

Management Liability Suite Policy

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Thank you for choosing Ando Management Liability Suite Insurance

Find out what your insurance does and doesn't cover

This document explains how the insurance works, your responsibilities, and how to make a claim. Please read it carefully, as it's really important you understand it. While there's a lot of information, if you take time to read it now, you'll know what the insurance covers. Just as important – you'll also know what it doesn't cover.

This Management Liability Suite Insurance policy document sets out the policy's benefits, what's not covered, and the main terms and conditions of the insurance agreement.

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Looking for something specific? Search key words by pressing **Ctrl + F (PC)** or **Command + F (Mac)** on your computer.

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Important information about this policy

Our promise to you

In return for **you** having paid or promised to pay the required premium **we** agree to insure **you** as set out in this **policy**.

Your policy

Your policy with **us** consists of:

- any information provided to **us** by **you** or on **your** behalf including **your** proposal,
- this policy document,
- any endorsements or clauses that **we** apply to **your** policy, and
- the **schedule**.

Duty of disclosure

When **you** apply for insurance, **you** have a legal duty of disclosure. This means **you** or anyone applying on **your** behalf must tell **us** everything **you** know (or could be reasonably expected to know) that might affect **our** decision when deciding:

- to accept **your** insurance, and/or
- the cost or terms of the insurance, including the **excess**.

In particular, **you** should tell **us** anything which may increase the chance of a claim under this **policy**, or the amount of a claim under this **policy**.

You also have this duty every time **your** insurance renews and when **you** make any changes to it. If **you** or anyone on **your** behalf breaches this duty of disclosure, **we** may treat this **policy** as being of no effect and to have never existed.

Please ask **us** if **you** are not sure whether **you** need to tell **us** about something.

Changes to facts or circumstances during the policy

You must tell **us** of any material change to any of the facts or circumstances existing at the beginning of the **period of insurance**.

If **you** do notify **us** of a change, **we** may alter the premium, the terms of **your** insurance or cancel the insurance with effect from the date on which the change first occurred.

Changing your mind

If **you** change **your** mind **you** can cancel **your policy** within 30 days of it starting provided **you** have not made a claim.

We will then cancel the **policy** from its commencement and refund in full any premium **you** have paid.

Reading this policy

There are words in bold that have specific meaning(s) and are explained in the 'Definitions' section at the end of this **policy** document.

The headings that **we** have used in this **policy** document are intended to help **you** find **your** way through it more easily. They are not to be used for interpreting the contents of the **policy** document.

Privacy

You agree to Ando Insurance Group Limited collecting, using and disclosing **your** personal information as set out in **our** Privacy Policy. Where **you** provide **us** with personal information about any other person for insurance related purposes, **you** confirm that **you** have the authority of those persons to disclose such information and to authorise Ando to collect, hold, use and disclose the information in accordance with **our** Privacy Policy.

For information about Ando's Privacy Policy, please see www.ando.co.nz/privacy-policy.

Insurance Claims Register

You consent to any personal information **we** hold in connection with any claim that **you** make being transferred to the Insurance Claims Register, a register operated by Insurance Claims Register Limited for use by participant insurers. This information may be accessed by participant insurers for the purpose of managing claims.

For more information, please see www.ando.co.nz/privacy-policy and www.icnz.org.nz/industry/claims-register.

Fair Insurance Code

We are committed to complying with the Fair Insurance Code as published by the Insurance Council of New Zealand. This means **we'll**:

- provide insurance contracts which are understandable and show the legal rights and obligations of both **us** and **you**;
- explain the meaning of legal or technical words or phrases;
- explain the special meanings of words or phrases as they apply in the **policy**;
- manage claims quickly, fairly and transparently;
- clearly explain the reason(s) why a claim has been declined;
- provide **you** with a written summary of **our** complaints procedure as soon as disputes arise and advise **you** how to lodge a complaint and tell **you** about the Insurance and Financial Services Ombudsman Scheme.

Concern or complaint

We aim to provide a great standard of service in everything **we** do.

If **you** have a concern or complaint, **we** want to hear from **you** so that **we** have the opportunity to make it right. **You** can contact **us** on the details below or see www.ando.co.nz/complaints for information on **our** complaints and dispute resolution process.

p 09 377 1432

e complaints@ando.co.nz

Introduction to modules

1. In consideration of the payment of the premium to **us** and in reliance on the written proposal and any other underwriting information provided, which will be deemed to be incorporated into and to be the basis of this **policy**, **we** will insure **you** for each **module** specified in the **schedule**, subject to the terms of each **module** and this **policy**.
2. In any **module**:
 - Coverage Clauses apply only to the **module** in which they appear and are subject to the terms of that **module**.
 - Additional Coverage Clauses are included automatically in the **module** in which they appear, unless otherwise stated in the **schedule**, and apply only to the **module** in which they appear. Each Additional Coverage Clause is subject to the terms of the **module** in which it appears including the exclusions.
 - In relation to the Additional Coverage Clauses, the **sublimit** or **excess** stated in the **schedule** will apply. The **sublimits** shown in any Additional Coverage Clause are included in, not in addition to, and may be less than, the **limit of indemnity** (or, in the case of cover under the Defence Costs Module, the **defence costs limit of indemnity**).
 - Module Exclusions apply only to the **module** in which they appear. The General Exclusions apply to all **modules** unless otherwise specified.
 - The General Conditions apply to all **modules** unless otherwise specified.
 - Certain words have a meaning which is specific to this **policy**. These words appear in bold, and their meaning is listed in the 'Definitions' section of this **policy**. The Definitions includes defined words which will apply to all **modules** and parts of the **policy**, unless otherwise specified within the definition. Words describing persons include companies and other legal entities. The singular includes reference to the plural and vice versa, and reference to any gender will include all other genders.
3. **Defence costs** are not payable under any **module** other than the Defence Costs Module.
4. Where cover for any claim under this **policy** is available under more than one **module** (not including the Defence Costs or Crisis Support Modules):
 - Cover will be provided by **us** under only one **module** of this **policy**; and
 - **You** will be entitled to elect which **module** responds to the claim under the **policy** provided such election is made within a reasonable time. **We** may give notice to **you** requiring **you** to make an election within 10 working days and if **you** do not make an election within that period **we** will elect which **module** responds to the claim.
5. Where a claim under any **module** triggers cover, **defence costs** will only be paid if and to the extent that the Defence Costs Module responds to the claim.
6. Where a claim under a **module** triggers cover under the Crisis Support Module, **crisis loss** will only be paid under the Crisis Support Module.

Modules (Section 1 – 3)

- General Liability
- Statutory Liability
- Employment Disputes
- Directors and Officers
- Employer's Liability
- Internal Crime
- Tax Audit Investigation
- Crisis Support
- Consequential Loss
- Defence Costs

General Liability Module

Section 1. Coverage

1.1 Public and product liability

We will insure **you** for amounts that **you** become legally liable to pay as compensation for **personal injury** or **property damage** caused by an **occurrence**.

1.2 Limit of indemnity

a) **Our** maximum liability:

- (i) for any claim under this **module**, or any series of claims, arising out of one **occurrence**, or,
- (ii) in the aggregate for an **occurrence** involving **your products**;

excluding **defence costs**, will not exceed the **limit of indemnity** or **sublimit** in any applicable Additional Coverage Clause.

All **personal injury** or **property damage** caused by continuous or repeated exposure to the same condition will be one **occurrence**.

b) A payment under any Additional Coverage Clause will be part of and not in addition to the **limit of indemnity**.

1.3 Excess

- a) **You** must pay the **excess**, for every claim under this **module**, or series of claims, arising out of one **occurrence**, however no excess will apply for **defence costs**.
- b) Where a claim triggers Coverage Clause 1.1 (Public and product liability) and any Additional Coverage Clause or endorsement to the **module**, the highest of the specified **excesses** will apply.

Section 2. Additional Coverage Clauses

Additional Coverage Clauses are included automatically in the **module** in which they appear, unless otherwise stated in the **schedule**, and apply only to the **module** in which they appear. Each Additional Coverage Clause is subject to the terms of the **module** in which it appears including the exclusions.

2.1 Advertising liability

We will pay amounts that **you** become legally liable to pay as compensation for **advertising liability** during the **period of insurance** within the **policy territory** provided that **we** will not insure **you** for any **advertising liability** directly or indirectly arising out of:

- a) statements made at **your** direction with the knowledge that such statements are false; or
- b) any breach of contract, provided that this exclusion will not apply to claims for unauthorised appropriation of advertising ideas; or
- c) any incorrect description of **your products** or services; or
- d) any mistake in the advertised price of **your products** or services; or
- e) the failure of **your products** or services to conform with advertised performance, quality, fitness or durability; or
- f) liability incurred by **you** if **your business** is advertising, broadcasting, publishing or telecasting.

You will pay the **excess** for every claim under this Additional Coverage Clause. The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Module Exclusion 3.6 (Defamation) does not apply to this Additional Coverage Clause.

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2.2 Business advice or service

We will pay amounts that **you** become legally liable to pay as compensation for an **occurrence** arising out of an error or omission in:

- a) advice or services in relation to **your products** without charge; or
- b) product training and/or demonstrations given by **you** without charge; or
- c) emergency medical advice or emergency medical treatment provided by **you** on **your** premises.

You will pay the **excess** for every claim under this Additional Coverage Clause. The maximum amount payable by **us** for any one **occurrence** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Module Exclusion 3.17 (Professional liability) does not apply to this Additional Coverage Clause.

2.3 Car park liability

We will pay amounts that **you** become legally liable to pay as compensation for **personal injury** or **property damage** caused by an **occurrence** relating to the operation or ownership of a car park including damage to **vehicles** caused by **you** parking a vehicle (other than to **vehicles** owned or used by or on behalf of **you**) in the car park.

You will pay the **excess** for every claim under this Additional Coverage Clause. The maximum amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Module Exclusion 3.21 (Vehicles) does not apply to this Additional Coverage Clause.

2.4 Care, custody or control

We will pay amounts that **you** become legally liable to pay as compensation for **property damage** caused by an **occurrence** where the liability arises while the property is in **your** care, custody or control (including employees' property), provided:

- a) real property is excluded; and
- b) property owned, hired or leased by **you** is excluded.

You will pay the **excess** for every claim under this Additional Coverage Clause. The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Module Exclusion 3.19(b) (Property owned or in your care, custody or control) does not apply to this Additional Coverage Clause.

2.5 Defective work

We will pay amounts that **you** become legally liable to pay:

- a) as compensation for **property damage** to property owned by a third party and that **you** are or have been working on caused by an **occurrence**; or
- b) for the cost of repairing, correcting, removing, or replacing the whole or a part of **your product** which is faulty, defective, harmful or has failed to perform the function for which it was sold, supplied, manufactured or installed, where **your product** has caused accidental physical loss or destruction to other tangible property arising from an **occurrence**;

In relation to this Additional Coverage Clause 2.5(b) only Definition 6.87 (Your product) is deleted, and **your product** instead means:

Any property, good, product, or other thing, including labels, instructions for use, advice and property which has been manufactured, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by **you**; after it has ceased to be:

- (i) in **your** possession; or
- (ii) under **your** control; or

- (iii) owned by you (including but not limited to any ownership by way of any retention of title agreement).

Where work is staged or includes separate areas of work or parts **your product** will not cease to be in **your** possession or under **your** control until final completion and delivery of all stages, areas or parts.

Provided that **we** will not insure **you** for liability arising from or in connection with:

- (i) any defect in any design, plan, process or specification; or
- (ii) the **service or repair** of any **vehicle, aircraft or watercraft**.

You will pay the **excess** for every claim under this Additional Coverage Clause. The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Module Exclusions 3.7(c) (Defective materials, design and work), 3.18 (Property damage to products) and 3.19(b) (Property owned or in your care, custody or control) do not apply to this Additional Coverage Clause.

2.6 Goods on hook

We will pay amounts that **you** become legally liable to pay as compensation for **property damage** to property while being lifted or lowered or moved or carried by any crane(s) owned, hired, or otherwise **your** responsibility caused by an **occurrence**, provided:

- a) **you** are not otherwise insured for **your** liability under any other **policy** of insurance; or
- b) **you** are not insured for **property damage** in connection with dual lifts (where two cranes are used for any one lift) or multi-lifts; or
- c) **you** are not insured for **property damage** to property being carried under a Contract of Carriage in accordance with Part 5, Subpart 1 of the Contract and Commercial Law Act 2017.

You will pay the **excess** for every claim under this Additional Coverage Clause. The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Module Exclusions 3.7 (Defective materials, design and work) and 3.19(b) (Property owned or in your care, custody or control) do not apply to this Additional Coverage Clause.

2.7 Hot work

We will pay amounts that **you** become legally liable to pay as compensation for **personal injury** or **property damage** that arises from **hot work** caused by an **occurrence**, provided:

- a) the **hot work** complies with the New Zealand Standard 4781:1973 Code of Practice for Safety in Welding and Cutting; and
- b) the area of the **hot work** is cleared of combustible material for a safe distance from or beneath the place where such **hot work** is being carried out. A safe distance will be not less than ten metres from where **hot work** operations are being carried out. Where these precautions are impracticable such material will be covered with fireproof blankets or similar protective equipment. Combustible parts of premises will be similarly protected; and
- c) hose reels or fire extinguishers of a type and capacity suitable for the combustible material and the premises will be kept adjacent to the area of work and available for immediate use; and
- d) equipment will be lit or switched on for as short a time as possible before use and extinguished immediately after use; and
- e) lighted or heated **hot work** equipment will not be left unattended; and
- f) a thorough examination for any signs of combustion will be made within or below the area in which work has been undertaken immediately then thirty (30) minutes after the termination of each period of **hot work**; and

- g) before applying heat to metal built into or projecting through walls, floors or ceilings an examination will be made to ensure that the other end of the metal is not in hazardous proximity to combustible material; and
- h) **you** comply with the conditions of any specific **hot work** permit in addition to complying with precautions (a)–(g) above.

You will pay the **excess** for every claim under this Additional Coverage Clause. The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Module Exclusion 3.10 (Hot work) does not apply to this Additional Coverage Clause.

2.8 Innkeeper's liability

We will pay amounts that **you** become legally liable to pay under the Innkeepers Act 1962.

You will pay the **excess** for every claim under this Additional Coverage Clause. The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Module Exclusion 3.19(b) (Property owned or in your care, custody or control) does not apply to this Additional Coverage Clause.

2.9 Landlord's liability

We will pay amounts that **you** become legally liable to pay as compensation for **personal injury** or **property damage** arising from **your** legal ownership, but not physical occupation, of any premises caused by an **occurrence**.

You will pay the **excess** for every claim under this Additional Coverage Clause. The maximum amount payable by **us** for any one **occurrence** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Module Exclusion 3.19(a) (Property owned or in your care, custody or control) does not apply to this Additional Coverage Clause.

2.10 Lost or stolen keys

We will pay the costs reasonably and necessarily incurred in altering or replacing locks, and their keys or combinations, if the keys or combinations are lost, stolen or believed on reasonable grounds to have been duplicated without proper authority, during the **period of insurance** within the **policy territory** provided:

- a) the keys or combinations are in **your** possession in connection with **your business**; and
- b) **you** do not own, hire, lease or rent the property to which the keys or locks relate.

You will pay the **excess** for every claim under this Additional Coverage Clause. The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Module Exclusion 3.19(b) (Property owned or in your care, custody or control) does not apply to this Additional Coverage Clause.

2.11 Motorised plant

We will pay amounts that **you** become legally liable to pay as compensation for **personal injury** or **property damage** caused by an **occurrence** and:

- a) arises from loading or unloading any **vehicle** used by or on **your** behalf but not in **your** care, custody or control; or
- b) arises from any **vehicle** while it is being operated for its specialised function or purpose, and not being driven on a public road as a **vehicle**; or

- c) relating to any bridge, viaduct, weighbridge, road or anything beneath the **vehicle** caused by vibration or by the weight of any **vehicle** and/or its load provided that any designated weight restrictions were not exceeded, but only while the **vehicle** is being operated for its specialised function or purpose and not being driven on a public road as a **vehicle**.

You will pay the **excess** for every claim under this Additional Coverage Clause. The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Module Exclusion 3.21 (Vehicles) does not apply to this Additional Coverage Clause.

2.12 Pollution – sudden and accidental

We will pay amounts that **you** become legally liable to pay as compensation for **personal injury** or **property damage** caused by an **occurrence**, anywhere in the world except for **North American countries** arising from the discharge, dispersal, release or escape of **pollutants** into or on land, the atmosphere, or any watercourse or body of water; provided:

- a) the discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended from **your** standpoint; and
- b) takes place in its entirety at a specific time and place.

You will pay the **excess** for every claim under this Additional Coverage Clause. The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Module Exclusion 3.16 (Pollution) does not apply to this Additional Coverage Clause.

2.13 Product withdrawal costs

We will pay the reasonable recall costs incurred by **you** or a **third party** where it is necessary for **you** to withdraw or recall **your products** during the **period of insurance** within the **policy territory** provided that the defect(s) in **your product** which causes the withdrawal or recall has already given rise to a claim covered by this **module**.

You will pay the **excess** for every claim under this Additional Coverage Clause. The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Module Exclusion 3.24 (Withdrawal or repair of products) does not apply to this Additional Coverage Clause.

2.14 Punitive or exemplary damages

We will pay punitive or exemplary damages **you** are ordered to pay by a New Zealand Court for **personal injury** provided **you** are not insured for:

- a) any punitive or exemplary damages connected with a dishonest, fraudulent or deliberate act or omission by **you**;
- b) any liability arising from trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse.

You will pay the **excess** for every claim under this Additional Coverage Clause. The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Module Exclusion 3.9 (Fines and penalties) does not apply to this Additional Coverage Clause.

2.15 Service or repair – equipment or machinery

We will pay amounts that **you** become legally liable to pay as compensation for **personal injury** or **property damage** caused by an **occurrence** to equipment or machinery (not being a **vehicle**, **aircraft** or **watercraft** or part thereof) arising from **service or repair** of that equipment or machinery, provided:

- a) **you** have taken all reasonable steps to avoid the happening of any **occurrence** and, in particular, ensure:
 - (i) **employees** are properly trained and supervised and comply with all statutory obligations; and
 - (ii) there are proper safety systems, equipment, practices and procedures in place, and that **employees** use and comply with them at all times; and
 - (iii) all plant is kept properly maintained; and
- b) the equipment or machinery is not owned, hired, leased or rented by **you**, and is or was in **your** care, custody or control solely for the purpose of the **service or repair**; and
- c) the cost of rectifying, repairing or replacing the actual part or parts being **serviced or repaired** is excluded but resultant **property damage** arising from **service or repair** is not excluded.

You will pay the **excess** for every claim under this Additional Coverage Clause. The maximum amount payable by **us** for any one **occurrence** under this Additional Coverage Clause is the **sublimit** in respect of any claim or series of claims arising out of one **occurrence**, or in the aggregate during the **period of insurance**.

Module Exclusions 3.7 (Defective materials, design and work), 3.18 (Property damage to products) and 3.19(b) (Property owned or in your care, custody or control) do not apply to this Additional Coverage Clause.

2.16 Service or repair – vehicle or watercraft

We will pay amounts that **you** become legally liable to pay as compensation for **personal injury** or **property damage** caused by an **occurrence** arising from **service or repair** of any:

- a) **Vehicle**; or
- b) **watercraft** not exceeding ten metres in length.

Provided the **vehicle** or **watercraft** is not owned, hired, leased or rented by **you**, and is or was in **your** care, custody or control solely for the purpose of the **service or repair**.

You will pay the **excess** for every claim under this Additional Coverage Clause. The maximum amount payable by **us** for any one **occurrence** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit** in respect of any claim or series of claims arising out of one **occurrence**, or in the aggregate during the **period of insurance**.

Module Exclusions 3.7 (Defective materials, design and work), 3.18 (Property damage to products), 3.19(b) (Property owned or in your care, custody or control), 3.21 (Vehicles) and 3.23 (Watercraft) do not apply to this Additional Coverage Clause.

2.17 Tenant's liability

We will pay amounts that **you** become legally liable to pay as compensation for **personal injury** or **property damage** to premises (including landlord's fixtures and fittings) leased, rented or hired by **you** for a fee but not owned by **you** caused by an **occurrence**.

You will pay the **excess** for every claim under this Additional Coverage Clause. The maximum amount payable by **us** for any one **occurrence** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Module Exclusion 3.19(b) (Property owned or in your care, custody or control) does not apply to this Additional Coverage Clause.

2.18 Underground services

We will pay amounts that **you** become legally liable to pay as compensation for **personal injury** or **property damage** caused by an **occurrence** in New Zealand to any existing underground cables, existing underground pipes, or other existing underground facilities, provided:

- a) prior to the commencement of any work **you** enquired of the relevant authorities and owners to verify the existence and the location of the cables, pipes or other underground facilities; and
- b) **you** took all reasonable precautions to prevent **personal injury** or **property damage**.

You will pay the **excess** for every claim under this Additional Coverage Clause. The maximum amount payable by **us** for any one **occurrence** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Module Exclusion 3.20 (Underground services) does not apply to this Additional Coverage Clause.

2.19 Unmanned aerial vehicles

We will pay amounts **you** become legally liable to pay as compensation for **personal injury** or **property damage** caused by an **occurrence** arising from **your** use of any drones, Remotely Piloted Aircraft Systems (RPAS), Unmanned Aerial Systems (UAS), Unmanned Aerial Vehicles (UAV) or model aircraft, provided:

- a) they are not used to carry cargo of any nature other than camera equipment; and
- b) weigh less than a gross weight of 25kg; and
- c) the RPAS, UAS, UAV or model aircraft is not flown or operated where flying is prohibited by any government or local authority law, bylaw, rule or regulation, or in contravention to any government or local authority regulation including but not limited to the Civil Aviation Authority rules or regulations.

You will pay the **excess** for every claim under this Additional Coverage Clause. The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

In relation to this Additional Coverage Clause only Definition 6.58 (Personal injury) is deleted, and personal injury instead means:

Physical bodily injury caused solely and directly by a violent sudden accident that happens during the **period of insurance** within the **policy territory** and caused by an **occurrence**.

Module Exclusion 3.2 (Aircraft) does not apply to this Additional Coverage Clause.

2.20 Vibration or removal of support

We will pay amounts **you** become legally liable to pay as compensation for **personal injury** or **property damage** caused by an **occurrence** arising from vibration, or removing, weakening or interfering with the support of land, or buildings or structures, provided that the land or buildings are not owned or occupied by **you**.

You will pay the **excess** for every claim under this Additional Coverage Clause. The maximum amount payable by **us** for any one **occurrence** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Module Exclusion 3.22 (Vibration or removal of support) does not apply to this Additional Coverage Clause.

2.21 Warrant of fitness

We will pay amounts that **you** become legally liable to pay as compensation for **personal injury** or **property damage** caused by an **occurrence** in connection with:

- a) the inspection and certification of **vehicles** for the issuing of a warrant of fitness or other inspection certificate as may be required by law; or
- b) 'pre-purchase' or **vehicle** appraisal services;

provided:

- (i) the coverage under this Additional Coverage Clause does not extend to include the valuation of any **vehicle** and/or accessory of any type whatsoever; and
- (ii) **you** are licensed and qualified to issue a warrant of fitness or other inspection certificates as may be required by law.

You will pay the **excess** for every claim under this Additional Coverage Clause. The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Module Exclusion 3.17 (Professional liability) does not apply to this Additional Coverage Clause.

2.22 Water damage to buildings

Where Module Exclusion 3.4 (Building defects – water damage to buildings) applies to any claim **we** will nonetheless indemnify **you** in respect of any amounts **you** become legally liable to pay as compensation for **property damage** caused by an **occurrence** provided;

- a) **you** will pay an excess of \$2,500 for every claim under this Additional Coverage Clause; and
- b) the maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is \$25,000 inclusive of **defence costs**.

For the purposes of this Additional Coverage Clause only Module Exclusion 3.7 (Defective materials, design and work) is deleted and replaced as follows:

Liability for:

- a) defective materials;
- b) any defect in any design, plan or specification;
- c) defective work; or
- d) improving or correcting any work undertaken by **you** or on **your** behalf.

This exclusion does not apply to resultant **property damage** arising from defective work under (c) above.

For the avoidance of doubt all other provisions of the **policy** apply to this Additional Coverage Clause.

Section 2. Costs Inclusive Additional Coverage Clause

2.23 Visits to North American countries

We will pay amounts that **you** become legally liable to pay as compensation for **personal injury** or **property damage** that happens during the **period of insurance** in the **North American countries** caused by an **occurrence** arising solely out of the actions of non-resident directors, executives and salespersons temporarily visiting the **North American countries** in the course of **your business**, provided:

- a) **you** have no premises, branch or subsidiary operation in the **North American countries**;
- b) any work performed in, on, or in connection with the manufacture, assembly, repair, servicing, maintenance, amendment, alteration or enhancement to any of **your products** is excluded;
- c) the ownership, possession, control, or maintenance or use of any **vehicle** or **watercraft** is excluded.

You will pay the **excess** for every claim under this Costs Inclusive Additional Coverage Clause.

Where a claim is covered under this Costs Inclusive Additional Coverage Clause, **we** will pay **defence costs** relating directly to the investigation, defence, handling, settlement, compromise or appeal of such claim provided that:

- the maximum aggregate amount payable by **us** under this Costs Inclusive Additional Coverage Clause inclusive of **defence costs** during any one **period of insurance** is the **limit of indemnity**; and
- upon payment by **us** of the **limit of indemnity** in respect of any judgment, settlement or claim, **our** liability for **defence costs** will cease.

The Defence Costs Module and Module Exclusions 3.12 (North American countries) and 3.13 (North American exports) do not apply to this Additional Coverage Clause.

Section 3. Module Exclusions

The General Exclusions apply to exclude cover under this **module**. **We** will also not insure **you** for any claim under this **module** in connection with:

3.1 Aesthetic defects

Any defect in aesthetics, colour, style or appearance.

This exclusion does not apply to resultant **property damage** arising from any defect in aesthetics, colour, style or appearance.

3.2 Aircraft

Your ownership, possession, control, operation, use, maintenance, **service or repair**, manufacture, sale, supply, loading or unloading of any **aircraft** or hovercraft.

3.3 Aircraft products

Any of **your products** which, with **your** knowledge were, or were intended to be, incorporated into any **aircraft**.

3.4 Building defects – water damage to buildings

- a) a building or structure:
 - (i) affected by moisture or water build-up; or
 - (ii) subject to the penetration of external moisture or water; or
 - (iii) subject to the action or effects of bacteria, fungi, gradual deterioration, micro-organisms, mildew, mould, protozoa, rot decay, or any similar or like forms; or

- b) the failure of any building or structure to comply with, or perform to, the requirements of the New Zealand Building Code contained in the First Schedule of the Building Regulations 1992 or any applicable standard (or amended or substituted regulation or standard) in relation to leaks, water penetration, weatherproofing, moisture or any effective water exit or control system.

This exclusion does not apply to any claim under the **policy**:

- (i) in relation to a leak in a building's internal pipes, internal water systems or internal water containment or storage systems;
- (ii) for **property damage**, caused by an **occurrence**, where the **property damage** and the **occurrence** take place in their entirety at a specified time and place while **you** are carrying out work on the building or structure.

3.5 Contractual liability

Liability assumed by **you** under any contract or agreement except to the extent that **you** would have been liable even if there had been no contract in existence. However, this exclusion will not apply to liability pursuant to any:

- a) lease or hire of property; or
- b) representation or warranty of the fitness or quality of **your products**, or a representation or warranty that work performed by or on behalf of **you** will be done in a workmanlike manner; or
- c) contracts noted in the **schedule**.

3.6 Defamation

Liability for defamation.

3.7 Defective materials, design and work

Liability for:

- a) defective materials;
- b) any defect in any design, plan or specification;
- c) defective work; or
- d) improving or correcting any work undertaken by **you** or on **your** behalf.

This exclusion does not apply to resultant **property damage** arising from defective materials, design or work.

3.8 Expected or intended

Personal injury or **property damage** expected or intended from **your** perspective.

This exclusion does not apply to:

- a) **your** liability for compensation as the result of an act committed by **your employee** which results in **personal injury** or **property damage** expected or intended from the standpoint of **your employee**, provided such act was not committed at **your** direction or with **your** knowledge (subject to General Conditions Clause 5.31(a) Severability); or
- b) **personal injury** or **property damage** resulting from the use of reasonable force to protect persons or property.

3.9 Fines and penalties

Liability for any fines, penalty, performance warranty or liquidated damages, or punitive or exemplary damages.

3.10 Hot work

Liability arising out of **hot work**.

3.11 Loss of use

Loss of use of tangible property, which has not been physically damaged or destroyed, where that loss of use is caused by:

- a) a delay in or lack of performance, or inadequacy of performance, by **you** or on behalf of **you** under any contract or agreement; or
- b) the failure of **your products** to meet the level of performance, quality, fitness or durability that has been warranted or represented expressly or impliedly by **you**.

This exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of **your products** after **your products** have been put to use by any person or entity other than **you**.

3.12 North American countries

- a) Liability arising in **North American countries**; or
- b) Proceedings issued in **North American countries**, including any liability from or based on a settlement or arbitration in, or a judgment or order of a court in the **North American countries**.

3.13 North American exports

Liability arising from any of **your products** knowingly exported by **you** (or exported by **your** agents or distributors with **your** knowledge) to the **North American countries**, including any liability arising from or based on a settlement or arbitration in, or a judgment or order of a court in the **North American countries**.

3.14 Offshore gas or oil platforms

Liability arising from work performed on or around any offshore gas or oil platform.

3.15 Personal injury to employees

- a) **Personal injury** arising directly or indirectly out of or in the course of employment with **you**; or
- b) An obligation on **you** under any accident or workers compensation legislation or any industrial award, employment contract, agreement or determination.

3.16 Pollution

Liability:

- a) directly or indirectly caused by **pollutants**, seepage, pollution or contamination;
- b) for the cost of removing, nullifying or cleaning up **pollutants**, seeping, polluting or contaminating substances.

3.17 Professional liability

Any error or omission in advice or service of a professional nature.

3.18 Property damage to products

Property damage to **your products**.

This exclusion does not apply to resultant **property damage** arising from **your products**.

3.19 Property owned or in your care, custody or control

Property damage to any property:

- a) owned by **you**; or
- b) in **your** care, custody or control.

This exclusion does not apply to resultant **property damage** to property that is not owned by **you**, or is not in **your** care, custody or control.

3.20 Underground services

Liability arising from or in relation to any underground cables, underground pipes or other underground facilities.

3.21 Vehicles

Liability arising out of **your** ownership, possession, control, operation, use, maintenance, **service or repair** by or on behalf of **you** of any **vehicle** which is:

- a) required by legislation to be registered and/or licensed and/or insured; or
- b) being operated while in an unsafe condition; or
- c) being operated by any person who has consumed any liquor or taken any substance or drug; or
- d) insured, or in respect of which **you** are insured under any other policy, even if the other insurance is not collectable because of a breach of Condition or applicable Exclusion.

3.22 Vibration or removal of support

Liability arising from or in relation to vibration, or the removing, weakening or interfering with the support of land, or buildings or structures or anything contained on that land, building or structure.

3.23 Watercraft

Your:

- a) ownership, possession, control, operation, use, manufacture, sale, supply, loading or unloading of any **watercraft** exceeding 10 metres in length; or
- b) maintenance, **service or repair**, of any **watercraft**.

3.24 Withdrawal or repair of products

The recall, including making any refund on the price paid, repair, withdrawal, inspection, removal, altering, treating, modification, replacement or loss of use of **your products** or any property of which such products form a part, or of work undertaken by or for **you**.

Statutory Liability Module

Section 1. Coverage

1.1 Your liability

We will pay on **your** behalf any:

- a) **fine** under any **Act of Parliament**; and
- b) **order for reparation**; and
- c) **statutory damages**;

arising out of a **valid claim**.

1.2 Limit of indemnity

- a) All **claims** arising out of a series of related **events** arising from one source or cause will be one **claim**.
- b) **Our** maximum liability for all amounts paid under this **module** excluding **defence costs**:
 - (i) for any one **claim**; or
 - (ii) in the aggregate during any one **period of insurance** for all **claims**;will not exceed the **limit of indemnity**.
- c) A payment under any Additional Coverage Clause will be part of and not in addition to the **limit of indemnity**.

1.3 Excess

- a) **You** must pay the **excess** for every **claim**, including where a **claim** under this **module** triggers **defence costs** under the Defence Costs Module.
- b) Where a **claim** arises from separate **events**, then **you** will pay an **excess** for each **event**, except where the **claim** arises from a series of related **events** arising from one source or cause, in which case only one **excess** will apply.

Section 2. Additional Coverage Clauses

Additional Coverage Clauses are included automatically in the **module** in which they appear, unless otherwise stated in the **schedule**, and apply only to the **module** in which they appear. Each Additional Coverage Clause is subject to the terms of the **module** in which it appears including the exclusions.

2.1 Defence costs if acquitted

We will reimburse **your** reasonable **defence costs** where it is alleged that **you** have acted knowingly, wilfully or intentionally and **you** are subsequently **acquitted** of the charge to which the allegation relates.

2.2 Enforceable undertakings

We will pay amounts which **you** are 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 **you** were convicted; and
- b) the maximum amount **we** will pay under this Additional Coverage Clause (excluding **defence costs**) is no greater than the amount **we** would expect to pay as an **order for reparation** had **you** been convicted; and

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- c) the maximum amount of **defence costs we** will pay under this Additional Coverage Clause or the Defence Costs Module is \$25,000.
- d) the maximum aggregate amount payable by us under this Additional Coverage Clause during any one **period of insurance** shall be the **sublimit**. A payment under this Additional Coverage Clause will be part of and not in addition to the **limit of indemnity**.

Provided **you** are not insured under this Additional Coverage Clause for:

- (i) any amounts payable in respect of an enforceable undertaking or agreement **you** incur or agree to without **our** 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 **your** failure to comply with or contravention of any of the terms of the enforceable undertaking.

Module Exclusion 3.1(b) (Compliance) will not apply to this Additional Coverage Clause.

2.3 Licensed Building Practitioners

We will indemnify **you** for:

- a) any fine or costs imposed by any statutory registration board or similar regulatory authority under the provisions of the Building Act 2004; and
- b) all reasonable **defence costs** incurred in the investigation and defence of a **claim** covered by this Additional Coverage Clause.

Provided **you** are a **Licensed Building Practitioner** and hold a current license of the relevant class at the time the work giving rise to the complaint was supervised and/or signed off.

You will pay the **excess** for every **claim** under this Additional Coverage Clause. The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

2.4 Pecuniary penalties

We will pay any amount which **you** are ordered to pay as a **pecuniary penalty**, provided:

- a) **we** are not legally prohibited from insuring **you** 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 in connection with **your business**; and
- c) **you** first knew, or ought to have known, during the **period of insurance**, of the proceeding to which the **pecuniary penalty** relates; and
- d) **you** have notified **us** of the proceeding to which the **pecuniary penalty** relates, as soon as possible, but no later than 30 days after the **period of insurance** ends.

You will pay the **excess** for every **claim** under this Additional Coverage Clause. The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Module Exclusion 3.3 (Damages and non-criminal penalties) will not apply to this Additional Coverage Clause.

2.5 Private prosecutions

We will pay on your behalf any **order for reparation** 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 **us**. An **order of reparation** paid under this Additional Coverage Clause will be part of and not in addition to the **limit of indemnity**.

You will pay the **excess** for every **claim** under this Additional Coverage Clause. The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Module Exclusion 3.9 (Private prosecution) will not apply to this Additional Coverage Clause.

2.6 Reparation at restorative justice conferences

We will pay reparation that is offered by **you** at a restorative justice conference as appropriate and paid prior to sentencing, provided:

- a) the restorative justice conference relates to charges which have been notified to **us** as a **valid claim**; and
- b) **our** 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 **we** would expect to pay as an **order for reparation** upon **your** conviction.

You will pay the **excess** for every **claim** under this Additional Coverage Clause. The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Module Exclusion 3.8 (Monetary amounts paid or offered before sentence) and Module Exclusion 3.10 (Reparation) will not apply to this Additional Coverage Clause.

Section 3. Module Exclusions

The General Exclusions apply to this **module**. **We** will also not insure **you** for any claim under this **module** in respect of any claim:

3.1 Compliance

- 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
- b) For the cost incurred by **you** in complying with any enforcement or remedial order or an enforceable undertaking.

3.2 Continuing fine

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

3.3 Damages and non-criminal penalties

Arising from any proceeding seeking:

- a) **damages**, including punitive, aggravated, liquidated, multiple or exemplary **damages**, except for **statutory damages**; or
- b) compensation for injury suffered, including physical or mental injury, humiliation, distress or damage to reputation, except for an **order of reparation**; or
- c) penalties provided by an **Act of Parliament**.

3.4 Employment disputes

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.

3.5 Excluded Acts

Arising out of, based upon, attributable to, or in any way involving, directly or indirectly 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) Crimes Act 1961
- e) Commerce Act 1986
- f) Financial Markets Conduct Act 2013
- g) Financial Service Providers (Registration and Dispute Resolution) Act 2008
- h) Financial Markets Authority Act 2011
- i) Land Transport Act 1998
- j) Misuse of Drugs Act 1975
- k) Criminal Proceeds (Recovery) Act 2009
- l) Summary Offences Act 1981
- m) Waste Minimisation Act 2008

and any other **Act of Parliament** specified in this **policy** as an excluded **Act of Parliament**.

3.6 Health and Safety at Work Act

For any **fine** ordered to be paid by **you** following conviction under the Health and Safety at Work Act 2015.

3.7 Infringement fees

For any infringement fees of any kind.

3.8 Monetary amounts paid or offered before sentence

For any sum paid, or offered to be paid, by **you**, without **our** prior written consent, to or for a complainant prior to imposition of sentence by a court, as reparation or otherwise, following an **event**.

3.9 Private prosecution

Arising out of or related to any **private prosecution**.

3.10 Reparation

For any monetary amount ordered to be paid by **you** by way of reparation imposed by a Court under any **Act of Parliament**, except an **order for reparation**.

3.11 Retroactive date

Arising out of any **event** that occurred prior to the **retroactive date**.

3.12 Taxes

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

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Employment Disputes Module

Section 1. Coverage

1.1 Your liability

We will pay **loss** that **you** are legally liable to pay arising from a **valid claim**.

1.2 Limit of liability

- a) All **claims** arising out of the same **wrongful act** and all **claims** arising out of **interrelated wrongful acts** will be deemed one **claim**.
- b) **Our** maximum liability for all amounts paid under this **module** excluding **defence costs**:
 - (i) for any one **claim**; or
 - (ii) in the aggregate during any one **period of insurance** for all **claims**;will not exceed the **limit of indemnity**.

1.3 Excess

- a) **You** must pay the **excess** for every **claim** including where a **claim** under this **module** triggers **defence costs** under the Defence Costs Module.
- b) All **claims** brought by the same **employee** arising out of **interrelated wrongful acts** will be deemed to be one **claim**, and only one **excess** will be payable.
- c) **Claims** brought by more than one **employee** arising out of **interrelated wrongful acts** will be deemed to be separate **claims**, and a separate **excess** is payable for each **employee's claim**.

Section 2. Additional Coverage Clauses

There are no Additional Coverage Clauses for the Employment Disputes Module.

Section 3. Module Exclusions

The General Exclusions apply to this **module**. We will also not insure **you** for any claim under this **module**, or for any claim directly or indirectly arising from or out of or in connection with:

3.1 Bodily injury

Death or physical injury to the body, or any illness attributable to direct physical injury to the body.

3.2 Defamation

The publication of material known by **you** to be false or misleading or defamatory. This exclusion will not apply if **you** did not know (or could not reasonably be expected to have known) that the material was false or misleading or defamatory.

3.3 Employee entitlements

Liability for payment to any **employee** of any amount which **you** are obligated (whether under any statute or any express or implied term of any employment agreement or otherwise) to pay prior to the **wrongful act** being committed.

3.4 Employee remuneration

Liability for the payment of any remuneration or benefit to any **employee** who has been reinstated to their former position after a **wrongful act**.

3.5 Fines and penalties

Liability for the payment of fines or penalties (whether criminal, civil or pecuniary) imposed by law or for punitive or aggravated or exemplary or multiple **damages** or matters uninsurable under the laws of New Zealand.

3.6 Industrial action

A **wrongful act** committed during any lockout, strike, picket, stand-down or suspension, or other industrial dispute.

3.7 Modifications to workplace

Liability for the cost of physical modifications to any **employee's** workplace, or the cost of changes to workplace procedures, including changes in the nature of the workplace arising from the **employee** working remotely.

3.8 Non-compliance

Non-compliance with any judgment, award, determination or demand against **you** by any court, authority, commission, tribunal, or any other statutory body, or by any inspector or **officer** carrying out a regulatory function.

3.9 Property damage

Loss of or damage to tangible or intangible property.

3.10 Redundancy compensation

Failure by **you** to pay adequate redundancy compensation or benefit to any **employee** dismissed by reason of redundancy that the **employee** was entitled to receive.

3.11 Retroactive date

Any **wrongful act** or **interrelated wrongful act** carried out prior to the **retroactive date**.

3.12 Statutory liability

Any statute or regulation relating to workers compensation, accident compensation or health and safety.

Directors and Officers Module

Section 1. Coverage

In respect of a **valid claim**:

1.1 Directors and officers individual cover

We will pay **loss** arising from any **wrongful act** provided that **you** are not indemnified by the **named entity**.

1.2 Company reimbursement cover

We will pay **loss** arising from the **named entity** indemnifying **you** as permitted or required by law arising from any **wrongful act** covered by Coverage Clause 1.1 (Directors and officers individual cover).

1.3 Limit of indemnity

- a) All **claims** arising out of the same **wrongful act** and all **interrelated wrongful acts** will be one **claim**.
- b) **Our** maximum liability for all amounts paid under this **module** excluding **defence costs**:
 - (i) for any one **claim**; or
 - (ii) in the aggregate during any one **period of insurance** for all **claims**,
will not exceed the **limit of indemnity**.
- c) A payment under any Additional Coverage Clause will be part of and not in addition to the **limit of indemnity**.

1.4 Excess

You must pay the **excess** for every **claim** made under this **module**, including where a **claim** under this **module** triggers **defence costs** under the Defence Costs Module, provided:

- a) no **excess** applies to Coverage Clause 1.1 (Directors and officers individual cover).
- b) if **loss** arising from a single **claim** is covered in part under Coverage Clause 1.1 (Directors and officers individual cover) and in part under Coverage Clause 1.2 (Company reimbursement cover), the applicable **excess** applies to that part of the **loss** covered by Coverage Clause 1.2 (Company reimbursement cover), subject to Additional Coverage Clause 2.6 (Preservation of indemnity).

Section 2. Additional Coverage Clauses

Additional Coverage Clauses are included automatically in the **module** in which they appear, unless otherwise stated in the **schedule**, and apply only to the **module** in which they appear. Each Additional Coverage Clause is subject to the terms of the **module** in which it appears including the exclusions.

2.1 Court attendance costs

We will pay to an **officer** \$500 per day, for each day an **officer** is requirement to attend a court as a witness in connection with a **claim** covered by this policy.

The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is \$50,000.

2.2 Estates and legal representatives / spousal liability

We will pay **loss** arising from a **claim** made against **your** estate, heir, legal representatives or assigns where **you** are deceased, incompetent, insolvent or bankrupt, provided:

- a) where the **claim** is made against **your** partner, it is solely by reason of **your** partner's:
 - (i) status as **your** partner; or
 - (ii) ownership or interest in property which the claimant seeks as recovery for alleged **wrongful acts** of **yours**, all **loss** which such partner becomes legally obliged to pay by reason of such **claim** will be treated for the purposes of this **module** as **loss** which **you** become legally obliged to pay on account of the **claim** made against **you**; and
- b) provided always that any estate, heirs, legal representatives, spouse or assigns will comply with and be subject to all the provisions of this **policy**.

2.3 Extradition proceeding

An **extradition proceeding** will be a **claim** under this **module**, but only for the purposes of triggering cover under Additional Coverage Clause 2.5 (Extradition costs) of the Defence Costs Module.

2.4 Outside positions liability

You will also mean any **officer** while serving in an **outside position**, provided cover for any claim under the **policy**:

- a) is subject to the service in any **outside position** being with the knowledge and consent of the **named entity**; and
- b) will be in excess of any insurance in force in respect of the **outside position** and is only provided to **you** by reason of serving in such **outside position**; and
- c) will not extend to the entity to which the **outside position** applies or to any of its other officers or employees who are not also an **Insured**; and
- d) will not apply to any **claim** made against **you** by, on behalf of, or for the benefit of the entity to which the **outside position** applies or any of its directors or **officers**; and
- e) will not apply to a **claim** brought by or on behalf of any past or present shareholder who had or has direct or indirect control or ownership of more than 15% of the shares or rights of the entity to which the **outside position** applies; and
- f) will not apply to any **claim** that is a derivative action brought or maintained on behalf the entity to which the **outside position** applies and is brought or maintained with the intervention, active assistance or active participation (unless required by law) of such entity or its director, **officer** or trustee.

2.5 Pollution loss

We will pay **loss** arising from a **claim** which is brought by any shareholder of the **named entity** alleging **loss** to the **named entity** or its shareholders in connection with any **wrongful act** resulting in the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of **pollutants**, provided that the discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended from **your** standpoint and takes place in its entirety at a specific time and place.

The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Module Exclusion 3.5 (Pollution) will not apply to this Additional Coverage Clause.

2.6 Preservation of indemnity

We will pay **loss** arising from a **claim** to the extent that the **named entity** is permitted or required to indemnify **you** for a **claim** but for whatever reason fails or refuses to do so.

The **excess** applicable to Coverage Clause 1.2 (Company reimbursement cover) will apply to such **claims** unless the **named entity** is placed in liquidation (other than voluntary liquidation) in which case no **excess** will apply.

2.7 Reinstatement of limit upon a recovery

Any amounts which **we** recover (net of **our** costs and expenses associated with such recovery) following a paid **claim** or other **loss** covered by this **policy** will reduce the erosion of the **limit of indemnity** to the same extent.

2.8 Superannuation trustees

We will pay all **loss** arising from any **claim** made against **you** in **your** individual or collective capacities as trustees of the **named entity's** own superannuation or pension funds. This cover will apply to any **claim** by any member of the superannuation or pension funds notwithstanding that they may also be an **insured**.

Section 3. Module Exclusions

The General Exclusions apply to this **module**. We will also not insure any **loss**, or **claim**, or any claim under this **module** directly or indirectly arising from or out of or in connection with:

3.1 Bodily injury / property damage

Bodily or mental injury, emotional distress, illness, disease or death of any person or for damage to or destruction of any tangible property, including loss of use.

3.2 Consensual claim

A **claim** brought or maintained with the intervention, active assistance or active participation (unless required by law) of any **insured** against whom the **claim** is brought.

3.3 Insured vs insured

A **claim** which is brought by or on behalf of any one or more **insured** or the **named entity** against another **insured** or the **named entity**; however, this exclusion will not apply to:

- a) any **claim** against **you**:
 - (i) pursued as a shareholder derivative action brought or maintained on behalf of a **named entity** or **outside entity**; and that has not been solicited or instigated with the voluntary (rather than legally required) intervention, assistance or active participation of the **named entity** or any **Insured** or any **outside position**; or
 - (ii) brought by any past director, **officer** or **employee** of a **named entity** or **outside entity**, or
 - (iii) brought by an insolvency administrator, receiver, trustee or liquidator of any **named entity** or **outside entity** either directly or derivatively on behalf of a **named entity** or **outside entity**.

3.4 Major shareholder exclusion

A **claim** brought by or on behalf of any shareholder, who directly or beneficially holds or controls 15% or more of the voting shares or rights or issued capital of the **named entity**.

3.5 Pollution

- a) The actual, alleged or threatened discharge, release, escape, seepage, dispersal, migration or disposal of **pollutants** into or onto land, property, water or the atmosphere, whether intentional or accidental; or
- b) Any direction or request that **you** test for, monitor, clean up, remove, contain, treat, detoxify or neutralise any **pollutants**, or any voluntary decision not to do so.

3.6 Professional services

A breach of professional duty owed in a capacity other than as specified in Definition 6.86 (You, your, yours, insured).

3.7 Prospectus / capital raising exclusion

- a) Any public issue of shares, preference shares (redeemable or otherwise), debentures of whatever kind, promissory notes or any other form of negotiable or non-negotiable security for the raising of capital by equity, debt or any other means; or
- b) The issue of any prospectus, product disclosure statement, memorandum of information or similar document or the making of any written or oral representation.

3.8 Retroactive date

Any **wrongful act** or **interrelated wrongful acts** which occurred prior to the **retroactive date**.

Employer's Liability Module

Section 1. Coverage

1.1 Your liability

We will insure **you** for any **valid claim** for amounts that **you** are legally liable to pay as:

- a) **damages** as a result of an **employee** sustaining **personal injury** in New Zealand that arose out of or in the course of such **employee's** employment in **your business** and where the **personal injury** is one for which the **employee** is not covered under the Accident Compensation Act 2001; or
- b) punitive and exemplary damages as a result of the **employee** sustaining **personal injury** in New Zealand that arose out of or in the course of such **employee's** employment in **your business** and where the **personal injury** is one for which the **employee** is eligible for compensation under the Accident Compensation Act 2001.

1.2 Limit of indemnity

- a) All **claims** arising out of the same act, incident, or circumstances will be deemed one **claim**.
- b) **Our** maximum liability for all amounts paid under this **module** excluding **defence costs**:
 - (i) for any one **claim**; or
 - (ii) in the aggregate during any one **period of insurance** for all **claims**,
will not exceed the **limit of indemnity**.

1.3 Excess

- a) **You** must pay the **excess** for every **claim**, including where a **claim** under this **module** triggers **defence costs** under the Defence Costs Module.
- b) All **claims** relating to the same **employee** arising out of the same act, incident, or circumstances will be deemed to be one **claim**, and only one **excess** will be payable.
- c) **Claims** brought by more than one **employee** arising out of the same act, incident, or circumstances will be deemed to be separate **claims**, and a separate **excess** is payable for each **employee's claim**.

Section 2. Additional Coverage Clauses

There are no Additional Coverage Clauses for the Employer's Liability Module.

Section 3. Module Exclusions

The General Exclusions apply to this **module**. We will also not insure **you** for any **claim** or for any claim under this **module** directly or indirectly arising from or out of or in connection with:

3.1 Accident Compensation Act 2001

Compensation that is available under the Accident Compensation Act 2001 or would have been available under that Act except for **your** status as an exempt employer under that Act.

3.2 Defamation

Liability based on or in any way arising out of any actual or alleged defamation or injurious falsehood.

3.3 Employment disputes

Liability in connection with:

- a) an employment relationship, seeking compensation under the Employment Relations Act 2000; or
- b) unpaid wages or other benefits.

3.4 Fines, wages and contractual obligations

- a) Fines, penalties, reparation, court costs, prosecution witness expenses or solicitors' costs ordered to be paid by **you**; or
- b) Unpaid wages or other benefits due to any **employee**; or
- c) Any contractual obligation in the nature of a performance warranty or **claim** for liquidated **damages**.

3.5 Health and Safety at Work Act

An **employee** sustaining **personal injury** which arose out of **your** failure to comply with any improvement, prohibition or suspension notice issued to **you** or **employees** under the Health and Safety at Work Act 2015.

3.6 Intentional acts

Intentional wrongdoing or conscious recklessness on **your** 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.

3.7 Retroactive date

Any **personal injury, event**, circumstances or accident that occurred prior to the **retroactive date**.

Internal Crime Module

Section 1. Coverage

1.1 Loss from internal crime

We will pay **loss** sustained by **you** which results directly from any **internal crime** which was first **discovered** during the **period of insurance** and notified to **us** within 90 days of such **discovery**.

1.2 Limit of indemnity

- a) Where more than one **loss** arises from one **internal crime** or from a series of **internal crimes** which are connected causally or inter-related, they will be deemed to be a single **loss** occurring in the **period of insurance** during which the first **loss** was **discovered**.
- b) **Our** maximum liability for all amounts paid under this **module** excluding **defence costs**:
 - (i) for **loss discovered** during the **period of insurance**; or
 - (ii) in the aggregate during any one **period of insurance** for all claims under this **module**, will not exceed the **limit of indemnity**.
- c) The **sublimits** of the Additional Coverage Clauses of this **module** are part of, and not in addition to the **limit of indemnity**.
- d) **Our** aggregate liability for all **loss** sustained by **you** will not exceed the amount for which **we** would be liable if all **losses** were sustained by any one of the persons, companies or other entities forming part of **you**.

1.3 Excess

You will pay the **excess** for every claim under this **module**, including where a claim under this **module** triggers **defence costs** under the Defence Costs Module. A single **excess** will apply to all claims under this **module** arising from any **internal crime** or any series of **internal crimes** which are causally connected or inter-related.

Section 2. Additional Coverage Clauses

Additional Coverage Clauses are included automatically in the **module** in which they appear, unless otherwise stated in the **schedule**, and apply only to the **module** in which they appear. Each Additional Coverage Clause is subject to the terms of the **module** in which it appears including the exclusions.

2.1 Business interruption

We will pay **you** the following costs incurred as a result of a **loss** covered under this **module**:

- a) any renting fee for temporary replacement equipment and temporary additional premises; and
- b) any costs of additional external workforce and overtime of **employees**; and
- c) any costs related to transportation of equipment or documents, incurred by **you** during the 90 days commencing immediately after the period of 48 hours starting from **discovery**;

Provided always that these costs are beyond **your** usual operational costs and **we** agree that they are necessary for the restoration of the normal course of operations of **your business**.

The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

2.2 Care, custody and control

We will pay you for the **loss** of property, money or **securities** under **your** care, custody and control and for which **you** are legally liable, where such **loss** is as a direct result of an **internal crime** and is **discovered** during the **period of insurance**.

The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

2.3 Client liability

We will pay you for **loss** sustained by a **client** from **improper financial gain** where such **loss** is **discovered** during the **period of insurance**.

The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

2.4 Court attendance costs

We will pay you \$500 per day, for each day an **employee** is required to attend a court as a witness in connection with a **claim** covered by this policy.

The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is \$50,000.

2.5 Data reconstitution costs

We will pay your reasonable **data reconstitution costs** following an **internal crime** arising from **your computer system** where **you** have suffered a **loss** covered under this **module** and **discovered** within the **period of insurance**.

The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

2.6 Extortion

We will pay any loss sustained by **you** and **discovered** within the **period of insurance** due to **extortion** committed by a **third party** provided that:

- a) **our** written consent is obtained before such payment or surrender occurs, and
- b) **you** have reported the **extortion** threat or ransom demand to the police.

There is no cover under this Additional Coverage Clause for any **extortion** threat or demand in connection with an attack on your electronic computers including operating systems, software, hardware, componentry, firmware or communications and open systems networks, websites, off-line media libraries or **data** backups.

The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Module Exclusion 3.5 (Kidnap and ransom) will not apply to this Additional Coverage Clause.

2.7 Investigation costs

We will pay you for **investigation costs** incurred by **you** within the **period of insurance** which are directly related to a **loss** covered under this **module**.

The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

2.8 Loss investigation expenses

We will pay **preliminary expenses** on **your** behalf, following notification by **you** of the **discovery** of a **loss**.

Following the exhaustion of the **preliminary expenses**, if **we** continue to engage the **loss investigator**, the costs of the **loss investigator** may be considered under Additional Coverage Clause 2.7 (Investigation costs).

The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

2.9 Outsourcing

We will pay **you** for any **loss** suffered by **you** as a result of a fraudulent or criminally dishonest single, continuous or repeated act(s) or a series of acts committed by employees of any company to whom **you** have outsourced services (including but not limited to payroll, computing or accountancy services) under a written contract.

Provided:

- a) **you** are able to prove that the company to which services were outsourced to had been checked for their honesty, competence and financial stability and **you** retain the right to audit their services; and
- b) where any **loss** caused by an employee of such outsourcing company is also insured under a **policy** under which that employee is a beneficiary or pursuant to an indemnity under a contract then this **policy** will only cover such **loss** to the extent that the amount of such **loss** is in excess of the amount of such other insurance; and
- c) where any **loss** caused by an employee of such outsourcing company is also covered under an indemnity agreement under which that employee is a beneficiary then this **module** will only cover such **loss** to the extent that the amount of such **loss** is in excess of the amount of such indemnity agreement.

The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Section 3. Module Exclusions

The General Exclusions apply to this **module**. **We** will also not insure **you** for any claim under this **module** directly or indirectly arising from or out of or in connection with:

3.1 Confidential information and intellectual property

Loss of or arising from any confidential information, trade secrets, computer programs, customer information, patents, trademarks, copyrights or processing methods, except to the extent that any such information is used to facilitate the committing of an **internal crime** covered by this **policy**.

3.2 Consequential loss

Consequential loss directly or indirectly arising from or in connection with any **loss**, unless covered under Additional Coverage Clauses 2.1 (Business interruption), 2.5 (Data reconstitution costs), 2.7 (Investigation costs), 2.8 (Loss investigation expenses).

3.3 Credit and debit cards

The **fraudulent alteration** of any written instrument required in connection with a debit, credit, banking or credit card.

3.4 Fire

Loss caused by any fire.

3.5 Kidnap and ransom

Loss arising from or in connection with kidnap, ransom or any threat thereof.

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3.6 Known internal crime

Loss caused by any **employee** who **you** were aware had previously committed an **internal crime** before or after the commencement date of employment by **you**.

3.7 Pollution

- a) The actual, alleged or threatened discharge, release, escape, seepage, dispersal, migration or disposal of **pollutants** into or upon land, **property**, water or the atmosphere, whether intentional or accidental; or
- b) Any direction or request that **you** test for, monitor, clean up, remove, contain, treat, detoxify or neutralise any **pollutants**, or any voluntary decision to do so.

3.8 Property damage

Damage or destruction to any **property**.

3.9 Retroactive date

Any **internal crime** or other act, error or omission, that occurred prior to the **retroactive date**.

Tax Audit Investigation Module

Section 1. Coverage

1.1 Tax audit costs

Where during the **period of insurance** the **named entity** has both received a **tax audit notice** and reported it to **us, we** will provide cover to the **named entity** for necessary and reasonable **tax audit costs** incurred by the **named entity** up to the completion of the audit or investigation.

1.2 Limit of indemnity

Our maximum liability for any claim under this **module** in respect of all **tax audit notices** in the **period of insurance** will not exceed the **limit of indemnity**.

1.3 Excess

You must pay the **excess** for every claim under this **module**.

Section 2. Additional Coverage Clauses

There are no Additional Coverage Clauses for the Tax Audit Investigation Module.

Section 3. Module Exclusions

The General Exclusions apply to this **module**.

3.1 We will not insure **you** for any claim under this **module** directly or indirectly arising from or out of or in connection with any **tax audit costs** arising out of or in connection with:

- a) any improper, unwarranted or unjustified delay, refusal or failure to comply with any request made by or on behalf of the Inland Revenue Department of New Zealand, for the production of documents or the provision of information by the **named entity**.
- b) inquiries from the Inland Revenue Department of New Zealand which are not related to an identified intention to conduct an audit or likely future audit. Any audit or investigation concerning income earned or where the source of income is outside New Zealand and its external territories or protectorates, or where the services giving rise to the audit are performed by persons or any corporate entity outside of New Zealand and its external territories or protectorates.
- c) matters arising under customs legislation.
- d) any audit or investigation, where notice or information as to their likely conduct was received by the **named entity** prior to the **period of insurance**. Receipt of such communication will have occurred when the Inland Revenue Department of New Zealand makes communication with the **named entity** or any other person acting on its behalf.
- e) any fraudulent or dishonest act, error, omission or misrepresentation committed by or on behalf of the **named entity**.
- f) the imposition of, or the seeking to impose, any tax, penalty tax, costs, interest, fine or any fees or expenses in connection with any criminal prosecution.
- g) an audit or investigation of a return of income that has not been prepared or reviewed by the accountant or registered tax agent, except where the return is a prescribed sales tax return or a prescribed payroll tax return.

3.2 We will not insure you for any **Tax audit costs** incurred after the audit or investigation has been completed.

Crisis Support Module

For the purposes of the Crisis Support Module, all defined words will be defined as they are in the **module** to which the claim under consideration relates.

Section 1. Coverage

1.1 Crisis containment

We will pay **crisis loss** which the **named entity** incurs by reason of a **crisis**, where that **crisis** also gives rise to a claim which is covered under another **module** of this **policy**, provided that the **crisis**:

- a) first occurs and is notified to **us** during the **period of insurance**; and
- b) was not foreseen or expected by **you**; and
- c) has, in the reasonable opinion of **your** chief executive officer (or the equivalent thereof) the potential to cause **financial loss** to the **named entity** if not managed; and
- d) does not include an industry-wide event that affects the industry in which the **named entity** operates as opposed to an event that is isolated to the **named entity**; and
- e) this cover applies only for **crisis loss** incurred during the first 45-day period immediately following the day on which the **crisis** first occurs.

The maximum aggregate amount payable under this Coverage Clause is the **limit of indemnity**.

1.2 Limit of indemnity

- a) **Our** maximum liability for all amounts paid under this **module**:
 - (i) for any one claim under this **module**; or
 - (ii) in the aggregate during any one **period of insurance** for all claims under this **module**;will not exceed the **limit of indemnity**.
- b) A payment under any Additional Coverage Clause will be part of and not in addition to the **limit of indemnity**.

1.3 Excess

You must pay the **excess** for every claim under this **module** except where otherwise specified.

Section 2. Additional Coverage Clauses

Additional Coverage Clauses are included automatically in the **module** in which they appear, unless otherwise stated in the **schedule**, and apply only to the **module** in which they appear. Each Additional Coverage Clause is subject to the terms of the **module** in which it appears including the exclusions.

2.1 Counselling

We will reimburse **your** reasonable costs for counselling in relation to a **crisis** as a result of an **event** which gives rise to cover under the Statutory Liability Module, to be provided by a member of the New Zealand Association of Counsellors, provided the costs of counselling have been agreed upon by **us**.

No **excess** will apply to this Clause.

The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

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2.2 Family / personal expenses

We will pay **deprivation of assets expenses** arising from a claim for which **you** are covered under another **module** of this **policy** and which is first made against **you** during the **period of insurance**.

The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

2.3 First aid costs

We will pay any first aid expenses incurred by **you** arising from a **personal injury** covered by another **module** of this **policy**.

The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Section 3. Module Exclusions

The General Exclusions apply to this **module**. **We** will also not insure **you** for any claim under this **module** in respect of the following.

3.1 Consequential loss

A claim under the Consequential Loss Module.

3.2 Defence costs

A claim under the Defence Costs Module.

Consequential Loss Module

For the purposes of the Consequential Loss Module, all defined words will be defined as they are in the **module** to which the claim under consideration relates, unless otherwise specified in the Definitions Section.

Section 1. Coverage

1.1 Consequential loss

We will insure **you** for Consequential Loss resulting from interruption to or interference with **your business** which is the result of:

- a) a **valid claim** in respect of which **we** have accepted indemnity under the Statutory Liability Module or the Employers Liability Module; or
- b) an **occurrence** or other covered event in respect of which **we** have accepted indemnity under the General Liability Module.

Provided:

- c) Consequential Loss means:
 - (i) the reduction in the **income** that would normally have been earned during the **indemnity period** if there had been no **valid claim** or **occurrence**; or
 - (ii) the additional expenses reasonably incurred during the **indemnity period** to avoid or minimise a reduction in **income** resulting from the **valid claim** or **occurrence** or to resume or maintain **your business** activities as per normal; or
 - (iii) an equitable allowance for any **financial loss** suffered for a maximum period of 3 months after the **indemnity period** ends because **your** stocks have been used to maintain **income** during the **indemnity period**; or
 - (iv) the net loss resulting directly from the **valid claim** or **occurrence**, of collectable amounts owed to **you** plus the reasonable costs incurred in establishing, tracing and recovering the debts; or
 - (v) the reduction in value of undamaged stock, arising directly from the **valid claim** or **occurrence**, due solely to **your** 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; or
 - (vi) costs reasonably and necessarily incurred by an accountant appointed or approved by **us** for the preparation of the claim under Coverage Clause 1.1 (Consequential loss) of this **module**.
- d) from these amounts, **we** will deduct any savings made during the **indemnity period** in **your business** costs and expenses, where those savings result from the **valid claim** or **occurrence**.

1.2 Limit of indemnity

Our maximum liability for any claim under this **module** will not exceed the **limit of indemnity** for any one claim, or in the aggregate for the **period of insurance**.

1.3 Excess

You must pay the **excess** for every claim under this **module**.

Section 2. Additional Coverage Clause

There are no Additional Coverage Clauses for the Consequential Loss Module.

Section 3. Module Exclusions

The General Exclusions apply to exclude cover under this **module**. **We** will also not insure **you** for any Consequential Loss directly or indirectly arising from or out of or in connection with:

3.1 Business records

The costs of rewriting and reconstructing business records not otherwise covered under this **module**.

3.2 Claims under other modules

A claim under the Crime, Crisis Support, Defence Costs, Directors and Officers Liability, or Employment Disputes Module.

3.3 Dishonesty

Dishonesty, a wilful breach of any statute, contract or duty, or any act or omission committed or omitted or alleged to have been committed or omitted by **you** with a reckless disregard for the consequences.

3.4 Financial loss

For **financial loss** which may be covered under a Fire or Material Damage or Business Interruption or Consequential Loss policy.

3.5 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.

3.6 Property damage

Repairing or replacing loss or damage to real or personal property.

Defence Costs Module

For the purposes of the Defence Costs Module, all defined words will be defined as they are in the **module** to which the claim under consideration relates.

Section 1. Coverage

1.1 Defence costs

Where a claim is covered under another **module** of this **policy**, **we** will pay **defence costs** relating directly to the investigation, defence, handling, settlement, compromise or appeal of such claim.

1.2 Limit of indemnity

- a) **Our** maximum liability in the aggregate for all **defence costs** during the **period of insurance** will not exceed the **defence costs limit of indemnity**. The cover provided under any Additional Coverage Clause in this **module** will be part of, and not in addition to, the **defence costs limit of indemnity**.
- b) **Our** maximum liability in the aggregate for all **defence costs** during the **period of insurance** in respect of Additional Coverage Clause 2.5 (Pollution loss) in the Directors and Offices Module is a sum equal to and will not exceed the pollution loss **defence costs limit of indemnity**.
- c) Upon payment by **us** of either the **limit of indemnity** under any **module** or the applicable **sublimit** in respect of any judgment, settlement or claim, **our** liability for **defence costs** will cease.
- d) Upon payment by **us** of the **defence costs limit of indemnity** or the applicable **sublimit** in respect of any claim against **you** (or any claim, judgment or settlement) **our** liability for any further **defence costs** in connection with that claim will cease.
- e) If a payment exceeding the **limit of indemnity** or the applicable **sublimit** has to be made to dispose of a claim, **our** liability to pay **defence costs** in connection with that claim will be limited to the same proportion of the **defence costs** as the **limit of indemnity** bears to the amount paid to dispose of the claim.
- f) If a payment exceeding the **defence costs limit of indemnity** or the applicable **sublimit** has to be made to dispose of a claim, **our** liability to pay **defence costs** in connection with that claim will be limited to the same proportion of the **defence costs** as the **defence costs limit of indemnity** bears to the amount paid to dispose of the claim.

Section 2. Additional Coverage Clauses

Additional Coverage Clauses are included automatically in the **module** in which they appear, unless otherwise stated in the **schedule**, and apply only to the **module** in which they appear. Each Additional Coverage Clause is subject to the terms of the **module** in which it appears including the Exclusions.

2.1 ACC

We will pay reasonable fees, costs, charges and expenses incurred by **you** with **our** prior written consent, which will not be unreasonably delayed or withheld, in **you** making an application to the Court to determine whether a **personal injury** covered by another **module** of this **policy** is properly the subject of cover under the Accident Compensation Act 2001.

This will not include any remuneration or reimbursement of fees for **your** time in making the application.

The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

2.2 Advancement of defence costs

We will advance **defence costs** in connection with any **claim** made against **you** for which there would otherwise be cover under the Directors and Officers Module but for the application of General Exclusion 4.4 (Dishonesty and deliberate conduct), prior to the disposition of the claim, provided that to the extent it is finally established by judgment, other adjudication or any settlement that any such claim is not covered under any **module**, each of **you** severally agree to repay **us** such **defence costs**.

2.3 Emergency defence costs

If **our** written consent cannot reasonably be obtained before **defence costs** are incurred, **we** will grant retrospective approval for such costs of up to 10% of the **defence costs limit of indemnity** provided that **our** consent is obtained within 14 days following the first such costs being incurred.

2.4 Exhaustion of defence costs

When the amount of **defence costs** incurred reaches 90% of the **defence costs limit of indemnity**, we will continue to insure **you** above the **defence costs limit of indemnity** provided that **you** buy an extension of this **policy** at market rate as determined by **us**.

2.5 Extradition costs

We will pay any **defence costs** incurred in challenging, resisting and defending an **extradition proceeding**, including any appeal, brought against **you**.

The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

2.6 Legal prosecution defence costs

We will insure any **officer** or **employee** for **defence costs** necessarily and reasonably incurred in defending **legal action** arising out of the accidental injury or death of any person in the normal course of the **officers'** or **employees'** employment with the **named entity** or **subsidiary**, provided that:

- a) the alleged conduct must have taken place in New Zealand; and
- b) the **officer** or **employee** must have been first threatened with the **legal action** during the **period of insurance**; and
- c) the **officer** or **employee** must also have notified **us** of the **legal action** during the **period of insurance** or within 28 days of its expiry.

In addition to the existing Exclusions under this **module**, this Additional Coverage Clause shall not cover any **defence costs** in connection with any **legal action**:

- a) where the **officer** or **employee** has been charged with any similar offence in the seven years before the **officer** or **employee** obtained cover under this **policy**;
- b) where the **officer** or **employee** is intending to plead guilty or the **officer** or **employee** intends to plead not guilty, but this plea is not reasonable in the sole opinion of senior counsel appointed by **us** to consider the reasonableness of the not guilty plea;
- c) involving any:
 - (i) alleged breach of professional duty, or duty as a director, trustee, or power of attorney;
 - (ii) agreement under which the **officer** or **employee** have agreed to accept liability they would not otherwise have had;
 - (iii) dispute concerning a will, bequest, contract to leave assets in a will, probate, Testamentary Promises claim, Family Protection claim, inheritance or gift; or
 - (iv) employment dispute;
- d) involving any legal dispute whatsoever between the **officer** or **employee** and the **officer's** or **employee's** spouse, ex-spouse, de facto partner or ex-de facto partner;
- e) involving any offence alleged to have been committed:
 - (i) whilst in breach of any order made under the Domestic Violence Act 1995 or its amendments; or
 - (ii) under Fisheries legislation;
- f) involving the driving of a motor vehicle or offence or infringement under the Land Transport Act 1998, or Transport Act 1962, or their amendments, where **you** have been charged with any offence involving alcohol, drugs, logbook use, overloading, road-user charges, or speeding including dangerous or careless driving or excessive speed;
- g) in existence at the commencement of the **period of insurance**;
- h) brought against the officer or employee in any other jurisdiction other than New Zealand;
- i) involving molestation of any person, or any other form of sexual activity or any behaviour of a sexual nature;
- j) involving a reckless, intentional or deliberate act or omission;
- k) that **you** have intentionally or deliberately encouraged.

The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

2.7 Official investigations and inquiries

We will pay **defence costs** arising out of:

- a) any request to **you** for information by any statutory registration board, regulator, coroner, government body or authority, governmental or administrative agency or self-regulatory body established by statute.
- b) any attendance by **officers** or **employees** at any **official investigation**, hearing, examination or inquiry, including a coronial inquiry, in relation to the affairs of the **named entity** or **subsidiary**, by virtue of their position with the **named entity** or **subsidiary**.

Provided:

- (i) **we** consider that such request, **official investigation**, hearing, examination or inquiry will lead to a claim against **you** to which another **module** of this **policy** responds;
- (ii) the circumstances to which the investigation, hearing, examination or inquiry relate first occurred after the **retroactive date** and are first notified to **you**, and by **you** to **us**, during the **period of insurance**.

The maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** is the **sublimit**.

Section 3. Module Exclusions

The General Exclusions apply to this **module**. **We** will also not insure **you** for any claim under this **module** in respect of the following.

3.1 Consequential loss

A claim under the Consequential Loss Module.

3.2 Crisis support

A claim under the Crisis Support Module.

3.3 Tax audit investigation

A claim under the Tax Audit Investigation Module.

General Sections

Section 4. General Exclusions

These exclusions apply to all **modules** unless otherwise specified.

For the purposes of the General Exclusions all defined words will be defined as they are in the **module** to which the claim under consideration relates.

Despite any provision to the contrary in this **policy** or any endorsement to this **policy**, **we** will not insure **you** for any claim under any **module** of this **policy** in respect of or directly or indirectly arising from or out of, or in connection with the following.

4.1 Asbestos

Any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from or in consequence of, or aggravated by asbestos, in whatever form or quantity.

4.2 Communicable diseases

Any **losses**, liability, cost or expense of whatever nature directly or indirectly arising from:

- a) highly pathogenic avian influenza in humans; or
- b) any disease(s) determined to be a quarantinable disease as defined and stated in the Health Act 1956 (New Zealand) s2(1), or any subsequent amendment, replacement or successor legislation of the Commonwealth of New Zealand, including delegated legislation; or
- c) any mutation of the diseases described in (a) to (b) inclusive, including any fear or threat thereof (whether actual or perceived) or action taken by a competent public authority in controlling, preventing or suppressing such disease.

For the avoidance of doubt, loss, liability, cost or expense includes any cost to clean-up, decontaminate, disinfect, remove, replace, monitor or test:

- (i) for any such diseases; or,
- (ii) any property insured hereunder that is affected by or suspected to be affected by such disease.

4.3 Cyber loss

Any legal liability caused by or arising out of any:

- a) **cyber act** or **cyber incident** including but not limited to any action taken in controlling, preventing, suppressing, or remediating any **cyber act** or **cyber incident**, or
- b) Loss of use, reduction in functionality, repair, replacement, restoration or reproduction of any **data**, including any amount relating to the value of such **data**.

4.4 Dishonesty and deliberate conduct

- a) The improper use of position or information by **you** to gain personal profit or advantage or cause detriment to the **named entity**; or
- b) Any actual or alleged deliberate, dishonest, fraudulent, reckless, or malicious act or omission by **you**; or
- c) Any intentional, wilful or reckless violation or breach of any statute or regulation by **you**, including **your** intentional or reckless disregard of prior warnings from a regulator or enforcement action taken by a regulator against **you**; or
- d) **You** gaining any personal profit, remuneration or financial advantage to which **you** were not legally entitled.

Provided that this exclusion will not apply to any **insured** that did not commit or condone the act or omission described by (a) to (d) above. Any one **insured**'s individual knowledge and/or conduct will not be imputed to any other **insured** (other than the **named entity**) when determining the application of this exclusion.

Where a claim under this **policy** is determined to arise from an act or omission which is described at (a) to (d) above, whether by judgment, adjudication, admission or otherwise, **we** will seek reimbursement of any amounts paid to **you** under the **policy** including any advancement of **defence costs** made by **us**.

This exclusion will not apply to a claim under the Internal Crime Module for loss as the direct result of an **internal crime**.

4.5 EMF (Electromagnetic Fields)

Any actual or alleged liability, costs, or expenses in respect of any loss or claim arising directly or indirectly out of electromagnetic fields or electromagnetic interference.

4.6 Fraudulent claims

We will not insure any claim under this **policy** if:

- a) any answers or statements in respect of any claim under this **policy**, or in any information provided to obtain, amend or renew this insurance, are false in any way; or
- b) if any notification or claim to obtain any benefit under this **policy** is fraudulent in any way, whether made by **you** or by anyone acting on **your** behalf.

4.7 GMO (Genetically Modified Organisms)

Any actual or alleged liability, costs, or expenses in respect of any loss or claim arising directly or indirectly, out of, or in any way involving the manufacture, production (but not non-experimental farming), breeding, distribution or research and development field trials of genetically modified organisms including the blending or mixing of genetically modified organisms with other organisms or products, or their pollination by genetically modified organisms.

4.8 Jurisdiction

Any **proceeding**, claim, legal action, litigation, prosecution, investigation or inquiry:

- a) first brought in a court outside the **jurisdictional limits**; or
- b) which is brought or may be brought in a court within the **jurisdictional limits** to enforce a judgment or **fine** ordered in a court outside the **jurisdictional limits** whether by way of a reciprocal agreement or otherwise (although this will not apply to exclude cover for an **extradition proceeding**); or
- c) in which the proper law to be applied is that of a country outside the **jurisdictional limits**.

4.9 Known claims and circumstances

Any claim, circumstances that may give rise to a claim, loss or liability:

- a) made against or intimated to **you** or the **named entity** prior to the commencement of the **period of insurance**; or
- b) notified to **us** or to another insurer under any previous **policy** of insurance; or
- c) arising from any litigation or investigation or inquiry that was either in progress or pending prior to the **period of insurance**; or
- d) arising out of or connected with any **event**, facts or circumstances which:
 - (i) **you** or the **named entity** were aware of, or reasonably should have been aware of, prior to commencement of the **period of insurance**; and
 - (ii) which **you** reasonably should have considered may give rise to a claim under this **policy** or to a claim against **you**.

4.10 Molestation

Liability for sexual harassment, the molestation of any person, or any other form of sexual activity or any behaviour of a sexual nature. This exclusion does not apply to any liability for sexual harassment in respect of any claim under the Employment Disputes Module.

4.11 Nuclear and radioactivity

- a) Ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- b) Operations employing the process of nuclear fission or fusion or handling radioactive material, including but not limited to:
 - (i) the use of nuclear reactors such as atomic piles, particle accelerators, generators or similar devices; or
 - (ii) the use, handling or transportation of radioactive materials; or
 - (iii) the use, handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion; or
- c) The radioactive, toxic, explosive or other hazardous properties of any explosive assembly or its nuclear components.

4.12 Other activities

You directing an **employee** to undertake activities or undertaking activities otherwise than in the course of or in connection with the usual activities of **your business**.

4.13 Sanctions

Any claim where the provision of cover, payment of any claim or provision of any benefit would expose **us** to any sanction, prohibition or restriction under United Nations resolutions or trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America, South Africa, Australia or New Zealand.

4.14 Territorial limits

- a) Loss arising from an **internal crime** occurring outside of New Zealand; or
- b) A **wrongful act** committed wholly outside New Zealand or to which the laws of New Zealand do not apply.

4.15 Terrorism

Any liability, loss, damage or expenses of whatsoever nature directly or indirectly caused by, resulting from, or in connection with any act of terrorism, regardless of any other cause or event contributing concurrently or in any other sequence to the liability, loss, damage, cost or expense.

For the purposes of this exclusion, act of terrorism means:

An act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s), 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.

This exclusion also excludes liability, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

4.16 TSE (Transmissible Spongiform Encephalopathy)

Any actual or alleged liability, costs, or expenses in respect of any loss or claim arising directly or indirectly out of Transmissible Spongiform Encephalopathy (TSE).

4.17 War

War, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, military rising, rebellion, revolution, insurrection, military or usurped power, martial law or looting or pillaging in connection therewith, strike, lock-out, riot, civil commotion, mutiny, confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority or any act or condition incidental to any of the above.

Section 5. General Conditions

These Conditions will apply to all **modules**, unless otherwise specified. For the purposes of the General Conditions, all defined words will be defined as they are in the particular **module** to which the claim under consideration relates.

5.1 Allocation

If any costs, expenses or amounts of money are incurred both in respect of a claim which is insured under this **policy** and a claim or matter that is not insured under this **policy** then **we** will be liable to pay only a fair proportion of such costs, expenses or amounts.

In the event that **you** and **we** are unable to agree as to a fair proportion, then counsel mutually agreed upon by both parties and whose decision will be final, will determine what is a fair proportion.

5.2 Authorisation clause

You agree that the **named entity** will act on **your** behalf in respect of:

- a) the giving and receiving of any notice of claim or cancellation; and
- b) the payment of premiums and receiving of any return premiums that may become due under this **policy**; and
- c) the agreement to and acceptance of endorsements or any other matter arising under this **policy**; and
- d) the giving or receiving of any notice provided for in this **policy** except the giving of notice to apply for the **discovery period**.

5.3 Basis of settlement

In respect of the Consequential Loss Module only

In assessing consequential loss, **we** will make all adjustments which, in **our** discretion, fairly reflect trends, variations or other special circumstances in **your business**, which would have affected **your business** anyway either before or after the claim covered by Consequential Loss Module Coverage Clause 1.1 (Consequential loss) so that the adjusted figures represent, as closely as is reasonably practicable, the financial performance of **your business** which would have been obtained during the **indemnity period** but for the claim covered by Consequential Loss Module Coverage Clause 1.1 (Consequential loss).

5.4 Breach of condition

Where **your** breach of any condition of this **policy** has resulted in prejudice to the handling and/or settlement of any claim to which this **policy** responds, which in all other respects qualifies to be insured under this **policy**, the insurance cover afforded by this **policy** in respect of such claim or loss will be reduced to such amount as would have been payable by **us** in the absence of such prejudice.

5.5 Cancellation

- a) The **named entity** may on **your** behalf cancel this **policy** at any time by giving notice to **us** in writing. **We** will refund to the **named entity** on a pro rata basis the amount of the unexpired premium already paid subject to any applicable minimum premium. **We** will have no liability to **you** for any payment made to or by the **named entity**.
- b) **We** may cancel this **policy** after sending at least 30 days' notice to the **named entity** in accordance with Condition 5.23 (Notices by us). **We** will refund to the **named entity** on a pro rata basis the amount of any unexpired premium already paid.

5.6 Change in control

Unless **you** notify **us** and **we** agree in writing to continue **your** cover under this **policy**, **you** immediately stop being insured if **you**:

- a) commit any act of bankruptcy or are adjudicated bankrupt; or
- b) are put into receivership or liquidation; or
- c) cease to own or control **your business**; or
- d) make any arrangement with creditors, including a composition or assignment.

5.7 Claims made

The Directors and Officers, Statutory Liability, Employers Liability, Employment Disputes and Internal Crime Modules are claims-made modules and no claim under those **modules** can be made after the expiry of the **period of insurance**.

5.8 Claims notification

In respect of all modules aside from the General Liability Module

- a) **You** must give **us** immediate notice in writing of:
 - (i) any claim, legal action, summons, proceeding, prosecution, inquest or inquiry involving **you** that might give rise to a claim under this **policy** regardless of whether **you** believe that a claim under this **policy** will or will not be made, or would fall below the applicable **excess**, or be groundless; or
 - (ii) any **discovery**, including but not limited to full particulars as to dates and persons involved and the date and manner in which **you** first became aware of the matters underlying any loss; or
 - (iii) the receipt of notice from, or information as to any intention by, any party to make a claim against **you**; or
 - (iv) any circumstance that a reasonable insured in **your** position should have considered may give rise to a claim against **you** or a claim under this **policy**.

Where **you** give **us** such notice, any claim that may subsequently be made against **you** will be deemed to be a claim under this **policy** made during the **period of insurance**.

- b) Notice to **us** under Condition 5.8(a) above will be sent to liabilityclaims@ando.co.nz and will be considered to be received and effective upon actual receipt by **us**.
- c) If **you** become aware of a circumstance which may give rise to a claim under this **policy** and give written notice of such circumstance during the **period of insurance** or **discovery period** (if applicable), then any claim subsequently arising from such circumstances is considered to have been made during the **period of insurance** or the **discovery period** in which the circumstance(s) was first reported to **us**.
- d) Upon receipt of notice from **you** under this Condition, **we** may take any action **we** consider appropriate to protect **your** position and **our** position in respect of the claim against **you**, and any such action by **us** will not be construed as an admission of **your** entitlement to cover under this **policy**.

5.9 Claims notification – General Liability Module

In respect of the General Liability Module only

- a) **You** must give **us** immediate notice in writing of:
 - (i) any **occurrence**, act, error or omission involving **you** that might give rise to a claim under this **policy** regardless of whether **you** believe that a claim under this **policy** will or will not be made, or would fall below the applicable **excess**, or be groundless; or
 - (ii) the receipt of notice from, or information as to any intention by, any party to make a claim against **you**; or
 - (iii) any circumstance that a reasonable insured in **your** position should have considered may give rise to a claim against **you** or a claim under this **policy**.

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- b) Notice to **us** under Condition 5.9(a) above will be sent to liabilityclaims@ando.co.nz and will be considered to be received and effective upon actual receipt by **us**.
- c) Upon receipt of notice from **you** under this Condition, **we** may take any action **we** consider appropriate to protect **your** position and **our** position in respect of the claim against **you**, and any such action by **us** will not be construed as an admission of **your** entitlement to cover under this **policy**.

5.10 Conduct of claims

- a) **You** will at **your** own cost take all reasonable steps to avoid any claim against **you** or diminish any loss in respect of any claim against **you**.
- b) **You** will at **your** own cost immediately disclose all information and provide all assistance in order to allow **us** to investigate the claim and determine liability and cover under this **policy**. Failure to comply with this obligation will entitle **us** to deny liability for the claim in whole or in part. **We** may make any investigation into a claim against **you** that we reasonably deem necessary.
- c) No alteration or repair will be carried out without **our** written consent until **we** have had an opportunity of inspection and have authorised such repairs.
- d) If **we** believe that **our** liability for any claim under this **policy** will not exceed the **excess**, **we** may instruct **you** to assume responsibility for the defence, investigation, settlement or appeal of such claim at **your** expense. Should the amount for which we will insure **you** for the claim under this **policy** subsequently exceed the **excess**, **we** agree to reimburse the reasonable costs and expenses incurred by **you** that exceed the **excess**. **You** must advise **us** as soon as the total amount or costs of such claim exceed the **excess** or it becomes apparent that they are likely to do so.
- e) **You** will not (without **our** prior written consent) make any decision that affects the investigation, defence, compromise or handling of the claim against **you**, including any admission, offer, promise or payment.
- f) **You** will preserve and will make available to us and any solicitor **we** appoint, all documents, records, accounts, information, explanation and other evidence as may be reasonably required by or on behalf of **us** for the purposes of investigating **your** claim under this **policy**, and any property, products, appliances and plant and all other things which may assist in the investigation or defence of a claim against **you** or in the exercise of rights of subrogation.
- g) If required by **us** **you** will make any declaration on oath, or another legal form, of the truth of the claim under this **policy** or any other matters related to the claim against **you**.

5.11 Constructive notice and alterations

- a) Except as provided by an **Act of Parliament**, notice to any agent or broker or knowledge possessed by any agent, broker or other person will not constitute notice to **us**; and
- b) No change in, modification of or assignment of interest under this **policy** will be effective except when made by a written endorsement to this **policy** which is signed by **our** authorised representative.

5.12 Continuous cover

We will not rely on General Exclusion 4.9 (Known claims and circumstances) to exclude a claim under this **policy** provided:

- a) the **named entity** has maintained without interruption primary insurance of the same type as the **module** under which the claim is being made with **us** between the date when the notification should have been given and the date this **policy** came into effect; and
- b) there has been no deliberate non-disclosure or deliberate misrepresentation to **us** in respect of the claim, circumstance, loss or liability; and
- c) **we** have total discretion to apply either the terms and conditions of the **policy** in force at the time the notification should have been given, or the terms and conditions of this **policy**; and
- d) **our** liability will be reduced by the amount that **we** determine fairly represents the extent to which **your** liability for the claim, circumstance or loss could have been reduced had it been reported under the earlier **policy**.

5.13 Defence

- a) **We** are entitled, but not required, to at any time appoint a solicitor (of **our** choice) to act in the defence, investigation, settlement, handling or appeal of a claim against **you** or any circumstances that may give rise to a claim under this **policy**.
- b) **You** acknowledge that any solicitor **we** appoint acts for **us**.
- c) The solicitor **we** appoint may disclose to **us** any information obtained in the course of the defence, investigation (for liability or cover), settlement or appeal of the claim against **you**, whether the information was obtained from **you** or otherwise. **You** agree to waive all **claims** to legal professional privilege that might otherwise have existed between **you** and the solicitors retained by **us**. It is agreed **we** may use such information to assist in determining coverage under the **policy**.
- d) **We** will have full control over the conduct in **your** name of any proceedings in connection with any claim against **you** (or counterclaim, or any circumstance that may give rise to a claim under this **policy**) including as to the defence, investigation, settlement or appeal of the claim and prosecution of any counterclaim.
- e) **You** will give all information, co-operation and assistance that **we** may require in respect of any claim under this **policy**, including any counterclaim.
- f) **You** must not incur any **defence costs** or any other costs and expenses which may be covered under this **policy** without **our** prior written consent.
- g) **We** will not require **you** to defend any claim against **you**, nor will **you** require **us** to defend, on **your** behalf, any such claim unless **Senior Counsel** advises that such claim should be defended.

In formulating such advice, **Senior Counsel** will take into consideration the likely outcomes, including whether the defence has a reasonable prospect of success and the likely costs to be incurred in the defence and **our** liability under the **policy**. The cost of the **Senior Counsel's** opinion will be regarded as part of the **defence costs**.

In the event that the appointed **Senior Counsel** advises that, having regard to all the circumstances, the matter should be settled, provided that settlement can be achieved within certain limits which, in counsel's opinion, are reasonable, then **you** will co-operate with **us** to achieve such settlement.

In the event that **Senior Counsel** advises that, having regard to all the circumstances, the matter should not be defended, then **you** can elect to defend the claim or proceeding at **your** own expense, but **our** liability will not exceed the amount that would have been payable had **you** elected not to defend.

5.14 Discovery period

- a) If **we** cancel this **policy** or do not offer renewal upon expiry, then the **named entity** has the right, upon terms and premium to be agreed, to purchase a single **discovery period**, subject to payment of additional premium and the following additional conditions:
 - (i) the **discovery period** applies only to an act, error or omission which occurs prior to the date on which the **discovery period** begins; and
 - (ii) the right to purchase the **discovery period** will lapse unless written notice of such election, together with payment of the additional premium due, is received by **us** within 30 days following the date of cancellation or non-renewal. If the right of extension lapses, then cover under this **policy** ceases as at the date of cancellation or non-renewal; and
 - (iii) the **limit of indemnity** for the **discovery period** is part of and not in addition to the **limit of indemnity**; and
 - (iv) provided this **policy** has not been cancelled or replaced with any other insurance; and
 - (v) the **discovery period** is non-cancellable, except for non-payment of premium.
- b) The **named entity** is not entitled to elect the **discovery period** where, at the date of non-renewal, the **named entity**:
 - (i) is merged or consolidated with or becomes a subsidiary company of another company; or

- (ii) sells all or substantially all of its assets to another company; or
- (iii) the **named entity** is in liquidation, receivership, insolvency, bankruptcy or administration.
- c) Once the **discovery period** has been elected by **you** the entire premium for the **discovery period** will be deemed earned at its commencement.

5.15 Discovery period for retired insureds

- a) If the **named entity** does not renew, or replace, this **policy** with any other insurance or purchase the **discovery period** cover, then a run-off period of 12 months immediately following whichever of the following is applicable:
 - (i) the **period of insurance** and the first 28 days immediately after the **period of insurance**; or
 - (ii) the **period of insurance** and the **discovery period**,
 will be provided for **you** if **you** have retired from your position as an **officer** or **employee** of the **named entity** before the date of non-renewal. During this period notice may be given to **us** of any claim against **you** which arises from an act, error or omission occurring prior to the date of non-renewal.
- b) This will not apply if, at the date of non-renewal, the **named entity**:
 - (i) is merged or consolidated with or becomes a **subsidiary** company of another company; or
 - (ii) sells all or substantially all of its assets to another company; or
 - (iii) the **named entity** is in liquidation, receivership, insolvency, bankruptcy or administration.

5.16 GST

Where, on receiving any indemnity payment under this **policy**, **you** are liable to pay tax under Section 5(13) of the Goods and Services Tax Act 1985, **we** will insure **you** for the cost of that tax.

The indemnity under this clause is in addition to the applicable **limit of indemnity**.

5.17 Inadvertent non-disclosure

In respect of the Directors and Officers Module only

We will waive **our** rights to avoid the **policy** and confirm indemnity to **you** provided always:

- a) **you** can establish to **our** satisfaction that such non-disclosure or misrepresentation was innocent and free from any dishonesty or intent to deceive; and
- b) **we** have continuously been **your** primary insurer under a directors and **officers** insurance **policy** between the date when such disclosure or representation should have been given and the date when it was in fact given; and
- c) the premium and terms of this **policy** will be adjusted at **our** discretion to reflect those which would have applied had such disclosure or representation been made at the correct time; and
- d) **our** liability to insure **you** will be no greater than the indemnity for which **we** would have been liable had the proper disclosure or representation been made at the correct time.

5.18 Inspection of property

We will be permitted, but not obligated to inspect **your** property and operations at any reasonable time.

5.19 Legislation changes

Any reference to any **Act of Parliament** or subordinate rules, regulation or standards referred to in this **policy** includes any amendments made or substitutions to that **Act of Parliament**, subordinate rule, regulation or standard.

5.20 Material change

You will give immediate notice to **us** in writing of any material change to any of the facts or circumstances existing at the commencement of the **period of insurance**. **We** will be entitled to vary the **policy** terms and/or charge an additional premium.

5.21 Mergers and change in control

- a) If, during the **period of insurance**, the **named entity**:
 - (i) is merged or consolidated with or becomes a **subsidiary** company of another company; or
 - (ii) sells all or substantially all of its assets to another company,Then cover under this **policy** will apply only in respect of acts, errors or omissions committed prior to the effective date of the merger, consolidation or sale.
- b) Unless **you** notify **us** and **we** agree in writing to continue **your** cover under this **policy**, **you** immediately stop being insured if **you**:
 - (i) commit any act of bankruptcy or are adjudicated bankrupt; or
 - (ii) are put into receivership or liquidation; or
 - (iii) make any arrangement with creditors, including a composition or assignment.

5.22 Module response

Where cover for any claim under this **policy** is available under more than one **module** (not including the Defence Costs or Crisis Support Modules):

- a) Cover will be provided by **us** under only one **module** of this **policy**; and
- b) **You** will be entitled to elect which **module** responds to the claim under the **policy** provided such election is made within a reasonable time. **We** can give notice to **you** requiring **you** to make an election within 10 working days and if **you** do not make an election within that period **we** will elect which **module** responds to the claim.

5.23 Notices by us

Any notice given in writing by **us** to the **named entity**, or to the broker through which **you** arranged this **policy**, will be deemed to be notice to each insured. Any notices by **us** may be effected by sending an email or letter to the last known contact address of the **named entity** or broker. Any such notice will be considered to have been received, if sent by email, at the time of transmission, and if sent by post, three working days after the date of posting.

5.24 Other insurance

Upon giving notice of any claim for which cover is available under this **policy**, **you** will provide **us** with written details of any other insurance that may cover or partially cover that claim.

In the event that **you** hold other insurance cover with another insurer in respect of any claim for which cover would otherwise be available under this **policy**, then the indemnity under this **policy** will not be available until the **limit of indemnity** under any other **policy** has been exhausted.

5.25 Payment of limit of liability

We may at any time pay **you** the balance of indemnity available up to the applicable **limit of indemnity**, or such lesser amount for which the claim can be settled. Upon such payment, **we** will have no further liability to **you** under this **policy**, except for **defence costs** or other covered costs already incurred up until the time of payment.

5.26 Policy disputes

This **policy** is governed by the laws of New Zealand whose courts have exclusive jurisdiction in any dispute which may arise in relation to the operation or interpretation of this **policy**.

5.27 Progress payments

In respect of the Consequential Loss Module only

At **your** request, **we** will make progress payments to **you** during the **indemnity period** provided that the requested progress payment is supported by the accountant or other representative appointed by **us**.

5.28 Proof of loss

In respect of the Internal Crime Module only

- a) **You** will provide **us** with full particulars of a proof of loss as soon as reasonably possible in support of **your** claim under this **policy**. Unless otherwise agreed, a reasonable time frame will be deemed to be 12 months from the date of **discovery**.
- b) **You** may not offer, as a part of any proof of loss, any computation or comparison which involves in any manner a profit and loss computation or comparison. **You** may offer a comparison between **your** inventory records and actual physical counts of its inventory to prove the amount of loss only where **you** establish that, wholly apart from such comparison, **you** have sustained a covered loss caused by an **employee**.

5.29 Reasonable care and precautions

You will take all reasonable precautions to:

- a) avoid or prevent the happening of any circumstances that may give rise to a claim against **you** or a claim under the **policy**; and
- b) comply, and ensure that directors, **officers** and **employees** comply, with all statutory obligations, orders or instructions, by-laws or regulations imposed by a regulator or public authority; and
- c) ensure all **employees** are properly trained and supervised; and
- d) there are proper safety systems, equipment, practices and procedures in place, and that all employees use and comply with them at all times; and
- e) all plant and equipment is kept properly maintained.

5.30 Recoveries

Any amounts recovered following a payment or payments under this **policy** will be distributed in the following order:

- a) the costs incurred in the course of such recovery, whether to **you** or to **us**;
- b) to **you** in respect of any amount by which the amount of the claim exceeded the **limit of indemnity**;
- c) to **us** to the extent of the claim paid or payable;
- d) to the **named entity** for the amount of any applicable **excess**.

5.31 Severability

- a) The **proposal** will be construed as a separate **proposal** by each **insured**. In respect of statements made and particulars provided in the **proposal**, no such statements or particulars, and no information possessed by any **Insured**, will be imputed to any other **Insured**.
- b) If more than one legal entity is insured under this **policy**, each entity is covered in the same manner as though **we** had issued them with a separate **policy**, provided:
 - (i) where the **named entity** is a company with a sole director the knowledge, acts or omissions of the sole director will be imputed to the **named entity**; and
 - (ii) if there is a claim against more than one **Insured** in respect of the same acts, errors or omissions, only one **excess** and one **limit of indemnity** will apply, regardless of the number of **insureds**. Where the **limit of indemnity** is insufficient to fully insure all **insureds**, it will apply in priority to the **named entity**.

In respect of the General Liability Module only

- c) This Condition does not apply to entities which are insured under this **policy** under Definition 6.86(e) or 6.86(f) (You, your, yours, insured).

5.32 Subrogation

- a) If **we** make any payment whatsoever under this **policy**, **we** will be entitled to all **your** rights of recovery against any party; and
- b) **You** will do all that is necessary to assist **us** in the exercise of **our** rights of subrogation, including prosecuting proceedings in **your** name at **our** expense, providing information, executing documents, and giving evidence; and
- c) If **you** effect any recovery in respect of the claim, **you** will account to **us** for the full amount received in accordance with this **policy**; and
- d) **We** will not exercise any subrogated rights of recovery against any **employee** unless the claim has been brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the **employee**.

5.33 Valuation of losses

In respect of the Internal Crime Module only

- a) Securities

In respect of **securities**, **we** will only be liable for the actual cash value thereof at the close of business on the business day on which the loss was **discovered**.

- b) Books of accounts and records

In respect of loss of or damage to property consisting of books of accounts or other records (other than electronic **data**) used by **you** in **business**, **we** will only be liable for the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of **data** which will have been furnished by **you** in order to reproduce such books and other records.

- c) Electronic data

In the event that a loss covered under the Internal Crime Module results in the destruction, erasure or **theft** of electronic **data** used by **you** while such **data** is stored within **your computer systems**, **we** will be liable under this **policy** if such **data** is reproduced, however cover will only apply to the cost of labour for the actual transcription or copying of **data** by **you** in order to reproduce such electronic **data**.

- d) Damage to premises

In the case of damage to premises, **we** will not be liable for more than the actual diminution in value of the property.

- e) Foreign currency

In respect of foreign currency, then for the purpose of any calculation required in the settlement of a loss, the rate of exchange will be the published rate in the NZ Herald on the date of such settlement.

- f) Property

In respect of property (not included in the above), **we** will not be liable for more than the actual cash value thereof at the time of loss or for more than the diminution in value of the property or of replacing same with property or material of like quality and value, provided however, the actual cash value of such other property held by **you** as a pledge, or as collateral for an advance or loan, will be deemed not to exceed the value of the property as determined and recorded by **you** when making the advance or loan, nor, in the absence of such record, the unpaid portion of the advance or loan plus accrued interest thereon at legal rates.

Section 6. Definitions

6.1 Acquitted

The dismissal of charges before or after a defended hearing, or the entry of a not guilty verdict. **Acquitted** does not include the withdrawal or disposition of a charge pursuant to a plea bargain or agreement with the prosecutor where multiple charges have been laid.

6.2 Act of Parliament

Any Act of the New Zealand Parliament, including any amendment, enactment or replacement legislation or any statutory regulations, rules or codes issued under such an Act.

6.3 Advertisement

Any communication to the public promoting **your business** including by way of print, electronic or digital media, publication, communication, broadcast, message, programme, content, or exhibit, where that communication first occurs during the **period of insurance** and within the **policy territory**.

6.4 Advertising liability

Liability arising out of one or more of the following acts, errors or omissions:

- a) defamation arising out of statements first published during the **period of insurance**; or
- b) infringement of copyright, title or slogan; or
- c) unfair competition, misappropriation of advertising ideas or style of doing business; or
- d) invasion of privacy;

where committed or alleged to have been committed in any **advertisement** by **you** or on **your** behalf, in the course of carrying out **your business**.

6.5 Aircraft

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

6.6 Associated entity

Any entity in which the **named entity** or **subsidiary** owns at the time of the **wrongful act** (either directly or indirectly) between 20% and 50% of the issued or unissued shares.

6.7 Business

The business of the **named entity** as specified in the **schedule**, which includes:

- a) the provision and management of lunchroom facilities, social, sports, welfare and similar organisations for the benefit of **employees**; and
- b) fire brigade, first aid, medical and ambulance services; and
- c) property owners, lessors, lessees and tenants; and
- d) organisation of and participation in exhibitions, trade fairs, conferences and the like; and
- e) the organisation of charitable events or similar fundraising activities; and
- f) sponsorship of events, organisations, entities and individuals; and
- g) any other activity that **you** may undertake provided that **you** give **us** prior written notice and obtain **our** written acknowledgement of coverage.

6.8 Claim

In the Directors and Officers Module only

- a) A demand for compensation or **damages** which alleges a **wrongful act**; or
- b) Any administrative, disciplinary, regulatory or criminal proceeding which alleges a **wrongful act**; or
- c) Any civil proceeding for compensation or **damages** or alternative dispute resolution process which alleges a **wrongful act**; or
- d) Any circumstances that a reasonable insured in **your** position would consider may give rise to an allegation of a **wrongful act**.

In the Employment Disputes Module only

- e) Any written or verbal communication (including notice of any proceedings, investigations or raised personal grievance) to **you** which alleges a **wrongful act**; or
- f) Any circumstances that a reasonable insured in **your** position would consider may give rise to an allegation of a **wrongful act** or a claim for punitive or exemplary damages arising out of a **wrongful act**.

In the Employers Liability Module only

- g) Any threatened or actual legal proceedings against **you**; or
- h) Any circumstance that a reasonable insured in **your** position would have considered may give rise to a demand for **damages**.

In the Statutory Liability Module only

- i) Any threatened or actual prosecution or investigations or inquiry regarding an **event**; or
- j) Any circumstances which indicate to a reasonable insured in **your** position that a prosecution, investigation or inquiry regarding an **event** may occur, which is connected with **your business**, and which may give rise to the imposition of a **fine**; or
- k) Any threatened or actual **proceeding**; or
- l) Any circumstances which indicate to a reasonable insured in **your** position that a **proceeding** may occur.

6.9 Client

A customer of **yours** that **you** provide goods or services to under a written contract, for a fee or other monetary consideration.

6.10 Computer system

Any computer, hardware, software, firmware and the **data** stored thereon, as well as associated input and output devices, **data** storage devices, networking equipment, components and storage area network or other electronic back up facilities owned or operated by **you** or any other party.

6.11 Crisis

Any of the following events:

- a) the loss of the **named entity**'s intellectual property rights previously acquired under law by the **named entity** for a patent, trademark or copyright; or
- b) the loss of a major customer or major contract of the **named entity** (being a customer or contract that constitutes more than 30% of the **named entity**'s annual turnover); or
- c) any act committed on the **premises** that results in any **employee** or customer suffering:
 - (i) physical injury or death; and/or
 - (ii) emotional trauma from witnessing the physical injury or death of any other person; or

- d) damage to a **premises** caused by oil spills, crashes, fires, building collapse (other than by earthquake, windstorm or other natural events) and other similar events; or
- e) the recall of any product which has been produced, prepared, manufactured or packaged by the **named entity** due to its potential to cause **property damage** or bodily injury; or
- f) an **internal crime** covered under the Internal Crime Module; or
- g) a **valid claim** under the Statutory Liability Module.

6.12 Crisis loss

Reasonable fees, costs, charges and expenses incurred by **you** following a **crisis** as a result of the **named entity** engaging a public relations firm or consultant, crisis management consultant or law firm in order to minimise the effect of a **crisis** and to prevent or limit any adverse or negative publicity in respect of a claim to which another **module** of this **policy** responds.

6.13 Cyber act

An unauthorised or malicious act or series of related unauthorised or malicious acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **computer system** or any **data** by any person or group(s) of persons.

6.14 Cyber incident

- a) Any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any **computer system**; or
- b) Any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **computer system** arising from any **cyber act** or under 6.14(a).

6.15 Damages

Monetary compensation ordered to be paid or agreed to be paid pursuant to a judgment or settlement of any action brought in a New Zealand court in respect of **personal injury** to an **employee** but does not include any such monies payable pursuant to any remedy, relief or penalty provided in any statute of New Zealand, whether by way of damages, **fine**, reparation or other order.

6.16 Data

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**.

6.17 Data reconstitution costs

The reasonable costs (other than remuneration payable to any **employee**, **officer**, and **your** cost of their time or costs or overhead) incurred in reproducing or amending the software programs or systems where such reproducing or amendment is necessary to correct damage caused to the programs or to amend the security codes following an **internal crime** in respect of the use of the computer hardware or software programs or systems owned and operated by **you** and which was the subject of a loss under this **policy**.

6.18 Defence costs

Reasonable fees, costs, charges and expenses incurred by **us** on **your** behalf or by **you** with **our** written consent, which will not be unreasonably delayed or withheld.

Defence costs will not include any remuneration or reimbursement of fees for **your** time including any time spend in assisting **us** or **our** appointed lawyers with the conduct of any claim.

6.19 Defence costs limit of indemnity

The **limit of indemnity** specified in the **schedule** for the Defence Costs Module unless otherwise specified.

6.20 Deprivation of assets expenses

Housing, utilities, personal insurances and schooling expenses in the event of an interim or interlocutory order confiscating, controlling, suspending or freezing rights or ownership or real property or personal assets of **yours** or creating a charge over real property or personal assets of **yours** during the **period of insurance** provided that such expenses will only be payable:

- a) directly to the service provider and in the event of a personal allowance for such costs having been granted by a court will only apply where such personal allowance has been exhausted; and
- b) after 30 days following the date of the order for a period of up to 12 months.

6.21 Discovered, discovery

The moment at which **you** or any **officer**, departmental head or other senior manager or the equivalent thereof, not in collusion with any person(s) committing the **internal crime**, becomes aware of any fact or facts that give reasonable grounds to believe that loss as insured under this **policy** has been or may be incurred even though the exact amount or details of the loss may not then be known.

Knowledge possessed or **discovered** by the **named entity** or **subsidiary** or by any **officer**, departmental head or other senior manager or the equivalent thereof will be deemed to constitute knowledge possessed or **discovery** made by all other persons, companies or entities forming part of the **named entity** or **subsidiary**.

6.22 Discovery period

An extension of this **policy** of a further **period of insurance** of 12 months following the effective date of **us** cancelling the **policy** or not offering renewal upon expiry.

6.23 Employee

- a) Any person who was, is, or during the **period of insurance** becomes (or who alleges that but for the **wrongful act** would have been) an employee (as defined in the Employment Relations Act 2000) of the **named entity** or **subsidiary**; or
- b) The estate, heirs, legal representatives or assigns in the event of the death of the employee or incapacity of that employee but only if such persons comply with and are subject to the terms of this **policy**.

Employee does not include any **officer** or any consultants, contractors or agents or contractor or person providing **you** with services for labour only under contract for services.

In the Internal Crime Module only

- c) **Employee** will have the meaning at Definition 6.23 (Employee) (a) and (b) above, and will also mean:
 - (i) any natural person who works under **your** supervision, who is subject to the same controls and procedures as the person mentioned under (a) above; and
 - (ii) any natural person who is a volunteer or temporary personnel whilst performing acts within the scope of an **employee's** normal duties; and
 - (iii) any natural person who is a retired **employee** of **yours** working under a written contract; and
 - (iv) any natural person whose identity **you** are unable to discover, but whose **internal crime** caused a loss covered under this **module** and the evidence proves that the loss was sustained due to an **internal crime** of a person under Definition 6.23 (Employee) (a), (b), (c) above.

Employee does not include:

- (v) any **third party**; or
- (vi) any partner of **yours** (where the **named entity** or its **subsidiary** is a partnership); or

- (vii) any **employee** who, at the time of loss, controls more than 20% of **your** voting rights; or
- (viii) any **officer**, when acting in their capacity as an executive or **officer of yours**, and not in his or her capacity as an **employee of yours**.

6.24 Event

- a) Any act or omission done or omitted to be done by **you** in connection with **your business** that may result in an allegation that **you** have committed an offence under an **Act of Parliament** punishable by conviction; or
- b) A **proceeding**.

6.25 Excess

The excess specified in the **schedule** for each Coverage Clause or Additional Coverage Clause, which will be inclusive of costs, unless otherwise specified. All insureds are jointly liable to pay the **excess**. In order to recover the **excess**, **we** may deduct the amount of the **excess** from any amount paid under this **policy**. The **limit of indemnity** will apply over and above the applicable excess.

6.26 Extortion

Any threat to personally injure **employees** or **officers** or their family members, or to damage or destroy property owned by **you** or for which **you** are legally liable, provided that prior to the 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 **officer**, and **you** have reported the threat to the Police.

6.27 Extradition proceeding

In respect of the provisions of the Extradition Act 1999:

- a) a formal request for extradition or a warrant for **your** arrest or other proceedings; or
- b) any associated appeal against the request for **your** extradition or a warrant for **your** arrest; or
- c) the same request or warrant and any associated appeal arising from the equivalent legislation in any other jurisdiction.

6.28 Financial instrument

Cheques, drafts or similar written promises, orders or directions to pay a certain amount of money that are made, drawn by or drawn upon **you** or by anyone acting or purporting to be acting as **your** agent.

6.29 Financial loss

A significant or substantial decrease of the total consolidated annual revenues of the **named entity** as at the end of the **named entity's** last financial year.

6.30 Fine

Any monetary penalty or costs for which **you** are liable on conviction of any offence under an **Act of Parliament** in connection with an **event** for which **we** may legally insure **you**.

A **fine** will include amounts ordered to be paid, upon conviction, towards the costs of the prosecution.

A **fine** does not include either any amount ordered as compensation, or a **fine** imposed pursuant to the Health and Safety at Work Act 2015.

6.31 Fraudulent alteration

A material alteration to any **financial instrument** for a fraudulent or dishonest purpose by a person other than the person who was authorised to sign such **financial instrument**.

6.32 Hot work

Any work involving:

- a) the application of heat, a naked flame or open heat source or work that produces sparks; or
- b) cutting involving the use of rotary disc or grinding equipment; or
- c) the use of gas welding, arc welding, oxyacetylene welding equipment including cutting with such equipment; or
- d) soldering, brazing, use of heat guns.

6.33 Improper financial gain

An **internal crime** causing loss to a **client** by the taking or gaining of any property, money or **securities** to which that **employee** was not legally entitled (and excluding any salaries, bonuses, fees, commissions, promotion, emoluments or other remuneration), provided that the **employee's** actions were not in collusion with the **client's** directors or employees.

6.34 Income

Revenue received or receivable in the course of **your 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 **your business** that vary with production and/or revenue.

6.35 Indemnity period

The period commencing at midnight on the day on which **you** were first required to notify **us** of the **valid claim** or **occurrence** under Consequential Loss Module Coverage Clause 1.1 (Consequential loss) and expiring on the earlier of:

- a) 12 months or the period specified in the **schedule**; or
- b) when **your business** returns to the level that **your business** would have attained but for the **valid claim** or **occurrence** under Consequential Loss Module Coverage Clause 1.1 (Consequential loss).

6.36 Insured

Insured has the meaning set out at Definition 6.86 (You, your, yours, insured).

6.37 Internal crime

Any fraudulent or criminally dishonest single, continuous or repeated act(s) committed by an **employee** acting alone or in collusion with others which causes **you** a loss.

6.38 Interrelated wrongful acts

All **wrongful acts** that arise from common or related facts or a series of common or related facts.

6.39 Investigation costs

All reasonable and necessary costs incurred by **you** to establish the amount of a loss (other than remuneration payable to any **employee**, **officer**, cost of their time or **your** costs or overhead) with **our** written consent in connection with a covered loss to be paid under this **policy** where the loss exceeds the **excess**.

6.40 Jurisdictional limits

The jurisdictions specified in the **schedule** for each **module**.

6.41 Legal action

Any prosecution, including any appeals in any court in New Zealand.

6.42 Licensed Building Practitioner

A building practitioner whose name is at the time of the act, error or omission entered in the register established and maintained under the Building Act 2004 or any amendments, enactments or statutory regulations of such Act.

6.43 Limit of indemnity

The limit of indemnity specified in the **schedule**.

6.44 Loss

In the Directors and Officers Module only

Any amount which **you** become legally liable to pay on account of any **claim**, including:

- a) **damages** awarded or judgments entered against **you**; and
- b) legal costs and expenses awarded against the **you** in connection with a covered award, judgment or settlement; and
- c) settlements negotiated with **our** prior written consent;

Loss does not include:

- (i) **crisis loss**; or
- (ii) **defence costs**; or
- (iii) any amount which **you** are not legally obliged to pay; or
- (iv) taxes, except as covered under Condition 5.16 (GST), or fines or penalties imposed by law; or
- (v) punitive or exemplary damages, or the multiple portion of any multiplied damage award; or
- (vi) any amount which is uninsurable at law.

In the Employment Disputes Module only

- d) Any amount **you** are obliged to pay an **employee** on account of any claim. Such claim must be made against **you** for **wrongful acts** for which cover applies, including, but not limited to, **damages**, judgments and settlements.

Loss does not include:

- (i) **crisis loss**; or
- (ii) **defence costs**; or
- (iii) any amount which **you** are not legally obliged to pay; or
- (iv) taxes, except as covered under Condition 5.16 (GST), or fines or penalties imposed by law; or
- (v) punitive or exemplary damages, or the multiple portions of any multiplied damage award; or
- (vi) any amount which is uninsurable at law; or
- (vii) any private mediator's or arbitrator's costs that may arise out of a contractual alternative dispute resolution provision.

In the Internal Crime Module only

- e) The direct **financial loss** of any **property**, money or **securities**.
- f) **Loss** will also include the amount of any interest receivable or payable by **you** resulting directly from a loss, between the time of sustaining such loss and the date of **discovery** of such loss, provided that this interest is calculated by applying the average base rate in force by the New Zealand Reserve Bank.

Loss does not include:

- (i) **crisis loss**; or
- (ii) **defence costs**; or
- (iii) any amount which **you** are not legally obliged to pay; or
- (iv) taxes, except as covered under Condition 5.16 (GST), or fines or penalties imposed by law; or
- (v) punitive or exemplary damages, or the multiple portion of any multiplied damage award; or
- (vi) any amount which is uninsurable at law.

6.45 Loss investigator

An investigator and/or forensic expert appointed by **us**.

6.46 Module

Each module in this **policy**, which should be read in conjunction with the General Exclusions, the General Conditions, the Definitions and the Preamble.

6.47 Named entity

The entity or entities specified in the **schedule**.

6.48 Non-profit entity

Any corporation, association, trust, fund, institution, society, enterprise or foundation:

- a) not included in the definition of **named entity** and **subsidiary**; and
- b) established primarily for charitable, community, industry or social purposes.

6.49 North American countries

The United States of America and Canada, including those territories to which the legal jurisdiction of the United States of America or Canada extends or applies.

6.50 Occurrence

Any one event in connection with **your business**, including continuous or repeated exposure to substantially the same general conditions, which results in **personal injury** or **property damage** that is not expected or intended from **your** standpoint.

6.51 Officer

Any person who was, is, or during the **period of insurance** becomes:

- a) a principal, partner, director, alternate director, de facto director or secretary of the **named entity** or **subsidiary**; or
- b) a company officer who though not a director, is concerned in, or takes part in, the management of the **named entity** or **subsidiary**; or
- c) any person who by virtue of any law is deemed to be a director of the **named entity** or **subsidiary**; or
- d) The estate, heirs, legal representatives or assigns in the event of the death of the **officer** or incapacity of that **officer** but only if such persons comply with and are subject to the terms of this **policy**.

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6.52 Official investigation

Statutory Registration Board or similar regulatory inquiry, investigation or proceeding.

6.53 Order for reparation

An amount of money **you** are ordered to pay as reparation under Section 32 of the Sentencing Act 2002.

6.54 Outside entity

Any:

- a) **non-profit entity** or **associated entity**; or
- b) other entity where **outside position** cover is noted in the **policy** by endorsement.

6.55 Outside position

The role of director, **officer**, manager, trustee or other equivalent position held by **you** in an **outside entity**.

6.56 Pecuniary penalty

A monetary penalty ordered by a New Zealand Court in a civil proceeding which is to be paid to a Crown entity pursuant to an **Act of Parliament** which provides for that pecuniary penalty. A **pecuniary penalty** will not include a **fine** or costs or any compensation ordered by a Court.

6.57 Period of insurance

The period specified in the **schedule**.

6.58 Personal injury

Bodily injury, sickness, disease or infection, illness or care needs, including death resulting therefrom, and will include disability, shock, fright, mental anguish or mental injury.

In the General Liability Module only

Bodily injury, sickness, disease or infection, illness or care needs, including death resulting therefrom, and will include disability, shock, fright, mental anguish or mental injury, as well as bodily injury caused by:

- a) false arrest, wrongful detention, false imprisonment or malicious prosecution or humiliation committed by **you**; or
- b) wrongful entry or eviction or other invasion of the right of privacy committed by **you**; or
- c) assault and battery committed by **you**, provided that this was not committed by **you** or at **your** direction except for the purpose of preventing or eliminating danger to persons or property; or
- d) trespass to the person committed by **you**;

happening during the **period of insurance** and within the **policy territory**.

6.59 Policy

This document, the **schedule**, the proposal and any endorsements issued by **us**.

6.60 Policy territory

The territory specified in the **schedule**.

In the General Liability Module only:

Worldwide, unless otherwise stated in the **schedule**, and;

- a) Except where the local laws require **you** to have insurance with an insurer or insurance provider licenced in that territory; and

- b) Subject to
 - (i) Module Exclusions 3.12 (North American countries) and 3.13 (North American exports);
 - (ii) New Zealand only in Additional Coverage Clause 2.13 (Product withdrawal costs), 2.14 (Punitive or exemplary damages), 2.15 (Service or repair – equipment or machinery), 2.16 (Service or repair – vehicle or watercraft), 2.18 (Underground services), 2.20 (Vibration or removal of support) and 2.21 (Warrant of fitness); and
 - (iii) New Zealand and Australia only in Additional Coverage Clause 2.19 (Unmanned aerial vehicles).

6.61 Pollutants

Any substance located anywhere in the world exhibiting any hazardous characteristics including without limitation substances identified on a list of hazardous substances issued by any governmental agency in the country where this **policy** is issued including but not limited to:

- a) solid, liquid, gaseous or thermal irritants, contaminants or smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste materials; or
- b) any other air emission, odour, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, electric or magnetic or electromagnetic field and noise.

6.62 Preliminary expenses

Up to 8 hours of time spent by a **loss investigator** assisting **you** with the investigation of **your loss**.

6.63 Premises

The interior portion of any building or property owned or occupied by the **named entity** or **subsidiary** as a place to conduct its business.

6.64 Private prosecution

Any prosecution taken by a person or entity other than the statutory authority or enforcement agency given that responsibility under an **Act of Parliament**.

6.65 Proceeding

- a) An official complaint against **you** of a breach (or potential breach) of either the Privacy Act 2020 or the Human Rights Act 1993; or
- b) A civil proceeding against **you** alleging a breach (or potential breach) of either the Privacy Act 2020 or the Human Rights Act 1993.

6.66 Property

In the Internal Crime Module only

Tangible property of **yours** other than money or **securities**.

6.67 Property damage

- a) Physical injury to or destruction or **loss** of tangible property including resulting loss of use; or
 - b) Loss of use of tangible property, which has not been physically injured or destroyed provided such loss of use arises out of physical damage to or destruction or loss of other tangible property;
- happening during the **period of insurance** and within the **policy territory**.

6.68 Proposal

All proposals including attachments, materials and information submitted with them for this **policy** or for any **policy** of which this **policy** is a renewal or replacement. All such proposals, attachments and materials are deemed to be incorporated into this **policy**.

6.69 Retroactive date

The **retroactive date** specified in the **schedule**.

6.70 Schedule

The current **schedule** to this **policy** issued by **us**.

6.71 Securities

Any bond, debenture, note, share, stock or other equity or security for debt, and will include any certificate of interest or participation in, receipt for, warrant or other right to subscribe to or to purchase, voting trust certificate relating to, or other interest in any of the foregoing items representing money or **property**. **Securities** does not include money or **property**.

6.72 Senior counsel

A senior lawyer to be mutually agreed between **us** and **you**. In the absence of such agreement, the **senior counsel** will be selected by the President of the New Zealand Bar Association from a list of three nominations from **us** and three nominations from **you**.

6.73 Service or repair

The repair, alteration, installation, renovation, service, scheduled maintenance or any necessarily incidental activities.

6.74 Statutory damages

Damages payable by **you** for an accidental breach of either the Privacy Act 2020 or the Human Rights Act 1993.

6.75 Sublimit

The sublimit for the applicable Coverage Clause or Additional Coverage Clause specified in the **schedule**. If no sublimit is specified in the **schedule**, then no cover is available.

6.76 Subsidiary

- a) A company in which the **named entity**, at the start of the **period of insurance**, exercises effective management control, or, either directly or indirectly through other entities;
 - (i) controls the composition of the board of directors; or
 - (ii) controls more than half of the shareholder voting power; or
 - (iii) holds more than 50% of the issued share capital; or
 - (iv) any company whose financial accounts are required to be consolidated with those of the **named entity** pursuant to the Companies Act 1993 or the applicable New Zealand accounting standard; or
 - (v) any incorporated joint venture over which **you** exercise effective management control.
- b) **Subsidiary** will also mean an entity which has ceased to be a subsidiary during the **period of insurance**, however **we** will only insure claims under this **policy** relating to that subsidiary but only in respect of acts, errors or omissions occurring prior to the subsidiary ceasing to be a subsidiary.
- c) **Subsidiary** will also extend to include any entity fitting the criteria at (a)(i)-(v) above which is acquired or created or which begins to be controlled by the **named entity** during the **period of insurance** (hereafter referred to as 'new subsidiary'), provided:

- (i) the total gross assets of the new subsidiary do not exceed 20% of the total gross consolidated assets of the **named entity**; and
 - (ii) the new subsidiary is not located outside of New Zealand; and
 - (iii) the new subsidiary has no **securities** traded or listed; and
 - (iv) the new subsidiary operates the same business as the description in the **schedule of your business**.
- d) However, **we** will not insure any claim under this **policy** for or arising out of acts, errors or omissions occurring before the date that the new subsidiary became a subsidiary.

In the Employers Liability Module only

Subsidiary will also include:

Any entity that ceased to be a subsidiary before the **period of insurance**, but **we** will not pay on **your** behalf any claim arising out of **personal injury** occurring after it ceased to be a subsidiary, nor will **we** pay on **your** behalf any claim arising out of **personal injury** occurring before it became a subsidiary. There is no cover for any claim in connection with any **personal injury** that occurred prior to the date the company became a **subsidiary**.

6.77 Tax audit costs

Any reasonable fees, charges or disbursements of an accountant or registered tax agent or any other consultant who is engaged by the **named entity** for work undertaken in response to a **tax audit notice**.

6.78 Tax audit notice

Any notification from the Inland Revenue Department of New Zealand relating to the **named entity's** liability to pay income tax, fringe benefits tax, capital gains tax, goods and services tax or employer superannuation contribution tax (including the amount of any such tax) only.

6.79 Theft

The unlawful permanent deprivation by an **employee** of money, **securities** or **property**, whether from **your** premises or in transit or otherwise, including by robbery.

6.80 Third party

Any person or entity other than **you**, not being an **employee** or acting in collusion with an **employee**, but excluding:

- a) any partner of **yours** (where the **named entity** or its **subsidiary** is a partnership); or
- b) any **employee** who, at the time of **loss**, controls more than 20% of **your** voting rights; or
- c) any **officer**.

6.81 Valid claim

Any **claim** that is:

- a) first made against **you** during the **period of insurance**; and
- b) notified in writing to **us** by **you** during the **period of insurance** or within 28 days after its expiry; and
- c) arising out of any act, error or omission or conduct in connection with **your business** that occurred subsequent to the **retroactive date**.

Claims that do not accord with all of (a), (b) and (c) of this definition will not be covered under this **policy**.

6.82 Vehicle

Any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power and any trailer or other attachment made or intended to be drawn by any such machine, and includes its accessories, tools, specialised equipment, and spare parts.

6.83 Watercraft

Any vessel, craft or thing made or intended to float on and travel on or through water. Any reference in this **policy** to the length of the **watercraft** is to be measured in length overall being stem to stern excluding any fixed or movable projections extending beyond these points.

6.84 We, our, us

Ando Insurance Group Limited for and on behalf of the Underwriters noted in the **schedule**.

6.85 Wrongful act

In the Directors and Officers Module only

Any actual or alleged error, misstatement, misleading statement, act, omission, negligence, breach of duty, breach of trust, breach of authority or other act committed or attempted by **you** solely in the capacity as a director or **officer** in the course of performing **your** duties to the **named entity** or **subsidiary** or in an **outside position**.

In the Employment Disputes Module only

Actual or alleged conduct of the following kind against an **employee** by **you**, or by another **employee** in the course of that other **employee's** employment with **you**:

- a) unjustifiable disadvantage, unlawful discrimination, wrongful unjustifiable demotion, or unjustifiable failure or refusal to promote;
- b) actual or constructive termination of an employment agreement, in breach of the law;
- c) misrepresentation or defamation;
- d) the infliction of emotional distress;
- e) harassment (sexual or racial or otherwise);
- f) failure or refusal to hire a potential **employee**;
- g) invasion or breach of the right of privacy as provided in the Privacy Act 2020.

6.86 You, your, yours, insured

In the Consequential Loss and the Internal Crime Modules only

The **named entity** and any **subsidiary**.

In the Directors and Officers Module only

In respect of cover under all Coverage Clauses except Coverage Clause 1.2 (Company Reimbursement Cover).

Any person who was, is, or during the **period of insurance** becomes:

- a) an **officer**; and
- b) an **employee** of the **named entity** and **subsidiary**:
 - (i) while acting in a managerial or supervisory capacity for that **named entity** or **subsidiary**, or
 - (ii) named as a co-defendant with an **officer** of the **named entity** or **subsidiary**; and
- c) a contractor who acts as a member of a committee elected or appointed by resolution of the board of directors of the **named entity** or **subsidiary** to perform specific directorial acts on behalf of the **named entity** or **subsidiary**.

You, your, yours, insured will not include any externally appointed **officers**, including but not limited to, auditors, receivers, statutory managers, trustees, liquidators or mortgagees in possession.

In respect of Coverage Clause 1.2 (Company reimbursement cover), **you, your, yours, insured** means only the **named entity** or **subsidiary**.

In the General Liability Module only

- a) The **named entity** or **subsidiary**; and
- b) An **officer** or **employee** of the **named entity** or **subsidiary**; and
- c) Each joint venture, co-venturer or joint lessee of the **named entity** and **subsidiary** but only with respect to liability incurred as a joint venture, co-venturer or joint lessee, provided that the **named entity** and **subsidiary** gives written notice to **us** and obtains **our** written acknowledgement of coverage for such joint venture, co-venture or joint lease; and
- d) Every principal in respect of their vicarious liability arising solely out of the performance by the **named entity** or **subsidiary** of any contract of work for such principal, but always subject to the terms of this **policy**.
- e) Any contractors or subcontractors who supply only their labour and who work fully under the direction, control and supervision of the insured but only while they are engaged and working in New Zealand for and on behalf of the **named entity** or **subsidiary** and provided they are not otherwise insured.
- f) Any volunteer but only while they are engaged and working in New Zealand for and on behalf of the **named entity** or **subsidiary** and that they are not otherwise insured.

In all other parts of this policy other than Defence Costs

- a) The **named entity** or **subsidiary**; and
- b) An **officer** or **employee** of the **named entity** or **subsidiary**.

6.87 Your product

Any good, product, or other thing, including labels, instructions for use, advice and property which has been manufactured, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by **you** after it has ceased to be:

- a) in **your** possession; or
- b) under **your** control; or
- c) owned by **you** (including any ownership by way of any retention of title agreement).

ANDO ML 0525

