

# AIG Insurance New Zealand Limited

## Policy Wording

### 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.

### 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>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>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>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	<p>For any person described in (i) and (ii) below who actually attends court as a witness in connection with a <b>Claim</b> notified under and covered by this policy, <b>Defence Costs</b> will include the following rates per day for each day on which attendance in court has been required:</p> <table><tr><td>(i) For any principal, partner, or director <b>Insured</b></td><td>\$ 500</td></tr><tr><td>(ii) For any <b>Employee</b></td><td>\$ 250</td></tr></table> <p>No <b>Retention</b> shall apply to this Extension.</p>	(i) For any principal, partner, or director <b>Insured</b>	\$ 500	(ii) For any <b>Employee</b>	\$ 250
(i) For any principal, partner, or director <b>Insured</b>	\$ 500				
(ii) For any <b>Employee</b>	\$ 250				
Extended Reporting Period	<p>If the <b>Insurer</b> cancels or does not renew this policy, other than for non-payment of <b>Premium</b> or any other breach of the terms of this policy by an <b>Insured</b>, the <b>Policyholder</b> 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 <b>Claim</b> first made against the <b>Insured</b>. That extended reporting period shall not apply if this policy or its cover has been replaced.</p>				
Lost Documents	<p>With respect to a <b>Third Party's Documents</b>:</p> <ul style="list-style-type: none"><li>(i) For which an <b>Insured</b> is legally responsible, and</li><li>(ii) That, during the <b>Policy Period</b>, have been destroyed, damaged, lost, distorted, erased or mislaid solely in the performance or non-performance of <b>Professional Services</b>,</li></ul> <p><b>Damages</b> shall be extended to include costs and expenses reasonably incurred by the <b>Insured</b> in replacing or restoring such <b>Documents</b> provided that:</p> <ul style="list-style-type: none"><li>(a) such loss or damage is sustained while the <b>Documents</b> are either: (1) in transit; or (2) in the custody of the <b>Insured</b> or of any person to whom the <b>Insured</b> has entrusted them;</li><li>(b) where the lost or mislaid <b>Documents</b> have been the subject of a diligent search by or on behalf of the <b>Insured</b>;</li><li>(c) the amount of any <b>Claim</b> for such costs and expenses shall be supported by evidence of expenditure that shall be subject to approval by a competent person to be nominated by the <b>Insurer</b> with the consent of the <b>Insured</b>; and</li><li>(d) the <b>Insurer</b> shall not be liable for any <b>Claim</b> arising out of wear, tear and/or gradual deterioration, moth and vermin, or other matters beyond the <b>Insured's</b> control.</li></ul> <p>This Extension will be subject to a Sub-limit of Liability of \$100,000. A separate retention of \$1,000 instead of the <b>Retention</b> will apply to each <b>Claim</b> covered under this Extension.</p>				

## Definitions

---

<b>Bodily Injury</b>	means physical injury, sickness, disease or death; and if arising out of the foregoing, nervous shock, emotional distress, mental anguish or mental injury.
<b>Breach of Duty</b>	means any actual or alleged breach of duty, act, error, misstatement, breach of confidentiality or omission including any form of invasion of privacy, publicity, false light, public disclosure of private facts, intrusion, commercial appropriation of name or likeness, wrongful entry or eviction, trespass or eavesdropping in the performance of or failure to perform <b>Professional Services</b> .
<b>Claim</b>	means any: (i) written demand or (ii) civil or administrative proceeding, that seeks <b>Damages</b> as a result of <b>Wrongful Acts</b> .



<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>	means reasonable fees, costs and expenses incurred by or on behalf of the <b>Insured</b> in the investigation, defence, adjustment, settlement or appeal of any <b>Claim</b> . <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.
<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>	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> . <b>Employee</b> shall not mean any: (i) principal, partner or director; or (ii) temporary contract labour, self-employed person or labour-only sub-contractor.
<b>Fraud/Dishonesty</b>	means fraudulent or dishonest conduct of an <b>Employee</b> : (i) Not condoned, expressly or implicitly by; and (ii) That results in liability to; The <b>Policyholder</b> or any <b>Subsidiary</b> .
<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>	means: (1) The <b>Policyholder</b> or any <b>Subsidiary</b> ; (2) Any natural person, who is or has been a principal, partner or director of the <b>Policyholder</b> or any <b>Subsidiary</b> ; (3) Any <b>Employee</b> ; (4) 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> ; and (5) Any estates or legal representatives of any <b>Insured</b> described in (2) and (3) of this definition;  But only when providing <b>Professional Services</b> in the foregoing capacities.
<b>Insurer</b>	means the entity specified as such in the Schedule.
<b>Limit of Liability</b>	means the amount specified as such in the Schedule.
<b>Loss</b>	means <b>Damages</b> and <b>Defence Costs</b> . <b>Loss</b> shall not mean and this policy shall not cover any (1) taxes; (2) non-compensatory damages, including punitive, multiple, exemplary or liquidated damages; (3) fines or penalties; (4) the costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief; (5) compensation, benefits or overhead of, or charges or expenses by any <b>Insured</b> ; or (6) any matters which may be deemed uninsurable under the law governing this policy or the jurisdiction in which a <b>Claim</b> is brought.
<b>Misleading or Deceptive Conduct</b>	means any actual or alleged misleading or deceptive conduct at law or under the Fair Trading Act 1986 or any similar legislation.
<b>Multi-Media Services</b>	means (1) television, cable, satellite or radio broadcasting; (2) newspaper, magazine, book, music, directories, electronic, video, screen play, film script, playwright publishing including the researching, preparation, serialisation, exhibition or distribution of publishing materials; (3) advertising, graphic design, design of logos or trademarks, purchasing of advertising time and space, market research, public relations, direct mailing, design of games, competitions or special offers; and (4) printing.



<b>Over-redemption</b>	means price discounts, prizes, awards or other consideration given in excess of the total contracted or expected amount.
<b>Policy Period</b>	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.
<b>Policyholder</b>	means the entity or natural person specified as such in the Schedule.
<b>Pollutants</b>	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.
<b>Premium</b>	means the amount specified as such in the Schedule and any premium adjustment reflected in an endorsement to this policy.
<b>Professional Services</b>	means the professional services of the <b>Policyholder</b> and any <b>Subsidiary</b> as specified in the Schedule.
<b>Property Damage</b>	means damage to or loss of or destruction of tangible property or loss of use thereof.
<b>Retention</b>	means the amount specified as such in the Schedule.
<b>Retroactive Date</b>	means the date specified as such in the Schedule.
<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>	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> .
<b>Trade Secret</b>	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.
<b>Wrongful Act</b>	means any <b>Breach of Duty, Infringement, Misleading or Deceptive Conduct</b> , libel, slander, or <b>Fraud/Dishonesty</b> .



## Exclusions

---

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

Antitrust	arising out of, based upon or attributable to any actual or alleged antitrust violation, 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> ;
Computer Virus /Unauthorised Access	arising out of, based upon or attributable to any computer virus, malicious code or failure to prevent unauthorised access to or use of an electronic system or program;
Continuity Date	arising out of or in any way connected to any: <ul style="list-style-type: none"><li>(i) actual or alleged <b>Wrongful Act</b> committed before the <b>Continuity Date</b> if, on or before that date, the <b>Insured</b> knew or ought reasonably to have foreseen that such <b>Wrongful Act</b> would or could lead to a <b>Claim</b>; or</li><li>(ii) facts or circumstances of which notice was given or ought reasonably to have been given under any policy in force; or</li><li>(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>;</li></ul>
Contractual Liability/ Performance Guarantees	arising out of, based upon or attributable to any: <ul style="list-style-type: none"><li>(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;</li><li>(ii) guarantee or warranty; or</li><li>(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>;</li></ul>
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;
Government/Regulatory Actions	arising out of, based upon or attributable to any government, regulatory, licensing or commission action or investigation; unless relating solely to the performance of or failure to perform <b>Professional Services</b> for such entities;
Infrastructure	arising out of, based upon or attributable to: <ul style="list-style-type: none"><li>(i) mechanical failure;</li><li>(ii) electrical failure, including any electrical power interruption, surge, brown out or black out; or</li><li>(iii) telecommunications or satellite systems failure, unless such failure arises from a <b>Breach of Duty</b> by an <b>Insured</b>;</li></ul>
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> or <b>Misleading and Deceptive Conduct</b> ;



Internet Material	arising out of, based upon or attributable to material which is published or posted on the Internet where, prior to publishing or posting, the <b>Insured</b> has no knowledge of either the content or source of the material;
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 judge, jury or other 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 Cover</b> .
Over-redemption	arising out of, based upon or attributable to <b>Over-redemption</b> ;
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/Circumstance	(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> ;
Software Technology Infringement	arising out of, based upon or attributable to any <b>Infringement</b> of software or software technology;
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;
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.





## Claims

---

Notification of Claims	<p>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 soon 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.</p>
Related Claims	<p>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 noticed <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 noticed <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.</p>
Continuity	<p>Notwithstanding the <b>Continuity</b> and <b>Prior Claims/Circumstances</b> Exclusions, cover is provided under this Policy 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:</p> <ul 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></ul>
Circumstances	<p>During the <b>Policy Period</b>, an <b>Insured</b> may become aware of circumstances which may reasonably be expected to give rise to a <b>Claim</b>. In such event, an <b>Insured</b> may report the circumstances in writing to the <b>Insurer</b>. If in doing so, the <b>Insured</b> provides: (i) the reasons for anticipating the <b>Claim</b>, and (ii) full particulars as to dates, acts and persons involved; then any <b>Claim</b> which is subsequently made against an <b>Insured</b> and reported in writing to the <b>Insurer</b> alleging, arising out of, based upon or attributable to such circumstances, or alleging any <b>Wrongful Act</b> which is the same as or related to any <b>Wrongful Act</b> alleged or described in the previously notified circumstances, shall be considered first made against the <b>Insured</b> and reported to the <b>Insurer</b> at the time the facts or circumstances were first reported, if accepted by the <b>Insurer</b>.</p>
Defence/Settlement	<p>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</p>



**Claim** to make a payment to the **Insured** of the unpaid balance of the **Limit of Liability**, and upon making such payment, all obligations of the **Insurer** to the **Insured** 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	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> .
Cooperation	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.
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> will 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>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</p>





fair and equitable allocation finally agreed or determined shall be applied retrospectively to any **Defence Costs** incurred prior to agreement or determination.

#### Fraudulent Claims

If any **Insured** shall give any notice or claim cover for any **Loss** under this policy knowing such notice or claim to be false or fraudulent as regards amounts or otherwise, such **Loss** shall be excluded from cover under the policy, and the **Insurer** shall have the right to cancel the policy.

### 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: (1) negotiating terms and conditions of, binding and amending cover; (2) exercising rights of **Insureds**; (3) notices; (4) **Premiums**; (5) endorsements; (6) dispute resolution; and (7) 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 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. The Lost Documents Extension Sub-limit of Liability shall be part of and not in addition to the Limit of Liability.**

#### 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**



Other Insurance/ Indemnification	<p>alleging the same <b>Wrongful Act</b>. <b>Insurer</b> may, in its sole and absolute discretion, advance all or part of the <b>Retention</b>, and, in that event, such amounts shall be reimbursed to the <b>Insurer</b> by the <b>Insureds</b> forthwith.</p> <p>Unless otherwise required by law, Cover under this policy is provided only as excess over any self-insurance or other valid and applicable insurance, unless such other insurance is written only as specific excess insurance over the <b>Limit of Liability</b>. If such other insurance is provided by the <b>Insurer</b> or any member company or affiliate of AIG then the maximum amount payable by AIG under all such policies shall not exceed the Limit of Liability of that policy referred to above which has the highest applicable Limit of Liability. Nothing contained herein shall be construed to increase the <b>Limit of Liability</b> of this policy. To the extent that another insurance policy imposes upon an insurer a duty to defend a <b>Claim</b>, <b>Defence Costs</b> arising out of such <b>Claim</b> shall not be covered under this policy.</p>
Non-Compliance	<p>The amount of indemnity under this Policy shall be reduced where the <b>Insured's</b> breach of, or non-compliance with, the terms and conditions of this Policy prejudices the settlement or handling of a <b>Loss</b> or <b>Claim</b>, to such sum which in the opinion of the <b>Insurer</b> would have been payable by them without such prejudice</p>

## General Provisions

---

Assignment	<p><b>This policy and any rights under or in respect of it cannot be assigned without the prior written consent of the Insurer.</b></p>
Cancellation	
By Policyholder:	<p>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.</p>
By Insurer:	<p>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 <i>pro-rata</i> 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.</p>
GST	<p>All amounts indicated in this Policy and the attached Schedule are exclusive of Goods and Services Tax where payable by law.</p>
Insolvency	<p>Insolvency, receivership or bankruptcy of any <b>Insured</b> shall not relieve the <b>Insurer</b> of any of its obligations hereunder.</p>
Jurisdiction	<p>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.</p>
Plurals, Headings and Titles	<p>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.</p>
Scope and Governing	<p>Where legally permissible, this policy shall apply to any <b>Claim</b> made against</p>



Law	any <b>Insured</b> in New Zealand or Australia only. 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 the dishonest, fraudulent, intentional criminal or malicious act or omission of the <b>Employee</b> . 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.