



# *Professional Risks*

DIRECTORS AND OFFICERS

# Professional Risks / DIRECTORS AND OFFICERS INSURANCE POLICY

## CONTENTS

INTRODUCTION	2
WHAT YOU ARE INSURED FOR	2
AUTOMATIC EXTENSIONS	3
OPTIONAL EXTENSIONS	6
EXCLUSIONS	9
BASIS OF SETTLEMENT	10
MANAGING YOUR CLAIM	11
GENERAL CONDITIONS	13
DEFINITIONS	15

**Welcome to NZI. Thank you for selecting us as your insurer. This is your Directors and Officers Policy document.**

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

### INTRODUCTION

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

#### POLICY CONTRACT

This policy consists of the following parts:

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

#### INTERPRETING THIS POLICY

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

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

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

### WHAT YOU ARE INSURED FOR

#### A. DIRECTORS AND OFFICERS LIABILITY

**You** are insured for **your liability** arising from a **wrongful act** that occurs after the **retroactive date** in connection with the **company**, provided:

1. **your liability** is not lawfully indemnifiable by the **company**, and
2. **you** first knew of the **claim** in relation to that **wrongful act** during the **period of insurance**, and
3. **you** have advised **us** of that **claim** as soon as possible, but no later than 30 days after the **period of insurance** ends.

#### B. COMPANY REIMBURSEMENT

**We** will pay on behalf of the **company**, to the extent it is lawfully permitted to indemnify **you**, for **your liability** (and defence costs covered under 'What you are insured for Part C' below) arising from a **wrongful act** that occurs after the **retroactive date** in connection with the **company**, provided:

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

#### C. DEFENCE COSTS

**You** are insured for all legal costs and legal expenses necessarily and reasonably incurred with **our** prior written consent to defend or settle:

1. a **claim** alleging **liability** covered by this policy, and
2. a criminal proceeding brought against **you** arising from a **wrongful act** covered by this policy, provided that **you** are acquitted. In the event that **you** are convicted of an offence in such a criminal proceeding, **you** are obliged to repay to **us** any monies **we** have paid in respect of legal costs or legal expenses in relation to that proceeding.

Legal costs and legal expenses covered by this policy are included within the sum insured and are not additional to it.

Costs and expenses incurred solely for a Judicial Review or seeking an Injunction are not covered by this policy (*as these are not civil liability claims*).

## AUTOMATIC EXTENSIONS

The following Automatic Extensions apply to this insurance subject to the provisions outlined in 'What you are insured for' and the terms of this policy.

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

### A. CONTINUOUS COVER

This policy is extended to include:

1. any **claim** or circumstance that may give rise to a **claim**, that **you** first knew of or ought to have known of, and that should have been advised to **us** during any previous period of insurance with **us**, and
2. any indemnity provided to **you** by the **company** in relation to that **claim** or circumstance that may give rise to a **claim**.

However, this cover:

(a) only applies if:

- (i) **you** had continuous Directors and Officers cover with **us** since that previous period of insurance for the time **you** were a director, officer or employee, and
- (ii) **your** failure to advise was not deliberate, and
- (iii) **you** had advised **us** of the **claim** or circumstance that may give rise to a **claim** no later than the end of this **period of insurance** (or 30 days thereafter), and

(b) is subject to:

- (i) the terms of the policy in existence when **you** first knew of the **claim** or circumstance that may give rise to a **claim**, or
  - (ii) the terms of this policy,
- whichever provides lesser cover. **We** have sole discretion to elect which policy applies.

'Exclusion Part K' does not apply to this Extension.

### B. CURRENT OUTSIDE DIRECTORSHIPS – NON PROFIT ORGANISATIONS

This policy is extended to insure **your liability** arising from a **wrongful act** in connection with **outside directorships** that **you** hold at the request of the **company** at any time during the **period of insurance** in a non profit organisation, provided that:

1. **your liability** is not indemnified by the non-profit organisation, and
2. **your liability** is not covered by any other insurance, and
3. this extension does not extend to cover any other director, officer or executive of the non-profit organisation or the non-profit organisation itself.

### C. EMPLOYMENT PRACTICES LIABILITY (YOUR COVER)

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

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

The definition of 'wrongful act' is extended to include 1 to 5.

**You** are not insured for:

(a) **liability** to pay any amount pursuant to:

- (i) an obligation under a contract of employment, or
- (ii) any Act of Parliament other than the Employment Relations Act 2000, or

(b) **liability** in connection with:

- (i) an industrial dispute, strike, picket, lock-out, go slow or work to rule, or
- (ii) union relations or union access, or

- (iii) the Injury Prevention, Rehabilitation and Compensation Act 2001, workers compensation or health and safety legislation, or similar legislation, or
- (iv) bodily injury, sickness, disease or death of any person, or
- (v) the cost of physical modifications to premises, plant or equipment owned or occupied by **you**, or
- (vi) a contract of employment alleged to have been obtained by unfair bargaining, or
- (vii) the dismissal or disciplining of an **employee**, unless prior to this **you** had obtained and followed **our** advice or the advice of an employment lawyer approved by **us**, or
- (c) for the cost of complying with any compliance order, or any other order in the nature of an injunction, or
- (d) for legal costs that **you** incur to obtain legal advice from an employment lawyer prior to the dismissal or disciplining of an **employee**.

'Exclusions Part F and J' do not apply to this Automatic Extension.

## D. ESTATES AND LEGAL REPRESENTATIVES

This policy is extended to insure **your** estate, legal representative or assigns for **wrongful acts** that result in their **liability** after **you** have died or become legally incompetent or insolvent.

**We** will insure **your** estate, legal representative or assigns on the same terms as **we** insure **you**.

## E. EXTENDED REPORTING PERIOD

If **we** elect not to offer renewal of this policy, then **you** may pay **us** an additional premium (being 50% of the last premium), to extend **your** cover under the policy for another 12 months.

However, this will only cover **you** for **wrongful acts** that happened before the expiry of the **period of insurance**.

**You** cannot extend **your** cover if **we** cancelled this policy or declared this policy unenforceable because **you** did not:

1. pay the premium, or
2. disclose information material to the risk, or
3. comply with terms of this policy.

If **you** choose to extend the policy as described above, then **you** must give **us** notice that **you** wish to do so within 30 days of **our** refusing to renew this policy.

## F. INSURED VS INSURED

This policy is extended to insure **claims** brought against **you** by:

1. any other person or entity covered by this policy, for contribution or indemnity in relation to another **claim** that is covered by this policy, or
2. a shareholder of the **company** in their own right, or on behalf of the **company**, provided that the shareholder:
  - 2.1 was not covered by this policy at the time of the **wrongful act**, and
  - 2.2 is acting without any assistance, enticement or co-operation from **you**, other than as required by law, or
3. any regulatory authority on behalf of the **company**, provided that the regulatory authority is acting without any assistance, enticement or co-operation from **you**, other than as required by law, or
4. any liquidator, receiver, receiver and manager, statutory manager, administrator or trustee administering a compromise or scheme of arrangement of the **company**.

'Exclusions Part F and J' do not apply to this Extension.

## G. JOINT VENTURES

This policy is extended to insure **your** individual and joint **liability** arising from a **wrongful act** in connection with a **joint venture**.

**You** are not insured for **liability** arising from **claims** brought against **you** by **your** joint venture partner.

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

# Professional Risks / DIRECTORS AND OFFICERS INSURANCE POLICY

## H. NEW SUBSIDIARIES

This policy is extended to insure **your liability** arising from **your** directorship of any **subsidiary company** created or acquired by the **company** during the **period of insurance**, provided that:

1. the **wrongful act** is allegedly committed after the entity becomes a **subsidiary company**, and
2. if the **subsidiary company** increases the **company's** total assets by more than 20% based on the **company's** latest annual report, **you** must advise **us** of the **subsidiary company** within 60 days of the acquisition or creation of it.

Once **you** have advised **us**, **we** may, at **our** option, require **you** to pay an additional premium and/or amend the terms of this policy.

The definition of 'wrongful act' is extended to include an error, omission, act or conduct by **you** in **your** capacity as a director, secretary, executive officer or employee of the **subsidiary company**.

## I. OFFICIAL INVESTIGATIONS

This policy is extended to insure all legal costs and legal expenses necessarily and reasonably incurred with **our** prior written consent, for **your** representation at any official investigation, examination or inquiry:

1. held as the result of an allegation of a **wrongful act** against **you**, and
2. in connection with a potential **claim** which, if made, would be covered by this policy, and
3. that **you** are required to attend.

The most **we** will pay under this extension is \$250,000 for all potential **claims you** first knew of during the **period of insurance**.

## J. OLD OUTSIDE DIRECTORSHIPS – RUN OFF COVER

This policy is extended to insure **your liability** arising from a **wrongful act** in connection with **outside directorships** that **you** held during a previous period of insurance with **us** provided that:

1. **we** insured **you** under Automatic Extension Part B or Optional Extension Part B at the time **you** held the **outside directorship**, and
2. the **wrongful act** occurred during this time, and
3. **your liability** is not indemnified by the organisation, and
4. **your liability** is not covered by any other insurance, and
5. this extension does not extend to cover any other director, officer or executive of the relevant organisation or the organisation itself.

## K. OLD SUBSIDIARIES – RUN OFF COVER

This policy is extended to insure **your liability** arising from **your** directorship of any entity that has ceased to be:

1. a **subsidiary company** of the **company** prior to the **period of insurance**, or
2. a **subsidiary company** during the **period of insurance**,

provided that:

- (a) the **wrongful act** is allegedly committed while that entity was a **subsidiary company**, and
- (b) the **wrongful act** occurred after the **retroactive date**.

The definition of 'wrongful act' is extended to include an error, omission, act or conduct by **you** in **your** capacity as a director, secretary, executive officer or employee of the **subsidiary company**.

## L. PRESERVATION OF INDEMNITY

This policy is extended to insure **your liability** arising from a **wrongful act** that can lawfully be indemnified by the **company**, but that **you** cannot recover from the **company** because the **company** is in liquidation (other than by voluntary liquidation).

**You** must provide satisfactory proof of the **company's** financial position, including documentary evidence of the **company's** assets and liabilities and any official statements issued by the liquidator.

## M. PROSPECTUS LIABILITY

This policy is extended to insure **your liability** arising out of any of the following:

1. rights issues, bonus share issues, employee share options,
2. dividend reinvestment plans,
3. convertible notes,
4. redeemable preference issues.

No cover is provided for **liability** arising out of an initial public offering of securities.



## N. SPOUSAL LIABILITY

This policy is extended to insure **your** lawful spouse for his or her **liability** that arises from a **wrongful act** committed by **you**, provided that the **claim**:

1. has been made solely because he or she is **your** lawful spouse, and
2. relates to property that:
  - 2.1 **you** and **your** lawful spouse jointly own, or
  - 2.2 **you** have transferred to **your** lawful spouse for legitimate purposes.

## O. WITNESS EXPENSES

The policy is extended to compensate any independent director or independent officer for attending court proceedings as a witness in connection with a **claim** covered by this policy.

**We** will pay \$300 per day for any one independent director or independent officer, up to \$10,000 in total for all independent directors or independent officers during the **period of insurance**.

## OPTIONAL EXTENSIONS

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

Cover under these 'Optional Extensions' is subject to the provisions outlined in 'What you are insured for' and the terms of this policy.

Except for 'Optional Extension Part A - Automatic Reinstatement', all other Optional Extensions are included within the sum insured shown in the **schedule**, they are not in addition to it.

### A. AUTOMATIC REINSTATEMENT OF THE AGGREGATE LIMIT

If all **liability** and legal costs and legal expenses that **you** would otherwise be insured for under this policy exceed the sum insured shown in the **schedule**, then **we** will provide one automatic reinstatement of the sum insured.

Provided that this does not apply:

1. to any **claim** in connection with the same **wrongful act** as a **claim** already met or to be met under this policy, and
2. to 'Optional Extension Part F – USA and Canadian Jurisdiction', and
3. until any separate policy (including an 'excess policy') that insures **you**, after the sum insured under this policy is exceeded, is exhausted.

### B. CURRENT OUTSIDE DIRECTORSHIPS – OTHER THAN NON PROFIT SEEKING ORGANISATIONS

This policy is extended to insure **your liability** arising from a **wrongful act** in connection with **outside directorships** that **you** hold at the request of the **company** at any time during the **period of insurance** in the profit seeking organisations named in the **schedule**, provided that:

1. **your liability** is not indemnified by those organisations, and
2. **your liability** is not covered by any other insurance, and
3. this extension does not extend to cover any other director, officer or executive of those organisations.

'Exclusion Part M' does not apply to this Extension.

### C. EMPLOYMENT PRACTICES LIABILITY (COMPANY COVER)

This policy is extended to insure the **company** for its **liability** for **claims** brought against it:

1. by an **employee** arising from:
  - 1.1 unjustified dismissal or unjustified disadvantage, of that **employee**, or
  - 1.2 workplace harassment (whether sexual or otherwise) of that **employee**, or
  - 1.3 wrongful demotion of, wrongful failure to promote, wrongful deprivation of career opportunity of, wrongful discipline of or negligent evaluation of or negligent failure to grant tenure of employment to that **employee**, or
  - 1.4 workplace stress, or
2. for wrongful refusal to employ a potential **employee**, or
3. for defamation arising from employment-related matters, or
4. for misrepresentation or misleading advertising as to the terms and conditions of employment, or
5. for denial of natural justice to an **employee** concerning his or her employment, that occur after the **retroactive date** in connection with the business, provided:
  - (a) the **company** first knew of the **claim** during the **period of insurance**, and
  - (b) the **company** advised **us** of that **claim** as soon as possible, but no later than 30 days after the **period of insurance** ends.

**We** will insure the **company** on the same terms as **we** insure **you**, for its resulting **liability**, subject to the policy terms that applied at the time it first knew of that **claim**.

The **company** is not insured for:

- (i) **liability** to pay any amount pursuant to:
  - ▶ an obligation under a contract of employment, or
  - ▶ any Act of Parliament other than the Employment Relations Act 2000, or
- (ii) **liability** in connection with:
  - ▶ an industrial dispute, strike, picket, lock-out, go slow or work to rule, or
  - ▶ union relations or union access, or
  - ▶ the Injury Prevention, Rehabilitation and Compensation Act 2001, workers compensation or health and safety legislation, or similar legislation, or
  - ▶ bodily injury, sickness, disease or death of any person, or
  - ▶ the cost of physical modifications to premises, plant or equipment owned or occupied by the **company**, or
  - ▶ a contract of employment alleged to have been obtained by unfair bargaining, or
  - ▶ the dismissal or disciplining of an **employee**, unless prior to this the **company** obtained and followed **our** advice or the advice of an employment lawyer approved by **us**, or
- (iii) **liability** in connection with a **wrongful act** occurring outside New Zealand, or
- (iv) **liability** in connection with a **claim**:
  - ▶ first brought in a court outside New Zealand, or
  - ▶ brought in a court within New Zealand to enforce a judgment made by a court outside of New Zealand, or
  - ▶ where the **claim** is governed by or the **liability** arises under the proper law of a country other than New Zealand, or
- (v) for the cost of complying with any compliance order, or any other order in the nature of an injunction, or
- (vi) for legal costs that the **company** incurred to obtain legal advice from an employment lawyer prior to the dismissal or disciplining of an **employee**.

'Exclusions Part F and J' do not apply to this Optional Extension.

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

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

For the purposes of this Optional Extension, the definition of 'claim' is:

The earliest of the following:

- (i) service on the **company** of a legal or arbitral proceeding by any third party, or
- (ii) the **company's** receipt of oral or written notice from any third party that they hold the **company** liable, or intend to commence legal or arbitral proceedings against it, in connection with any of 1 – 5 above.



## D. MERGERS AND CONSOLIDATIONS – RUN OFF COVER

If the **company**:

1. is merged, amalgamated, or consolidated with or becomes a subsidiary company of another company, or
2. sells all or substantially all of its assets to another entity, and

if **you** or the **company** wish to extend the policy for up to seven years from the date this policy expires, then **you** or the **company** must:

- (a) give **us** notice that **you** or the **company** wish to do so within 30 days of this policy expiring, and
- (b) pay any additional premium **we** require.

However, this will only cover **wrongful acts** that happened before 1 or 2 above.

## E. POLLUTION DEFENCE COSTS

This policy is extended to insure all legal costs and legal expenses necessarily and reasonably incurred with **our** prior written consent, to defend a **claim** arising from discharge, dispersal, release or escape of **pollutants**.

The most **we** will pay under this extension is \$1,000,000 for all **claims you** first knew of during the **period of insurance**.

No cover is provided for legal costs and legal expenses incurred to defend a **claim** in connection with a **wrongful act** in any country or territory subject to the laws of the United States of America or the Dominion of Canada.

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

## F. USA AND CANADIAN JURISDICTION

This policy is extended to insure **your liability** in connection with a **claim**:

1. first brought against **you** in a court in the United States of America or the Dominion of Canada, or
2. brought in a court anywhere else in the world to enforce a judgment made by a court applying the law of the United States of America or the Dominion of Canada by way of reciprocal agreement or otherwise, or
3. where the proper law of the United States of America or the Dominion of Canada is applied.

No cover is provided for **claims** arising from:

- (a) a breach of the Securities Act 1933, Securities Exchange Act 1934, or any rules or regulations adopted under them, any like federal, state or provincial statute in the United States of America or the Dominion of Canada, regulating securities in a similar way, or any rules or regulations adopted pursuant to them, or any other state, provincial or common law of the United States of America or the Dominion of Canada relating to securities, or
- (b) any provisions of the Employee Retirement Income Security Act 1974 or regulations or rules concerning pensions, profits sharing or employee benefit programmes arising under federal, state, local laws or common law or that relate in any way thereto, or
- (c) actions or proceedings or developments thereof arising directly or indirectly from the Anti-Trust Laws of the United States of America or the Dominion of Canada, or
- (d) enforcements of judgments, orders, or awards obtained or determined pursuant to the laws of the United States of America or the Dominion of Canada or their Territories or Protectorates with respect to 'Optional Extension Part C – Employment Practices Liability (Company Cover)', and 'Optional Extension Part E – Pollution Defence Costs'.

'Exclusion Part S' does not apply to this Optional Extension.

## EXCLUSIONS

- A. ASBESTOS** **You** are not insured for **liability** in connection with asbestos.
- B. BODILY INJURY** **You** are not insured for **liability** arising from bodily injury, sickness, disease or death of any person.
- C. BUILDING DEFECTS** **You** are not insured for **liability** in connection with a building or structure being affected by:
1. moisture or water build-up or the penetration of external moisture or water, or
  2. the action or effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa, or any similar or like forms,
- provided that the **liability** is caused directly or indirectly by:
- (a) non-compliance with the New Zealand Building Code, or
  - (b) faulty design or faulty specification, including but not limited to faulty sequence, procedure or programme, or
  - (c) faulty materials, or
  - (d) faulty workmanship,
- when the building or structure was constructed, manufactured, altered, repaired, renovated or maintained.
- This exclusion does not apply to **liability** that is caused by, or directly arises from, the leakage of internal pipes, internal water systems or internal cisterns.
- D. CLAIMS BY ENTITIES CONTROLLED BY YOU** **You** are not insured for **liability** arising from **claims** brought against **you**, by or on behalf of any company or entity that is operated or controlled by **you** or **your** family or extended family or nominees or trustees (other than a **subsidiary company**).
- E. DISHONESTY OR FRAUD** **You** are not insured for **liability** in connection with **your**:
1. wilful breach of duty or wilful breach of an Act of Parliament, or
  2. dishonest, fraudulent or malicious act or omission, or
  3. act or omission committed with a criminal intent, or
  4. unlawful profit or advantage, or
  5. insider trading.
- F. EMPLOYMENT CLAIMS** **You** are not insured for **liability** in connection with **your** capacity as an employer.
- G. EXISTING LITIGATION** **You** are not insured for **liability** in connection with any litigation in existence at the commencement of the **period of insurance**.
- H. FAILURE TO INSURE** **You** are not insured for **liability** in connection with a failure to obtain or maintain adequate insurance.
- I. FINES AND EXEMPLARY DAMAGES** **You** are not insured for:
1. any fine or penalty imposed on **you** (whether under contract or statute), or
  2. any punitive or exemplary damages awarded against **you**.
- J. INSURED VS INSURED** **You** are not insured for **liability** arising from **claims** brought against **you**, by or on behalf of:
1. the **company** or any of its subsidiary companies, or
  2. any other person or entity covered by this policy, or
  3. a shareholder of the **company** in their own right, or on behalf of the **company**.
- K. KNOWN CLAIMS AND CIRCUMSTANCES** **You** are not insured for **liability** in connection with any **claim** or circumstance that may give rise to a **claim** that **you** first knew of, or ought to have known of, prior to the inception date of this policy.
- L. NUCLEAR** **You** are not insured for **liability** in connection with any operations employing the process of nuclear fission or fusion, or handling of radioactive material. This includes, but is not limited to:
1. the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices, and
  2. the use, handling or transportation of any radioactive material, and
  3. the use, handling or transportation of any weapon or explosive device employing nuclear fission or fusion.

<b>M. OUTSIDE DIRECTORSHIPS – PROFIT SEEKING ORGANISATIONS</b>	<b>You</b> are not insured for <b>liability</b> in connection with any <b>outside directorships</b> that <b>you</b> hold at the request of the <b>company</b> in any profit seeking organisations.
<b>N. POLLUTION</b>	<b>You</b> are not insured for <b>liability</b> in connection with <b>pollutants</b> .
<b>O. PROFESSIONAL DUTIES</b>	<b>You</b> are not insured for <b>liability</b> in connection with: <ol style="list-style-type: none"> <li>the rendering of, or failure to render, professional services and/or professional advice, or</li> <li>a breach of any contract for the provision of professional services and/or professional advice, other than in <b>your</b> capacity as a director or officer as insured under this policy.</li> </ol>
<b>P. PROPERTY DAMAGE</b>	<b>You</b> are not insured for <b>liability</b> for the destruction of or damage to, or loss of use of tangible property.
<b>Q. PROSPECTUS LIABILITY</b>	<b>You</b> are not insured for <b>liability</b> in connection with an initial public offering of securities of the <b>company</b> .
<b>R. TERRORISM</b>	<b>You</b> are not insured for <b>liability</b> in connection with an <b>act of terrorism</b> .
<b>S. USA AND CANADIAN JURISDICTION</b>	<b>You</b> are not insured for <b>liability</b> in connection with a <b>claim</b> : <ol style="list-style-type: none"> <li>first brought against <b>you</b> in a court in the United States of America or the Dominion of Canada, or</li> <li>brought in a court anywhere else in the world to enforce a judgment made by a court applying the law of the United States of America or the Dominion of Canada by way of reciprocal agreement or otherwise, or</li> <li>where the <b>claim</b> is governed by or the <b>liability</b> arises under the proper law of the United States of America or the Dominion of Canada.</li> </ol>
<b>T. WAR</b>	<b>You</b> are not insured for <b>liability</b> in connection with: <ol style="list-style-type: none"> <li>war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, or</li> <li>confiscation, nationalisation, requisition, destruction or damage to property by any government or public or local authority.</li> </ol>

## BASIS OF SETTLEMENT

<b>A. MAXIMUM AMOUNT PAYABLE</b>	The most <b>we</b> will pay in total, including for legal costs and legal expenses, for: <ol style="list-style-type: none"> <li>any one <b>claim</b>, and</li> <li>all <b>claims</b> (subject to Optional Extension Part A, if it applies),</li> </ol> <b>you</b> first knew of during the <b>period of insurance</b> is the sum insured shown in the <b>schedule</b> .
<b>B. EXCESS</b>	The relevant excess shown in the <b>schedule</b> will be deducted from the amount <b>we</b> pay for a claim brought under 'What you are insured for Part A' or 'What you are insured for Part B'. However, the excess shown in the <b>schedule</b> for Employment Practices Liability will be deducted from the amount <b>we</b> pay for a <b>claim</b> brought under 'Optional Extension Part C Employment Practices Liability – Company Cover'. The excess must also be paid when <b>we</b> cover legal costs and legal expenses. <b>We</b> will deduct only one excess for a series of <b>claims</b> arising from one <b>wrongful act</b> . If a <b>claim</b> arises from separate <b>wrongful acts</b> then an excess will apply to each <b>wrongful act</b> .

## MANAGING YOUR CLAIM

### A. YOUR OBLIGATIONS

#### 1. Confidentiality

**You** must not disclose the nature of the **liabilities** covered by this policy unless **you** are required by law.

#### 2. Do Not Admit Liability

**You** must not:

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

#### 3. Advise Us

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

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

#### 4. Minimise the Loss

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

#### 5. Provide Full Information

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

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

**You** must:

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

#### 6. Be Truthful

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

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

This is at **our** sole discretion.

#### 7. Incurring Costs

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

#### 8. Cooperation

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

### B. MANAGING YOUR CLAIM

#### 1. Allocation of Defence Costs

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

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

The cost of the lawyer's determination is to be taken as part of 'What you are insured for Part C'.

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

### 2. Your Defence (*Queen's Counsel Clause*)

- 2.1 **We** are not required to defend a **claim** against **you** unless a lawyer that **we** and **you** agree to instruct advises that the **claim** should be defended.
- 2.2 In formulating his or her advice, the lawyer must be instructed to consider:
- (a) the economics of the matter, and
  - (b) the damages and costs likely to be recovered, and
  - (c) the likely costs of defence and
  - (d) the prospects of successfully defending the **claim**.
- 2.3 The cost of the lawyer's opinion is to be taken as part of 'What you are insured for Part C'.
- 2.4 If the lawyer advises that the claim should be settled and if the terms of the settlement that **we** recommend are within limits that are reasonable (in the lawyer's opinion and in the light of the matters he/she is required to consider), then:
- (a) **you** cannot object to the settlement, and
  - (b) **you** must immediately pay the excess shown in the **schedule**.

### 3. Subrogation

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

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

### 4. Recoveries

**We** will not recover any amount paid out as a claim under this policy from:

- 4.1 the **company**, unless cover is provided by 'Automatic Extension Part L – Preservation of Indemnity', and
- 4.2 **you**, unless **you** are insured by any other insurance. In this case **we** will enforce **our** right of contribution.

### 5. Defence of Liability Claims

After **you** have made a claim under this policy, subject to 'Managing Your Claim Part B Item 2 – Your Defence (*Queen's Counsel Clause*)', **we** have the sole right (which shall be a precedent to **your** right to be covered) to:

- 5.1 act in **your** name and on **your** behalf to defend, negotiate or settle the **claim** as **we** see fit (this will be done at **our** expense), and
- 5.2 defend or legally represent **you** at an official investigation, examination or inquiry as covered by 'Automatic Extension I Official Investigations', and
- 5.3 publish a retraction or apology (in the case of defamation proceedings).

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

### 6. Discharge of Liability Claims

Subject to 'Managing Your Claim Part B Item 2 – Your Defence (*Queen's Counsel Clause*)' **we** may elect at any time to pay **you**:

- 6.1 the maximum amount payable under this policy, or
  - 6.2 any lesser sum that the claim against **you** can be settled for.
- Once **we** have paid this, **our** responsibility to **you** under this policy is met in full.

### 7. Waiver of Professional Privilege

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

## GENERAL CONDITIONS

### A. HOW WE ADMINISTER THIS POLICY

#### 1. Authorisation

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

#### 2. Mergers, Consolidations, Acquisitions

If the **company** is merged, amalgamated, consolidated or becomes a **subsidiary company** of another company during the **period of insurance**, **we** will continue to provide cover for **wrongful acts** that happened before the date of the merger, consolidation or sale.

#### 3. Territorial Limits

This policy covers **wrongful acts** that occur anywhere in the world.

#### 4. Cancellation and Modification

##### 4.1 By You

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

##### 4.2 By Us

**We** may cancel or modify this policy by advising **you** (or **your** Broker or Agent) by letter, fax or email. Cancellation or modification will take effect at 4.00pm, on the 60th day after the date of **our** advice.

**We** will refund the proportion of unused premium paid, calculated from the date of cancellation.

If **you** pay **your** premium by instalments, **you** must pay **us** any unpaid instalments that are due.

#### 5. Protecting our Position

Once **you** have advised **us** of a **claim**, **we** will take whatever action **we** consider appropriate to protect **our** position. This does not however:

- 5.1 indicate that **you** are entitled to be covered under this policy, or
- 5.2 jeopardise **our** rights under this policy or at law.

#### 6. Other Insurance

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

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

#### 7. Currency

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

#### 8. GST

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

- 8.1 all sums insured exclude GST, and
- 8.2 all sub limits exclude GST, and
- 8.3 all excesses include GST, and
- 8.4 GST will be added, where applicable, to claim payments.



## B. LAWS AND ACTS THAT GOVERN THIS POLICY

### 1. Acts of Parliament

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

### 2. Disputes about this Policy

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

### 3. Insurance Law Reform Acts

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

## C. YOUR OBLIGATIONS

### 1. Comply with the Policy

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

### 2. Provide Accurate Information

**You** must make sure all statements and representations **you** make to **us** at any time are truthful and complete.

### 3. Reasonable Care

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

### 4. Change in Circumstances

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

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

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

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

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

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

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

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

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

## DEFINITIONS

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

<b>act of terrorism</b>	<p>Includes any unlawful act, or preparation in respect of action, or threat of action designed to influence or coerce the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and that:</p> <ol style="list-style-type: none"><li>1. involves violence against one or more persons, or</li><li>2. involves damage to property, or</li><li>3. endangers life other than that of the person committing the action, or</li><li>4. creates a risk to health or safety of the public or a section of the public, or</li><li>5. is designed to interfere with or disrupt an electronic system.</li></ol>
<b>claim</b>	<p>The earliest of the following:</p> <ol style="list-style-type: none"><li>1. service on <b>you</b> of a legal or arbitral proceeding by any third party, or</li><li>2. <b>your</b> receipt of written notice from any third party that they hold <b>you</b> liable, or intend to commence legal or arbitral proceedings against <b>you</b>,</li></ol> <p>in connection with a <b>wrongful act</b> covered by this policy, regardless of whether the claimed amount exceeds the excess.</p>
<b>company</b>	<p>Each company named in the <b>schedule</b> and any <b>subsidiary company</b> of any one of those companies, provided that the <b>subsidiary company</b>:</p> <ol style="list-style-type: none"><li>1. was a <b>subsidiary company</b> of that company at the inception date of this policy, and</li><li>2. the accounts of the <b>subsidiary company</b> are consolidated into those of the company in accordance with the relevant accounting standard.</li></ol>
<b>employee</b>	<p>A person who is deemed to be employed by the <b>company</b> pursuant to the Employment Relations Act 2000.</p>
<b>joint venture</b>	<p>Any unincorporated enterprise undertaken jointly by the <b>company</b> with another party or parties.</p>
<b>liability</b>	<p>Liability for damages (but not fines, penalties, or punitive or exemplary damages), interest, costs and expenses that a civil court or arbitrator orders <b>you</b> to pay (but not any penalties) or settlements negotiated by <b>us</b>, in relation to a <b>claim</b>. It includes the legal costs of the person making the <b>claim</b>, for which <b>you</b> become liable.</p>
<b>outside director</b>	<p>A director, officer or executive of an organisation that it is not the <b>company</b>, a <b>subsidiary company</b>, a parent company of the <b>company</b>, or a company with the same parent company as the <b>company</b>.</p>
<b>period of insurance</b>	<p>The period <b>you</b> are insured for. This is shown in the <b>schedule</b>.</p>
<b>pollutants</b>	<p>Any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.</p>
<b>retroactive date</b>	<p>The date shown in the <b>schedule</b>.</p>
<b>subsidiary company</b>	<p>Any subsidiary of the <b>company</b> as defined in section 5 of the Companies Act 1993.</p>
<b>schedule</b>	<p>The latest version of the Schedule <b>we</b> issued to <b>you</b> for this policy.</p>

## Professional Risks / DIRECTORS AND OFFICERS INSURANCE POLICY

<b>we</b>	NZI, a business division of IAG New Zealand Limited. <b>We</b> may also use the words 'us' or 'our' to describe NZI.
<b>wrongful act</b>	Any actual or alleged error, omission, act or conduct by <b>you</b> in <b>your</b> capacity as a director, secretary, executive officer or employee of the <b>company</b> . In relation to 'Automatic Extension Part B', 'Automatic Extension Part J' and 'Optional Extension Part B' only, this definition is extended to <b>your</b> capacity as an <b>outside director</b> .
<b>you</b>	Any person: <ol style="list-style-type: none"><li>1. who was, or is at any time during the <b>period of insurance</b> a director, officer or employee of the <b>company</b>, by whatever name called, and whether or not validly appointed, to occupy that position, or</li><li>2. who by virtue of any applicable legislation is deemed to be a director, secretary, executive officer or employee of the <b>company</b>.</li></ol> <p>'You' does not include any:</p> <ol style="list-style-type: none"><li>(a) liquidator, external auditor, receiver, receiver and manager, statutory manager, administrator or trustee administering a compromise or scheme of arrangement of the <b>company</b>, or</li><li>(b) trustee, director, officer, or employee of a superannuation or pension organisation.</li></ol> <p><b>We</b> may also use the word 'insured' to describe <b>you</b>.</p>



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

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

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

*To find out more about the advantages of choosing NZI, talk to your broker or visit [nzi.co.nz](http://nzi.co.nz).*

*Printed using vegetable based mineral oil free inks on paper from an environmentally certified and responsibly managed forest and mill.*

**[nzi.co.nz](http://nzi.co.nz)**