

# Q Pack Plus<sup>TM</sup> Policy

QPACK<sup>TM</sup>+



MADE  
POSSIBLE  
BY QBE

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# Welcome to QBE Insurance and thank you for trusting us with your business insurance.

QBE has been committed to New Zealand and its commerce for over 125 years. We are Australasia's largest international insurance and reinsurance group and have specialist staff operating in over 50 countries. Our standing in the insurance marketplace has been achieved through consistent delivery of quality service to both our brokers and policyholders.

This is your Q Pack Plus™ policy document which should be read in conjunction with your policy schedule. Together, they form your contract of insurance and tell you what you are, and are not, insured for.

If you need help understanding any aspect of your insurance cover, please contact your insurance broker.



Ross Chapman  
General Manager  
New Zealand Operations

# QPack Plus™ Policy

In consideration of the payment of the premium to QBE Insurance (International) 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. In addition to the applicable Limit of Indemnity, QBE will pay Defence Costs necessarily and reasonably incurred in relation to a Claim against the Insured for which there is cover under this Policy (irrespective of whether or not the Insured is found legally liable).

### 2. Fidelity

Indemnify the Insured for any Direct Financial Loss first Discovered and notified to QBE during the Period of Insurance or notified within 21 days of its expiry Arising from Dishonest Acts committed in New Zealand after the Retroactive Date.

### 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 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 him or her;
- 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 21 days of its expiry for an Event that occurred in New Zealand after the Retroactive Date.

Notwithstanding the Excess noted in the 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 Company is legally liable to pay by reason of any Claim brought by an Employee first made against the Company 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 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

### In respect of Insuring Clause 1 (General Liability)

QBE's maximum liability in respect of any Claim, or any series of Claims, Arising out of 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 stated in the Schedule, or the sub-limit in any applicable Extension. All Personal Injury or Property Damage in respect of continuous or repeated exposure to substantially the same general conditions shall be construed as Arising out of one Occurrence.

Provided that:

1. immediately that QBE has paid the Limit of Indemnity in respect of any judgement or settlement, its liability in relation to Defence Costs shall cease;
2. if a payment exceeding the Limit of Indemnity has to be made to dispose of a Claim, QBE's liability in relation to Defence Costs will be limited to the same proportion as the Limit of Indemnity bears to the amount required to dispose of the Claim;

#### **In respect of Insuring Clauses 2 to 8 (inclusive)**

QBE's maximum liability in respect of each Insuring Clause during the Period of Insurance shall not exceed the Limit of Indemnity except as provided for under Condition 14 (Direct Financial Loss - Establishing Loss). Any sub-limit or Defence Costs form part of that amount and are not payable in addition to the Limit of Indemnity.

#### **In respect of all Insuring Clauses**

1. The inclusion of more than one Insured under this Policy does not operate to increase the total amount payable by QBE under this Policy.
2. In the event of a series of inter-related Claims, arising out of the same general circumstances, where indemnity may be available under more than one section 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 stated in the Schedule as applying to that Insuring Clause.

## **Extensions**

The following Extensions to the Policy are included automatically, provided always 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, in respect of Insuring Clauses 3 (Employment Practice Liability), 4 (Directors and Officers Liability) and 8 (Criminal Defence Legal Costs) only, QBE will 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 judgement, 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 Limit of Indemnity.

### **3. Consultants, subcontractors and agents**

In respect of Insuring Clause 7 (Internet Liability) only, this Policy is extended to include Loss arising from a Claim for Internet Error committed by any consultant, subcontractor or agent for whose act, error or omission the Insured is legally liable. Provided always 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 20 (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 always 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 when 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 its 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 Arising from a Claim made against the:

- 5.1 spouse of a Director or Officer solely based on his or her status as such, which seeks damages recoverable from:
  - 5.1.1 matrimonial property; or
  - 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,

both made against such person or entity 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 & 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 its discretion, appoint legal counsel to represent the Insured involved in the Investigation; and
- 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; and
- 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; and
- 6.4 if cover for such Defence Costs is payable under Insuring Clause 8 (Criminal Defence Legal Costs) this Extension shall not apply; and
- 6.5 the maximum aggregate amount payable under this Extension shall be NZD 100,000 unless otherwise specified.

## 7. Outside directorships

In respect of Insuring Clause 4 (Directors and Officers Liability) QBE will pay on behalf of a Director or Officer Loss 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 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; and
- 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 covered by this Policy will be reduced by the limit of indemnity of such other insurance provided by that QBE company; and
- 7.3 QBE is not liable to make any payment for Loss 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; and
- 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; and
  - 7.4.3 by any shareholder of the Outside Entity holding more than 15% (fifteen percent) of the voting share capital of the Outside Entity; and
- 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:

- (a) by an employee of the Outside Entity alleging an Employment Dispute; or
- (b) for contribution or indemnity in respect of a Claim brought against another director, officer or employee of the Outside Entity, provided 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 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 Directors or Officers 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)

## 9. Business advice or service

Notwithstanding Exclusion 21 (Professional Services), QBE will indemnify the Insured in respect of Personal Injury or Property Damage Arising out of an error or omission in:

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

## 10. Forest and rural fires act

QBE will indemnify the Insured in respect of liability under the Forest and Rural Fires Act 1977 for:

- 10.1 costs and losses incurred during the Period of Insurance recoverable under section 43;
- 10.2 levies imposed by a Fire Authority and apportioned to the Insured during the Period of Insurance under section 46.

This Extension applies:

10.3 regardless of whether or not Property Damage has occurred;

10.4 to Vehicles, notwithstanding Exclusion 41 (Vehicles).

Provided that:

10.5 a Limit of Indemnity of NZD 500,000 any one Period of Insurance shall apply;

10.6 an Excess of NZD 500 shall apply.

## 11. Goods on hook

Notwithstanding Exclusions 33 (Defective Materials, Design and Workmanship) and 40 (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:

11.1 for the purposes of this Extension, "Damage" means physical injury to or destruction of tangible property which occurs during the Period of Insurance;

11.2 a Limit of Indemnity of NZD 250,000 any one Period of Insurance shall apply;

11.3 an Excess of NZD 2,500 shall apply.

## 12. 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:

12.1 a Limit of Indemnity of NZD 250,000 any one Period of Insurance shall apply;

12.2 an Excess of NZD 1,000 shall apply.

## 13. Landlords liability

Notwithstanding Exclusion 40 (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.

## 14. 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 doesn't own, hire, lease or rent, are lost, stolen or believed on reasonable grounds to have been duplicated without proper authority

Provided that:

14.1 a Limit of Indemnity of NZD 50,000 any one Period of Insurance shall apply;

14.2 an Excess of NZD 1,000 shall apply.

## 15. Mechanical plant liability

Notwithstanding Exclusions 33 (Defective Materials, Design and Workmanship), 35 (Insured's Products), 40 (Property Owned) and 41 (Vehicles), QBE will indemnify the Insured in respect of Personal Injury or Property Damage:

15.1 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;

15.2 Arising from any Vehicle while it is being operated for its specialised function or purpose, and not as a Vehicle;

15.3 relating to the operation or ownership of a car-park so as to cause damage to Vehicles within it (other than to Vehicles belonging to, or used by or on behalf of the Insured);

15.4 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:

15.4.1 any designated weight restrictions were not exceeded;

15.4.2 an Excess of NZD 2,500 shall apply.

## 16. Product withdrawal costs

Notwithstanding Exclusions 33 (Defective Materials, Design and Workmanship), 35 (Insured's Products) and 42 (Withdrawal or Repair of Products), QBE will indemnify the Insured for up to 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:

16.1 a Limit of Indemnity of NZD 100,000, inclusive of Defence Costs, shall apply in respect of all such withdrawals or recalls during any one Period of Insurance;

16.2 an Excess of NZD 2,500, inclusive of Defence Costs, shall apply to each such withdrawal or recall.



## 17. Property in care custody or control

Notwithstanding Exclusion 40 (Property Owned), but subject to Exclusions 33 (Defective Materials, Design and Workmanship) and 41 (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:

- 17.1 real property, property owned, or premises leased by or rented to or by the Insured is excluded;
- 17.2 a Limit of Indemnity of NZD 250,000 any one Period of Insurance shall apply;
- 17.3 an Excess of NZD 1,000 shall apply.

## 18. 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:

- 18.1 any liability Arising from trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse is excluded;
- 18.2 any award of punitive or exemplary damages by any court of law outside New Zealand is excluded;
- 18.3 a Limit of Indemnity of NZD 1,000,000, inclusive of Defence Costs, any one Period of Insurance shall apply;
- 18.4 an Excess of NZD 500, inclusive of Defence Costs, shall apply.

## 19. Tenants liability

Notwithstanding Exclusion 40 (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.

## 20. Underground services

Notwithstanding Exclusions 33 (Defective Materials, Design and Workmanship) and 35 (Insured's Products), 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:

- 20.1 prior to the commencement of any work, the Insured enquired of the relevant authority, corporation or company as to the location of such services;
- 20.2 the Insured took all reasonable precautions to prevent Personal Injury or Property Damage;
- 20.3 a Limit of Indemnity of NZD 250,000 any one Period of Insurance shall apply;
- 20.4 an Excess of NZD 5,000 shall apply.

## 21. Vehicle or watercraft, equipment or machinery service or repair

Notwithstanding Exclusions 29 (Aircraft and Watercraft), 33 (Defective Materials, Design and Workmanship), 35 (Insured's Products), 40 (Property Owned) and 41 (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:

- 21.1 Vehicle or Watercraft not exceeding 10 metres in length, and/or its internal combustion engine, accessories or fittings (Watercraft being measured in length overall being stem to stern excluding any fixed or moveable projections extending beyond these points); or
- 21.2 equipment or machinery.

Provided that:

- 21.3 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;
- 21.4 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;
- 21.5 a Limit of Indemnity 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;
- 21.6 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;
- 21.7 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.

## 22. Vibration and removal of support

Notwithstanding Exclusions 33 (Defective Materials, Design and Workmanship) and 35 (Insured's Products), 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:

- 22.1 the land or buildings affected are not owned or occupied by the Insured;

- 22.2 the Personal Injury or Property Damage arises from the actions of the Insured;
- 22.3 a Limit of Indemnity of NZD 250,000 any one Period of Insurance shall apply;
- 22.4 an Excess of NZD 5,000 shall apply.

### 23. Visits to the north american countries

Notwithstanding Exclusion 37 (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:

- 23.1 the Insured has no Premises, branch or subsidiary operation in the North American Countries;
- 23.2 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;
- 23.3 the ownership, possession, control, or maintenance or use of any Vehicle or Watercraft is excluded;
- 23.4 the Limit of Indemnity, inclusive of Defence Costs, any one Period of Insurance shall be the Limit of Indemnity in the Schedule.

### 24. Warrant of fitness

Notwithstanding Exclusion 21 (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 out of a negligent act, error or omission, in connection with the Business, by any licensed, qualified vehicle certifier employed by the Insured,

Provided that:

- 24.1 for the purpose of this Extension, the "Business" means:
  - 24.1.1 the inspection and certification of Vehicles for the issuing of a warrant of fitness or other inspection certificate as may be required by law; and
  - 24.1.2 'pre-purchase' or vehicle appraisal services;
- 24.2 a Limit of Indemnity of NZD 100,000 any one Period of Insurance, inclusive of Defence Costs, shall apply;
- 24.3 an Excess of NZD 1,000 shall apply;
- 24.4 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;
- 24.5 it is warranted that the Insured and their Employees are licensed and qualified to issue warrant of fitness or other inspection certificates as may be required by law.

## Definitions

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

#### 1. "Aircraft" means:

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

#### 2. "Acquitted by a Court" means:

- 2.1 dismissal of all charges prior to a hearing; or
- 2.2 after a defended hearing or other final adjudication:
  - 2.2.1 a dismissal of all the charges; or
  - 2.2.2 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.

#### 3. "Act of Parliament" means:

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

#### 4. "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.

#### 5. "Arising" means:

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

**6. "Business of the Insured" means:**

- 6.1 the business of the Insured as stated in the Schedule, which shall include:
  - 6.1.1 the provision of lunch room facilities, social, sports, welfare and similar organisations for the benefit of the Insured's employees;
  - 6.1.2 first aid and medical services provided by Medical Persons on the Insured's Premises;
  - 6.1.3 associated travel;
- 6.2 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.

**7. "Claim" means:**

- 7.1 legal or arbitral proceedings instituted and served on an Insured; or
- 7.2 a written demand for monetary relief made or brought against an Insured; or
- 7.3 the receipt of notice from any person or party of any intention towards 7.1 or 7.2 above, alleging an Employment Practice Breach; Event; Internet Error; Personal Injury; Property Damage; or a Wrongful Act.

**8. "Company" means:**

The Named Corporation and its Subsidiaries.

**9. "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, Transport Act 1962, 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).

**10. "Defence Costs" means:**

Any:

- 10.1 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:
  - 10.1.1 in investigating, defending, settling or appealing any Claim; or
  - 10.1.2 in preparing for and attending an Investigation;
- 10.2 interest accruing after the date of entry of judgement against the Insured and until the date QBE pays, tenders or deposits in a court the judgement sum or such part of that judgement sum as is required to satisfy QBE's liability to the Insured in terms of the Limit of Indemnity.
- 10.3 first aid expenses incurred by the Company Arising from a Personal Injury in relation to Insuring Clause 1 (General Liability).

For the purposes of Insuring Clause 8 (Criminal Defence Legal Costs) Defence Costs shall mean any necessary and reasonable legal fees, disbursements or related expert or witness costs 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.

**11. "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:

- 11.1 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
- 11.2 costs, fees or other expenses incurred in establishing the existence or amount of any such loss, except as provided in Condition 14 (Direct Financial Loss - Establishing Loss).

**12. "Director" means:**

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

**13. "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.

**14. "Dishonest Acts" means:**

Any dishonest act or omission committed by any specific and identifiable Employee or Employees, 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 or any other person or organisation.

**15. "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. This will not include a Director, partner, consultant, independent contractor, temporary employee, broker, consignee, any person on secondment, or any agent of the Company however, notwithstanding this, Insuring Clause 1 (General Liability) and Insuring Clause 5 (Statutory Liability) will include:

- 15.1 a person under hire or lent to the Company; or
- 15.2 a "labour only" contractor or "labour only" sub-contractor, but only while they are carrying out work for the Business of the Insured and provided they are not insured under any other policy.

**16. "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:

- 16.1 unlawful discrimination but excluding racial discrimination;
  - 16.2 invasion or breach of the right of privacy;
  - 16.3 defamation;
  - 16.4 wrongful infliction of emotional distress, mental anguish or humiliation;
  - 16.5 actual or constructive termination of employment that is in breach of the law;
  - 16.6 misleading or deceptive representation or advertising relating to employment;
  - 16.7 failure or refusal to employ or promote;
  - 16.8 wrongful demotion;
  - 16.9 harassment (sexual or otherwise);
  - 16.10 unfair discipline or evaluation of employment performance;
  - 16.11 victimisation,
- occurring within New Zealand.

**17. "Employment-Related Benefits" means:**

- 17.1 severance or redundancy payments or entitlements;
- 17.2 stock, shares, stock options or any entitlement or right under any equity plan of any description including the participation in any such equity plan;
- 17.3 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;
- 17.4 any benefit, payment or entitlement of any kind in respect of paid or unpaid leave;
- 17.5 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);
- 17.6 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.

**18. "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.

**19. "Excess" means:**

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

**20. "Excluded Act" means:**

Arms Act 1983, Aviation Crimes Act 1972, Crimes Act 1961, Proceeds of Crime Act 1991, Real Estate Agents Act 2008, Summary Offences Act 1981, Transport Act 1962, Transport (Vehicle and Driver Registration and Licensing) Act 1986, including any code, rules, regulations, bylaws or other subordinate legislation made under such Act or any statutory amendment or re-enactment of that Act and any other Act of Parliament specified in the Schedule as an Excluded Act.

**21. "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 in Employment Act 1992 or any statutory amendment or re-enactment of that Act, but this definition is extended to include a sentence of reparation imposed following a conviction under that Act.

## 22. "Insured" means:

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

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

- 22.1 an Employee, partner or shareholder of the Company whilst acting within the scope of his or her duties as such, except in respect of any liability under the Companies Act 1993; and
- 22.2 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
- 22.3 every office bearer or member of social and sporting clubs formed with the consent of the Company (other than an Insured designated in clause 22.2 or 22.4) in respect of claims Arising from the duties connected with the activities of any such club; and
- 22.4 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.

## 23. "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).

## 24. "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.

## 25. "Internet Error" means:

Any unintentional:

- 25.1 Intellectual Property Breach;
- 25.2 defamation;
- 25.3 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;
- 25.4 passing off;
- 25.5 breach of confidentiality or infringement of any right to privacy, including any alleged breach of the terms of the Privacy Act 1993;
- 25.6 misuse of information which is either confidential or subject to statutory restrictions on use;
- 25.7 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;
- 25.8 belittling of a product or work (whether completed or not) of others; or
- 25.9 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 Schedule.

## 26. "Investigation" means:

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

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

## 27. "Limit of Indemnity" means:

The maximum amount payable in the event of a claim under this Policy as specified in the Schedule for each Insuring Clause or any Extension or endorsement to this Policy. If there is no Limit of Indemnity stated in the Schedule then no cover is provided for that Insuring Clause.

## 28. "Loss" means:

In respect of a Claim covered under Insuring Clauses 3 (Employment Practice Liability), 4 (Directors and Officers Liability), 6 (Employers Liability) and 7 (Internet Liability):

- 28.1 damages awarded or judgements entered against the Insured;
- 28.2 settlements negotiated with the prior written consent of QBE;

28.3 legal costs and expenses for which the Insured shall become legally liable to the claimant;

28.4 Defence Costs.

In respect of Insuring Clause 6 (Employers Liability) it shall also mean punitive and exemplary damages provided that the Personal Injury is covered by the Injury Prevention, Rehabilitation, and Compensation Act 2001 (notwithstanding Exclusion 18 (Personal Injury Legislation) and (a) below).

In respect of a Claim covered under Insuring Clause 5 (Statutory Liability):

28.5 any Fine; and

28.6 Defence Costs incurred by the Insured.

Loss in respect of Insuring Clauses 3 (Employment Practice Liability), 4 (Directors and Officers Liability), 6 (Employers Liability) and 7 (Internet Liability) will not include:

- (a) punitive, liquidated, aggravated or exemplary damages (unless awarded in New Zealand for defamation or Personal Injury);
- (b) taxes, fines or penalties;
- (c) 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;
- (d) 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;
- (e) the cost of physical modifications to or procedures within the Insured's workplace;
- (f) education, seminar or similar programme costs relating to or following an Employment Dispute;
- (g) any Employment-Related Benefit or amounts attributable to any Employment-Related Benefit;
- (h) 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 judgement or settlement representing the amount by which such price or consideration is effectively increased nor any amount for the claimant's costs and expenses;
- (i) the refund of money paid as consideration for any goods or services, by way of damages or otherwise;
- (j) any amount that is uninsurable under New Zealand Law.

**29. "Medical Persons" means:**

Any registered health practitioner or first aid attendant.

**30. "Named Corporation" means:**

The company first named in the Schedule.

**31. "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.

**32. "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.

**33. "Officer" means:**

Any person who was, is, or may become:

- 33.1 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
- 33.2 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.

**34. "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.

**35. "Outside Entity" means:**

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

**36. "Period of Insurance" means:**

The Period of Insurance specified in the Schedule.

**37. "Personal Injury" means:**

- 37.1 for the purpose 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:
  - 37.1.1 false arrest, wrongful detention, false imprisonment or malicious prosecution;
  - 37.1.2 wrongful entry or eviction or other invasion of the right of privacy;
  - 37.1.3 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;
  - 37.1.4 trespass to the person;
  - 37.1.5 defamation.

It excludes any such injury Arising out of or in the course of employment with the Insured.

- 37.2 for the purpose 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 purpose 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.

**38. "Policy" means:**

This policy together with any schedule and endorsements issued by QBE.

**39. "Policy Territory" means:**

In respect of Insuring Clauses 1 (General Liability) and 4 (Directors & Officers Liability)

Worldwide excluding North American Countries, except where specifically noted in Extensions 16 (Product Withdrawal Costs), 18 (Punitive or Exemplary Damages), 20 (Underground Services), 21 (Vehicle or Watercraft, Equipment or Machinery Service or Repair) and 22 (Vibration and Removal of Support).

**40. "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.

**41. "Premises" means:**

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

**42. "Property Damage" means:**

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

**43. "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.

**44. "Retroactive Date" means:**

The Retroactive Date specified in the Schedule.

**45. "Schedule" means:**

The current schedule of insurance or any future schedule issued for renewal and any endorsements attached thereto.

**46. "Subsidiary" means:**

- 46.1 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 deemed a subsidiary by virtue of any applicable legislation or law, including a subsidiary of the Named Corporation's subsidiary;
- 46.2 any company that by virtue of any applicable legislation or law becomes a Subsidiary during the Period of Insurance provided that company:
  - 46.2.1 has total gross assets in value less than 25% of the total gross assets of the Company; and
  - 46.2.2 conducts business activities that are substantially the same as the Company's business activities as most recently advised to QBE; and
  - 46.2.3 is domiciled outside any North American Countries;

46.3 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 46.2.1, 46.2.2 or 46.2.3 provided that detailed notice of the creation or acquisition is given to QBE as soon as practicable but always within 90 (ninety) 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 Schedule whichever is the latter.

**47. "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.

**48. "Watercraft" means:**

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

**49. "Website" means:**

The Insured's internet site or sites 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).

**50. "Wrongful Act" means:**

50.1 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, whilst acting in their capacity as a Director or Officer of the Company.

50.2 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.

All causally connected Wrongful Acts shall be deemed interrelated Wrongful Acts and will jointly constitute a single Loss under this Policy.

## Exclusions

QBE will not indemnify the Insured for any Claim under this Policy Arising from:

**1. Asbestos**

Asbestos in whatever form or quantity.

**2. Bodily injury**

Death, bodily or mental injury, illness or emotional distress of any person. However this Exclusion will not apply to:

2.1 any Claim for emotional distress in respect of any actual or alleged Employment Dispute; or

2.2 any Claim for Personal Injury under Insuring Clauses 1 (General Liability) or 6 (Employers Liability).

**3. Chatrooms**

Any chat rooms, electronic bulletin boards, electronic open forum debate sites or online social networking sites.

**4. Contractual liability**

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:

4.1 to the contractual obligation of the Company to indemnify a Director or Officer against a Loss that is covered under Insuring Clause 4 (Directors and Officers Liability); or

4.2 in respect of Insuring Clause 1 (General Liability), liability pursuant to:

4.2.1 the lease or hire of real or personal property;

4.2.2 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;

4.2.3 contracts or agreements as specified in the Schedule.

**5. Controlling interest**

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

**6. Employment relations act**

In respect of Insuring Clauses 4 (Directors and Officers Liability), 5 (Statutory Liability) and 6 (Employers Liability).

The Employment Relations Act 2000 or any statutory amendment or re-enactment of that Act.



## 7. Failure to act or wilful act

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

- 7.1 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;
  - 7.2 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 or Privacy Review Tribunal;
  - 7.3 act/s of knowingly, wilfully or intentionally committing the Event or Criminal Offence,
- unless the Insured is Acquitted by a court.

## 8. Failure to insure

In respect of Insuring Clause 4 (Directors and Officers Liability)

Any breach of an obligation to insure property.

## 9. Fraud

- 9.1 any dishonest, fraudulent, criminal, malicious or deliberate act or omission by an Insured; or
- 9.2 any wilful violation or breach of any statute or regulation by an Insured,

where it is established by an express or implied admission, judgement 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 this Policy.

## 10. Government benefits

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.

## 11. Indecent material

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

## 12. Insider trading

Any breach by a Director or Officer of Sections 131, 139, 140, or 145 of the Companies Act 1993 or any statutory amendment or enactment of that Act, 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, judgement or other adjudication that the conduct did in fact occur.

## 13. Insolvency

Any Claim Arising out of insolvency, receivership or liquidation, of the Insured.

## 14. Insured versus insured

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

- 14.1 Arising from an Employment Dispute; or
- 14.2 by an Employee under Insuring Clause 6 (Employers Liability); or
- 14.3 brought or maintained by any former Director or Officer; or
- 14.4 in respect of Insuring Clause 4 (Directors and Officers Liability):
  - 14.4.1 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
  - 14.4.2 for contribution or indemnity, if the Claim for contribution or indemnity results from a Claim that would be covered under this Policy.

## 15. Jurisdiction

In respect of Insuring Clauses 2 (Fidelity), 3 (Employment Practice Liability), 4 (Directors and Officers Liability), 5 (Statutory Liability), 6 (Employers Liability), 7 (Internet Liability) and 8 (Criminal Defence Legal Costs):

- 15.1 legal action brought in a court of law outside the jurisdiction of New Zealand; or
- 15.2 legal action brought in a court of law within the jurisdiction of New Zealand to enforce a judgement of a court of law outside the jurisdiction of New Zealand whether by way of a reciprocal agreement or otherwise; or
- 15.3 legal action where the proper law to be applied is that of a country other than New Zealand.

## 16. Nuclear

Nuclear energy operations, including but not limited to:

- 16.1 the erection, installation, occupation, repair, maintenance, control, use or ownership of any nuclear power station, similar reactor building or nuclear reactor; or
- 16.2 any process of nuclear fission or fusion or handling radioactive material or irradiated nuclear fuel which operations include but are not limited to:
  - 16.2.1 the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices; or
  - 16.2.2 the use, handling or transportation of radioactive materials; or
  - 16.2.3 the use, handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion.

## 17. Orders, fines and costs, excluded actions

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

- 17.1 cost or payment of any enforcement order, remedial order or compliance order;
- 17.2 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 employing body of the intention to commence a prosecution in relation to that Event or offence;
- 17.3 pecuniary penalty, restitution, compensation or order for payment pursuant to sections 78, 80, 82, 83, 84A, 86 or 89(3)(b) of the Commerce Act 1986;
- 17.4 order for payment of costs made under the Commissions of Inquiry Act 1908;
- 17.5 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 in Employment Act 1992 prosecution;
- 17.6 action, proceeding, inquiry, investigation or prosecution taken against the Insured by:
  - 17.6.1 the Inland Revenue Department or any other revenue collecting authority; or
  - 17.6.2 a person other than the statutory authority or enforcement agency given that responsibility under the Act of Parliament.

## 18. Personal injury legislation

Any costs or compensation for which cover to any extent is provided by the Injury Prevention, Rehabilitation and Compensation Act 2001 or would have been provided under this Act but for the Company being an accredited employer under that Act.

## 19. Pollution

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 purpose of this Exclusion, Company will include Outside Entity.

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

This Exclusion does not apply to Insuring Clause 1 (General Liability) - see Exclusion 39 (Pollution).

## 20. Prior or pending

- 20.1 any litigation or other proceeding pending or begun before the commencement of this Policy; or
- 20.2 any Claim or Prosecution made, threatened or in any way intimated prior to the commencement of the Period of Insurance; or
- 20.3 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 or not.

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

## 21. Professional services

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

## 22. Property damage

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 for Property Damage under Insuring Clause 1 (General Liability) of this Policy or provided under Insuring Clause 8 (Criminal Defence Legal Costs).

## 23. Prospectus liability

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.

## 24. Redundancy

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

## 25. Refund of money

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

## 26. Shareholder

Any Claim alleging 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 25% of the issue share capital of the Insured.

## 27. Terrorism

27.1 any Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss; or

27.2 any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

## 28. War

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:

## 29. Aircraft and watercraft

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

29.1 Aircraft or hovercraft;

29.2 Watercraft exceeding 10 metres in length, measured length overall, being stem to stern excluding any fixed or moveable projections extending beyond these points.

## 30. Aircraft products

Personal Injury or Property Damage Arising out of 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.

## 31. Building defects

Any Claim in respect of or alleging Personal Injury or Property Damage Arising out of:

31.1 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

31.2 mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure.

## 32. Defamation

Defamation:

32.1 where a statement is made at the Insured's direction knowing of its defamatory nature;

32.2 which results from or is related to advertising, broadcasting or telecasting activities by or on behalf of the Insured.

## 33. Defective materials, design and workmanship

Liability for the cost of:

33.1 rectifying, repairing or replacing defective materials;

33.2 remedying any defect in any design, plan or specification;

33.3 remedying defective workmanship;

33.4 correcting or improving any work undertaken by the Insured,

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

## 34. E-Commerce

34.1 Personal Injury or Property Damage Arising out of 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:

- (a) 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;
- (b) 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;
- (c) 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; and
- (d) the operation and maintenance of the Insured's web site.

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.

34.2 Property Damage to computer data or programs and their storage media Arising directly or indirectly out of or caused by, through or in connection with:

34.2.1 the use of any computer hardware or software;

34.2.2 the provision of computer or telecommunication services by the Insured or on the Insured's behalf;

34.2.3 the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus.

### 35. Insured's products

Property Damage to the Insured's Products.

### 36. Loss of use

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

36.1 a delay, in or lack of performance by, or on behalf of, the Insured of any contract or agreement, or

36.2 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.

### 37. 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 judgement or order of a court of law in the North American Countries.

### 38. Offshore gas or oil platforms

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

### 39. Pollution

Personal Injury or Property Damage, including costs and expenses incurred in the prevention, removing, nullifying or clean up. Arising out of 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.

### 40. Property owned

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

### 41. Vehicles

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

41.1 required by legislation to be registered, warranted, certified or insured;

41.2 being operated while in an unsafe condition;

41.3 being operated by any person who is under the influence of any liquor, substance or drug;

41.4 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.

### 42. 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 (Fidelity)

In addition to the above Exclusions, the following Exclusions will apply to Insuring Clause 2 (Fidelity)

QBE is not liable to make any payment for:

### 43. 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.

### 44. Consequential loss

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

44.1 any loss of potential income, dividends, or profit;

44.2 any costs incurred by the Company in re-writing or amending the Company's software programs or systems where such re-writing or amending is necessary to correct the programs or systems;

44.3 any contractual penalties incurred by the Company;

44.4 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.

### 45. Default

Direct Financial Loss Arising from non-payment or default under any account, loan, rental or lease agreement, extension of credit, withdrawal or payment from any customer's account, or similar evidence of debt.

### 46. New bank accounts

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

### 47. 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 Acts.

### 48. 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.

### 49. Procedures

Direct Financial Loss Arising from:

49.1 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;

49.2 any cheques in excess of NZD 1,000 (one thousand dollars) that are not duly authorised by at least two authorised signatures;

49.3 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;

49.4 the Insured failing to take all reasonable precautions, including supervision, checks, audits, and controls, to prevent any Direct Financial Loss.

### 50. 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 the Claim Notification Condition of this Policy.

### 51. 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.

### 52. 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 purpose of this Exclusion, a Dishonest Act is known to the Insured if it is known to an Employee or Director:

52.1 whose duties, directly or indirectly, include supervising, managing and/or directing the activities of the dishonest Employee; and

52.2 who is not in collusion with such Employee for the purpose of committing a Dishonest Act.

### 53. 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.

#### 54. 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 Direct Financial Loss is caused by Dishonest Acts.

#### 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:

#### 55. 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 QBE or an employment lawyer from Brookfields - phone 0508 Brookfields or 0508 276653 (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:

#### 56. Damages and fines

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

#### 57. Guilty plea

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

#### 58. Similar prosecution

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

#### 59. Transport offence

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

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

## Conditions

### 1. 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:

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

The above notice must be given by the Insured to QBE within 30 calendar days of the alteration of risk. QBE may then, at its 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 30 days.

### 2. Apportionment

If any Claim or Prosecution:

- 2.1 includes both insured and uninsured matters; and/or
- 2.2 is directed at uninsured parties;

then QBE shall:

- (a) pay all the Defence Costs - that is, those solely attributable to the Insured's defence of a Claim or Prosecution;
- (b) 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;
- (c) pay 70% of the common costs or expenses attributable to the Insured's defence of insured and uninsured matters and/or to the defence of insured and uninsured parties.

In respect of any particular Loss, Prosecution, or Investigation, the Insured and QBE may agree on a global apportionment of total costs and expenses in a manner that fairly reflects the allocations in (a) to (c) above. But, in the absence of such agreement, the separate allocations in (a) to (c) above shall apply.

QBE will, subject to Extension 1 (Advancement of Defence Costs), pay the Defence Costs and its allocated share of the common costs or expenses as and when they are incurred.

### 3. 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;

- 3.1 negotiating and binding the terms of cover; and
- 3.2 the giving and receiving of notice of Claim, Direct Financial Loss, Investigation, Prosecution or cancellation; and
- 3.3 the payment or receiving of premiums payable or returned; and
- 3.4 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.

### 4. Cancellation

- 4.1 The Named Corporation may cancel this Policy at any time by notifying QBE in writing, which must include the signed instructions of each current Director to cancel the Policy.
- 4.2 In the event that the Named Corporation is insolvent, in receivership or in liquidation, QBE will not accept cancellation of the Policy unless the instructions are in writing and signed by each Director of the Named Corporation.
- 4.3 QBE may cancel this Policy at any time by sending 30 days' notice in writing to the Named Corporation of the date from which cancellation is to take effect. Such notice may be delivered personally, posted, faxed or emailed to the Named Corporation or their representative at the address last notified to QBE.

In either event, QBE will retain or be entitled to the premium for the period during which this Policy has been in force based on QBE's cancellation rates.

### 5. 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:

- 5.1 any Claim, Investigation or Prosecution; or
- 5.2 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
- 5.3 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:

- 5.4 subsequent Claim or Prosecution Arising from the facts alleged in the First Notification; or
- 5.5 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.

"First Notification" means:

The first notification made to QBE during a Period of Insurance of a circumstance or a series of circumstances.

### 6. Claim defence and settlement

Any 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.

### 7. Claim payment

QBE may at any time pay:

- 7.1 the Limit of Indemnity applying to any one Claim or series of Claims (after deduction of sums already paid); or
- 7.2 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 its proportion of Defence Costs incurred prior to the date of payment.

## 8. 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 it to investigate and defend the Claim, Investigation or Prosecution or determine its 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 from Arising 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 it considers 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 its 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 its reinsurers any information obtained in the course of the conduct of the defence of any Claim.

## 9. Confidentiality

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.

## 10. 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.

## 11. 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 purpose 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 cooperate with QBE to effect such settlement in accordance with this Policy, subject to Condition 10 (Contesting a Claim).

## 12. Cross liability/joint insureds

In respect of Insuring Clause 1 (General Liability)

If more than one legal entity is insured under this Policy, each entity is covered in the same manner as though QBE had issued them with a separate Policy.

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.

The coverage under this Condition does not apply to entities which are insured under this Policy by Definition 22.4 (Insured).

## 13. 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:

### Securities and Foreign Currency

No more than the actual market value of securities, foreign currency or precious metals, determined by that value published in the local newspaper in New Zealand 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.

### 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 its 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.



#### 14. 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:

- 14.1 investigate the circumstances giving rise to the Direct Financial Loss; and
- 14.2 determine the quantum of the Direct Financial Loss; and
- 14.3 advise how and when the Insured's controls were or may have been breached; and
- 14.4 provide recommendations that may prevent future similar Direct Financial Loss; and
- 14.5 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:

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

#### 15. Direct financial loss - notification

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

- 15.1 immediately notify QBE;
- 15.2 take immediate steps to ascertain the full extent of any Direct Financial Loss;
- 15.3 inform QBE of any further Direct Financial Losses as they are Discovered;
- 15.4 as soon as practicable, but in any event no later than 30 calendar days thereafter, submit full particulars of the Direct Financial Loss in writing to QBE;
- 15.5 provide QBE with any reasonably required proof and information in respect of the Direct Financial Loss;
- 15.6 allow QBE or its 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.

#### 16. 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.

#### 17. 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.

#### 18. 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 or sub-limit.

A single Excess will apply to:

- 18.1 Direct Financial Loss Arising from a single or series of related, continuous or repeated Dishonest Acts; or
- 18.2 each and every Prosecution for a Criminal Offence, or aggregate of Criminal Offences Arising out of the same general circumstances; or
- 18.3 a Claim where indemnity may be available under more than one Insuring Clause or Extension of, or an endorsement to, the Policy, with the Excess to apply being the highest Excess of the sections of the Policy that are applicable.

#### 19. 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 or any statutory amendment or re-enactment of that Act, 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.

#### 20. Inspection of property

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

#### 21. Interpretation of words

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

## 22. Non-imputation

Except as provided for under Insuring Clause 2 (Fidelity) which includes reference to the definition of Discovered in Definition 13, 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.

## 23. Notice of appeals

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

- 23.1 received notice from the Insured of their intention to appeal at least 5 working days prior to the expiry of the time limit for bringing any appeal; and
- 23.2 agreed in writing to the appeal.

## 24. 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 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.

## 25. 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 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.

## 26. 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.

## 27. Reimbursement on conviction

If the Insured is charged with an offence, or more than one offence Arising out of 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 it has paid under Insuring Clause 8 (Criminal Defence Legal Costs).

## 28. 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:

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

## 29. 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.

## 30. Written notice

All notices, including notification of Claims, Investigations, Prosecutions and Direct Financial Losses, should be sent to QBE in writing at the address or to the facsimile number stated on this Policy or by email to a known QBE contact person.



**QBE**

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