

Agile Infinite Management Liability Package Insurance

Combined Wording and
Product Disclosure Statement (PDS)

Issued by Agile Insurance Group NZ Limited
NZBN 9429052286766

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Policy Wording & Product Disclosure Statement (PDS)

Prepared on 9th September 2026

Any general advice that may be contained within this Policy Wording and Product Disclosure Statement (PDS) or accompanying material does not take into account Your individual objectives, financial situation or needs. The *insured* need to decide if the limits, type and level of cover are appropriate for You.

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Part A – Product Disclosure Statement

General Information

In this PDS, “We”, “Agile”, “Our”, “Us” means Agile Insurance Group NZ Limited (**Agile**) and “You”, “Your” means the **Insured** (the person who has entered into this contract of insurance with Us).

This document is a Product Disclosure Statement (**PDS**) and is also the Agile Insurance Group NZ Limited (**Agile**) **policy** wording.

This document contains important information and has been prepared to assist You in understanding Your policy and making an informed choice about Your insurance requirements. It is up to You to choose the cover You need.

This policy is a non-consumer product and is not intended to be used wholly or predominantly for personal, domestic or household purposes.

It is important that You carefully read and understand this document before making a decision. Other documents may form part of **Agile’s policy** wording and PDS and if they do, **Agile** will tell You in the relevant document. Please keep this document and any other documents that **Agile** tell You form part of Your **policy** and keep in a safe place in case You need to refer to them in the future.

Throughout this document, certain words are highlighted in **bold & italic**. These words have special meaning and are included in [General Definitions](#), and Definitions applicable to the coverage sections of this **policy** wording and PDS. Please refer to the Definitions for their meaning. Any reference to an Act, legislation or legislative instrument in this document also refers to that Act, legislation or legislative instrument as amended and may be in force from time to time.

This **policy** is a legal contract between the You and **Agile**. You have paid, or agreed to pay, **Agile** the required **premium** and **Agile** will provide indemnity as specified in this **policy** and as set out in the **schedule**. It is essential that You read all of the **policy** terms and conditions before You purchase it to ensure that this **policy** provides You the protection You require and You are aware of the **limits of liability** provided and the amounts **Agile** will pay (including any **deductible** that applies) noting that some of these will be stated in the **policy** itself (these are Our standard **policy** limits) and the remainder will be stated in the **schedule**. You must ensure that You are aware of the Definitions of this **policy**.

You must comply with all provisions of this **policy**, otherwise **Agile** may be entitled to refuse to pay a claim or reduce its liability under this **policy**. This **policy** is in force for the **period of insurance** set out in the **schedule** or until cancelled

1. Who Can I Contact If I Have Questions?

We have simplified Our contact points so You can easily get in touch with Agile.

For Enquiries Relating To	Please Contact
General enquiries, including policy questions and coverage, and policy amendments. Any questions, just call or email.	+64 9 888 4512 nz@withagile.com
Cancelling Your policy You can cancel Your policy at any time.	+64 9 888 4512 nz@withagile.com
Making a claim Get in touch as soon as possible and We can help. You can claim directly through Our online portal.	+64 9 888 4512 claims@withagile.com Link to Online Portal
Making a complaint If You are not happy...We want to know.	+64 9 888 4512 complaints@withagile.com

2. About Agile Insurance Group NZ Limited

This insurance is issued by Agile Insurance Group NZ Limited (NZBN: 9429052286766) (*Agile*). Agile arranges policies for and on behalf of certain Underwriters at Lloyd's led by Agile Syndicate 2427 managed by Asta Managing Agency.

In all aspects of this *policy*, Agile acts as agent for subscribing insurers and not for You.

Our contact details are:

Head Office:	Ground Floor, 48 Broadway, Newmarket, Auckland, New Zealand, 1023
Postal Address:	Ground Floor, 48 Broadway, Newmarket, Auckland, New Zealand, 1023
Telephone:	+64 9 888 4512
E-mail:	hello@withagile.com
Website:	www.withagile.com

3. About Lloyd's

Lloyd's is the world's leading insurance and reinsurance marketplace. Through the collective intelligence and risk-sharing expertise of the market's underwriters and brokers, Lloyd's helps to create a braver world. The Lloyd's market does this by sharpening the insight to anticipate and understand risk, and the knowledge to develop relevant and innovative forms of insurance for customers globally.

Lloyd's offers the efficiencies of shared resources in a marketplace that covers risks from more than 200 territories, in any industry, at any scale. Lloyd's promises a trusted partnership – helping people, businesses and communities to recover in times of need and build resilience for the future. Lloyd's is a 330-year-old start up, founded by a few brave entrepreneurs in a coffee shop. Three centuries later, the Lloyd's market continues that proud tradition – sharing risk and inspiring courage everywhere.

4. About This Policy

We agree to provide You with insurance in accordance with the terms, conditions, and exclusions of the *policy* based on the information You have provided or that was provided on Your behalf to Agile, subject to payment of the *premium* required. The policy consists of this document, the *schedule* and any *endorsements* affixed (or intended to be affixed) to it and the proposal form. All of them should be read as if they were one document. This *policy* is subject to New Zealand law and practice.

Your certificate of insurance

Your *schedule* of insurance contains important details about Your *policy* such as the *period of insurance*, what cover options and *deductibles* will apply, and any changes to the *policy* wording.

What makes up Your *premium*

Your *premium* is determined by a number of factors and of course, the higher the risk is, the higher the *premium*. Your *premium* also includes amounts that We are required to pay, such as government charges, taxes or levies (e.g. GST) that apply to Your *policy*. You will find these amounts on Your quotation.

5. Important Information About This Policy Wording and Product Disclosure Statement

This document is a PDS and is also Our insurance *policy* wording.

This document contains important information and has been prepared to assist You in understanding Your policy and making an informed choice about Your insurance requirements. It is up to You to choose the cover You need.

It is important that You carefully read and understand this document before making a decision. Other documents may form part of Our Policy Wording and PDS and if they do, We will tell You in the relevant document.

In return for You paying *Agile* a *premium*, *Agile* insure You for the events described in the *policy* wording and PDS, subject to the terms, conditions and exclusions of Your *policy*. Please keep this document, Your *schedule* and any other documents that We tell You form part of Your *policy* in a safe place in case You need to refer to them in the future. Please check these documents to make sure all the information in them is correct. Please let *Agile* know as soon as possible if any alterations are needed or if You change Your address or payment details. For certain types of cover under the policy, *Agile* will require You to provide receipts and other documentary evidence to *Agile* before We pay a claim.

Check Your documents

It's important that You check all the details on the documents **Agile** send You. If You notice an error or if You have a question, please contact **Agile** at www.withagile.com/contact/. If You find You need to change the cover for whatever reason, get in contact with Us.

New Zealand Fair Insurance Code

The Insurance Council of NZ has developed the Fair Insurance Code, which is a self-regulatory code which sets out the standard of service member companies must provide to their customers. The Fair Insurance Code aims to raise the standards of practice and service in the insurance industry.

This **policy** is subject to the protections afforded by the Fair Insurance Code. For further information on the Code please visit Fair Insurance Code - ICNZ.

6. Your Duty of Disclosure

You have a duty of disclosure under this non-consumer **policy** to make a fair presentation of the risk. You must tell Us about all "material circumstances", which are matters that a prudent insurer would want to know when deciding whether to provide insurance and, if so, on what terms and **premium**. This is not limited to answering any questions We ask. If You are not sure whether something is relevant, You should tell Us anyway.

This duty applies in relation to things You know or ought to know by carrying out a reasonable search. If You are an individual then this duty applies in relation to things that You (i.e. the individual) know or ought to know. If You are not an individual, then this duty applies in relation to things that are known to 1 or more individuals who are part of Your senior management (individuals who play significant roles in making decisions about how Your activities are to be managed or organised) and/or are responsible for Your insurance. If this **policy** covers Your subsidiaries, this duty applies in relation to things You ought to know by carrying out a reasonable search and making reasonable enquiries of Your subsidiaries.

Your duty to make a fair presentation of the risk applies before You enter into this **policy** and before You renew, extend, vary, or reinstate this **policy**. You also have a separate contractual duty to notify us of any Change in Risk during the course of the policy as set out in the General Conditions below.

When You provide information to Us, You must do so honestly and make sure it is factually correct. You must also present the information in a clear and accessible way.

If You do not comply with Your duty of disclosure, We will consider what We would have done if We had the correct information. Depending on the circumstances, We may increase Your premium, change the terms of Your **policy**, reduce what We pay for a claim, and/or refuse a claim. If We would not have agreed to Your **policy**, or a change to it, We may treat the policy as if it had never existed or had never been changed and refuse all claims.

If We treat Your *policy* as if it had never existed or never been changed on the basis of a breach that is not deliberate or reckless, We will refund Your *premium* or any additional *premium* charged as a result of the change.

If You deliberately or recklessly do not meet Your disclosure duties, We may treat your *policy* as if it had never existed or had been ended at the time it was changed, refuse all claims, and keep any *premium* You have paid.

7. Who Can Purchase This Policy

Certain eligibility criteria apply. This *policy* can only be purchased by customers domiciled in New Zealand.

8. General Terms

Commencement and Period of Your Policy

Your *policy* begins on the date shown on the *schedule* and continues for the period as shown in the *schedule* after which time it expires, or until it is cancelled. This is Your *period of insurance*.

Change in risk

Every change materially affecting the facts or circumstances existing at the commencement of or during the course of this *policy*, shall be notified to **Agile** within thirty (30) days that such change comes to Your notice.

Agile reserves the right to accept or deny coverage at the time of such notification and to establish a separate rate and *premium* for any such coverage.

With regard to the Public & Products Liability Coverage Section, if any entity becomes an *acquired business* this condition will apply notwithstanding Definition 5.9 *insured*, (e).

Renewal of Your Policy

This insurance may be renewed for further consecutive yearly periods upon payment of the *premium*. Payment of Your *premium* is deemed to be acceptance of an offer of renewal for a further yearly period.

If You continue to pay Your *premium*, then unless Your *policy* is cancelled or We advise You prior to the renewal date that We will be updating Your *policy* or not be renewing, a *policy* on the same terms and conditions automatically comes into existence for one (1) year from the renewal date.

The duty of disclosure set out above also applies on each renewal or variation of this *policy*.

Expiry of Your Policy

Your *policy* expires at the end of the *period of insurance*. We may decide not to renew Your *policy*. If We decide not to renew Your *policy*, We will send You an expiry notice at least fourteen (14) days before the expiry of Your *policy*. If Your policy is cancelled or otherwise terminated, the *period of*

insurance will be from the commencement date or renewal date, whichever is the later, up to and including the date of cancellation or termination.

Jurisdiction

The law of New Zealand applies to this *policy*, and the New Zealand Courts have exclusive jurisdiction. In the event of any dispute arising under this *policy* including, but not limited to, its construction and/or validity and/or performance and/or interpretation, You and We will submit to the exclusive jurisdiction of any competent Court in New Zealand.

If a suit is instituted against any one of the subscribing insurers, all subscribing insurers' will abide by the final decision of such Court or any competent Appellate Court.

New Zealand Currency

All payments by You to **Agile** and **Agile** to You or someone else under Your *policy* must be in New Zealand currency.

If a loss under this *policy* is stated in a currency other than New Zealand dollars, payment under this *policy* shall be made in New Zealand dollars at the cash rate of exchange for the purchase of New Zealand dollars as reported in the Reserve Bank of New Zealand on the date the final judgment is reached, the amount of the settlement is agreed upon or the element of loss is due, as the case may be.

9. Cancellation of Your Policy

Your *policy* may be cancelled in one of two (2) ways:

When You can cancel

You can cancel Your *policy* at any time by emailing **Agile** at nz@withagile.com or calling +64 9 888 4512.

The cancellation will take effect at 4pm Local Standard Time on the day We receive Your notice of cancellation or at 4pm Local Standard Time on the date that You request the *policy* to be cancelled.

On cancellation, We will refund the *premium* for Your policy, less an amount which covers the period for which You were insured. However, We will not refund any *premium* if We have paid or are obliged to pay a claim under Your *policy*.

When We can cancel

We can cancel Your *policy* by giving You written notice to the address on file, where:

- (a) You have breached a provision of Your *policy* (including one requiring payment of *premium* within sixty (60) days);
- (b) A change in risk occurs such that We are no longer willing/able to provide You with insurance cover
- (c) You have made a fraudulent claim or used any fraudulent means under any *policy* of insurance;
- (d) If You are placed in liquidation, receivership or administration or bankruptcy or if any application is made to the Court or meeting convened for any these purposes.

On cancellation, unless You have been fraudulent, We will refund the *premium* for Your *policy*, less an amount which covers the period for which You were insured. However, We will not refund any *premium* if We have paid or are obliged to pay a benefit under Your *policy*.

10. Claims

In the event of an *occurrence, claim, event* or *fine* or circumstance which may result in a claim under Your *policy* You must comply with the requirements under General Conditions 3. Notice and proof of claim, claims assistance and cooperation and General Condition 4. Claims control.

Claims Documentation

To facilitate the settlement of Your claim, please provide Us with any requested documentation, including the following:

- ☒ a written claim form or claim notification detailing the nature and extent of the loss or damage
- ☒ copies of all correspondence exchanged with any third party
- ☒ repair quotations
- ☒ details of any other insurance that may exist on the insured property.

In the event of a claim arising under this insurance notice should be given as soon as possible to:

For Enquiries Relating To	Please Contact
Making a claim Get in touch as soon as possible and We can help.	+64 9 888 4512 Link to Online Portal claims@withagile.com

11. Complaints and Dispute Resolution

If You have any concerns or wish to make a complaint in relation to this *policy*, Our services or Your insurance claim, please let **Agile** know and We will attempt to resolve Your concerns in accordance with Our Internal Dispute Resolution procedure. Please contact Agile Insurance Group NZ Limited in the first instance:

Address: The Complaints Officer
Agile Insurance Group NZ Limited
Suite 1, Level 6, 171 Clarence Street, SYDNEY, NSW, 2000

Telephone: [+64 9 888 4512](tel:+6498884512)

Email: complaints@withagile.com

We will acknowledge receipt of Your complaint within five (5) business days and attempt to resolve the complaint to Your satisfaction within ten (10) business days, unless We require further information in which case, We will agree an alternate time frame with You.

If We cannot resolve Your complaint to Your satisfaction, You can escalate the matter to Lloyd's General Representative in New Zealand to carry out an independent review:

Address: Lloyd's General Representative in New Zealand
C/- Hazelton Law
PO Box 5639, Wellington
Email: ldrnz@lloyds.com
Telephone: [+64 4 472 7670](tel:+6444727670)

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

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

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

Address: PO Box 10-845 Wellington New Zealand
Telephone: [0800 888 202](tel:0800888202) or [+64 4 499 7612](tel:+6444997612)
Email: info@ifso.nz or via their website www.ifso.nz.

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

12. Updating Our PDS

We may update the information contained in Our PDS when necessary. A paper copy of any updated information is available to You at no cost by calling Us on [+64 9 888 4512](tel:+6498884512).

If We need to make any changes to this PDS or the policy wording, we will let You know by email and/or post.

A copy of any new PDS or supplementary PDS will be available to You at no cost by calling **Agile**.

You may, following receipt of the updated PDS, either accept the new PDS or supplementary PDS, or alternatively cancel the *policy*.

If You wish to accept the new PDS or supplementary PDS, You do not need to do anything. If You decide to cancel the policy, then clause 9. Cancellation of Your Policy, will apply.

13. Data Privacy Statement

This Data Privacy Statement document sets out how We collect, store, use and disclose personal information.

Introduction

The privacy of Your personal information is very important to Us. For the purposes of this Statement “You” includes individuals who engage with Us on the Insured’s behalf. This Statement details how We collect, store, use, disclose and protect an individual’s personal information in accordance with Our obligations under the *Privacy Act 2020* (NZ) (“Privacy Act”).

The terms of Our Privacy Policy may change from time to time. The current terms will be displayed on the website.

About the Privacy Act

The Privacy Act regulates the way both public and private agencies can collect, use, keep, secure and disclose personal information about a person.

Personal information means any information about an identifiable individual. This includes basic personal identifiers, such as your name, address and age, but also details of the devices you use, Your preferences and personal traits, and more sensitive information such as Your health and biometric information, religious beliefs, and financial information.

The aim of the law is to ensure that organisations that collect, hold, use and disclose personal information about people, handle that information responsibly. It also gives people some control over the way information about them is handled. For example, it gives individuals the right to know what personal information an organization holds about them and a right to correct that information if it is wrong.

Information Collected

We collect personal information from You that is necessary for the purpose of providing Our products and services. This includes personal information collected via our proposal form and policy application process, and via our website.

Where possible, We collect it directly from You. Where We collect personal information about You indirectly, We will do so in accordance with the Privacy Act (for example, with your authorisation, where indirect collection would not prejudice Your interests, or direct collection is not reasonably practicable).

If You do not provide all or part of the personal information We request We may not be able to provide Our products or services to You, including provision of quotes, issuing of policies, and managing claims.

Online Privacy

We may collect some personally identifiable information about You at different times depending on how You choose to access Our website.

If You submit Your e-mail address for a request it will be used to complete that request and send a reply.

We may request Your e-mail address for the inclusion into a mailing list. If You choose to submit Your e-mail address an option to remove this address from Our database will be offered to You via e-mail correspondence. All opt-in e-mails sent to the mailing list will comply with the *New Zealand Unsolicited Electronic Messages Act 2007*.

Use of Cookies

From time to time, We may use data collection devices such as 'cookies' in conjunction with Our website. Cookies are commonly used on the internet. They are a small file placed onto a computer by a server. A cookie can later be identified by a server. We may use both 'persistent' and 'session cookies'. We use the services of a marketing company to help Us measure the effectiveness of Our advertising and how visitors use Our site. Although Our marketing company manages the information coming from Our site on Our behalf, We control how that data may and may not be used. Any information that is collected in this way is used in an aggregated form, We do not use it to identify You as an individual.

We may use cookies for various purposes such as:

- to provide You with better and more customised service and a more effective website.
- collecting anonymous statistical information on things such as how many visitors Our sites receive, how those visitors use the sites and where they came from.
- If You wish, You can configure Your browser so it does not accept cookies, but this may affect the functionality of the website.

Use of Information

We use the personal information We collect for the purposes of providing our products and services. This includes, for example, providing quotations and issuing policies. We also use that information to administer Your policy, to process any claims You may have and to enhance Our relationship with You. In addition, We may use the information to provide You with updates of Our products and services, and products and services provided by affiliated companies.

Disclosure to Other Parties

The personal information that We collect from You may be disclosed to other parties which are involved with the provision of Our products and services to You. Such parties include the insurance administrator and underwriter.

Personal information may also be provided to Our affiliated companies to enable them to offer related products and services directly to You.

We will also disclose Your personal information where the disclosure is required or authorised by or under law. As an example, We may disclose information to government agencies.

Any third parties We provide information to, can use or disclose personal information provided to them, only for the specific purpose for which it was provided.

Access to and correction of Personal Information

You can request access to the personal information We hold about You. Access will not be denied unless there are exceptional circumstances as allowed for under the Privacy Act. For example, where We are involved in legal proceedings or where the request is frivolous. We may charge a fee for access and if We do, We will advise You of the fee prior to proceeding with the request.

If you consider Your personal information is incorrect you also have the right to request it be corrected.

Accuracy of Information

We will take reasonable measures to ensure that the personal information We hold about You is accurate and up to date. If You believe Your personal information is not accurate and up to date, please inform Us. We will promptly update any information that is incorrect.

Information Security

We will take reasonable precautions to ensure that the personal information that We have about You is protected against any unlawful use or access and is kept safe and secure.

While We undertake reasonable steps to protect Your personal information, no guarantee can be given that information sent over the internet is always 100% secure. Sending and receiving information over the internet is at the user's own risk, however We will take all reasonable steps to ensure Your data security once We receive it.

For Enquiries Relating To Privacy	Please Contact
Contact Our Privacy Officer at Agile by Email	privacy@withagile.com
Contact Our Privacy Officer at Agile by Phone	+64 9 888 4512
Contact Our Privacy Officer at Agile by Mail by writing to	Privacy Officer, Agile Underwriting Services Pty Ltd Suite 1, Level 6, 171 Clarence Street, SYDNEY, NSW, 2000

Part B – Policy Wording

General Definitions

When used in ***bold & italic*** in this ***policy*** (including its ***endorsements***) the words below have the following meanings and are applicable to all sections of the ***policy*** unless otherwise specified.

- 1.1 ***act of terrorism*** means any act, or preparation to perform an act, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:
- (a) involves violence against one or more persons;
 - (b) involves damage to property;
 - (c) endangers life other than that of the person committing the action;
 - (d) creates a risk to health or safety of the public or a section of the public; or
 - (e) is designed to interfere with or to disrupt an electronic system.
- 1.2 ***Agile*** means Agile Insurance Group NZ Limited (NZBN: 9429052286766) as agent for certain Underwriters at Lloyd's Led by Agile Syndicate 2427 managed by Asta Managing Agency.
- 1.3 ***business*** means all activities and operations of the ***insured entity*** and includes the following in connection with such activities and operations:
- (a) at the ***insured's*** discretion, private work carried out by an ***employee*** for a director or business partner or ***employee*** of the ***insured***;
 - (b) attendance at or participation in trade fairs, shows and exhibitions by any ***employee*** or director in connection with their employment;
 - (c) the ownership, maintenance, repair and occupation of premises or facilities belonging to the ***insured***;
 - (d) the provision and management of catering, social, sports, welfare, childcare, theatrical and related facilities including galas for the benefit of ***employees***;
 - (e) the provision of sponsorship; and
 - (f) the provision of fire, first aid, ambulance and security services.
- 1.4 ***computer system*** means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, ***data*** storage device, networking equipment or back up facility, owned or operated by the ***insured*** or any other party.
- 1.5 ***computer virus*** means corrupting or harmful instructions or code introduced into a ***computer system*** that propagate themselves through that ***computer system***.

- 1.6 **cyber act** means an unauthorised, malicious or criminal act, or the threat or hoax thereof, involving access to, processing of, use of or operation of a **computer system**.
- 1.7 **data** means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **computer system**.
- 1.8 **deductible** means the first amount of each claim or series of claims arising out of any one **occurrence** for which the **insured** is responsible. The **deductible** applicable to this insurance is specified in the **schedule**. The **deductible** applies to all amounts for which **Agile** will be liable, including indemnity provided by the Insuring Clause(s) 1.2 Additional payments.
- 1.9 **defence costs** means legal costs and expenses including but not limited to lawyer fees, investigator fees, expert fees incurred by the **insured** with **Agile's** prior written consent in respect of the **claim**. **Defence costs** do not include any compensation, expenses or benefits of the **insured**.
- 1.10 **employee** means any person who is employed by the **insured** in connection with the **business** and in respect of whose remuneration the **insured** deducts pay-as-you-earn (PAYE) tax at source.
- 1.11 **endorsement** means any changes to the terms and conditions of this **policy**.
- 1.12 **insured entity** means the entity(ies) named in the **schedule** and includes any of such entity(ies) subsidiary companies (including subsidiaries thereof) and any other entity under the control of the entity(ies) named in the **schedule**, and over which such entity(ies) exercises active management.
- 1.13 **internet operations** means:
- (a) transfer of **data** or programmes by use of electronic mail systems by the **insured** or the **insured's employee's**, including for the purpose of this definition only, part-time and temporary staff, contractors and others within the **insured's** organisation whether or not such **data** or programmes contain any malicious or damaging code, including but not limited to **computer virus**, worm, logic bomb, or trojan horse;
 - (b) access through the **insured's** network to the world wide web or a public internet site by the **insured** or the **insured's employee's**, including for the purposes of this definition only, 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 the **insured's** customers or others outside the **insured's** organisation; and
 - (d) the operation and maintenance of the **insured's** web site.
- 1.14 **IT network incident** means any unexpected non-malicious partial or total unavailability of or inability to access, process, use or operate any **IT network**.
- 1.15 **IT network** means any computer hardware (or components thereof), software (or components thereof), communication system networks, **internet operations**, websites wheresoever hosted, online, or offline media libraries, **data**, or any other peripheral devices.
- 1.16 **limit of liability** means the applicable amount specified in the **schedule**.
- 1.17 **period of insurance** means the period specified in the **schedule** and any extension thereof which may be agreed between the **insured** and **Agile** in writing.

- 1.18 **policy** means the contractual terms and conditions of insurance coverage and benefits payable to the **insured** set out in this document, the **schedule**, and any **endorsements**.
- 1.19 **pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acid, alkalis, chemicals, or waste. Waste includes but is not limited to material to be recycled, reconditioned, or reclaimed.
- 1.20 **premium** means the amount shown in the quote.
- 1.21 **retroactive date** means the date specified in the **schedule**.
- 1.22 **schedule** means the schedule attaching to and forming part of this **policy**, including any schedule substituted for the original schedule.
- 1.23 **territorial limits** means as may be defined in a Coverage Section or otherwise as set out in the **schedule** in respect of each Coverage Section and comprises the locations of the **business** where coverage under this **policy** is provided.
- 1.24 **transaction** means:
- (a) the entity(ies) named in the **schedule** consolidates with, merges into, or sells more than fifty percent (50%) of its assets to any other person or entity or group of persons or entities acting in concert such that the entity(ies) named in the **schedule** does not continue to trade in substantially the same way as it did prior to the consolidation, merger or sale; or
 - (b) any person or entity, or group of persons or entities, acting in concert acquire more than 50% of the assets or voting rights of the entity(ies) named in the **schedule**; or
 - (c) the entity(ies) named in the **schedule** sells all or substantially all of its assets to another entity; or
 - (d) in respect of the Directors and Officers Liability Coverage Section only, the appointment of an insolvency practitioner by or on behalf of the entity(ies) named in the **schedule**.
- 1.25 **worksites** means any premises or site where any work is performed for or in connection with the **business** together with all areas surrounding such premises or site or all areas in between such premises or site that the **insured** shall use in connection with such work.

PUBLIC & PRODUCTS LIABILITY COVERAGE SECTION

Insuring Clauses: Public & Products Liability

1.1 What Agile cover

Subject to the terms and conditions of this *policy*, *Agile* will indemnify the *insured* for all amounts which the *insured* becomes legally liable to pay as *compensation* up to the *limit of liability*:

- (a) arising out of *personal injury*, *property damage*, or *advertising liability* happening during the *period of insurance*;
- (b) as a result of an *occurrence* within the *territorial limits* in connection with the *business* or *products*; and
- (c) provided that *Agile* will only be liable to indemnify the *insured* in excess of the *deductible*.

1.2 Additional payments

Subject to the terms and conditions of this *policy*, *Agile* will pay:

- (a) *defence costs* incurred by *Agile*, or the *insured* with *Agile's* written consent, in the settlement or defence of any claim for *compensation* in respect of which the *insured* is entitled to indemnity under this *policy*, or if sustained, would be so entitled.
- (b) the expenses incurred by the *insured* for first aid to others at the time of *personal injury* caused by an *occurrence* (other than medical expenses prohibited by law).
- (c) *compensation* to the *insured* if, at *Agile's* request, an *insured* attends court as a witness in connection with an *occurrence* in respect of which the *insured* is entitled to indemnity under this *policy*, at the following rates per day for each day on which attendance is required:
 - 1. any director, officer or business partner of the *insured* \$300 per day;
 - 2. any *employee* of the *insured* \$200 per day.

The amount of such costs and expenses as described under clause 1.2 (a), (b), and (c) are payable by *Agile* in addition to the *limit of liability* specified in the *schedule*.

However, in respect of any *occurrence* in *North America*, or *occurrences* in respect of which a claim for *compensation* is brought in a court in *North America*, the *limit of liability* specified in the *schedule* shall be inclusive of all additional payments under this clause.

1.3 Representation at inquiry

Upon request from an *insured*, *Agile* will provide the *insured* with legal representation at any *inquiry* where the *inquiry* arises from an *occurrence* likely to give rise to a liability covered clause 1.1 What *Agile* cover of this *policy*. *Agile's* liability under this clause will not exceed \$250,000 in respect of any one claim or series of claims arising out of any one *occurrence* and in the aggregate during the *period of insurance*.

1.4 Temporary protection

Agile will pay expenses incurred by the *insured* for:

- (a) temporary protection of damaged or undamaged property of any person or part, including temporary repairs, shoring up or underpinning thereof;
- (b) purchasing or hiring or erection and dismantling of hoarding, barriers, fences and any other form of temporary protection, including such protection which the insured must provide in compliance with the requirements of any Government, Local Government or other Statutory Authority.

This extension of cover does not apply to any *occurrence* in connection with *pollutants*.

1.5 Overseas personal liability

Where the *insured* is not entitled to indemnity under any other policy of insurance, self-insurance or deductible programme effected by or on behalf of the *insured*, subject to the terms and conditions of this *policy*, *Agile* will indemnify *employees* and directors (and their spouses whilst accompanying the *employee* or director) for legal liability to pay *compensation* as a result of an *occurrence* happening:

- (a) during the *period of insurance*
- (b) in connection with the *business*; and
- (c) whilst the *employee* or director is travelling outside their country of domicile in connection with the *business*.

1.6 Claims preparation costs

In addition to the amount of cover provided by this *policy*, *Agile* will pay up to \$25,000 in respect of each claim or series of claims arising out of any one *occurrence* for professional fees and such other expenses incurred by the *insured* for the preparation of a claim under this *policy*.

The amount of such costs and expenses as described under this clause are payable by *Agile* in addition to the applicable *limit of liability*.

Exclusions: Public & Products Liability

The following Exclusions are included and in respect of this Coverage Section override any inconsistent *policy* General Exclusions unless otherwise stated.

Agile will not be liable under the Public & Products Liability Coverage Section of this *policy* in respect of:

2.1 Advertising liability

advertising liability in connection with or contributed to by:

- (a) failure of performance of contract, but this shall not relate to claims resulting from unauthorised appropriation of ideas based upon alleged breach of an implied contract;
- (b) incurred by any *insured* where the principal *business* of that *insured* is advertising, broadcasting, publishing or telecasting;
- (c) resulting from statements made at the *insured's* direction knowing that such statements are false;
- (d) failure of the *insured's* products or services to conform with advertised performance, quality, fitness or durability;
- (e) incorrect description of any *insured's* products, article or commodity; or
- (f) mistake in advertised price of any *insured's* products.

2.2 Aircraft products

any liability whatsoever in connection with or contributed to by any of the *insured's products*, which the *insured* knew, or ought to have known, are intended for incorporation into any *aircraft* or *drone*.

2.3 Aircraft, watercraft, hovercraft

- (a) any liability whatsoever in connection with or contributed to by the ownership, maintenance, possession, use or operation, loading or unloading, of any aircraft or hovercraft;
- (b) the ownership, operation or use by the *insured* of any watercraft except on inland or coastal waters, where the watercraft does not exceed fifteen (15) metres in length, and the watercraft is owned by others and used by the *insured* for *business* entertainment. Coastal waters are to be defined as within one (1) kilometre off the coast of the territory from where the *insured* operates.

It is noted and agreed that 2.3 (a) does not apply to a *drone*.

2.4 Contractual liability

any liability or obligation assumed by the *insured* under any agreement or contract except to the extent that the liability or obligation arises from *endorsed contracts* or a provision in a contract (whether written or oral):

- (a) for lease of real or personal property (save for a provision which obliges the *insured* to effect insurance or provide indemnity in respect of the subject matter of the lease);
- (b) with any public supplier for the supply of water, gas, electricity, fuel, sewerage or waste removal services, telephone and communications services (save for contracts with such suppliers for the performance of work by the *insured*);

- (c) with any railway authority, railway company or other independent carrier for the loading, unloading and/or transport of the *insured's products*;
- (d) where such liability or obligation would otherwise have been implied by law.

2.5 Employer's Liability

any liability to indemnify or pay *compensation* in connection with:

- (a) *personal injury* to any *employee* of the *insured* arising out of or in the course of employment of such person in the *business*; or
- (b) any obligation for which the *insured* may be held liable under the *Accident Compensation Act 2001*, or any amending or replacement legislation; or
- (c) any liability in respect of which the *insured* is entitled to seek compensation under any policy of insurance required to be taken out pursuant to any legislation relating to workers' compensation whether or not the *insured* has effected such a policy, arising out of or based upon or attributable to any *personal injury*.

2.6 Loss of use

for loss of use of tangible property, which has not been physically lost, destroyed or damaged, directly arising out of:

- (a) a delay in or lack of performance by the *insured* or on behalf of the *insured* of any contract or agreement; or
- (b) failure of any products or work performed by the *insured* or on behalf of the *insured* to meet the level of performance, quality fitness or durability expressly or impliedly warranted or represented by the *insured*.

2.7 Motor vehicle liability

any liability whatsoever in connection with, caused by, the use of, or contributed to a *motor vehicle* owned by, operated, or in the physical or legal control of the *insured*

- (a) which is registered or in respect of which insurance is required by virtue of any legislation.

However, exclusion 2.8 (a) shall not apply to:

1. any *motor vehicle* whilst being used or operated as a *tool of trade* by the *insured* or on behalf of the *insured* at the *insured's* premises or *worksites*;
2. a *motor vehicle* (other than a *motor vehicle* owned or used by or on behalf of the *insured*) whilst that *motor vehicle* is in a car park owned or operated by the *insured* for no income or reward as a car park operator; or
3. *personal injury* or *property damage* occurring during the loading or unloading of a *motor vehicle* caused by or arising from the collection or delivery of any goods from or to the *motor vehicle* where such *personal injury* or *property damage* occurs beyond the limits of any carriageway or thoroughfare, and where applicable legislation does not require insurance against such liability.

2.8 North America

any liability in *North America* in connection with or contributed to by the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to existence of, or presence of any:

- (a) fungi or bacteria; or
- (b) substance, vapour or gas produced by or arising out of any fungi or bacteria.

2.9 Other insurance

any liability whatsoever which forms the subject of:

- (a) insurance procured to cover specific work(s), contract(s) or agreement(s).

2.10 Pollution

any liability whatsoever in connection with or contributed to by:

- (a) **personal injury** or **property damage** in connection with or contributed to by the discharge, seepage, migration, dispersal, release or escape of **pollutants** into or upon any property, land, the atmosphere or any watercourse or body of water (including ground water);
- (b) **personal injury** or **property damage** in connection with or contributed to by the discharge, seepage, migration, dispersal, release or escape of **pollutants** caused by any **product** that has been discarded, dumped, abandoned or thrown away by others;
- (c) the cost of removing, nullifying or cleaning up **pollutants**; or
- (d) the cost of preventing the escape of **pollutants**.

However, exclusion 2.11 (a) and 2.11 (c) shall not apply where the claim:

1. has no connection with **North America**; and
2. arises from a sudden identifiable, unintended and unexpected event from the **insured's** standpoint which takes place in its entirety at a specific time and place during the **period of insurance** and is in connection with the **business**.

2.11 Professional liability

any liability whatsoever in connection with or contributed to by the rendering or failure to render professional advice or service by the **insured**, or any error or omission in connection therewith.

However, this clause shall not apply to:

- (a) the **insured's** liability in respect of **personal injury** or **property damage** resulting from the provision of professional advice or services which is not given for any fee or reward; or
- (b) the rendering or failure to render professional advice by any **employee** to provide first aid or other medical services at the **insured's** premises. Medical services excludes advice or services provided by **medical persons**.

2.12 Property owned by the insured

for **property damage** to property owned by the **insured**.

2.13 Punitive or liquidated damages

any amount which constitutes:

- (a) fines or penalties; or
- (b) liquidated, punitive, aggravated or exemplary damages or multiplication of awards.

2.14 Repair and replacement

any liability whatsoever in connection with or contributed to by:

- (a) rectifying defective work carried out by or on behalf of the *insured*;
- (b) the recall, removal, repair, recovery, alteration or replacement of the *insured's products* arising from a defect in or an error in connection with the sale or supply of such *products* or the guaranteed performance of the *insured's products* or the unsuitability thereof for the use for which they are supplied; or
- (c) the failure of the *insured's products* to meet the level of performance, quality, fitness or durability expressly or implied warranted or represented by an *insured*.

It is noted and agreed that 2.15 (c) shall not apply to resultant *property damage* or *personal injury*.

2.15 Toxic Mould Exclusion

any claim for liability, loss, *property damage*, costs or expenses, or any duty to defend a claim directly or indirectly caused by, arising out of, contributed to by, in connection with, or resulting from exposure to algae, archaea, bacteria, fungi, lichen, plasmids, protozoa, any virus or any similar organism or any actual, or alleged, disease or *personal injury* involving the presence, existence, detection, removal, elimination or avoidance of such organisms or exposure to them.

2.16 Waived or limited rights

any injury, loss, damage, cost or expense whatsoever where the *insured* has waived, limited or reduced its rights to:

- (a) recovery of, or contribution to the injury, loss, damage, cost or expense from any other party; or
- (b) to raise a defence, set off or counter claim in answer to its legal liability for any injury, loss, damage, cost or expense whatsoever.

However, this exclusion does not apply to *endorsed contracts*.

2.17 Jurisdiction

Any:

- (a) legal proceedings, wherever brought, in any court of *North America*, or under the laws of *North America*, or brought under the laws outside *North America* to enforce a judgment or order made under the laws of *North America*;
- (b) coronial inquests, disciplinary hearings, or occupational health and safety proceedings brought outside New Zealand.

2.18 Vibration and removal of support

Any claim, loss, damage, liability, or costs and expenses incurred directly or indirectly, out of, through, from or in connection with *personal injury* or *property damage* arising from:

- (a) vibration; or
- (b) removal of the support; or
- (c) weakening of the support; or
- (d) interference with the support,

of land, buildings or structures owned or occupied by the *insured*.

2.19 External Moisture, Water or Building Defects

Any claim, loss, damage, liability, or costs and expenses incurred directly or indirectly, out of, through, from or in connection with *personal injury* or *property damage* arising from:

- (a) moisture or water build-up or the penetration of external moisture or water;
- (b) as detailed in 2.15 Toxic Mould Exclusion, including any costs and expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposal of, or in any way responding to or assessing the effects of such organisms as detailed in 2.15 Toxic Mould Exclusion;
- (c) the failure of any building or structure to comply with or perform to the requirements of any building code or standard or to meet the level of performance, quality, fitness, or durability expressly or implied, warranted or represented by the *insured* to be fit for its intended purpose.

This exclusion does not apply to any *occurrence* for *personal injury* or *property damage* that is caused by the leakage of internal pipes, internal water system or internal cisterns.

2.20 Care, Custody and Control

property damage to property owned by, hired to or in the legal custody or control of the *insured* or any *employee* or any party acting on behalf of the *insured*.

2.21 Underground Services Exclusion

Any claim, loss, damage, liability, or costs and expenses incurred directly or indirectly, out of, through, from or in connection with *property damage* to underground property and services including but not limited to underground cables, underground pipes and other underground facilities.

Automatic Extensions: Public & Products Liability

The following Automatic Extensions are included and are subject to the *policy* terms and conditions unless otherwise stated. Some extensions have specified sub-limits of Liability and *deductibles* specified in the *schedule*.

3.1 Goods on Hook

Notwithstanding Exclusion 2.20 Care, Custody and Control, *Agile* will indemnify the *insured* for all sums that the *insured* shall become legally liable to pay for *personal injury* and *property damage* in New Zealand during the *period of insurance* in connection with the *business* in respect of loss or damage to goods or property of others, while in the legal custody or control of the *insured* or any *employee* or any party acting on behalf of the *insured*, directly arising from the dropping or slipping of the goods or property whilst it slung on or on the hook of any crane or similar lifting apparatus.

It is a condition precedent to liability under this clause that adequate transportation and loading and unloading equipment is used and that the weight of goods or property being lifted, loaded or unloaded

does not exceed the registered manufacturer's guaranteed lifting or weight capacity of any equipment including but not limited to ropes, cables, blocks, and tackle.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule*. This Extension shall be subject to the *deductible* stated in the *schedule*.

So far as concerns this Automatic Extension, Exclusions and Conditions applicable to all sections of the *policy* will also apply.

3.2 Innkeepers Liability

Notwithstanding Exclusion 2.20 Care, Custody and Control, *Agile* will indemnify the *insured* for all sums that the *insured* shall become legally liable to pay for *personal injury* and *property damage* in New Zealand during the *period of insurance* in connection with the *business* in respect of loss or damage to goods or property of others, while in the legal custody or control of the *insured* covered under the *Innkeepers Act 1962* and any amendments thereafter where *property damage* happens during the *period of insurance* in connection with the *business*.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule*. This Extension shall be subject to the *deductible* stated in the *schedule*.

So far as concerns this Automatic Extension, Exclusions and Conditions applicable to all sections of the *policy* will also apply.

3.3 Lost or Stolen Keys

Notwithstanding Exclusion 2.20 Care, Custody and Control, *Agile* will indemnify the *insured* for all sums that the *insured* shall become legally liable to pay for *personal injury* and *property damage* in New Zealand during the *period of insurance* in connection with the *business* in respect of the reasonable costs of re-cutting keys and/or the replacement of locks, where keys, locks or security codes have been lost by or stolen from the *insured* during the *period of insurance* and in connection with the *business* provided that the *insured* does not own the property to which the keys or locks relate.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule*. This Extension shall be subject to the *deductible* stated in the *schedule*.

So far as concerns this Automatic Extension, Exclusions and Conditions applicable to all sections of the *policy* will also apply.

3.4 Product Withdrawal Costs

Notwithstanding Exclusion 2.14 (b) Repair and replacement *Agile* will indemnify the *insured* in respect of Expenditure incurred by the *insured* with *Agile's* prior consent for the recall of any *products* (or any part thereof) in New Zealand only, as a result of a decision taken by the *insured* during the *period of insurance* and first notified to *Agile* during the *period of insurance* that it is necessary to recall any *products* because their use or consumption (or continued use or consumption) may cause *personal injury* or *property damage* for which the *insured* may incur a legal liability.

For this Automatic Extension, Expenditure means:

- (a) The reasonable and necessary financial outlay incurred by the *insured* in arranging for the return of the *products* or any part thereof:

1. to the *insured's* premises; or
2. to the premises of the manufacturer (or manufacturers nominated agent);

and such financial outlay includes the cost of correspondence, newspaper and magazine advertising, radio or television announcements, transportation costs, packaging or temporary storage charges and if necessary, the cost to the *insured* of physically destroying the recalled *products*.

- (b) The costs of examination of the *products* (or any part) whether incurred by the *insured* or their nominated agent arising out of a recall as described.

This Automatic Extension does not apply to or include claims:

- i) for the *deductible* in respect of the first amount of each *occurrence* (or series of *occurrences* arising out of one originating cause) as specified in respect of this Insuring Clause;
- ii) for the costs incurred in the repair, alteration, treatment, modification, reconditioning, resupply, or replacement of any *products* (or part thereof);
- iii) which form the subject of indemnity by any other section of this *policy* and this section shall not be drawn into contribution with such other section;
- iv) for any Expenditure arising from the *insured's* decision to recall any *products*:
 - (a) which have not been delivered to customers by the *insured* and which remain in the care, custody and control of the *insured* or their parent or subsidiary companies, or any of the *insured's* agents;
 - (b) solely as a result of the *products* having been misdelivered or misdirected by or on behalf of the *insured*;
 - (c) where recall is brought about solely due to exposure to weather or due to external loss or damage or gradual deterioration. This exclusion shall not apply where a defect in the *product* supplied is merely exacerbated by exposure to weather or the passage of time.
- v) for claims arising out of deliberate or alleged deliberate contamination, alteration, or adulteration of any *product*.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule*. This Extension shall be subject to the *deductible* stated in the *schedule*.

So far as concerns this Automatic Extension, except where expressly stated otherwise, Exclusions and Conditions applicable to all sections of the *policy* will also apply.

3.5 Punitive and Exemplary Damages

Notwithstanding Exclusion 2.13 Punitive or liquidated damages, *Agile* will indemnify the *insured* for all sums that the *insured* shall become legally liable to pay by way of punitive or exemplary damages awarded for *personal injury* (for which coverage is determined to exist under the *Accident Compensation Act 2001* or any amending or replacing legislation) where such *personal injury* happened in New Zealand during the *period of insurance* and in connection with the *business*.

Provided that:

- (a) any liability arising from trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse is excluded;
- (b) any punitive or exemplary damages awarded by any court outside New Zealand are excluded;

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule*. This Extension shall be subject to the *deductible* stated in the *schedule*.

So far as concerns this Automatic Extension, Exclusions and Conditions applicable to all sections of the *policy* will also apply.

3.6 Service and Repair – Machinery

Agile will indemnify the *insured* for all sums that the *insured* shall become legally liable to pay for *personal injury* and *property damage* in New Zealand during the *period of insurance* in connection with the *business* arising from the service and repair by the *insured* of any machinery, other than any *motor vehicle* or *watercraft* or its internal combustion engine, accessories or fittings, provided that the machinery is not owned, hired, leased or rented by the *insured*.

Exclusion 2.14 Repair and replacement does not apply to this Automatic Extension.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule*. This Extension shall be subject to the *deductible* stated in the *schedule*.

So far as concerns this Automatic Extension, except where expressly stated otherwise, Exclusions and Conditions applicable to all sections of the *policy* will also apply.

3.7 Service and Repair – Vehicle & Watercraft

Agile will indemnify the *insured* for all sums that the *insured* shall become legally liable to pay for *personal injury* and *property damage* in New Zealand during the *period of insurance* in connection with the *business* arising from:

- (a) the service and repair by the *insured* of any
 - i) *motor vehicle*;
 - ii) *watercraft* not exceeding fifteen (15) metres in length;
 - iii) an internal combustion engine, accessories, or fittings for either (i) or (ii) above;
- (b) to a *motor vehicle* or *watercraft* not exceeding fifteen (15) metres in length, that is in the *insured's* custody or control for the purpose of service and repair, including while it is being driven or operated by the *insured*;

provided that the *motor vehicle* or *watercraft* is not owned, hired, leased or rented by the *insured*.

Exclusion 4 Repair and replacement, and Exclusion 7 Motor vehicle liability, do not apply to this Automatic Extension.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule*. This Extension shall be subject to the applicable *deductible* stated in the *schedule*, where "GVM" means gross vehicle mass.

So far as concerns this Automatic Extension, except where expressly stated otherwise, Exclusions and Conditions applicable to all sections of the *policy* will also apply.

3.8 Specified Property in Custody and control

Notwithstanding Exclusion 2.20 Care, Custody and Control, **Agile** will indemnify the *insured* for all sums that the *insured* shall become legally liable to pay for **property damage** in New Zealand during the *period of insurance* in connection with the *business* to property owned by, hired to or in the legal custody or control of the *insured* or any *employee* or any party acting on behalf of the *insured*, solely comprising:

- (a) guests', visitors', directors', officers', *employees*' or business partners' personal effects;
- (b) *motor vehicles* in a car park, unless the car park is owned or operated by the *insured* for reward;
- (c) premises at which the *insured* is undertaking work in connection with the *business*;
- (d) any building (including its fixtures and fittings) leased, hired or rented to the *insured* provided **Agile** shall not be liable in respect of liability assumed by the *insured* under a tenancy or other agreement which would not have been implied by law in the absence of such agreement;
- (e) any other property temporarily in the *insured's* possession for the purpose of being worked upon, but no indemnity is granted for damage to that part of any property upon which the *insured* is or has been working if the damage arises solely out of such work; or
- (f) notwithstanding Exclusion 2.4 Contractual liability any other property (except property owned by the *insured* and not mentioned in (a), (b), (c) (d) or (e) above) in the *insured's* legal custody or control for which the *insured* has not assumed any responsibility to obtain insurance, subject to the Sublimit of Liability stated in the *schedule*.

3.9 Underground Services

Notwithstanding Exclusion 2.21 Underground Services Exclusion, **Agile** will indemnify the *insured* for all sums that the *insured* shall become legally liable to pay for **property damage** in New Zealand during the *period of insurance* in connection with the *business* to underground property and services including but not limited to underground cables, underground pipes and other underground facilities, provided that prior to the commencement of work, the *insured* has inquired with the relevant authorities or owners of such underground property and services and recorded in writing their locations.

However; this Extension shall not apply to:

- i) any liability arising out of work carried out more than 10 meters below ground level;
- ii) any liability arising out of work carried out by directional drilling or by a thrusting or boring machine.

The *deductible* applicable to this Extension is the amount stated in the *schedule*.

3.10 Vibration and removal of support

Notwithstanding Exclusion 2.18 Vibration and removal of support, **Agile** will indemnify the *insured* for all sums that the *insured* shall become legally liable to pay for **property damage** in connection with such vibration or removal of, weakening of or interference with support, in New Zealand during the *period of insurance* in connection with the *business*. If the land, buildings or structures are not owned or occupied by the *insured*.

The Sublimit of Liability under this Extension shall be the amount stated in the *schedule* for any one *occurrence* and in the aggregate during the *period of insurance*. The *deductible* stated in the *schedule* will apply to any one *occurrence*.

Optional Extensions: Public & Products Liability

The following Optional Extensions only apply when they are shown in the *schedule* and are subject to the *policy* terms and conditions.

4.1 Rectification of Defective Work

Agile will indemnify the *insured* for all sums that the *insured* shall become legally liable to pay for, when shown in the *schedule*.

- (a) Defective Work for *property damage* to property the *insured* is or has been working on, where the *property damage* occurs in New Zealand during the *period of insurance* as a result of an *occurrence* and in connection with the *business*, provided that the property is not owned, hired, leased or rented by the *insured*; or
- (b) Faulty Products where the *product* has caused physical loss or destruction to other tangible property, where the accidental physical loss or destruction happens in New Zealand during the *period of insurance* caused by an *occurrence* and in connection with the *business*.

Provided that:

- (a) any defect in design, plan or specification is excluded;
- (b) construction of new buildings is excluded;
- (c) concreting activities is excluded;
- (d) any property that is machinery, a *motor vehicle* or *watercraft* is excluded; except where indemnity is provided under Automatic Extension 3.6 Service and Repair – Machinery or Automatic Extension 3.7 Service and Repair – Vehicle & Watercraft

For the purposes of this Optional Extension, Defective Work means:

- i) defective construction work;
- ii) defective erection work;
- iii) defective installation work;
- iv) defective repair work;
- v) defective service work;
- vi) defective treatment work; or
- vii) defective alteration work performed by the *insured* on *products*.

For the purposes of this Optional Extension, Faulty Product means the cost of repairing, correcting, removing, or replacement of the whole or part of the *product*, which is faulty, defective, harmful or has failed to perform the function for which it was sold, supplied, manufactured or installed.

Exclusion 2.14 Repair and replacement does not apply to this Optional Extension.

The Sublimit of Liability under this Optional Extension shall be the amount stated in the *schedule*. This Extension shall be subject to the *deductible* stated in the *schedule*.

So far as concerns this Optional Extension, Exclusions and Conditions applicable to all sections of the *policy* will also apply.

Definitions: Public & Products Liability

When used in ***bold & italic*** in this ***policy*** (including its endorsements) the words below have the following meanings. Where an equivalent definition to a definition below is provided in another Coverage Section, the definition below will not apply to such Coverage Section. Further, the definitions below will override any inconsistent ***policy*** General Definition insofar as it relates to this Coverage Section unless otherwise stated.

5.1 ***advertising liability*** means:

- (a) infringement of copyright of, or passing off of a title or slogan;
- (b) unfair competition, piracy or idea misappropriation contrary to an implied contract;
- (c) invasion of privacy;
- (d) defamation, libel, slander;

committed or alleged to have been committed during the ***period of insurance*** in any advertisement, publicity article, broadcast or telecast arising out of the ***insured's*** advertising activities or any advertising activities conducted on the ***insured's*** behalf, in the course of advertising the ***products***, or goods or services related to those ***products***.

For the purpose of this definition, advertisement means any manner of communication given to the public including but not limited to any form of print media, publication, telecommunication, radio or television broadcast, electronic mail, internet, World Wide Web, social media platforms or exhibit.

5.2 ***aircraft*** means any vessel, craft or object made, or intended, to travel through air or space but does not include a ***drone***.

5.3 ***acquired business*** means any company or companies acquired or established or created by the ***insured*** provided that:

- (a) its business is consistent with the ***business*** as described in the ***schedule***;
- (b) its turnover does not exceed 10% of the turnover that was used to calculate the ***premium***; and
- (c) it is domiciled in New Zealand.

5.4 ***compensation*** means monies paid or pursuant to any judgment, award, or settlement, and is only payable in respect of an ***occurrence*** to which this insurance applies, for:

- (a) ***personal injury***;
- (b) ***property damage***; or
- (c) ***advertising liability***.

5.5 ***drone*** means a remotely piloted aircraft (RPA) but only to the extent that:

- (a) the RPA is being used in strict accordance with all relevant legislation, rules or regulations put in place, administered or enforced by the Civil Aviation Authority of New Zealand (whether or not the legislation, rules or regulations have territorial application); and
- (b) any injury, loss, damage, cost or expense under consideration has no connection with invasion or breach of privacy through the use or operation of the RPA.

- 5.6 **endorsed contracts** means the contract(s) specified in the **schedule**.
- 5.7 **hovercraft** means any vessel, craft or device made to float on or in or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.
- 5.8 **inquiry** means any inquest, coronial inquiry, or criminal proceedings:
- (a) regarding **personal injury** or **property damage**; and
 - (b) not connected with the laws of **North America**.
- 5.9 **insured** means an **insured entity** and also includes:
- (a) any of the **insured's** directors, officers, **employee's** or business partners but only whilst acting within the scope of their duties in such capacity;
 - (b) any student or person undertaking work for the **insured** under a work experience or similar scheme;
 - (c) any voluntary helper;
 - (d) any **acquired business** but only for ninety (90) days following the takeover or formation of the company or companies at which time the **acquired business** will no longer be included as an **insured**, unless agreed otherwise by **Agile**;
 - (e) any social and/or sporting clubs, first aid, fire and ambulance services formed with the **insured's** consent and includes any office bearer or member thereof in their respective capabilities as such;
 - (f) any of the **insured's** directors or senior executives in respect of private work undertaken by the **insured's employees** for such director or senior executive;
 - (g) any principal in respect of the vicarious liability of such principal arising out of the performance by the **insured** of any contract or agreement for the performance of work for such principal to the extent required by such contract or agreement but limited to the coverage provided by this **policy**;
 - (h) any contractor or sub-contractor but only while they are engaged and working in New Zealand for and on behalf of the **insured** provided that they are not otherwise insured. General Condition 4. Cross liability does not apply in respect of such contractors or sub-contractors.
- 5.10 **medical persons** means qualified medical practitioners, dentist, nurses and first aid attendants
- 5.11 **motor vehicle** means any type of machine and attachments thereto (including a trailer) which:
- (a) travels on wheels or on self-laid tracks; and
 - (b) is propelled by other than manual or animal power.
- 5.12 **North America** means:
- (a) the United States of America and Canada; and
 - (b) any state or territory incorporated in, or administered by, the United States of America or Canada including any country or territory subject to the laws of the United States of America or Canada.
- 5.13 **occurrence** means an event, including continuous or repeated exposure to conditions, that results in **personal injury**, **property damage** or **advertising liability** that is neither expected nor intended (except for the matters set out in clause (f) of the definition of **personal injury**) from the **insured's**

standpoint, during the *period of insurance*.

With respect to *personal injury* or *property damage*, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one *occurrence*.

All *advertising liability* arising out of the same injurious material or act (regardless of the frequency or repetition thereof) shall be deemed to be one *occurrence*.

5.14 *personal injury* means:

- (a) bodily injury, death, disease, illness, disability, sickness, nervous shock, mental anguish or mental injury or loss of consortium;
- (b) false arrest, false detention, wrongful imprisonment, malicious prosecution or humiliation;
- (c) wrongful entry or wrongful eviction or other invasion of privacy;
- (d) discrimination as a result of race, religion, sex, sexual orientation, marital status, age, intellectual impairment, disability or otherwise (unless insurance thereof is prohibited by law) not committed by the *insured* or at the *insured's* direction, but only with respect to liability other than fines and penalties imposed by law;
- (e) defamation, libel or slander; and
- (f) assault and/or battery committed by or at the direction of the *insured* whilst engaged in the *business* and for the purpose of preventing or eliminating danger to persons or property.

5.15 *products* means any goods or *products* manufactured, grown, extracted, produced, processed, treated, altered, handled, sold, supplied, distributed, imported, exported, repaired, serviced, installed, assembled, erected or constructed by the *insured* (including packaging, containers or any associated instructions) in connection with the *business* in or from the *territorial limits*, and after it has ceased to be the *insured's* property or in the *insured's* custody or legal control.

5.16 *products liability* means the *insured's* legal liability in respect of *personal injury* or *property damage* caused by or arising out of any *products* or the reliance upon a representation or warranty made at any time with respect to such *products*; but only where such *personal injury* or *property damage* occurs away from premises owned or leased by or rented to the *insured* and after physical possession of such *products* has been relinquished to others.

5.17 *public liability* means the *insured's* legal liability in respect of *personal injury*, *property damage* or *advertising liability* happening in connection with the *business* and caused by or arising out of an *occurrence* other than *products liability*.

5.18 *property damage* means:

- (a) physical damage to, or loss of or destruction of tangible property, including the subsequent loss of use of that property;
- (b) loss of use and/or loss of value of tangible property that has not been physically damaged, physically lost or physically destroyed provided such loss of use and/or loss of value is caused by physical damage to, physical loss of or physical destruction of other tangible property; and includes denial of access to property, premises, services or facilities, interference with or stoppage of vehicular or pedestrian traffic; and
- (c) trespass, nuisance or interference with right of way or right to light air or water, easement or quasi-easement.

5.19 **tool of trade** means a **motor vehicle** that has tools, implements, machinery or plant attached to or towed by the **motor vehicle** and is being used by the **insured** at their premises or any **worksite**. **Tool of trade** does not include any **motor vehicle** whilst travelling to or from a **worksite** or **motor vehicle** that are used to carry goods to or from any premises.

5.20 **territorial limits** means as stated in the **schedule**, and in respect of **North America** only with respect to:

1. overseas **business** visits by any of the **insured's** directors, business partners, officers, executives, or **employee's**, who are non-residents in **North America**, but not where they perform manual work in **North America**;
2. **products** exported to **North America** without the **insured's** knowledge.

5.21 **watercraft** means any vessel, craft or thing made, or intended to float on or in, or travel on or through or under water.

STATUTORY LIABILITY COVERAGE SECTION

Insuring Clauses: Statutory Liability

1.1 What Agile cover

Subject to the terms and conditions of this *policy*, *Agile* will pay for any *fine* that a New Zealand Court or tribunal imposes any *order for reparation* or *statutory damages* on the *insured* arising out of a *claim* or *event* that occurs in New Zealand in connection with the *business* up to the *limit of liability* provided that:

- (a) the *insured* first became aware of the *claim* during the *period of insurance*;
- (b) the *insured* has advised *Agile* of the *claim* as soon as possible but no later than last day of the *period of insurance*;
- (c) the *claim* or *event* has occurred on or after the *retroactive date*; and
- (d) provided that *Agile's* liability will only be in excess of the *deductible*.

1.2 Additional payments

Subject to the terms and conditions of this *policy*, *Agile* will pay *defence costs* for:

- (a) a prosecution that if proven could result in a *fine* that would be insured under this *policy*;
- (b) a *proceeding* that if proven could result in *statutory damages* that would be insured under this *policy*;
- (c) a prosecution under an *Act of Parliament*; and
- (d) compensation to the *insured* if, at *Agile's* request, an *insured* attends court as a witness in connection with a *claim* or *event* in respect of which the *insured* is entitled to cover under this *policy*, at the following rates per day for each day on which attendance is required:
 - 1. any director, officer or business partner of the *insured* \$300 per day;
 - 2. any *employee* of the *insured* \$200 per day.

The *defence costs* as described under clause 1.2 (a), (b), (c), and (d) are payable by *Agile* in addition to the *limit of liability* for Statutory Liability and up to the *limit of liability* for *defence costs* and as specified in the *schedule*.

1.3 Free legal advice helpline

Agile will pay for up to one hour's advice from an appropriately qualified lawyer via the Legal Advice Helpline whose details appear in the *schedule* in respect of any matter that may in the reasonable opinion of an *executive* result in a *claim* covered under this Coverage Section.

Cover under this Insuring Clause is not subject to the *deductible* and is in addition to the *limit of liability*.

Use of the Legal Advice Helpline does not constitute a notice to **Agile** of any *claim* or *event* or of any circumstance which may reasonably be expected to give rise to a claim under this Coverage Section and the requirements under General Condition 3. Notice and Proof of Claim, Claims Assistance and Cooperation shall apply. Furthermore:

- (a) the provision of assistance under this Insuring Clause is not confirmation there is or will be cover under this Coverage Section for any related *claim*, and
- (b) use of the Legal Advice Helpline is on the basis neither **Agile** nor the relevant legal expert assumes any responsibility for any legal assistance provided and is not a substitute for the *insured* obtaining its own expert advice where needed.

1.4 Claims preparation costs

In addition to the amount of cover provided by this *policy*, **Agile** will pay up to \$25,000 in respect of each *claim* or series of *claims* for professional fees and such other expenses incurred by the *insured* for the preparation of a *claim* under this *policy*.

The amount of such costs and expenses as described under this clause are payable by **Agile** in addition to the *limit of liability* for *defence costs*.

Exclusions: Statutory Liability

The following Exclusions are included and in respect of this Coverage Section override any inconsistent *policy* General Exclusions unless otherwise stated.

Agile will not be liable under the Statutory Liability section of this *policy* in respect of:

2.1 Compliance Costs

- (a) for payment of any *fine* (or part of a *fine*) which is a penalty imposed for failing to comply with any enforcement order or remedial order or enforceable undertaking; or
- (b) for the cost incurred by the *insured* in complying with any enforcement order or remedial order or enforceable undertaking.

2.2 Continuing fine

for payment of any *fine* (or part of a *fine*) which is imposed in relation to a period of time after the *insured* first received notice from the prosecuting body of the intention to commence a prosecution in relation to the offence.

2.3 Damages and Non-criminal Penalties

any proceeding seeking:

- (a) damages, including punitive, aggravated, liquidated, multiple or exemplary damages; or
- (b) compensation for injury suffered, including physical or mental injury, humiliation, distress or damage to reputation except an order of reparation; or
- (c) civil *pecuniary penalties* under any *Act of parliament*

2.4 Dishonesty and Fraud

any *claim* in connection with:

- (a) deliberate breach of duty or deliberate breach of an Act; or
- (b) dishonest, fraudulent or malicious act or omission; or
- (c) act or omission committed with criminal intent; or
- (d) unlawful profit or advantage; or
- (e) insider trading.

2.5 Employment disputes

any *claim* arising out of any contract of employment or service or any intended contract of employment or service with any current, former or prospective *employee*, including any personal grievance or similar action by an *employee* but this exclusion will not apply to any investigation, inquiry or prosecution by the Ministry of *Business*, Innovation and Employment pursuant to the *Health and Safety at Work Act 2015*.

2.6 Excluded Acts

any *claim* whatsoever in connection with or contributed to by the following *Acts of Parliament*:

- (a) *Anti-Money Laundering and Countering Financing of Terrorism Act 2009*
- (b) *Arms Act 1983*
- (c) *Aviation Crimes Act 1972*
- (d) *Commerce Act 1986*
- (e) *Crimes Act 1961*
- (f) *Criminal Investigations (Bodily Samples) Act 1995*
- (g) *Criminal Proceeds (Recovery) Act 2009*
- (h) *Financial Markets Conduct Act 2013*
- (i) *Financial Service Providers (Registration and Dispute Resolution) Act 2008*
- (j) *Financial Markets Authority Act 2011*
- (k) *Land Transport Act 1998*
- (l) *Misuse of Drugs Act 1975*
- (m) *Proceeds of Crime Act 1991*
- (n) *Summary Offences Act 1981*
- (o) *Waste Minimisation Act 2008*

and any other *Act of parliament* specified in the *schedule* as an excluded *Act of parliament*

2.7 Acts of Parliament

any *fine* or infringement fee ordered to be paid by the *insured* following conviction under any Acts of Parliament where *Agile* is prohibited from indemnifying or reimbursing the *insured* for any *fine* or infringement fee.

2.8 Infringement Fees

any fee imposed that is associated with a strict liability offence.

2.9 Intentional or deliberate disregard

any *claim* arising out of or based upon, attributable to, or in any way involving the *insured's* intentional or reckless disregard of the provisions of any *Act of parliament*, including the *insured's* intentional or reckless disregard of prior warnings from a regulator or enforcement action taken by a regulator against the *insured*.

2.10 Known claims and circumstances

- (a) *claims* made against, or intimated to, the *insured* prior to the commencement of the *period of insurance*; or
- (b) *claims* notified under any previous policy; or
- (c) arising out of or connected with any *claim* that:
 - i) the *insured* was aware of prior to commencement of the *period of insurance*; and
 - ii) a reasonable person in the *insureds* position would have considered give rise to a *claim*.

2.11 Legal Jurisdiction

any *claim* in connection with:

- (a) where the proceeding, prosecution, investigation or inquiry is brought or may be brought in a court outside of New Zealand; or
- (b) where the proceeding, prosecution, investigation or inquiry is brought in a court in New Zealand to enforce a judgement or *fine* made by a court outside of New Zealand; or
- (c) in which the proper law to be applied is that of a country other than New Zealand.

2.12 Monetary amounts paid or offered before sentence

any sum paid, or offered to be paid, by the *insured* prior to sentencing by the court where the sum is paid or offer made without *Agile's* prior written consent.

2.13 Other activities

any *claim* arising out activities that are not in course of or in connection with the *insured's business*.

2.14 Private prosecution

any *claim* arising out of or related to any *private prosecution*.

2.15 Punitive or exemplary damages

any *claim* for damages, including punitive, aggravated, liquidated, or exemplary damages imposed by a court for the breach of any Act.

2.16 Retroactive Date

any *claim* that occurred prior to the *retroactive date*.

2.17 Taxes

any payment of any tax, including any *fine* or penalty resulting from the failure to pay any tax.

Automatic Extensions: Statutory Liability

The following Automatic Extensions are included and are subject to the *policy* terms and conditions unless otherwise stated. Some extensions have specified Sublimits of Liability and *deductibles* specified in the *schedule*.

3.1 Defence costs if acquitted

Agile will reimburse the *insured's* reasonable *defence costs* where it is alleged the *insured* has acted knowingly, wilfully or intentionally and the *insured* is *acquitted* of the charge to which the allegation was made.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule* and the *deductible* stated in the *schedule* will apply under this Automatic Extension.

3.2 Enforceable Undertakings

Agile will cover the *insured* for amounts which the *insured* is required to pay as part of an enforceable undertaking accepted by the regulator under the *Health and Safety at Work Act 2015*, and *defence costs* incurred in relation to the enforceable undertaking, provided that:

- (a) the enforceable undertaking arises out of a valid *claim* which would have resulted in an *order for reparation* if the *insured* were convicted; and
- (b) the maximum amount *Agile* will pay under this Automatic Extension (excluding *defence costs*) is no greater than the amount *Agile* would expect to pay as an *order for reparation* had the *insured* been convicted; and
- (c) the maximum amount of *defence costs* *Agile* will pay under this Automatic Extension is \$100,000.
- (d) The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule* and the *deductible* stated in the *schedule* will apply under this Automatic Extension.

Provided that *Agile* will not indemnify the *insured* for:

- i) any amounts in respect of undertaking or agreement that have been made by the *insured* without *Agile's* prior written consent; or

- ii) any costs of or in connection with compliance, training or remedial actions; or
- iii) any costs of compliance, monitoring activities or meeting any non-financial terms of the enforceable undertaking; or
- iv) any amount payable to any party other than a 'victim' (as defined under section 4(1) of the *Sentencing Act 2002*) had the **event** resulted in a conviction; or
- v) any amounts that may result from the **insured's** failure to comply with or contravention of any of the terms of the enforceable undertaking.

Exclusion 2.1 Compliance Costs will not apply to this Automatic Extension.

3.3 Extended Reporting Period

If **Agile** cancel or refuse to offer a renewal for the Statutory Liability Coverage Section, the **insured** can extend, upon payment of 90% of the expiring annual **premium**, for the period of twelve (12) months following the effective date of such cancellation or non-renewal, but only in respect of an **event** otherwise covered under this Coverage Section that takes place prior to the effective date of such cancellation or non-renewal. Provided that:

- (a) This right of extension will lapse unless written notice of such election, together with payment of the additional **premium** due, is given to **Agile** within thirty (30) days following the effective date of cancellation or non-renewal. If the right of extension lapses, then cover under this Coverage Section ceases as at the effective date of the cancellation or non-renewal.
- (b) Any **claim** made during the extended reporting period will be treated as if it had been made during the last **period of insurance** and is subject to the remaining **limit of indemnity** at the effective date of cancellation or non-renewal.
- (c) The entire **premium** for the extended reporting period is non-refundable.

3.4 Mergers and consolidations

If the entity(ies) named in the **schedule** is the subject of a **transaction**, then this **policy** will be extended to insure the new company, provided all of the following are satisfied:

- i) the operations and activities of the merged, amalgamated or consolidated entity are the same as those undertaken by the **insured's business** as described in the **schedule**; and
- ii) the **insured** gives **Agile** notice that the **insured** wishes to extend cover to the new company within thirty (30) days of the **transaction**, and **Agile** agree to extend cover to the new company; and
- iii) cover provided following the **transaction** is subject to the **retroactive date** shown in the **schedule**; and
- iv) if **Agile** agrees to extend coverage it will be entitled to vary the **policy** terms, conditions and Exclusions and/or charge an additional **premium**, which are accepted by the **insured**.

3.5 Official Investigation

Agile will pay **defence costs** for the **insured** to be represented at any **official investigation**, public examination or commission, provided that:

- (a) the investigation arises out of an **event**, or potential **event**, that occurred after the **retroactive date**, in New Zealand, and in connection with the **business**; and

- (b) the *insured* first knew, or ought to have known, during the *period of insurance*, of the *official investigation*, public examination or commission in relation to that *event*; and
- (c) the *insured* have notified *Agile* of the *official investigation*, public examination or commission, as soon as possible, but before the *period of insurance* ends.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule* and the *deductible* stated in the *schedule* will apply under this Automatic Extension.

3.6 Pecuniary penalties

Agile will pay any amount which the *insured* are ordered to pay as a *pecuniary penalty*, provided that:

- (a) *Agile* are not legally prohibited from insuring the *insured* for the *pecuniary penalty*, and
- (b) the *pecuniary penalty* arises out of an act, error or omission that occurred after the *retroactive date*, in New Zealand, and in connection with the *business*; and
- (c) the *insured* first knew, or ought to have known, during the *period of insurance*, of the proceeding to which the *pecuniary penalty* relates; and
- (d) the *insured* have notified *Agile* of the proceeding to which the *pecuniary penalty* relates, as soon as possible, but no later than the last day of the *period of insurance*.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule* and the *deductible* stated in the *schedule* will apply under this Automatic Extension.

Exclusion 2.3 Damages and Non-criminal Penalties will not apply to this Automatic Extension.

3.7 Private Prosecutions

Agile will pay on behalf of the *insured* any *order for reparation* and *defence costs* arising out of a *private prosecution* under the *Health and Safety at Work Act 2015*, provided that the *private prosecution* arises out of the same *event* as a valid *claim* which was previously notified to *Agile*. An *order of reparation* and *defence costs* paid under this Automatic Extension are inclusive to the *limit of liability* as specified in the *schedule*.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule* and the *deductible* stated in the *schedule* will apply under this Automatic Extension.

Exclusion 2.14 Private prosecution will not apply to this Automatic Extension.

3.8 Public relations expenses

Agile will pay the reasonable costs and expenses of a public relations consultant for the sole purpose of protecting the *insured's* reputation that has been brought to question as a direct result of a *claim*, provided:

- (a) The *insured* must notify *Agile* within 30 days of first becoming aware of the *insured's* reputation being brought into question and provide full written details outlining the circumstances surrounding the *event*; and
- (b) *Agile* must have given prior written consent to retain the services of the public relations consultant.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule* and the *deductible* stated in the *schedule* will apply under this Automatic Extension.

3.9 Reparation at restorative justice conference

Agile will pay reparation that is offered by the *insured* at a restorative justice conference as appropriate to be paid prior to sentencing, provided that:

- (a) the restorative justice conference relates to charges which have been notified to **Agile** as a valid *claim*; and
- (b) **Agile's** written agreement is obtained prior to the restorative justice conference as to whether any reparation should be offered at the restorative justice conference, and as to the amount of the reparation to be paid, which will be no greater than the amount **Agile** would expect to pay as an *order for reparation* upon the *insured's* conviction.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule* and the *deductible* stated in the *schedule* will apply under this Automatic Extension.

Exclusion 2.12 Monetary amounts paid or offered before sentence will not apply to this Automatic Extension.

Definitions: Statutory Liability

When used in ***bold & italic*** in this *policy* (including its endorsements) the words below have the following meanings. Where an equivalent definition to a definition below is provided in another Coverage Section, the definition below will not apply to such Coverage Section. Further, the definitions below will override any inconsistent *policy* General Definition insofar as it relates to this Coverage Section unless otherwise stated.

- 4.1 ***acquitted*** means the dismissal of charges before or after a defended hearing, or a not guilty verdict. This does not include the withdrawal of a charge pursuant to a plea bargain or agreement with the prosecutor where multiple charges are laid.
- 4.2 ***act of parliament*** means any Act of the New Zealand Parliament, including any amendments, re-enactments, replacement legislation or any statutory regulations, rules or codes issued under such Act except for Exclusion 2.6 Excluded Acts.
- 4.3 ***claim*** means any:
 - (a) judicial, administrative or regulatory proceeding instituted against, and served upon, the *insured*; or
 - (b) threat or indication that a judicial, administrative or regulatory proceeding will be established against the *insured*; or
 - (c) circumstance that the *insured* may reasonably believe may give rise to a *claim* against the *insured* under (a) or (b) above.
- 4.4 ***event*** means any act or omission by the *insured* in connection with the *business* that may result in an allegation that the *insured* has committed an offence under an *act of parliament* punishable by a conviction or a proceeding.
- 4.5 ***fine*** means any monetary penalty for which the *insured* are liable on conviction of any offence under an *Act of parliament* in connection with an *event*. The *fine* will include amounts ordered to be paid, upon conviction, towards the costs of the prosecution. *Fine* does not include the cost or

payment of any enforcement order, or compliance order, or a ***fine*** imposed pursuant to the *Health and Safety at Work Act 2015*.

- 4.6 ***insured*** means an insured entity and also includes:
- (a) any of the ***insured's*** directors, officers, ***employee's*** or business partners but only whilst acting within the scope of their duties in such capacity;
 - (b) any student or person undertaking work for the ***insured*** under a work experience or similar scheme;
 - (c) any voluntary helper;
 - (d) any social and/or sporting clubs, first aid, fire and ambulance services formed with the ***insured's*** consent and includes any office bearer or member thereof in their respective capabilities as such;
 - (e) any of the ***insured's*** directors or senior executives in respect of private work undertaken by the ***insured's employees*** for such director or senior executive;
- 4.7 ***official investigation*** means any statutory registration board or similar regulatory inquiry, investigation or proceeding.
- 4.8 ***order for reparation*** means an amount the ***insured*** is ordered to pay as reparation under section 32 of the *Sentencing Act 2002*, or as superseded.
- 4.9 ***pecuniary penalties*** means a monetary penalty ordered by a New Zealand Court or in a civil proceeding which is to be paid to a Crown entity pursuant to an ***Act of parliament*** which provides for a pecuniary penalty.
- 4.10 ***private prosecution*** means any investigation, defence, proceeding, inquiry or prosecution taken by a person or entity other than the statutory authority or enforcement agency given that responsibility under an ***Act of parliament***.
- 4.11 ***statutory damages*** means damages payable by the ***insured*** for an alleged breach under the applicable Act.

EMPLOYERS LIABILITY COVERAGE SECTION

Insuring Clauses: Employers Liability

1.1 What Agile cover

Subject to the terms and conditions of this *policy*, *Agile* will indemnify the *insured* for *damages* the *insured* becomes legally liable to pay for a *claim* by an *employee*.

- (a) for *personal injury* sustained by such *employee* in New Zealand and that arose out of, and in the course of, such *employee's* employment in the *business*; and
- (b) for which the *employee* is not covered under the *Accident Compensation Act 2001*, provided always that:
 - i) the *claim* is first made during the *period of insurance*; and
 - ii) the *personal injury* arose out of an *event*, circumstance or accident that occurred on or after the *retroactive date* and before the expiry of the *period of insurance*.
 - iii) *Agile's* liability will only be in excess of the *deductible*.

1.2 Additional Payments

Subject to the terms and conditions of this *policy*, *Agile* will pay *defence costs* for the *insured* as agreed under 1.1 What Agile cover (a) and (b), including compensation to the *insured* if, at *Agile's* request, an *insured* attends court as a witness in connection with a *claim* or *event* in respect of which the *insured* is entitled to cover under this *policy*, at the following rates per day for each day on which attendance is required:

1. any director, officer or business partner of the *insured* \$300 per day;
2. any *employee* of the *insured* \$200 per day.

The costs as described under this clause 1.2 are payable by *Agile* in addition to the *limit of liability* for Employers Liability and up to the *limit of liability* for *defence costs* and as specified in the *schedule*.

1.3 Claims preparation costs

In addition to the amount of cover provided by this *policy*, *Agile* will pay up to \$25,000 in respect of each *claim* or series of *claims* for professional fees and such other expenses incurred by the *insured* for the preparation of a *claim* under this *policy*.

The amount of such costs and expenses as described under this clause are payable by *Agile* in addition to the *limit of liability* for *defence costs*.

Exclusions: Employers Liability

The following Exclusions are included and in respect of this Coverage Section override any inconsistent *policy* General Exclusions unless otherwise stated.

Agile will not be liable under the Employers Liability section of this *policy* in respect of:

2.1 Accident Compensation Act 2001

compensation that is available under the *Accident Compensation Act 2001* or would have been available under that Act, except for the *insured's* status as an exempt employer under that Act.

2.2 Defamation

any liability based on or in any way arising out of a *claim* based on defamation or injurious falsehood.

2.3 Dishonesty and Fraud

any *claim* alleging, resulting from or contributed by any dishonest, fraudulent, criminal or injurious falsehood.

2.4 Employment Disputes

any liability in connection with:

- (a) an employment relationship problem or for an *employee* or former *employee* seeking compensation under the *Employment Relations Act 2000*; or
- (b) unpaid wages or other benefits due to any *employee*.

2.5 Health and Safety at Work Act

any *claim* as a result of an *employee* sustaining *personal injury* that arose out of the failure by the *insured* to comply with any improvement, prohibition or suspension notice issue to the *insured* or at its *employees* under the *Health and Safety at Work Act 2015* or any amending or replacing legislation.

2.6 Intentional Torts

Any *claim* alleging, based on or in any way arising out of intentional wrongdoing or conscious recklessness on the *insureds* part, including, but not limited to, intentional infliction of harm, trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse.

2.7 Known claims and circumstances

- (a) *claims* made against, or intimated to, the *insured* prior to the commencement of the *period of insurance*; or
- (b) *claims* notified under any previous policy; or
- (c) arising out of or connected with any *claim* that:
 - i) the *insured* was aware of prior to commencement of the *period of insurance*; and
 - ii) a reasonable person in the *insureds* position would have considered give rise to a *claim*.

2.8 Legal Jurisdiction

Any **claim** in connection with:

- (a) any legal action or litigation first brought in a court outside of New Zealand; or
- (b) any legal action or litigation brought in a court within New Zealand to enforce a judgement handed down in a court outside New Zealand whether by way of a reciprocal agreement or otherwise; or
- (c) any legal action in which the proper law to be applied is that of a country other than New Zealand.

2.9 Other Activities

Any **claim** arising out activities that are not in course of or in connection with the **business**.

2.10 Retroactive date

Any **claim** or **event** that occurred prior to the **retroactive date**.

Automatic Extensions: Employers Liability

The following Automatic Extensions are included and are subject to the **policy** terms and conditions unless otherwise stated. Some extensions have specified Sublimits of Liability and **deductibles** specified in the **schedule**.

3.1 Continuous Cover

Agile will indemnify the **insured** for any **claim** that would be covered under this **policy** but is excluded by Exclusion 2.7 Known claims and circumstances (c), subject to the following additional conditions:

- (a) **Agile** were the **insured's** Employers Liability Insurer at the primary level under a policy ('the former policy') at the time when the **insured** first became aware of the circumstances that subsequently gave rise to the **claim**; and
- (b) **Agile** continued without interruption as the **insured's** Employers Liability Insurer at the primary level from the time when the **insured** first became aware of the circumstances up until such time as the **claim** was made against the **insured** and notified to **Agile**; and
- (c) **Agile's** liability is limited to the amount for which **Agile** would have been liable at the time referred to in 3.1(a) (**claim**) in accordance with the terms and conditions of the former policy; and
- (d) **Agile's** liability will be reduced by the amount that fairly represents the extent to which liability for the **claim** could have been reduced had the circumstances been duly reported under the former policy.

3.2 Extended Reporting Period

If **Agile** cancel or refuse to offer a renewal for this **policy**, the **insured** can extend, upon payment of 90% of the expiring annual **premium**, the cover granted by this **policy** for the period of twelve (12) months following the effective date of such cancellation or non-renewal, but only in respect of an **event**

otherwise covered under this *policy* that takes place prior to the effective date of such cancellation or non-renewal. Provided that:

- (a) This right of extension will lapse unless written notice of such election, together with payment of the additional *premium* due, is given to *Agile* within thirty (30) days following the effective date of cancellation or non-renewal. If the right of extension lapses, then cover under this *policy* ceases as at the effective date of the cancellation or non-renewal.
- (b) Any *claim* made during the extended reporting period will be treated as if it had been made during the last *period of insurance* and is subject to the remaining *limit of indemnity* at the effective date of cancellation or non-renewal.
- (c) The entire *premium* for the extended reporting period is non-refundable.

3.3 Mergers and consolidations

If the entity(ies) named in the *schedule* is the subject of a *transaction*, then this *policy* will be extended to insure the new company, provided all of the following are satisfied:

- i) the operations and activities of the merged, amalgamated or consolidated entity are the same as those undertaken by the *business*; and
- ii) the *insured* gives *Agile* notice that the *insured* wishes to extend cover to the new company within thirty (30) days of the *transaction*, and *Agile* agree to extend cover to the new company; and
- iii) cover provided following the *transaction* is subject to the *retroactive date* shown in the *schedule*; and
- iv) if *Agile* agrees to extend coverage it will be entitled to vary the *policy* terms, conditions and Exclusions and/or charge an additional *premium*, which are accepted by the *insured*.

Definitions: Employers Liability

When used in *bold & italic* in this *policy* (including its endorsements) the words below have the following meanings. Where an equivalent definition to a definition below is provided in another Coverage Section, the definition below will not apply to such Coverage Section. Further, the definitions below will override any inconsistent *policy* General Definition insofar as it relates to this Coverage Section unless otherwise stated.

4.1 *claim* means:

- (a) any legal proceedings against the *insured* in connection with an *employee* sustaining *personal injury*;
- (b) any notice the *insured* receives from any person that they intend to commence a proceeding against the *insured* in connection with an *employee* sustaining *personal injury*;
- (c) any circumstance that a reasonable *insured* would have considered may give rise to a demand for *damages*.

4.2 *damages* means monetary compensation ordered to be paid or agreed to be paid pursuant to a judgement or settlement of any action brought in a New Zealand court in respect of *personal*

injury to an *employee* but does not include any compensation payable pursuant to any remedy, relief or penalty provided in any New Zealand statute by way of *damages*, fine, reparation or other order.

- 4.3 *event* means any act or omission by the *insured* in connection with the *business*.
- 4.4 *insured* means an *insured entity* named in the *schedule* and also includes:
- (a) any of the *insured's* directors, officers, *employees* or business partners but only whilst acting within the scope of their duties in such capacity;
 - (b) any student or person undertaking work for the *insured* under a work experience or similar scheme;
 - (c) any voluntary helper;
 - (d) any social and/or sporting clubs, first aid, fire and ambulance services formed with the *insured's* consent and includes any office bearer or member thereof in their respective capabilities as such;
 - (e) any of the *insured's* directors or senior executives in respect of private work undertaken by the *insured's employees* for such director or senior executive.
- 4.5 *personal injury* means bodily injury, sickness, disease or infection, including death resulting therefrom, and shall include disability, shock, fright, mental anguish or mental injury.

CONSEQUENTIAL LOSS COVERAGE SECTION

Insuring Clauses: Consequential Loss

1.1 What Agile cover

Subject to the terms and conditions of this *policy*, *Agile* will indemnify the *insured* for *consequential loss* resulting from a **covered event** during the *period of insurance* in respect of which *Agile* has accepted indemnity.

Agile's liability will only be in excess of the *deductible*.

Exclusions: Consequential Loss

The following Exclusions are included and in respect of this Coverage Section override any inconsistent *policy* General Exclusions unless otherwise stated.

Agile will not be liable under this Coverage Section in respect of:

2.1 Business Records

the costs of rewriting and reconstructing business records not otherwise covered under this *policy*.

2.2 Financial Loss

financial loss covered under a Fire or Material Damage or Business Interruption or Consequential Loss Insurance Policy.

2.3 Fines, Penalties and Compliance Costs

fines, penalties, liquidated damages or the additional costs incurred in complying with any *act of parliament, regulation, order in council, by-law*, New Zealand or *international standard*, or any other industry or professional code of practice or compliance standard.

2.4 Property Damage

the costs of repairing or replacing loss or damage to real or personal property.

Special Conditions: Consequential Loss

The following Special Conditions are included and in respect of this Coverage Section override any inconsistent *policy* General Conditions unless otherwise stated.

3.1 Basis of Settlement

In assessing *consequential loss*, **Agile** will make all adjustments which, in their discretion, fairly reflect trends, variations or other special circumstances in the *business*, which would have affected the *business* anyway either before or after the *covered event* so that the adjusted figures represent, as closely as is reasonably practicable, the financial performance of the *business* which would have been obtained during the *indemnity period* but for the *covered event*.

3.2 Change of Business Circumstances

The cover under this Coverage Section ceases immediately if the *insured*:

- (a) is put into receivership or liquidation;
- (b) commits an act of bankruptcy or is adjudicated bankrupt;
- (c) ceases to own or control the *business*.

3.3 Limit of Liability

In no case will **Agile's** liability exceed 90% of the *limit of liability* stated in the *schedule* and in the aggregate for the *period of insurance*.

The maximum amount payable by **Agile** in respect of any claim is 40% of the sum insured during any 3-month period, or pro rata for different periods.

The maximum amount of any claim payable by **Agile** shall be 90% of the actual loss or 90% of the sum insured whichever is the lesser amount. The *insured* shall be deemed to be its own insurer for the remaining 10%.

3.4 Progress Payments

At the *insured's* request, **Agile** will make progress payments to the *insured* during the *indemnity period*, provided that the requested progress payment is supported by the accountant or other representative appointed by **Agile**.

Definitions: Consequential Loss

When used in *bold & italic* in this *policy* (including its endorsements) the words below have the following meanings. Where an equivalent definition to a definition below is provided in another Coverage Section, the definition below will not apply to such Coverage Section. Further, the definitions below will override any inconsistent *policy* General Definition insofar as it relates to this Coverage Section unless otherwise stated.

- 4.1 **consequential loss** means loss of gross profit and/or increased costs, being:
- (a) The reduction in the **income** that would normally have been earned during the **indemnity period** if there had been no **covered event**;
 - (b) The additional expenses reasonably incurred during the **indemnity period** to avoid or minimise a reduction in **income** resulting from the **covered event** or to resume or maintain normal business activities;
 - (c) An equitable allowance for any financial loss suffered for a maximum period of 3 months after the **indemnity period** ends because the **insured's** stocks have been used to maintain **income** during the **indemnity period**;
 - (d) The net loss resulting directly from the **covered event**, of collectable amounts owed to the **insured** plus the reasonable costs incurred in establishing, tracing and recovering those debts; or
 - (e) The reduction in value of undamaged stock, arising directly from the **covered event**, due solely to the **insured's** inability to process or sell that stock normally, measured by the replacement cost of that stock, or if not replaced its market value, less any savings that can be achieved.
- 4.2 **claims preparation costs** means costs reasonably and necessarily incurred by an accountant appointed or approved by **Agile** for the preparation of the claim. From these amounts **Agile** will deduct any savings made during the **indemnity period** in the **business** costs and expenses resulting from the **covered event**.
- 4.3 **covered event** means an **occurrence** or other covered event during the **period of insurance** in respect of which **Agile**,
- (a) have accepted indemnity under the Public and Products Liability Coverage Section of this **policy**; or
 - (b) have accepted indemnity under the Statutory Liability Coverage Section of this **policy**; or
 - (c) have accepted indemnity under the Employers Liability Coverage Section of this **policy**.
- and which results in interruption or interference of the **business**.
- 4.4 **income** means revenue received or receivable in the course of the **business** including revenue for goods sold, services rendered and rent and expenses from tenants, less the cost of goods sold and any other expenses of the **business** that vary with production and/ or revenue.
- 4.5 **indemnity period** means the period commencing at midnight on the day on which the **insured** was first required to notify **Agile** of the **covered event**, and expiring on the earlier of:
- (a) 12 months later or such other period as specified in the **schedule**; or
 - (b) when the **business** returns to the level that the **business** would have attained but for the **covered event**.

DIRECTORS AND OFFICERS LIABILITY COVERAGE SECTION

Insuring Clauses: Directors and Officers Liability

1.1 What Agile cover

Subject to the terms and conditions of this *policy*, *Agile* will:

- (a) pay on behalf of any *insured person* the *loss* arising from a *claim* first made during the *period of insurance* (or Extended Reporting Period, if applicable) against such *insured person* for any *wrongful act*, unless the *insured entity* has indemnified the *insured person* for such *loss*.

No *deductible* shall apply.

- (b) indemnify the *insured entity* the *loss* arising from a *claim* first made during the *period of insurance* (or Extended Reporting Period, if applicable) against any *insured person* for any *wrongful act*, if the *insured entity* pays such *loss* to or on behalf of the *insured person*.

Agile's liability will only be in excess of the *deductible*.

1.2 Additional Payments

Subject to the terms and conditions of this *policy*, *Agile* will pay compensation to the *insured* if, at *Agile's* request, an *insured person* attends court as a witness in connection with a *claim* in respect of which the *insured* is entitled to cover under this *policy*, at the following rates per day for each day on which attendance is required:

1. any *executive* \$300 per day;
2. any *employee* \$200 per day.

The costs as described under this clause 1.2 are payable by *Agile* in addition to the *limit of liability* and up to the *limit of liability* for *defence costs* as specified in the *schedule*.

Exclusions: Directors and Officers Liability

The following Exclusions are included and in respect of this Coverage Section override any inconsistent *policy* General Exclusions unless otherwise stated.

Agile will not be liable under this Coverage Section in respect of loss, liability or costs:

2.1 Bodily Injury / Property Damage

arising out of or based upon bodily injury (other than emotional distress or mental anguish), sickness, disease, or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof; provided, however, that this Exclusion shall not apply to Automatic Extension 3.7 (Health and Safety).

2.2 Improper Gain

arising out of, based upon or attributable to the gaining of any personal profit or financial advantage or improper or illegal remuneration by the *insured*, if a final, non-appealable judgment or adjudication in the underlying action or any formal written admission by an *insured* establishes that such *insured* was not legally entitled to such profit or advantage or that such remuneration was improper or illegal.

2.3 Major Shareholder

arising out of any *claim* brought by or on behalf of any shareholder holding or controlling (directly or beneficially) 15% or more of the voting rights or issued capital of the entity(ies) named in the *schedule*.

Automatic Extensions: Directors and Officers Liability

The following Automatic Extensions are included and are subject to the *policy* terms and conditions unless otherwise stated. Some extensions have specified Sublimits of Liability and *deductibles* specified in the *schedule*.

3.1 Additional Limit for Non-Executive Directors

- (a) This Extension provides an *additional limit of liability* for *insured persons* in their capacity as non-executive directors of the *insured entity* that shall apply to the coverage provided by Insuring Agreement 1.1(a).
- (b) The *additional limit of liability* applies only after:
 - 1. the *limit of liability* has been fully exhausted due to the payment of *loss*; and
 - 2. any other insurance that responds to the claimed *loss* (including any purchased specifically in excess of this *policy*) has been fully exhausted.

3.2 Continuous Cover

This Extension extends cover for any *claim* arising out of, based upon or attributable to a *circumstance* which could have been, but was not, notified by the *insured* under any prior policy provided by *Agile*, and which is first notified to *Agile* during the *period of insurance*, provided that:

- (a) the failure by the *insured* to notify such *circumstance* under any such prior policy was not fraudulent; and
- (b) *Agile* have the discretion to apply either the terms and conditions of this *policy* or the terms and conditions of the prior policy in effect when the *circumstance* first arose; and
- (c) the *insured's* entitlement to indemnity will be reduced by the extent of any prejudice to *Agile* as a result of the *insured's* failure to notify such *circumstance* under any such prior policy.

3.3 Emergency Costs

If *Agile's* prior written consent cannot be obtained within a reasonable time prior to any *defence costs* or any *reputation costs* being incurred by or on behalf of an *insured person*, *Agile* shall retrospectively approve such *defence costs* or *reputation costs*. However, such approval shall be provided only for those *defence costs* or *reputation costs* incurred during the forty-eight (48) hour period commencing from the time such costs are first incurred by an *insured*.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule*.

3.4 Insured Persons' Estates and Life Partners

This Extension provides coverage for any *claim* for a *wrongful act* if such *claims* are made against:

- (a) the estates, heirs, legal representatives or assigns of a deceased *insured person* or
- (b) the legal representatives or assigns of an *insured person* who is incompetent, insolvent or bankrupt, provided that such coverage is afforded only to the extent such *claim*, if made against the *insured person*, would have been covered by this Coverage Section in the absence of such *insured person's* death, incompetence, insolvency or bankruptcy.
- (c) an *insured person's* spouse or domestic partner solely by reason of that person's status as an *insured person's* spouse or domestic partner, or an ownership interest in property which the claimant seeks as recovery for a *wrongful act*.

and any amount which the *insured person's* spouse or domestic partner becomes legally obligated to pay by reason of such *claim* shall be treated as *loss* which the *insured person* is legally obligated to pay.

3.5 Retired Insured Persons' Extended Reporting Period

This Extension provides an extended reporting period, for a period equal to any applicable statute of limitations, to any *insured person* who retires or resigns during or prior to the *period of insurance*, provided that this Coverage Section is neither renewed nor replaced with any other Directors and Officers liability cover, and that:

- (a) this extended reporting period shall apply solely to the coverage provided by Insuring Agreement 1.1(a), Automatic Extension 3.9 (Loss Mitigation) and Automatic Extension 3.13 (Reputational Costs);
- (b) this extended reporting period shall not be available to an *insured person* who: (i) retires or

resigns due to a *transaction*; or (ii) has been disqualified from holding his or her position with an *insured entity*; and

- (c) no additional premium is payable for this extended reporting period

3.6 Extradition

Agile will pay on behalf of an *insured person* any *extradition costs* and/or *bond expenses* in respect of any covered *claim* that comprises or includes an *extradition*. The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule*.

3.7 Insured Person Health & Safety Costs

Despite Exclusion 3.1 (Bodily Injury/Property Damage) of this Coverage Section, *Agile* will pay on behalf of an *insured person* any *defence costs* arising from:

- (a) an official investigation or enquiry alleging a breach of the Health and Safety at Work Act 2015 or any amendment thereto; or
- (b) a *corporate manslaughter proceeding*.

that would otherwise be covered under this *policy*. The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule*.

3.8 Investigation Costs

Agile will pay on behalf of an *insured person* any *investigation costs* incurred directly in connection with an *investigation* first commenced during the *period of insurance*. The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule*.

3.9 Loss Mitigation

If an *insured person* reasonably determines during the *period of insurance* (or an extended reporting period, if applicable), that urgent action is needed in order to avoid or minimise the risk of a *claim* against them that would be covered under this Coverage Section, the *insured* shall be entitled to retain an appropriate loss mitigation advisor to provide services in connection with avoiding or minimising such risk, provided that:

- (a) notice is given to *Agile* of a *circumstance* in accordance with the Claims Conditions of this *policy*; and
- (b) *Agile* shall pay on behalf of the *insured* the reasonable fees, costs and expenses incurred by or on behalf of such *insured*, with *Agile's* prior written consent (such consent not to be unreasonably withheld or delayed), for such loss mitigation services.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule*.

3.10 Outside Directorship

This Coverage Section includes cover for *claims* brought against an *outside entity insured person*.

3.11 Fines & Penalties

Agile will pay on behalf of an *insured person*, to the extent permitted by applicable law, any pecuniary penalties awarded against an *insured person* under the laws of Australia or New Zealand.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule*.

3.12 Pollution Defence Costs

Agile shall pay on behalf of an *insured person* any *defence costs* in respect of any *claim* made against such *insured person* for any *wrongful act* in respect of the discharge, dispersal, release or escape of *pollutants*.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule*.

3.13 Reputation Costs

Agile will pay the *reputation costs* incurred by or on behalf of an *insured person*, with *Agile's* prior written consent (such consent not to be unreasonably withheld or delayed), as a result of a negative public statement made about such *insured person* by any regulator in connection with any *claim* covered under this Coverage Section.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule*.

3.14 Pension Trustee Capacity

Agile will pay on behalf of an *insured person* any *loss* arising from any *claim* made against an *insured person* in their capacity as trustee of the *insured entity's* own superannuation fund, pension fund or employee benefits programme that would otherwise be covered under this Coverage Section.

3.15 Tax Audit Costs

Where an *insured entity* receives a *tax audit notice* during the *period of insurance* and has notified it to *Agile* in accordance with the Claims Conditions of this *policy*, *Agile* will pay *tax audit costs* up to the completion of the audit investigation.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule*.

This Extension shall only apply if the *insured* has not purchased a tax audit insurance policy.

3.16 Mergers and Consolidations

If the entity(ies) named in the *schedule* is the subject of a *transaction*, then this *policy* will be extended to insure the new company, provided all of the following are satisfied:

- i) the operations and activities of the merged, amalgamated or consolidated entity are the same as those undertaken by the *insured's business* as described in the *schedule*; and
- ii) the *insured* gives *Agile* notice that the *insured* wishes to extend cover to the new company within thirty (30) days of the *transaction*, and *Agile* agree to extend cover to the new company; and
- iii) cover provided following the *transaction* is subject to the *retroactive date* shown in the *schedule*; and
- iv) if *Agile* agrees to extend coverage it will be entitled to vary the *policy* terms, conditions and Exclusions and/or charge an additional *premium*, which are accepted by the *insured*.

3.17 Cyber Governance Liability

Notwithstanding General Exclusion 1. Cyber, **Agile** will pay on behalf of an *insured person* any *loss* arising from a *claim* alleging a *wrongful act* in the governance or oversight of cyber risks arising from a *cyber act* or *computer virus*.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule*.

Special Conditions: Directors and Officers Liability

The following Special Conditions are included and in respect of this Coverage Section override any inconsistent *policy* General Conditions unless otherwise stated.

4.1 Outside Directorship Other Insurance

In connection with any *claim* made against an *outside entity insured person*, this *policy* shall apply specifically in excess of any indemnification from an *outside entity* and any other insurance coverage provided to an *outside entity* or its directors, officers, trustees or governors (or equivalent).

In the event such other insurance provided to an *outside entity* or its directors, officers, trustees or governors (or equivalent) is provided by **Agile** (or would be except for the application of any *deductible*, exhaustion of a limit of liability or failure to submit notice of a claim) then the *limit of liability* shall be reduced by the amount of the limit of liability of the other insurance provided to such *outside entity* or its directors, officers, trustees or governors (or equivalent) by **Agile** as to any such *claim*.

4.2 Presumptive Indemnification

In the event and to the extent that the *insured entity* or an *outside entity* is permitted or required to indemnify any *insured persons* for *loss* covered by this Coverage Section, but for whatever reason fails to do so, then **Agile** will pay the *loss* on behalf of the *insured persons*. In such event, the amount of the *deductible* applicable to Insuring Agreement 1.1(b) shall be borne by the *insured entity* and paid to **Agile** upon demand. In the event of the *insured entity* being placed in administration, receivership or liquidation (other than voluntary liquidation), no *deductible* shall apply.

Definitions: Directors and Officers Liability

When used in *bold & italic* in this *policy* (including its endorsements) the words below have the following meanings. Where an equivalent definition to a definition below is provided in another Coverage Section, the definition below will not apply to such Coverage Section. Further, the definitions

below will override any inconsistent *policy* General Definition insofar as it relates to this Coverage Section unless otherwise stated.

- 5.1 ***additional limit of liability*** means the additional limit of liability stated in the *schedule*.
- 5.2 ***bond expenses*** means a reasonable fee or premium necessary to obtain a bond or other similar form of financial guarantee, in respect of obligations as to a specific security or collateral placed upon the *insured person* by a civil or criminal court in connection with an *extradition* and excluding any form of actual security or collateral itself.
- 5.3 ***circumstance*** means an incident, occurrence, fact, matter, act, error or omission which in the opinion of an *insured*, acting reasonably, is likely to give rise to:
- (a) a *claim* against the *insured*; or
 - (b) any other matter covered under this Coverage Section.
- 5.4 ***claim*** means any:
- (a) written demand;
 - (b) judicial, administrative or regulatory proceeding, whether civil or criminal;
 - (c) arbitration or mediation proceeding commenced against an *insured person*;
 - (d) *investigation*; or
 - (e) official request for *extradition*, or the execution of a warrant for the arrest of any *insured person* where such execution is an element of *extradition*.
- 5.5 ***corporate manslaughter proceeding*** means a criminal proceeding against an *insured person* for manslaughter in their capacity as an *executive* and directly related to the *business* of the *insured*.
- 5.6 ***employment practices breach*** means any:
- (a) breach of employment laws or any other legal provisions or duties whether arising under statutory law, common law or otherwise, relating to any natural person's actual or prospective employment relationship with an *insured entity*; or
 - (b) discrimination or harassment of any natural person who is a customer, client, vendor, supplier, creditor, tenant or service provider or other business invitee of an *insured entity*.
- 5.7 ***executive*** means any:
- (a) past, present or future director or officer of an *insured entity*; or
 - (b) past, present or future chief legal officer, controller, "de facto" director, shadow director, trustee, governor, management committee member or member of the board of managers, risk manager or director of investor relations of an *insured entity* or any other person in a functionally equivalent or comparable position.
- 5.8 ***extradition*** means any formal process under the Extradition Act 1999 or any amendments thereto requesting or seeking to extradite an *insured person* from one country to another country for trial or otherwise to answer any accusation, including but not limited to any related appeal, any judicial review applications challenging the designation of a territory for the purposes of extradition law, any challenge or appeal of any extradition decision by the responsible governmental authority or similar court.
- 5.9 ***extradition costs*** means any reasonable legal fees, costs and expenses incurred by an *insured person* with the prior written consent from *Agile* (not to be unreasonably withheld) to obtain legal advice or to bring or defend proceedings including by way of judicial review or other challenge to the decision to order *extradition* and to pursue appeals.

5.10 *insured* means any *insured entity* and any *insured person*.

5.11 *insured person* means any:

- (a) *executive*;
- (b) *employee*, but only during such time as the *claim* against such *employee* is also made against an *executive*
- (c) natural person serving as a representative or a director of an *insured entity*;
- (d) past, present or future trustee of a superannuation fund, pension fund or employee benefits programme established for the sole benefit of an *employee*;
- (e) *outside entity insured person* in accordance with Automatic Extension 3.10

5.12 *investigation* means any formal civil, criminal, administrative or regulatory investigation into the conduct of an *insured person* in their capacity as an *insured person* of the *insured entity*, which is commenced by the filing or issuance of a notice of charges, subpoena or formal investigative order.

5.13 *investigation costs* means any reasonable fees, costs, charges and expenses (other than remuneration payable to any *insured person* or the cost of their time or the costs or overhead of any *insured entity*) incurred with *Agile's* written consent, such consent not to be unreasonably withheld or delayed, by or on behalf of an *insured person* directly in connection with such *insured person* preparing for an *investigation*.

5.14 *loss* means any amount for which the *insured person* is legally liable as:

- (a) damages, settlements or judgments;
- (b) pre-judgment or post-judgment interest;
- (c) costs or fees awarded in favour of the claimant;
- (d) punitive or exemplary damages;
- (e) *defence costs*; and
- (f) any amounts for which cover is provided pursuant to Section 2, Automatic Extensions.

loss does not include:

- 1. fines or penalties imposed by law, except as otherwise provided by (d) above and Automatic Extension 2.13;
- 2. taxes, except as provided by Section 15 (GST) of the General Conditions;
- 3. the multiple portion of any multiplied damage award; and
- 4. amounts deemed uninsurable in law.

5.15 *outside entity* means any:

- (a) not-for-profit entity; and
- (b) other entity listed as such by endorsement to this *policy*.

outside entity does not include any *insured entity*.

5.16 *outside entity insured person* is an *executive* or *employee* who at the specific request or direction of an *insured entity* acts as a director, officer, trustee, governor or equivalent thereof of an *outside entity*, but only while that person is acting in their capacity as such.

5.17 *reputation costs* means the reasonable fees, costs and expenses charged by any public relations firm, crisis management firm or law firm retained by or behalf of an *insured person*, to mitigate the adverse effects to such *insured person's* reputation as a result of a negative public statement made about him or her by a regulator.

5.18 ***tax audit costs*** means any necessary and reasonable fees, charges or disbursements of a chartered accountant or registered tax agent or any other consultant who is engaged by the ***insured entity*** with the prior written consent of ***Agile*** for work undertaken in response to a ***tax audit notice***.

5.19 ***tax audit notice*** means any notification from the Inland Revenue Department of a tax audit investigation of the ***insured entity***.

5.20 ***wrongful act*** means any:

- (a) actual or alleged act, error, omission, neglect, breach of duty, breach of trust, misstatement, or misleading statement by an ***insured person***;
- (b) actual or alleged ***employment practices breach*** by an ***insured person***; or
- (c) matter claimed against an ***insured person*** solely by reason of their position as such.

EMPLOYMENT PRACTICES LIABILITY COVERAGE SECTION

Insuring Clauses: Employment Practices Liability

1.1 What Agile cover

Subject to the terms and conditions of this *policy*, *Agile* will pay on behalf of any *insured*, the *loss* arising from a *claim* first made during the *period of insurance* (or Extended Reporting Period, if applicable) against such *insured* for any *employment wrongful act*.

Agile's liability will only be in excess of the *deductible*.

1.2 Additional Payments

Subject to the terms and conditions of this *policy*, *Agile* will pay compensation to the *insured* if, at *Agile's* request, an *insured person* attends court as a witness in connection with a *claim* in respect of which the *insured* is entitled to cover under this *policy*, at the following rates per day for each day on which attendance is required:

1. any *executive* \$300 per day;
2. any *employee* \$200 per day.

The costs as described under this clause 1.2 are payable by *Agile* in addition to the *limit of liability* and up to the *limit of liability* for *defence costs* as specified in the *schedule*.

1.3 Free legal advice helpline

Agile will pay for up to one hour's advice from a qualified employment lawyer via the Legal Advice Helpline whose details appear in the *schedule* before any proposed:

1. suspension of an *employee* from work;
2. disciplinary action against an *employee*;
3. steps to terminate an *employee's* employment; or
4. commencement of a restructure or process or redundancy programme

that may in the reasonable opinion of an *executive* result in a *claim* for an *employment wrongful act* covered under this Coverage Section.

Cover under this Insuring Clause 1.3 is not subject to the *deductible* and is in addition to the *limit of liability*. However, in the event the *insured* proceeds with any of the steps in (1) – (4) above without obtaining the advice of a qualified employment lawyer first (whether or not via the Legal Advice Helpline) the *deductible* applicable to this Coverage Section in respect of any claim for cover resulting from such steps will be increased to \$20,000.

Use of the Legal Advice Hotline does not constitute a notice to *Agile* of any *claim* or of any circumstance which may reasonably be expected to give rise to a claim under this *policy* and the requirements under General Condition 3. Notice and Proof of Claim, Claims Assistance and Cooperation shall apply. Furthermore:

- (a) the provision of assistance under this Insuring Clause 1.3 is not confirmation there is or will be cover under this *policy* for any related claim for cover under this Coverage Section; and
- (b) use of the Legal Advice Helpline is on the basis neither *Agile* nor the relevant legal expert assumes any responsibility for any legal assistance provided and is not a substitute for the *insured* obtaining its own expert advice where needed.

Exclusions: Employment Practices Liability

The following Exclusions are included and in respect of this Coverage Section override any inconsistent *policy* General Exclusions unless otherwise stated.

Agile will not be liable under this Coverage Section in respect of:

2.1 Bodily Injury / Property Damage

bodily injury (other than emotional distress or mental anguish), illness, disease, or death of any person, or damage to or destruction of any tangible property.

2.2 Employee Entitlements

any payment to an *employee* of any amount which the *insured entity* was obligated (whether under any statute or any express or implied terms of any employment agreement, or otherwise) to pay such *employee* prior to the *employment wrongful act* alleged in such *claim* took place.

2.3 Labour Disputes

any lockout, strike, picket line, hiring of replacement workers, or other similar actions in connection with labour disputes or labour negotiations; provided, however, that this Exclusion shall not apply to any *claim* for *retaliation*.

2.4 Statutory Liability

any obligation pursuant to any *claim* regarding an injury for which cover is available under the *Accident Compensation Act 2001*, the *Health and Safety at Work Act 2015* or any associated regulation or amendment or other equivalent occupational health and safety statute, law or regulation in any country or territory.

Automatic Extensions: Employment Practices Liability

The following Automatic Extensions are included and are subject to the *policy* terms and conditions unless otherwise stated. Some extensions have specified Sublimits of Liability and *deductibles* specified in the *schedule*.

3.1 Third Party Claims

Agile will pay on behalf of any *insured*, the *loss* arising from a *claim* first made during the *period of insurance* (or any extended reporting period, if applicable) against such *insured* for a *third party wrongful act*.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule*.

3.2 Reinstatements and Injunctions

Agile will pay on behalf of the *insured* any *defence costs* incurred by the *insured* arising from a *claim* brought by any *employee* seeking either an injunction, reinstatement or an order from the Complaints Review Tribunal, Employment Relations Authority, Employment Court or any other court or tribunal authorised to make orders under the Human Rights Act 1993. However, *Agile* will not pay the actual costs of complying with any injunction, any order for reinstatement or any order of any aforesaid tribunal, authority or court.

Definitions: Employment Practices Liability

When used in ***bold & italic*** in this *policy* (including its endorsements) the words below have the following meanings. Where an equivalent definition to a definition below is provided in another Coverage Section, the definition below will not apply to such Coverage Section. Further, the definitions below will override any inconsistent *policy* General Definition insofar as it relates to this Coverage Section unless otherwise stated.

4.1 ***benefits*** means fringe benefits, deferred compensation or payments (including insurance premiums) in connection with any employee-related plan. ***benefits*** does not include salary, wages, bonuses or non-deferred cash incentive compensation.

4.2 ***claim*** means any:

- (a) written demand;
- (b) judicial, administrative or regulatory proceeding, whether civil or criminal; or
- (c) arbitration or mediation proceeding commenced by service of a demand for arbitration or mediation.

claim does not include any arbitration or other proceeding pursuant to a collective bargaining agreement.

4.3 **discrimination** means any violation of employment discrimination laws, including but not limited to any actual, alleged or constructive employment termination, dismissal, or discharge, employment demotion, denial of tenure, modification of any term or condition of employment, any failure or refusal to hire or promote, or any limitation or segregation of any **employee** or applicant for employment by the **insured entity** in any way that would deprive any person of employment opportunities based on such person's race, colour, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, or any other status that is protected by law.

4.4 **employee** means any natural person who was, now is or shall be a full-time, part-time, seasonal or temporary employee of the **insured entity**, as defined under the Employment Relations Act 2000. **employee** does not mean any **executive**, principal, partner, member or any person providing services for labour only under a contract for services to the **insured entity**.

(a) **employment wrongful act** means any actual or alleged:

- (a) **discrimination**,
- (b) **harassment**,
- (c) **retaliation**,
- (d) **workplace tort**, or
- (e) **personal grievance**,

by an **insured** but only if alleged by or on behalf of an **employee** or an applicant for employment with the **insured entity**.

Employment wrongful act shall also include a **third party wrongful act** by an **insured**, but solely with respect to the coverage provided under Automatic Extension 3.1.

4.5 **harassment** means:

- (a) sexual harassment, including unwelcome sexual advances, requests for sexual favours, or other conduct of a sexual nature that is made a condition of employment with, used as a basis for employment decisions by, interferes with performance or creates an intimidating, hostile or offensive working environment within the **insured entity**, or
- (b) workplace harassment, including work-related harassment of a non-sexual nature that interferes with performance or creates an intimidating, hostile or offensive working environment within the **insured entity**.

4.6 **insured** means any **insured entity** and any **insured person**.

4.7 **insured person** means any **executive** or **employee**.

4.8 **loss** means any amount for which the **insured** is legally liable as:

- (a) damages, settlements or judgments;
- (b) pre-judgment or post-judgment interest;
- (c) costs or fees awarded in favour of the claimant;
- (d) punitive or exemplary damages; and
- (e) **defence costs**.

loss does not include:

- 1. fines or penalties imposed by law, except as provided by (d) above;
- 2. taxes, except as provided by Section 15 (GST) of the General Conditions;
- 3. the multiple portion of any multiplied damages award;

4. amounts deemed uninsurable under applicable law;
5. **stock benefits** due or to become due or the equivalent value of such **stock benefits**, and any future compensation, including any **stock benefits**, for any person hired, promoted or reinstated pursuant to a judgment, settlement, order or other resolution of a **claim**.

4.9 **personal grievance** means a personal grievance as described in the *Employment Relations Act 2000* or any equivalent legislation or amendment.

4.10 **retaliation** means retaliatory treatment of an **employee** alleged to be on account of such individual:

- (a) exercising their rights under any law;
- (b) refusing to violate any law or opposing any unlawful practice;
- (c) having assisted or testified in or cooperated with any legal proceeding or formal governmental investigation regarding alleged violations of law by any **insured**;
- (d) disclosing or expressing an intent to disclose to a superior or to any governmental agency any alleged violations of law; or
- (e) filing or expressing an intent to file any claim against the **insured entity** under any "whistle-blower" law.

4.11 **stock benefits** means any offering, plan or agreement between the **insured entity** and any **insured person** thereof, which grants stock or stock options or stock appreciation rights to such individual, including but not limited to stock options, restricted stock or any other stock grant, but not including employee stock ownership plans or employee stock purchase plans.

4.12 **third party** means any natural person who is a customer, vendor, service provider or other business invitee of the **named insured**.

third party does not include an **insured person** or any applicant for employment with the **insured entity**.

4.13 **third party wrongful act** means any actual or alleged:

- (a) discrimination against a **third party** based upon such **third party's** race, colour, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, or any other status that is protected by law; or
- (b) harassment, directed against a **third party**, including sexual harassment, unwelcome sexual advances, requests for sexual favours or other misconduct of a sexual nature.

4.14 **workplace tort** means any employment related:

- (a) misrepresentation, defamation (including libel and slander), false arrest, detention, imprisonment, invasion of privacy, negligent evaluation, wrongful discipline or wrongful deprivation of a career opportunity; or
- (b) negligent retention, supervision, hiring or training, wrongful infliction of emotional distress, mental anguish or humiliation or failure to provide or enforce consistent employment-related corporate policies and procedures.

COMMERCIAL CRIME COVERAGE SECTION

Insuring Clauses: Commercial Crime

1.1 What Agile cover

Subject to the terms and conditions of this *policy*, *Agile* will indemnify the *insured* for the *loss* of the *insured* first *discovered* during the *period of insurance* (or Extended Reporting Period, if applicable) as a result of:

- (a) *computer fraud*
- (b) *credit card fraud*
- (c) *theft* or *forgery* by an *employee*
- (d) *theft* or *forgery* by a *fiduciary* in respect of the *sponsored plan*
- (e) *forgery* of *financial instruments* by a *third party*
- (f) *funds transfer fraud*
- (g) *robbery* or *safe burglary* within the *premises* by a *third party*
- (h) physical loss, destruction or damage to *money*, *securities* or *property* or *premises* as a result of (g) or an attempted *robbery* or *safe burglary*
- (i) *robbery* or *theft* of *money* or *securities* by a *third party* while in *transit*
- (j) physical loss, destruction or damage *property* as a result of (i) or an attempted *robbery*
- (k) *money orders and counterfeit currency fraud* by a *third party*
- (l) *social engineering fraud*.

Agile's liability will only be in excess of the *deductible*.

1.2 Loss quantification costs

Agile will pay up to the Sublimit of Liability stated in the *schedule* in respect of each *loss* or series of related *losses* for professional fees incurred by the *insured* for the quantification of covered *loss* under this Coverage Section, which shall be part of and not in addition to the *limit of liability*.

Exclusions:

Commercial Crime

The following Exclusions are included and in respect of this Coverage Section override any inconsistent *policy* General Exclusions unless otherwise stated.

Agile will not be liable under this Coverage Section of this *policy* in respect of:

2.1 Collusion

loss sustained by a *client* due to *theft* or *forgery* committed by an *employee* acting in collusion with the *client* or the *client's* employee.

2.2 Consequential Loss

indirect or consequential loss of any kind, provided, however, that this Exclusion shall not apply to otherwise covered *restoration expenses* under Automatic Extension 3.5.

2.3 Credit Card Forgery/Alteration

loss under Insuring Agreement 1.1(a) (*credit card fraud*) caused by any *forgery* or alteration of any written instrument; provided, however, that this Exclusion shall not apply if:

- (a) the provisions, conditions and other terms under which the involved credit card was issued were fully complied with; and
- (b) the *insured* is legally liable to the issuer of such credit card for such *loss*.

2.4 While Under Custody

loss of or damage to *money*, *securities* or *property* while in the custody of any bank, trust company, similar recognised place of safe deposit, armoured motor vehicle company or any person who is duly authorised by the *insured* to have custody of such assets.

2.5 Data

loss incurred:

- (a) as a result of the reconstitution of *data* if the *insured* knowingly used or uses illegal copies of programs; or
- (b) to render the *data* usable by replacement processing equipment; or
- (c) to design, update or improve software or programs or to perfect their operation or performance; or
- (d) as a result of an alteration in *data* held on magnetic media due to the effect of magnetic fields, their incorrect use or the obsolescence of the *computer system*.

2.6 Sustained Prior to Termination

loss sustained by the *insured* prior to the termination of this Coverage Section unless such *loss* is first *discovered* during the *period of insurance* and the *insured* provides written notice thereof to *Agile* in accordance with Special Condition 4.9 (Proof of Loss).

2.7 Forgery & Alteration Collusion

loss under Insuring Agreement 1.1(e) (*forgery* of *financial instruments*) for *loss* due to *forgery* of any:

- (a) *financial instrument* committed by any *third party* in collusion with any *employee*, or
- (b) any registered or coupon obligations issued or purported to have been issued by the *insured*, or any coupons whether attached or detached.

2.8 Fines, Penalties and Damages

fines, penalties, or damages of any nature.

2.9 Fire

loss resulting directly or indirectly from fire; provided however that this Exclusion shall not apply to:

- (a) loss of *money* or *securities*, or
- (b) damage to any safe or vault caused by the application of fire thereto for the purposes of *safe burglary*.

2.10 Lost Income

loss of income, whether or not earned or accrued, including interest and dividends, not realised as the result of a *loss* covered under this Coverage Section. This Exclusion does not apply to Automatic Extension 3.3 Interest Receivable.

2.11 Inventory Computation

loss, or that portion of any *loss*, sustained by the *insured* which results from an unexplained inventory shortage, including loss, the proof of which its existence or amount is dependent upon an inventory computation or a profit and loss computation; provided however, that if the *insured* can establish, wholly apart from such computations, that it has sustained a loss, then the *insured* may offer its inventory records and actual physical count of inventory in support of the amount of loss claimed.

2.12 Principal Crime

loss resulting directly or indirectly from any *crime* or other fraudulent or dishonest act committed or condoned by the *insured*, an owner or member or partner of the *insured*, or an *executive*, whether acting alone or in collusion with others; provided, however, that this Exclusion shall not apply to loss otherwise provided under Insuring Clause 1.1(c) (*theft* or *forgery* by an *employee*) insofar as it relates to a *client's* assets.

2.13 After Knowledge

loss caused by an *employee*, which is sustained by an *insured* after any other *employee* with managerial or supervisory responsibility, or an *executive*, not in collusion with the *employee* becomes aware of a *crime* or other fraudulent or dishonest act committed by such *employee* while employed with the *insured* or prior to the commencement of the *employee's* employment with the *insured*, involving *money*, *securities* or *property*.

2.14 Proprietary Information

loss resulting directly or indirectly from or comprising the unauthorised use or disclosure of trade secrets, patents or other intellectual property, confidential processing methods, customer lists, or other confidential information of any kind; provided however, that this Exclusion does not apply to *loss* otherwise covered under Insuring Clauses 1.1(a) (*computer fraud*), 1.1(c) (*theft* or *forgery* by an *employee*) or 1.1(d) (theft or forgery of in respect of the *sponsored plan*).

2.15 Trading

loss resulting directly or indirectly from any authorised or unauthorised trading of *money, securities* or *property*, whether or not in the name of the *insured* and whether or not in a genuine or fictitious account; provided, however, that this Exclusion shall not apply to loss caused by *theft* or *forgery* which results in an improper financial gain to an *employee*. Such improper financial gain shall not include salary, bonuses, commissions, incentive payments, fees or other compensation, including but not limited to promotions and raises associated with employment, earned time off including vacations, and the costs of any retirement benefits.

2.16 Voluntary Surrender

loss due to the *insured* knowingly having given or surrendered *money, securities* or *property* in any exchange or purchase with a *third party* not in collusion with an *employee*; provided, however, this Exclusion shall not apply to *money orders and counterfeit currency fraud* nor Insuring Clause 1.1(a) *computer fraud*.

2.17 Digital Assets

assets that exist solely in a digital format including but not limited to cryptocurrency.

Automatic Extensions: Commercial Crime

The following Automatic Extensions are included and are subject to the *policy* terms and conditions unless otherwise stated. Some extensions have specified Sublimits of Liability and *deductibles* specified in the *schedule*.

3.1 Contractual Penalties

Agile will indemnify the *insured* for any contractual penalty assumed by and enforced against the *insured* under a written contract resulting directly from *loss* covered by the Insuring Clauses, provided that the maximum aggregate amount payable for all contractual penalties under this Extension is limited to 10% of the *limit of liability*.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule*.

3.2 Extortion

Agile will indemnify the *insured* for *loss* resulting directly from *extortion* committed solely by an *employee*.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule*.

3.3 Interest Receivable

Agile will reimburse the *insured* for any interest actually lost or paid by the *insured* directly resulting from *loss* covered by the Insuring Clauses provided that *Agile's* liability under this Extension shall be calculated by applying the average of the Reserve Bank of New Zealand base rate in force between the time that the *loss* was sustained and the date of *discovery* of the *loss*.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule*.

3.4 Investigation Costs

Agile will reimburse the *insured* for *investigation costs* which are directly related to a *loss* under the Insuring Clauses.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule*.

3.5 Restoration Expenses

Agile shall reimburse the *insured* for *restoration expenses* that an *insured* incurs to *restore* its *computer system* if damaged or destroyed by a *computer violation* as part of a *computer fraud* for which *loss* is covered under Insuring Clause 1.1(a) (*computer fraud*).

Reimbursement of *restoration expenses* will be made to the *insured* once all processes have been completed to *restore* the *computer system*, and the *insured* has provided *Agile*, in writing, of a description and accounting of all *restoration expenses*, together with such details as *Agile* may require.

The Sublimit of Liability under this Automatic Extension shall be the amount stated in the *schedule*.

Special Conditions: Commercial Crime

The following Special Conditions are included and in respect of this Coverage Section override any inconsistent *policy* General Conditions unless otherwise stated.

4.1 Non-Accumulation of Liability

When there is more than one *insured*, the maximum liability of *Agile* for *loss* sustained by more than one *insured* shall not exceed the amount for which *Agile* would be liable if all *loss* was sustained by any one *insured*.

Regardless of the number of years this Coverage Section remains in effect and the total premium amounts due or paid, neither the *limit of liability* nor the amount *Agile* shall reimburse for any *loss* shall be cumulative from year-to-year or from *period of insurance* to *period of insurance*.

Further, *Agile* shall have no liability for *loss* of an *insured* which amounts to an equivalent gain or benefit for another *insured*.

4.2 Ownership

Agile's liability under this Coverage Section will apply only to the *money, securities* or *property* owned by the *insured* or by a *client* for which the *insured* is legally liable; and *Agile* will not be liable for damage to the *premises* unless the *insured* is the owner of the *premises* or is liable for such damage.

4.3 Other Insurance

If the *insured* or any other party with an interest in any *loss* covered by this Coverage Section has any bond, indemnity or other insurance which would cover such *loss* in whole or in part in the absence of this Coverage Section, then this Coverage Section shall be null and void to the extent of the amount recoverable or received under such other bond, indemnity, or insurance; but this Coverage Section shall cover such *loss*, subject to its exclusions, conditions and other terms, only to the extent of the amount of such *loss* in excess of the amount recoverable or received under such other bond, indemnity or insurance.

4.4 Notice and Proof of Loss

It is a condition precedent to *Agile's* liability under this Coverage Section that the *insured* shall provide:

- (a) written notice to *Agile* as soon as practicable and in no event later than ninety (90) days after such *discovery*;
- (b) a sworn Proof of Loss with full particulars to *Agile* within six (6) months of such *discovery*, including:
 1. production of all relevant records and documents as *Agile* shall request; and
 2. submit to examination under oath at *Agile's* request; and cooperate completely with *Agile* in all matters pertaining to the claim.

The *insured* may offer a comparison between the *insured's* inventory records and actual physical count of its inventory to prove the amount of *loss*, but only where the *insured* establishes wholly apart from such comparison that it has sustained a covered *loss*, caused by an identified *employee*.

4.5 Records

The *insured* must keep records of all *money, securities*, and *property* under this Coverage Section so *Agile* may verify the amount of any *loss*.

4.6 Sponsored Plan

Solely with respect to any *sponsored plan*, payment by the *Agile* for covered *loss* to the *insured* shall be held by the *insured* for the use and benefit of the *sponsored plan* incurring such *loss*.

4.7 Valuation / Foreign Currency

Agile shall reimburse:

- (a) loss of **money** but only up to and including its face value, and at the **insured's** option, reimburse for loss of **money** issued by any country other New Zealand:
 1. at face value in the **money** issued by that country; or
 2. in New Zealand equivalent determined by the rate of exchange published by the Reserve Bank of New Zealand at 3pm on the day on the day the **loss** was **discovered**.
- (b) loss of **securities** but only up to and including their value at the close of business on the day the **loss** was **discovered**. *Agile* may, at *Agile's* option reimburse the market value of such **securities** or replace them in kind, in which event the **insured** must assign to *Agile* all the **insured's** rights, title and interest in and to those **securities**; or reimburse the cost of any lost Securities Bond required in connection with issuing duplicates of the **securities**. However, *Agile* will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of the value of the **securities** at the close of business on the day the loss was **discovered**.
- (c) Loss of, or loss from damage to, **property** or **premises** including its exterior for the replacement cost without deduction for depreciation; provided *Agile* will not reimburse more than the cost to replace the lost or damaged **property** with property of comparable material and quality and used for the same purpose; the amount the **insured** must actually spend that is necessary to repair or replace the lost or damaged **property**; or

Agile will not reimburse the **insured** on a replacement cost basis for any loss or damage until such **property** is actually repaired or replaced, and unless the repairs or replacement are made as soon as reasonably possible after the loss or damage. If the lost or damaged **property** is not repaired or replaced, *Agile* will reimburse the **insured** the actual cash value of the **property** on the day the loss was **discovered**.

Definitions: Commercial Crime

When used in **bold & italic** in this **policy** (including its endorsements) the words below have the following meanings. Where an equivalent definition to a definition below is provided in another Coverage Section, the definition below will not apply to such Coverage Section. Further, the definitions below will override any inconsistent **policy** General Definition insofar as it relates to this Coverage Section unless otherwise stated.

- 5.1 **banking premises** means the interior portion of a building occupied by, or the night depository chute or safe maintained by any bank, trust company or similar depository institution.
- 5.2 **client** means a customer of an **insured entity** to whom such **insured entity** provides goods or services under a written contract or for a fee.
- 5.3 **computer fraud** means the use by a **third party** of any computer to fraudulently cause a transfer of **money, securities** or **property** by the **insured** by reason of a **computer violation**.
- 5.4 **computer program** means a set of related electronic instructions which direct the operations and functions of a **computer system**, which enables the **computer system** to receive, process, store, retrieve, send, create or otherwise act upon **electronic data**.

5.5 **computer system** means a computer, including all input, output, processing, storage and communication equipment which is connected to such computer, and which the operating system or application software used by the **insured** is under the direct operational control of the **Insured**. Off-line libraries are deemed to be part of such **computer system**.

5.6 **computer violation** means an unauthorised:

- (a) and unlawful accessing of the **computer system** by means of a "hack";
- (b) entry into or deletion of **electronic data** from a **computer system**;
- (c) change to data elements or program logic of a **computer system**, which is kept in machine readable format; or
- (d) introduction of instructions, programmatic or otherwise, which propagate themselves through a **computer system**,
by an unknown **third party** and directed against an **insured**.

For the purposes of the **computer fraud** cover under this Coverage Section, General Exclusion 1. Cyber does not apply to a **computer violation**.

5.7 **counterfeit** means an imitation of **money** that is intended to deceive and to be taken as genuine.

5.8 **credit card fraud** means the **forgery** or alteration of, on or in, any written instrument required in connection with any credit card which is issued to any **employee** at the request of the **insured**, other than a credit card issued by any **insured**, provided that such fraud is committed by a **third party**.

5.9 **crime** means any of the following:

- (a) **computer fraud**
- (b) **credit card fraud**
- (c) **theft**
- (d) **forgery**
- (e) **funds transfer fraud**
- (f) **robbery**
- (g) **safe burglary**
- (h) **money orders and counterfeit currency fraud**;
- (i) **extortion**;
- (j) **social engineering**; and
- (k) any other act or event that causes a covered **loss** under the Insuring Clauses or Extensions of this Coverage Section.

5.10 **data** means facts or information contained in records, accounts, microfilms, tapes or other records, whether or not contained in a **computer system**.

5.11 **discover, discovers, discovery or discovered** means the point in time at which knowledge is acquired by an **executive**, which would cause a reasonable person to believe that a covered loss has been sustained or an event has occurred that may subsequently result in a covered loss, even though the exact amount or details of such loss or event are unknown; provided that it shall not include knowledge acquired by an **executive**, acting alone or in collusion with an **employee**, who is a participant in any criminal act covered by this Coverage Section.

5.12 **electronic data** means facts or information converted to a form:

- (a) usable in a **computer system**;
- (b) which does not provide instructions or directions to a **computer system**; and
- (c) which is stored on electronic processing media for use by a **computer program**.

5.13 **employee** means any:

- (a) natural person regularly performing services for an **insured** in the ordinary course of the **business**, who is compensated by the **insured** directly by salary, wages or commissions, and whose performance is controlled and directed by such **insured**, including any part-time, seasonal, and temporary employee;
- (b) natural person who is a volunteer and whose performance is controlled and directed by the **insured** but only whilst performing acts within the scope of what would be an employee's usual duties;
- (c) natural person who is a trustee, fiduciary, administrator or officer of a **sponsored plan**; or
- (d) **executive**, while performing acts within the scope of the usual duties of an employee of the **insured**.

employee does not mean any broker, partner, investment advisor or investment manager, factor, commission, merchant, consignee, contractor or other agent or representative of the same general character.

5.14 **extortion** means any threat to personally injure **employees** or **executives** or their family members, or to damage or destroy any **property**, including any **computer system**, owned by the **insured** or for which the **insured** is legally liable, provided that prior to surrender of any **money**, **securities** or **property** the person receiving the threat has made a reasonable effort to report the threat to another **employee** or **executive**, and the **insured** has made a reasonable effort to report the threat to the relevant authority.

5.15 **fiduciary** means any natural person who is a trustee, an officer, or an administrator of any **sponsored plan**, and any other natural person, including an **employee** who is authorised to handle **money**, **securities** or **property** that belongs to a **sponsored plan**.

5.16 **financial instrument** means cheques, drafts or similar written promises, orders or directions to pay a sum certain in **money**, that are made, drawn by or drawn upon an **insured** or by anyone acting as an **insured's** agent, or that are purported to have been so made or drawn.

5.17 **forgery** means the signing of the name of another natural person with the intent to deceive in respect of **money**, **securities** or **property**, but does not mean a signature that includes one's own name, with or without authority, in any capacity for any purpose. Mechanically or electronically produced or reproduced signatures shall be treated as hand-written signatures.

5.18 **funds transfer fraud** means fraudulent written, electronic, telegraphic, cable, teletype or telephone instructions issued by a **third party** to a financial institution directing such institution to transfer, pay or deliver **money** or **securities** from an account from which transfers can be received or made that is maintained by the **insured** at such institution, without the **insured's** knowledge or consent, insofar as the financial institution does not immediately reinstate such **money** or **securities** to the **insured's** account. **funds transfer fraud** does not include a **forgery**.

5.19 **insured** means:

- (a) the **insured entity**; and
- (b) a **sponsored plan**.

- 5.20 **in transit** means being conveyed outside the **premises**, from one person or place to another, by the **insured** within the custody of an **employee** or **executive**, or a person authorised by way of a written contract by the **insured** to have custody of **money, securities** or **property**. **in transit** ends immediately upon delivery to the designated recipient or its agent.
- 5.21 **investigation costs** means the reasonable and necessary fees and expenses incurred by the **insured** to establish the amount of a loss (other than the remuneration payable to an **employee** or **executive**, cost of their time or the overhead of any **insured**) with the prior written consent of **Agile** in connection with a covered loss to be paid under this Coverage Section where the loss exceeds the applicable **deductible**.
- 5.22 **loss** means the direct financial loss of the **insured** and as may be provided in this Coverage Section as a result of a **crime**.
- 5.23 **money** means electronic funds, currency, coins, bank notes and bullion but not digital currency.
- 5.24 **money orders and counterfeit currency fraud** means the good faith acceptance:
- (a) in exchange for merchandise, **money** or services, of any post office or express money order, if such money order is not paid upon presentation; or
 - (b) in the regular course of business, of **counterfeit** New Zealand currency.
- 5.25 **premises** means the interior portion of a building which is occupied by the **insured** in conducting **business**.
- 5.26 **property** means tangible property, other than **money** or **securities**, that has intrinsic value.
- 5.27 **restore** means to complete the restoration or reproduction of **computer programs** and **electronic data** within the **computer system**, to bring such **computer system** back to the level of operational capability that existed immediately preceding a **computer violation**.
- 5.28 **restoration expenses** means reasonable costs incurred by an **insured** to **restore** the **computer system**.
- Reimbursement of **restoration expenses** applies only:
- (a) with respect to **computer programs** and **electronic data** which an **insured** owns or for which an **insured** is legally liable; and
 - (b) if and to the extent an **insured** is unable to reproduce such **computer programs** or **electronic data**, either from back-up data copies or from some other form of back-up technology;
 - (c) to expenses and does not include the value of any lost or compromised **computer programs** or **electronic data**.
- 5.29 **robbery** means the unlawful taking of **money, securities** or **property** from the custody of an **employee**, or other person (except a person acting as a watchman, porter or janitor) authorised by way of a written contract by the **insured** to have custody of such **money, securities** or **property**, by violence or threat of violence.
- 5.30 **safe burglary** means the unlawful taking of **money, securities** or **property** by forcible or violent entry evidenced by visible marks, from a locked vault or safe located within the **premises**.
- 5.31 **securities** means negotiable and non-negotiable instruments existing in physical and electronic format, representing **money** or **property** but not assets that exist solely in a digital format.

- 5.32 ***social engineering fraud*** means the dishonest impersonation of a ***client, employee, executive*** or established trading partner of the ***insured entity*** by an unknown ***third party*** purportedly providing instructions or authorisation to an ***employee*** for the transfer of ***money, securities*** or ***property***; ***fraudulent impersonation*** that has not been verified by a "call-back" by an ***employee*** or similar will be subject to the Sublimit of Liability stated in the ***schedule***.
- 5.33 ***sponsored plan*** means a superannuation fund, pension fund or employee benefits programme which is:
- (a) solely sponsored by the ***insured***, or operated solely by the ***insured*** or jointly by the ***insured*** and a labour organisation for the benefit of the ***employees***, located anywhere in the world, and which existed on or before the inception date of this ***policy*** or which is created or acquired after such inception date; or
 - (b) any other plan, fund, or program specifically included as a ***sponsored plan*** by Endorsement to this Coverage Section.
- sponsored plan*** does not include any multi-employer plan.
- 5.34 ***theft*** means the unlawful taking of ***money, securities*** or ***property*** with the intention to permanently deprive the ***insured*** or a ***client*** while such ***money, securities*** or ***property*** are under the care, custody and control of an ***insured entity***.
- 5.35 ***third Party*** means a natural person, other than an ***employee***.

COMMERCIAL LEGAL EXPENSES COVERAGE SECTION

Insuring Clauses: Commercial Legal Expenses

What Agile cover

Subject to the terms and conditions of this *policy*, *Agile* will cover the *insured* in accordance with the following:

Free legal advice helpline

Agile will pay for up to one hour's advice from an appropriately qualified lawyer via the Legal Advice Helpline whose details appear in the *schedule* in respect of any matter that may in the reasonable opinion of an *executive* result in a *claim* covered under this Coverage Section.

Cover under this Insuring Clause is not subject to the *deductible* and is in addition to the *limit of liability*.

Use of the Legal Advice Helpline does not constitute a notice to *Agile* of any *claim* or of any circumstance which may reasonably be expected to give rise to a claim under this Coverage Section and the requirements under General Condition 3. Notice and Proof of Claim, Claims Assistance and Cooperation shall apply. Furthermore:

- (a) the provision of assistance under this Insuring Clause is not confirmation there is or will be cover under this Coverage Section for any related *claim*, and
- (b) use of the Legal Advice Helpline is on the basis neither *Agile* nor the relevant legal expert assumes any responsibility for any legal assistance provided and is not a substitute for the *insured* obtaining its own expert advice where needed.

1.1 Commercial Contract Disputes

What is covered

Subject to the *limit of liability* and the *deductible*, *Agile* agree to pay the *insured* for *legal expenses* incurred in the pursuit or defence of any dispute or legal proceedings made by or brought against the *insured* in a contractual dispute or legal proceedings with a *contracting party* over a contract for the

sale of goods or a contract for the hire of goods or a contract for the supply of a service within the meaning set out in the *Contract and Commercial Law Act 2017* provided that:

- **Legal expenses** incurred in the pursuit of any dispute or legal proceedings shall be limited to seventy-five percent (75%) of the amount in dispute up to a maximum of the **limit of liability**, and
- The amount in dispute exceeds the **minimum sum in dispute**, and
- Where the contract is a **construction contract** the construction operations are carried out or are to be carried out by the **contracting party** on the **property** and the **construction contract** is for the repair or renovation of the **property** and the repair and renovation of the **property** is not part of the **business**, and
- Where the dispute or legal proceedings arise from an undisputed debt, the **insured** has exhausted all reasonable methods of recovery and the **appointed representative** recommends legal action.

What we do not cover

Agile shall not be liable to pay the **insured** in respect of **claims** arising out of or in connection with:

- Contracts that provide or arrange credit, insurance, securities, guarantees or other financial products and financial services as defined in the Fair Trading Act; or
- Contracts where the liability or right of recovery is incurred by assignment; or
- Franchise contracts; or
- Contracts of employment; or
- Any tenancy or licence to use any real property.

1.2 Criminal Prosecution

What is covered

Subject to the limit of liability and the deductible, Agile agree to pay the Insured for legal expenses incurred in:

- Defending a prosecution against the **insured** in a court of criminal jurisdiction; and
- An appeal by the **insured** against the service of a remedial or stop-work order under the *Health and Safety at Work Act 2015*.

What we do not cover

Agile shall not be liable to pay the **insured** in respect of **claims** arising out of or in connection with any allegation relating to arising from:

- Investigations by the Inland Revenue Department; or
- Offences against the person, including offences of a sexual nature; or
- Criminal damage; or
- Dishonesty; or
- Non-endorsable road traffic offences except tachograph prosecutions and weight prosecutions; or
- Driving whilst under the influence of alcohol and/or drugs, or speeding; or
- Failure to insure a motor vehicle as required by law.

1.3 Employment Disputes

What is covered

Subject to the *limit of liability* and the *deductible*, **Agile** agree to pay the *insured* for *legal expenses* incurred by the *insured* in defending legal proceedings brought against the *insured* by an *employee*, ex-*employee* or prospective *employee* in respect of their contract of employment with the *insured* or a breach of employment related legislation.

The *insured* should seek legal advice:

- Prior to carrying out any disciplinary procedure or action or suspension of an *employee*; or
- Prior to dismissal of an *employee*; or
- Prior to notifying an *employee* of their intended retirement date or prior to retiring an *employee*; or
- Prior to instituting a redundancy programme and prior to making an *employee* redundant; or
- Upon notification formally or informally of a grievance from an *employee* or ex-*employee*; or
- Upon notification formally or informally of a complaint relating to discrimination, victimisation or harassment because of age, disability, gender reassignment, marriage/civil partnership, pregnancy/maternity, race, religion or belief, sex or sexual orientation; or
- Prior to any actual or proposed variation of the terms and conditions of employment that an *employee* could reasonably consider to be adverse (including altering the hours or time or place worked or demotion or deduction from or reduction in an *employee's* remuneration); or
- As soon as practicable if an *employee* leaves their employment with or without written notice; or
- Upon receipt of an appeal from an *employee* or ex-*employee* against a decision made by a court, tribunal or other similar body.

Failure to seek advice will not invalidate the *insured's* insurance coverage under this Coverage Section, but could decrease the *insured's* prospects of a successful defence in any subsequent disputes or legal proceedings and the *insured's* ability to make a *claim*.

This Insuring Clause 1.3 shall only apply if the *insured* has not purchased the Employment Practices Liability Coverage Section of this *policy* nor any other employment practices liability insurance policy.

1.4 Property Disputes

What is covered

Subject to the *limit of liability* and the *deductible*, **Agile** agree to pay the *insured* for *legal expenses* incurred in any dispute or legal proceedings made by or brought against the *insured* provided the *insured* will suffer financial loss if the *insured* fail to pursue or defend the dispute or legal proceedings:

- Over the physical possession of the *property* provided that all statutory and contractual notices have been correctly served by the *insured*; or
- Over the terms of a tenancy agreement between the *insured* and a *contracting party* relating to the use or maintenance of the *property*; or
- The actual or alleged negligence, damage (including trespass) or nuisance to the *property* other than with a tenant.

What we do not cover

Agile shall not be liable to pay the *insured* in respect of any *claim* arising out of or in connection with:

- The payment or non-payment or review of any tax, rent, mesne profit or service charge; or
- A dispute or legal proceedings relating to planning or building regulations or decisions or compulsory purchase orders or any actual, planned or proposed works by or under the order of any government or public or local authority; or
- Any dispute or legal proceedings arising from the negotiation, review or renewal of a tenancy agreement or the subsequent purchase of the *property* whether or not this purchase is completed; or
- Any dispute or legal proceedings where the *insured* have failed to maintain in full force and effect buildings insurance covering the standard range of perils during the tenancy agreement if the *insured* were contractually obligated to have this insurance in force; or
- A dispute or legal proceedings over subsidence or heave regardless of how caused; or
- A contract dispute or legal proceedings other than where the contract is a tenancy agreement with a *contracting party*.

1.5 Data Protection

What is covered

Subject to the *limit of liability* and the *deductible*, **Agile** agree to pay the *insured* for *legal expenses* incurred in defending any dispute or legal proceedings brought against the *insured* under the *Privacy Act 2020*.

1.6 Statutory Licence

What is covered

Subject to the *limit of liability* and the *deductible*, **Agile** agree to pay the *insured* for *legal expenses* incurred in an appeal by the *insured* against the suspension, revocation, imposed alteration of or refusal to renew a Statutory Licence.

What we do not cover

Agile shall not be liable to pay the *insured* for *legal expenses* incurred in respect of any *claim* arising out of or in connection with:

- A suspension, revocation, alteration or refusal to renew a *statutory licence* which is imposed by an Act of Parliament or national or local government regulation or order; or
- Any costs incurred to comply with a notice or order; or
- Driving licences.

1.7 Employee's Breach of Restrictive Covenants

What is covered

Subject to the *limit of liability* and the *deductible*, **Agile** agree to pay the *insured* for *legal expenses* incurred in pursuing legal proceedings against an *employee* or ex-*employee* to obtain the remedy of an injunction against that *employee* or ex-*employee* for their breach of an express restrictive covenant in their employment contract where the breach by the *employee* or ex-*employee* relates to or arises from:

- Soliciting the *insured's employees*, or
- Soliciting the *insured's* customers.

What we do not cover

Agile shall not be liable to pay the *insured* for *legal expenses* incurred in respect of any *claims* arising out of or in connection with individuals who before the inception of this *policy* either ceased to be *employees* or were working out their notice period (including where the *employee* was on a period of gardening leave).

1.8 IRD Tax Investigation Protection

What is covered

Subject to the *limit of liability* and the *deductible*, *Agile* agree to pay the *insured* for *legal expenses* incurred in respect of the *insured's* representation arising directly from:

- an *IRD investigation* in respect of a notification from the *IRD* that it is taking action, carrying out an investigation or making an inquiry under the provisions of *income tax legislation*;
- a *GST dispute* with the *IRD* in respect of a claim by the *IRD* for additional amounts of GST. For the purpose of this clause, the claim is first made against the *insured* on the earliest of the following:
 - the date on which the *IRD* requests a meeting with the *insured* or enters the *insured's* premises or expresses dissatisfaction with any of the *insured's* GST returns in writing; or
 - the date on which the *insured* or the *insured's* tax adviser first became aware, or could reasonably have become aware, that a *GST dispute* was likely to arise with the *IRD*; or
 - the date on which the *insured* are served with a notice of assessment or amended notice of assessment relating to the additional amounts of GST;
- a *fringe benefits dispute* in respect of a claim by the *IRD* for additional amounts of tax within the meaning of *income tax legislation*. For the purposes of this clause, the claim is first made against the *insured* on the earliest of:
 - the date on which the *IRD* expresses dissatisfaction with the amounts of *PAYE* or *FBT* (as defined in *income tax legislation*) paid by the *insured* or the *insured's* returns relating to *PAYE* or *FBT*; or
 - the date on which the *IRD* starts an investigation into the accuracy of *PAYE* or *FBT* returns or information or into the *insured's* liability or that of an *employee* to pay additional tax because of alleged inaccuracies in such returns or information.

Provided that:

- there is a reasonable prospect of reducing the liabilities alleged by *IRD*;
- the *insured* has maintained and continue to maintain accurate, truthful and up to date records and make returns in due time in accordance with statute and accounting conventions acceptable to the *IRD* where applicable and have made all returns and payments except those which are disputed and provided information to relevant authorities in due time;
- the *insured* and the *appointed representative* must provide information to the *IRD* in due time and must comply with any statutory notice requesting information which is not the subject of an appeal;
- the *insured* or the *appointed representative* immediately notify *Agile* in writing of any invitation by the *IRD* to make an offer in settlement; and
- In respect of an *IRD investigation* the *appointed representative* provide *Agile* with copies of relevant correspondence between the *IRD*, the *appointed representative* and the *insured* (including the notice of investigation) together with copies of the accounts, tax computations and returns giving rise to the investigation.

What we do not cover

Agile shall not be liable to pay the *insured* for *legal expenses* incurred in respect of any *claim* arising out of or in connection with:

- Costs incurred in dealing with routine matters which do not fall within a claim by the *IRD* in respect of a *GST dispute*, *fringe benefits dispute* or *IRD investigation* (including but not limited to a superannuation fund audit / payroll tax audit visit).
- In respect of an *IRD Investigation* only:
 - costs arising after the issue of a notice under *income tax legislation* notifying the *insured* that the investigation has been completed; and/or
 - costs arising directly from an amendment under *income tax legislation*; and/or
 - costs incurred otherwise than wholly in connection with an *IRD investigation* into the *business* income or profits.
- Any *claim* where:
 - deliberate mis-statements have been made in respect of accounts, returns or any other submissions made to the relevant authorities with intent to deceive;
 - the *insured* has failed to notify the *insured's* business status to the relevant authorities within a statutory period;
 - there has been a failure to maintain or submit accurate, truthful and up-to-date records and returns or a failure to observe statutory time limits or requirements;
 - a false representation has been made either knowingly or without belief in its truth and this has resulted in a misstatement of amounts payable, expenses claimed, income or profits chargeable or losses allowable for tax or contributions purposes or of expenses payments made;
- Any *claim* arising from or relating to:
 - an investigation or inquiry by the Prosecutions Division of the *IRD* or following the transfer of an inquiry to that division;
 - avoidance schemes relating to tax or superannuation contributions under the *New Zealand Superannuation and Retirement Income Act 2001*; and/or
 - *IRD* refunds in countries outside New Zealand or Import GST.

This Insuring Clause 1.8 shall only apply if the *insured* has not purchased a tax audit insurance policy.

Exclusions: Commercial Legal Expenses

The following Exclusions are included and in respect of this Coverage Section override any inconsistent *policy* General Exclusions unless otherwise stated. **Agile** will not be liable under this Coverage Section in respect of:

- 2.1 the *insured's* defence in civil legal proceedings arising from:
 - (a) Injury or disease including psychiatric injury and stress; or
 - (b) Loss, destruction or damage of or to property; or
 - (c) Alleged breach of any professional duty; or
 - (d) Any non-contractual wrongful act or infringement of a right (other than as specified in

- Insuring Clause 1.4. Property Disputes if the *insured* is covered under that Insuring Clause as specified in the *schedule*); or
- 2.2 Any dispute or legal proceedings brought, made or commenced outside the *territorial limits*; or
 - 2.3 *Legal expenses* incurred without *Agile's* prior written consent or for a sum in excess of *Agile's* consent; or
 - 2.4 Any *claim* relating to or arising from any cause, event or circumstance occurring prior to or existing at inception of this *policy* and which has or which the *insured* knew or ought reasonably to have known may give rise to a dispute or legal proceedings by or against the *insured*; or
 - 2.5 Fines or other penalties imposed by a court or tribunal; or
 - 2.6 Any dispute or legal proceedings in respect of which the *insured* are, or but for the existence of this *policy* would be, entitled to any payment under any insurance policy whether a legal expenses insurance or not or under a legal aid certificate or representation order; or
 - 2.7 Any *claim* arising from the *insured's* intentional wrongdoing or an act or omission with negligent disregard as to its consequences; or
 - 2.8 Any dispute or legal proceedings with government or local authority departments concerning the imposition of statutory charges; or
 - 2.9 Disputes or legal proceedings between *insureds*, or with any parent company or subsidiary company or associated company or partner of an *insured entity*; or
 - 2.10 Any dispute or legal proceedings between the *insured* and *Agile*, or the *insured* and the *appointed representative*, or the *insured* and the *insured's* insurance intermediary; or
 - 2.11 Any dispute or legal proceedings arising out of breach or alleged breach of confidentiality or passing off whether related to intellectual property or not; or
 - 2.12 Any dispute or legal proceedings arising out of the ownership or existence of any intellectual property rights; or
 - 2.13 Any dispute or legal proceedings arising out of or in connection with actual or alleged defamation or malicious falsehood; or
 - 2.14 Any *legal expenses* incurred in respect of or in connection with a judicial review; or
 - 2.15 Appeals arising out of legal proceedings to which our prior written consent has not been granted or withdrawn; or
 - 2.16 Any claim, legal liability or any loss or damage to property or *property* directly or indirectly caused by or contributed to by seepage, pollution or contamination of any kind; or
 - 2.17 Any *legal expenses* which the *insured* should or would have had to incur irrespective of any dispute or legal proceedings; or
 - 2.18 Any expense, legal liability or any loss or damage to property or *property* directly or indirectly caused by or contributed to by:
 - (a) Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
 - (b) The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component; or

2.19 Any loss, damage, cost or expense directly or indirectly caused by, resulting from or in connection with (including any action taken in controlling, preventing, suppressing) or in any way relating to any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- (a) War, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- (b) Any act including but not limited to the use or threat of force or violence 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), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public in fear.

Special Conditions: Commercial Legal Expenses

The following Special Conditions are included and in respect of this Coverage Section override any inconsistent *policy* General Conditions unless otherwise stated.

3.1 Instruction and choice of Appointed Representative and Counsel

Agile will choose an appointed representative to act on the insured's behalf in any claim.

In all cases the *appointed representative* shall be appointed in the name of and on behalf of *the Insured*. If in the course of any *claim* the *appointed representative* wishes to instruct Counsel or an expert, Counsel's or the expert's name and an explanation of the necessity for this instruction must be submitted to *Agile* for *Agile's* prior written consent to the proposed instruction which will not be unreasonably withheld.

3.2 Payment of Legal Expenses

All invoices and requests for payment for *legal expenses* which the *insured* receives from the *appointed representative* should be forwarded to *Agile* as soon as practicable upon receipt. If *Agile* so require the *insured* must ask the *appointed representative* to submit to *Agile* the bill of costs for assessment or certification by the appropriate law society, court or tribunal. the *insured* is responsible for payment of all *legal expenses*. *Agile* may settle these requests for payment of *legal expenses* directly at *Agile's* discretion if requested by the *insured* to do so. The payment of some *legal expenses* by *Agile* is not an indication that all *legal expenses* will be paid.

3.3 Recovery of Costs

Whenever the *insured* is awarded costs or under the terms of any settlement where costs are included, those costs are to be repaid to Us.

The *insured* and the *insured's appointed representative* must make every effort to make a full recovery of costs. Where a settlement purports to be a global or a without costs settlement or where costs are awarded but not recovered, the *insured* agrees that a fair and reasonable proportion of that settlement will be deemed costs and due to *Agile*. Where this settlement is paid in instalments all costs to *Agile* shall be paid first.

3.4 Appeal Procedure

If, following legal proceedings to which *Agile* have given *Agile's* prior written consent, the *insured* wishes to appeal against the judgment or decision of a court or tribunal, the grounds for this appeal must be submitted to *Agile* through the *appointed representative* as soon as practicable so that *Agile* may consider whether to consent to this further action.

If an appeal is lodged against a judgment or decision of a court or tribunal made in the *insured's* favour following legal proceedings to which *Agile* have given *Agile's* prior written consent, the *insured* must notify *Agile* as soon as practicable in order that cover may continue. *Agile* will inform the *appointed representative* of *Agile's* decision. If *Agile* so require it the *insured* must co-operate in an appeal against the judgment or decision of a court or tribunal.

3.5 Duty to Mitigate

The *insured* must take all reasonable precautions to avoid, prevent and mitigate *claims*, disputes or legal proceedings.

The *insured* must use every endeavour and take all reasonable measures to minimise the cost and effect of any *claim*.

3.6 Alteration to Risk

The *insured* must notify *Agile* as soon as reasonably practicable of any material change in the risk insured by this Coverage Section. *Agile* are entitled to amend the terms of this Coverage Section and / or charge an additional premium based on *Agile's* assessment of any change in the risk insured by this Coverage Section.

A material change in the risk shall include, but is not limited to:

1. An *insured* going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or an *insured* failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding up proceedings;
2. Any material changes to the nature of the goods or services offered by the *insured*;
3. Any material changes in the *business*.

3.7 Exercise of Reasonable Care

The *insured* must exercise reasonable care to prevent injury, loss or damage to the *insured* or others and comply with all the terms and conditions of this Coverage Section.

3.8 GST Basis of Settlement

If the *insured* is registered for GST, *Agile* will not pay the GST element of any *legal expenses*.

Special Claims Conditions: Commercial Legal Expenses

The following Special Claims Conditions are included and in respect of this Coverage Section override any inconsistent *policy* General Conditions unless otherwise stated.

4.1 Agile's Consent

It is a condition precedent to *Agile's* liability that *Agile's* consent to incur *legal expenses* must be obtained in writing prior to the *insured* incurring any *legal expenses*. This consent will be given by *Agile* if the *insured* can satisfy *Agile* that:

1. it is reasonable to incur *legal expenses* having regard to the proportionality between the remedy claimed and the *legal expenses* to be incurred and;
2. where the *insured* is pursuing a claim, there are reasonable prospects of proving the other party's legal liability and of recovering the damages claimed or other legal remedy sought; or
3. where the *insured* is defending a claim, the other party does not have reasonable prospects of proving the *insured's* legal liability; or
4. in respect of a criminal prosecution and where the *insured* pleads guilty there is a reasonable prospect of a significant mitigation of the *insured's* sentence or fine.

If during the course of a *claim* the *insured* ceases to satisfy *Agile* in respect of the applicable points (a)–(d) above, all future payments will cease in respect of *legal expenses* related to that *claim*.

The decision to grant or withhold *Agile's* consent will be made on receipt of the following information:

- (a) a fully completed insurance *claim* form; and
- (b) the information and documentation *Agile* reasonably request; and
- (c) a legal opinion from the *appointed representative* as to the applicable points (1) – (4) above; and
- (d) any advice *Agile* may deem necessary to take.

With the *insured's* agreement, *Agile* may provide assistance in settling disputes or legal proceedings, the costs of which will be covered under this Coverage Section subject to the payment of the *deductible*.

Agile may require the *insured* to obtain an opinion from Senior Counsel at the *insured's* expense assessing the merits of the subject matter of the claim and any legal action. If based upon this opinion *Agile* are satisfied in respect of the applicable points (1) – (4) above the *legal expenses* in obtaining that opinion will be paid by *Agile* within the *limit of liability*.

In granting *Agile's* consent *Agile* undertake to pay the *insured* subject to the terms and conditions of this *policy* but this consent does not imply that all *legal expenses* will be paid. In particular *legal expenses* for matters that go beyond the immediate scope of the *claim* shall be deemed by *Agile* to fall outside the insurance coverage provided by this Coverage Section. *Agile* reserve the right to limit *Agile's* consent by time and/or financial amount of *legal expenses* and/or stage of proceedings to allow for a review of *Agile's* continued consent.

If after *Agile's* prior written consent has been granted it is shown the *claim* has not been brought within the terms and conditions of this *policy*, *Agile's* consent will be withdrawn and no insurance coverage under this *policy* shall be provided for this *claim*. *Agile* shall be entitled to recover any *legal expenses* previously paid.

If the *insured* elects to proceed with the pursuit or defence of a dispute or legal proceedings to which *Agile's* consent has not been granted because the *insured* has not satisfied applicable points (1) – (4) above, and if the *insured* is successful in this pursuit or defence, *Agile* will pay the *legal expenses* incurred after *Agile's* consent had not been granted subject to the terms and conditions of this *policy*.

4.2 Disclosure

It is a condition precedent to *Agile's* liability that:

1. the *insured* must give the *appointed representative* and *Agile* all necessary cooperation, assistance and information including a complete and truthful account of the facts of the *claim* and all relevant documentation or other evidence in the *insured's* possession; and
2. the *insured* must provide, obtain or execute all documents as necessary and attend meetings or conferences as requested; and
3. the *insured* must instruct the *appointed representative* to provide *Agile* with any information, documents or advice in connection with any *claim* and the subject matter of any *claim* even if privileged; and
4. the *insured* must instruct the *appointed representative* to provide *Agile* with regular updates on the progress of the subject matter of any *claim* and inform *Agile* as soon as practicable if and when any circumstance adversely impacts the factors on which *Agile* granted *Agile's* consent.

The insurance coverage under this Coverage Section may be withdrawn if the *insured* fails to co-operate with *Agile's* or the *appointed representative's* requests or if the *insured* or the *appointed representative* fails to provide *Agile* with any information in connection with any *claim* or the subject matter of any *claim*.

4.3 Offer of Settlement

It is a condition precedent to *Agile's* liability that the *insured* must inform *Agile* in writing as soon as an offer to settle the subject matter of the *claim* is received and/or the *insured* proposes to make an offer of settlement. In deciding whether to accept or reject any settlement offer, the *insured* must consider the *legal expenses* incurred or likely to be incurred and recovered.

No insurance coverage under this Coverage Section shall be provided if the *insured* enters into any agreement to settle without *Agile's* prior written consent (this consent not to be unreasonably withheld) and *Agile* shall be entitled to recover any *legal expenses* previously paid.

If the *insured* rejects an offer of settlement which *Agile* recommend that the *insured* accept, or the *insured* makes an offer with which *Agile* do not agree, no further insurance coverage under this *policy* shall be provided for the subject matter *claim*.

Agile may at *Agile's* discretion decide to pay the *insured* the amount of damages that the *insured* is claiming or that are being claimed against the *insured* instead of paying the *insured* for *legal expenses* to pursue or defend the dispute or legal proceedings. Where *Agile* exercise this discretion *Agile* will cease to be liable for any further *legal expenses* for the subject matter of the *claim*.

Definitions: Commercial Legal Expenses

When used in ***bold & italic*** in this Coverage Section (including its endorsements) the words below have the following meanings. Where an equivalent definition to a definition below is provided in another Coverage Section, the definition below will not apply to such Coverage Section. Further, the definitions below will override any inconsistent *policy* General Definition insofar as it relates to this Coverage Section unless otherwise stated.

- 5.1 ***acts of parliament*** means all Acts of Parliament referred to in this Coverage Section shall include any subsequent amendments, re-enactments or regulations and equivalent legislation enforceable within the ***territorial limits***.
- 5.2 ***any one claim*** means all ***claims*** or possible ***claims*** arising from the same original cause, event or circumstance.
- 5.3 ***appointed representative*** means a lawyer or other appropriately qualified person appointed to act for the *insured* in accordance with the terms of this Coverage Section.
- 5.4 ***claim*** means a claim under this Coverage Section for ***legal expenses***.
- 5.5 ***construction contract*** means a contract to provide construction work as defined by the *Building Act 2004*. (For the avoidance of doubt supply of a construction contract to a residential occupier will be deemed a ***construction contract*** for the purposes of this Coverage Section).
- 5.6 ***contracting party*** means a person, firm or company domiciled within the ***territorial limits*** with whom the *insured* has a direct contractual relationship.
- 5.7 ***due date*** means the date monies owed to the *insured* first becomes due and payable.
- 5.8 ***fringe benefits dispute*** means a dispute with the *IRD* regarding the amount of tax payable by the *insured* or an *employee* under *income tax legislation* in respect of fringe benefits.
- 5.9 ***FBT*** means Fringe Benefit Tax.
- 5.10 ***GST dispute*** means a dispute a dispute with the *IRD* regarding the amount of GST payable by ***the Insured***.
- 5.11 ***IRD*** means the Inland Revenue Department or appropriate government authority or agency authorised to conduct the relevant activity.
- 5.12 ***IRD investigation*** means an investigation into the *insured's* taxation affairs by the *IRD* under *income tax legislation*.
- 5.13 ***income tax legislation*** means *Income Tax Act 2007, New Zealand Superannuation and Retirement Income Act 2001, Goods and Services Tax Act 1985, Taxation Administration Act 1994* any other

Commonwealth, or Territory legislation dealing with income tax or any other legislation replacing the above legislation.

- 5.14 **legal expenses** means any professional fees, expenses and other disbursements reasonably incurred by the **appointed representative** with **Agile's** prior written consent; and any costs incurred by other parties for which the **insured** is held liable in court or tribunal proceedings to pay these costs or become liable to pay these costs under a settlement made with another party with **Agile's** prior written consent but excluding any costs which the **insured** may be ordered to pay by a court of criminal jurisdiction.
- 5.15 **minimum sum in dispute** means the sum in dispute between the **insured** and the **contracting party** as specified in the **schedule** below which **Agile** shall not be liable to provide cover under this Coverage Section.
- 5.16 **PAYE** means Pay As Your Earn income tax.
- 5.17 **property** means land and/or buildings owned or occupied by the **insured** for which the **insured** is legally responsible.
- 5.18 **statutory licence** means a licence or certificate of registration issued under statute, statutory instrument or by a government or local authority to the **insured** provided that this licence or certificate is necessary to engage in the **business**.

General Exclusions

Agile will not be liable under any section of this *policy* in respect of:

1. Cyber

any loss, liability, or costs resulting from any *computer virus*, *cyber act*, or *IT network incident*;

2. Deliberate acts

any liability or claim whatsoever in connection with or contributed to by any deliberate act or omission of the *insured* or any *employee* and which could reasonably have been expected, having regard to the nature and circumstances of such an act or omission.

3. Dishonesty and Fraud

any dishonest, criminal or fraudulent act by the *insured*.

For the purposes of the Directors and Officers Liability, and Employment Practices Liability Coverage Sections only, this Exclusion will not apply unless a final judgment or adjudication or any formal written admission by the *insured* establishes that such act occurred.

This Exclusion does not apply to the Crime and Statutory Liability Coverage Sections.

4. Radioactive contamination

any liability or claim whatsoever in connection with or contributed to by:

- (a) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

5. Specific products and substances

any liability whatsoever in connection with or contributed to by:

- (a) AIDS, HIV or HIV related illness;
- (b) asbestos or asbestos products;
- (c) human biological materials including extracts thereof (e.g. blood, plasma, plasma proteins, immunoglobulins, cells, tissue, organs, urine, excretions, etc.);
- (d) polychlorinated biphenyls including polychlorinated biphenyl generated dibenzofurans and dioxins;
- (e) PFAS, or per- and polyfluoroalkyl substances;
- (f) Human implants;
- (g) the manufacture or supply of all pharmaceutical active ingredients including medical implants;
- (h) e-cigarettes, vapes and related products; or
- (i) tobacco and tobacco related products.

6. Terrorism

any injury, loss, damage, liability, claim, cost or expense whatsoever in connection with any **act of terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

This clause also excludes injury, loss, damage, liability, claim, cost or expense of whatsoever nature in connection with any action taken in controlling, preventing, suppressing or in any way relating to any **act of terrorism**.

If **Agile** alleges that, by reason of this clause, any injury, loss, damage, liability, claim, cost or expense is not covered by this **policy** the burden of proving the contrary shall be upon the **insured**.

7. War

any liability or claim whatsoever in connection with or contributed to by or arising from any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.

8. Communicable Disease

any actual or alleged loss, liability, damage, **compensation**, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a **communicable disease** or the fear or threat (whether actual or perceived) of a **communicable disease**.

For the purpose of this exclusion, loss, liability, damage, **compensation**, injury, sickness, disease, death, medical payment, defence cost, costs, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test for a **communicable disease**.

As used herein, a **communicable disease** means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

- (a) the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
- (b) the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid liquid or gas or between organisms, and
- (c) the disease, substance or agent can cause or threatened bodily injury, illness, emotional distress, damage to human health, human welfare or **property damage**.

9. Insured v Insured

any **claim** brought by or on behalf of any **insured** against any other **insured**; provided, however, that this exclusion shall not apply to:

- (a) any claim brought by an **insured** that is in the form of a cross-claim or third-party claim for contribution or indemnity which is part of, and results directly from, a **claim** which is not otherwise excluded;

- (b) a shareholder derivative action, but only if such action is brought and maintained without the solicitation, approval, assistance, active participation or intervention of any *insured person*;
- (c) any *claim* brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, receiver or similar official for the entity(ies) named in the *schedule* or any assignee of such trustee, examiner, receiver or similar official;
- (d) any *claim* alleging an *employment wrongful act* brought by or maintained by an *insured person*; or
- (e) the Public and Products Liability Coverage Section.

10. Pollution

any actual or alleged loss, liability, costs or claim arising directly or indirectly out of, based upon or attributable to or comprising:

- (a) the actual, alleged or threatened presence, discharge, dispersal, release or escape of *pollutants*; or
- (b) the testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralising *pollutants*, whether or not any of the foregoing are or should be performed by the *insured* or by others.

General Conditions

The definitions, terms and conditions set out in these General Conditions apply to all purchased Coverage Sections of this *policy* except as provided in a Coverage Section.

Any words in these General Conditions, which are defined in a specific Coverage Section, shall have the meaning provided for such terms in such Coverage Section for purposes of determining coverage.

These General Conditions, the *policy* (for each and every purchased Coverage Section together with any appendices), including any endorsements, and the *schedule* constitutes the entire agreement between the *insured* and **Agile** or any of their agents relating to this insurance.

1. Assignment

No assignment of interest under this *policy* shall bind **Agile** without our consent.

2. Notice and proof of claim, claims assistance and cooperation

Upon the discovery of any *claim, event, personal injury, property damage, advertising liability, damages, fine* or circumstance which may reasonably be expected to give rise to a claim under this *policy* (whether or not the *insured* believes the claim amount might fall below the applicable *deductible*) the *insured* shall, as soon as reasonably practicable:

- (a) advise **Agile** of the cause and the amount of loss and any other proof or information with respect to the claim that may be reasonably required;
- (b) take reasonable steps to prevent further loss; and
- (c) at all reasonable times permit **Agile** to inquire into, investigate and examine the circumstances of any loss.

For Enquiries Relating To	Please Contact
Making a claim Get in touch as soon as possible and Agile can help.	+64 9 888 4512 claims@withagile.com

The *insured* must assist and cooperate with **Agile** fully and promptly in relation to a claim, including:

- (a) allowing **Agile** to negotiate, defend or settle the claim or *inquiry*:
 - i) in the *insured's* name and on the *insured's* behalf; or
 - ii) in the name of and on behalf of any other party covered by the *policy*;
- (b) as far as possible, preserve any product, appliance, plant or other items which might prove necessary or useful as evidence until **Agile** have had an opportunity of inspection.
- (c) furnish to **Agile** details of any other insurance covering or which may cover the same loss;
- (d) sending to **Agile** any claim, writ, summons, or full details of other relevant legal or other proceedings such as an impending prosecution or inquest the *insured* receives or becomes aware of; and
- (e) supplying **Agile** with all information and assistance **Agile** may reasonably require. **Agile** will only request information relevant to the claim.

3. Claims control

- (a) The *insured* shall not, without *Agile's* written consent, admit or repudiate liability, negotiate or make any offer, promise or payment in connection with any claim.
- (b) *Agile* shall be entitled, but not obliged, to take over and conduct in the *insured's* name, the defence or settlement of any claim or *inquiry* or to prosecute in the name of the *insured* at its own expense and for its own benefit, any claim against any persons, and shall have full discretion in the conduct of any proceedings and in the settlement of any claim.

4. Cross liability

Subject to General Condition 9. Joint responsibility when an *insured* consists of more than one party, the *insured* shall be considered as a separate *insured* as though a separate policy had been issued to each of the said parties, but nothing herein contained shall operate to increase the *limit of liability*.

5. Deductible

The *deductible* is the first amount payable by the *insured* for each insured event and the *schedule* states whether it shall include *defence costs*. *Agile* will never be liable to indemnify the *insured* for the amount of the *deductible*.

Public & Products Liability

A single *deductible* shall apply to any one *occurrence* or series of related *occurrences* as provided in General Condition 12. Series paragraph (a). This applies to all Extensions unless specifically stated otherwise in the *schedule* or this wording.

Statutory Liability

A single *deductible* shall apply to any one *claim* or series of related *claims* as provided in General Condition 12. Series paragraph (b). This applies to all Extensions unless specifically stated otherwise in the *schedule* or this wording.

Employers Liability

A single *deductible* shall apply to any one *claim* or series of related *claims* as provided in General Condition 12. Series paragraph (b). This applies to all Extensions unless specifically stated otherwise in the *schedule* or this wording.

Consequential Loss

A single *deductible* shall apply according to General Condition 12. Series paragraph (a) or (b) depending on the applicable Coverage Section for the *covered event*.

Directors and Officers Liability

A single *deductible* shall apply to any one *claim* or other insured event or series of related *claims* or other insured events as provided in General Condition 12. Series paragraph (b). This applies to all Extensions unless specifically stated otherwise in the *schedule* or this wording.

Employment Practices Liability

A single **deductible** shall apply to any one **claim** or other insured event or series of related **claims** or other insured events as provided in General Condition 12. Series paragraph (b). This applies to all Extensions unless specifically stated otherwise in the **schedule** or this wording.

Commercial Crime

A single **deductible** shall apply to any one **loss** or series of related **losses** as provided in General Condition 12. Series paragraph (b). This applies to all Extensions unless specifically stated otherwise in the **schedule** or this wording.

In respect of all of the above, for related **occurrences, claims** or **losses** that are covered under more than one Coverage Section, then the applicable **deductible** shall be applied to each Coverage Section but in no event shall the **insured** be liable to pay more than the amount of highest applicable **deductible**.

Commercial Legal Expenses

A single **deductible** shall apply to each **claim** or series of related **claims** as provided in General Condition 12. Series paragraph (b).

6. Discharge of any liability

Agile may at any time pay the **limit of liability** (after deduction of any sum or sums already paid), or any lesser sums for which any claim or claims can be settled and shall then be under no further liability in respect thereof except for the payment of amounts referred to in Public & Products Liability clause 1.2 Additional payments, Statutory Liability Clause 1.2 Additional payments, and Employers Clause 1.2 Additional Payments, incurred prior to such payment.

In the event of a claim or series of claims arising from an **occurrence** resulting in liability of the **insured** to pay a sum in excess of the **limit of liability**, **Agile's** liability under clause Public & Products Liability clause 1.2 Additional payments, Statutory Liability Clause 1.2 Additional payments, and Employers Clause 1.2 Additional Payments, shall not exceed an amount being in the same proportion as **Agile's** payment bears to the total payment made by or on behalf of or to be made by the **insured** in satisfaction of the claim or claims.

7. Fraudulent acts / claims

If any claim is, in any respect, fraudulent or if any fraudulent means or devices are used by the **insured** or anyone acting on the **insured's** behalf to obtain any benefit or any increased benefit under this **policy**, or if any loss hereunder be occasioned by the wilful act or with the connivance of the **insured**, then **Agile**, without prejudice to any other rights(s) **Agile** might have under this **policy** or at law, shall be entitled to refuse to pay that claim and, in its sole discretion, elect to cancel the **policy** with **Agile** having no liability to make any payment for any item claimed after the date of the fraudulent act.

8. Inspection and audit

Agile shall be permitted to inspect the **insured's** property and operations at any reasonable time. Neither **Agile's** right to make inspections nor the making thereof nor any report thereon shall constitute

an undertaking on behalf of or for the benefit of an *insured* or others to determine or warrant that such property or operations are safe or healthy, or are in compliance with any law, rule or regulation.

Agile may examine and audit the *insured's* books and records at any time during the *period of insurance* and within three years after the final termination of the *policy*, as far as they relate to the subject matter of this insurance.

9. Joint responsibility

Where the *insured* is comprised of more than one legal entity, information supplied to *Agile* shall be deemed to have been furnished by and on behalf of all such entities, and any information supplied to *Agile* or any omission or non-disclosure in relation to any renewal or extension hereof, shall likewise be deemed to have been furnished, omitted or withheld on behalf of all such entities.

Any and all *insureds* and any persons deriving benefit under this *policy* are jointly liable and responsible for any breach of any terms of this *policy* and/or misrepresentation and/or non-disclosure and/or fraud.

10. Limit of liability

Agile's liability shall not exceed the *limit of liability* for:

Public & Products Liability

any one *occurrence* or series of related *occurrences* for *public liability* as provided in General Condition 12. Series paragraph (a), and for any one *occurrence* and in the aggregate for the *period of insurance* for *products liability*.

Defence costs are in addition to the limit of liability.

Statutory Liability

any one *claim* and in the aggregate for the *period of insurance*.

Defence costs are in addition to the *limit of liability*.

Employers Liability

any one *claim* and in the aggregate for the *period of insurance*.

Defence costs are in addition to the *limit of liability*.

Directors and Officers Liability

any one *claim* and in the aggregate for the *period of insurance*.

Defence costs are in addition to the *limit of liability*.

Employment Practices Liability

any one *claim* and in the aggregate for the *period of insurance*.

Defence costs are in addition to the *limit of liability*.

Commercial Crime

any one *loss* and in the aggregate for the *period of insurance*.

Commercial Legal Expenses

any one *claim* and in the aggregate for the *period of insurance*.

Other Provisions

For related *occurrences*, *claims* or *losses* that are covered under more than one Coverage Section, then the applicable *limit of liability* shall be applied to each Coverage Section but in no event shall **Agile** be liable to pay more than the amount of highest applicable *limit of liability*.

All Sublimits of Liability (whether described as such or not) are aggregate amounts for the *period of insurance* and are part of and not in addition the applicable *limit of liability*, unless expressly stated otherwise in a Coverage Section or the *schedule*.

If the *insured* has purchased insurance in excess of this *policy*, and the amounts claimed by the *insured* are likely to exceed the *limit of liability*, **Agile** shall only be liable to pay that proportion of *defence costs* that corresponds to the proportion the *limit of liability* bears to the likely amount payable for the insured event.

11. Series clause

- (a) In respect of a series of *occurrences* (in respect of the Public and Products Liability Coverage Section) which are attributable directly or indirectly or allegedly attributable directly or indirectly to the same event, condition, defect or hazard, or failure they shall be added together and treated as one *occurrence* irrespective of period of time after the commencement of the period of insurance or the number of persons or entities that sustain property damage and/or personal injury.
- (b) In respect of a series of insured events (for all Coverage Sections other than Public and Products Liability), which are attributable directly or indirectly or allegedly attributable directly or indirectly to the same or related occurrence, event, condition, defect or hazard, act, omission, crime, or failure they shall be added together and treated as one insured event irrespective of when they took place.
- (c) All such *occurrences* or insured events shall be deemed to have occurred on the day of the first of such *occurrence* or insured event.
- (d) **Agile** shall not indemnify the *insured* for any liability of whatsoever nature in connection with personal injury or property damage where such personal injury or property *damage* is in any way connected with an *occurrence* or events or circumstances, whether of a continuous, intermittent or repeated exposure, which had occurred or commenced or existed prior to the commencement of the *period of insurance*.

12. Premium

When shown in the *schedule*, the *premium* is minimum and deposit and is adjustable. The *insured* shall, within sixty (60) days after the expiry of each *period of insurance*, provide such information as **Agile** may require adjusting the *premium*.

Any difference in *premium* shall be paid by or allowed to the *insured*, provided that the adjusted *premium* will not be less than any minimum *premium* specified in the *schedule*. The *insured* shall at all times allow **Agile** to inspect such records.

13. Reasonable precautions

It is a condition of this *policy* to *Agile's* liability under this *policy* that the *insured* shall, at its own expense:

- (a) take, and cause to be taken, reasonable precautions to prevent any *claim, event, occurrence, personal injury, property damage, advertising liability, damages, fine or loss*.
- (b) comply with all statutory or local authority law, obligations and requirements or equivalent;
- (c) take, and cause to be taken, reasonable precautions to prevent the manufacture, sale or supply of defective *products*; and
- (d) withdraw, inspect, repair, replace, trace, recall or modify any of the *products* containing any defect or deficiency of which the *insured* has knowledge or has reason to suspect.

14. Release

Where the *insured* is required by contractual agreement to release any Government or Public or Local Authority or other Statutory Authority from liability in respect of loss, destruction or damage or legal liability insured against under this *policy*, such a release is allowed without prejudice to this insurance.

Notwithstanding General Condition 16. Subrogation of this *policy*, *Agile* agrees to waive all rights of subrogation against any such Authority in the event of any *occurrence* for which a claim for indemnity may be made under this *policy*.

15. Sanctions

Agile shall not make any payments nor provide any benefit to any *insured* or any other party to the extent that such payment, benefit and/or any *business* or activity of the *insured* would violate any applicable trade or economic sanctions, law or regulation.

16. Subrogation

With regard to the Public & Products Liability Coverage Section, *Agile* waive all rights of subrogation under this *policy* against any *insured* except if such *insured* is protected from such loss by any other contract or policy of indemnity or insurance. In that event, *Agile's* right of subrogation is not waived to the extent of the indemnity or insurance under such other contract or policy.

In all other respects *Agile* maintains all of its rights to seek recovery from any party, in the *insured's* name, in respect of amounts paid by *Agile* under this *policy*.

17. Subrogation and allocation of the proceeds of recoveries

Subject to General Condition 16. Subrogation, any *insured* claiming under this *policy* shall, at *Agile's* request and expense, do and concur in doing and permit to be done all such acts and things and provide information that may be necessary or may be reasonably required by *Agile* for the purpose of enforcing any rights and remedies, or for obtaining relief or indemnity from any other organisation(s) or person(s), to which *Agile* shall be or would become entitled upon *Agile* paying for or indemnifying the *insured* in respect of legal liability under this *policy*.

Should the *insured* incur any legal liability which is not covered by the *policy* (aside from the deductible), the *insured* will be entitled to the first call on the proceeds of all recoveries made, by either the *insured* or *Agile*, on account of such legal liability until fully reimbursed for such uninsured amounts (less the actual costs of making such recoveries where those costs are incurred by *Agile*), and any remaining amount(s) will be applied to reimburse *Agile*.

18. Interpretation

This *policy* incorporates the *schedule*, definitions, insuring clauses, exclusions and conditions and any other terms contained or endorsed in or to this *policy*, which are to be read together. Where any word or expression has been given specific meaning in any part of this *policy* such word or expression shall bear this meaning wherever it may appear unless such meaning is inapplicable to the context in which such word or expression appears.

Words importing the singular gender shall include the plural and vice versa, and words importing the masculine gender shall include the feminine gender.

Headings have been included for ease of reference, and it is understood and agreed that the terms and conditions of this *policy* are not to be construed or interpreted by reference to such headings.

19. Goods and Services Tax (GST)

Agile will only pay amounts over a sum insured or Sublimit of Liability to the value of GST which is recoverable by *Agile* under the *Goods and Services Tax Act 1985*.

Any *deductible* applied includes GST and GST will be added where applicable to claim payments.

Agile will not indemnify the *insured*, or any other recipient of a claim settlement payout pursuant to this *policy*, for any GST liability, fines or penalties that arise from or are attributable to that entity's failure to discharge their tax output obligations or notify *Agile* of an entitlement (or correct entitlement) to an input tax credits applicable to the *premium* or a claim settlement payout.

20. Severability

In the event any clause of this *policy*, or part of any clause, is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

21. Several Liability Notice

The subscribing insurer(s) obligations under contractors of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurer(s) are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

22. Premium Payment

- (a) As a condition precedent to the right to be indemnified under any of the Coverage Sections of this *policy*, the *insured* undertakes that the *premium* will be paid in full to Agile Insurance Group NZ Limited within sixty (60) days of inception of the *policy*.

- (b) If the *premium* has not been so paid by the sixtieth (60th) day from the inception of the *policy* Agile Insurance Group NZ Limited shall have the right to cancel the *policy* from inception by notifying the *insured* in writing or via the *insured's* insurance agent in writing.

23. Other Insurance

Subject to any equivalent provision in a Coverage Section, if the *insured* has a policy of insurance with another insurer in respect of any claim or event for which cover would otherwise be available under this *policy*, then this *policy* will apply only to the amount of any loss or liability in excess of that recoverable under that other policy. This clause applies even if the other insurance policy also has a clause to this effect.