

# Miscellaneous Professional Liability Insurance



AIG Insurance New Zealand Limited

## Policy Wording



Bring on tomorrow



# Miscellaneous Professional Liability Insurance

This Policy is issued / insured by AIG Insurance New Zealand Limited.

PO Box 1745  
Shortland Street,  
Auckland 1140  
New Zealand

## Fair Insurance Code

The **Insurer** is a signatory to the Fair Insurance Code. This aims to raise the standards of practice and service in the insurance industry, improve the way that claims and complaints are handled and help people better understand how general insurance works. Information brochures on the Code are available upon request.

### Your Duty of Disclosure

Before you enter into a contract of general insurance with an insurer, you have a duty to disclose to the insurer every matter that you know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, upon what terms. You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance.

However, your duty of disclosure does not require you to disclose matters:

- that diminish the risk to be undertaken by the insurer;
- that are of common knowledge;
- that your insurer knows or, in the ordinary course of its business, ought to know;
- as to which compliance with your duty is waived by the insurer.

### Consequences of Non-Disclosure

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a claim or may cancel the contract. If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning.

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**This document contains your Insurance Policy terms, Provisions, Exclusions and Conditions. It is important that you read it, understand it and retain it in a safe place.**



Policy Schedule

Miscellaneous Professional Liability Insurance

Policy Number PI <>

ITEMS

Policyholder <>

Policyholder's Main Address C/- <>

Professional Services <>

Policy Period From: <>

To: <>

Both days at 4:00 P.M. at the Policyholder's Main Address

Section A: Limit of Liability <> any one Claim and in the aggregate.

Section B: Limit of Liability <> any one Claim and in the aggregate.

Retention <> costs inclusive, each and every claim.

A single Retention shall apply to Section A and Section B

Extensions:

		Sub-Limit Section A	Included/ Excluded	Sub-Limit Section B	Included/ Excluded
1.	Lost Documents	\$250,000	Included	\$250,000	Included

Retroactive Date <>

Continuity Date <>

Premium As agreed

Insurer & Address  
AIG Insurance New Zealand Limited  
P.O. Box 1745  
Auckland 1140  
New Zealand

Address for Claims Notice  
AIG Insurance New Zealand Limited  
Claims Department  
P.O. Box 1745  
Auckland 1140  
New Zealand

All amounts indicated in this Schedule are exclusive of GST where payable by law.

Issued at Auckland 4 August 2015.

Signed for and on behalf of the Insurer:

\_\_\_\_\_  
Authorised Signatory



# Miscellaneous Professional Liability Insurance

## Notice

This is a claims made insurance policy. This policy will only apply to **Claims** first made against the **Insured** by a **Third Party** and reported to the Insurer during the **Policy Period**. The **Limits of Liability** available to pay judgments or settlements shall be reduced by amounts incurred for legal defence. Further, please note that the amounts incurred for legal defence shall be applied against the **Retention** amount.

In consideration of the payment of the **Premium** and subject to all of the provisions of this policy, the **Insurer** agrees as follows.

## SECTION A: Covers

All cover under this policy is afforded solely with respect to **Claims** first made against an **Insured** during the **Policy Period** and reported to the **Insurer** as required by this policy.

<b>Professional Liability</b>	The <b>Insurer</b> will pay on behalf of any <b>Insured</b> all <b>Damages</b> resulting from any <b>Claim</b> for any <b>Breach of Duty</b> of the <b>Insured</b> .
<b>Misleading or Deceptive Conduct</b>	The <b>Insurer</b> will pay on behalf of any <b>Insured</b> all <b>Damages</b> resulting from any <b>Claim</b> for any <b>Misleading or Deceptive Conduct</b> of the <b>Insured</b> .
<b>Intellectual Property</b>	The <b>Insurer</b> will pay on behalf of any <b>Insured</b> all <b>Damages</b> resulting from any <b>Claim</b> for any <b>Infringement</b> .
<b>Defamation</b>	The <b>Insurer</b> will pay on behalf of any <b>Insured</b> all <b>Damages</b> resulting from any <b>Claim</b> for libel or slander committed unintentionally by an <b>Insured</b> .
<b>Fraud / Dishonesty</b>	The <b>Insurer</b> will pay on behalf of any <b>Insured</b> , who is not the actual perpetrator, all <b>Damages</b> resulting from any <b>Claim</b> for <b>Fraud/Dishonesty</b> of any <b>Employee</b> .
<b>Defence</b>	The <b>Insurer</b> has the right to defend any <b>Claim</b> which this policy may respond to under its Covers or Extensions. The <b>Insurer</b> shall pay <b>Defence Costs</b> incurred in defending such <b>Claim</b> .

The **Insurer** is under no obligation to pay **Loss**, unless the **Wrongful Act**:

- (i) first takes place on or after the **Retroactive Date**; and
- (ii) is committed solely in the performance of or failure to perform **Professional Services**.



## Extensions

**Court Attendance** For any person described in (i) and (ii) below who actually attends court as a witness in connection with a **Claim** notified under and covered by this policy, **Defence Costs** will include the following rates per day for each day on which attendance in court has been required:

- (i) for any principal, partner, or director **Insured** \$500
- (ii) for any **Employee** \$250

No **Retention** shall apply to this Extension.

**Extended Reporting Period** If the **Insurer** cancels or does not renew this policy, other than for non-payment of **Premium** or any other breach of the terms of this policy by an **Insured**, the **Policyholder** shall have the right to a period of 30 days following the date of cancellation or expiry in which to give notice of any covered **Claim** first made against the **Insured**. That extended reporting period shall not apply if this policy or its cover has been replaced.

**Lost Documents**

With respect to a **Third Party's Documents**:

- (i) for which an **Insured** is legally responsible; and
- (ii) that, during the **Policy Period**, have been destroyed, damaged, lost, distorted, erased or mislaid solely in the performance or non-performance of **Professional Services**,

**Damages** shall also include costs and expenses reasonably incurred by the **Insured** in replacing or restoring such **Documents** provided that:

- (i) such loss or damage is sustained while the **Documents** are either:
  - a) in transit; or
  - b) in the custody of the **Insured** or of any person to whom the **Insured** has entrusted them;
- (ii) where the lost or mislaid **Documents** have been the subject of a diligent search by or on behalf of the **Insured**;
- (iii) the amount of any **Claim** for such costs and expenses shall be supported by evidence of expenditure that shall be subject to written approval by a competent person to be nominated by the **Insurer** with the consent of the **Insured**; and
- (iv) the **Insurer** shall not be liable for any **Claim** arising out of wear, tear and/or gradual deterioration, moth and vermin, or other matters beyond the **Insured's** control.

This Extension will be subject to a Sub-limit of Liability as set out in the Schedule. A separate retention of \$1,000 instead of the **Retention** will apply to each **Claim** covered under this Extension.

## Definitions

**Bodily Injury** Means physical injury, sickness, disease or death; and if arising out of the foregoing, nervous shock, emotional distress, mental anguish or mental injury.

**Breach of Duty** Means any actual or alleged breach of duty, act, error, misstatement, breach of confidentiality or omission in the performance of or failure to perform **Professional Services**.

**Claim** Means any:

- (i) written demand; or
- (ii) civil or administrative proceeding,



that seeks **Damages** as a result of **Wrongful Acts**.

<b>Damages</b>	Means any amount that an <b>Insured</b> shall be legally liable to pay to a <b>Third Party</b> in respect of judgments rendered against an <b>Insured</b> , or for settlements which conform with the consent requirements set out in the "Claims" Conditions, subject to the limitations of <b>Loss</b> .
<b>Defence Costs</b>	<p>Means reasonable fees, costs and expenses incurred by or on behalf of the <b>Insured</b>, with the <b>Insurer's</b> prior approval, in the investigation, defence, adjustment, settlement or appeal of any <b>Claim</b>.</p> <p><b>Defence Costs</b> shall not mean any internal or overhead expenses of any <b>Insured</b> or the cost of any <b>Insured's</b> time.</p>
<b>Documents</b>	Means all documents of any nature whatsoever including computer records and electronic or digitized data; but does not include any currency, negotiable instruments or records thereof.
<b>Employee</b>	<p>Means any natural person who is or has been expressly engaged as an employee under a contract of employment with the <b>Policyholder</b> or any <b>Subsidiary</b>.</p> <p><b>Employee</b> shall not mean any:</p> <ul style="list-style-type: none"><li>(i) principal, partner or director; or</li><li>(ii) temporary contract labour, self-employed person or labour-only sub-contractor.</li></ul>
<b>Fraud/Dishonesty</b>	<p>Means fraudulent or dishonest conduct of an <b>Employee</b>:</p> <ul style="list-style-type: none"><li>(i) not condoned, expressly or implicitly, by; and</li><li>(ii) that results in liability to;</li></ul> <p>the <b>Policyholder</b> or any <b>Subsidiary</b>.</p>
<b>Infringement</b>	Means an unintentional infringement of any intellectual property right of any <b>Third Party</b> , other than patents and <b>Trade Secrets</b> .
<b>Insured</b>	<p>Means:</p> <ul style="list-style-type: none"><li>(i) the <b>Policyholder</b> or any <b>Subsidiary</b>;</li><li>(ii) any natural person, who is or has been a principal, partner or director of the <b>Policyholder</b> or any <b>Subsidiary</b>;</li><li>(iii) any <b>Employee</b>; and</li><li>(iv) any temporary contract labour, self-employed persons, labour-only sub-contractors, solely under contract with, and under the direction and direct supervision of the <b>Policyholder</b> or any <b>Subsidiary</b>;</li></ul> <p>but only when providing <b>Professional Services</b> in the foregoing capacities.</p> <p><b>Insured</b> also includes any estate or legal representatives of any <b>Insured</b> described in (ii) and (iii) of this definition with respect to the <b>Insured's</b> provision of <b>Professional Services</b> in any such capacity.</p>
<b>Insurer</b>	Means the entity specified as such in the Schedule.
<b>Limit of Liability</b>	Means the applicable limit of liability set out in the Schedule.



<b>Loss</b>	<p>Means <b>Damages</b> and <b>Defence Costs</b>.</p> <p><b>Loss</b> shall not mean and this policy shall not cover any (i) taxes payable by the <b>Insured</b>; (ii) non-compensatory damages, including punitive, multiple, exemplary or liquidated damages; (iii) restitutionary relief; (iv) fines or penalties; (v) the costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief; (vi) employment related compensation or benefits, overhead, charges or expenses of any <b>Insured</b>; or (vii) any matters which may be deemed uninsurable under the law governing this policy or the jurisdiction in which a <b>Claim</b> is brought.</p>
<b>Misleading or Deceptive Conduct</b>	<p>Means any actual or alleged misleading or deceptive conduct at law or under the Fair Trading Act 1986 or any similar legislation.</p>
<b>Policy Period</b>	<p>Means the period of time specified in the Schedule unless the policy is cancelled in which event the <b>Policy Period</b> will end on the effective date of the cancellation.</p>
<b>Policyholder</b>	<p>Means the entity or natural person specified as such in the Schedule.</p>
<b>Pollutants</b>	<p>Means, but is not limited to, any solid, liquid, biological, radiological, gaseous or thermal irritant or contaminant whether occurring naturally or otherwise, including asbestos, smoke, vapour, soot, fibres, mould, spores, fungus, germs, fumes, acids, alkalis, nuclear or radioactive material of any sort, chemicals or Waste. "Waste" includes, but is not limited to, material to be recycled, reconditioned or reclaimed.</p>
<b>Premium</b>	<p>Means the amount specified as such in the Schedule and any premium adjustment reflected in an endorsement to this policy.</p>
<b>Professional Services</b>	<p>Means the professional services of the <b>Policyholder</b> and any <b>Subsidiary</b> as specified in the Schedule.</p>
<b>Property Damage</b>	<p>Means damage to or loss of or destruction of tangible property or loss of use thereof.</p>
<b>Retention</b>	<p>Means the amount specified as such in the Schedule.</p>
<b>Retroactive Date</b>	<p>Means the date specified as such in the Schedule.</p>
<b>Subsidiary</b>	<p>Means companies in which the <b>Policyholder</b>, either directly or indirectly through one or more of its <b>Subsidiaries</b>;</p> <ul style="list-style-type: none"><li>(i) controls the composition of the board of directors;</li><li>(ii) controls more than half of the voting power; or</li><li>(iii) holds more than half of the issued share capital.</li></ul> <p>For any <b>Subsidiary</b> or any <b>Insured</b> thereof, cover under this policy shall only apply to <b>Wrongful Acts</b> committed while such entity is a <b>Subsidiary</b> of the <b>Policyholder</b>.</p>
<b>Third Party</b>	<p>Means any entity or natural person; provided, however, <b>Third Party</b> does not mean: (i) any <b>Insured</b>; or (ii) any other entity or natural person having a financial interest or executive role in the operation of the <b>Policyholder</b> or any <b>Subsidiary</b>.</p>
<b>Trade Secret</b>	<p>Means information that derives independent economic value, actual or potential, from not being generally known and not being readily ascertainable through proper means by other persons who can obtain economic advantage from its disclosure or use.</p>
<b>Wrongful Act</b>	<p>Means any <b>Breach of Duty</b>, <b>Misleading or Deceptive Conduct</b>, <b>Infringement</b>, libel, slander, or <b>Fraud/Dishonesty</b>.</p>



## Exclusions

This policy shall not cover **Loss** in connection with any **Claim**:

Anti-competitive Conduct	Arising out of, based upon or attributable to any actual or alleged restrictive trade practices, restraint of trade or unfair competition;
Bodily Injury / Property Damage	Arising out of, based upon or attributable to <b>Bodily Injury</b> or <b>Property Damage</b> unless arising from an actual or alleged failure to achieve the legally required standard of care, diligence and expertise in performing <b>Professional Services</b> ;
Contractual Liability / Performance Guarantees	Arising out of, based upon or attributable to any: (i) contractual liability or other obligation assumed, that goes beyond the duty to use such skill and care as is ordinarily applied to the professional services provided, taking into consideration any specialised knowledge or expertise; (ii) guarantee or warranty; or (iii) delay in performing, failing to perform or failing to complete any <b>Professional Services</b> , unless such delay or failure arises from a <b>Breach of Duty</b> by an <b>Insured</b> ;
Costs Assessment	Arising out of, based upon or attributable to any failure by any <b>Insured</b> or other party acting for the <b>Insured</b> to make an accurate pre-assessment of the cost of performing <b>Professional Services</b> ;
Employment / Discrimination	Arising out of, based upon or attributable to any: (i) actual or alleged employment related: practices, harassment or discrimination; or (ii) intentional or systemic harassment or discrimination;
Insolvency	Arising out of, based upon or attributable to the insolvency, administration or receivership of the <b>Insured</b> or their actual or alleged inability to meet any or all of their debts as they fall due;
Intentional Acts	Arising out of, based upon or attributable to any deliberate or reckless <b>Breach of Duty</b> ;
Infrastructure	Arising out of, based upon or attributable to: (i) mechanical failure; (ii) electrical failure, including any electrical power interruption, surge, brown out or black out; or (iii) telecommunications or satellite systems failure;
Joint Ventures	Arising out of, based upon, or attributable to work carried out by the <b>Insured</b> for and in the name of any association or joint venture of which an <b>Insured</b> forms part;
Misdeeds	Arising out of, based upon or attributable to any act which a court, official tribunal or arbitrator finds, or which an <b>Insured</b> admits, to be a criminal, dishonest or fraudulent act; and in such event, the <b>Insurer</b> shall be reimbursed for all <b>Loss</b> paid in connection with such <b>Claim</b> ; provided, however, that this exclusion shall not apply to the <b>Fraud/Dishonesty</b> Cover;
Patent/Trade Secret	Arising out of, based upon or attributable to the breach of licences concerning infringement of, or misappropriation of patents or <b>Trade Secrets</b> ;
Pollution	Arising out of, based upon or attributable to: (i) the actual, alleged or threatened presence, discharge, dispersal, release, migration or escape of <b>Pollutants</b> , or (ii) any direction, request or effort to: (a) test for, monitor, clean up, remove, contain, treat, detoxify or neutralise <b>Pollutants</b> , or (b) respond to or assess the effects of <b>Pollutants</b> ;
Prior Claims / Circumstances / Litigation	(i) made prior to or pending at the inception of this policy; or (ii) arising out of, based upon or attributable to any circumstance that, as of the inception of this policy, may reasonably have been expected by any <b>Insured</b> to give rise to a <b>Claim</b> ; or (iii) pending or prior litigation derived from the same or essentially the same facts as might be



	alleged in such prior or pending litigation, as at the <b>Continuity Date</b> ;
Trade Debts	Arising out of, based upon or attributable to any: (i) trading debt incurred by an <b>Insured</b> or (ii) guarantee given by an <b>Insured</b> for a debt;
U.S.A. / Canada	Made or pending within; or to enforce a judgment obtained in, the United States of America, Canada, or any of their territories or possessions; or
War / Terrorism	Arising out of, based upon or attributable to any war (declared or otherwise), terrorism, warlike, military, terrorist or guerrilla activity, sabotage, force of arms, hostilities (declared or undeclared), rebellion, revolution, civil disorder, insurrection, usurped power, confiscation, nationalisation or destruction of or damage to property by or under the order of, any governmental, public or local authority or any other political or terrorist organisation.

## SECTION B: Costs and Expenses

If the **Insurer** (in its sole and absolute discretion) determines that any loss covered by any other section, cover, endorsement or extension of this **Policy** is subject to the existence or potential existence of a **Charge**, the **Insurer** shall not be obligated to advance any costs or expenses under that section, cover, endorsement or extension of this Policy but instead the **Insurer** shall pay such costs and expenses solely under this Section B – Costs and Expenses.

### Section B: Conditions

- All costs and expenses paid, or to be paid, under this Section B – Costs and Expenses shall:
  - be subject to the same terms and conditions (including any Exclusions) which would have applied had the **Insurer** made payment under the applicable section, cover, endorsement or extension of this Policy which is subject to the existence or potential existence of a **Charge**,
  - be subject to the **Section B: Limit of Liability** prescribed in the Schedule; and
  - not include taxes other than an amount of GST for which an Insured is not entitled to an input tax credit; remuneration or employment-related benefits; loss or any other damages, compensation, fines or penalties; nor amounts which the Insurer is prohibited from paying by law.
- Subject to clause 4 below, if:
  - any loss covered by this Policy would have been paid by the **Insurer** but for the existence or potential existence of a **Charge**; and
  - that loss (or any part of that loss) has been paid to the Insured under Section B – Costs and Expenses; and
  - upon the final determination of the existence and extent of any such **Charge** the loss (or any part of the loss) is determined not to be, or to have been, subject to the **Charge** and could have been paid to the **Insured** under any other section, cover, endorsement or extension of this Policy;

the **Insurer** shall as soon as practicable reinstate the **Section B: Limit of Liability** (without deduction or set-off) by an amount equivalent to such loss or part of such loss falling within each of (i), (ii) and (iii) above and the **Limit of Liability** of the corresponding section, cover, endorsement or extension of this Policy shall be reduced by the amount of the reinstatement.

- Subject to clause 4 below, if, prior to the final determination of the existence and extent of any **Charge**, the **Insurer** (in its sole and absolute discretion) determines that any loss paid to the **Insured** under Section B – Costs and Expenses could have been paid under any other section, cover, endorsement or extension of this Policy, the **Insurer** shall as soon as practicable reinstate the **Section B: Limit of Liability** by an amount equivalent to such loss (without deduction or set-off) and any such amounts reinstated under this clause shall apply in reduction of any reinstatement under clause 2 above and the **Limit of Liability** of the corresponding section, cover, endorsement or extension of this Policy shall be reduced by the amount of the reinstatement.
- The maximum amount available to reinstate the **Section B: Limit of Liability** under clauses 2 and 3 above shall not exceed the **Section A: Limit of Liability** any one claim limit (if any) stated in the Schedule.

### Additional Definition



1. “**Charge**” means a charge arising under section 9 of the Law Reform Act 1936 (New Zealand), section 6 of the Law Reform (Miscellaneous Provisions) Act 1946 (New South Wales), sections 25 to 28 of the Law Reform (Miscellaneous Provisions) Act 1955 (ACT), sections 26 to 29 of the Law Reform (Miscellaneous Provisions) Act 1956 (Northern Territory) and/or any other legislative provision of similar effect.

## SECTION C: Claims

Notification of Claims	The <b>Insured</b> shall, as a condition precedent to the obligations of the <b>Insurer</b> under this policy, give written notice to the <b>Insurer</b> (i) of any <b>Claim</b> first made against the <b>Insured</b> , (ii) of the receipt of notice from any person of an intention to make a <b>Claim</b> against any <b>Insured</b> , (iii) of any circumstances of which they shall become aware during the <b>Policy Period</b> which may give rise to a <b>Claim</b> against any <b>Insured</b> , or (iv) of the discovery of reasonable cause for suspicion of dishonesty or fraud on the part of any past or present partner or <b>Employee</b> of the <b>Insured</b> whether giving rise to a <b>Claim</b> under this Policy or not as practicable and during the <b>Policy Period</b> . All notifications must be in writing or by facsimile, and addressed as required in the Claims Notice Item on the Schedule.
Related Claims	If notice of a <b>Claim</b> , circumstance or discovery of dishonesty, against an <b>Insured</b> is given to the <b>Insurer</b> pursuant to the terms and conditions of this policy, then: (i) any subsequent <b>Claim</b> alleging, arising out of, based upon or attributable to the facts alleged in that previously notified <b>Claim</b> ; and (ii) any subsequent <b>Claim</b> alleging any <b>Wrongful Act</b> which is the same as or related to any <b>Wrongful Act</b> alleged in that previously notified <b>Claim</b> , shall be considered made against the <b>Insured</b> and reported to the <b>Insurer</b> at the time notice was first given. Any <b>Claim</b> or <b>Claims</b> arising out of, based upon or attributable to (i) the same cause, or (ii) a single <b>Wrongful Act</b> , or (iii) a series of continuous, repeated or related <b>Wrongful Acts</b> , shall be considered a single <b>Claim</b> for the purposes of this policy.
Continuity	Notwithstanding the <b>Prior Claims/Circumstances/Litigation</b> Exclusion, cover is provided under this <b>Policy</b> for any <b>Claim</b> , fact, matter or circumstance which could or should have been notified to the <b>Insurer</b> under any earlier policy. Provided always that: <ol style="list-style-type: none"><li>(i) the <b>Claim</b>, fact, matter or circumstance could and should have been notified after the <b>Continuity Date</b>; and</li><li>(ii) the cover provided by this Condition shall be on the same terms, exceptions and conditions as the policy under which the <b>Claim</b>, fact, matter or circumstance could or should have been notified.</li></ol>
Defence / Settlement	The <b>Insurer</b> does not assume any duty to defend, and the <b>Insured</b> shall not be required to contest any legal proceeding unless counsel (to be mutually agreed upon by the <b>Insured</b> and the <b>Insurer</b> ) shall advise that such <b>Claim</b> should be contested by the <b>Insured</b> . The <b>Insurer</b> may elect in writing to take over and conduct the defence and settlement of any <b>Claim</b> . If the <b>Insurer</b> does not so elect, it shall be entitled, but not required, to participate fully in such defence and the negotiation of any settlement that involves or appears reasonably likely to involve the <b>Insurer</b> . The <b>Insurer</b> has the right at any time after notification of a <b>Claim</b> to make a payment to the <b>Insured</b> of the unpaid balance of the <b>Limit of Liability</b> , and upon making such payment, all obligations of the <b>Insurer</b> to the <b>Insured</b> under this policy, including, if any, those relating to defence, shall cease.
Insurer's Consent	As a condition precedent to cover under this policy, no <b>Insured</b> shall admit or assume any liability, enter into any settlement agreement, consent to any judgment, or incur any <b>Defence Costs</b> without the prior written consent of the <b>Insurer</b> . Only those settlements, judgments and <b>Defence Costs</b> consented to by the <b>Insurer</b> , and judgments resulting from <b>Claims</b> defended in accordance with this policy, shall be recoverable as <b>Loss</b> under this policy. The <b>Insurer's</b> consent shall not be unreasonably withheld, provided that the <b>Insurer</b> shall be entitled to exercise all of its rights under the policy.



Insured's Consent	<p>The <b>Insurer</b> may make any settlement of any <b>Claim</b> it deems expedient with respect to any <b>Insured</b>, subject to such <b>Insured's</b> written consent. If any <b>Insured</b> withholds consent to such settlement, the <b>Insurer's</b> liability for all <b>Loss</b> on account of such <b>Claim</b> shall not exceed the amount for which the <b>Insurer</b> could have settled such <b>Claim</b>, plus <b>Defence Costs</b> incurred as of the date such settlement was proposed in writing by the <b>Insurer</b>, less coinsurance (if any) and the applicable <b>Retention</b>.</p>
Cooperation	<p>The <b>Insured</b> will at their own cost: (i) render all reasonable assistance to the <b>Insurer</b> and co-operate in the defence of any <b>Claim</b> and the assertion of indemnification and contribution rights; (ii) use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any <b>Loss</b> under this policy; (iii) give such information and assistance to the <b>Insurer</b> as the <b>Insurer</b> may reasonably require to enable it to investigate any <b>Loss</b> or determine the <b>Insurer's</b> liability under this policy.</p>
Allocation	<p>Where any <b>Loss</b> is incurred in respect of any <b>Claim</b> which arises from both covered matters and matters not covered by this policy, the <b>Insurer's</b> liability under this policy is limited to the proportion of the <b>Loss</b> which represents a fair and equitable allocation between each <b>Insured</b> and the <b>Insurer</b>, taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this policy.</p> <p>Where the <b>Insurer's</b> liability under this policy is limited under this clause, the <b>Insured</b> and the <b>Insurer</b> must use their best endeavours to agree upon the allocation to be adopted by them as the fair and equitable allocation.</p>
Allocation Disputes	<p>If the parties are unable to agree, then the fair and equitable allocation is to be determined by a Senior Lawyer (to be mutually agreed upon by the <b>Policyholder</b> and the <b>Insurer</b>, or in the absence of agreement, to be appointed by the President of the Law Society, or equivalent organisation, in the jurisdiction in which the <b>Loss</b> was incurred).</p> <p>The Senior Lawyer is to determine the fair and equitable allocation as an expert, not as an arbitrator. The <b>Policyholder</b> (or its designee) and the <b>Insurer</b> may make submissions to the Senior Lawyer. The Senior Lawyer is to take account of the parties' submissions, but the Senior Lawyer is not to be fettered by such submissions and is to determine the fair and equitable allocation in accordance with his or her own judgment and opinion. The Senior Lawyer's determination shall be final and binding. The costs of the Senior Lawyer's determination are to be borne by the <b>Insurer</b>.</p> <p>Subject to any applicable laws, for so long as the proportion of <b>Defence Costs</b> to be paid under the policy remains unagreed and undetermined, the <b>Insurer</b> shall pay the proportion of the <b>Defence Costs</b> which it considers represents a fair and equitable allocation. The fair and equitable allocation finally agreed or determined shall be applied retrospectively to any <b>Defence Costs</b> incurred prior to agreement or determination.</p>
Fraudulent Claims	<p>If any <b>Insured</b> shall give any notice or claim cover for any <b>Loss</b> under this policy knowing such notice or claim to be false or fraudulent as regards amounts or otherwise, such <b>Loss</b> shall be excluded from cover under the policy, and the <b>Insurer</b> shall have the right to cancel the policy.</p>



#### Purchase and Administration Policy Purchase

If the **Insurer** becomes entitled to avoid this policy from inception or from the time of any variation in cover, the **Insurer** may at its discretion maintain this policy in full force but exclude the consequences of and any **Claim** relating to any matter which ought to have been disclosed before inception or any variation in cover.

However, in any case where the **Insured** should have notified under any preceding insurance a circumstance which may give rise to a **Claim** and the indemnity or cover available under this **Policy** is greater or wider in scope than the indemnity which the **Insured** would have been entitled to under any preceding insurance (whether with the **Insurer** or not) then the **Insurer** shall only be liable to indemnify the **Insured** in respect of that **Claim** to the extent of the indemnity which would have been afforded by such preceding insurance.

#### Administration

The **Policyholder** has acted and shall act on behalf of each and every **Insured** with respect to: (i) negotiating terms and conditions of, binding and amending cover; (ii) exercising rights of **Insureds**; (iii) notices; (iv) **Premiums**; (v) endorsements; (vi) dispute resolution; (vii) claims management and consent to defence/settlement; and (viii) payments to any **Insured**.

#### Representation / Severability

In granting cover to the **Insured**, the **Insurer** has relied upon the material statements and particulars in the proposal together with its attachments and other information supplied.

That written proposal form for coverage shall be construed as a separate proposal form individually submitted for each **Insured**. No state of mind or knowledge possessed by an **Insured** shall be imputed to any other **Insured** for the purpose of determining entitlement to coverage.

## Limit and Retention

#### Limit of Liability

The total amount payable by the **Insurer** under this policy shall not exceed the applicable **Limit of Liability**. Sub-limits of Liability, amounts specified in the Extensions and **Defence Costs** are part of that amount and are not payable in addition to the **Limit of Liability**. The **Limit of Liability** for the period provided in the Extended Reporting Period Extension is part of, and not in addition to, the **Limit of Liability** for the **Policy Period**. The inclusion of more than one **Insured** under this policy does not operate to increase the total amount payable by the **Insurer** under this policy.

#### Retention

The **Insurer** shall only pay for the amount of any **Loss** which is in excess of the **Retention**. For the avoidance of doubt, the **Retention** also applies to **Defence Costs**. The **Retention** is to be borne by the **Insured** and shall remain uninsured. A single **Retention** shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act**.

#### Other Insurance

Such insurance as is provided under this Policy shall apply only as excess over any other valid and collectible insurance.

#### Non-Compliance

The amount of indemnity under this Policy shall be reduced where the **Insured's** breach of, or non-compliance with, the terms and conditions of this Policy prejudices the settlement or handling of a **Loss** or **Claim**, to such sum which in the opinion of the **Insurer** would have been payable by them without such prejudice.



## General Provisions

Assignment	This policy and any rights under or in respect of it cannot be assigned without the prior written consent of the <b>Insurer</b> .
Cancellation - By Policyholder:	This policy may be cancelled by the <b>Policyholder</b> as and in the manner permitted by law. In such case, if no <b>Claim</b> has been made and no circumstance has been notified prior to such cancellation, the <b>Insurer</b> shall retain the customary short rate proportion (unexpired portion of <b>Premium</b> less handling charges) of the <b>Premium</b> . Otherwise, <b>Premium</b> shall not be returnable and shall be deemed fully earned at cancellation.
By Insurer:	This policy may be cancelled by the <b>Insurer</b> as and in the manner permitted by law. In such case, the <b>Insurer</b> shall be entitled to a pro-rata proportion of the <b>Premium</b> . Payment or tender of any unearned premium by the <b>Insurer</b> shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.
GST	All amounts indicated in this Policy and the attached Schedule are exclusive of Goods and Services Tax where payable by law.
Insolvency	The insolvency, receivership or bankruptcy of any <b>Insured</b> shall not relieve the <b>Insurer</b> of any of its obligations hereunder.
Jurisdiction	It is hereby agreed that this insurance shall be governed by the laws of New Zealand whose Courts shall have jurisdiction in any dispute arising hereunder.
Plurals, Headings and Titles	The descriptions in the headings and titles of this policy are solely for reference and convenience and do not lend any meaning to this contract. Words and expressions in the singular shall include the plural and vice versa. In this policy, words in <b>bold</b> typeface have special meaning and are defined. Words that are not specifically defined in this policy have the meaning normally attributed to them.
Scope and Governing Law	Where legally permissible and subject to the U.S.A./Canada Exclusion, this policy shall apply to any <b>Claim</b> made against any <b>Insured</b> anywhere in the world. Any interpretation of this policy relating to its construction, validity or operation shall be made in accordance with the laws of New Zealand and in accordance with the English text as it appears in this policy.
Subrogation	If any payment is to be made under this policy in respect of a <b>Claim</b> , the <b>Insurer</b> shall be subrogated to all rights of recovery of the <b>Insured</b> whether or not payment has in fact been made and whether or not the <b>Insured</b> has been fully compensated for its actual loss. The <b>Insurer</b> shall be entitled to pursue and enforce such rights in the name of the <b>Insured</b> , who shall provide the <b>Insurer</b> with all reasonable assistance and co-operation in doing so, including the execution of any necessary instruments and papers. The <b>Insured</b> shall do nothing to prejudice these rights. Any amount recovered in excess of the <b>Insurer's</b> total payment shall be restored to the <b>Insured</b> less the cost to the <b>Insurer</b> of such recovery. The <b>Insurer</b> agrees not to exercise any such rights of recovery against any <b>Employee</b> unless the <b>Claim</b> is brought about or contributed to by serious or wilful misconduct of the <b>Employee</b> in the course of or arising out of the employment. In its sole discretion, the <b>Insurer</b> may, in writing, waive any of its rights set forth in this Subrogation Clause.
Validity	This policy is not binding upon the <b>Insurer</b> unless it is countersigned on the Schedule by an authorised representative of the <b>Insurer</b> or its general agent.