

Professional Indemnity Insurance Policy

In consideration of payment of the premium and in reliance on the **Proposal** or declaration, and subject to the provisions of this **Policy**, the **Insurer** and **Insured(s)** agree as follows:

Section 1 INSURING CLAUSES AND EXTENSIONS

All cover under this **Policy** is afforded with respect to **Claims** first made against an **Insured** during the **Policy Period** and reported to the **Insurer** as required by this **Policy**.

INSURING CLAUSES

1.1 Civil Liability

The **Insurer** will indemnify the **Insured** for all **Damages** and **Defence Costs** resulting from any **Claim** for any civil liability of the **Insured**.

1.2 Misleading or Deceptive Conduct

The **Insurer** will indemnify the **Insured** for all **Damages** and **Defence Costs** resulting from any **Claim** alleging breach of sections 9 to 14 of the Fair Trading Act 1986 (or any amending or replacing legislation), or any provisions which form part of similar fair trading legislation enacted by New Zealand or the states or territories of the Commonwealth of Australia.

1.3 Fraud and Dishonesty

The **Insurer** will indemnify any **Insured** for all **Damages** and **Defence Costs** resulting from any **Claim** brought about or contributed to by any fraudulent or dishonest conduct of an **Employee**, provided that this indemnity will not be provided to any person committing or condoning, expressly or implicitly, such act or omission.

1.4 Defamation

The **Insurer** will indemnify the **Insured** for all **Damages** and **Defence Costs** resulting from any **Claim** for defamation committed by the **Insured**.

1.5 Intellectual Property

The **Insurer** will indemnify the **Insured** for all **Damages** and **Defence Costs** resulting from any **Claim** for any infringement of any intellectual property rights, other than patents and **Trade Secrets**.

1.6 Vicarious Liability

The **Insurer** will indemnify the **Insured** for all **Damages** and **Defence Costs** resulting from **Claims** against the **Insured** arising from contractors and/or consultants providing **Professional Services** on behalf of the **Insured**, provided that this indemnity will not extend to the contractor and/or consultant who committed the **Wrongful Act**.

EXTENSIONS

The cover provided by this **Policy** is extended as detailed below. This cover is subject to the terms and conditions of this **Policy**.

1.7 Continuous Cover

In the event of a **Claim**, or circumstance that may reasonably have been expected by any **Insured** to give rise to a **Claim**, which could have been notified to the **Insurer** under any earlier policy of which this **Policy** is a direct or indirect renewal or replacement, the **Insurer** will treat that **Claim** or circumstance as though it had been properly notified to the **Insurer** during the **Policy Period** provided always that:

- 1.7.1 the **Insured** first became aware of the circumstances that might give rise to the **Claim** after the **Continuity Date**;
- 1.7.2 the failure to notify was not fraudulent or intentionally dishonest; and
- 1.7.3 the cover provided by this Insuring Clause will be subject to the terms, conditions and limitations of the policy in force when the **Insured** first became aware of the circumstances or this **Policy**, at the **Insurer's** discretion.

1.8 Public Relations Costs

The cover provided by this **Policy** extends to cover **Public Relations Costs** reasonably incurred by the **Insured** with the prior written consent of the **Insurer** (which consent will not be unreasonably withheld or delayed), provided always that:

- 1.8.1 those reasonable fees, costs and expenses arise as a result of a **Claim** first made against the **Insured** during the **Policy Period**; and
- 1.8.2 no admission of liability is made by the **Insured**.

The maximum amount payable under this Extension is specified at item 5 of the **Schedule**. The cover under this Extension is part of the **Limit of Indemnity** for **Defence Costs**.

1.9 Mitigation Costs

The cover provided by this **Policy** extends to cover **Mitigation Costs** reasonably incurred by the **Insured** with the prior written consent of the **Insurer** (which consent will not be unreasonably withheld or delayed), provided that no admission of liability is made by the **Insured**.

The maximum amount payable under this Extension is specified at item 5 of the **Schedule**.

1.10 Court Attendance Costs

The cover provided by this **Policy** extends to the cost of attendance for any person described in 1.10.1 and 1.10.2 below who attends Court as a witness in connection with a **Claim** notified and covered under this **Policy** as follows:

- 1.10.1 for any principal, partner or director **Insured** \$500 per day
- 1.10.2 for any **Employee** \$250 per day

The maximum amount payable under this Extension is specified at item 5 of the **Schedule**. The cover under this Extension is part of the **Limit of Indemnity** for **Defence Costs**.

No **Retention** will apply to payments made under this Extension.

1.11 Extended Reporting Period

If the **Insurer** cancels or does not renew this **Policy**, other than for non-payment of premium the **Policyholder** will have the right to a period of 30 days following the date of cancellation or expiry of the **Policy Period** in which to give notice of any **Claim** first made against the **Insured** during the **Policy Period**. This extended reporting period will not apply if this **Policy** or its cover has been replaced.

The fact that the cover provided by this **Policy** may be extended by virtue of this 30-day extended reporting period will not in any way increase the **Limits of Indemnity** or any sub-limit of indemnity stated in the **Schedule**. For the purposes of the **Limits of Indemnity**, or applicable sub-limit of indemnity, the extended reporting period is considered to be part of, and not in addition to, the **Policy Period**.

The following Extensions 1.12 and 1.13 are deemed to be **Claims** for the purposes of this **Policy**.

1.12 Quasi-Judicial Investigations

In relation to any **Quasi-Judicial Investigation**, the **Insurer** will pay on behalf of the **Insured**:

1.12.1 all monetary orders or determinations against the **Insured**; and

1.12.2 any reasonable fees, costs and expenses incurred by or on behalf of the **Insured** in relation to the **Quasi-Judicial Investigation**.

The maximum amount payable under this Extension is specified at item 5 of the **Schedule**. The cover under this Extension is part of the **Limit of Indemnity** stated at item 4A of the **Schedule**.

The **Retention** specified at item 6 of the **Schedule** will apply.

1.13 Loss of Documents

The cover provided by this **Policy** extends to the reasonable costs and expenses incurred by the **Insured** in replacing or restoring **Documents** for which an **Insured** is legally responsible and that have been destroyed, damaged, lost or mislaid provided always that:

1.13.1 the **Documents** which were in the physical custody or control of the **Insured** or any other person to whom the **Insured** entrusted, lodged or deposited those **Documents** in the ordinary course of **Professional Services**; and

1.13.2 the **Insurer** will not be liable to make any payment arising out of wear, tear and/or gradual deterioration, moth or vermin.

The maximum amount payable under this Extension is specified at item 5 of the **Schedule**. The cover under this Extension is part of the **Limit of Indemnity** stated at item 4A of the **Schedule**.

No **Retention** will apply to payments made under this Extension.

Section 2 DEFINITIONS

2.1 **Bodily Injury** means physical injury, sickness, disease or death; and if arising out of the foregoing, nervous shock, emotional distress, mental anguish or mental injury.

2.2 **Claim** means:

2.2.1 any written demand; or

2.2.2 civil, administrative, arbitration or any other adjudicative proceeding, including a cross-claim or counter claim,

that seeks **Damages** or other relief including non-monetary relief, as a result of a **Wrongful Act**.

2.3 **Continuity Date** means the date specified at item 8 of the **Schedule**.

2.4 **Damages** means any amount that an **Insured** will be legally liable to pay in respect of judgments against an **Insured**, or settlements which conform with the consent requirements of this **Policy**.

Damages does not include any wages, salaries, commissions, fees, charges or other forms of remuneration or profit to be repaid, lost or forgone by the **Insured** as a result of a **Claim**.

2.5 **Defence Costs** means reasonable fees, costs and expenses incurred by or on behalf of the **Insured**, with the **Insurer's** prior approval, in the investigation, defence, adjustment, settlement or appeal of any **Claim**.

Defence Costs does not include any internal or overhead expenses of any **Insured** or the cost of any **Insured's** time, except as provided for under Extension 1.10 (Court Attendance Costs).

2.6 **Documents** means all documents of any nature whatsoever including computer records and electronic or digitised data; but does not include any currency, negotiable instruments or records thereof.

2.7 **Employee** means any natural person who is or has been expressly engaged as an employee under a contract of employment with the **Insured**.

Employee does not mean any:

2.7.1 principal, partner or director; or

2.7.2 temporary contract labour, self-employed person or labour only sub-contractor.

2.8 **Family Member** means any:

2.8.1 spouse, domestic partner or companion;

2.8.2 parent or parent of the spouse; or

2.8.3 sibling or child,

of the **Insured**.

2.9 **Insured** means:

2.9.1 the **Policyholder** or any **Subsidiary**;

2.9.2 any natural person, who is or has been a principal, partner or director of the **Policyholder** or any **Subsidiary**;

2.9.3 any **Employee**; and

2.9.4 any temporary contract labour, self-employed person or labour-only sub-contractors, solely under contract with, and under the direction and direct supervision of the **Policyholder** or any **Subsidiary**,

but only when providing **Professional Services** in the foregoing capacities.

This **Policy** also covers any **Claim** made against the:

- 2.9.5 estates, heirs, legal representatives or assigns of a natural person **Insured** who is deceased; or
- 2.9.6 the legal representatives or assigns of a natural person **Insured** who is incompetent, insolvent or bankrupt.

This cover is afforded only to the extent that **Claim**, if made against the **Insured**, would have been covered by this **Policy** in the absence of the **Insured's** death, incompetency, insolvency or bankruptcy.

- 2.10 **Insurer** means Berkshire Hathaway Specialty Insurance Company (incorporated in Nebraska, USA).
- 2.11 **Limits of Indemnity** mean the amounts specified at item 4 of the **Schedule**.
- 2.12 **Mitigation Costs** means the reasonable fees, costs and expenses incurred by the **Insured** as a result of action taken by the **Insured** to mitigate a potential **Claim** against the **Insured** during the **Policy Period**. **Mitigation Costs** will not include any internal or overhead expenses of any **Insured** or the cost of any **Insured's** time.
- 2.13 **Policy** means this policy wording, the **Schedule**, the **Proposal** and any Endorsement attaching to and forming part of this **Policy** either at commencement or during the **Policy Period**.
- 2.14 **Policy Period** means the period of time specified at item 3 of the **Schedule** unless this **Policy** is cancelled in which event the **Policy Period** will end on the effective date of cancellation.
- 2.15 **Policyholder** means the entity or natural person specified at item 1 of the **Schedule**.
- 2.16 **Pollutants** means but is not limited to any solid, liquid, biological, radiological, gaseous or thermal irritant or contaminant whether occurring naturally or otherwise, including asbestos, asbestos fibres or derivatives of asbestos, smoke, vapour, soot, fibres, mould, spores, fungus, germs, fumes, acids, alkalis, nuclear or radioactive material of any sort, chemicals or waste. "Waste" includes, but is not limited to, material to be recycled, reconditioned or reclaimed.
- 2.17 **Professional Services** means the services of the **Policyholder** or any **Subsidiary** as specified at item 2 of the **Schedule**.
- 2.18 **Property Damage** means damage to or loss of or destruction of tangible property or loss of use thereof.
- 2.19 **Proposal** means the written proposal provided to the **Insurer** by the **Insured** together with any written materials attached to the proposal or submitted to the **Insurer** in connection with the underwriting of this **Policy**.
- 2.20 **Public Relations Costs** means reasonable fees and related expenses of a public relations or crisis management firm or law firm in order to prevent or limit negative publicity or effects which it is anticipated may arise from any **Claim** for which cover is provided under this **Policy**.
- 2.21 **Quasi-Judicial Investigation** means any complaint, investigation or charge against the **Insured** in connection with **Professional Services** by or to a professional or statutory body which has jurisdiction to investigate and adjudicate in that situation.
- 2.22 **Retention** means the amount specified at item 6 of the **Schedule**.
- 2.23 **Retroactive Date** means the date specified at item 9 of the **Schedule**.

- 2.24 **Schedule** means the schedule attached to and forming part of this **Policy**.
- 2.25 **Subsidiary** means companies in which the **Policyholder**, either directly or indirectly:
- 2.25.1 controls the composition of the Board of Directors;
 - 2.25.2 controls more than half of the voting power; or
 - 2.25.3 holds more than half of their issued share capital.
- For any **Subsidiary**, cover under this **Policy** shall only apply while such entity is or was a **Subsidiary** of the **Policyholder**.
- 2.26 **Trade Secrets** means any information that derives independent economic value, actual or potential, from not being generally known and not being readily ascertainable through proper means by other persons who can obtain economic advantage from its disclosure or use.
- 2.27 **Wrongful Act** means any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty by the **Insured** committed solely in the performance of or failure to perform **Professional Services**.

Section 3 EXCLUSIONS

The **Insurer** will not be liable to make any payment in connection with any **Claim**:

3.1 **Anti-competitive Conduct**

arising out of, based upon or attributable to any actual or alleged restrictive trade practices, restraint of trade or unfair competition.

3.2 **Bodily Injury/Property Damage**

arising out of, based upon or attributable to **Bodily Injury** or **Property Damage** unless arising from an actual or alleged failure to achieve the legally required standard of care, diligence and expertise in performing **Professional Services**, provided that this Exclusion does not apply to **Documents** which have been destroyed, damaged, lost or mislaid to the extent that cover is provided under Extension 1.13 (Loss of Documents).

3.3 **Conduct**

arising out of, based upon or attributable to:

3.3.1 anything which a Court, official tribunal, arbitrator or professional or statutory body finds, or which an **Insured** admits, to be a criminal, dishonest or fraudulent **Wrongful Act**; or

3.3.2 any reckless, deliberate, intentional or wilful **Wrongful Act** by an **Insured**.

In the event of a criminal, dishonest or fraudulent **Wrongful Act** by an **Insured**, the **Insurer's** obligation to indemnify that **Insured** will cease and that **Insured** will reimburse all sums paid in connection with that **Claim**.

For the purpose of determining the applicability of this Exclusion, the relevant conduct of any **Insured** shall not be imputed to any other **Insured**.

This Exclusion will not apply to the cover provided by Insuring Clause 1.3 (Fraud and Dishonesty).

3.4 **Fines and Penalties**

alleging or in respect of any liability to pay taxes (except as provided in General Condition 5.5 (Goods and Service Tax)), fines or penalties, or liquidated, aggravated, multiple, punitive or exemplary damages.

This Exclusion will not apply to fines and penalties of a compensatory nature or to the cover provided under Extension 1.12 (Quasi-Judicial Investigations).

3.5 **Insolvency**

arising out of, based upon or attributable to the actual or alleged insolvency, administration or receivership of the **Insured**.

3.6 **Liability Assumed**

arising out of, based upon or attributable to any actual or alleged liability or other obligation assumed or accepted by an **Insured** under any contract, agreement, guarantee or warranty, except to the extent that liability would have attached to the **Insured** in the absence of the contract, agreement, guarantee or warranty.

3.7 **Nuclear Liability**

directly or indirectly caused by, arising out of or in any way connected with:

3.7.1 nuclear weapons material;

3.7.2 radiation or contamination by radioactivity from any material or nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, and for purposes of this Exclusion combustion will include any self-sustaining process of nuclear fission; or

3.7.3 the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof,

including, but not limited to, any use of such material or nuclear fuel, assembly or component in conjunction with any act of terrorism.

3.8 **Patents – Trade Secrets**

arising out of, based upon or attributable to the actual or alleged infringement of, or misappropriation of patents or **Trade Secrets**.

3.9 **Pollution**

arising out of, based upon or attributable to:

3.9.1 the actual, alleged or threatened presence, discharge, dispersal, release, migration or escape of **Pollutants**; or

3.9.2 any direction, request or effort to (i) test for, monitor, clean up, remove, contain, treat detoxify or neutralise **Pollutants**; or (ii) respond to or assess the effects of **Pollutants**.

3.10 **Prior Claims**

3.10.1 made prior to or pending at the inception of this **Policy**;

3.10.2 arising out of, based upon or attributable to any circumstance which may reasonably be expected by any **Insured** to give rise to a **Claim**, that is known to the **Insured** prior to inception of this **Policy**; or

3.10.3 derived from the same or essentially the same facts as alleged in any **Claim** made prior to or pending at the inception of this **Policy**.

This Exclusion does not apply to the cover provided by Extension 1.7 (Continuous Cover).

3.11 **Product Liability**

arising from or in connection with the manufacture, preparation, modification, repair, supply, maintenance or treatment of any goods or products sold, supplied or distributed by the **Insured**, or the failure of the goods to perform in any way.

3.12 **Related Entities**

brought or maintained by or on behalf of:

3.12.1 any **Insured**, or any associated entity (whether incorporated or not) of the **Insured**;

3.12.2 any person who, at the time of the act, error or omission giving rise to the **Claim**, is a **Family Member**; or

3.12.3 any person, firm, company or entity:

- (a) operated or controlled by any **Insured**;
- (b) operated or controlled by any **Employee**, partner, nominee or trustee of any **Insured**;
- (c) in which any **Insured** has a direct or indirect financial interest (a shareholding of less than 5% in a publicly listed company will not constitute a financial interest); or
- (d) advised or induced by the **Insured** to invest in or lend money to any person, firm, company or entity referred to in any of 3.12.1, 3.12.2 or 3.12.3 above or to the **Insured**.

For the purpose of this Exclusion, the term **Insured** will include both the **Insured** and any **Family Member**.

Provided that this Exclusion does not apply to **Claims** for contribution or indemnity if such **Claim** directly results from another **Claim** that would otherwise be covered under this **Policy**.

3.13 **Retroactive Date**

arising directly or indirectly out of a **Wrongful Act** or conduct giving rise to a **Quasi-Judicial Investigation** which occurred prior to the **Retroactive Date**.

3.14 **Sanctions**

and will not provide any cover or benefit to the extent that the provision of such cover, payment of such claim, or provision of such benefit would expose the **Insurer** to any sanction, prohibition or restriction under United Nations resolutions, or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, New Zealand, Australia or the United States of America.

3.15 **Trade Debts**

arising out of, based upon or attributable to any actual or alleged trading debt incurred by an **Insured**.

3.16 **United States of America/Canada**

brought or maintained within the jurisdiction of, or to enforce a judgment obtained in, or based upon any laws of, the United States of America, Canada, or any of their respective territories or possessions.

3.17 **War/Terrorism**

arising out of, based upon or attributable to any war (declared or otherwise), terrorism, warlike, military, terrorist or guerrilla activity, sabotage, force of arms, hostilities (declared or undeclared), rebellion, revolution, civil disorder, insurrection, usurped power, confiscation, nationalisation or destruction of or damage to property by or under the order of, any governmental, public or local authority or any political or terrorist organisation for the purpose of instilling fear in a civilian population.

Section 4 CLAIMS CONDITIONS

4.1 **Co-operation**

4.1.1 The **Insured** will at its own cost:

- (a) render all reasonable assistance to the **Insurer** and co-operate in the defence of any **Claim** and the assertion of indemnification and contribution rights;
- (b) use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any loss under this **Policy**;
- (c) give all information and assistance to the **Insurer** as the **Insurer** may reasonably require to enable it to investigate any loss or determine the **Insurer's** liability under this **Policy**.

4.1.2 The **Insured** waives all claims to legal professional privilege between themselves and any solicitor retained by the **Insurer** to act on the **Insured's** behalf in relation to any **Claim**. The **Insured** will allow the solicitor to disclose to the **Insurer** any information obtained in the course of the solicitor's duties.

4.2 **Defence / Consent for Costs and Expenses and Settlement / Allocation**

4.2.1 As a condition precedent to the right to be indemnified under this **Policy**, the **Insured** (and any person, firm, or company acting for or on the **Insured's** behalf) must not incur any **Defence Costs** and any other fees, costs or expenses under any Extension, admit liability for, compromise, settle or make any offer or payment in respect of any **Claim**, or other matter for which cover is provided under this **Policy**, without the **Insurer's** written consent, which consent will not to be unreasonably withheld or delayed, provided that the **Insurer** will be entitled to exercise all of its rights under this **Policy**.

4.2.2 The **Insured** will defend any **Claim** brought against the **Insured**; however the **Insurer** will have the right but not the duty to take over the investigation, defence and settlement of any **Claim**, and the **Insurer** will have full discretion in the handling and resolution thereof (notwithstanding that a dispute may have arisen between the **Insured** and the **Insurer**).

4.2.3 The **Insured** will not be required by the **Insurer** to contest any legal proceedings against the **Insured** unless a Queen's Counsel (to be mutually agreed upon by the **Insurer** and the **Insured** and in the absence of agreement to be determined by the President of the New Zealand Law Society), advises that those proceedings can be contested with a reasonable prospect of success. The costs of that advice will be borne by the **Insurer**.

4.2.4 If the **Insured** does not agree with the decision by the **Insurers** to settle a **Claim**, the **Insured** can elect to contest the **Claim** at its own expense but the liability of the **Insurer** will not exceed the amount for which the **Claim** could have been settled in the opinion of a Queen's Counsel (to be mutually agreed upon by the **Insured** and the **Insurer** and in the absence of agreement to be determined by the President of the New Zealand Law Society). The costs of that advice will be borne by the **Insurer**.

The **Insurer** will pay all **Defence Costs** incurred up to the date the **Insured** notifies the **Insurer** in writing of its election under this clause of this **Policy**, and will pay the **Insured** (subject to the **Retention**) the amount for which the **Claim** could have been so settled. The **Insured** expressly agrees that the **Insurer's** liability in respect of the **Claim** will then be at an end and the **Insurer** will not be obliged to pay for any other or further amounts in respect of the **Claim** under this **Policy**.

4.2.5 In the event of a **Claim** which involves covered and non-covered matters or covered and non-covered parties, the **Insured** and the **Insurer** agree to use their best efforts to determine a fair and proper allocation of **Damages** and **Defence Costs** covered under this **Policy**, taking into account the relative legal and financial exposures.

4.3 **Fraudulent Claims**

If any **Insured** claims cover for any payment under this **Policy** knowing that claim to be false or fraudulent as regards the amounts or otherwise, that claim will be excluded under this **Policy**, and the **Insurer** has the right to cancel this **Policy**, and to be reimbursed by the **Insured** for all payments (including **Defence Costs** and any other fees, costs or expenses covered under any Extension) made in connection with that claim.

4.4 **Notification of Claims**

4.4.1 The **Policyholder** must, as a condition precedent to the obligations of the **Insurer** under this **Policy**, give written notice to the **Insurer** as soon as practicable, but no later than the end of the **Policy Period**:

- (a) of any **Claim** first made against the **Insured** during the **Policy Period**;
- (b) of the receipt of notice from any person of an intention to make a **Claim** against any **Insured**; and
- (c) of any circumstance which may reasonably be expected by any **Insured** to give rise to a **Claim**. Any **Claim** which is subsequently made against the **Insured** alleging, arising out of, based upon or attributable to that circumstance, will be considered made at the time notice of the circumstance was first given to the **Insurer**.

4.4.2 All notifications must be in writing and addressed via the **Insured's** insurance broker or to the **Insurer** as specified at item 11 of the **Schedule**.

4.5 Related Claims

Any **Claim** or **Claims** arising out of, based upon or attributable to the same **Wrongful Act** or a series of repeated **Wrongful Acts** arising from causally or logically related facts or circumstances will be considered a single **Claim** for the purposes of this **Policy** and a single **Limit of Indemnity** and a single **Retention** will be payable.

All such **Claims** will be considered first made at the earliest time that any such **Claim** is first made against the **Insured**.

Section 5 GENERAL CONDITIONS

5.1 Authorisation

The **Policyholder** will act as agent on behalf of all **Insureds** with respect to all matters under this **Policy** including:

- 5.1.1 the giving and receiving of all correspondence regarding this **Policy**;
- 5.1.2 the giving of notice of any **Claim** or other matter;
- 5.1.3 the sending or receiving of notice of cancellation;
- 5.1.4 the payment of the premium; and
- 5.1.5 the receipt and acceptance of any Endorsements attaching to and forming part of this **Policy**.

5.2 Cancellation

- 5.2.1 The **Policyholder** may cancel this **Policy** at any time by notifying the **Insurer** in writing stating the effective time of the cancellation, provided that date is at least 30 days after the date the notice is given.
- 5.2.2 The **Insurer** may cancel this **Policy** at any time by sending 30 days' notice in writing to the **Policyholder** of the date from which cancellation is to take effect. That notice may be delivered personally, posted, emailed or faxed to the **Policyholder** or the representative last notified to the **Insurer**.
- 5.2.3 On cancellation of this **Policy**, the **Insurer** will retain the proportion of the premium calculated pro-rata up to the date of the cancellation.

5.3 Confidentiality

The **Insured** must not disclose to any third party any of the terms of this **Policy** or the amount of the premium except to the extent that they are required by law to do so or with the prior written consent of the **Insurer**, which consent will not be unreasonably withheld or delayed.

5.4 Entire Agreement

This **Policy** constitutes the entire agreement between the parties. The terms, conditions and limitations of this **Policy** can be waived or changed only by written Endorsement to this **Policy**.

5.5 Goods and Services Tax

Where, upon receiving any indemnity payment under this **Policy**, 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), the **Insurer** will indemnify the **Insured** for the amount of that tax. The indemnity under this paragraph is payable by the **Insurer** in addition to the **Limits of Indemnity**.

All amounts indicated in this **Policy** and **Schedule** are exclusive of Goods and Services Tax or the equivalent tax in any territory specified at item 10 of the **Schedule**.

5.6 Innocent Non-Disclosure and Material Non-Disclosure

5.6.1 The **Insurer** will not exercise its right to avoid this **Policy**, nor will the **Insurer** reject a request for indemnity solely on the grounds of non-disclosure in the **Proposal** or a breach of the notice provisions in Claims Condition 4.4 (Notification of Claims) provided that:

- (a) the **Insured** establishes to the **Insurer's** reasonable satisfaction that the non-disclosure or breach was free of any fraudulent conduct or intent to deceive; and
- (b) if the non-disclosure or breach has resulted in prejudice to the **Insurer** in the handling or settlement of any **Claim** or request for indemnity, the indemnity afforded by this **Policy** in respect of that **Claim** or request for indemnity will be limited to the sum as would have been payable, in the **Insurer's** reasonable opinion, by the **Insurer** in the absence of the prejudice.

5.6.2 In consideration of the **Insurer** waiving its right to avoid this **Policy** in accordance with General Condition 5.6.1 (a), and in the event of a material non-disclosure in the **Proposal**, the **Insurer** will be entitled in its sole discretion (i) to determine the amount of any additional premium to be paid by the **Insured**; and (ii) charge the additional premium to the **Insured**.

5.6.3 If the **Insurer** becomes entitled to avoid this **Policy** from inception or from the time of any variation in cover, the **Insurer** may at its discretion maintain this **Policy** in full force but exclude the consequences of any **Claim** relating to any matter which ought to have been disclosed before inception or any variation in cover.

5.7 Limits of Indemnity

5.7.1 The maximum amount payable by the **Insurer** under this **Policy** for loss excluding **Defence Costs** will not exceed the applicable **Limit of Indemnity** specified at item 4A of the **Schedule**. Sub-limits of Indemnity and any amounts specified in the Insuring Clauses and Extensions (including any Optional Extensions contained in any Endorsement attaching to and forming part of this **Policy**) are part of and not payable in addition to the **Limit of Indemnity**.

5.7.2 **Defence Costs** and any other fees, costs or expenses subject to the **Limit of Indemnity** for **Defence Costs** are payable in addition to the **Limit of Indemnity** specified at item 4A. The maximum amount payable by the **Insurer** for **Defence Costs** will not exceed the amount specified at item 4B of the **Schedule**. Payment of **Defence Costs** will not reduce the **Limit of Indemnity** specified at item 4A of the **Schedule**.

5.7.3 The inclusion of more than one **Insured** under this **Policy** does not increase the total amount payable by the **Insurer** under this **Policy**.

5.8 **Other Insurance**

Such insurance as is provided under this **Policy** will apply only as excess over any other valid and collectible insurance.

5.9 **Policy Jurisdiction**

This **Policy** is governed by the laws of New Zealand whose Courts have exclusive jurisdiction in any dispute regarding this **Policy** or the interpretation of it.

5.10 **Plurals, Headings and Titles**

The descriptions in the headings and titles of this **Policy** are solely for reference and convenience and do not lend any meaning to this contract. Words and expressions in the singular includes the plural and vice versa. In this **Policy** words in bold typeface have special meaning and are defined. Words that are not specifically defined in this **Policy** have the meaning normally attributed to them.

5.11 **Retention**

The **Insurer** will only pay for the amount of any loss in excess of the **Retention**. For the avoidance of doubt, the **Retention** also applies to **Defence Costs**. The **Retention** is to be borne by the **Insured** and will remain uninsured.

5.12 **Severability**

In granting cover to the **Insured**, the **Insurer** has relied upon the material statements and particulars in the **Proposal**. That written **Proposal** will be construed as a separate **Proposal** individually submitted for each **Insured**. No state of mind or knowledge possessed by an **Insured** will be imputed to any other **Insured** for the purpose of determining entitlement to cover unless the **Policyholder** or relevant **Subsidiary** is a company with a sole director, in which case the knowledge of the sole director will be imputed to the **Policyholder** or **Subsidiary**.

5.13 **Subrogation**

If any payment is to be made under this **Policy** in respect of a **Claim**, the **Insurer** will be subrogated to all rights of recovery of the **Insured** whether or not payment has in fact been made and whether or not the **Insured** has been fully compensated for the loss suffered. The **Insurer** will be entitled to pursue and enforce those rights in the name of the **Insured**, who will provide the **Insurer** with all reasonable assistance and cooperation in doing so, including the execution of any necessary instruments and papers. The **Insured** will do nothing to prejudice these rights. Any amount recovered in excess of the **Insurer's** total payment will be restored to the **Insured** less the cost to the **Insurer** of the recovery. The **Insurer** agrees not to exercise its rights of recovery against any **Employee** unless the **Claim** is brought about or contributed to by serious or wilful misconduct of the **Employee**. In its sole discretion, the **Insurer** may, in writing, waive any of its rights in this Condition.