

insuring clause

In consideration of payment or promise of payment of the required premium and in reliance upon the proposal and declarations furnished by the Insured and subject to the terms of this policy, Vero Liability Insurance Limited ("the "Company") agree to pay on behalf of the Insured all Claims for Damages and Defence Costs arising out of any actual or alleged misrepresentation and/or error or omission in the Prospectus as set out in the Schedule which are notified to the Company during the Period of Insurance as set out in the Schedule.

Provided that:

- (a) the alleged misrepresentation and/or error or omission has taken place on or after the Retroactive Date as set out in the Schedule; and
- (b) the maximum amount payable by the Company for Damages and Defence Costs for all Claims under this policy shall not exceed the Limit of Indemnity as set out in the Schedule.

advancement of defence costs

- (a) If cover has been confirmed in writing by the Company, then the Company will advance all reasonable Defence Costs as and when they are incurred and prior to the final outcome of the Claim.
- (b) If cover has not been confirmed in writing by the Company, the Company will advance all reasonable Defence Costs arising from such Claim as and when they are incurred and prior to the final outcome of the Claim, provided that:
 - (i) such Defence Costs shall be limited to NZ\$500,000 (five hundred thousand dollars), unless otherwise agreed in writing by the Company;
 - (ii) no Defence Costs other than those incurred with the prior written consent of the Company shall be payable hereunder, such consent shall not be unreasonably withheld.
- (c) The Company reserve their rights to recover from any Insured any Defence Costs advanced in accordance with the above if subsequently it is established by judgment, settlement, or other final adjudication that the Insured is not entitled to payment under this policy.

exclusions

The Company shall not pay on behalf of the Insured any Claim:

DISHONEST OR CRIMINAL ACTS

- (a) for any alleged deliberately dishonest, deliberately fraudulent, deliberately criminal, deliberately malicious act or omission of the Insured;

NUCLEAR RISKS

- (b) directly or indirectly occasioned by, happening through or in consequence of ionising radiations or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel or the radioactive toxic explosive or other hazardous properties or any explosive nuclear assembly or nuclear component thereof;

WAR & TERRORISM

- (c) against them, alleging, involving, arising from (directly or indirectly):

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 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 (i) and/or (ii) above.

RETURN OF IMPROPER GAINS

- (d) for the return by the Insured of any remuneration, profit, or advantage if it is determined by a judgment or other final adjudication that the Insured was not legally entitled to that remuneration, profit or advantage;

POLLUTION

- (e) for seepage pollution or contamination or the breach of any statute regulation or ordinance prohibiting or controlling emissions or effluents of any kind or from any enforcement action or proceeding brought under or pursuant to any statute regulation or ordinance;

EMPLOYEES

- (f) by any current, former or prospective employee of the Insured in their capacity as such.

CIRCUMSTANCES PRIOR TO INCEPTION

- (g) for any circumstance or alleged misrepresentation and/or error or omission of which, at the commencement of the Period of Insurance as set out in the Schedule or, if this policy is renewed, the effective date of renewal, the Insured is aware or ought reasonably to be aware may give rise to a Claim against the Insured;

RETROACTIVE DATE

- (h) for any alleged misrepresentation and/or error or omission which has taken place or allegedly taken place prior to the Retroactive Date as set out in the Schedule.

YEAR 2000

- (i) on the policy which arises directly or indirectly from, or is 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.

In this Exclusion (notwithstanding anything to the contrary in this policy):

- (a) "Computer Equipment" includes 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, and irrespective of by whom it is owner or operated.
- (b) "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, that:
- No value for current date will cause any interruption in operation;
 - Date-based functionality must behave consistently for dates prior to, during and after Year 2000;
 - In all interfaces and data storage, the century in any date must be specified either explicitly or by unambiguous algorithm of inferencing rules;
 - Year 2000 must be recognised as a leap year in terms of handling both 29 February and day 366;
 - 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 and shall be interpreted in accordance with that document.

INSURED VERSUS INSURED

- (j) brought against any Insured by or on behalf of any Insured (as defined herein). However this Exclusion shall not apply in respect of Claims brought by any shareholder, who is not an Insured, as part of a derivative action, provided that the shareholder is acting without any prior direct or indirect solicitation, enticement or co-operation of any Insured.

ASBESTOS

- (k) for 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

- (l) in respect of 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.

In respect of the exclusions no fact pertaining to nor knowledge possessed by nor alleged misrepresentation and/or error or omission of any Insured shall be imputed to any other Insured for the purpose of determining the availability of cover.

conditions

CLAIMS

- (a) The Insured shall as a condition precedent to their right to be covered under this policy give to the Company notice in writing as soon as practicable:

- (i) of any Claim made against them or any of them;
- (ii) of the receipt of notice from any person or party of any intention to hold the Insured responsible for the results of any alleged misrepresentation and/or error or omission for which this policy provides cover;
- (iii) of any circumstance which the Insured shall become aware which may give rise to a Claim or Claims under this policy;

irrespective of whether the quantum is likely to be within or above the amount of the Excess as set out in the Schedule.

- (b) The Insured shall do and concur in doing all things reasonably practicable to avoid or diminish any Claim under this policy at their cost and on request give to the Company or their authorised representatives all such information and assistance as they may reasonably require. The Company may assume control and conduct of any Claim (which shall be a condition precedent to the Insured's right to be covered under this Policy) for which they have confirmed cover.

- (c) Where non-compliance with (a) and (b) above by one or more of the Insured has resulted in prejudice to the handling or settlement of any allegation which in all other respects qualifies to be covered under this policy, the cover afforded by this policy in respect of such allegation shall (so far as the particular Insured who has failed to comply is concerned) be reduced to such sum as would have been payable by the Company in the absence of such prejudice.

- (d) The insurance provided by this policy ceases absolutely at the expiry of the Period of Insurance as set out in the Schedule. However provided that notice referred to in (a) above has been given to the Company prior to the expiration of the Period of Insurance as set out in the Schedule, any

Claim arising from the circumstances thus notified which is subsequently made after the expiration of the Period of Insurance as set out in the Schedule shall be deemed to have been made during the subsistence of this policy.

(e) The Insured shall not in relation to any Claim under this policy:

- (i) make any admission of liability; nor
- (ii) incur any expense; nor
- (iii) make any payment or settlement of liability

without the prior written consent of the Company. Such consent shall not be unreasonably withheld. The Company is not liable for any admissions, expenses, payments or settlements made without their consent.

(f) If any Insured does not consent to any settlement recommended by the Company and elects to contest or continue any legal proceedings in connection therewith the Company's liability for the Claim shall not exceed the amount for which the Claim would have been so settled (over and above the Excess as set out in the Schedule) including Defence Costs incurred up to the date of such refusal.

(g) The Insured shall not be required to contest any legal proceedings unless counsel mutually agreed upon by the Insured and the Company shall advise such proceedings should be contested by the Insured. Counsel's costs shall be payable by the Company and shall be payable in addition to the Limit of Indemnity as set out in the Schedule.

SUBROGATION

(a) The Company shall be entitled to use the name of the Insured in any proceedings to enforce for the benefit of the Company any order made for costs or otherwise and shall have the right of subrogation in respect of all rights which the Insured may have against any person or entity who may be responsible to the Insured in respect of any Claim for any alleged misrepresentation and/or error or omission covered by this policy and the Insured shall do everything necessary to secure and preserve such rights including executing any necessary documents for the purpose of vesting such rights in the Company. Any moneys recovered pursuant to the exercise of such rights shall be applied firstly for the benefit of the Company to the extent of the amount paid by them in respect of that Claim (including related costs and expenses) and the remaining moneys shall become the property of the Insured.

(b) If no recovery is made as a result of proceedings conducted solely by the Company then they shall bear the expenses thereof.

Provided that the Company waive all rights of subrogation against the Insured unless the right of subrogation arises from the deliberately dishonest, deliberately fraudulent, deliberately malicious, or deliberately criminal conduct of the Insured.

FRAUD

If any Claim under the policy is in any respect fraudulent or if any false declaration is made or used in support of any Claim or if any fraudulent means or devices are used by any Insured or anyone acting on behalf of any of them to obtain any benefit under this policy in respect of any Claim, all benefit under this policy will be forfeited.

LIMIT OF INDEMNITY AND EXCESS

(a) Any Claim or series of Claims arising from one original source or original cause or event or repetition of the original source, cause or event and All Claims arising out of any one allegation of misrepresentation and/or error or omission or inter-related allegations of misrepresentation and/or error or omission are deemed to be one Claim. Any Claim arising from inter-related allegations of misrepresentation and/or error or omission is deemed to have originated in the earliest period of insurance in which any of the allegations of misrepresentation and/or error or omission is first notified to the Company.

(b) The Company's liability under this policy applies only to that part of each one Claim in excess of the Excess as set out in the Schedule.

(c) Subject to the Goods and Services Tax Extension of this policy, the Company's aggregate liability under this policy in respect of all Claims for Damages and Defence Costs arising out of allegations of misrepresentation and/or error or omission will not exceed the Limit of Indemnity as set out in the Schedule to this policy.

OTHER INSURANCE

If, at the time of any Claim arising under this policy, there is any other valid and collectable insurance covering all or part of the same allegations of misrepresentation and/or error or omission, this policy will apply in priority to such other insurance.

SEVERABILITY

(a) In granting cover under this policy to any Insured the Company have relied upon the declarations and statements contained within and attached to the proposal. All such declarations and statements are the basis of such cover and shall be considered as incorporated in and constituting part of this policy.

(b) The proposal shall be construed as a separate application for cover by each Insured. With respect to the declarations and statements contained within or attached to the proposal for cover, no statement in the proposal or knowledge possessed by any Insured shall be imputed to any other Insured for the purposes of determining the availability of cover with respect to Claims made against any Insured.

(c) The terms of this policy apply to each Insured provided that the failure by any Insured to observe and fulfil the terms of this policy will not prejudice this insurance in relation to any other Insured.

ASSIGNMENT

No assignment of interest under this policy shall bind the Company unless their written consent is endorsed hereon.

JURISDICTION

This policy shall be governed by the law of New Zealand whose Courts shall have jurisdiction in any dispute under this policy.

TERRITORY

This policy provides cover for Damages and Defence Costs arising out of allegations which occur in New Zealand.

CANCELLATION

This policy shall terminate in its entirety at the earliest of the following times:

(a) 90 days after receipt by the Insured at the address as set out in the Schedule of a written notice of termination from the Company or, if a later time is specified in such notice, at such later time;

- (b) upon receipt by the Company of written notice of termination from the Insured or, if a later time is specified in such notice, at such later time;
- (c) at such time as may be agreed upon by the Company and the Insured; or
- (d) upon expiration of the Period of Insurance as set out in the Schedule.

The Company shall refund any unearned premium computed on a pro-rata basis.

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.

extensions

The terms of this policy apply to this extension to this policy unless expressly stated otherwise. The terms of this extension apply only to this extension and not to the rest of the policy unless expressly stated otherwise.

GOODS AND SERVICES TAX

- (a) Where the Insured is liable to pay tax under the Goods and Services Tax Act 1985 (or any statutory amendment or re-enactment of the Act) on receiving any payment under this policy, the Company will cover the Insured for the cost of that tax.
- (b) The amount payable under this clause is payable by the Company in addition to the Limit of Indemnity as set out in the Schedule.

definitions

Words or phrases given special meaning in the Schedule attaching to this policy have the same meaning wherever they appear in the policy. In addition:

"Claim" means a demand for, or an assertion of a right to compensation or Damages in connection with the Prospectus as set out in the Schedule or an intimation of an intention to seek such compensation or Damages.

"Damages" means the total amount which any Insured becomes legally obligated to pay on account of all Claims, investigations, inquiries, administrative or regulatory proceedings, suits, legal actions, summons, writs, examinations made or commenced against them (including any written demands communicated to any Insured alleging misrepresentation and/or error or omission in the Prospectus as set out in the Schedule by whatever means) for any actual or alleged misrepresentation and/or error or omission in the Prospectus as set out in the Schedule, including but not limited to damages, judgments, settlements, costs and expenses, but not including Defence Costs.

"Defence Costs" means costs, charges and expenses incurred in investigations, inquiries, defence and settlement of legal actions, Claims, proceedings and appeals therefrom, the cost of appeal, attachment or similar bonds, and legal fees and experts' fees.

Provided that "Defence Costs" does not include regular or overtime wages, salaries or fees of the Insured.

"Insured" means:

- (a) the entity(ies) as set out in the Schedule;
- (b) past, present and future directors, officers or employees of (a);
- (c) in respect of any director or officer entitled to cover under this policy as described in (b) above who is deceased, incompetent, insolvent or bankrupt:
 - the estates, heirs, or legal representatives or assigns;
 - the current or former;
 - spouses;
 - de facto spouses;
 - same sex partners;

but only in relation to alleged misrepresentation and/or error or omission on the part of any such director or officer.

Each person or entity is insured jointly.

Vero Liability Insurance Limited

Private Bag 92055 Auckland New Zealand
Telephone 09 306 0350 Facsimile 09 306 0351

www.veroliability.co.nz