 In respect of any claim where the amount of the claim is less than the amount of the Deductible, the Insured must bear all Defence Costs associated with the claim.

6.12.4 Where the Deductible is expressed in the Schedule to be inclusive of Defence Costs, then the Insured must pay all Defence Costs, up to the amount of the Deductible, incurred by the Company in engaging advisers considered necessary by the Company to determine the liability of the Insured and to resolve the claim.

6.12.5 Any Defence Costs incurred by the Company to determine whether the Company has a liability to indemnify the Insured under this policy will not be subject to the Deductible but will be borne by the Company.

#### DEFENCE AND SETTLEMENT

6.13.1 The Insured agrees not to settle any claim, incur any Defence Costs, make any admission, offer any 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 will not be liable for any settlement, Defence Costs, admission, offer or payment, or assumed obligation to which it has not consented.

6.13.2 The Company will be entitled at any time to conduct, in the name of the Insured (which shall be a condition precedent to the Insured's right to be covered under this Policy), the defence or settlement of any claim and, subject to any other provision of this policy, will have full discretion as to the manner in which the defence or settlement is conducted.

6.13.3 The Company may, if it believes that any claim will not exceed the Deductible, instruct the Insured to conduct the defence of the claim. In such a situation, the Company will reimburse the Insured for all reasonable Defence Costs in the event that any payment made to dispose of the claim exceeds the Deductible.

#### CLAIMS CO-OPERATION

6.14.1 The Insured must use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability in respect of any claim.

6.14.2 After any claim or fact or circumstance that might give rise to a claim under this policy has been notified, the Insured must provide information to the Company of all significant developments (including proceedings, prosecutions or inquiries) which may affect such claim or fact or circumstance.

6.14.3 The Insured must frankly and honestly provide to the Company all relevant information and assistance the Company may require to enable it to investigate and to defend any claim or fact or circumstance, and/or to enable the Company to determine its liability under this policy.

6.14.4 The Insured must use its best endeavours to preserve all property, Information and Communication Technology, appliances and plant and all other things which may assist in the investigation or defence of a claim or fact or circumstance, in the exercise of a right of subrogation and, so far as reasonably practicable, the Insured must not, without the consent of the Company, carry out any alteration or repair to relevant items until the Company has had an opportunity to inspect them.

6.14.5 Other than costs and expenses incurred to enable the Company to determine its liability under this policy, compliance with this Condition will be at the Insured's own costs, unless otherwise agreed in writing by the Company.

#### DISCHARGE OF LIABILITIES

6.15 The Company may at any time pay to the Insured in respect of any claim against the insured, being the subject of one Limit of Indemnity, the balance of that Limit of Indemnity and upon that payment the Company will relinquish conduct or control of and be under no further liability under this policy in connection with the claim, EXCEPT FOR:

- a. costs and expenses recoverable from the Insured for all or part of the period prior to such payment; and
- b. Defence Costs covered under Insuring Clauses 1.2 and 4.2 prior to such payment.

#### INSURED'S RIGHT TO CONTEST

6.16 If the Company recommends settlement in respect of any claim and the Insured does not agree that the claim should be settled then the Insured may elect to contest the claim. PROVIDED ALWAYS THAT the Company's liability in connection with the claim will not exceed the amount of which the claim could have been settled plus Defence Costs incurred up to the date of the Insured's election.

#### SUBROGATION

6.17 If any payment is made under the policy in respect of a claim. The Company is subrogated to all the Insured's rights of recovery in relation thereof. The Insured shall give all such assistance in the exercise of rights of recovery as the Company may reasonably require. However, the Company shall not exercise any subrogated rights of recovery against any Employee of the Insured unless the claim has been brought about or contributed to by the dishonest, fraudulent, criminal or malicious act, error or omission of the Employee.

#### NOTICES

6.18 Any notice given in writing to the Company to the first named Insured specified in the Schedule will be treated as notice to each of the parties comprising the Insured. Services of notices by the Company will be effective immediately on receipt by the first named Insured of a facsimile transmission sent from the Company or in the case of notices by post, three business days after having been posted by the Company.

#### GST

6.19 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 the section or Act) upon receiving any indemnity 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.

#### POLICY CONSTRUCTION AND INTERPRETATION

6.20.1 The construction, interpretation and meaning of the provisions of this policy will be determined in accordance with the laws of New Zealand, and any disputes relating to it will be submitted to the exclusive jurisdiction of New Zealand.

6.20.2 The marginal notes and titles or paragraphs 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.

6.20.3 Under this policy the masculine includes the feminine, and the singular includes the plural and vice versa.

#### SENIOR COUNSEL CLAUSE

6.21.1 The Company will not require the Insured to contest any claim unless a Senior Counsel (to be mutually agreed upon by the Insured and the Company) advises that such claim should be contested.

6.21.2 In formulating such advice, Senior Counsel must 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.

6.21.3 The cost of such Senior Counsel's opinion will be regarded as part of the Defence Costs.

#### RUN-OFF COVER INSURED ENTITY OR SUBSIDIARY

6.22 The Company agrees that if an Insured entity or Subsidiary ceases to exist or operate or is consolidated with, merged into or acquired by any other entity, then the coverage provided under this policy with respect to that Insured entity or Subsidiary will continue until the expiry date of the period of Insurance. PROVIDED ALWAYS THAT such coverage will only apply in respect of liability arising out of any act, error or omission occurring prior to the effective date that such Insured entity or Subsidiary ceased to exist or operate or was consolidated with, merged into or acquired by another entity, unless otherwise agreed in writing by the Company.

#### WAIVER OF PRIVILEGE

6.23 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.

## section e : definitions

#### AIRCRAFT

7.1 'Aircraft' means any vessel, craft or anything made or intended to fly or move in or through the atmosphere or space.

#### BUSINESS

7.2 'Business' means the business described in the Schedule including the provision of canteens, social, sports welfare and childcare organisations for the benefits of the Insured's Employees, first aid, fire and ambulance services and the maintenance of the Insured's premises.

#### CLAIM

7.3 'Claim' means:

- a. the receipt by the Insured of any written or verbal notice of demand for compensation made by a third party against the Insured; or
- b. any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counter-claim or third or similar party notice served upon the Insured.

#### COMPUTER EQUIPMENT

7.4 'Computer Equipment' means but is not limited to any or any combination or part of data, computer hardware, operating system, application, software and computer chip, including microprocessor chip or embedded control logic.

#### DATA

7.5 'Data' means:

- a. information such as text, numbers, sounds and images that can be processed by any form of electronic device; and
- b. deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written printed or reproduced by any method by will not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

#### DEDUCTIBLE

7.6 'Deductible' means the amount of Deductible as specified in the Schedule.

#### DEFENCE COSTS

7.7 'Defence Costs' means the expenses incurred with the written consent of the Company by or on behalf of the Insured or the Company in the investigation or defence of a claim and will include legal costs and disbursements.

#### EMPLOYEE

7.8 'Employee' means any person engaged under a contract of service or apprenticeship with the Insured.

#### INFORMATION AND COMMUNICATION TECHNOLOGY

7.9 'Information and Communication Technology' means:

- a. any Computer Equipment, software, hardware or firmware sold, manufactured, produced, installed, repaired, serviced, treated, supplied, distributed, licensed or shared by the Insured; and
- b. any technology related service, advice or work provided by the Insured and includes the provision of data processing, data warehousing, facilities management and outsourcing, telecommunication and data communication services provided by the Insured in the conduct of the Business.

#### INSURED

7.10 'Insured' means:

- a. the person, persons, partnership, company, corporation or other entity specified as the Insured in the Schedule; and

- b. any person who is during the Period of Insurance, a principal, partner, director or Employee (including contracted employee) of the Insured; and
- c. any former principals, partners, directors or employees of the Insured; and
- d. any office bearer or member of social and sporting clubs, canteen, welfare and childcare organisations and first aid, fire and ambulance services formed with the consent of the named Insured in respect of Claims arising from their duties connected with the activities of any such club, organisation or service.

'Insured' does not include the interest of any person other than as described in 7.10 a. to d.

#### LICENSEE

7.11 'Licensee' means any party who enters into a licence agreement with the Insured.

#### LIMIT OF INDEMNITY

7.12 'Limit of Indemnity' means the applicable Limit of Indemnity specified in the Schedule.

#### NOTIFICATION PERIOD

7.13 'Notification Period' means the period commencing on the start of the Period of Insurance and ending twenty eight (28) days after its expiry.

#### OCCURRENCE

7.14 'Occurrence' means an event, including continuous or repeated exposure to conditions, which results in Personal Injury or Property Damage neither expected nor intended by the Insured. With respect to Personal Injury or Property Damage all such exposure to substantially the same general conditions will be deemed to be one Occurrence.

#### PROPERTY DAMAGE

7.15 'Property Damage' means physical damage to, loss or destruction of tangible property, including any resulting loss of use of the property, or loss of use of tangible property which has not been physically damaged, lost or destroyed, provided such loss of use is caused by an Occurrence.

#### PERSONAL INJURY

7.16 'Personal Injury' means:

- a. bodily injury (and this expression includes death and illness), disability, shock, fright, mental anguish, mental injury; and
- b. false arrest, wrongful detention, false imprisonment or malicious prosecution; and
- c. wrongful entry or eviction or other invasion of the right of privacy; or
- d. assault and battery not committed by or at the direction of the Insured unless reasonably committed or the purpose of preventing or eliminating danger to person or property.

#### PERIOD OF INSURANCE

7.17 'Period of Insurance' means the period specified in the Schedule.

#### POLICY

7.18 'Policy' means:

- a. the Schedule, Insuring Clauses, Extensions, Conditions, Definitions, Exclusions and other terms contained herein; and
- b. any endorsement attaching to and forming part of this policy either at inception or during the Period of Insurance; and
- c. the Proposal.

#### POLLUTANTS

7.19 'Pollutants' means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled or reconditioned or reclaimed.

#### PREMIUM

7.20 'Premium' means the Premium specified in the Schedule or in any endorsement to the Schedule.

#### PROPOSAL

7.21 'Proposal' means the written Proposal made by the Insured to the Company containing particulars and statements which, together with other information provided by the Insured, are the basis of this policy and are considered as incorporated herein.

#### The Company

7.22 'The Company' means Vero Liability Insurance Limited.

#### SENIOR COUNSEL

7.23 'Senior Counsel' means a barrister in active practice who is entitled to use the post-nominals QC or SC in any one or more superior courts in Australia or New Zealand.

#### SUBSIDIARY

7.24 'Subsidiary' means:

- a. any entity which by virtue of any applicable legislation or law is deemed to be a subsidiary of the Insured specified in the Schedule; or
- b. any entity over which the Insured specified in the Schedule is in a position to exercise effective direction or control through ownership or control of more than fifty percent (50%) of the issued voting shares of such entity.

#### SCHEDULE

7.25 'Schedule' means the Schedule attached to the policy.

#### VEHICLE

7.26 'Vehicle' means any type of machine on wheels or on self laid tracks made or intended to be propelled by other than manual or animal power and trailer or other attachment made or intended to be drawn by such machine.

#### WATERCRAFT

7.27 'Watercraft' means any vessel, craft or thing made or intended to float on, or in, or travel on or through water.

#### YEAR 2000 CONFORMITY

7.28 'Year 2000 Conformity' means that neither the 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; and
- b. date based functionality must behave consistently for dates prior to, during and after year 2000; and
- c. in all interfaces and data storage, the century in any date must be specified either explicitly or by unambiguous algorithms or inferencing rules; and



- d. year 2000 must be recognised as a leap year in terms of handling both 29 February and day 366; and
- e. 9 September 1999 must be recognised.

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 number SAA/SNZMP77:1988 and shall be interpreted in accordance with that document.

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