



Design & Construction Contractors
Professional Indemnity Civil Liability
Policy Wording

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Important Information

Please read the following information.

This Insurance is not subject to the provisions of the Insurance Council of New Zealand Fair Insurance Code.

Duty of Disclosure

Your Duty of Disclosure

Before **You** enter into an insurance contract, **You** have a duty to tell **Us** anything that **You** know, or could reasonably be expected to know, may affect **Our** decision to insure **You** and on what terms.

You have this duty until **We** agree to insure **You**.

You have the same duty before **You** renew, extend, vary or reinstate an insurance contract.

You do not need to tell **Us** anything that:

- reduces the risk **We** insure **You** for;
- is common knowledge;
- **We** know or should know as an insurer; or
- **We** waive **Your** duty to tell us about.

If **You** do not tell **Us** something

If **You** do not tell **Us** anything **You** are required to, **We** may cancel **Your** insurance contract or reduce the amount **We** will pay **You** if **You** make a claim, or both.

If **Your** failure to tell **Us** is fraudulent, **We** may refuse to pay a claim and treat the insurance contract as if it never existed.

A. The Policy

The **Policy** is issued on a claims made and notified basis. This means that, other than as provided under the *Insurance Contracts Act 1984* (Cth), the **Policy** covers **You** for **Claims** made against **You** and notified to **Us** during the period of cover. It does not provide cover for:

- **Claims** which are specifically excluded within this **Policy** or by way of Endorsement;
- **Claims** arising from an event which occurred before the **Policy's** 'Retroactive Date' where such a date is specified in the **Schedule**;
- **Claims** made after the period of cover expires (even where the event giving rise to the **Claim** occurred during the period of cover);

- **Claims** made, threatened or intimated before the period of cover commenced;
- **Claims** arising from facts or circumstances of which **You** first became aware before commencement of the **Policy** and which **You** knew or ought reasonably to have known, had the potential to give rise to a **Claim** under the **Policy** or any previous policy; or
- **Claims** arising from circumstances noted on the proposal form or any previous proposal form.

B. Privacy Statement

We safeguard **Your** privacy and the confidentiality of **Your** personal information and are committed to handling **Your** personal information in a responsible way. **We** will abide by the *Privacy Act 2020* (the Act) and the Privacy Principals, New Zealand, which are set out in the Act. We have developed a Privacy Policy that sets out how **We** collect, store, use and disclose **Your** personal information. Please refer to **Our** website below for a copy of **Our** Privacy Policy.

Accessing your personal information and dealing with complaints

You may request access to the personal information **We** hold about **You** by calling **Us** at any time.

Our Privacy Policy details how **You** can make a complaint about a breach of the privacy principles as set out in the *Privacy Act 2020* and **Our** complaints process.

Our Privacy Policy is available at www.artisanuw.com.au

C. Contact Details

Artisan Underwriting Pty Ltd

PO Box Q1082, QVB

SYDNEY, NSW 1230

Ph: 02 7259 8389

Email: info@artisanuw.com.au

Website: www.artisanuw.com.au

This policy is being issued by Artisan Underwriting Pty Ltd (ABN: 14 651 184 333; AFSL 553384)

Complaints and disputes

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact in the first instance:

Artisan Underwriting Pty Ltd

PO Box Q1082, QVB, Sydney, NSW 1230

Tel: 61-2-7259 8389

Email: claims@Artisanuw.com.au

We will acknowledge receipt of your complaint within 5 business days and do our utmost to resolve the complaint to your satisfaction within 10 business days, unless we require further information in which case, we will agree an alternate time frame with you.

If we cannot resolve your complaint to your satisfaction, you can escalate the matter to Lloyd's General Representative in New Zealand:

Lloyd's General Representative in New Zealand

Email: IDRNewZealand@lloyds.com

Telephone: +64 4 472 7582

Post: PO Box 5639 Wellington New Zealand

Following receipt of your complaint, you will be advised whether your dispute will be handled by the Complaints team at Lloyd's Australia or the Lloyd's Complaints team in the UK, or what other avenues are available to you.

A final decision will be provided to you within two months of the date on which you first made the complaint unless certain exceptions apply.

If your complaint is not resolved in a manner satisfactory to you or we do not resolve your complaint within two months of originally receiving it, you may refer the matter to the Insurance and Financial Services Ombudsman (IFSO). IFSO can be contacted as follows:

Telephone: [0800 888 202](tel:0800888202) or [+64 4 499 7612](tel:+6444997612)

Email: info@ifso.nz or via their website www.ifso.nz.

Post: PO Box 10-845 Wellington New Zealand

Your complaint must be referred to IFSO within 3 months of the final decision, unless IFSO considers special circumstances apply. If your complaint is not eligible for consideration by IFSO, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

Service of Suit*

The Underwriters accepting this Insurance agree that:

- (i) if a dispute arises under this Insurance, this Insurance will be subject to New Zealand law and practice and the Underwriters will submit to the jurisdiction of any competent Court in New Zealand;
- (ii) any summons notice or process to be served upon the Underwriters may be served upon:

*Lloyd's General Representative in New Zealand
Level 29
Plimmer Tower
2-6 Gilmer Terrace
Wellington 6011
New Zealand*

who has authority to accept service on the Underwriters' behalf;

- (iii) if a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

* PLEASE NOTE: *It is not compulsory for the Lloyd's General Representative to accept service on behalf of Underwriters. If Underwriters require a local law firm to be named as authorised to accept service, their details should replace those in italics above.*

Section 1

Insuring Clauses

The provisions of Section 1 apply to all Sections of this Policy, unless otherwise stated to the contrary.

1.1. What's Covered

We will Cover the Insured up to the Limit of Liability for any Claim for Civil Liability first made against the Insured during the Policy Period arising out of the provision of the Professional Services.

1.2. Defence Costs

We will Cover the Insured for Defence Costs for Covered Claims but only where such costs have been incurred with Our prior written consent (such consent not to be unreasonably withheld or unreasonably delayed), but only up to a maximum amount equal to the Limit of Liability.

If the Schedule states that the Defence Costs are 'inclusive' then Defence Costs are part of the Limit of Liability and will not be payable in addition to the Limit of Liability.

If the Schedule states that the Defence Costs are 'in addition' then Defence Costs are payable in addition to the Limit of Liability.

If the Insured's liability for any Claim (or Covered Claim) is for an amount greater than the amount of the Limit of Liability, then Our liability for such Defence Costs will be the same proportion as the Limit of Liability bears to the sum required to dispose of that Claim (or Covered Claim).

1.3. Advancement of Defence Costs

If We elect not to take over and conduct the defence or settlement of any Claim, then subject to Our written consent being obtained prior to the Named Insured incurring Defence Costs (such consent shall not be unreasonably withheld or delayed) then We will pay all reasonable and necessary Defence Costs provided that Cover has not already been denied by Us under the Policy.

The Insured on whose behalf or for whose benefit Defence Costs were paid, shall repay to Us all such Defence Costs, in the event and to the extent that:

- i. the Insured makes an admission in writing of any fraudulent, dishonest, malicious or intentional conduct or intentional damage; or
- ii. it is subsequently established, directly or indirectly, by judgment or other final adjudication, that conduct of the type referred to in i. above occurred.

Section 2

Extensions

We will provide the following Cover, provided always that:

- a) The Cover provided by each Extension is subject to the Schedule, Insuring Clauses, Claims Conditions, General Conditions, Exclusions, Definitions and Interpretations and all other terms of the Policy (unless otherwise expressly stated); and
- b) The inclusion of any Extension will not increase the Limit of Liability. Where Specific Cover Limit is stated in respect of any Extension, such sub-limit shall form part of and not be in addition to the Limit of Liability.

2.1. Inquiries Cover

We will Cover the Insured for the reasonable and necessary legal costs and expenses incurred with Our prior written consent (not to be unreasonably withheld or unreasonably delayed) for representation of the Insured at an Inquiry that the Insured first became aware of and was first initiated during the Policy Period.

The Specific Cover Limit under this Extension 2.1 "Inquiries Cover" is \$500,000 in the aggregate and is inclusive of, and not in addition to, the Limit of Liability.

The Excess applicable to this Extension 2.1 "Inquiries Cover" is \$1,000 for each and every claim (cost exclusive), unless expressly stated otherwise.

The cover provided by this Extension is not subject to Insuring Clause 1.1.

2.2. Civil Liability Clarification

The Cover We provide under Insuring Clause 1.1 includes (but is not limited to) the following types of Civil Liability Claims:

- a) breach of a duty (including a fiduciary duty);
- b) defamation;
- c) breaches of the Fair Trading Act 1986 legislation (but not for criminal liability in respect of any of these). References to legislation includes any amendment, replacement, re-enactment, successor, equivalent or similar legislation;
- d) breach of warranty of authority committed, by or on behalf of the Insured, in good faith and in the reasonable belief of the person alleged to have committed the breach that appropriate authority was held; and

- e) unintentional breach of any duty of privacy or confidentiality at law.

2.3. Continuous Cover

Notwithstanding Exclusion 5.13 “Known Claims and Known Circumstances”, We will Cover the Insured for any Claim otherwise Covered by this Policy arising from a Known Circumstance, but only if:

- a) there has been no fraudulent non-disclosure or fraudulent misrepresentation in respect of such Known Circumstance;
- b) We were the professional indemnity insurer of the Named Insured when the Insured first knew of such Known Circumstance;
- c) We continued without interruption to be the Named Insured’s professional indemnity insurer up until this Policy came into effect;
- d) had We been notified of the Known Circumstance when the Insured first knew of it, the Insured would have been covered under the policy in force at that time but is not now entitled to be covered by that policy, and the Insured would (if not for Exclusion 5.13 “Known Claims and Known Circumstances” of this Policy) otherwise be Covered under this Policy; and
- e) the Known Circumstance has not previously been notified to Us or to any other insurer.

If the Insured was entitled to have given notice of the Known Circumstance under any other policy of insurance with any other insurer, then this Extension 2.3 “Continuous Cover” does not apply to provide Cover under this Policy, to the extent that indemnity is provided to the Insured under that other policy of insurance.

Our liability under this Extension 2.3 “Continuous Cover” is reduced to the extent of any prejudice We suffer as a result of any delayed notification of the Known Circumstance to Us.

The Limit of Liability of the Cover We provide under this Extension 2.3 “Continuous Cover” is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph (d) above, or under this Policy. The terms of this Policy otherwise apply.

2.4. Court Attendance Costs

For any persons listed in a) and b) below who is required to attend court as a witness in connection with any Claim or Covered Claim in respect of which the Insured is entitled to indemnity under this Policy, We will pay to the Named Insured court attendance costs at the following rates per day for each day on which attendance is required:

- a) any Principal, partner or director of the Insured - \$700.00; and
- b) any employee of the Insured - \$350.00.

No Excess shall apply to this Extension 2.4 “Court Attendance Costs”. The cover provided by this Extension is not subject to Insuring Clause 1.1

2.5. Loss or Damage to Documents

- a) Where Cover is not otherwise provided under Insuring Clause 1.1 of the Policy, We shall pay the costs and expenses in replacing or restoring Lost or Damaged Documents:
 - i. for which a Named Insured is legally responsible;
 - ii. that have been Lost or Damaged during the Policy Period;
 - iii. where the Lost or Damaged Documents have been the subject of a diligent search by or on behalf of the Named Insured; and
 - iv. where such Lost or Damaged Documents are first discovered and notified to Us during the Policy Period.
- b) We will only pay such costs and expenses if either:
 - i. We incur them; or
 - ii. the Named Insured incurs them after first obtaining Our agreement in writing and the costs and expenses are reasonable and necessary.
- c) For the purposes of this Extension 2.5 “Loss or Damage to Documents”, “Lost or Damaged” shall mean Documents destroyed, damaged, lost, distorted, erased or mislaid as a result of one event solely in the provision of Professional Services and Loss shall have a corresponding meaning.

Lost or Damaged(including rearrangement) does not include:

- i) wear, tear and/or gradual deterioration, moth and vermin, or other matters beyond the Named Insured’s control;
- ii) electronically stored data, software or computer programs arising from any computer virus or malware or from any design or programming defect in any computer program or computer operating system.
- d) The Specific Cover Limit under this Extension 2.5 “Loss or Damage to Documents” is \$500,000 in the aggregate and is inclusive of, and not in addition to, the Limit of Liability.

The Excess applicable to this Extension 2.5 “Loss or Damage to Documents” is \$1,000 for each and every Claim (cost exclusive), unless expressly stated otherwise.

2.6. Infringement of Copyright or Patents

We will Cover the Insured for any Claim directly arising from any inadvertent infringement or alleged inadvertent infringement of any Intellectual Property.

2.7. Vicarious Liability for Agents or Consultants

We will Cover the acts, errors or omissions of the agents or consultants of the Named Insured that arise out of the provision of the Professional Services and for which the Named Insured is liable.

Subject to the Definition of Employee in Section 9.13, such agents' and consultants' own liability is not Covered by this Policy.

2.8. Compensatory Civil Penalties

Notwithstanding Exclusion 5.20 "Punitive & Exemplary Damages", We will Cover the Insured for Claims for compensatory civil penalties directly arising from the provision of its Professional Services.

The Specific Cover Limit under this Extension 2.8 "Compensatory Civil Penalties" is \$500,000 in the aggregate, which is inclusive and not in addition to the Limit of Liability.

However, We will not be liable to provide Cover under this Extension 2.8 "Compensatory Civil Penalties":

- a) where We are legally prohibited at law from covering the Insured;
- b) based upon, attributable to or in consequence of any:
 - i) wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any relevant legislation;
 - ii) gross negligence or recklessness; or
 - iii) requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue charge or impost.

2.9. Run-off Cover for the Named Insured

We agree in the event of;

- a) a Run Off Event; or

- b) the Named Insured going into voluntary bankruptcy, receivership, liquidation or any other form of external administration, or an Insured failing to pay debts or breaching any other obligation which could give rise to the appointment of a receiver or bankruptcy or winding-up proceedings,

coverage under this Policy will continue until the expiry of the Policy Period or cancellation of this Policy, whichever is earlier, provided always that such cover will only apply in respect of Claims arising out of acts, errors or omissions occurring prior to the date on which such event detailed in Extension 2.9(a) or 2.9(b) occurred, unless expressly agreed in writing by Us.

2.10. Public Relations Expenses

We will Cover the Named Insured for Public Relations Expenses incurred by the Named Insured in respect of an Adverse Publicity Event that first occurs and is notified to Us during the Policy Period, provided always that:

- a) We will only indemnify the Named Insured for the Public Relations Expenses that are incurred during the first thirty (30) days immediately following the Adverse Publicity Event; and
- b) the Public Relations Expenses are incurred with Our prior written consent (which shall not be unreasonably withheld or unreasonably delayed).

The Specific Cover Limit under this Extension 2.10 “Public Relations Cover” is \$500,000 in the aggregate which is included in and not in addition to the Limit of Liability.

The Excess applicable to this Extension 2.10” Public Relations cover” is \$1,000 (cost exclusive) each and every Adverse Publicity Event.

The Cover provided by this Extension is not subject to Insuring Clause 1.1.

2.11. Extended Notification Period

In the event that this Policy is not renewed then the cover provided by Insuring Clause 1.1 shall be extended to any Claim first made against the Named Insured and notified to Us within the Extended Notification Period, provided always that:

- a) cover afforded under this Extension 2.11 will not reinstate or increase the Limit of Liability or extend the Policy Period; and
- b) cover afforded under this Extension 2.11 will only apply to an act, error or omission committed by the Insured prior to the expiry of the Policy Period.

For the purposes of this Extension 2.11 “Extended Notification Period”, Extended Notification Period means the period commencing immediately following the end of the Policy Period and finishing sixty (60) days thereafter or when the Named Insured first effects another professional indemnity insurance policy (whichever is the earlier).

Notwithstanding anything to the contrary contained in the Policy, for the purposes of this Extension;

- i) the Defence Costs under this Extension will be 'Costs Inclusive'; and
- ii) the Excess under this Extension will be 'Costs Inclusive'.

2.12. Mitigation Costs

We will Cover the Insured for the reasonable Mitigation Costs incurred with Our prior written consent provided always that:

- a) the Mitigation Costs are incurred to mitigate a loss or potential loss that otherwise would be the subject of a Claim that would be covered under the Policy;
- b) the Insured first discovers the relevant act, error or omission which would give rise to the loss during the Policy Period and notifies Us during the Policy Period;
- c) no admission of liability (whether by word, conduct or otherwise) is made by the Named Insured;
- d) We have given prior written consent (not to be unreasonably withheld or unreasonably delayed) to the incurring of, or agreement to incur, such Mitigation Costs;

We will not pay any costs or expenses incurred by the Insured in proving entitlement to coverage under this Extension;

- e) Cover afforded under this Extension will not include any Defence Costs; and
- f) no payment will be made to the Insured in relation to a Cyber Ransom or Cyber Extortion Payment.

However, Cover is excluded under this extension for:

- g) indirect costs and expenses, including but not limited to overheads, any of the Insured's profits, including but not limited to the loss or diminution of the Insured's profit, bonus, incentive payment or opportunity cost; and/or
- h) costs and expenses of materials or Professional Services which result in an increased quality or standard from that specified in the design parameters of the relevant contract.
- i) Defence Costs; and/or
- j) Cyber Ransom or Cyber Extortion.

For the purposes of this Extension 2.12 "Mitigation Costs", "Cyber Ransom or Cyber Extortion Payment" means a payment demanded by a third party who has committed, or has threatened to commit, an unauthorised, malicious or criminal act in respect of Computer

Systems or Data that would result in, or is intended to result in, harm or loss being suffered by the Insured, the Insureds clients or any other party whatsoever.

The maximum amount payable under this Extension 2.12 “Mitigation Costs” is \$1,000,000 in the aggregate which is inclusive and not in addition to the Limit of Liability.

The Cover provided by this Extension 2.12 “Mitigation Costs” is not subject to Insuring Clause 1.1.

2.13. Severability

Where the Insured comprises more than one entity, any conduct on the part of an Insured whereby such Insured failed to comply with their duty of disclosure obligations or made a misrepresentation to Us before this Policy was entered into will not prejudice the right of any other Insured to indemnity as may be provided by this Policy, provided always that:

- a) such other Insured is entirely innocent of and has no prior knowledge of any such conduct. The onus of proof in this regard will be upon such other Insured;
- b) such other Insured will, as soon as is reasonably practicable upon becoming aware of any such conduct, advise Us in writing of all known facts in relation to such conduct; and
- c) full enquiry has been made by the Named Insured, before the Policy was entered into of each other Insured and persons who make up the Insured for the purposes of complying with their duty of disclosure obligations.

This Extension does not limit the duty of disclosure owed by the entities or persons that make up the Insured.

2.14. Appointed Sub-Consultants

Notwithstanding Extension 2.7 “Vicarious Liability for Agents or Consultants”, We will Cover any natural person or entity who is a past and/or present contractor of the Named Insured against Civil Liability for compensation and Defence Costs in respect of any Claim first made against such contractor and notified to Us during the Policy Period which results from the conduct of the Professional Services for the Named Insured, provided always that:

- a) at the time of any act, error or omission by such contractor giving rise to the Claim such contractor:
 - i. was performing the Professional Services under a contract for services entered into with the Named Insured; and
 - ii. was not an Employee or a Principal of the Named Insured; and

- iii. was performing the Professional Services themselves where such contractor was a natural person, or if the contractor entity was not a natural person, only one natural person was performing the Professional Services on behalf of the contractor; and
- b) where:
 - i. We require a declaration of the Named Insured's income (inclusive of gross fees paid to such contractor) for certain periods of time for the purposes of calculating the full annual Premium for this Policy, whether in the Proposal or otherwise; and
 - ii. the gross fees paid to such contractor were not included in the declaration, the Premium otherwise payable by the Named Insured will be adjusted accordingly by Us at the time of the Claim in relation to the contractor; and
- c) all third party beneficiaries must comply with the terms and conditions of the Policy, including without limitation, the Claims Conditions. We will pay Defence Costs on the basis already set out in this Policy.

2.15. Emergency Insured Costs

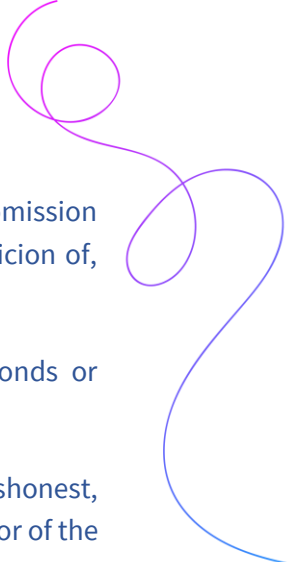
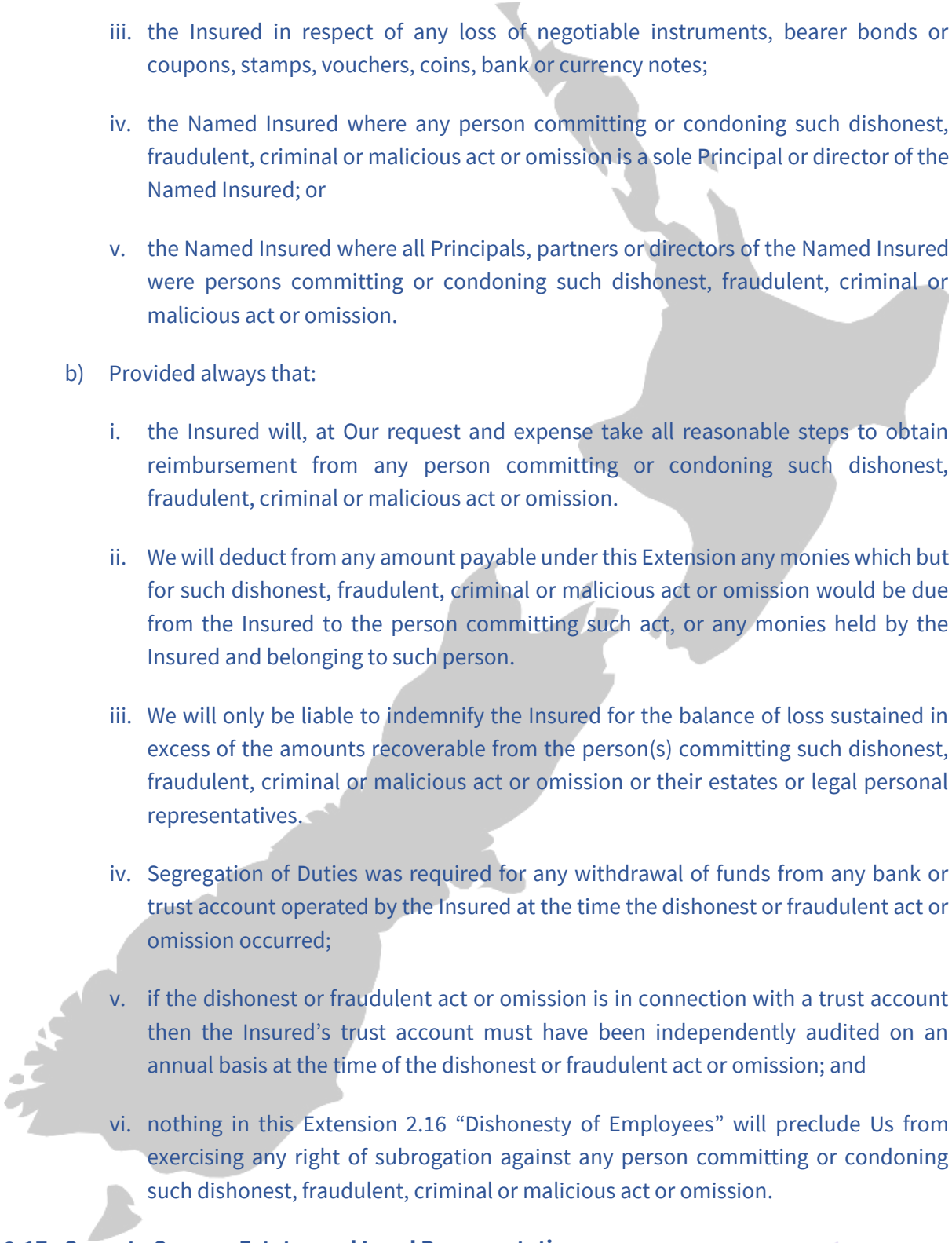
We will Cover the Insured for any Defence Costs which are incurred pursuant to Insuring Clause 1.2 "Defence Costs", prior to obtaining Our written consent, provided always that such Defence Costs are incurred as a result of a sudden, urgent and unexpected circumstance where the Insured needs to respond to a request arising from the service of a legal document in a very short stipulated timeframe (for example, outside of business hours), where the Insured is not reasonably able to contact Us in that timeframe.

In the event the Insured incurs Defence Costs without Our prior written consent after such time the Insured could reasonably have contacted Us to request Our prior written consent, We may reduce Our liability for such Defence Costs by an amount that fairly represents the extent to which Our interests are prejudiced by the Insured's failure to request Our prior written consent.

2.16. Dishonesty of Employees

Notwithstanding Exclusion 5.12 "Intentional Damage", We will Cover the Insured against Civil Liability for compensation and Defence Costs in respect of any Claim first made against the Insured and notified to Us during the Policy Period resulting from any dishonest, fraudulent, criminal or malicious act or omission by an Employee occurring or committed in connection with the Professional Services, subject to the following:

- a) We will not Cover:
 - i. any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;

- 
- 
- ii. the Insured in respect of any loss sustained in consequence of any act or omission occurring after the date of discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the person concerned;
 - iii. the Insured in respect of any loss of negotiable instruments, bearer bonds or coupons, stamps, vouchers, coins, bank or currency notes;
 - iv. the Named Insured where any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission is a sole Principal or director of the Named Insured; or
 - v. the Named Insured where all Principals, partners or directors of the Named Insured were persons committing or condoning such dishonest, fraudulent, criminal or malicious act or omission.
- b) Provided always that:
- i. the Insured will, at Our request and expense take all reasonable steps to obtain reimbursement from any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission.
 - ii. We will deduct from any amount payable under this Extension any monies which but for such dishonest, fraudulent, criminal or malicious act or omission would be due from the Insured to the person committing such act, or any monies held by the Insured and belonging to such person.
 - iii. We will only be liable to indemnify the Insured for the balance of loss sustained in excess of the amounts recoverable from the person(s) committing such dishonest, fraudulent, criminal or malicious act or omission or their estates or legal personal representatives.
 - iv. Segregation of Duties was required for any withdrawal of funds from any bank or trust account operated by the Insured at the time the dishonest or fraudulent act or omission occurred;
 - v. if the dishonest or fraudulent act or omission is in connection with a trust account then the Insured's trust account must have been independently audited on an annual basis at the time of the dishonest or fraudulent act or omission; and
 - vi. nothing in this Extension 2.16 "Dishonesty of Employees" will preclude Us from exercising any right of subrogation against any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission.

2.17. Cover to Spouse, Estates and Legal Representatives

If an Insured dies or becomes legally incompetent or insolvent, We will Cover the spouse, estate, legal representative or assigns of the Insured, or the party entitled to Cover, to the same extent as Cover would otherwise have been available to the Insured.

2.18. Joint Venture

We will Cover the Named Insured for the Named Insured's liability in respect of a Joint Venture provided that:

- a) the Joint Venture is disclosed to Us along with providing Us all material facts (including any additional income relating to the Insureds portion of the Joint Venture, (which may not have been disclosed in any previous declarations to Us));
- b) We have expressly agreed to Cover the Joint Venture;
- c) the Insured has agreed to pay any additional premium that We may charge for extending coverage under this Extension for the Named Insureds liability in the Joint Venture;
- d) the name of the Joint Venture is included in the Schedule; and
- e) We will Cover the Named Insured only for the acts, errors or omissions of the Named Insured arising from the provision of Professional Services as otherwise Covered by this Policy.

2.19. Privacy Breach Costs

We will Cover the Insured for the reasonable costs of notifying individuals or corporations of a Privacy Breach directly resulting from the conduct of the Professional Services provided that:

- a) the Insured first discovers the Privacy Breach during the Policy Period and notifies Us during the Policy Period; and
- b) the Insured obtains Our consent prior to incurring such costs.

2.20. Contractual Liability

Notwithstanding Exclusion 5.2 "Assumed Duty or Obligation", We will Cover You for any Claim which:

- a) is made against the Insured and is notified to Us as soon as reasonably possible during the Policy Period; and
- b) arises from an act, error or omission on or after the Retroactive Date as specified in the Schedule which arises out of a breach of an indemnity and/or hold harmless term of a written contract, to the extent that such liability or breach resulted from the Insured's act, error or omission in the performance of the Professional Services.

2.21. Proportionate Liability

Notwithstanding 5.2 “Assumed Duty or Obligation”, We will Cover the Insured against civil liability in respect of a Claim arising out of the performance of Professional Services, which the Insured has assumed under a contract for Professional Services by reason of having contracted out of the operation of Proportionate Liability Legislation.

2.22. Novated Contracts

Notwithstanding 5.2 “Assumed Duty or Obligation”, We will Cover the Insured against civil liability, in respect of a Claim arising out of the performance of Professional Services, which the Insured has assumed only by reason of the novation of a contract in circumstances where:

- a) the Insured purchases or acquires another business or contract;
- b) the Insured assumes responsibility for Professional Services previously undertaken by another party; or
- c) the Insured’s contract to provide Professional Services is novated to another party.

However, the cover provided under this extension does not apply:

- i. to any contract entered into as a result of a dispute which involves the Insured in any way; or
- ii. to any facts that, at the time the novation of a contract was executed, any party to the novation of a contract was aware, or a reasonable person would have been aware, might give rise to a claim under this Policy.

2.23. Implied Warranties & Conditions

We will Cover the Insured against civil liability the Insured incurs in respect of a Claim, alleging breach of warranty or condition as to merchantable quality, due skill and care or fitness for purpose implied in a contract under common law or any legislation of New Zealand arising out of the performance of Professional Services.

2.24. Newly Acquired / Merged Entities

We will Cover, in the same manner and to the same extent as the Named Insured, any entity or subsidiary acquired or created by the Named Insured during the Policy Period, provided always that:

- a) the Policy Period applicable to such Cover will be the period commencing on the date of such acquisition or creation and expiring sixty days (60) days after that date or on the expiry date of the Policy Period (whichever is the earlier);
- b) the Retroactive Date applicable to such cover under this Extension 2.24 will be the date of acquisition or creation of the entity or subsidiary; and
- c) the Claim arises out of the exercise and conduct of the entity or subsidiary's business which is the same as or substantially similar to the Named Insured's Professional Services Covered under this Policy.

The Named Insured may apply to Us within sixty days (60) days of this Extension 2.24 being triggered to vary the Policy to continue the Cover provided by this Extension 2.24 until the expiry of the Policy Period by notifying Us of the acquisition or creation of the entity or subsidiary and providing all material facts and information requested by Us.

Any such variation will only be offered by Us at Our sole and absolute discretion and is subject to any additional terms imposed including the charging of any additional premium which We consider appropriate having regard to the nature of the risk to be assumed by Us. In the event the Insured does not accept the terms offered or pay the amount of any additional premium, the Insured may cancel the policy in accordance with clause 8.2 "You Can Cancel the Policy".

2.25. Reinstatement of the Limit of Liability

We will provide a single reinstatement of the Limit of Liability if the Limit of Liability is exhausted due to payment of amounts insured under the Policy, but We will only provide such reinstatement if the limit of liability available under any policy or policies in excess of this Policy has or have been exhausted and provided always that:

- a) We will pay no more than a single Limit of Liability in respect of each Claim and associated Defence Costs and each claim for any other amounts insured under the Policy;
- b) the cover provided under this Extension 2.25 does not apply to any Extensions or Optional Additional Covers to which a sub-limit of liability applies;
- c) such reinstatement shall only apply to subsequent Claims and Defence Costs that are totally unrelated or unconnected to the Claim, Claims and/or Defence Costs that exhausted the Limit of Liability; and
- d) We will be liable for no more than twice the Limit of Liability in the aggregate in respect of all Claims and Defence Costs (other than Defence Costs which are stated to be "in addition" as per clause 1.2 in Section 1 of this Policy).

Section 3

Optional Additional Covers

The following are optional Covers to this Policy only and are subject to all other provisions of the Policy unless otherwise expressly stated to the contrary.

We will provide the following cover but only under Section 1 of this Policy, provided always that:

- a) each Optional Additional Cover will only apply where it is specifically noted in the Schedule as included;
- b) the cover provided by each Optional Additional Cover is subject to the Schedule, Insuring Clauses, Claims Conditions, General Conditions, Exclusions, Definitions and Interpretations and any other terms of the Policy (unless otherwise expressly stated); and
- c) the inclusion of any Optional Additional Cover will not increase the Limit of Liability. Where a Sub-Limit of Liability is stated in respect of any Extension, such Sub-Limit of Liability shall form part of and not be in addition to the Limit of Liability.

3.1. Fidelity Cover

We will Cover the Named Insured for loss of negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to the Named Insured or for which the Named Insured is legally liable where any such loss is sustained in consequence of any dishonest or fraudulent act or omission of any Named Insured, provided always that:

- a) such loss is first discovered by the Named Insured during the Policy Period and is notified in writing to Us within twenty-eight (28) days of the date of such discovery (but never after the expiry date of the Policy Period);
- b) We will not Cover:
 - i. the Named Insured for any loss sustained in consequence of any act or omission occurring after the date of discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the person concerned; or
 - ii. any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- c) the Named Insured will, at Our request and expense take all reasonable steps to recover or obtain reimbursement from such person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;

- d) any monies which but for such dishonest, fraudulent, criminal or malicious act or omission would be due from the Named Insured to the person committing such act, or any monies held by the Named Insured and belonging to such person, will be deducted from any amount payable under this Policy;
- e) We will only Cover the Named Insured for the balance of loss sustained in excess of the amounts recoverable from the person committing such dishonest, fraudulent, criminal or malicious act or omission or their estates or legal personal representatives; and
- f) nothing in this Optional Additional Cover 3.1 "Fidelity Cover" will preclude Us from exercising any right of subrogation against any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission.

If this Optional Additional Cover is provided then it will be noted as 'Covered' with the Specific Cover Limit under this Optional Additional Cover 3.1 "Fidelity Cover" specified in the Schedule. The Specific Cover Limit for this Optional Additional Cover 3.1 "Fidelity Cover" is in the aggregate and is inclusive of, and not in addition to, the Limit of Liability. A separate Excess applicable to this Optional Additional Coverage 3.1 "Fidelity Cover" of \$5,000 (cost inclusive) for each and every loss will apply.

The Cover provided by this Optional Additional Cover is not subject to Insuring Clauses 1.1 or 1.2 or Exclusion 5.12 "Intentional Damage".

3.2. Multi-Year Run-Off

If during the Policy Period there is a Run-Off Event then We will make available to such Insured entity (and any person who is or was a Principal, partner, director or employee of such Insured entity prior to the effective date of such merger, takeover, sale or winding up) an extension to the Policy Period for a period of up to a maximum additional seven (7) years, strictly conditional upon;

- a) the Insured giving Us written notice of such merger, takeover, sale or winding up as soon as reasonably practicable and during the Policy Period;
- b) Our offer to extend Cover may be subject to such additional terms, conditions and premium as We may reasonably impose having regard to the nature of the risk to be assumed by Us;
- c) such extension of the Policy Period will not take effect until Our offer is accepted by such Insured; and
- d) such extension will only apply to Claims arising out of a breach of professional duty in the exercise and conduct of the Professional Services which occurred prior to the effective date of such merger, takeover, sale or winding up.

The Limit of Liability is not increased by this Optional Additional Cover notwithstanding the extended Policy Period.

In the event the Insured does not accept the terms offered or pay the amount of any additional premium that We charge for this Optional Additional Cover, the Insured may cancel the Policy in accordance with clause 8.2 “You Can Cancel the Policy”.

3.3. Principal’s Indemnity

We will pay on behalf of the Principal the civil liability it is legally liable to pay as a result of a Claim first made against the Principal during the Policy Period (or the extended Policy Period under Optional Additional Cover 3.2 “Multi Year Run-Off”, if applicable), by any person or entity (other than an Insured) which results directly from civil liability the Insured incurs in the performance of Professional Services, provided that Cover under this Policy would have been available to the Insured had such Claim been brought by the Principal against the Insured.

However, the cover provided under this Optional Additional Cover 3.3 does not apply to:

- (a) any contract entered into as a result of a dispute which involves the Insured in any way; or
- (b) the Principal’s own acts, errors or omissions.

Notwithstanding Definition 9.33, for the purposes of this Extension 3.3, Principal means the entity of whom the Insured has entered into a contract with to provide Professional Services. The Principal will be deemed to be an Insured in the definition of Claim and Defence Costs and will comply with all the terms and conditions of this Policy.

Section 4

Coverage Limit Clarification

4.1. The Limit of Liability

The Limit of Liability applies to any one Claim and, subject to this Section 4, applies to the total of all Claims and Covered Claims, Covered by this Policy.

4.2. Reinstatement of the Limit of Liability

- a) The Limit of Liability is the maximum amount We will provide Cover for in respect of any one Claim. Subject to the following limitations, We will provide Cover to a maximum of twice the Limit of Liability for all Claims Covered by this Policy:
 - i. We do not, in respect of any one Claim, provide Cover for an amount in the aggregate more than the Limit of Liability or the Specific Cover Limit as applicable;
 - ii. for any one Claim, or Claims (including Covered Claims) arising from the one act, error or omission or from a series of, or from repeated or related, acts, errors or omissions, the aggregate Cover under this Policy will not exceed the Limit of Liability or Specific Cover Limit as applicable; and
 - iii. if there is extra insurance, held with another insurer in excess of the applicable limit of this Policy, then Cover in excess of one Limit of Liability or Specific Cover Limit as applicable (up to a maximum of twice the Limit of Liability or Specific Cover Limit as applicable) is only available for so much of the liability (otherwise Covered by this Policy) which is not covered by the extra insurance.
- b) Where Cover is provided under this Policy for any Claim, then Defence Costs are paid in respect of that Claim up to an amount equal to the Limit of Liability in accordance with Insuring Clause 1.2 “Defence Costs” of this Policy. The aggregate amount We pay in total for Defence Costs for or in respect of all Claims Covered by this Policy does not exceed an amount equal to twice the Limit of Liability (other than Defence Costs which are stated to be “in addition” as per clause 1.2).

4.3. Defence Costs if the Limit of Liability is Exceeded

If the amount that has to be paid to dispose of, settle or finalise a Claim exceeds the Limit of Liability, then We only pay for the same proportion of the Defence Costs as the Limit of Liability bears to the amount to be paid to dispose of, settle or finalise the Claim. But We will never pay more than the Limit of Liability (other than Defence Costs which are stated to be “in addition” as per clause 1.2).

4.4. Multiple Entities and/or Persons

The Limit of Liability does not increase if there is more than one Insured Covered under this Policy, or if more than one Insured causes or contributes to the Claim.

4.5. Specific Cover Limit

If the Schedule or Section 2 (Extensions) or Section 3 (Optional Additional Covers) of the Policy specifies any Specific Cover Limits for specific types of Cover under this Policy, then the applicable Specific Cover Limits and not the Limit of Liability applies. The Specific Cover Limits are included within, and not in addition to, the Limit of Liability.



Section 5

Exclusions

We do not provide Cover for any of the following Claims or Covered Claims:

5.1. Asbestos

directly or indirectly arising out of or in connection with asbestos.

5.2. Assumed Duty or Obligation

arising from or in connection with:

- a) a liability under a contractual warranty, guarantee or undertaking (unless such liability would have existed regardless of the contractual warranty, guarantee or undertaking);
- b) circumstances where a right of contribution or indemnity has been given up by an Insured, but only to the extent of the prejudice suffered by Us in those circumstances;
- c) circumstances where someone has done work or provided services under an arrangement or agreement with an Insured which limits any potential right for an Insured to receive contribution or indemnity from that person, but only to the extent We are prejudiced in those circumstances;
- d) any Civil Liability which an Insured agrees to accept in connection with the provision of the Professional Services which is more onerous than that which the Insured would otherwise have at common law, but only to the extent of the prejudice We suffer because of that agreement;
- e) any business not conducted for or on behalf of the Named Insured firm or incorporated body;
- f) or in respect of any liability which is incurred or affected by reason of the Insured at any time entering into a deed or agreement excluding, limiting or delaying the Insured's legal rights of recovery against any other person, firm or entity, other than a deed or agreement the Insured has entered into at Our direction and with Our prior written consent; or
- g) liquidated damages.

5.3. Bodily Injury and Property Damage

directly or indirectly arising out of, related to, or in connection with bodily injury, mental injury (including but not limited to mental stress and mental anguish), harassment, invasion

of privacy, disease or death of any person(s) or loss of or damage to property, unless such Claim or Covered Claim arises directly out of any breach of a professional duty owed by the Insured in the conduct of the Professional Services.

5.4. Conflict of Interest

directly or indirectly arising out of, related to, or in connection with any actual or alleged conflict of interest, where such interests have not been disclosed to and approved by all parties. Conflicts of Interest include but are not limited to any products, advice or services which are provided by or on behalf of the Insured, where the Insured has a financial interest, equitable interest or vested interest.

5.5. Construction Cost Guarantees

directly or indirectly arising out of, related to, or in connection with any actual or alleged:

- a) deliberate decision by the Insured to tender for a contract at less than economic terms for commercial or goodwill reasons;
- b) any estimate of probable design and/or construction costs, being exceeded provided that this exclusion shall not apply to any Claim arising directly from negligence of a quantity surveyor employed by or appointed on behalf of the Insured to carry out those activities normally undertaken by a quantity surveyor.

5.6. Defective Products and Workmanship

- a) any defective workmanship or defective materials relating to physical works of construction, erection, assembly, maintenance, installation, manufacture or alteration to buildings, property, goods or products; or
- b) any defect in any product or good unless such defect arises from the exercise and conduct of the Activities and Duties. However, this sub Clause 5.6(b) will not apply where such defect arises from the exercise and conduct of the Professional Services.

5.7. Disciplinary Action

insofar as an Insured is required by law to maintain a statutory registration in order to be entitled to practice or provide the Professional Services, Claims or Covered Claims arising from acts, errors or omissions by or on behalf of the Insured which occurred at a time when such registration was not held, was cancelled or suspended or was otherwise not current and valid.

5.8. Directors and Officers Liability

arising directly or indirectly from, in connection with;

- a) the Insured's functions and duties as a director and/or officer of the Insured or any legal entity, corporation or other incorporated body;
- b) any services or advices provided by the Insured in the capacity of a trustee provided always that this exclusion will not apply where the Insured acts as a stakeholder, custodian or trustee where such activities are undertaken incidentally to the provision of other professional services in the conduct of the Professional Services.

5.9. Employers' liability and Occupiers' liability

- a) directly or indirectly based upon, attributable to or in consequence of the Named Insured's liability as an employer; or
- b) arising from bodily injury (including mental anguish or emotional distress), sickness, disease or death of any employee, apprentice, contractor, volunteer or any worker who is under the direction, control and/or supervision of the Insured or for whose workplace safety the Insured is responsible;
- c) arising out of or in respect of actual or alleged unlawful discrimination (or other unlawful act, error or omission) by any Insured against any Employee or employment applicant; or
- d) arising from ownership or occupation (or alleged occupation) of land or buildings by an Insured.

5.10. Investment Advice

directly or indirectly arising out of, related to, or in connection with any actual or alleged:

- a) giving (whether actual or alleged) of any express or implied warranty or guarantee, making a representation, failing to give an appropriate warning or engaging in misleading and deceptive conduct relating to the financial return (including, without limitation, any actual, historical, anticipated, forecast or projected financial return) of any investment or portfolio of investments; or
- b) giving (whether actual or alleged) of any express or implied warranty or guarantee, making a representation, failing to give an appropriate warning or engaging in misleading and deceptive conduct relating to the financial circumstances or situation (including, without limitation, any actual, historical, anticipated, forecast or projected financial return) of any entity.

5.11. Insolvency and Financial Conditions

directly or indirectly arising out of or in connection with:

- a) the Insured's insolvency, bankruptcy or liquidation; or

- b) the failure by the Insured to provide, effect or maintain any bond or any form of insurance or finance.

5.12. Intentional Damage

arising direct or indirectly out of, a consequence of or in connection with any:

- a) acts, errors, omissions by an Insured, with the intention of causing a third party loss, damage or injury, or with reckless disregard for the consequences;
- b) dishonest, fraudulent or malicious act or omission by the Insured; or
- c) any willful breach of any statute, contract or duty by a Named Insured.

5.13. Known Claims and Known Circumstances

- a) known at the inception date of this Policy;
- b) arising from, directly or indirectly based upon, attributable to, or in consequence of any Known Circumstance or known Claims or Covered Claims;
- c) disclosed in the Proposal or arising from facts or circumstances which may give rise to a Claim or Covered Claim disclosed in the Proposal; or
- d) if this Policy is endorsed or amended mid-term, for any Claim or Covered Claim that arose from a Known Circumstance (as at the effective date of the amendment/endorsement) to the extent that the Claim or Covered Claim would not have been Covered by the Policy before such amendment/ endorsement.

5.14. Ownership of Transport

arising from or in respect of the ownership, control over, operation or use of any aircraft, marine craft or motor vehicles of any kind whatsoever.

5.15. Pollution

arising directly or indirectly from the Insured or anyone on behalf of or at the direction of the Insured discharging, dispersing, releasing or permitting Pollutants to escape into or upon land, the atmosphere, or any water course or body of water.

5.16. Profit

for any component of profit derived or derivable by an Insured.

5.17. Products (Non-Compliant) Liability

directly or indirectly arising from Non-Compliant Products and Materials including but not limited to, external insulation, finishing systems, wall paneling, cladding or façade material

that are not compliant with, do not conform with, or are installed, applied or used in a manner that does not comply with, all relevant provisions of the Environmental Protection Authority rules or legislation, Fair Trading Act 1986 legislation (or as amended from time to time) including New Zealand Customs Services, New Zealand consumer laws, New Zealand border force rules and regulations or any equivalent organisations or bodies who govern the compliance and conformity of any products, goods or materials (including the importation or exportation thereof).any other applicable laws or regulations.

5.18. Professional Indemnity Cyber and Data Protection

directly or indirectly arising from, attributable to or in connection with any loss, damage, liability, claim, costs, expense, fines, penalties, mitigation costs or any other amount directly caused by, directly resulting from or directly arising out of:

- a) a Cyber Act; or
- b) any partial or total unavailability or failure of any Computer System;
provided the Computer System is owned or controlled by the insured or any other party acting on behalf of the insured in either case; or
- c) the receipt or transmission of malware, malicious code or similar by the insured or any other party acting on behalf of the insured;
- d) any failure or interruption of service provided:
 - i) to the insured or any other party acting on behalf of the insured by an internet service provider, telecommunications provider or cloud provider but not including the hosting of hardware and software owned by the insured; or
 - ii) by any utility provider, but only where such failure or interruption of service impacts a Computer System owned or controlled by the insured or any other party acting on behalf of the insured.
- e) a breach of Data Protection Law by the insured or any other party acting on behalf of the insured.

Any cover for costs of reconstituting or recovering lost, inaccessible or damaged documents owned or controlled by the Insured or any other party acting on behalf of the Insured in this Policy shall not apply to Data.

Save as expressly provided in Exclusion 5.19, or by other restrictions in this Policy specifically relating to the use of, or inability to use, a Computer System, no cover otherwise provided under this contract shall be restricted solely due to the use of, or inability to use, a Computer System.

This Exclusion 5.18 takes priority over any other provision in this contract

5.19. Property Development

directly or indirectly arising from, attributable to or in connection with any actual or alleged:

- i) valuation of any property or land; or
- ii) representations, statements, advices or opinions on the financial return of any project, development, building or property;
- iii) financing, funding or financial arrangements with regards to any investment, property or developments; or
- iv) building certification or pre-purchase inspections;
- v) misleading and deceptive conduct regarding the availability or connection of utilities to any land or property; or
- vi) land titles including any disputes or claims with respect thereof; or
- vii) bribery or corruption; or
- viii) change of or replacement to any material, good or product without the written approval, certification or sign off from the Insured's client, principal, head contractor or developer.
- ix) the final cost of a project or any part thereof exceeding a pre-set financial limit to which the Named Insured agreed;
- x) bankruptcy liquidation or insolvency of any of the parties involved in a project;
- xi) use or repair of any real or personal property or ownership, rental, occupation, deemed occupation, leasing, maintenance or operation of any real or personal property.

5.20. Punitive and Exemplary Damages

for punitive, aggravated or exemplary damages or for fines or penalties. In addition, this Policy does not provide Cover for any investigation or Defence Costs associated with such Claims or Covered Claims.

5.21. Nuclear

arising from:

- a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or

- b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

5.22. Refund of Professional Fees and Trading Debts

- a) for (or calculated by reference to) the refund of or waiver of any obligation to pay professional fees or charges (by way of damages, offset or otherwise);
- b) for the costs and expenses incurred by or on behalf of an Insured in complying with any contractual obligations or making good any faulty product;
- c) arising directly or indirectly from the provision of cost guarantees, estimates of probable costs, estimates of probable financial savings or contract price or cost estimates being exceeded; or
- d) arising from a liability to pay trading debts or the repayment of any loan.

5.23. Related Parties

against an Insured brought by or on behalf of:

- a) any other Insured;
- b) any company in respect of which any Insured holds (beneficially or otherwise) more than 10% of the voting shares or rights and/or an executive role;
- c) any trust in respect of which any Insured is a trustee and/or beneficiary and/or has a direct or indirect financial interest; or
- d) any other person, firm or incorporated body having control of over 10% or more of the voting shares or rights or an executive role in the operation of the Named Insured unless such Claim emanates from a completely independent and unrelated third party.

5.24. Retroactive Date

resulting from, attributable to or in connection with any act, error or omission occurring or committed or alleged to have occurred or alleged to have been committed prior to the Retroactive Date.

5.25. Sanctions

arising from, attributable to or in connection with any payment under this Policy where such payment would be in violation of any sanction, prohibition or restriction in which We are required to comply, including but not limited to United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, Australia, United Kingdom or the United States of America.

5.26. Social Engineering

directly or indirectly arising out of, related to, or in connection with any actual or alleged:

a) any Claim, Defence Costs, loss or any other costs whatsoever for any actual or alleged unauthorised access to or use of any Computer System owned, operated by or licensed to or by the Insured; or

b) Social Engineering.

Furthermore, there is also no Cover under any section of this Policy for any Claims, Defence Costs, loss or any other costs whatsoever arising from, attributable to, a consequence of or in connection with the Insureds actual or alleged failure to:

i. implement Segregation of Duties;

ii. have a different person reconcile the funds as those who operate the Insured's bank accounts, operating accounts and financial accounts; or

iii. have a formal change of supplier, client or vendor details policy, including the actual or alleged failure to call and verify change of details with the vendor, client or supplier of whom any request to change details was purportedly to have come from, by speaking to a known source or with the original details prior to said change.

5.27. War and Terrorism

directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence any of the following:

a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, revolution, rebellion, insurrection, uprising, military or usurped power, confiscation by order of any public authority or government de jure or de facto, martial law;

b) riots, strikes or civil commotion;

c) Terrorism; or

d) any action taken in controlling, preventing, suppressing, retaliating against or responding to or in any way relating to those things in 5.27(a) to 5.27(c) above.

5.28. Listed Human Disease

directly or indirectly arising out of, related to, or in connection with any actual or alleged:

- a) any disease identified or listed at any time as a human disease under the Biosecurity Act 2015 (Cth), Bio Security Act 1993, or the current equivalent, as amended, superseded or replaced from time to time, or
- b) any disease identified or listed in a state of emergency, public health emergency or pandemic declared by any governmental authority or identified by the World Health Organisation or its current equivalent as amended or replaced, regardless of when the disease is so listed or identified.

5.29. USA / Canada

- a) first brought in or determined pursuant to the laws of the United States of America or the Dominion of Canada, or their territories or protectorates;
- b) arising out of the enforcement of judgments, orders or awards obtained in or determined pursuant to the laws of the United States of America or the Dominion of Canada, or their territories or protectorates; or
- c) where the proper law of the United States of America or the Dominion of Canada, or their territories or protectorates is applied to any of the issues in any Claim or Covered Claim, Covered by this Policy, subject to the 'Jurisdictional Limit' specified in the Schedule.

Section 6

Claims Conditions

6.1. Notification

The Named Insured and/or any Insured covered under this Policy must tell Us in writing about a Claim, circumstance, Inquiry, loss, investigation or any other matter which may be covered under this Policy as soon as reasonably possible during the Policy Period. If this is not done, an Insured's right to Cover under this Policy may be affected.

The written notice should include, so far as is reasonably possible and so far as the relevant Insured is aware:

- a) the identity of the claimant if relevant;
- b) an outline of the factual matters and circumstance;
- c) an estimate of the likely quantum of any loss and
- d) include any supporting documents (if applicable).

Such notice to Us must be given in writing and delivered to:

The Claims Department

Artisan Underwriting Pty Ltd

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6.2. Claims Co-Operation

We may make any investigation as is reasonably required in relation to the Claim (or Covered Claim) or Inquiry notice, or any written notice notifying Us of a potential Claim, circumstance, Inquiry, loss, investigation, or other matter which may be covered under this Policy.

The Insured must:

- a) as a condition to Cover under this Policy, take all reasonable steps to prevent any act, error, omission or circumstance which may cause or contribute to any Claim or Covered Claim which may be Covered under this Policy;
- b) co-operate and provide Us with reasonable assistance in connection with any investigation, negotiation, loss, circumstance recovery, defence and legal proceeding or settlement of a Claim, Covered Claim or Inquiry;
- c) do all things reasonably practicable to minimise any further loss, including but not limited to the Insured's liability in respect of any Claim or Covered Claim or Inquiry;
- d) avoid confrontational engagement with any aggravated claimant;
- e) maintain a detailed record of all communications with any party about the loss, investigation, circumstance, Claim, Covered Claim or Inquiry; or
- f) where the Insured is the Named Insured, taking steps which a reasonable person in the Insured's professional position would take (for example, suspending or terminating an Employee) where the Insured has confirmed or suspects dishonesty or a fraudulent or malicious act or omission has contributed to the loss claimed by the third party;
- g) not settle any Claim (or Covered Claim) or incur any Defence Costs, other legal costs or assume any contractual obligations whatsoever without Our written consent (and if Our prior consent is not obtained, the Insured's right to Cover under this Policy may be affected);
- h) not admit any liability whatsoever; and
- i) as soon as reasonably possible, advise Us in writing of any insurance already effected or which may subsequently be effected covering, in total or in part and whether absolutely or contingently, the risk, or any part of it, Covered by this Policy.

Failure by the Insured to carry out any of the above may potentially prejudice Our position or Our potential or actual rights of recovery.

Any costs of the Insured to carry out and comply with the above requirements shall be borne by the Insured, unless otherwise covered under the Policy.

6.3. Our Position, Management and Disclosure

When We receive notification of a circumstance, loss, investigation, Inquiry, Claim or Covered Claim:

- a) it is up to Us in Our absolute discretion to take whatever action We consider appropriate to protect Our position.

This does not, however:

- i. indicate that any Insured is entitled to be Covered under this Policy; or
 - ii. prejudice Our rights under the Policy or at law.
- b) We can:
 - i. take over and defend or settle any Claim (or Covered Claim) in the Insured's name; or
 - ii. where We have confirmed Cover and the Named Insured so requests, have the duty, to conduct the defence of or settlement of any Claim in the Insured's name; and
 - iii. claim in the Insured's name, any right any Insured may have for contribution or indemnity. We will act reasonably in exercising this right.
- c) We will keep the Insured reasonably informed and updated with the progress of any such matter.

6.4. Named Insured's right to contest

The Insured will not be required to contest any legal proceedings unless a Senior Counsel (to be mutually agreed upon by the Insured and Us or failing agreement to be appointed by the President of the New Zealand Bar Association advises that, taking due account of the interests of both Us and the Insured, the defence of such proceedings has reasonable prospects of being successful and should be contested having regard to the alternative to contesting the proceedings.

If the Named Insured elects not to consent to a settlement that We recommend and wants to contest or continue the dispute or legal proceedings, then We will only provide Cover (subject to the Limit of Liability) for:

- a) the amount We could have settled the matter for; less
 - i. the relevant Excess; plus
 - ii. the Defence Costs calculated to the date the Named Insured elected not to consent to the settlement.

6.5. Potential Claims Settlement

Any money We pay to settle any matter, incident or circumstance which might give rise to a Claim (or Covered Claim), is taken to be:

- a) a payment to settle a Claim (or Covered Claim); and
- b) a payment for the purpose of calculating the total of all Claims (or Covered Claims) under this Policy.

6.6. Subrogation and Recoveries

If any payment is made by Us under this Policy the Insured grants to Us all rights of recovery against any parties from whom a recovery may be made and the Insured will take all reasonable steps to preserve such rights.

We shall not recover any amount paid out in respect of a Claim or Covered Claim under this Policy from any Employee unless the Claim (or Covered Claim) arose from dishonest, fraudulent, criminal or malicious acts or omissions of the Employee.

6.7. Costs and Expenses Offsetting

If We incur any costs or expenses above Our liability under the Policy for Defence Costs, then the Named Insured must pay whatever amount is above that liability as soon as reasonably possible, after We request it. Payment of such monies by Us under this Claims Condition 6.7 “Costs and Expenses Offsetting” can be offset from the Named Insured against (and deduct that amount from) any amount We must pay to or on behalf of the Named Insured under this Policy.

6.8. The Excess

If the Schedule states that the Excess is “Cost Inclusive” then Excess will mean the sum shown in the Schedule and will be the first amount payable of each Claim made against the Insured.

If the Schedule states that the Excess is “Cost Exclusive” then Excess will mean the sum shown in the Schedule unless otherwise stated in this Policy and will be the first amount payable of each Claim made against the Insured excluding Defence Costs.

The Excess shall be net of any input tax credit the Insured may be entitled to claim in relation to GST.

6.9. Alteration to Risk

The Named Insured must as soon as reasonably possible advise Us in writing if any of the following occurs during the Policy Period:

- a) undertaking activities or services that are materially different from the Professional Services;
- b) any suspension, cancellation, revoking, or loss of or condition imposed, upon any licence, registration or other authority required by the Insured to conduct the Professional Services;

- c) the Insured being insolvent, bankrupt or in liquidation; or
- d) a Run-Off Event.



Section 7

General Conditions

7.1. Assignment

The Insured must not assign the Policy or any rights under the Policy without Our prior written consent by way of endorsement to the Policy.

7.2. Authority

The persons listed as the Named Insured in the Schedule are appointed individually and jointly as agent of each Insured in all matters relating to this Policy, and to Claims or Covered Claims, Covered by the Policy.

In particular (but without limitation) the Named Insureds are agents for the following purposes:

- a) to give and receive notice of Policy cancellation, to pay Premiums and to receive any return Premiums that may become due under this Policy;
- b) to accept Endorsements or other notices provided for in this Policy;
- c) to give instructions to solicitors or counsel that We appoint or agree to, and to receive advice from them and to act on that advice;
- d) to consent to any settlement We recommend;
- e) to do anything We or Our legal advisers think might help with the procedures set out in this Policy for settling and defending Claims or Covered Claims; and
- f) to give Us information relevant to this Policy, which We can rely on when We decide whether to accept the risk and set the Policy terms or the Premium.

7.3. Allocation

Where the Insured is entitled to cover pursuant to Insuring Clause 1.2 “Defence Costs” in circumstances where a Claim is made and part of that Claim for compensation arises out of, is in connection with or is related to facts or matters that are not covered by this Policy then, Our liability under this Policy is limited to that proportion of the Defence Costs which represents a fair and equitable allocation between the Insured and Us, taking into account the relative legal and financial exposures attributable to covered allegations and allegations that are not covered under this Policy.

In circumstances where the Insured and Us cannot agree on an allocation between covered allegations and allegations that are not covered, the dispute shall be submitted to binding

opinion from a Senior Counsel agreed between the parties or, failing agreement, appointed by the President of the New Zealand Bar Association.

7.4. Governing Law

The Policy will be governed in accordance with law of New Zealand and any disputes relating to interpretation will be submitted to the exclusive jurisdiction of the New Zealand courts.

7.5. GST Input Tax Credits

Where We are required to Cover the Insured and the Insured is entitled to claim an input tax credit in relation to GST, the amount of such input tax credit will be deducted from any amount payable by Us. Where the Insured is entitled to claim an input tax credit in relation to GST for a payment required to be made by the Insured as an Excess, then the monetary limit of the Excess shall be deemed to be net of the Insured's entitlement to the Input tax credit.

7.6. Payment in New Zealand

Any reference to Premium, Limit of Liability, Excess, loss, Defence Costs, legal representation costs or any other amounts payable by Us under this Policy are expressed and are payable in Australian Dollars. All Premiums, Claims, Defence Costs and any other costs payable must be paid in Australian dollars in Australia.

7.7. Non-imputation

The Proposal provided to Us by or on behalf of the Insured before this Policy inception, is taken to be a separate Proposal for each natural person or entity Covered under this Policy.

If there is any fact or misstatement in the Proposal that relates to one natural person who is an Insured, We do not attribute it to any other natural person who is an Insured, for the purposes of this Policy.

7.8. Territory covered by this Policy

Cover is restricted to Claims brought under the legal jurisdiction of the New Zealand courts, unless expressly agreed in writing by Us by way of endorsement to the Policy. However, Cover under this Policy is not restricted by where an act or omission giving rise to the Claim occurred.

7.9. Other Insurances

If a Claim arises under this Policy and there is another insurance policy in force at the same time covering the same liability, the Named Insured shall provide to Us within sixty (60) days the full details of such other insurance, including the identity of the insurer and the policy number, and such further information as We may reasonably require. This is to enable Us to exercise our right to seek contribution from the insurer of that other insurance.

Section 8

Cancellation

8.1. We Can Cancel the Policy

The We may cancel this Policy should the Named Insured become insolvent or enter liquidation or administration. If such an event occurs, We shall provide the Named Insured with thirty (30) days prior written notice of such cancellation. In the event that prior to the effective date of such cancellation the Insured has not provided notice to Us of any Claim or circumstance which may lead to a Claim, We shall return a pro rata portion of the premium to the Insured. However, if such notice has been provided, the premium shall be deemed fully earned as of the inception date of the Policy.

We have the right to cancel this Policy if the premium has not been paid by the Insured within sixty (60) days after the inception date of the Policy. In the event of such non-payment, We may cancel this Policy as if it had never been in existence and shall provide the Named Insured with not less than ten (10) days prior written notice of such cancellation. In the event of such cancellation, the Policy will be deemed terminated as of the date indicated in Our notice of cancellation.

8.2. You Can Cancel the Policy

The Insured may cancel this insurance at any time by giving fourteen (14) days' notice and provided there have been no notifications made by the Insured under this Policy, the Insured will be entitled to a pro rata refund. If the Insured has made a notification under the Policy then the Insured is not entitled to any refund.

After cancellation pursuant to this Clause 8.2, We will refund the premium for the time remaining on the Policy, less any non-refundable duties or any fees or charges which are not able to be recovered.

Section 9

Definitions

9.1. Adverse Publicity Event

Means an event which, in the reasonable opinion of a Principal of the Named Insured, might cause the reputation of the Insured to be seriously affected by adverse or negative publicity.

9.2. Civil Liability

Means the compensatory damages, costs and expenses in respect of a Claim which include the legal costs of the person making the Claim, for which an Insured becomes liable, but do not include any criminal liabilities or penalties.

9.3. Claim

Means the receipt by an Insured of:

- a) any originating process (in a legal proceeding or arbitration), cross claim or counter claim or third party or similar notice claiming compensation against an Insured; or
- b) any written or verbal demand from a third party claiming compensation against an Insured.

9.4. Computer System

Means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility.

9.5. Cover

Means compensation for losses and damages in accordance with the terms and conditions of this Policy, but shall not include any component of profit.

9.6. Covered Claim

Means the:

- a) Claims, liabilities, losses, costs, and matters otherwise the subject of Cover under the Policy; or

- b) circumstances which may give rise to any of the matters set out in clause 9.6 (a) which We may agree to Cover under this Policy.

9.7. Cyber Act

Means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof, involving access to, processing of, use of or operation of any Computer System.

9.8. Cyber Liability Coverage

Means any cyber insurance policy(ies) which provides standalone cyber coverage (whether partially or otherwise) for cyber related liabilities and/or cyber related security breaches.

9.9. Data

Means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System.

9.10. Data Protection Law

Means any applicable data protection and privacy legislation or regulations in any country, province, state, territory or jurisdiction which govern the use, confidentiality, integrity, security and protection of personal data or any guidance or codes of practice relating to personal data issued by any data protection regulator or authority from time to time (all as amended, updated or re-enacted from time to time).

9.11. Defence Costs

Means the legal costs and expenses (including any expert costs where the choice of expert has been approved by Us) of investigating, defending or settling any:

- a) Claim or Covered Claim; or
- b) originating process (in a legal proceeding or arbitration), cross claim or counter claim or third party or similar notice or written or verbal demand from a third party claiming declaratory and/or other equitable relief against an Insured arising from the provision of the Professional Services.

9.12. Documents

Means a third party's documents of any nature including the electronically stored data, software or computer programs for or in respect of any Computer System; but not including bearer bonds, coupons, bank notes, currency notes or negotiable instruments.

9.13. Employee

Means a natural person who is not a Principal, but who is or was, at the time the relevant act, error or omission giving rise to the Claim occurred, a person who:

- a) had entered into a contract of service with the Named Insured firm or incorporated body and is or was remunerated by the Named Insured for that service;
- b) is neither a party to a contract of service with the Named Insured, nor an independent contractor, but a party to a contract for service with the Named Insured for the provision of services to or on behalf of the Named Insured for reward; or
- c) a volunteer worker or student and is under the Named Insured's direction, control and supervision in the provision of Professional Services.

9.14. Endorsement

means any document which is described as an endorsement to this Policy and intends to vary this Policy.

9.15. Excess

Means the part the Insured may be required to pay of each Covered Claim and as further described in Condition 6.8.

9.16. Former Principal

Means a person who has been, but is no longer

the Principal of any corporate entities through which the Named Insured previously traded, in the course of the provision of the Professional Services.

9.17. Inquiry

Means any legal or quasi legal inquiry including coronial Inquiries (into a matter arising directly out of the provision of Professional Services and such matter is the subject of and is not excluded from Cover under this Policy) by a body conducting the inquiry (including a regulatory, licensing or statutory body) which has jurisdiction over the Insured (either by reason of a statutory power or by reason of the Insured's membership of a professional association which has the power to discipline its members).

9.18. Insured, You, Your

Means each of the following, individually and jointly:

- a) the Named Insured;
- b) each person, firm or incorporated body identified as an Insured in the Schedule;

- c) Employees of the Named Insured (but only in respect of Civil Liability arising from the provision of the Professional Services performed for and on behalf of the Named Insured, and not in respect of Claims or Covered Claims under Extension 2.16 “Dishonesty of Employees” of this Policy).

9.19. Intellectual Property

Means copyright, design, patent, trade mark or moral right, including false attribution of authorship under the *Copyright Act 1968* (Cth) or *Copyright Act 1994* (including any amendment, replacement, re-enactment, successor, equivalent or similar legislation).

9.20. Joint Venture

Means an undertaking (regardless of what it is called) which the Named Insured carries on together with someone else who is not otherwise Covered under this Policy.

9.21. Known Circumstance

Means any fact, situation or circumstance which:

- a) an Insured was aware of at any time before the Policy Period or before this Policy was amended/endorsed; or
- b) a reasonable person in the Insured’s professional position would have thought, at any time before the Policy Period or before this Policy was amended/endorsed, might result in someone making an allegation against an Insured in respect of a liability, loss or costs, that might be Covered by this Policy or by Endorsement to this Policy.

9.22. Limit of Liability

Means the limit stated in the Schedule as the “Limit of Liability”. See also Section 4.

9.23. Mitigation Costs

Means the reasonable costs and expenses incurred by the Insured to mitigate a loss or potential loss that would otherwise be the subject of a Claim under the Policy.

9.24. Named Insured

Means each of the following, individually and jointly:

- a) each person, firm or incorporated body identified in the Schedule as “The Named Insured” and each Principal or Former Principal of any such firm or incorporated body;
- b) any entity which is engaged in the provision of Professional Services and which is created and controlled, during the Policy Period, by anyone identified in the Schedule as “The Named Insured”; and

- c) anyone who becomes a Principal of the “The Named Insured” identified in the Schedule, during the Policy Period (but only in respect of work undertaken for or on behalf of “The Named Insured” identified in the Schedule).

9.25. Non-Compliant Products and Materials

Means any products, goods or materials or products that are:

- a) not compliant with or do not conform to any legislation, regulation, standard, code, or instruction by any official body; or
- b) imported, exported, applied, used, sold, distributed, installed, applied, repaired, maintained, or utilised in any way that is not compliant with or does not conform to any legislation, regulation, standard, code, or Instruction by any Official Body.

9.26. Official Body

Means any regulator, government body, administrative body or government or agency empowered to investigate the affairs or conduct of an Insured, including but not limited to:

- i. the Fair Trading Act 1986,
- ii. the Consumer Guarantees Act 1993,
- iii. the Building Act 2004,
- iv. the New Zealand Building Code (NZBC),
- v. the Resource Management Act 1991 (RMA),
- vi. the Environmental Protection Authority (EPA) rules and regulations,
- vii. the New Zealand Customs Service regulations for importation and exportation,
- viii. the New Zealand Border Force compliance requirements,
- ix. the Health and Safety at Work Act 2015 (HSWA),
- x. the Weights and Measures Act 1987 (for product compliance and trade measurements), and
- xi. any other relevant regulatory body overseeing the compliance and conformity of goods, products, or materials, including those governing their importation, exportation, or use in construction.

For the avoidance of doubt this includes a coronial inquest, judicial body or commission of inquiry.

9.27. Policy Period

Means the “Policy Period” stated in the Schedule.

9.28. Policy

Means this insurance Policy made up of:

- a) this Policy document;
- b) the Schedule; and
- c) the Endorsements, if any, contained in the Schedule.

9.29. Pollutants

Means any solid, liquid, gases or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkali, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

9.30. Premium

Means the amount payable by the Named Insured for the Policy including any applicable charges advised by Us.

9.31. Privacy Breach

Means an incident involving the unauthorised disclosure, loss, modification, misuse, interference or access of:

- a) personal information, as defined in the *Privacy Act 2020 and the Privacy Principals* including any amendment, consolidation, re-enactment, replacement or successor of such legislation; or
- b) third party corporate information that is identified as confidential.

9.32. Previous Policy

Means a professional indemnity insurance policy held by the Insured for a period of twelve (12) months immediately preceding this Policy Period.

9.33. Principal

Means a sole practitioner, a partner of a firm, or a director of a company, which practitioner, firm or company is Covered by this Policy.

9.34. Professional Services

Means one or more of the following services:

- a) design, including advice in relation to design;
- b) drafting;
- c) technical calculation;
- d) technical specification;

- e) project management;
- f) construction management;
- g) feasibility studies;
- h) programming and time flow management;
- i) quantity surveying;
- j) surveying;
- k) technical advice;
- l) inspection;
- m) asset management services; and
- n) training in respect of (a) to (m) above,

provided that it is performed only by, or under the direct supervision of, a properly registered engineer, architect or surveyor, a quantity surveyor who is a member of the New Zealand Institute of Quantity Surveyors or any other person providing a professional service of a skilful character according to an established discipline appropriate to the Professional Services being performed or supervised.

Professional Services excludes:

- (i) performance or supervision (where such supervision would normally be undertaken by a building contractor, site supervisor, site manager, superintendent or foreman) of construction, manufacture, assembly, installation, erection, maintenance or physical alteration of buildings, goods, products or property;
- (ii) environmental protection, workplace health and safety or industrial relations matters which would normally be overseen by a building contractor.

9.35. Proportionate Liability Legislation

means the Civil Liability Act 2002 (NSW) Pt 4, Wrongs Act 1958 (Vic) Pt IVAA, Civil Liability Act 2002 (WA) Pt 1F, Civil Liability Act 2003 (Qld) Pt 2, Civil Law (Wrongs) Act 2002 (ACT) Ch 7A, Proportionate Liability Act 2005 (NT), Civil Liability Act 2002 (Tas) Part 9A, Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA) Pt 3, Competition and Consumer Act 2010 (Cth) Part VIA, Development Act 1993 (SA) s72 and Building Act 2004 (ACT) s141, and any similar legislation, all as amended from time to time.

9.36. Proposal

Means the written or electronic proposal form (together with any supplementary material) completed by or on behalf of the Insured, that was given to Us, and relied on by Us to effect this Policy.

9.37. Public Relations Expenses

Means the costs, charges, fees and expenses of a public relations firm or consultant engaged to prevent or limit the adverse effects of or negative publicity from an Adverse Publicity Event.

9.38. Retroactive Date

Means the “Retroactive Date” as shown in the Schedule.

9.39. Run-Off Event

Means a Named Insured ceasing to exist or operate, or is consolidated with, merged into or acquired by another entity.

9.40. Segregation of Duties

Means that any cheque payment or electronic money transfer receives prior approval by at least two approved and authorised signatories and that the person reconciling the Insured’s bank statements is a different person to the one that operates those bank accounts.

9.41. Senior Counsel

Means a Senior Counsel to be mutually agreed upon by Us and the Insured or, in the absence of agreement, to be appointed by the current President of the New Zealand Law Society.

9.42. Schedule

Means the Schedule to this Policy signed by one of Our officers.

9.43. Social Engineering

Means any fraudulent or dishonest instruction to the Insured or its agents which purports to be from a legitimate or trusted source authorised to make such instruction and which results in the Insured:

- a) transferring, paying or delivering any money or securities from an account maintained by the Insured to another person or entity;
- b) transferring or delivering any property to another person or entity;
- c) revealing confidential information; or
- d) changing or altering bank account or payment details of any person or entity.

9.44. Specific Cover Limits

Means the limit of Our Cover for each of the matters listed in the Schedule under “Extensions” or ‘Optional Additional Covers’ in Section 2 or Section 3 of this Policy.

9.45. Subsidiary

Means any company or other incorporated entity which at the commencement of the Policy Period by virtue of New Zealand law was, or is, either directly or indirectly a subsidiary of any incorporated body identified in the Schedule as "The Named Insured".

9.46. Terrorism

Means any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- a) involves violence against one or more persons;
- b) involves damage to property;
- c) endangers life other than that of the person committing the action;
- d) creates a risk to health or safety of the public or a section of the public; or
- e) is designed to interfere with or to disrupt an electronic system.

9.47. We, Us, Our

Means Artisan Underwriting Pty Ltd underwriting on behalf of Certain Underwriters at Lloyd's led by the AEGIS E&O Consortium 4894, which is led by Syndicate 1225 managed by AEGIS Managing Agency Limited.