



Professional Risks

INFORMATION TECHNOLOGY
LIABILITY

POLICY WORDING

Professional Risks / INFORMATION TECHNOLOGY LIABILITY INSURANCE POLICY

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Professional Risks

INFORMATION TECHNOLOGY LIABILITY INSURANCE POLICY



Welcome to NZI. Thank you for selecting us as your insurer. This is your Information Technology Liability Policy document.

It will tell you what you are insured for and what you are not insured for, as well as any obligations that you or we must abide by to ensure an enforceable policy. This policy document is a legal contract so please read it thoroughly and keep it in a safe place. If you need help with understanding your policy document, please contact your insurance broker.

INTRODUCTION

AGREEMENT

You agree to pay **us** the premium described in the **schedule** and comply with this policy. In exchange, **we** agree to insure **you** as set out in this policy.

POLICY CONTRACT

This policy consists of the following parts:

1. **your** insurance proposal form, and any oral or written supporting statements or documents supplied by **you**, and
2. this policy wording (including any endorsements or warranties), and
3. the **schedule**.

INTERPRETING THIS POLICY

Certain words in this policy have a specific meaning. These words appear in **bold** in this policy wording and in Title Case in endorsements shown in the **schedule**. **You** will find the meaning listed in the 'Definitions' section at the end of this policy. The definitions apply to the plural and any derivatives of the bolded words.

You will also find examples and comments to make parts of this policy easier to understand. These examples and comments, which appear in *italics*, do not affect or limit the meaning of the section they refer to.

The headings in this policy are for reference only and do not form part of it. They are not to be used when interpreting the policy.

SECTION ONE: CIVIL LIABILITY – TECHNOLOGY SERVICES AND TECHNOLOGY PRODUCTS

SECTION ONE: WHAT YOU ARE INSURED FOR

A. CIVIL LIABILITY

You are insured for **your civil liability** arising from an **error** that occurs after the **retroactive date** in the provision of **information technology** and **technology products**, provided:

1. **you** first knew, or ought to have known, of the **claim** in relation to that **error** during the **period of insurance**, and
2. **you** have advised **us** of that **claim** as soon as possible, but no later than 30 days after the **period of insurance** ends.

B. DEFENCE COSTS

You are insured for all legal costs and legal expenses necessarily and reasonably incurred with **our** prior written consent to defend or settle a **claim** alleging **civil liability** covered by this policy. Costs and expenses incurred solely for a Judicial Review or seeking an Injunction are not covered by this policy (*as these are not civil liability claims*).

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SECTION ONE: AUTOMATIC EXTENSIONS

The following Automatic Extensions apply to Section One subject to the provisions outlined in 'Section One: Civil Liability What you are insured for' and the terms of this policy. Except for 'Automatic Extension Part A – Automatic Reinstatement of the Aggregate Limit', all other Automatic Extensions are included within the sum insured shown in the **schedule**, they are not in addition to it.

A. AUTOMATIC REINSTATEMENT OF THE AGGREGATE LIMIT

1. If all **civil liability** that would otherwise be insured under 'What You Are Insured For A – Civil Liability' exceeds the sum insured shown in the **schedule**, then **we** will provide one automatic reinstatement of the sum insured.
Provided that this does not apply:
 - 1.1 to any **claim** that is connected with the same **error** as a **claim** already met or to be met under this policy, and
 - 1.2 to 'Section One Optional Extension Part A Employment Practices Liability' (where it applies), and
 - 1.3 until any separate policy (including an 'excess policy') that insures **you**, after the sum insured under this policy is exceeded, is exhausted.
2. If all legal costs and legal expenses that would otherwise be insured under 'What You Are Insured For B – Defence Costs' exceed the sum insured shown in the **schedule**, then **we** will provide one automatic reinstatement of the sum insured.
Provided that this does not apply:
 - 2.1 to any **claim** that is connected with the same **error** as a **claim** already met or to be met under this policy, and
 - 2.2 to 'Section One Automatic Extension Part G Disciplinary Proceedings or Enquiries', and
 - 2.3 until any separate policy (including an 'excess policy') that insures **you**, after the sum insured under this policy is exceeded, is exhausted.

B. CONSULTANTS, SUB-CONTRACTORS AND AGENTS

This Section is extended to insure **your civil liability** arising from any **claim** made against **you** arising out of the actions of any consultant, contractor, sub-contractor or agent. No cover is provided to **your** consultant, contractor, sub-contractor or agent.

C. CONTINUOUS COVER

This Section is extended to insure **you** for any **claim** or circumstance that may give rise to a claim that **you** first knew of or ought to have known of, and that should have been advised to **us** during any previous period of insurance with **us**.

However, this cover:

1. only applies if:
 - 1.1 **you** had continuous Information Technology Liability cover with **us** since that previous period of insurance, and
 - 1.2 **your** failure to disclose the **claim** or circumstance that may give rise to a **claim** at each subsequent renewal was not deliberate, and
 - 1.3 **you** advise **us** of the **claim** or circumstance that may give rise to a **claim** no later than the end of this **period of insurance** (or 30 days thereafter), and
2. is subject to:
 - 2.1 the terms of the policy in existence when **you** first knew of the **claim** or circumstance that may give rise to a **claim**, or
 - 2.2 the terms of this Section,
whichever provides lesser cover. **We** have the sole discretion to elect which policy applies.

'Section One Exclusion R' does not apply to this Extension.

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D. DATA

This Section is extended to insure **your civil liability** arising from loss, damage, destruction, mislaying, distortion or erasing of **data** by **you**, provided that:

1. the **data** was entrusted to or deposited with **you** in the ordinary course of **your business**, and
2. where the **data** is lost or mislaid **you** have conducted a diligent search, and
3. where **data** is damaged, destroyed, distorted or erased **you** have made all reasonable attempts to rectify or recreate the **data**.

'Section One Exclusion C' does not apply to this Extension.

E. DEFAMATION

This Section is extended to insure **your civil liability** arising from defamation in the provision of **information technology**.

'Section One Exclusion D' does not apply to this Extension.

F. DEFENCE COSTS FOR BREACH OF CONTRACT

This Section is extended to insure **you** for legal costs and legal expenses incurred for any **claim** made against **you** arising from an alleged breach of **your** contractual obligations in the provision of **information technology** provided that **we** will not pay any legal costs and legal expenses if **we** become reasonably satisfied that **you** are actually legally liable for that **error**.

The most **we** will pay for legal costs and legal expenses under this extension during the **period of insurance** is \$100,000.

'General Exclusion C Part 1' does not apply to this Extension.

G. DISCIPLINARY PROCEEDINGS AND ENQUIRIES

This Section is extended to insure all legal costs and legal expenses necessarily and reasonably incurred by **you** for **your** representation at a legal or quasi legal process enquiring:

1. into whether, in the provision of **information technology**, **you** have breached any relevant professional code of conduct administered by any professional association, or
2. about a complaint against **you** in the provision of **information technology**, by a statutory registration board or similar regulatory authority, provided that:
 - (a) **you** first become aware, or ought to have become aware, of the enquiry during the **period of insurance**, and
 - (b) **you** have advised **us** of the enquiry as soon as possible, but no later than 30 days after the **period of insurance** ends.

You must have **our** written approval before **you** begin incurring these costs and expenses.

You are not insured for the cost of regular or overtime wages, salaries or fees, or those of **your employees**.

The most **we** will pay under this extension for all enquiries **you** become aware of during the **period of insurance** is the sum insured shown in the **schedule** for Disciplinary Proceedings and Enquiries.

The excess shown in the **schedule** for Disciplinary Enquiries applies to the amount **we** pay.

'Section One: Automatic Extensions A. Automatic Reinstatement of the Aggregate Limit' does not apply to this extension.

H. DISHONESTY AND FRAUD

This Section is extended to insure **your civil liability** arising from a dishonest, fraudulent, criminal or malicious act or omission by an **employee** (but there is no cover for the offending **employee**). Provided also that where theft or misappropriation of money is involved:

1. **you** must have kept a separate trust account for that money and the trust account must have been audited at least annually by a qualified independent accountant, and
2. all payments or withdrawals from the trust account, whether by cheque or otherwise, must have had to be authorised by a **principal** or two authorised people, and
3. **you** must have taken reasonable precautions to prevent the theft or misappropriation of monies and **you** must have performed all the supervision, controls and audits declared in the proposal.

However, there is no cover under this extension if **you**:

- (a) had knowledge of, or
 - (b) ought to have reasonably suspected,
- a dishonest, fraudulent, criminal or malicious act or omission prior to such act or omission occurring and failed to take any reasonable action to prevent it, or any loss from it.

'Section One Exclusion Part F' does not apply to this Extension.

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- I. EMPLOYEES**
- This Section is extended to insure **your employees** for **errors** in the provision of **information technology** and **technology products** that result in their **civil liability**.
We will insure **your employees** on the same terms as **we** insure **you**.
No cover is provided to **your employees** for their dishonest, fraudulent, criminal or malicious acts, omissions or conduct.
- J. ESTATES AND LEGAL REPRESENTATIVES**
- This Section is extended to insure **your** estate, legal representative or assigns for **your errors** in the provision of **information technology** and **technology products** that result in their **civil liability** after **you** have died or become legally incompetent or insolvent.
We will insure **your** estate, legal representative or assigns on the same terms as **we** insure **you**.
- K. EXTENDED REPORTING PERIOD**
- If **we** elect not to offer renewal of this policy, then **you** may pay **us** an additional premium (being 50% of the last premium), to extend **your** cover under this Section for another 12 months. However, this will only cover **you** for **errors** that happened before the expiry of the **period of insurance**.
You cannot extend **your** cover if **we** cancelled this policy or declared this policy unenforceable because **you** did not:
1. pay the premium, or
 2. disclose the information material to the risk, or
 3. comply with terms of this policy.
- If **you** choose to extend the Section as described above, then **you** must give **us** notice that **you** wish to do so within 30 days of **our** refusing to renew this policy.
- L. FAIR TRADING ACT**
- This Section is extended to insure **your civil liability** arising from a breach of the Fair Trading Act 1986.
'Section One Exclusion I' does not apply to this Extension.
- M. INTELLECTUAL PROPERTY**
- This Section is extended to insure **your civil liability** arising from an unintentional infringement of any **intellectual property rights**.
- N. INTERNET LIABILITY**
- You** are insured for **your civil liability** arising from a **claim** made against **you** in respect of any error alleging:
1. unauthorised use of names (including domain names), trade names, trade addresses, service marks, service names, titles, slogans, formats, characters, character names, characterisations, plots, musical compositions, performances, logos, artwork, graphics, photographs or programme materials;
 2. passing off,
 3. breach of confidence or infringement of any right to privacy, including any alleged breach of the terms of the Privacy Act 1993 or similar legislation,
 4. misuse of information which is either confidential or subject to statutory restrictions on use,
 5. transmission of any **computer virus**,
 6. any act that belittles the product or work (whether completed or not) of others,
 7. unauthorised taking for use of any advertising idea, material, slogans, style or title of others, in connection with the use of the internet.
- 'Section One Exclusion B', 'Section One Exclusion M' and 'Section One Exclusion S' do not apply to this Extension.
- O. PRODUCT WITHDRAWAL COSTS FOR TECHNOLOGY PRODUCTS – NEW ZEALAND ONLY**
- You** are insured for reasonable costs incurred, where it is necessary for **you** to withdraw or recall **your technology products**, provided that:
1. the **technology product** defect(s), which cause the withdrawal or recall, have already given rise to **civil liability** covered under 'Section One: Civil Liability What You Are Insured For Part A' of this policy, and
 2. the costs are incurred within 12 months of **you** first notifying **us** of the **technology products** claim (as mentioned in Item 1 above), and
 3. the costs are limited to the withdrawal or recall of **technology products** within New Zealand.
- 'Section One Exclusion R Item 2' does not apply to this Extension.

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We will pay 80% of the costs incurred for any **event**.

The most **we** will pay under this Extension for all **events** that happen during an **annual period** is \$100,000, unless a different amount is shown in the **schedule**.

An excess of \$10,000 applies for each **event** under this Extension, unless a different amount is shown in the **schedule**.

P. RUN OFF COVER

This Section is extended to insure, until the expiry of the **period of insurance**, any entity of **yours** which is sold, ceased trading, merged or wound up during the **period of insurance** in respect of those activities of **yours** prior to the sale, cessation of trade, merger or winding up.

Q. SEVERABILITY AND NON-IMPUTATION

Where this Section insures more than one person or entity, each person or entity is insured separately by this Section. No conduct on the part of one person or entity will be imputed to the others where that person or entity has:

1. made a misrepresentation to **us** before this contract of insurance was entered into, or
2. failed to comply with any terms or conditions of the policy,
provided that the remaining persons or entities must:
 - (i) be entirely innocent of and have no prior knowledge of this conduct, and
 - (ii) as soon as practicable upon becoming aware of this conduct, advise **us** in writing of all known facts in relation to the conduct.

SECTION ONE: OPTIONAL EXTENSIONS

The following Optional Extensions apply to this Section if they are shown in the **schedule**.

Cover under these 'Optional Extensions' is subject to the provisions outlined in 'Section One: Civil Liability What You Are Insured For' and the terms of this policy.

'Optional Extensions' are included within the sum insured shown in the **schedule**, they are not in addition to it.

A. EMPLOYMENT PRACTICES

This Section is extended to insure **your civil liability** for **claims** brought against **you**:

1. by an **employee** arising from:
 - 1.1 unjustified dismissal or unjustified disadvantage, of that **employee**, or
 - 1.2 workplace harassment (whether sexual or otherwise) of that **employee**, or
 - 1.3 wrongful demotion of, wrongful failure to promote, wrongful deprivation of career opportunity of, wrongful discipline of or negligent evaluation of or negligent failure to grant tenure of employment to that **employee**, or
 - 1.4 workplace stress, or
2. for wrongful refusal to employ a potential **employee**, or
3. for defamation arising from employment-related matters, or
4. for misrepresentation or misleading advertising as to the terms and conditions of employment, or
5. for denial of natural justice to an **employee** concerning his or her employment.

The definition of 'error' is extended to include 1 to 5.

You are not insured for:

- (a) **civil liability** to pay any amount pursuant to:
 - (i) an obligation under a contract of employment, or
 - (ii) any Act of Parliament other than the Employment Relations Act 2000, or
- (b) **civil liability** in connection with:
 - (i) an industrial dispute, strike, picket, lock-out, go slow or work to rule, or
 - (ii) union relations or union access, or
 - (iii) the Injury Prevention, Rehabilitation and Compensation Act 2001, workers compensation or health and safety legislation or similar legislation, or
 - (iv) bodily injury, sickness, disease or death of any person, or
 - (v) the cost of physical modifications to premises, plant or equipment owned or occupied by **you**, or
 - (vi) a contract of employment alleged to have been obtained by unfair bargaining, or
 - (vii) the dismissal or disciplining of an **employee**, unless prior to this **you** had obtained and followed **our** advice or the advice of an employment lawyer approved by **us**, or

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- (c) for the cost of complying with any compliance order, or any other order in the nature of an injunction, or
- (d) for legal costs that **you** incur to obtain legal advice from an employment lawyer prior to the dismissal or disciplining of an **employee**.

'Section One Exclusion H and N' and 'General Exclusion C' do not apply to this Extension.

The most **we** will pay under this extension for all **claims** that **you** first knew of during the **period of insurance** is the amount shown in the **schedule** as 'Employment Practices Liability'.

All legal costs and legal expenses insured under this extension are included in this amount.

The excess shown in the **schedule** for Employment Practices Liability applies to the amount **we** pay. **You** must also pay this excess when **we** cover legal costs and legal expenses.

B. INTELLECTUAL LICENSEE PROPERTY RIGHTS

This Section is extended to insure **your civil liability** for **claims** brought against **you** by a party who enters into a licence agreement with **you** under any warranty or indemnity given by **you** in respect of **your** ownership or ability to license any **intellectual property rights**.

The most **we** will pay under this extension for all **claims** during the **period of insurance** is the sum insured shown in the **schedule** for Intellectual Licensee Property Rights.

'Section One Exclusion M' and 'General Exclusion C Item 1' do not apply to this Extension.

C. JOINT VENTURES

This Section is extended to insure **your** individual and joint **civil liability** in respect of **joint ventures** of which **you** are a party, provided that the **joint venture** is shown in the **schedule**. **You** are not insured for **civil liability** arising from **claims** brought against **you** by **your joint venture** partner.

No cover is provided to **your joint venture** partner. Where **we** have insured **you** for a joint liability under this extension, **we** are entitled to exercise by subrogation, **your** rights to seek indemnity or contribution from **your joint venture** partner.

'Section One Exclusion P' does not apply to this Extension.

D. SUB-CONTRACTORS AND CONSULTANTS

This Section is extended to insure **your** consultant, contractor, sub-contractor or agent for **errors** in the provision of **information technology** and **technology products**, on **your** behalf, that results in their **civil liability**, provided that the consultant, contractor, sub-contractor or agent derives 75% or more of their gross income from **you**.

We will insure **your** consultant, contractor, sub-contractor or agent on the same terms as **we** insure **you**.

SECTION ONE: EXCLUSIONS

A. AIRCRAFT TECHNOLOGY

You are not insured for **civil liability** or legal costs or legal expenses in connection with **information technology**, **technology products** or **data** in any aircraft or spacecraft or other aerial device including anything that controls them or their flight plan.

B. COMPUTER VIRUS TRANSMISSION

You are not insured for **civil liability** or legal costs or legal expenses arising from the transmission of a **computer virus**.

C. DATA

You are not insured for **civil liability** or legal costs or legal expenses in connection with loss of or damage to **data**.

D. DEFAMATION

You are not insured for **civil liability** or legal costs or legal expenses in connection with defamation.

E. DIRECTOR'S AND OFFICER'S LIABILITY

You are not insured for **civil liability** or legal costs or legal expenses in connection with an **error** of a director or officer of any entity covered under Section One while acting in that capacity.

F. DISHONESTY OR FRAUD

You are not insured for **civil liability** or legal costs or legal expenses in connection with any dishonest, fraudulent, criminal or malicious acts or omissions by **you**.

G. ELECTRONIC FUNDS TRANSFER

You are not insured for **civil liability** or legal costs or legal expenses in connection with **claims** arising from the electronic transfer of funds which are lost during transfer or incorrectly transferred into or between accounts, or from a failure to transfer funds into or between accounts.

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H. EMPLOYER'S LIABILITY	You are not insured for civil liability or legal costs or legal expenses in connection with your capacity or obligations as an employer.
I. FAIR TRADING	You are not insured for civil liability or legal costs or legal expenses in connection with the Fair Trading Act 1986.
J. FINANCIAL POSITION	You are not insured for civil liability or legal costs or legal expenses in connection with your insolvency, liquidation, receivership, bankruptcy or statutory management.
K. FOREIGN COURTS	<p>You are not insured for civil liability or legal costs or legal expenses in connection with proceedings:</p> <ol style="list-style-type: none"> 1. brought in a court outside New Zealand (unless that country is shown under 'Jurisdictional Limits' in the schedule), or 2. brought in a court within New Zealand to enforce a judgment made by a court outside of New Zealand (unless that country is shown under 'Jurisdictional Limits' in the schedule), or 3. where the claim is governed by or the civil liability arises under the law of a country other than New Zealand (unless that country is shown under 'Jurisdictional Limits' in the schedule).
L. INTERNET SERVICE	<p>You are not insured for civil liability or legal costs or legal expenses in connection with any activities or services provided by you or on your behalf as an internet service provider (ISP). For the purpose of this exclusion 'Internet Service Provider' includes but is not limited to providing retail or wholesale access to the world wide web, web hosting and internet transit.</p>
M. INTELLECTUAL PROPERTY	You are not insured for civil liability or legal costs or legal expenses in connection with an infringement of intellectual property rights by anyone.
N. INSURED VS INSURED	<p>You are not insured for civil liability or legal costs or legal expenses arising from claims made against you, by:</p> <ol style="list-style-type: none"> 1. another party covered by this policy, or 2. any subsidiary of yours, or 3. any company or trust that is operated or controlled by you or your employees, nominees or trustees, and in which you or your family or extended family have a direct or indirect financial interest, or 4. a member of your family.
O. INTENTIONAL DAMAGE	<p>You are not insured for civil liability or legal costs or legal expenses in connection with an error by you:</p> <ol style="list-style-type: none"> 1. with the intention of causing loss, damage or injury, or 2. with reckless disregard for the consequences.
P. JOINT VENTURES	You are not insured for civil liability or legal costs or legal expenses in respect of joint ventures of which you are a party.
Q. KNOWN CLAIMS AND KNOWN CIRCUMSTANCES	You are not insured for civil liability or legal costs or legal expenses in connection with any claim or circumstance that may give rise to a claim that you first knew of or ought to have known of, prior to the inception date of this policy.
R. KNOWN DEFECTS AND RECALL	<p>You are not insured for civil liability or legal costs or legal expenses in connection with:</p> <ol style="list-style-type: none"> 1. the sale, supply or distribution of technology products known to you to be defective or ineffective or incapable of substantially fulfilling the essential purpose for which they are intended to perform as specified, warranted (whether express or implied) or guaranteed, or 2. claims for the cost of withdrawal, recall and inspection of any goods comprising technology products (or any property of which it forms a part) where those goods are withdrawn from the market or public use because of a known or suspected defect, deficiency or inadequacy in them.
S. PERSONAL INFORMATION	You are not insured for civil liability or legal costs or legal expenses in connection with claims related to, based upon, attributable to, or in consequence of any misuse (or unauthorised use) of personal information.

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- T. PROFIT** **You** are not insured for loss or expenses **you** incur
1. where there is no liability to a third party, or
 2. for any component of profit derived or derivable by **you** from the sale or supply of any goods, services or rights by or on **your** behalf.
- U. PROPERTY LIABILITY** **You** are not insured for **civil liability** or legal costs or legal expenses in connection with **your** ownership, possession or use of any land, buildings, aircraft, watercraft, vessel or mechanically propelled vehicle.
- V. REFUND OF FEES, COST GUARANTEES AND TRADING DEBTS** **You** are not insured for **civil liability** or legal costs or legal expenses in connection with:
1. any dispute over professional fees or charges (by way of damages or otherwise), or
 2. paying trading debts or the repayment of a loan.
- W. SUPPLY OF GOODS AND WORKMANSHIP** **You** are not insured for **civil liability** or legal costs or legal expenses in connection with:
1. the manufacture, installation, assembly, processing, sale, supply or distribution of goods or products by **you** or on **your** behalf, or
 2. any workmanship by **you** or on **your** behalf, relating to the business of manufacturing, fabrication, construction, erection, installation, assembly, alteration, servicing, remediation, repair, demolition or disassembly (including any materials, parts or equipment), or from **your** supervision of such workmanship,
- other than **information technology** and **technology products**.

SECTION ONE: BASIS OF SETTLEMENT

- A. MAXIMUM AMOUNT PAYABLE – CIVIL LIABILITY** The most **we** will pay in total for **civil liability** insured under 'What You Are Insured For A – Civil Liability' for:
1. any one **claim**, and
 2. all **claims** (subject to the 'Section One Automatic Extension Part A', if it applies),
- you** first knew of, or ought to have known of, during the **period of insurance** is the sum insured shown in the **schedule**.
- B. MAXIMUM AMOUNT PAYABLE – DEFENCE COSTS** **We** will pay **your** legal costs and legal expenses under 'Section One What You Are Insured For B – Defence Costs' in addition to the sum insured shown in the **schedule**, but up to the same amount.
- C. EXCESS** If a **claim** arises:
1. under the jurisdiction of a New Zealand Court, then the excess shown in the **schedule** for 'New Zealand Jurisdiction' will be deducted from the amount **we** pay. **You** must also pay this excess when **we** cover legal costs and legal expenses if the **schedule** states 'Costs Inclusive'. If the **schedule** states 'Costs Exclusive', then no excess applies to legal costs and legal expenses, and/or
 2. under the jurisdiction of a court outside of New Zealand, then the excess shown in the **schedule** for 'Other Jurisdictions' will be deducted from the amount **we** pay. **You** must also pay this excess when **we** cover legal costs and legal expenses.
- We** will deduct only one excess for a series of **claims** arising from one **error**. If a **claim**, or a series of **claims**, arises from separate **errors** then an excess will apply to each **error**.

SECTION TWO: BROADFORM LIABILITY – PUBLIC LIABILITY AND NON TECHNOLOGY PRODUCTS

SECTION TWO: WHAT YOU ARE INSURED FOR

A. PUBLIC LIABILITY

1. Public Liability

You are insured for all sums that **you** become **liable** to pay arising from **injury** and/or **damage** that happens during the **period of insurance**:

- 1.1 anywhere in the world, except for **North America**, in connection with the **business**, and
- 1.2 in **North America**, provided that **your liability** is in connection with **business** related travel to, or in **North America**.

2. Product Liability

You are insured for sums that **you** become **liable** to pay arising from **injury** and/or **damage** that happens during the **period of insurance**, in connection with **your products**, anywhere in the world.

No cover is provided in **North America**:

- (a) for **liability** in connection with the activities of **your**:

- (i) sales agents, or
 - (ii) vendors, or
 - (iii) representatives,
- that are domiciled overseas, or

- (b) if **you** have a place of business in **North America**, or if **you** are represented by any parent or subsidiary company or **joint venture** in **North America**.

The most **we** will pay for any **event**, or in the aggregate for all **product liability events**, during an **annual period**, is the Public and Products Liability sum insured shown in the **schedule**.

B. DEFENCE COSTS

You are insured for all legal costs and legal expenses necessarily and reasonably incurred by **you** to defend any civil legal action that if proven would be covered by this Section.

We will meet these costs even if the legal action seems groundless.

For avoidance of any doubt, if **you** are unsure whether **we** will pay **your** costs and/or expenses, please consult **us** before **you** start incurring any costs and/or expenses.

Defence Costs covered by this Section will be paid in addition to the relevant limit shown in this policy or in the **schedule**, except for:

1. 'Section Two What You Are Insured For Part A Item 1.2' – Public Liability – North America' and 'Section Two What You Are Insured For Part A Item 2' – Product Liability – anywhere in the world' and
2. 'Section Two Automatic Extension Part B – Defective Design Liability' and
3. 'Section Two Automatic Extension Part N – Vibration, Removal, Weakening of Support Liability', and
4. 'Section Two Automatic Extension Part D – Exemplary Damages in New Zealand'.

For Items 1 – 4 above, Defence Costs covered by this policy are included within the relevant limit and are not additional.

SECTION TWO: AUTOMATIC EXTENSIONS

'Section Two What You Are Insured For Part A' above is extended to provide the following Automatic Extensions.

Automatic Extensions are included within the Public and Products Liability sum insured shown in the **schedule**, they are not in addition to it.

A. BAILEE'S LIABILITY

You are insured for all sums that **you** become **liable** to pay for **damage** that happens in New Zealand during the **period of insurance**, in connection with the **business**, to property that is:

1. in **your** control or possession (and not owned, hired, leased or rented by any person or entity defined under **you**, other than employees), and
2. at premises that are owned or occupied by **you**.

No cover is provided for **liability** for **damage** to land or buildings.

'Section Two Exclusion D Item 2' does not apply to faulty or defective storing of any **product** covered by this Extension.

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'Section Two Exclusion K Item 2' does not apply to this Extension.

The most **we** will pay under this Extension for all **events** that happen during the **period of insurance** is \$250,000, unless a different amount is shown in the **schedule**.

An excess of \$1,000 applies for each **event** under this Extension, unless a different amount is shown in the **schedule**.

B. DEFECTIVE DESIGN LIABILITY

You are insured for all sums that **you** become **liable** to pay arising from **injury** and/or **damage** that happens in New Zealand during the **period of insurance**, in connection with:

1. the **business**, and
2. any defective:
 - 2.1 formula or pattern, or
 - 2.2 design or plan, or
 - 2.3 specification,

of **products**.

'Section Two Exclusion Part B Item 1' does not apply to this Extension.

The most **we** will pay under this Extension for all **events** that happen during an **annual period** is \$250,000, unless a different amount is shown in the **schedule**.

An excess of \$1,000 applies for each **event** under this Extension, unless a different amount is shown in the **schedule**.

C. ERRORS AND OMISSIONS LIABILITY

You are insured for all sums that **you** become **liable** to pay arising from **injury** and/or **damage** that happens in New Zealand during the **period of insurance**, in connection with:

1. the **business**, and
2. errors or omissions in:
 - 2.1 advice given by **you**, provided that the advice is incidental to goods **you** have sold, supplied or **repaired**, or
 - 2.2 emergency medical advice or emergency medical treatment provided by **you**.

'Section Two Exclusion Part B Item 2' does not apply to this Extension.

D. EXEMPLARY DAMAGES IN NEW ZEALAND

You are insured for punitive or exemplary damages awarded against **you** by a New Zealand Court arising out of an **event** covered by this policy.

You are not insured for punitive or exemplary damages connected with a dishonest or fraudulent act or omission by **you**.

'General Exclusion B Item 2' and 'General Condition Part C Item 3' do not apply to this Extension.

The most **we** will pay under this Extension for all **events** that happen during an **annual period** is:

1. the Public and Products Liability sum insured shown in the **schedule**, or
2. \$1,000,000,

whichever is the lesser.

E. FOREST AND RURAL FIRES ACT

You are insured for all sums that **you** become **liable** to pay arising from fire (or threat of fire) that happens in New Zealand during the **period of insurance** in connection with the **business**, for:

1. costs and losses recoverable from **you** under Section 43(1) of the Forest and Rural Fires Act 1977, and not otherwise at law, and
2. costs agreed (or levies imposed) and apportioned to **you** by a fire authority under Sections 46 and 46A of the Forest and Rural Fires Act 1977.

We will pay these costs whether **damage** occurs or not.

'Section Two Exclusion Part M Item 1' and 'Section Two Exclusion Part E' do not apply to this Extension.

The most **we** will pay under this Extension for all **events** that happen during an **annual period** is \$250,000, unless a different amount is shown in the **schedule**.

Professional Risks / INFORMATION TECHNOLOGY LIABILITY INSURANCE POLICY

F. LANDLORD'S LIABILITY

You are insured for sums that **you** become **liable** to pay arising from **injury** and/or **damage** that happens anywhere in the world other than **North America** during the **period of insurance**, in connection with:

1. the **business**, and
2. **your** legal ownership, but not physical occupation, of any premises.

G. LOADING / UNLOADING LIABILITY

You are insured for all sums that **you** become **liable** to pay arising from **injury** and/or **damage** that happens in New Zealand during the **period of insurance**, in connection with:

1. the **business**, and
2. the:
 - 2.1 loading of goods into a stationary vehicle, or
 - 2.2 unloading of goods from a stationary vehicle.

You are not insured for **liability** for **damage** to a **mobile mechanical plant**.

'Section Two Exclusion Part M Item 1' does not apply to this Extension.

H. MOBILE MECHANICAL PLANT

You are insured for all sums that **you** become **liable** to pay arising from **injury** and/or **damage** that happens in New Zealand during the **period of insurance**, in connection with:

1. the **business**, and
2. **mobile mechanical plant** that is operating its plant or machinery at the time of the **injury** and/or **damage**, provided that **you** are not otherwise insured for **your liability** under any other policy.

'Section Two Exclusion Part K Item 2', 'Section Two Exclusion Part D Item 2' and 'Section Two Exclusion Part M Item 1', do not apply to this Extension.

I. MOTOR REPAIR AND STORAGE LIABILITY

You are insured for all sums that **you** become **liable** to pay arising from **injury** and/or **damage** that happens in New Zealand during the **period of insurance**, in connection with:

1. the **business**, and
2. any:
 - 2.1 **vehicle**, or
 - 2.2 internal combustion engine, or
 - 2.3 accessory or fitting of any of the above,not owned, hired, leased or rented by any person or entity defined under **you**, provided that the **injury** and/or **damage** occurs:
 - (a) as a result of **repairs** carried out by **you**, or
 - (b) while any item listed in 2 (above) is in **your** control or possession, but not as a result of **repairs** being carried out by **you** to that item.

No cover is provided under (a) above for **liability** for **damage** to an item that is insured under (b) above.

No cover is provided when **you** are driving any **vehicle** and **you**:

- (i) do not hold an appropriate driver's licence or do not comply with the conditions of **your** driver's licence, or
- (ii) have a proportion of alcohol in **your** breath or blood that exceeds the legal limit, or
- (iii) are under the influence of any other intoxicating substance or drug, or
- (iv) fail or refuse to supply a breath or blood sample as required by law, or
- (v) fail or refuse to stop, or remain at the scene, following an accident (as required by law), or
- (vi) are using the **vehicle** outside the manufacturer's recommended specifications.

No cover is provided when **you** are driving any **vehicle** that is in an unsafe condition if:

- (i) the condition of the **vehicle** causes, or contributes to, the **injury** and/or **damage**, and
- (ii) **you** were, or ought to have been, aware of the unsafe condition of the **vehicle**.

'Section Two Exclusion Part K Item 2', 'Section Two Exclusion Part M Item 1' and 'Section Two Exclusion Part B Item 2.1' do not apply to this Extension.

'Section Two Exclusion Part D' is deleted and replaced with the following:

'**You** are not insured for sums that **you** become **liable** to pay for the costs of rectifying, repairing or replacing errors or defects in **your** work or material. For the avoidance of doubt, this exclusion does not exclude **liability** for resultant **damage** arising from those errors or defects.'

Professional Risks / INFORMATION TECHNOLOGY LIABILITY INSURANCE POLICY

The most **we** will pay:

1. for each claim under (a) (**repairs** carried out by **you**) is:
 - 1.1 \$250,000 for **liability** for **damage** to any item listed in 2 (above), and
 - 1.2 the Public and Products Liability sum insured shown in the **schedule** for all **liability** (including 1.1).
2. for all claims during an **annual period** under item (b) (items in **your** control or possession) is \$250,000, unless a different amount is shown in the **schedule**.

An excess of \$1,000 applies for each **event** under this Extension, unless a different amount is shown in the **schedule**.

J. POLLUTION LIABILITY

You are insured for all sums that **you** become **liable** to pay arising from **injury** and/or **damage** that happens anywhere in the world other than **North America** during the **period of insurance** in connection with the **business** directly or indirectly arising from **pollution**, provided that the **pollution** is caused by a sudden, identifiable, unintended and unexpected happening that takes place in its entirety at a specified time and place.

For the avoidance of doubt, the cover provided by this Extension includes the cost of removing, nullifying or cleaning up the **pollution**.

'General Exclusion Part E' does not apply to this Extension.

K. PRODUCT WITHDRAWAL COSTS – NEW ZEALAND ONLY

You are insured for reasonable costs incurred, where it is necessary for **you** to withdraw or recall **your products**, provided that:

1. the **product** defect(s), which cause the withdrawal or recall, have already given rise to a claim covered under 'Section Two What You Are Insured For Part A' of this policy, and
2. the costs are incurred within 12 months of **you** first notifying **us** of the **products** claim (as mentioned in Item 1 above), and
3. the costs are limited to the withdrawal or recall of **products** within New Zealand.

'Section Two Exclusion J' does not apply to this Extension.

We will pay 80% of the costs incurred for any **event**.

The most **we** will pay under this Extension for all **events** that happen during an **annual period** is \$100,000, unless a different amount is shown in the **schedule**.

An excess of \$2,500 applies for each **event** under this Extension, unless a different amount is shown in the **schedule**.

L. TENANT'S LIABILITY

You are insured for all sums that **you** become **liable** to pay arising from **injury** and/or **damage** that happens anywhere in the world other than **North America** during the **period of insurance**, in connection with:

1. the **business**, and
2. any premises occupied, but not owned by **you**.

'Section Two Exclusion Part K Item 2' does not apply to the premises occupied by **you**.

M. UNDERGROUND SERVICES LIABILITY

You are insured for all sums that **you** become **liable** to pay arising from **damage** to any existing:

1. underground cables, or
2. underground pipes, or
3. other underground facilities,

that happens in New Zealand during the **period of insurance**, in connection with the **business**, provided that prior to commencement of the work, **you** have inquired with the relevant authorities about the exact position of such cables, pipes or other underground facilities.

'Section Two Exclusion Part L' does not apply to this Extension.

An excess of \$1,000 applies to each **event** under this Extension, unless a different amount is shown in the **schedule**.

Professional Risks / INFORMATION TECHNOLOGY LIABILITY INSURANCE POLICY

N. VIBRATION, REMOVAL, WEAKENING OF SUPPORT

You are insured for all sums that **you** become **liable** to pay arising from **injury** and/or **damage** that happens in New Zealand during the **period of insurance**, in connection with:

1. the **business**, and
2. the:
 - 2.1 vibration, or
 - 2.2 removal of the support, or
 - 2.3 weakening of the support, or
 - 2.4 interference with the support, of land or buildings.

'Section Two Exclusion Part N' does not apply to this Extension.

The most **we** will pay under this Extension for all **events** that happen during an **annual period** is \$250,000, unless a different amount is shown in the **schedule**.

An excess of \$5,000 applies for each **event** under this Extension, unless a different amount is shown in the **schedule**.

O. WATERCRAFT REPAIR AND STORAGE LIABILITY

You are insured for all sums that **you** become **liable** to pay arising from **injury** and/or **damage** that happens in New Zealand during the **period of insurance**, in connection with:

1. the **business**, and
2. any:
 - 2.1 watercraft up to 500 Gross Registered Tonnes, or
 - 2.2 marine internal combustion engine that is used in a watercraft up to 500 Gross Registered Tonnes, or
 - 2.3 accessory or fitting of any of the above, not owned, hired, leased or rented by any person or entity defined under **you**.

provided that the **injury** and/or **damage** occurs:

- (a) as a result of repairs carried out by **you**, or
- (b) while any item listed in 2 (above) is in **your** control or possession, but not as a result of **repairs** being carried out by **you** to that item.

No cover is provided under (a) above for **liability** for **damage** to an item that is insured under (b) above.

No cover is provided when **you** are sailing or navigating any watercraft and **you**:

- (i) are under the influence of any other intoxicating substance or drug, or
- (ii) are using the watercraft outside the manufacturer's recommended specifications.

No cover is provided when **you** are sailing or navigating any watercraft that is in an unsafe condition if:

- (i) the condition of the watercraft causes, or contributes, to the **injury** and/or **damage**, and
- (ii) **you** were, or ought to have been, aware of the unsafe condition of the watercraft.

'Section Two Exclusion Part K Item 2', 'Section Two Exclusion Part M Item 2' and 'Section Two Exclusion Part B Item 2.1' do not apply to this Extension.

'Section Two Exclusion D' is deleted and replaced with the following:

'**You** are not insured for sums that **you** become **liable** to pay for the costs of rectifying, repairing or replacing errors or defects in **your** work or material. For the avoidance of doubt, this exclusion does not exclude **liability** for resultant **damage** from those errors or defects.'

The most **we** will pay:

1. for each claim under (a) (**repairs** carried out by **you**) is:
 - 1.1 \$250,000 for liability for damage to any item listed in 2 (above), and
 - 1.2 the Public and Products Liability sum insured shown in the **schedule** for all **liability** (including 1.1).
2. for all claims during an **annual period** under item (b) (items in **your** control or possession) is \$250,000, unless a different amount is shown in the **schedule**.

An excess of \$1,000 applies for each **event** under this Extension, unless a different amount is shown in the **schedule**.

Professional Risks / INFORMATION TECHNOLOGY LIABILITY INSURANCE POLICY

P. WELDING / GAS CUTTING / BURNING-OFF LIABILITY

You are insured for all sums that **you** become **liable** to pay arising from **injury** and/or **damage** that happens in New Zealand during the **period of insurance**, in connection with the following work **you** carry out for the **business**:

1. welding, or
2. gas cutting, or
3. burning-off of any substance,

provided that the welding, gas cutting or burning-off is carried out in accordance with the current New Zealand Standard appropriate to that work.

'Section Two Exclusion Part O' does not apply to this Extension.

An excess of \$1,000 applies to each **event** under this Extension, unless a different amount is shown in the **schedule**.

SECTION TWO: EXCLUSIONS

A. BUILDING DEFECTS

You are not insured for loss, **liability**, prosecution, expense or **civil liability** of any type in connection with a building or structure being affected by:

1. moisture or water build-up or the penetration of external moisture or water, or
2. the action or effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa, or any similar or like forms,

provided that the **injury** and/or **damage** is caused directly or indirectly by:

- (a) non-compliance with the New Zealand Building Code, or
- (b) faulty design or faulty specification, including but not limited to faulty sequence, procedure or programme, or
- (c) faulty materials, or
- (d) faulty workmanship,

when the building or structure was constructed, manufactured, altered, repaired, renovated or maintained.

This exclusion does not apply to **your liability** for **injury** and/or **damage** that is caused by, or directly arises from, the leakage of internal pipes, internal water systems or internal cisterns.

B. DEFECTS AND ERRONEOUS ADVICE

You are not insured for sums that **you** become **liable** to pay in connection with:

1. **products** that are faulty or defective in:
 - 1.1 formula or pattern, or
 - 1.2 design or plan, or
 - 1.3 specification, or
2. any error or omission in:
 - 2.1 advice given by **you**, or
 - 2.2 medical advice or medical treatment provided by **you**.

C. E-COMMERCE

You are not insured for loss, **liability**, prosecution or expense of any type in connection with any of the following:

1. alteration, corruption, erasure or other use of **computers**, or
2. error in creating, amending, deleting or using **computers**, or
3. inability to access or use **computers** for any time, or at all.

D. FAULTY OR DEFECTIVE WORKMANSHIP AND PRODUCTS

You are not insured for sums that **you** become **liable** to pay in connection with any fault or defect in:

1. **products**, or
2. work done to or with **products**.

This exclusion does not exclude **liability** for resultant damage to property.

E. FOREST AND RURAL FIRES ACT

You are not insured for sums that **you** become **liable** to pay under the Forest and Rural Fires Act 1977, unless **you** are (or would be) otherwise **liable** for such sums.

Professional Risks / INFORMATION TECHNOLOGY LIABILITY INSURANCE POLICY

F. INFORMATION TECHNOLOGY	You are not insured for sums that you become liable to pay in connection with: <ol style="list-style-type: none">1. information technology, or2. technology products.
G. INJURY TO EMPLOYEES AND FAMILY	You are not insured for sums that you become liable to pay for injury that: <ol style="list-style-type: none">1. arises out of, and in the course of, your employment of any person, or2. is sustained by a member of your family, ordinarily living with you.
H. LIABILITY BY AGREEMENT	You are not insured for liability that you have agreed to assume under a contract unless you would otherwise have been liable in the absence of that contract.
I. LOSS OF USE	You are not insured for loss, liability , prosecution or expense of any type in connection with loss of use of tangible property that has not suffered physical loss or physical damage, where that loss of use is caused solely by: <ol style="list-style-type: none">1. your delay in performing a contract, or2. the failure of products to meet a level of performance, quality, fitness or durability expressly represented by you that is in excess of your legal liability in the absence of the representation.
J. PRODUCTS WITHDRAWN FROM MARKET	You are not insured for the cost to: recall, inspect, repair or replace, products that are withdrawn from the market (or from use) because of any known or suspected defect or deficiency.
K. PROPERTY YOU OWN OR CONTROL	You are not insured for sums that you become liable to pay for damage to: <ol style="list-style-type: none">1. property owned by you, or2. property in your control or possession (except vehicles in a car park operated by you).
L. UNDERGROUND SERVICES LIABILITY	You are not insured for sums that you become liable to pay in connection with any existing: <ol style="list-style-type: none">1. underground cables, or2. underground pipes, or3. other underground facilities.
M. VEHICLE / WATERCRAFT / AIRCRAFT	You are not insured for sums that you become liable to pay in connection with: <ol style="list-style-type: none">1. ownership, possession, repair or use of any vehicle, or2. ownership, possession, repair or use of any watercraft, or3. watercraft exceeding 500 Gross Registered Tonnes, or4. ownership, possession, repair or use of an aircraft, aerial device, or hovercraft, or5. products: <ol style="list-style-type: none">5.1 used in the construction of, or5.2 installed in,any aircraft, aerial device, hovercraft or watercraft that exceeds 500 Gross Registered Tonnes.
N. VIBRATION, REMOVAL, WEAKENING OF SUPPORT	You are not insured for sums that you become liable to pay in connection with: <ol style="list-style-type: none">1. vibration, or2. removal of the support, or3. weakening of the support, or4. interference with the support, of land or buildings.
O. WELDING / GAS CUTTING / BURNING-OFF LIABILITY	You are not insured for sums that you become liable to pay in connection with: <ol style="list-style-type: none">1. welding, or2. gas cutting, or3. burning-off of any substance, carried out by you.

Professional Risks / INFORMATION TECHNOLOGY LIABILITY INSURANCE POLICY

SECTION TWO: BASIS OF SETTLEMENT

- A. MAXIMUM AMOUNT PAYABLE** The most **we** will pay in total for any **event** under all Parts and Extensions of Section Two of this policy combined is:
1. the Public and Products Liability sum insured shown in the **schedule**, or
 2. the sum of the limits for the relevant Extensions as shown in this policy or in the **schedule**, where those Extensions separately apply,
- whichever is lesser, plus any legal costs and legal expenses payable in addition as described in 'Section Two What You Are Insured For Part B – Defence Costs'.
- For avoidance of doubt, if two or more Section Two Extensions could apply to cover the same **event**, the most **we** will pay in total for the **event** is the highest of the available limits plus any legal costs and legal expenses payable in addition as described in 'Section Two: What You Are Insured For Part B – Defence Costs'.
- B. EXCESS** An excess of \$500 applies for each **event**, unless a different amount is shown in this policy or in the **schedule**.
- For avoidance of doubt, if two Extensions could apply to cover the same **event**, **we** will only apply one excess. That excess will be the highest excess.

GENERAL EXCLUSIONS – APPLICABLE TO ALL SECTIONS

- A. ASBESTOS** **You** are not insured for sums that **you** become legally **liable** to pay in connection with any of the following:
1. the mining, processing, transporting, distributing or storing of asbestos,
 2. the manufacture or processing of materials that contain asbestos,
 3. any process of decontamination, treatment or control of asbestos,
 4. the presence of asbestos in any building or structure,
 5. pollution or contamination by asbestos.
- B. FINES / EXEMPLARY DAMAGES** **You** are not insured for:
1. any fine or penalty imposed on **you** (whether under contract or statute) or
 2. any punitive or exemplary damages awarded against **you**.
- C. LIABILITY BY AGREEMENT** **You** are not insured for obligations assumed under or for legal liability:
1. arising from **your** breach of a contract, warranty, guarantee or undertaking, unless **you** would otherwise have been legally **liable** in the absence of that contract, warranty, guarantee or undertaking, or
 2. to the extent **you** have limited any potential right to receive contribution or indemnity in relation to that **civil liability** from a person, in an arrangement or agreement with that person, or
 3. that **you** agree to accept outside of what is normal in the conduct of **your business**.
- D. NUCLEAR** **You** are not insured for loss, legal liability, prosecution or expense of any type in connection with any operations employing the process of nuclear fission or fusion, or handling of radioactive material. This includes, but is not limited to:
1. the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices, and
 2. the use, handling or transportation of any radioactive material, and
 3. the use, handling or transportation of any weapon or explosive device employing nuclear fission or fusion.
- E. POLLUTION** **You** are not insured for sums **you** become legally **liable** to pay in connection with **pollution**.
- F. TERRORISM** **You** are not insured for loss, legal liability, prosecution or expense of any type in connection with an **act of terrorism**.

G. WAR

You are not insured for loss, legal liability, prosecution or expense of any type in connection with:

1. war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, or
2. confiscation, nationalisation, requisition, destruction or damage to property by any government or public or local authority.

MANAGING YOUR CLAIM – APPLICABLE TO ALL SECTIONS

A. YOUR OBLIGATIONS

1. Do Not Admit Liability

You must not:

- 1.1 admit **you** are liable, or
- 1.2 do or say anything that may prejudice **our** ability to defend the **claim** against **you** or take recovery action in **your** name.

2. Advise us

If **you** become aware of any **claim**, **you** must notify **us** immediately.

If **you** become aware of any circumstance that may give rise to a **claim** under Section One of this policy, **you** must also notify **us** immediately. Once that circumstance is notified to **us**, it is deemed to be a **claim** under Section One of this policy.

3. Minimise the Loss

You must take all reasonable steps to minimise the **claim** and avoid any further liability arising.

4. Notify the Police

You must immediately lay a complaint with the Police if **you** suspect criminal activity has occurred.

5. Provide Full Information

When **you** make a claim under this policy **you** consent to **your** personal information in connection with the claim being:

- 5.1 disclosed to **us**, and
- 5.2 transferred to the Insurance Claims Register Limited.

You must:

- (a) give **us** free access to examine and assess the claim, and
- (b) send any relevant correspondence or documents to **us**, and
- (c) complete a claim form and/or statutory declaration to confirm the claim if **we** request it, and
- (d) provide any other information or assistance that **we** may require at any time.

6. Be Truthful

If **your** claim under this policy is dishonest or fraudulent in any way, **we** may:

- 6.1 decline **your** claim either in whole or in part, and/or
- 6.2 declare this policy or all policies **you** have with **us** to be unenforceable from the date of the dishonest or fraudulent act.

This is at **our** sole discretion.

7. Incurring Costs

You are not authorised to incur any costs or expenses without **our** prior written consent.

8. Co-operation

You must provide any other assistance that **we** may reasonably require at any time.

9. Do Not Dispose of Property

You must not dispose of any property involved in **your** claim until **we** have given **you** permission to do this.

B. MANAGING YOUR CLAIM

1. Allocation of defence costs

If a **claim** is covered only partly by this policy, then **we** will attempt to ensure fair and proper allocation of the legal costs and legal expenses for insured and uninsured portions.

If all parties are unable to agree upon the allocation of the legal costs and legal expenses then that allocation shall be referred to a lawyer that **we** and **you** agree to instruct, whose determination shall be binding upon all parties.

The cost of the lawyer's determination is to be taken as part of 'Section One What You Are Insured For B Defence Costs' or 'Section Two What You Are Insured For B Defence Costs' as applicable.

If the parties cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society.

2. Apportionment

If **we** incur costs and/or expenses above the maximum amount payable, then:

2.1 **you** must pay this amount when **we** ask for it, or

2.2 **we** can offset that payment against what **we** must pay to **you** under this policy.

3. Your Defence (*Queens Counsel Clause*)

3.1 **We** are not required to defend a **claim** against **you** unless a lawyer that **we** and **you** agree to instruct, advises that the **claim** should be defended.

3.2 In formulating his or her advice, the lawyer must be instructed to consider:

- (a) the economics of the matter, and
- (b) the damages and costs likely to be recovered, and
- (c) the likely costs of defence, and
- (d) **your** prospects of successfully defending the **claim**.

3.3 The cost of the lawyer's opinion is to be taken as part of 'Section One What You Are Insured For B – Defence Costs' or 'Section Two What You Are Insured For B Defence Costs' as applicable.

3.4 If the lawyer advises that the **claim** should be settled and if the terms of the settlement that **we** recommend are within limits that are reasonable (in the lawyer's opinion and in the light of the matters he/she is required to consider), then:

- (a) **you** cannot object to the settlement, and
- (b) **you** must immediately pay the excess shown in the **schedule**.

4. Subrogation

Once **we** have accepted any part of **your** claim under this policy, **we** may assume **your** legal right of recovery.

If **we** initiate a recovery **we** will include **your** excess, and any other uninsured losses suffered by **you**. Where **we** do this, **you** agree to pay **your** proportional share of the recovery costs, and subsequently the proceeds of the recovery will be shared on the same proportional basis, except that **we** will reimburse **your** excess first.

5. Recovery from Employees

We will not recover any amount paid out as a claim under this policy from any of **your** **employees** or former **employees** unless the claim arose from that **employee's** dishonest, fraudulent, criminal or malicious acts, omissions or conduct.

6. Defence of Liability Claims

After **you** have made a claim under this policy, **we** have the sole right (which shall be a condition precedent to **your** right to be covered) to:

- 6.1 act in **your** name and on **your** behalf to defend, negotiate or settle the claim as **we** see fit (this will be done at **our** expense), and
- 6.2 defend or legally represent **you** at a legal or quasi legal enquiry as covered by 'Section One Automatic Extension F Disciplinary Proceedings and Enquiries', and
- 6.3 publish a retraction or apology (in the case of defamation proceedings).

We may appoint **our** lawyers to represent **you**. They will report directly to **us**.

7. Discharge of Liability Claims

Subject to 'Managing Your Claim Item 3 – Your Defence (*Queens Counsel Clause*)' **we** may elect at any time to pay **you**:

- 7.1 the maximum amount payable under this policy, or
- 7.2 any lesser sum that the claim against **you** can be settled for.

Once **we** have paid this (plus any legal costs and legal expenses already incurred up to the maximum amount payable under this policy) **our** responsibility to **you** under the policy is met in full, in respect of that claim.

8. Waiver of Professional Privilege

The solicitors **we** instruct to act on behalf of **you** are at liberty to disclose to **us** any information they receive in that capacity, including information they receive from **you**. **You** authorise the solicitors to disclose this information to **us**.

GENERAL CONDITIONS – APPLICABLE TO ALL SECTIONS

**A. HOW WE ADMINISTER
THIS POLICY**

1. Non Accumulative Condition

This policy is not cumulative with any other insurance policies issued by **us**. Where **you** are entitled to indemnity for the same claim under more than one section of this policy or more than one policy issued by **us**, **you** can only obtain indemnity from one section or one policy issued by **us**.

2. Authorisation

The person(s) who signed the proposal form is appointed as agent of each person who is entitled to cover under this policy, in all matters relating to this policy and to **claims** covered by it.

3. Cancellation and Modification

3.1 By You

You may ask **us** to cancel or modify this policy at any time. **We** must agree in writing to any modification before it will take effect.

3.2 By Us

We may cancel or modify this policy by advising **you** (or **your** Broker or Agent) by letter, fax or email. Cancellation or modification will take effect at 4.00pm, on the 30th day after the date of **our** advice.

We will not refund the proportion of unused premium paid.

4. Other Insurance

You must notify **us** as soon as **you** know of any other insurance policy that covers **you** for any of the risk covered under this policy.

If **you** or anyone else who can claim under this policy can claim under any other insurance, **we** will only pay over and above the limit payable by the other insurances.

5. Currency

All sums in this policy wording (including any attachments) and in the **schedule** are specified in New Zealand dollars.

6. GST

Where GST is recoverable by **us** under the Goods and Services Act 1985:

- 6.1 all sums insured exclude GST, and
- 6.2 all sub limits exclude GST, and
- 6.3 all excesses include GST, and
- 6.4 GST will be added, where applicable, to claim payments.

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B. LAWS AND ACTS THAT GOVERN THIS POLICY

1. Acts of Parliament

Where this policy refers to any Act of Parliament, it also includes any subordinate legislation made under it, and any subsequent Acts or Regulations.

2. Disputes about this policy

The law of New Zealand applies to disputes about this policy, and the New Zealand Courts have exclusive jurisdiction.

3. Insurance Law Reform Acts

The exclusions and conditions in this policy are subject to **your** rights under the Insurance Law Reform Acts 1977 and 1985.

C. YOUR OBLIGATIONS

1. Comply with the Policy

You (and any other person or entity **we** cover) must comply with the conditions of this policy at all times. If **you** fail to comply, **we** may, at **our** sole discretion, not pay **your** claim.

2. Provide Accurate Information

You must make sure all statements and representations that are made to **us**, at any time, either by **you** or anyone else, are truthful and complete.

3. Reasonable Care

You must take reasonable care at all times to avoid circumstances that could result in a claim. **Your** claim will not be covered if **you** are reckless or grossly irresponsible.

4. Change in Circumstances

You must tell **us** immediately if there is a material:

- 4.1 increase in the risk insured, or
- 4.2 alteration of the risk insured.

Once **you** have told **us** of the change, **we** may then cancel or alter the premium and/or terms of this policy.

If **you** fail to notify **us** about a change in the risk insured, **we** may:

- (a) declare this policy unenforceable, or
- (b) decline any subsequent claim either in whole or in part.

These actions will be taken from the date **you** knew, or ought to have known, of the increase or alteration in the risk insured.

For avoidance of any doubt, information is 'material' where we would have made different decisions about either:

- (i) accepting your insurance, or
- (ii) setting the terms of your insurance,

if we had known that information. If in any doubt, notify us anyway.

DEFINITIONS – APPLICABLE TO ALL SECTIONS

The following definitions apply to all Sections in the NZI Information Technology Liability Policy, except where otherwise stated.

The definitions apply to the plural and any derivatives of the bolded words. *For example, the definition of 'we' includes 'us' and 'our'.*

accidental	Unexpected and unintended by you .
act of terrorism	<p>Includes any unlawful act, or preparation in respect of action, or threat of action designed to influence or coerce the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and that:</p> <ol style="list-style-type: none">1. involves violence against one or more persons, or2. involves damage to property, or3. endangers life other than that of the person committing the action, or4. creates a risk to health or safety of the public or a section of the public, or5. is designed to interfere with or disrupt an electronic system.
annual period	<p>The period of insurance. However, if:</p> <ol style="list-style-type: none">1. you pay the premium monthly or quarterly, or2. the period of insurance is for more than 12 months, <p>the annual period is any one 12 month period calculated from the date this policy first started, and consecutively thereafter.</p>
business	The business described in the schedule .
civil liability	Liability for damages (but not fines, penalties, or punitive or exemplary damages), interest, costs and expenses that a civil court or arbitrator orders you to pay or settlements negotiated by us , in relation to a claim . It includes the legal costs of the person making the claim , for which you become liable.
claim	<p><i>Applies only to Section One Civil Liability</i></p> <p>The earliest of the following:</p> <ol style="list-style-type: none">1. service on you of a legal or arbitral proceeding by any third party,2. your receipt of written notice from any third party that they hold you liable, or intend to commence legal or arbitral proceedings against you, <p>in connection with an error covered by this policy, regardless of whether the claimed amount exceeds the excess.</p>
claim	<p><i>Applies only to Section Two Broadform Liability</i></p> <p>Your receipt of notice from any third party that they hold you liable.</p>
computer virus	Any application the purpose of which is to gain unauthorised access to an information technology system to either disrupt or do harm or harvest confidential information or data.
computers	Includes any data, computer hardware, operating systems, computer network, equipment, websites, servers, extranet, software, applications software, computer chip including microprocessor chip and coded instructions as well as any new technology, product or service replacing existing computer equipment.
damage	<p>Any of the following:</p> <ol style="list-style-type: none">1. accidental physical loss or accidental physical damage to any tangible property, including its subsequent loss of use,2. accidental loss of use of any tangible property that has not suffered physical loss or physical damage.

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data	Documents, digitised data, micro-code or information stored in written, machine-readable or any other form but shall not include any bearer bonds, coupons, stamps, bank or currency notes or other negotiable instruments.
employee	Any person who is deemed to be employed by the business pursuant to the Employment Relations Act 2000.
error	Any actual or alleged error, omission, act or conduct.
event	Any one event (including continuous or repeated exposure to conditions) or series of events arising from one source or original cause.
information technology	Any information technology related service, advice, specification or work provided by you , including the provision of: <ol style="list-style-type: none">1. data processing,2. data warehousing,3. computer facilities management,4. telecommunications and data communication service, while conducting your business .
injury	Any of the following: <ol style="list-style-type: none">1. the accidental death of, or the accidental bodily injury to any person, including sickness, disease, disability, shock, fright, mental anguish or mental injury,2. false arrest, false imprisonment, malicious prosecution or malicious humiliation,3. defamation, or publication that violates any individual's right to privacy, except:<ol style="list-style-type: none">(a) defamation where you know the statement is false, and(b) defamation or publication that involves advertising, broadcasting or telecasting activities conducted by you, or on your behalf,4. wrongful entry or eviction, or any other invasion of the right of private occupancy,5. battery or assault, provided that:<ol style="list-style-type: none">(a) it is not committed by you, or(b) it is not committed under your direction,unless it is committed to prevent or eliminate danger to persons or property.
intellectual property rights	Patent, copyright, design of trademark or circuit layout rights.
joint venture	An undertaking (regardless of what it is called) which you carry on together with someone else who is not otherwise covered under this policy.
liable	Legally liable according to the law that applies in the circumstances.
mobile mechanical plant	A vehicle , that has either plant or machinery attached to it, or is primarily designed as mobile plant or machinery.
North America	Any territory under the jurisdiction of the laws of The United States of America or Canada.
period of insurance	The period you are insured for. This is shown in the schedule .
pollutants/pollution	Any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.
principal	A sole practitioner, a partner of a firm, or a director of a company where that firm or company is covered by this policy.
products	Any of the following: <ol style="list-style-type: none">1. any goods that you sell, supply, distribute, manufacture, construct, erect or install, including any item that is used to contain those goods/products (provided the container is not a vehicle), and2. that part of any tangible property that you work on, but not any other separate component of that property, other than technology products .

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repair	Repair, alter, renovate, service or install.
retroactive date	The date shown in the schedule .
schedule	The latest version of the Schedule we issued to you for this policy.
technology products	Any computer equipment, hardware or software: <ol style="list-style-type: none"> 1. sold, or 2. serviced, or 3. repaired, in connection with the provision of information technology .
vehicle	Any: <ol style="list-style-type: none"> 1. motor vehicle, or 2. machine on wheels, tracks or rollers (but not rails) that is propelled by its own power, or 3. anything, other than a watercraft, designed to be towed by either (a) or (b) above.
we	NZI, a business division of IAG New Zealand Limited. <i>We may also use the words, 'us', 'our' or 'company' to describe NZI.</i>
you	<i>Applies only to Section One Civil Liability</i> The following: <ol style="list-style-type: none"> 1. any person or entity shown in the schedule as an Insured and all current and former principals of that entity, 2. any subsidiary entity that is created while this policy is in force, by any person or entity shown in the schedule as an Insured, but only if that entity is engaged in the provision of information technology and technology products, 3. any person who, during the period of insurance, becomes a principal of an entity shown in the schedule as an Insured, but only in respect of work undertaken for that entity. We may also use the word 'insured' to describe you.
you	<i>Applies only to Section Two Broadform Liability</i> Any person or entity named in the schedule as 'insured'. This includes any of the following, provided they are living or based in New Zealand: <ol style="list-style-type: none"> 1. any existing subsidiary company of that entity, 2. any existing: <ol style="list-style-type: none"> (a) joint venture, or (b) other company, over which that person or entity exercises more than 50% management control, 3. any director, executive officer, employee or partner of: <ol style="list-style-type: none"> (a) that person or entity, or (b) any entity referred to in 1. and 2. above, but only while acting in that capacity, 4. any office bearer or member of a social club, social sporting club or your employee superannuation fund that has been formed by: <ol style="list-style-type: none"> (a) that person or entity, or (b) any entity referred to in 1. or 2. above, but only while acting in that capacity, or in connection with the activities of the club or fund, 5. any new organisation that the person or entity acquires through consolidation, merger, purchase of the assets, or assumption of control and active management, provided that: <ol style="list-style-type: none"> (a) the new organisation is acquired during the period of insurance, and (b) the acquisition is notified to us within 90 days after it takes effect, 6. any principal who is party to a contract with: <ol style="list-style-type: none"> (a) that person or entity, or (b) any entity referred to in 1. and 2. above, but only for the principal's vicarious liability that arises out of that person's or entity's actions under that contract. We may also use the word 'insured' to describe you.



NZI is a business division of IAG New Zealand Limited, a wholly owned subsidiary of Insurance Australia Group, Australasia's largest general insurer. Established in 1859, it is today one of the country's largest and longest-serving fire and general insurance brands, protecting tens of thousands of New Zealanders every year.

Through our broad range of commercial, personal, marine, professional risks and rural insurance products, we pride ourselves on helping people to achieve the best protection for their assets.

We partner with a network of skilled and experienced brokers and other insurance intermediaries who distribute our products. We pay remuneration to our brokers and intermediaries when they issue our policies, and when these policies are renewed or varied.

To find out more about the advantages of choosing NZI, talk to your broker or visit nzi.co.nz.

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