



QBE Insurance (Australia) Limited

Q Pack Plus[®] Policy

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Q Pack Plus® Policy

In consideration of the payment of the premium to QBE Insurance (Australia) Limited ('QBE') and in reliance on the written proposal, declaration and any other underwriting information provided, which shall be deemed to be incorporated into and form the basis of this Policy, QBE will, subject to the terms and conditions of this Policy:

Insuring Clauses

1. General Liability

Indemnify the Insured for all sums that the Insured becomes legally liable to pay as compensation (including interest) Arising From any Claim in respect of Personal Injury or Property Damage that happens during the Period of Insurance within the Policy Territory and is caused by an Occurrence in connection with the Business of the Insured.

2. Crime

Indemnify the Company for any Direct Financial Loss first Discovered and notified to QBE during the Period of Insurance or notified within twenty one (21) days of its expiry Arising From Dishonest Acts.

3. Employment Practice Liability

Pay on behalf of the Insured any Loss that the Insured is legally liable to pay by reason of any Claim first made against the Insured and notified to QBE during the Period of Insurance for an Employment Dispute after the Retroactive Date.

4. Directors and Officers Liability

Pay on behalf of:

- 4.1 a Director or Officer, any Loss that such person is legally liable to pay by reason of any Claim first made against them;
- 4.2 the Company, any Loss that the Company is legally liable or required to pay to a Director or Officer, by reason of any Claim first made against a Director or Officer,

and notified to QBE during the Period of Insurance for a Wrongful Act that occurred within the Policy Territory after the Retroactive Date. Notwithstanding the Excess noted in the Policy Schedule, the Excess applying to clause 4.1 above will be nil.

5. Statutory Liability

Pay on behalf of:

- 5.1 a Director, Officer or Employee, any Loss that such person is legally liable to pay by reason of any Claim first made against them;
- 5.2 the Company, any Loss that the Company is legally liable or required to pay:
 - 5.2.1 a Director, Officer or Employee, by reason of any Claim first made against a Director, Officer or Employee; or
 - 5.2.2 by reason of any Claim first made against the Company,

and notified to QBE during the Period of Insurance or within twenty one (21) days of its expiry for an Event that occurred in New Zealand after the Retroactive Date.

Notwithstanding the Excess noted in the Policy Schedule, the Excess applying to clause 5.1 above will be nil.

6. Employers Liability

Pay on behalf of the Insured any Loss that the Insured is legally liable to pay by reason of any Claim brought by an Employee first made against the Insured and notified to QBE during the Period of Insurance for Personal Injury sustained by that Employee in New Zealand that occurred after the Retroactive Date.

7. Internet Liability

Pay on behalf of the Insured any Loss that the Insured is legally liable to pay by reason of any Claim first made against the Insured and notified to QBE during the Period of Insurance for an Internet Error that occurred within the Policy Territory after the Retroactive Date.

8. Criminal Defence Legal Costs

Indemnify the Insured for Defence Costs incurred defending a Prosecution first brought against the Insured, and notified to QBE, during the Period of Insurance Arising From a Criminal Offence that occurred in New Zealand, after the Retroactive Date, in connection with the Business of the Insured and for which they are subsequently Acquitted by a Court.

Limit of Indemnity

1. In respect of Insuring Clause 1 (General Liability), QBE's maximum liability in respect of any Claim, or any series of Claims, Arising From one Occurrence, or in the aggregate during the Period of Insurance in respect of an Occurrence involving the Insured's Products, shall not exceed the Limit of Indemnity, or the sub-limit in any applicable extension.
2. In respect of Insuring Clause 2 (Crime), QBE's maximum liability during the Period of Insurance shall not exceed the Limit of Indemnity, except as provided for under Condition 15 (Direct Financial Loss – Establishing Loss).
3. In respect of Insuring Clauses 3 to 7 (inclusive), QBE's maximum liability for Loss in respect of each insuring clause during the Period of Insurance shall not exceed the Limit of Indemnity.
4. In respect of Insuring Clause 8 (Criminal Defence Legal Costs), QBE's maximum liability during the Period of Insurance shall not exceed the Limit of Indemnity.
5. The inclusion of more than one Insured under this Policy does not operate to increase the total amount payable by QBE under this Policy.
6. In the event of a series of inter-related Claims, Arising From the same general circumstances, where indemnity may be available under more than one insuring clause of the Policy, the maximum Limit of Indemnity to apply will be the highest Limit of Indemnity under the insuring clauses that apply, provided that the maximum payable under any one insuring clause will not exceed the Limit of Indemnity as applying to that insuring clause.

Defence Costs

1. In respect of Insuring Clause 1 (General Liability), QBE will pay Defence Costs by reason of a Claim covered under this Policy, in addition to the Limit of Indemnity or any sub-limit in any applicable extension, unless otherwise stated.

Provided that as soon as QBE has paid the Limit of Indemnity or the sub-limit in any applicable extension in respect of any judgment or settlement, its liability in relation to Defence Costs shall cease.

2. In respect of Insuring Clause 4 (Directors and Officers Liability), QBE will pay on behalf of:

- 2.1 the Director or Officer any Defence Costs by reason of a Claim covered under Insuring Clause 4.1;
- 2.2 the Company any Defence Costs by reason of a Claim covered under Insuring Clause 4.2.

QBE's maximum liability for Defence Costs under this insuring clause shall not exceed the Defence Costs Limit of Indemnity.

Only if and when the Defence Costs Limit of Indemnity has been exhausted and provided that this insuring clause is not subject to a charge under the Law Reform Act 1936, s.9, QBE will pay Defence Costs in respect of a Claim covered under this insuring clause up to the Limit of Indemnity available. Defence Costs will cease under this provision from the point in time that the Limit of Indemnity under this insuring clause becomes the subject of a charge under the Law Reform Act 1936, s.9.

3. In respect of Insuring Clauses 3 (Employment Practice Liability), 5 (Statutory Liability), 6 (Employers Liability) and 7 (Internet Liability), QBE will pay Defence Costs by reason of a Claim covered under this Policy, in addition to the Limit of Indemnity, up to the Defence Costs Limit of Indemnity.
4. Defence Costs will be paid by QBE where indemnity has been accepted irrespective of whether the Insured is found legally liable.

Extensions

The following extensions to the Policy are included automatically, provided that each extension is subject to the terms of this Policy (unless otherwise stated). All payments made under these extensions form part of and are not in addition to the Limit of Indemnity.

1. Advancement of Defence Costs

Except to the extent that QBE has denied indemnity, QBE will, upon satisfactory evidence of expenditure, pay the Defence Costs as and when they are incurred.

Provided that QBE reserves the right to recover any Defence Costs from the Insured in the event and to the extent that it is subsequently established by judgment, settlement or other final adjudication that the Insured was not entitled to the Defence Costs so advanced.

2. Compensation for Court Attendance

In respect of Insuring Clause 4 (Directors and Officers Liability) only, in the event that a Director or Officer is required to attend a court as a witness in connection with a Claim that is covered by this Policy, QBE will pay that Director or Officer NZD 300 per day for each day they attend as a witness.

The maximum aggregate amount payable under this extension during the Period of Insurance shall be NZD 10,000, which is part of and not in addition to the Defence Costs Limit of Indemnity.

3. Consultants, Subcontractors and Agents

In respect of Insuring Clause 7 (Internet Liability) only, this Policy is extended to include Loss and/or Defence Costs Arising From a Claim for an Internet Error, committed by any consultant, subcontractor or agent, for which the Insured is legally liable, provided that this indemnity will not extend to any such consultant, subcontractor or agent.

4. Continuous Cover

In the absence of fraudulent non-disclosure and notwithstanding Exclusion 22 (Prior or Pending), if any Claim, Criminal Offence, fact or circumstance that should have been notified to QBE under an earlier policy is notified during the Period of Insurance, QBE will accept the notification, provided that:

- 4.1 QBE has continuously been the insurer of the Insured, under a policy that would cover that type of loss, between the date when such notification should have been given and the date on which such notification was, in fact, given; and
- 4.2 cover under this extension will be subject to the terms of this Policy or the terms of the previous insurance, whichever QBE at our sole discretion decides; and
- 4.3 where QBE has been prejudiced by such late notification, the liability of QBE will be reduced to the amount for which QBE would have been liable had the notification been made at the correct time.

5. Estate and Legal Representatives/Spousal Liability

QBE will pay all Loss and/or Defence Costs Arising From a Claim made against the:

- 5.1 spouse of a Director or Officer solely based on their status as such, which seeks damages recoverable from:

- 5.1.1 relationship property;
- 5.1.2 property jointly held by a Director or Officer and the spouse; or
- 5.1.3 property transferred from a Director or Officer to the spouse;

- 5.2 estate, heirs, legal representatives, or assigns of any deceased, incompetent, insolvent, or bankrupt Director or Officer,

and notified to QBE during the Period of Insurance, resulting directly from a Claim made against that Director or Officer which is covered under this Policy.

Insofar as they can apply, any estate, heir, legal representative, assign, or spouse will observe and be subject to all the provisions of this Policy. No Excess will apply under this extension.

6. Investigations

In respect of Insuring Clauses 4 (Directors and Officers Liability) and 5 (Statutory Liability), QBE will pay on behalf of a Director, Officer or Employee the Defence Costs incurred by reason of that Director, Officer or Employee attending an Investigation.

Provided that:

- 6.1 QBE may, at our discretion, appoint legal counsel to represent the Insured involved in the Investigation;
- 6.2 the notice requiring the Insured to attend the Investigation is both received by the Insured and notified to QBE during the Period of Insurance;
- 6.3 in the event that the Insured withdraws a claim or QBE withdraws or declines cover, QBE will cease to advance Defence Costs and the Insured will refund any Defence Costs advanced by QBE to the extent that QBE is satisfied that the Insured was not entitled to such Defence Costs, unless QBE agrees in writing to waive recovery of such Defence Costs;
- 6.4 if cover for such Defence Costs is payable under Insuring Clause 8 (Criminal Defence Legal Costs) this extension shall not apply;
- 6.5 the maximum aggregate amount payable under this extension shall be NZD 100,000 unless otherwise specified, which forms part of and is not in addition to the Defence Costs Limit of Indemnity; and
- 6.6 this extension is subject to the Excess noted in the Policy Schedule.

7. Outside Directorships

In respect of Insuring Clause 4 (Directors and Officers Liability), QBE will pay, on behalf of a Director or Officer, Loss and/or Defence Costs which a Director or Officer becomes legally liable to pay by reason of a Claim first made against them and notified to QBE during the Period of Insurance for a Wrongful Act in their capacity as an Outside Director.

Provided that:

- 7.1 this cover is for not-for-profit companies only (unless otherwise stated and endorsed onto the Policy) and will be specifically in excess of any payment received from any other applicable insurance in force in respect of the Outside Entity and any payment received as indemnification by such Outside Entity;
- 7.2 if the Outside Entity holds insurance provided by QBE, or any of its member companies, then the Limit of Indemnity for all Loss and/or the Defence Costs Limit of Indemnity for all Defence Costs covered by this Policy will be reduced by the limit of indemnity of such other insurance provided by that QBE company;
- 7.3 QBE is not liable to make any payment for Loss and/or Defence Costs Arising From the actual or alleged insolvency of any Outside Entity or any actual or alleged inability of any Outside Entity to pay its debts as and when they fall due;
- 7.4 cover will not apply to any Claim brought:
 - 7.4.1 by a director, officer or employee of the Outside Entity; or
 - 7.4.2 by or on behalf or in the name of the Outside Entity at the instigation of or in solicitation, co-operation or enticement of or with a director or officer of the Outside Entity, the Company or any Director or Officer; or
 - 7.4.3 by any shareholder of the Outside Entity holding more than fifteen per cent (15%) of the voting share capital of the Outside Entity;
- 7.5 cover will not extend to the Outside Entity or to any of its other directors, officers or employees.

However 7.4.1 will not apply to a Claim made against an Outside Director:

- 7.6 by an employee of the Outside Entity alleging an Employment Dispute; or
- 7.7 for contribution or indemnity in respect of a Claim brought against another director, officer or employee of the Outside Entity, provided that such a claim would be covered as a Claim under this extension if it was brought directly against the Outside Director.

8. Trustees Liability

In respect of Insuring Clause 4 (Directors and Officers Liability), QBE will pay, on behalf of a Director or Officer, Loss and/or Defence Costs Arising From a Claim first made against a Director or Officer and notified to QBE during the Period of Insurance for a Wrongful Act in the Director's or Officer's capacity (individually or collectively) as trustees of the Company's own superannuation or pension fund. Such cover will apply to any Claim by any member of the superannuation or pension fund notwithstanding that the member may also be a Director or Officer.

Additional Extensions (applying to Insuring Clause 1 (General Liability))

The following extensions to the Policy are included automatically in respect of Insuring Clause 1 (General Liability), provided that each extension is subject to the terms of this Policy (unless otherwise stated). All payments made under these extensions form part of and are not in addition to the Limit of Indemnity.

9. Advertising Liability

QBE will indemnify the Insured in respect of Advertising Injury happening during the Period of Insurance in connection with the Business of the Insured.

Provided that:

- 9.1 QBE will not indemnify the Insured for any Claim in respect of or alleging Advertising Injury Arising From:
 - 9.1.1 statements made at the Insured's direction with knowledge that such statements are false;
 - 9.1.2 the failure of performance of contract. Provided that this exclusion will not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract;
 - 9.1.3 any incorrect description of the Insured's Products or services;
 - 9.1.4 any mistake in advertised price of the Insured's Products or services;
 - 9.1.5 the failure of the Insured's Products or services to conform with advertised performance, quality, fitness or durability;
 - 9.1.6 liability incurred by the Insured if the Business of the Insured is advertising, broadcasting, publishing or telecasting.
- 9.2 a sub-limit of NZD 1,000,000 any one Period of Insurance will apply;
- 9.3 an Excess of NZD 1,000 will apply.

10. Business Advice or Service

Notwithstanding Exclusion 23 (Professional Services), QBE will indemnify the Insured in respect of Personal Injury or Property Damage Arising From an error or omission in:

- 10.1 advice or services rendered by the Insured without charge;
- 10.2 professional medical advice by Medical Persons employed by the Insured to provide first aid and other medical services on the Insured's Premises.

11. Defective Workmanship and Property Damage during Work

The cover provided by this extension will:

- 11.1 apply to Insuring Clause 1 (General Liability);
- 11.2 apply notwithstanding Additional Exclusions 36 (Defective Materials, Design and Workmanship), 38 (Insured's Products), 42 (Property Owned), 43.1 and 43.4 (Vehicles); and
- 11.3 be subject to the Policy terms, including all other exclusions, specifically including Additional Exclusion 34 (Building Defects); and
- 11.4 only be available where the work:
 - 11.4.1 which created the Defective Product; or
 - 11.4.2 which caused the Property Damage,
 took place during the Period of Insurance, or any prior period in which the Insured was entitled to cover under this extension clause, or under previous iterations of a QBE extension with materially the same intention of cover.

Subject to the foregoing, QBE will indemnify the Insured for sums that the Insured becomes legally liable to pay to a third-party claimant for:

- 11.5 the Cost of Rectifying any Defective Product. The Defective Product must be Handed Over to the third-party, without knowledge or suspicion of its Defective nature, during the Period of Insurance within the Policy Territory and must occur in connection with the Business of the Insured;
- 11.6 the Cost of Rectifying any Property Damage to tangible property belonging to a third-party as a result of the Insured working on the property. The Property Damage must happen during the Period of Insurance within the Policy Territory and be caused by an Occurrence in connection with the Business of the Insured.

Provided that:

- 11.7 an Excess of NZD 1,000 will apply;
- 11.8 a sub-limit of NZD 100,000 in the aggregate for any one Period of Insurance will apply;
- 11.9 notwithstanding any provision to the contrary within this Policy, a Defence Costs sub-limit of NZD 100,000 in the aggregate for any one Period of Insurance will apply to Defence Costs. However, this limitation will not apply beyond this extension;
- 11.10 the Insured must, at the Insured's own expense, take all reasonable precautions to avoid the happening of any event which might result in Handover of Defective Product or Property Damage.

For the purposes of this extension:

11.11 'Defective Product' means:

11.11.1 tangible Insured's Products or parts thereof; or

11.11.2 completed physical work by the Insured on tangible property,

which has proven to be physically and tangibly Defective, but excludes any defects or issues relating to location, placement, height, software, manuals, instructions for use, and excludes any absence or inadequacy of, or any non-compliance with warranties, guarantees, certification, survey, or documentation of any kind.

11.12 'Defective' means defective, harmful or failed to perform the physical function for which it was sold, supplied, constructed, repaired, manufactured or installed.

11.13 'Handed Over' or 'Handover' means:

11.13.1 the supply of tangible Insured's Products from the Insured directly to a third-party; or

11.13.2 the completion for a third-party of all physical work on tangible property within the Insured's contracted work,

which happens when the Insured's Products, and property physically worked on, cease to be in the possession of or under the control of the Insured at final completion and delivery to the third-party. For staged work or work involving separate parts or different areas, Handover shall only happen at final completion and delivery of all stages, parts and areas.

11.14 'Cost of Rectifying' means the cost of rectifying, remedying, removal, repair, alteration, treatment or replacement of the Defective Product or Property Damage, but excludes any refund, credit, refusal to pay, economic loss, loss of rent, loss of profit, loss of use, cost or loss relating to delay, or any consequential costs or losses.

QBE will not indemnify the Insured under this extension for any Claim in respect of or alleging:

11.15 the Insured failing to perform any contractual obligation to fully complete the contracted work, or to deliver the entirety of any goods, products or property which the Insured is obliged to deliver;

11.16 any defects, flaws, or performance issues that were known, or suspected, to exist by the Insured, or communicated to the Insured by the third-party, at or prior to Handover;

11.17 any failure to obtain or any non-compliance with consent, inspection, certification, or approval from any local or regional authority, government agency or department, body corporate, neighbour, or any governing body whatsoever, except to the extent that there is a physical and tangible defect in the Defective Product;

11.18 Property Damage that is covered under any contract works insurance, or property insurance, which extends cover to the Insured;

11.19 Aircraft, Aircraft products or hovercraft;

11.20 Watercraft exceeding ten (10) metres in length;

11.21 professional advice or service provided by the Insured or any error or omission connected therewith;

11.22 any defect in aesthetics, colour, style or appearance, except to the extent that the Insured has failed to comply with an agreed specification;

11.23 any defect in any design, plan or specification regardless of whether or not the Insured was responsible for the design, plan or specification.

12. Goods on Hook

Notwithstanding Additional Exclusions 36 (Defective Materials, Design and Workmanship) and 42 (Property Owned), QBE will indemnify the Insured for all sums which the Insured shall become legally liable to pay for Damage to property while being lifted or lowered or moved or carried by any crane(s) owned, hired, or otherwise the responsibility of the Insured.

Provided that:

12.1 for the purposes of this extension, 'Damage' means physical injury to or destruction of tangible property which occurs during the Period of Insurance;

12.2 a sub-limit of NZD 250,000 any one Period of Insurance shall apply;

12.3 an Excess of NZD 2,500 shall apply.

13. Innkeepers Liability

QBE will indemnify the Insured for all sums which the Insured shall become legally liable to pay as compensation (including interest) as provided for under the Innkeeper's Act 1962.

Provided that an Excess of NZD 1,000 shall apply.

14. Landlords Liability

Notwithstanding Additional Exclusion 42 (Property Owned), QBE will indemnify the Insured in respect of Personal Injury or Property Damage Arising From the Insured's legal ownership, but not physical occupation, of any Premises.

15. Lost or Stolen Keys

QBE will indemnify the Insured for costs reasonably and necessarily incurred in altering or replacing locks and their keys or combinations where keys or combinations giving access to properties, for which the Insured is responsible but does not own, hire, lease or rent, are lost, stolen or believed on reasonable grounds to have been duplicated without proper authority.

Provided that:

- 15.1 a sub-limit of NZD 250,000 any one Period of Insurance shall apply;
- 15.2 an Excess of NZD 1,000 shall apply.

16. Mechanical Plant Liability

Notwithstanding Additional Exclusions 36 (Defective Materials, Design and Workmanship), 38 (Insured's Products), 42 (Property Owned) and 43 (Vehicles), QBE will indemnify the Insured in respect of Personal Injury or Property Damage:

- 16.1 Arising From loading or unloading any Vehicle used by or on behalf of the Insured but not in the Insured's care, custody or control;
- 16.2 Arising From any Vehicle while it is being operated for its specialised function or purpose, and not as a Vehicle;
- 16.3 relating to the operation or ownership or lease of a car park including the parking of Vehicles by the Insured so as to cause damage to Vehicles within it (other than to Vehicles belonging to, or used by or on behalf of the Insured);
- 16.4 relating to any bridge, viaduct, weighbridge, road or anything beneath the Vehicle caused by vibration or by the weight of any Vehicle and/or its load, provided that any designated weight restrictions were not exceeded.

17. Product Withdrawal Costs

Notwithstanding Exclusions 36 (Defective Materials, Design and Workmanship), 38 (Insured's Products) and 44 (Withdrawal or Repair of Products), QBE will indemnify the Insured for up to eighty per cent (80%) of those costs reasonably incurred in the withdrawal or recall from use in New Zealand of the Insured's Products which have the same defect as a product that has already given rise to a Claim in respect of which the Insured is entitled to indemnity under Insuring Clause 1 (General Liability).

Provided that:

- 17.1 a sub-limit of NZD 100,000, inclusive of Defence Costs, shall apply in respect of all such withdrawals or recalls during any one Period of Insurance;
- 17.2 an Excess of NZD1,000, inclusive of Defence Costs, shall apply to each such withdrawal or recall.

18. Property in Care, Custody or Control

Notwithstanding Additional Exclusion 42 (Property Owned), but subject to Additional Exclusions 36 (Defective Materials, Design and Workmanship) and 43 (Vehicles), QBE will indemnify the Insured in respect of Property Damage to property, including Employees' property, where the liability arises while the property is in the care, custody or control of the Insured.

Provided that:

- 18.1 real property, property owned, or premises leased by or rented to or by the Insured is excluded;
- 18.2 a sub-limit of NZD 500,000 any one Period of Insurance shall apply;
- 18.3 an Excess of NZD 1,000 shall apply.

19. Punitive or Exemplary Damages

QBE will indemnify the Insured in respect of punitive or exemplary damages awarded for Personal Injury in New Zealand.

Provided that:

- 19.1 any liability Arising From trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse is excluded;
- 19.2 any award of punitive or exemplary damages by any court of law outside New Zealand is excluded;
- 19.3 a sub-limit of NZD 2,000,000, inclusive of Defence Costs, any one Period of Insurance shall apply;
- 19.4 an Excess of NZD 500, inclusive of Defence Costs, shall apply.

20. Remotely Piloted Aircraft Systems

Notwithstanding Additional Exclusion 32 (Aircraft and Watercraft), QBE will indemnify the Insured in respect of Personal Injury or Property Damage Arising From the Insured's operation of remotely piloted aircraft systems, unmanned aerial vehicles, unmanned aerial systems, drones and/or radio controlled helicopters in New Zealand, each of which weighing under 15 kilograms.

Provided that:

- 20.1 the Insured complies with all applicable Civil Aviation Authority rules and/or regulations regarding the use of remotely piloted aircraft systems, unmanned aerial vehicles, unmanned aerial systems, drones and/or radio controlled helicopters;
- 20.2 a sub-limit of NZD 1,000,000 any one Period of Insurance will apply;
- 20.3 an Excess of NZD 1,000 will apply.

21.Tenants Liability

Notwithstanding Additional Exclusion 42 (Property Owned), QBE will indemnify the Insured in respect of Property Damage to Premises (including landlord's fixtures and fittings) leased or rented, but not owned, by the Insured.

22.Underground Services

QBE will indemnify the Insured in respect of Personal Injury or Property Damage in New Zealand to existing underground services, cables, pipes or equipment.

Provided that:

- 22.1 prior to the commencement of any work, the Insured enquired of the relevant authority, corporation or company as to the location of such services;
- 22.2 the Insured took all reasonable precautions to prevent Personal Injury or Property Damage;
- 22.3 an Excess of NZD 5,000 shall apply.

23.Vehicle or Watercraft, Equipment or Machinery Service or Repair

Notwithstanding Additional Exclusions 32 (Aircraft and Watercraft), 36 (Defective Materials, Design and Workmanship), 38 (Insured's Products), 42 (Property Owned) and 43 (Vehicles), QBE will indemnify the Insured in respect of Personal Injury or Property Damage in New Zealand Arising From the service or repair by the Insured of any:

- 23.1 Vehicle and/or its propulsion systems, accessories or fittings; or
- 23.2 Watercraft not exceeding ten (10) metres in length, and/or its propulsion systems, accessories or fittings (Watercraft being measured in length overall, being stem to stern excluding any fixed or movable projections extending beyond these points); or
- 23.3 equipment or machinery.

Provided that:

- 23.4 the Vehicle or Watercraft, equipment or machinery is not owned, hired, leased or rented by the Insured, and is or was in the care, custody or control of the Insured for the purpose of the service or repair;
- 23.5 the cost of rectifying, repairing or replacing defective materials or remedying defective workmanship in respect of the actual part or parts worked on is excluded but resultant Property Damage Arising From defective materials or workmanship is not excluded;
- 23.6 a sub-limit of NZD 250,000 any one Period of Insurance shall apply in respect of Property Damage to the Vehicle or Watercraft, equipment or machinery which is or has been in the care, custody or control of the Insured for service or repair;
- 23.7 an Excess of NZD 1,000 shall apply to Property Damage to the Vehicle or Watercraft which is or has been in the care, custody or control of the Insured for service or repair;
- 23.8 an Excess of NZD 2,500 shall apply to Property Damage to equipment or machinery which is or has been in the care, custody or control of the Insured for service or repair.

24.Vibration and Removal of Support

QBE will indemnify the Insured in respect of Personal Injury or Property Damage in New Zealand Arising From vibration, or removing, weakening or interfering with, the support of land or buildings.

Provided that:

- 24.1 the land or buildings affected are not owned or occupied by the Insured;
- 24.2 the Personal Injury or Property Damage arises from the actions of the Insured;
- 24.3 an Excess of NZD 5,000 shall apply.

25.Visits to the North American Countries

Notwithstanding Additional Exclusion 40 (North American Exports), QBE will indemnify the Insured in respect of Personal Injury or Property Damage in the North American Countries arising solely out of the actions of non-resident directors, executives and salespersons temporarily visiting the North American Countries in the course of the Business of the Insured.

Provided that:

- 25.1 the Insured has no Premises, branch or Subsidiary operation in the North American Countries;
- 25.2 any work performed in, on or in connection with the manufacture, assembly, repair, servicing, maintenance, amendment, alteration or enhancement to any of the Insured's Products is excluded;
- 25.3 the ownership, possession, control, or maintenance or use of any Vehicle or Watercraft is excluded;
- 25.4 the maximum amount payable by QBE, inclusive of Defence Costs, any one Period of Insurance shall not exceed the Limit of Indemnity.

26. Warrant of Fitness

Notwithstanding Exclusion 23 (Professional Services), QBE will indemnify the Insured for all sums that the Insured shall become legally liable to pay as compensation (including interest) in respect of Claims made against the Insured during the Period of Insurance and Arising From a negligent act, error or omission, in connection with the Business, by any licensed, qualified Vehicle certifier employed by the Insured.

Provided that:

- 26.1 for the purposes of this extension, the 'Business' means:
 - 26.1.1 the inspection and certification of Vehicles for the issuing of a warrant of fitness certificate as may be required by law; and
 - 26.1.2 pre-purchase or Vehicle appraisal services;
- 26.2 a sub-limit of NZD 500,000 any one Period of Insurance, inclusive of Defence Costs, shall apply;
- 26.3 an Excess of NZD 2,500 shall apply;
- 26.4 the coverage under this extension does not extend to include the valuation of any Vehicle, motorcycle, Watercraft, motor and/or accessory of any type whatsoever;
- 26.5 it is warranted that the Insured and its Employees are licensed and qualified to issue a warrant of fitness certificate as may be required by law.

Additional Extensions (applying to Insuring Clause 5 (Statutory Liability))

The following extensions to the Policy are included automatically in respect of Insuring Clause 5 (Statutory Liability), provided that each extension is subject to the terms of this Policy (unless otherwise stated). All payments made under these extensions form part of and are not in addition to the Limit of Indemnity.

27. Enforceable Undertakings

QBE will pay the following costs in respect of an enforceable undertaking accepted by the regulator under section 123 of the Health and Safety at Work Act 2015 and Arising From an Event covered under this Policy, subject to the written consent of QBE, whose consent will not be unreasonably withheld:

- 27.1 any payment of amends in reparations paid to the victim(s) of the Event, up to a maximum amount of NZD 250,000 any one Period of Insurance which is included in and not in addition to the Limit of Indemnity specified in the Policy Schedule; and
- 27.2 reasonable Defence Costs incurred in the drafting and preparation of the enforceable undertaking whether accepted or rejected by the regulator, up to a maximum amount of NZD 250,000 any one Period of Insurance which is included in and not in addition to the Defence Costs limit of indemnity.

Provided that:

- 27.3 the Event has resulted in a charging document being filed under the Health and Safety at Work Act 2015; and
- 27.4 the payment of amends to the victim will not exceed the amount QBE would expect to pay to cover a reparation order at sentencing; and
- 27.5 the amount payable overall under this extension will not exceed the amount QBE would expect to pay had the Insured been convicted and sentenced.

There is no cover under this extension for:

- 27.6 any costs associated with the regulator's administration fee; or
- 27.7 any costs in connection with compliance, rectifications, consultation, improvements, training, donations, remedial actions or otherwise meeting the enforceable terms of the enforceable undertaking; or
- 27.8 any costs associated with compliance monitoring activities for the enforceable undertaking; or
- 27.9 any amount payable to any party other than the victim under the definition of victim under the Sentencing Act 2002 had the Event resulted in a conviction (or their estate in the event of death); or
- 27.10 any Fine, reparation orders or Defence Costs that may arise from the Insured's failure to comply with or cause the Insured to be in contravention of the terms contained in the enforceable undertaking; or
- 27.11 any expert costs incurred in the drafting and preparation of the enforceable undertaking unless agreed to by QBE.

28. Extended Reporting Period

If QBE refuses to renew this Policy, the Insured may, upon payment of an additional premium not exceeding one hundred per cent (100%) of the full annual premium payable for the expiring Period of Insurance, extend the cover under this Policy for a further twelve (12) months from the date of expiry, provided that:

- 28.1 this option to extend the Policy must be notified in writing to QBE within thirty (30) days of the date of expiry;
- 28.2 the extension shall only apply in respect of an Event before the expiry date;
- 28.3 an offer by QBE of any renewal terms or premiums different from expiring terms or premiums shall not constitute a refusal to renew; and
- 28.4 the indemnity under this extension is included in and not in addition to the Limit of Indemnity specified in the Policy Schedule.

Definitions

In this Policy, including any endorsements, unless specifically stated to the contrary:

1. 'Acquitted by a Court' means:

- 1.1 dismissal of all charges prior to a hearing; or
- 1.2 after a defended hearing or other final adjudication:
 - 1.2.1 a dismissal of all the charges; or
 - 1.2.2 a verdict of not guilty on all the charges,

but shall not include a dismissal pursuant to a plea bargain where multiple charges have been laid or a criminal prosecution where the Insured is charged with more than one offence and convicted on at least one of the charges.

2. 'Act of Parliament' means:

Any Act of the New Zealand Parliament, other than an Excluded Act, including any code, rules, regulations, by-laws or other subordinate legislation made under such Act and any statutory amendment or re-enactment of that Act.

3. 'Act of Terrorism' means:

An act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

4. 'Advertising Injury' means:

Liability Arising From one or more of the following:

- 4.1 defamation except Arising From defamatory statements or disparaging material made or produced prior to the inception date of this Policy;
- 4.2 infringement of copyright, title or slogan;
- 4.3 unfair competition, misappropriation of advertising ideas or style of doing business;
- 4.4 invasion of privacy committed or alleged to have been committed in any Advertisement and Arising From any advertising activities conducted by the Insured or on the Insured's behalf, in the course of carrying out the Business of the Insured.

For the purposes of this definition, 'Advertisement' means any manner of communication given to the public including by way of any form of print media, publication, telecommunication, radio or television broadcast, electronic mail, internet, world wide web or exhibit.

5. 'Aircraft' means:

Any machine, craft or thing made or intended to fly or move in or through the atmosphere or space.

6. 'Arising From' means:

To arise directly or indirectly out of, alleging, based upon, in consequence of, contributed to by, connected with, or involving in any way.

7. 'Business of the Insured' means:

- 7.1 the business of the Insured as stated in the Policy Schedule, which shall include:
 - 7.1.1 the provision of lunch-room facilities, social, sports, welfare and similar organisations for the benefit of the Insured's Employees;
 - 7.1.2 first aid and medical services provided by Medical Persons on the Insured's Premises;
 - 7.1.3 associated travel;
- 7.2 any other activity that the Insured may undertake, provided that the Insured gives prior written notice to QBE and obtains QBE's acknowledgement of coverage.

8. 'Claim' means:

- 8.1 legal or arbitral proceedings instituted and served on an Insured;
- 8.2 a written demand for monetary relief made or brought against an Insured; or
- 8.3 the receipt of notice from any person or party of any intention towards clause 8.1 or 8.2 above.

9. 'Company' means:

The Named Corporation and its Subsidiary.

10. 'Credit Arrangement' means:

Any credit agreement, extension of credit or hire purchase agreement, loan or transaction in the nature of a loan, lease or rental agreement, invoice, account or otherwise evidence of debt, payments made or withdrawals from any customer's account involving items which are not finally paid for any reason.

11. 'Criminal Offence' means:

Any act or omission that has been accidentally committed for which anyone can be punished under the Crimes Act 1961, Summary Offences Act 1981, Misuse of Drugs Act 1976, Land Transport Act 1998, Commerce Act 1986, and all amendments to these Acts, except those offences which are specifically excluded by any Policy exclusion relevant to Insuring Clause 8 (Criminal Defence Legal Costs).

12. 'Defence Costs' means:

12.1 in respect of all insuring clauses, except Insuring Clause 8 (Criminal Defence Legal Costs), any necessary and reasonable legal or related expert or witness costs or disbursements incurred by QBE or by the Insured with QBE's prior written consent:

12.1.1 in investigating, defending, settling or appealing any Claim; or

12.1.2 in preparing for and attending an Investigation.

In respect of Insuring Clause 1 (General Liability), 'Defence Costs' shall also mean first-aid expenses incurred by the Company Arising From a Personal Injury.

12.2 in respect of Insuring Clause 8 (Criminal Defence Legal Costs), any necessary and reasonable legal or related expert or witness costs or disbursements incurred by the Insured with QBE's prior written consent in investigating, defending or appealing any Prosecution.

'Defence Costs' do not include wages, salaries or other remuneration or benefits paid by the Company to a Director, Officer or Employee.

13. 'Defence Costs Limit of Indemnity' means:

13.1 in respect of Insuring Clause 4 (Directors and Officers Liability), the defence costs limit of indemnity specified in the Policy Schedule.

13.2 in respect of Insuring Clauses 3 (Employment Practice Liability), 5 (Statutory Liability), 6 (Employees Liability) and 7 (Internet Liability), an amount equal to the Limit of Indemnity or NZD 1,000,000 in the aggregate in respect of each insuring clause, whichever is the lesser.

14. 'Direct Financial Loss' means:

The direct financial loss caused by the loss of money, securities or other property illicitly taken from and either owned by the Company or in the care, custody or control of the Company and for which the Company is legally liable. Direct Financial Loss does not include:

14.1 salary, wages, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or any other remuneration or benefit paid by the Company to its Directors or Officers or Employees; or

14.2 costs, fees or other expenses incurred in establishing the existence or amount of any such loss, except as provided in Condition 15 (Direct Financial Loss – Establishing Loss).

15. 'Director' means:

Any person who was, is or may become a validly appointed director, alternate director or trustee of the Company.

16. 'Discovery' or 'Discovered' means:

When any Director or Officer (who is not in collusion with an Employee who has or is attempting to commit a Dishonest Act) becomes aware of any facts which would cause a reasonable person to assume that Direct Financial Loss which may be covered by this Policy has been or is likely to be incurred, even though the quantum or details of the Direct Financial Loss are not known at the time of Discovery. Such Discovery constitutes Discovery by every Insured.

17. 'Dishonest Acts' means:

Any dishonest act or omission committed by any specific and identifiable Employee or any Third Party, acting alone or in collusion with others, with the intent to deprive the Company of money, securities or property and confer the benefit of them on the Employee, Third Party or any other person or organisation.

18. 'Employee' means:

Any person who was, is or may become an employee of the Company on a full-time, part-time or seasonal basis during or prior to commencement of the Period of Insurance.

'Employee' will not include:

18.1 a partner, consultant, independent contractor, temporary employee, broker, consignee, any person on secondment or any agent of the Company;

18.2 a Director in respect of Dishonest Acts covered under Insuring Clause 2 (Crime) unless the Director is acting within the scope of the usual duties of an employee of the Company.

However, notwithstanding 18.1, in respect of Insuring Clause 1 (General Liability) and Insuring Clause 5 (Statutory Liability), 'Employee' will include:

18.3 any person under hire or lent to the Company; or

18.4 any temporary or voluntary worker; or

18.5 any authorised student or any person while working for the Insured for the purpose of gaining work experience; or

18.6 any Labour-Only Contractor or Subcontractor but only while they are carrying out work for the Business of the Insured and provided that they are not insured under any other policy.

19. 'Employment Dispute' means:

Any actual or alleged employment-related conduct of the following kind, against any former, current or prospective Employee in respect of that person's past, present or prospective employment with the Company:

- 19.1 unlawful discrimination but excluding racial discrimination;
- 19.2 invasion or breach of the right of privacy;
- 19.3 defamation;
- 19.4 wrongful infliction of emotional distress, mental anguish or humiliation;
- 19.5 actual or constructive termination of employment that is in breach of the law;
- 19.6 misleading or deceptive representation or advertising relating to employment;
- 19.7 failure or refusal to employ or promote;
- 19.8 wrongful demotion;
- 19.9 harassment (sexual or otherwise) and/or bullying;
- 19.10 unfair discipline or evaluation of employment performance;
- 19.11 victimisation,

occurring within New Zealand.

20. 'Employment-Related Benefits' means:

- 20.1 severance or redundancy payments or entitlements;
- 20.2 stock, shares, stock options or any entitlement or right under any equity plan of any description including the participation in any such equity plan;
- 20.3 non-monetary benefits including but not limited to a company car, travel allowance, telecommunications, medical or life insurance expenses, education and training allowances, and equipment allowances;
- 20.4 any benefit, payment or entitlement of any kind in respect of paid or unpaid leave;
- 20.5 bonus or incentive payments, or any entitlement or right under a bonus or incentive plan (which, for the avoidance of doubt, does not include any payments, entitlement or right under a commission scheme);
- 20.6 payments or contributions in respect of any provident, benefit, superannuation, pension or retirement fund, or any other account, fund, scheme or plan intended to provide benefits, in whole or in part, at retirement or a particular age, or on the happening of a particular event.

21. 'Event' means:

Any act or omission occurring in the course of the Company's business that gives rise, or may give rise, to an action under an Act of Parliament.

22. 'Excess' means:

The amount shown as the excess in the Policy Schedule, or in any applicable extension or endorsement, which shall be borne by the Insured in respect of each and every Claim, Direct Financial Loss or Prosecution covered under the Policy.

23. 'Excluded Act' means:

- 23.1 Anti-Money Laundering and Countering Financing of Terrorism Act 2009;
- 23.2 Arms Act 1983;
- 23.3 Aviation Crimes Act 1972;
- 23.4 Crimes Act 1961;
- 23.5 Criminal Proceeds (Recovery) Act 2009;
- 23.6 Land Transport Act 1998;
- 23.7 Real Estate Agents Act 2008;
- 23.8 Summary Offences Act 1981,

and any other Act of Parliament specified in the Policy Schedule as an excluded Act and any code, rules, regulations, bylaws or other subordinate legislation made under such Act.

24. 'Fine' means:

In respect of Insuring Clause 5 (Statutory Liability), any fine or monetary penalty or costs assessed by a court to be paid by the Insured upon conviction for an offence in connection with an Event for which QBE may legally indemnify the Insured. This does not include a fine imposed pursuant to the Health and Safety at Work Act 2015, but this definition is extended to include a sentence of reparation imposed following a conviction under that Act.

25. 'Insured' means:

The Company, and a Director or Officer of the Company.

In respect of Insuring Clause 1 (General Liability) 'Insured' shall also mean:

- 25.1 an Employee, partner or shareholder of the Company while acting within the scope of his/her duties as such, except in respect of any liability under the Companies Act 1993; and
- 25.2 every principal, in respect of its vicarious liability arising solely out of the performance, by the Company or a Director, Officer or Employee, of any contract of work for such principal, but always subject to the terms of this Policy; and
- 25.3 every office bearer or member of a social or sporting club formed with the consent of the Company in respect of Claims arising out of the duties connected with the activities of any such club; and
- 25.4 each joint venturer, co-venturer or joint lessee of the Named Corporation but only with respect to liability incurred as a joint venturer, co-venturer or joint lessee, provided that the Named Corporation gives written notice to QBE and obtains QBE's written acknowledgement of coverage for such joint venture, co-venture or joint lease.

In respect of Insuring Clause 8 (Criminal Defence Legal Costs) 'Insured' will only mean any Director, Officer or Employee of the Company.

26. 'Insured's Products' means:

Any goods, products, including labels, instructions for use and advice and property after they have ceased to be in the possession of or under the control of the Company, manufactured, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by the Company (including any container, other than a Vehicle).

27. 'Intellectual Property Breach' means:

An unintentional infringement or unauthorised use of actual or alleged intellectual property rights which includes, but is not limited to, breach of copyright, trademark, registered design or patent, plagiarism or breach of confidentiality. Any such alleged breach must arise directly from the Company's business activities.

28. 'Internet Error' means:

Any unintentional:

- 28.1 Intellectual Property Breach;
- 28.2 defamation;
- 28.3 unauthorised use of names (including domain names), trade names, trade address, service marks, service names, titles, slogans, formats, characters, character names, characterisations, plots, musical compositions, performances, logos, artwork, graphics, photographs or programme materials;
- 28.4 passing off;
- 28.5 breach of confidentiality or infringement of any right to privacy, including any alleged breach of the terms of the Privacy Act 2020;
- 28.6 misuse of information which is either confidential or subject to statutory restrictions on use;
- 28.7 transmission of any computer virus, programme or code that causes loss or damage to any computer system and/or prevents or impairs any computer system from performing and/or functioning accurately and/or properly;
- 28.8 belittling of a product or work (whether completed or not) of others; or
- 28.9 unauthorised taking for use of any advertising idea, material, slogan, style or title of others,

committed or alleged to have been committed by the Insured via its Website, use of the internet, electronic mail or any electronic network, in connection with the Business of the Insured as specified in the Policy Schedule.

29. 'Investigation' means:

Any official inquiry, investigation, public examination or commission into the affairs of the Company:

- 29.1 which is instigated by a person or government authority that is legally empowered to conduct such official inquiry, investigation, public examination or commission;
- 29.2 which an Insured is legally compelled to attend; and
- 29.3 which alleges an Event or Wrongful Act by that Insured.

30. 'Labour-Only Contractors or Subcontractors' means:

Any contractor or subcontractor who supplies only their labour and who work fully under the direction, control and supervision of the Insured.

31. 'Limit of Indemnity' means:

The maximum amount payable in the event of a Claim under this Policy as specified in the Policy Schedule for each insuring clause. If there is no Limit of Indemnity stated in the Policy Schedule then no cover is provided for that insuring clause.

32. 'Loss' means:

- 32.1 in respect of Insuring Clauses 3 (Employment Practice Liability), 4 (Directors and Officers Liability), 6 (Employers Liability) and 7 (Internet Liability):
- 32.1.1 damages awarded or judgments entered against the Insured;
 - 32.1.2 settlements negotiated with the prior written consent of QBE;
 - 32.1.3 legal costs and expenses for which the Insured shall become legally liable to the claimant;
 - 32.1.4 interest accruing after the date of entry of judgment against the Insured and until the date QBE pays, tenders or deposits in a court the judgment sum or such part of that judgment sum as is required to satisfy QBE's liability to the Insured in terms of the Limit of Indemnity.
- 'Loss' will not include:
- 32.1.5 punitive, liquidated, aggravated or exemplary damages (unless awarded in New Zealand for defamation or Personal Injury);
 - 32.1.6 taxes, fines or penalties;
 - 32.1.7 back-pay, or compensation relating to back-pay, where the Company is ordered by the relevant court or tribunal to reinstate the claimant as an Employee;
 - 32.1.8 front-pay, future loss, future damages, future compensation or future economic relief (in all cases, considered from the point in time that reinstatement was to occur) where the Company is ordered by the relevant court or tribunal to reinstate the claimant as an Employee but refuses or fails to do so for whatever reason;
 - 32.1.9 the cost of physical modifications to or procedures within the Insured's workplace;
 - 32.1.10 education, seminar or similar programme costs relating to or following an Employment Dispute;
 - 32.1.11 any Employment-Related Benefit or amounts attributable to any Employment-Related Benefit;
 - 32.1.12 in respect of a Claim that alleges an inadequacy of the price or consideration paid or proposed to be paid for the acquisition or the completion of the acquisition of all, or substantially all, the ownership interest in, or assets of, any entity or business, the amount of any judgment or settlement representing the amount by which such price or consideration is effectively increased nor any amount for the claimant's costs and expenses;
 - 32.1.13 the refund of money paid as consideration for any goods or services, by way of damages or otherwise;
 - 32.1.14 any amount that is uninsurable under New Zealand law.
- In respect of Insuring Clause 6 (Employers Liability), 'Loss' shall also mean punitive and exemplary damages, provided that the Personal Injury is covered by the Accident Compensation Act 2001 (notwithstanding Exclusion 20 (Personal Injury Legislation) and 32.1.5 above).
- 32.2 in respect of Insuring Clause 5 (Statutory Liability), any Fine.

33. 'Medical Persons' means:

Any registered health practitioner or first-aid attendant.

34. 'Named Corporation' means:

The legal entity named in the Policy Schedule.

35. 'North American Countries' means:

The United States of America and/or Canada, including those territories to which the legal jurisdiction of the United States of America or Canada extends or applies.

36. 'Occurrence' means:

An event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury or Property Damage that is neither expected nor intended from the standpoint of the Insured.

37. 'Officer' means:

Any person who was, is, or may become:

- 37.1 an Employee who is concerned in, or takes part in, the management of the Company, irrespective of the name that is given to that Employee's position; or
- 37.2 a trustee of a superannuation or pension fund established for the benefit of the Employees of the Company provided that person is also an Employee or Director,

but excluding any externally appointed officers such as receivers, managers, liquidators, auditors, trustees, administrators, mortgagees in possession, or the like.

38. 'Outside Director' means:

A Director or Officer, who has been, now is or may become a director or officer of an Outside Entity and holds that position at the request and as a representative of the Company.

39. 'Outside Entity' means:

- 39.1 any non-profit organisation; or
- 39.2 any other entity that is endorsed onto the Policy.

40. 'Period of Insurance' means:

The period of insurance specified in the Policy Schedule.

41. 'Personal Injury' means:

- 41.1 in respect of Insuring Clause 1 (General Liability), bodily injury (including resulting death, illness or care), disability, shock, fright, mental anguish or mental injury, including such injury Arising From the following by the Insured:
 - 41.1.1 false arrest, wrongful detention, false imprisonment or malicious prosecution;
 - 41.1.2 wrongful entry or eviction or other invasion of the right of privacy;
 - 41.1.3 assault and battery, provided that this was not committed by or at the direction of the Insured except for the purpose of preventing or eliminating danger to persons or property;
 - 41.1.4 trespass to the person;
 - 41.1.5 defamation.

'Personal Injury' excludes any such injury Arising From or in the course of employment with the Insured.
- 41.2 in respect of Insuring Clause 6 (Employers Liability), bodily injury, sickness, disease or infection, including resulting death, and disability, shock, fright, mental anguish or mental injury, that arises out of or in the course of employment with the Company. For the purposes of this insurance, the disease shall be sustained when the Employee is first exposed to the condition in New Zealand out of which the disease results.

42. 'Policy' means:

This document, the Policy Schedule and any endorsements issued by QBE.

43. 'Policy Schedule' means:

The current schedule issued by QBE.

44. 'Policy Territory' means:

- 44.1 in respect of Insuring Clause 1 (General Liability), worldwide excluding North American Countries, unless otherwise stated in the Policy Schedule, and except:
 - 44.1.1 where the local laws require the Insured to have insurance with an insurer or insurance provider licensed in that territory;
 - 44.1.2 where specifically noted in Additional Extensions 17 (Product Withdrawal Costs), 19 (Punitive or Exemplary Damages), 22 (Underground Services), 23 (Vehicle or Watercraft, Equipment or Machinery Service or Repair) and 24 (Vibration and Removal of Support).
- 44.2 in respect of Insuring Clause 4 (Directors and Officers Liability) and Insuring Clause 7 (Internet Liability), worldwide excluding North American Countries, unless otherwise stated in the Policy Schedule.

45. 'Pollutants' means:

Any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, radioactive material of any sort, chemicals and waste. Waste includes, but is not limited to, material to be recycled, reconditioned or reclaimed.

46. 'Premises' means:

The portion of any building or property owned or occupied by the Company as a place to conduct its business.

47. 'Property Damage' means:

- 47.1 physical injury to or destruction or loss of tangible property including resulting loss of use; or
- 47.2 loss of use of tangible property which has not been physically injured or destroyed.

48. 'Prosecution' means:

Any criminal proceedings in any court in New Zealand including a District Court, High Court or any other court in which criminal proceedings may be heard.

49. 'Retroactive Date' means:

The retroactive date specified in the Policy Schedule.

50. 'Subsidiary' means:

- 50.1 any subsidiary company that, as at the commencement of the Period of Insurance, is controlled by the Insured through legal or beneficial ownership of more than one-half the maximum number of issued voting stock or is deemed a subsidiary by virtue of any applicable legislation or law, including a subsidiary of the Named Corporation's subsidiary;
- 50.2 any company that by virtue of any applicable legislation or law becomes a subsidiary during the Period of Insurance provided that company:
 - 50.2.1 has total gross assets in value less than twenty-five per cent (25%) of the total gross assets of the Company; and
 - 50.2.2 conducts business activities that are substantially the same as the Company's business activities as most recently advised to QBE; and
 - 50.2.3 is domiciled outside any North American Countries;
- 50.3 any other company that by virtue of any applicable legislation or law becomes a subsidiary during the Period of Insurance but does not comply with any of the criteria stated in subclauses 50.2.1, 50.2.2 or 50.2.3 provided that detailed notice of the creation or acquisition is given to QBE as soon as practicable but always within ninety (90) days of the creation or acquisition and the Company agrees to pay any additional premium or accept other terms imposed by QBE.

The Retroactive Date applicable to cover under this Policy for any subsidiary will be either the date of creation or acquisition by the Company or the date specified as the Retroactive Date in the Policy Schedule, whichever is the latter.

51. 'Third Party' means:

Any natural person who is not a Director, partner, officer, trustee or Employee of any Insured and is not acting in collusion with any Employee.

52. 'Vehicle' means:

Any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power and any trailer or other attachment made or intended to be drawn by any such machine, and includes its accessories, tools, specialised equipment and spare parts.

53. 'Watercraft' means:

Any vessel, craft or thing made or intended to float on or in, or travel on or through water.

54. 'Website' means:

The Insured's internet site(s) used to conduct and promote the Business of the Insured (such site(s) advised in the proposal and/or by any subsequent written advice to QBE).

55. 'Wrongful Act' means:

- 55.1 in respect of a Director or Officer, any actual or alleged breach of duty, breach of trust, neglect, error, misstatement, misleading statement, omission, breach of authority, Intellectual Property Breach, or defamation committed by a Director or Officer, or by any other person for which a Director or Officer is legally liable, while acting in their capacity as a Director or Officer of the Company.
- 55.2 in respect of the Company, any actual or alleged breach of duty, breach of trust, neglect, error, misstatement, misleading statement, omission, breach of authority, Intellectual Property Breach, or defamation committed by the Company.

Exclusions

QBE will not indemnify the Insured under any insuring clause of this Policy for any Claim:

1. Anti-Money Laundering and Countering Financing of Terrorism Act

Arising From the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

2. Asbestos

Arising From asbestos in whatever form or quantity.

3. Bodily Injury

Arising From death, bodily or mental injury, illness or emotional distress of any person. However, this exclusion will not apply to:

- 3.1 any Claim for emotional distress in respect of any actual or alleged Employment Dispute; or
- 3.2 any Claim for Personal Injury under Insuring Clauses 1 (General Liability) or 6 (Employers Liability); or
- 3.3 any Claim for an Event under Insuring Clause 5 (Statutory Liability).

4. Chat Rooms

Arising From any chat rooms, electronic bulletin boards, electronic open-forum debate sites or online social networking sites.

5. Contractual Liability

Arising From any liability of the Company under any contract, warranty or agreement, unless such liability would have attached at law in the absence of such contract, warranty or agreement. This exclusion will not apply:

- 5.1 to the contractual obligation of the Company to indemnify a Director or Officer against a Loss and/or Defence Costs that are covered under Insuring Clause 4 (Directors and Officers Liability); or
- 5.2 in respect of Insuring Clause 1 (General Liability), to liability pursuant to:
 - 5.2.1 the lease or hire of real or personal property;
 - 5.2.2 a representation or warranty of fitness or quality in respect of the Insured's Products, or a representation or warranty that work performed by or on behalf of the Insured will be done in a workmanlike manner;
 - 5.2.3 contracts or agreements as specified in the Policy Schedule.

6. Controlling Interest

Brought directly or derivatively by, or on behalf of, any entity in which any Insured has any controlling interest.

7. Cryptocurrencies and Crypto Assets

Arising From cryptocurrencies or crypto assets.

8. Employment Relations Act

In respect of Insuring Clauses 4 (Directors and Officers Liability), 5 (Statutory Liability) and 6 (Employers Liability), Arising From any breach of the Employment Relations Act 2000.

9. Failure to Act or Wilful Act

In respect of Insuring Clause 5 (Statutory Liability) and Insuring Clause 8 (Criminal Defence Legal Costs), Arising From an Event or Criminal Offence which has resulted from the Insured's:

- 9.1 failure to take all reasonable steps to ensure that the Insured's instruction to another person to discharge one or more of its obligations under any of the provisions of the Acts or statutes were discharged as instructed;
- 9.2 failure to comply with any lawful abatement notice or enforcement order, improvement notice, prohibition notice or suspension notice, building consent, Notice to Rectify, Compliance Schedule, Gazetted Notice, or order made by a Human Rights Review Tribunal;
- 9.3 act(s) of knowingly, wilfully or intentionally committing the Event or Criminal Offence, unless the Insured is Acquitted by a Court.

10. Failure to Insure

In respect of Insuring Clause 4 (Directors and Officers Liability), Arising From any breach of an obligation to insure property.

11.Fraud

Arising From:

11.1 any dishonest, fraudulent, criminal, malicious or deliberate act or omission by an Insured; or

11.2 any wilful violation or breach of any statute or regulation by an Insured,

where it is established by an express or implied admission, judgment or other adjudication that the conduct did in fact occur.

This exclusion does not apply to the extent that cover may be provided for Direct Financial Loss under Insuring Clause 2 (Crime) of this Policy.

12.Government Benefits

Arising From any obligation pursuant to any law or statute in respect of workers compensation, occupational or workplace health and safety (other than any payments under Insuring Clauses 5 (Statutory Liability) and 8 (Criminal Defence Legal Costs)), disability benefits, unemployment benefits or compensation, unemployment insurance, retirement benefits, social security benefits or any similar law or regulation whatsoever, or any breach of such obligation.

13.Indecent Material

Arising From any indecent, obscene, pornographic, adult or objectionable material of any kind or any such matter prohibited by any law, rule or regulation.

14.Insider Trading

Arising From any breach by a Director or Officer of sections 131, 139, 140 or 145 of the Companies Act 1993 or sections 240 – 244 of the Financial Markets Conduct Act 2013, or the gaining of any profit or advantage to which a Director or Officer is not legally entitled, where it is established by an express or implied admission, judgment or other adjudication, that the conduct did in fact occur.

15.Insolvency

Arising From insolvency, receivership or liquidation of the Insured.

16.Insured v Insured

Brought by, or on behalf of, any Insured other than a Claim:

16.1 Arising From an Employment Dispute;

16.2 brought or maintained by an Employee under Insuring Clause 6 (Employers Liability);

16.3 brought or maintained by any former Director or Officer; or

16.4 in respect of Insuring Clause 4 (Directors and Officers Liability):

16.4.1 brought in the name of the Company by any legally authorised individual or entity including any regulatory authority, provided the action is brought or maintained without any direct or indirect consent, solicitation, co-operation or enticement from any Insured; or

16.4.2 for contribution or indemnity, if the Claim for contribution or indemnity results from a Claim that would be covered under this Policy.

17.Jurisdiction

In respect of Insuring Clauses 3 (Employment Practice Liability), 4 (Directors and Officers Liability), 5 (Statutory Liability), 6 (Employers Liability), 7 (Internet Liability) and 8 (Criminal Defence Legal Costs), Arising From:

17.1 legal action brought in a court of law outside the jurisdiction of New Zealand;

17.2 legal action brought in a court of law within the jurisdiction of New Zealand to enforce a judgment of a court of law outside the jurisdiction of New Zealand, whether by way of a reciprocal agreement or otherwise; or

17.3 legal action where the proper law to be applied is that of a country other than New Zealand.

18.Nuclear

Arising From nuclear energy operations, including but not limited to:

18.1 the erection, installation, occupation, repair, maintenance, control, use or ownership of any nuclear power station, similar reactor building or nuclear reactor; or

18.2 any process of nuclear fission or fusion or handling radioactive material or irradiated nuclear fuel which operations include but are not limited to:

18.2.1 the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices;

18.2.2 the use, handling or transportation of radioactive materials; or

18.2.3 the use, handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion.

19.Orders, Fines and Costs, Excluded Actions

In respect of Insuring Clause 5 (Statutory Liability), in respect of any:

- 19.1 cost or payment of any enforcement order, remedial order or compliance order;
- 19.2 Fine imposed in relation to a daily or ongoing Event or offence where the Fine is imposed in relation to a period of time after the Insured first received notice from the informant or his/her employing body of the intention to commence a prosecution in relation to that Event or offence;
- 19.3 pecuniary penalty, restitution, compensation or order for payment pursuant to sections 80, 83, or 89(3)(b) of the Commerce Act 1986;
- 19.4 order for payment of costs made under the Commissions of Inquiry Act 1908;
- 19.5 damages or compensation, not part of a Fine, imposed by a tribunal or court of law, except a sentence of reparation following a Health and Safety at Work Act 2015 prosecution;
- 19.6 action, proceeding, inquiry, investigation or prosecution taken against the Insured by:
 - 19.6.1 the Inland Revenue Department or any other revenue-collecting authority; or
 - 19.6.2 a person other than the statutory authority or enforcement agency given that responsibility under an Act of Parliament.

20.Personal Injury Legislation

In respect of any costs or compensation for which cover to any extent is provided by the Accident Compensation Act 2001 or would have been provided under this Act but for the Company being an accredited employer under that Act.

21.Pollution

- 21.1 In respect of Insuring Clause 1 (General Liability), in respect of Personal Injury or Property Damage, including costs and expenses incurred in the prevention, removing, nullifying or clean up, Arising From the discharge, dispersal, release or escape of Pollutants into or on land, the atmosphere, or any watercourse or body of water, unless the discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended from the standpoint of the Insured and takes place in its entirety at a specific time and place.
- 21.2 In respect of all other insuring clauses, Arising From the actual, alleged or threatened discharge, release, escape or dispersal of Pollutants into or on real or personal property, water or the atmosphere, or any direction or request that the Insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralise Pollutants, or any voluntary decision to do so, including but not limited to any Claim for financial loss to the Company, its security holders or its creditors.

For the purposes of this exclusion, 'Company' will include Outside Entity.

This exclusion does not apply to the extent that cover may be provided under Insuring Clauses 5 (Statutory Liability), 6 (Employers Liability) and 8 (Criminal Defence Legal Costs) of this Policy.

22.Prior or Pending

Arising From:

- 22.1 any litigation or other proceeding pending or begun before the commencement of this Policy;
- 22.2 any Claim or Prosecution made, threatened or in any way intimated prior to the commencement of the Period of Insurance; or
- 22.3 any fact or circumstance of which the Insured had or should have become aware, prior to the commencement of this Policy, and which the Insured or a reasonable Insured should have considered may give rise to a Claim or Prosecution, whether notified under any other insurance.

This exclusion does not apply to the extent that cover may be provided under Extension 4 (Continuous Cover).

23.Professional Services

Arising From the provision of professional services for a fee or any act, error or omission relating to such service.

24.Property Damage

Arising From damage to or destruction of any tangible property, whether or not it is damaged or destroyed, including loss of its use.

This exclusion does not apply to the extent that cover may be provided under Insuring Clauses 1 (General Liability) and 8 (Criminal Defence Legal Costs) of this Policy.

25.Prospectus Liability

Arising From any public or private share offering, or the sale or transfer of ownership of shares, debentures, promissory notes, or the solicitation or issuance of negotiable or non-negotiable securities, whether or not a prospectus has been issued.

26.Redundancy

Arising From any obligation of any kind under any source in respect of redundancy or severance, or any breach or non-observance of such obligation.

27.Refund of Money

Arising From any request or demand for the refund of money paid as consideration for any goods or services.

28.Sanctions

Or provide any benefit where a claim payment would breach any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulation of any country.

This exclusion applies notwithstanding any provision to the contrary within this Policy or any endorsement thereto.

29.Shareholder

Arising From a Wrongful Act brought against any Insured by, at the instigation of or on behalf of any past or present shareholder. However, this exclusion shall not apply to any shareholder who has, or has had, less than twenty five per cent (25%) of the issue share capital of the Insured.

30.Terrorism

Arising From:

- 30.1 any Act of Terrorism, regardless of any other cause or event contributing concurrently or in any other sequence to the loss; or
- 30.2 any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

31.War

Arising From war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, military rising, rebellion, revolution, insurrection, military or usurped power, martial law or looting or pillaging in connection therewith, strike, lock-out, riot, civil commotion, mutiny, confiscation or nationalisation or requisition or destruction of, or damage to, property by or under the order of any government or public or local authority or any act or condition incidental to any of the above.

Additional Exclusions (applying to Insuring Clause 1 (General Liability))

In addition to the above exclusions, the following exclusions will apply to Insuring Clause 1 (General Liability).

QBE will not indemnify the Insured for:

32.Aircraft and Watercraft

Personal Injury or Property Damage Arising From the ownership, possession, control, operation, use, service or repair, loading or unloading by the Insured of any:

- 32.1 Aircraft or hovercraft;
- 32.2 Watercraft exceeding ten (10) metres in length, measured length overall, being stem to stern, excluding any fixed or movable projections extending beyond these points.

33.Aircraft Products

Personal Injury or Property Damage Arising From any of the Insured's Products which, with the Insured's knowledge, were, or were intended to be, incorporated into the structure, machinery or controls of any Aircraft or aerial device.

34.Building Defects

Any liability Arising From:

- 34.1 the failure or alleged failure of any building or structure to meet or conform to the requirements of the New Zealand Building Code contained in the First Schedule of the Building Regulations 1992 or any applicable New Zealand Standard (or amended or substituted Regulation or Standard) in relation to leaks, water penetration, weatherproofing, moisture, or any effective water exit or control system; or
- 34.2 mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure.

This exclusion does not apply to any Claim that is caused by the leakage of internal pipes, internal water systems or internal systems or internal cisterns.

35.Defamation

Any liability Arising From defamation:

- 35.1 where a statement is made at the Insured's direction, knowing of its defamatory nature;
- 35.2 which results from or is related to advertising, broadcasting or telecasting activities by or on behalf of the Insured.

36.Defective Materials, Design and Workmanship

Liability for the cost of:

- 36.1 rectifying, repairing or replacing defective materials;
- 36.2 remedying any defect in any design, plan or specification;
- 36.3 remedying defective workmanship;
- 36.4 correcting or improving any work undertaken by the Insured,

but any resultant Property Damage Arising From defective materials, design or workmanship is not excluded.

37.E-Commerce

37.1 Personal Injury or Property Damage Arising From the Insured's 'Internet Operations'.

This exclusion does not apply to Personal Injury or Property Damage arising out of any material which is already in print by the manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site.

For the purposes of this exclusion 'Internet Operations' means the following:

- 37.1.1 use of electronic mail systems by the Insured or the Insured's Employees, including part-time and temporary staff, contractors and others within the Insured's organisation;
- 37.1.2 access through the Insured's network to the world wide web or a public internet site by the Insured's Employees, including part-time and temporary staff, contractors and others within the Insured's organisation;
- 37.1.3 access to the Insured's intranet (meaning internal company information and computing resources) which is made available through the world wide web for customers of the Insured or others outside the Insured's organisation;
- 37.1.4 the operation and maintenance of the Insured's Website and applications ('apps').

Nothing in this exclusion shall be construed to extend coverage under this Policy to any liability which would not have been covered in the absence of this exclusion.

37.2 Property Damage to computer data or programs and their storage media Arising From:

- 37.2.1 the use of any computer hardware or software;
- 37.2.2 the provision of computer or telecommunication services by the Insured or on the Insured's behalf;
- 37.2.3 the use of computer hardware or software belonging to any third-party, whether authorised or unauthorised, including damage caused by any computer virus.

38. Insured's Products

Property Damage to the Insured's Products.

39. Loss of Use

Any loss of use of tangible property which has not been physically damaged or destroyed resulting from:

- 39.1 a delay in, or lack of performance by, or on behalf of, the Insured of any contract or agreement; or
- 39.2 the failure of the Insured's Products to meet the level of performance, quality, fitness or durability that has been warranted or represented expressly or impliedly by the Insured.

40. North American Exports

Liability Arising From any of the Insured's Products knowingly exported by the Insured (or exported by the Insured's agents or distributors with the Insured's knowledge) to the North American Countries, including any liability Arising From or based on a settlement or arbitration in, or a judgment or order of a court of law in the North American Countries.

41. Offshore Gas or Oil Platforms

Liability Arising From work performed on or about any offshore gas or oil platform.

42. Property Owned

Property Damage to any property owned by or in the care, custody or control of the Insured.

43. Vehicles

Personal Injury or Property Damage Arising From the ownership, possession, repair, operation, control, maintenance or use by or on behalf of the Insured of any Vehicle which is:

- 43.1 required by legislation to be registered, warranted, certified or insured;
- 43.2 being operated while in an unsafe condition;
- 43.3 being operated by any person who is under the influence of any liquor, substance or drug;
- 43.4 insured, or in respect of which the Insured is insured under any other policy, even if the other insurance is not collectable because of a breach of condition or applicable exclusion.

44. Withdrawal or Repair of Products

The recall (including making any refund on the price paid), repair, withdrawal, inspection, removal, altering, treating, modification, replacement or loss of use of the Insured's Products or any property of which such products form a part, or of work undertaken by or for the Insured, if such products, property or work are withdrawn from the market or from use because of any defect or deficiency of which the Insured knows or has reason to suspect or because of any Government or statutory ban, order or notice.

Additional Exclusions (applying to Insuring Clause 2 (Crime))

In addition to the above exclusions, the following exclusions will apply to Insuring Clause 2 (Crime).

QBE is not liable to make any payment for:

45. Confidential Information

Direct Financial Loss Arising From any Intellectual Property Breach or the accessing and dissemination of any confidential information including, but not limited to, trade secrets, computer programs, customer information or processing methods.

46. Consequential Loss

Indirect or consequential loss of any nature including, but not limited to:

- 46.1 any loss of potential income, dividends or profit;
- 46.2 any costs incurred by the Company in rewriting or amending the Company's software programs or systems where such rewriting or amending is necessary to correct the programs or systems;
- 46.3 any contractual penalties incurred by the Company;
- 46.4 fees, costs or expenses incurred by the Insured in respect of any legal proceedings whatsoever, resulting from Direct Financial Loss that is covered under this Policy.

47. Credit Risks

Direct Financial Loss Arising From non-payment or default under any Credit Arrangement.

48. New Bank Accounts

Direct Financial Loss attributable to any individual who can open new bank accounts without referral to others.

49. Non-Violent Crime by Third Party

Loss in respect of other property in the Insured's Premises, unless resulting from:

- 49.1 theft or attempted theft by a Third Party following the Third Party's entry to or exit from the Insured's Premises by violent or forcible means; or
- 49.2 the Dishonest Act of an Employee.

50. Past Employees

Direct Financial Loss caused or contributed to by any Employee who was not employed by the Company at the time of the Dishonest Act.

51. Prior or Subsequent Discovery

Direct Financial Loss which is first Discovered prior to the commencement of the Period of Insurance or after the end of the Period of Insurance.

52. Procedures

Direct Financial Loss Arising From:

- 52.1 the Company failing to maintain a trust bank account for funds held on behalf of anyone else or failing to have such trust bank account audited by a qualified independent accountant at least once each calendar year;
- 52.2 any cheques in excess of NZD 1,000 (one thousand dollars) that are not duly authorised by at least two authorised signatures;
- 52.3 any bank fund transfers or wired funds in excess of NZD 1,000 (one thousand dollars) that are not duly authorised in accordance with the Company's procedures;
- 52.4 the Insured failing to take all reasonable precautions, including supervision, checks, audits and controls, to prevent any Direct Financial Loss.

53. Proof

Direct Financial Loss, the proof of which is solely dependent on an inventory or profit and loss computation. If, however, an Employee is identified as having caused or is suspected of having caused Direct Financial Loss, then inventory records or inventory can be submitted as partial evidence in support of proof of the Direct Financial Loss, as required in Condition 6 (Claim Notification).

54. Single-Authority Accounts

Direct Financial Loss sustained from an account maintained by the Company at any financial institution in circumstances in which dual signatories and dual passwords of the Company are not used.

55. Subsequent Dishonesty

Direct Financial Loss Arising From any Dishonest Acts committed by an Employee who has previously committed a Dishonest Act that is known to the Insured. For the purposes of this exclusion, a Dishonest Act is known to the Insured if it is known to an Employee or Director:

- 55.1 whose duties, directly or indirectly, include supervising, managing and/or directing the activities of the dishonest Employee; and
- 55.2 who is not in collusion with such Employee for the purpose of committing a Dishonest Act.

56.Trustees

Direct Financial Loss Arising From any Dishonest Acts committed by a trustee of the Company's own superannuation or pension fund, relating to or in connection with such fund.

57.Voluntary Exchange or Purchase

Direct Financial Loss Arising From the voluntary giving or surrendering, whether or not such giving and surrendering is induced by deception, of money, securities or other property in any exchange or purchase, unless such deception is caused by an Employee.

Additional Exclusion (applying to Insuring Clause 3 (Employment Practice Liability))

In addition to the above exclusions, the following exclusion will apply to Insuring Clause 3 (Employment Practice Liability).

QBE will not indemnify the Insured in respect of:

58.Failure to Take Legal Advice

Any Claim in connection with the termination of employment unless, prior to the termination, the Insured has obtained and followed the advice of a QBE's appointed legal advice provider - phone 0800 723 53425 (0800 QBE LEGAL) (the first call, for up to one hour, is at no cost to the Insured).

Additional Exclusions (applying to Insuring Clause 8 (Criminal Defence Legal Costs))

In addition to the above exclusions, the following exclusions will apply to Insuring Clause 8 (Criminal Defence Legal Costs). QBE will not indemnify the Insured in respect of:

59.Damages and Fines

Fines, penalties, damages or compensation of any type, or interest.

60.Guilty Plea

Any Criminal Offence to which the Insured has admitted or entered a guilty plea at any time.

61.Similar Prosecution

Any Prosecution for an offence that is similar to any other offence that the Insured was prosecuted for during the five (5) year period prior to the Policy inception.

62.Transport Offence

Any alleged offence or infringement under the Transport Act 1962 or the Land Transport Act 1998 or their amendments where:

- 62.1 it relates to overloading, road-user charges, log-book or speeding;
- 62.2 the Insured is at risk of being disqualified from driving; or
- 62.3 the Insured was under the influence of intoxicants or drugs.

Conditions

1. Allocation of Defence Costs

- 1.1 If any payment, settlement or judgment in excess of the Limit of Indemnity has to be made or paid to settle or dispose of any Claim, QBE's liability for Defence Costs is limited to such proportion as the Limit of Indemnity bears to the amount payable to dispose of the Claim.
- 1.2 Where QBE has paid or incurred Defence Costs that are greater than its proportionate liability, then the Insured will upon demand from QBE, repay to QBE the amount of the difference.
- 1.3 QBE may at any time pay the Limit of Indemnity or any applicable sub-limit applying to any one Claim or series of Claims (after deduction of sums already paid) or any lesser amount for which such Claims can be settled and will then be under no further liability in connection with such Claims except for its proportion of Defence Costs incurred prior to the date of payment.

2. Alteration of Risk

The Insured must give, and it warrants that it will give to QBE, written notice, within the time specified in this clause, of any material alteration of risk from that disclosed in the written proposal, declaration and any other underwriting information provided for this insurance that occurs during the Period of Insurance, including but not limited to:

- 2.1 any act that amounts to an act of insolvency;
- 2.2 the appointment to the Insured of receivers, liquidators or statutory managers;
- 2.3 the suspension, termination or revocation of a Director or Officer's appointment.

The above notice must be given by the Insured to QBE within thirty (30) calendar days of the alteration of risk. QBE may then, at our discretion, impose additional premiums or terms and conditions Arising From such alteration of risk.

Failure to comply with this condition and warranty will result in the right to claim under this Policy, terminating absolutely in respect of any loss normally indemnifiable under this Policy, that is caused by acts or omissions committed after the expiration of the above period of thirty (30) days.

3. Apportionment

If any Claim or Prosecution:

- 3.1 includes both insured and uninsured matters; and/or
- 3.2 is directed at uninsured parties,

then QBE shall:

- 3.3 pay all the Defence Costs solely attributable to the Insured's defence of a Claim or Prosecution;
- 3.4 not be liable to pay any of the costs or expenses solely attributable to the Insured's defence of uninsured matters and/or to the defence of uninsured parties;
- 3.5 use best endeavours to agree with the Insured upon a fair and proper allocation of Defence Costs between insured and uninsured allegations.

If the Insured and QBE disagree over the allocation of Defence Costs, then, subject to Extension 1 (Advancement of Defence Costs), QBE shall advance such Defence Costs it considers to be covered under this Policy, until a different allocation is negotiated, arbitrated or judicially determined. In this case QBE will, if requested by the Insured, refer the dispute for determination of allocation to an expert mutually agreeable to all parties and such determination shall apply retrospectively to all Defence Costs incurred in the defence of that particular Claim, Loss, Prosecution or Investigation.

4. Authorisation Clause

By acceptance of this Policy the Named Corporation agrees to act on behalf of all Insureds with respect to, but not limited to:

- 4.1 negotiating and binding the terms of cover;
- 4.2 the giving and receiving of notice of Claim, Direct Financial Loss, Investigation, Prosecution or cancellation;
- 4.3 the payment or receiving of premiums payable or returned; and
- 4.4 the acceptance of endorsements or other notice provided by this Policy.

Provided that the above authorisation is in addition to and not in derogation of the rights, powers and obligations of each Insured and the authorisation conferred imposes no additional obligation upon the Company with respect to any of the matters set out.

5. Cancellation

- 5.1 The Named Corporation may cancel this Policy at any time by giving notice to QBE. If prior to such cancellation:
 - 5.1.1 no Claim or circumstance has been notified under this Policy, QBE will refund the amount of the unexpired premium already paid on a pro-rata basis, subject to any minimum premium applicable;
 - 5.1.2 there has been any Claim or circumstance notified under this Policy, any premium refund will be considered and determined by QBE at the time of cancellation.
- 5.2 QBE may cancel this Policy by sending at least thirty (30) days notice to the Named Corporation's appointed insurance broker. QBE will refund the amount of any unexpired premium already paid on a pro-rata basis.

6. Claim Notification

Irrespective of the alleged or actual quantum, and whether the Insured believes that a Claim, Investigation or Prosecution will not in fact proceed or is groundless, the Insured will give written notice to QBE as soon as practicable of:

- 6.1 any Claim, Investigation or Prosecution;
- 6.2 the receipt of notice from, or information as to any intention by, any party to either make a Claim or investigate, charge or prosecute any Insured; or
- 6.3 any Occurrence or circumstance of which any Insured becomes aware and which the Insured or a reasonable Insured should consider may give rise to a Claim, Investigation or Prosecution.

In respect of all insuring clauses, except Insuring Clause 1 (General Liability) such notice must be given to QBE within the Period of Insurance.

If notice of such Claim, Occurrence, Investigation, Prosecution or First Notification is given to QBE, then any:

- 6.4 subsequent Claim or Prosecution Arising From the facts alleged in the First Notification; or
- 6.5 allegations of any Criminal Offence, Employment Dispute, Event, Internet Error, Personal Injury, Property Damage or Wrongful Act causally connected to any such matter alleged in the First Notification

shall be considered made against the Insured and notified to QBE at the time of the First Notification.

For the purposes of this condition, 'First Notification' means the first notification made to QBE during a Period of Insurance of a circumstance or a series of circumstances.

7. Claim Defence and Settlement

The Insured will not admit liability for or settle any Claim or incur any Defence Costs without the written consent of QBE, whose consent will not be unreasonably withheld. QBE will be entitled, at any time, to take over and conduct, in the name of the Insured, the defence or settlement of any Claim and any counterclaim.

8. Claim Payment

QBE may, at any time, pay:

- 8.1 the Limit of Indemnity applying to any one Claim or series of Claims (after deduction of sums already paid); or
- 8.2 any lesser amount for which such Claims can be settled,

and will then be under no further liability in connection with such Claims except for QBE's proportion of Defence Costs incurred prior to the date of payment.

9. Co-operation

The Insured will take all reasonable steps to avoid or diminish any loss in relation to any possible Claim, Investigation or Prosecution, and will immediately disclose all information and give assistance to QBE to enable us to investigate and defend the Claim, Investigation or Prosecution or determine our liability under this Policy.

The Insured will use its best endeavours to preserve all property, products, appliances and plant and all other things which may assist in the investigation or defence of a Claim, Investigation or Prosecution or in the exercise of rights of subrogation and so far as may be reasonably practicable no alteration or repair shall be effected without the written consent of QBE until QBE shall have had an opportunity of inspection and authorised such repairs.

In the event of an Occurrence, or the likelihood of an Occurrence, the Insured will promptly take, at its own expense, all reasonable steps to prevent Personal Injury or Property Damage Arising From or continuing out of the same or similar conditions, but such expense will not be recoverable from QBE.

QBE may, upon receipt of notice from an Insured of any request for indemnity under this Policy, take whatever action that we consider appropriate to protect the Insured's position in respect of the Claim, Investigation or Prosecution, and such action by QBE will not be regarded in any way as prejudicing the Insured's or our own position and will not be an admission of the Insured's entitlement to indemnity.

The Insured irrevocably waives all rights to legal professional privilege between themselves and any legal counsel retained by QBE to act on the Insured's behalf in relation to any Claim. The Insured will allow the legal counsel to disclose to QBE and our reinsurers any information obtained in the course of the conduct of the defence of any Claim.

10. Confidentiality

In respect of Insuring Clauses 2 (Crime), 3 (Employment Practice Liability), 4 (Directors and Officers Liability), 7 (Internet Liability) and 8 (Criminal Defence Legal Costs), all Insureds must make all reasonable efforts not to disclose the existence of this Policy to any person except to professional advisers or as required by law or a court of law order.

11. Contesting a Claim

If any Insured refuses to consent to any settlement or course of action recommended by QBE or any legal counsel and elects to contest or continue any legal proceedings, QBE's liability will not exceed the amount for which the Claim, Investigation or Prosecution could have been settled, less any Excess, plus the Defence Costs incurred up to the date of such refusal.

12.Counsel

Neither QBE nor any Insured will require each other to contest or to continue any legal proceedings (including any appeals) in respect of any Claim against the Insured, unless legal counsel, to be mutually agreed upon by the Insured and QBE, or in default of agreement, nominated by QBE, recommends that such proceedings should be contested.

In formulating such recommendation, counsel will take into account the economics of the matter – the damages and costs that are likely to be recovered by the plaintiff, the likely costs of defence and the prospects of the Insured successfully defending the action. The cost of counsel's opinion will, for the purposes of this Policy, be regarded as part of the Defence Costs.

In the event that counsel recommends that, having regard to all the circumstances, the matter should not be contested but should be settled, provided that settlement can be achieved within limits which, in counsel's opinion, are reasonable, then the Insured will not object to any such settlement and will co-operate with QBE to effect such settlement in accordance with this Policy, subject to Condition 11 (Contesting a Claim).

13.Cross-Liability/Joint Insureds

In respect of Insuring Clause 1 (General Liability):

- 13.1 If more than one legal entity is insured under this Policy, each entity is covered in the same manner as though QBE had issued each party with a separate Policy.
- 13.2 If there is a Claim against more than one entity in respect of the same Occurrence, only one Excess and one Limit of Indemnity shall apply, regardless of the number of entities indemnified. Where the Limit of Indemnity is insufficient to fully indemnify all insured entities, it will apply in priority to the Named Corporation.
- 13.3 The coverage under this condition does not apply to entities which are insured under this Policy only by Definition 25.4 (Insured).

14.Direct Financial Loss – Basis of Valuation

In respect of any Direct Financial Loss that is covered under this Policy, the basis of valuation will be:

14.1 Securities and Foreign Currency

No more than the actual market value of securities, foreign currency or precious metals, as at the close of business on the day that the Direct Financial Loss was first Discovered or the actual cost of its replacement, whichever is the lesser value. The value of securities will be determined by reference to the relevant stock exchange. The value of foreign currency will be determined by reference to the Reserve Bank of New Zealand's list of exchange rates. The value of precious metals will be determined by reference to Australian Perth Mint.

14.2 Other Property

The lesser of the actual value of such property or the actual cost of repairing such property or replacing same with property or material of like quality and value. QBE may, at our election, pay such actual cash value or make such repair or replacement.

QBE may, with the Insured's consent, settle any claim by the Insured in respect of loss of property, with the owner of that property. Any property for which QBE has indemnified the Insured becomes the property of QBE.

15.Direct Financial Loss – Establishing Loss

In the event of an actual or suspected Direct Financial Loss, the notification of which has been made to and accepted by QBE, a fraud investigator shall be nominated by the Insured, with the prior written approval of QBE, to establish proof of the Direct Financial Loss. The fraud investigator will:

- 15.1 investigate the circumstances giving rise to the Direct Financial Loss;
- 15.2 determine the quantum of the Direct Financial Loss;
- 15.3 advise how and when the Insured's controls were or may have been breached;
- 15.4 provide recommendations that may prevent future similar Direct Financial Loss;
- 15.5 provide a written report, in a format approved by QBE, in duplicate to QBE and the Named Corporation.

If the Direct Financial Loss is covered under this Policy, QBE will pay the reasonable and necessary fees, costs and expenses of the fraud investigator. If the Direct Financial Loss is determined not to be covered under this Policy, the Insured will pay such fees, costs and expenses.

Such fees, costs and expenses of a fraud investigator paid by QBE will:

- 15.6 not incur an Excess; and
- 15.7 be paid in addition to the Limit of Indemnity.

16. Direct Financial Loss – Notification

Upon the Insured Discovering a Direct Financial Loss or potential Direct Financial Loss the Insured must:

- 16.1 immediately notify QBE;
- 16.2 take immediate steps to ascertain the full extent of any Direct Financial Loss;
- 16.3 inform QBE of any further Direct Financial Losses as they are Discovered;
- 16.4 as soon as practicable, but in any event no later than thirty (30) calendar days thereafter, submit full particulars of the Direct Financial Loss in writing to QBE;
- 16.5 provide QBE with any reasonably required proof and information in respect of the Direct Financial Loss;
- 16.6 allow QBE, or our nominee, to inspect the Insured's accounting records and any accountant's report on those records providing the inspection is reasonably connected with the Direct Financial Loss.

17. Direct Financial Loss – Recovery

The Insured, when required by QBE, at the expense of QBE, must use all diligence in prosecuting or assisting to prosecute any person in respect of whom a Direct Financial Loss is paid under this Policy.

18. Dishonest Claim

If any Director or Officer or any person or entity who is entitled to indemnity under this Policy makes any dishonest statement in respect of an application for indemnity under this Policy, this insurance shall be voidable from the commencement of the Period of Insurance, and all benefits under this Policy will be forfeited.

19. Excess

The Insured will pay any applicable Excess in respect of each and every Claim, Direct Financial Loss or Prosecution including Defence Costs, apart from Insuring Clause 1 (General Liability) where the Excess is exclusive of Defence Costs unless otherwise stated. QBE will only be liable to pay the amount beyond the Excess up to the amount of the Limit of Indemnity, the Defence Costs Limit of Indemnity or any sub-limit under any extension.

In respect of Insuring Clause 4 (Directors and Officers Liability), the Excess noted in the Policy Schedule only applies to Insuring Clause 4.2 and Defence Costs 2.2, unless otherwise stated.

A single Excess will apply to:

- 19.1 Direct Financial Loss Arising From a single or series of related, continuous or repeated Dishonest Acts;
- 19.2 each and every Prosecution for a Criminal Offence, or aggregate of Criminal Offences, Arising From the same general circumstances; or
- 19.3 a Claim where indemnity may be available under more than one insuring clause or extension of, or endorsement to, the Policy, with the Excess to apply being the highest Excess of the sections of the Policy that are applicable.

20. Goods and Services Tax

Where, upon receiving any indemnity payment under this Policy, the Insured is liable to pay tax under section 5 (13) of the Goods and Services Tax Act 1985, and/or under the equivalent legislation in any other jurisdiction to which cover applies, QBE will indemnify the Insured for the amount of that tax. The indemnity under this clause is payable by QBE in addition to the Limit of Indemnity or the Defence Costs Limit of Indemnity.

21. Inspection of Property

QBE will be permitted, but not obligated, to, inspect the Insured's property and operations at any reasonable time.

22. Interpretation of Words

The singular includes references to the plural and vice versa, and any gender includes inference to all genders.

23. Multiple Claims

- 23.1 All causally connected or interrelated Wrongful Acts will jointly constitute a single Claim under this Policy.
- 23.2 All Personal Injury or Property Damage in respect of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one Occurrence.

24. Non-Imputation

Except as provided for under Insuring Clause 2 (Crime) which includes reference to the Definition 16 (Discovery or Discovered), no state of mind or knowledge possessed by any one Director or Officer will be imputed to any other Director or Officer for the purpose of determining whether any provision in this Policy applies. However, any state of mind or knowledge possessed by any past or present chairman of the board, chief executive officer, Director, chief operating officer or chief financial officer of the Company will be imputed to the Company.

25. Notice of Appeals

QBE will not pay any Defence Costs relating to an appeal unless QBE has:

- 25.1 received notice from the Insured of their intention to appeal at least five (5) working days prior to the expiry of the time limit for bringing any appeal;
- 25.2 agreed in writing to the appeal.

26. Other Insurance

The Insured will, as soon as possible, advise QBE of any other insurance or indemnity from which they are entitled to receive any benefit in respect of any matter claimed under this Policy.

This Policy will only cover the part of the loss and/or Defence Costs which exceeds the amount of indemnity payable under such other insurance or indemnity – even if the other insurance or indemnity has a term to that effect. However, this will not apply if the other insurance or indemnity is a specific excess layer cover over this Policy.

27. Preservation of Indemnity

In respect of Insuring Clause 4 (Directors and Officers Liability), if a Director or Officer is unable to enforce a right to indemnity against the Company to which he or she is entitled, whether at common law, under statute or otherwise, by reason only of the Company being placed in liquidation (other than voluntary liquidation) and therefore having insufficient funds available to indemnify a Director or Officer, then QBE will indemnify a Director or Officer against Loss and/or Defence Costs Arising From any Claim payable under this Policy. The Excess applicable to Insuring Clause 4.1 will apply.

The burden of establishing satisfactory proof to obtain the benefit of this cover will rest entirely with a Director or Officer and will include the production of documentary evidence of the Company's assets and liabilities and any official statements issued by the liquidator.

28. Policy Interpretation

In the event of any dispute, the interpretation of any term in this Policy will be governed by the applicable law in New Zealand and its courts of law will have exclusive jurisdiction.

29. References to Legislation

Legislation referenced in this Policy includes Subsequent Legislation. Any term used in this Policy and defined by reference to legislation will have the meaning given in any replacement definition or definition with materially the same object or purpose in Subsequent Legislation.

For the purposes of this condition, 'Subsequent Legislation' means:

- 29.1 an Act or regulation as amended, replaced or re-enacted; and
- 29.2 where an Act or regulation has been repealed, the current equivalent Act or regulation with materially the same object or purpose whether in whole or in part.

30. Reimbursement on Conviction

If the Insured is charged with an offence, or more than one offence Arising From the same general circumstances, and is convicted on at least one such offence, QBE has the right to reimbursement from the Insured for all Defence Costs we have paid under Insuring Clause 8 (Criminal Defence Legal Costs).

31. Solicitor Appointment

In respect of Insuring Clause 8 (Criminal Defence Legal Costs), the Insured may appoint its own preferred legal representative, however QBE's written agreement must be obtained prior to the appointment. QBE may:

- 31.1 not agree to the appointment of the Insured's proposed solicitor;
- 31.2 withdraw consent to an appointed solicitor; or
- 31.3 require the Insured to appoint a solicitor of QBE's choosing.

32. Subrogation

If any payment is made under the Policy QBE is subrogated to all the Insured's rights of recovery in any way related to the matter. The Insured will give all such assistance in the exercise of rights of recovery as QBE may reasonably require. Any such recovery will be applied first to QBE's defence costs and expenses incurred, regardless of how the recovery may be described in any settlement agreement between the Insured and the claimant. However, QBE will not exercise any subrogated rights of recovery against any Insured unless the right of subrogation arises from the dishonest or intentionally criminal conduct of the particular person or company.

33. Written Notice

All notices, including notification of Claims, Investigations, Prosecutions and Direct Financial Losses, shall be sent to QBE in writing via the Named Corporation's:

- 33.1 appointed insurance broker (email or letter); or
- 33.2 QBE contact person (email or letter).

