

Directors and Officers Liability

Policy wording



Business Insurance for
a growing New Zealand

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Why NZI

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Get in touch

If you have any questions, or you would like more information on this insurance policy, please contact your broker.

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Introduction

About this policy	This Directors and Officers Liability policy consists of: <ul style="list-style-type: none">(a) this policy document, and(b) the schedule, and(c) any endorsements that have been applied.
Duty of disclosure	<p>The insured has a legal duty of disclosure when they apply for insurance. This means the insured or anyone acting on the insured's behalf must tell us everything they know (or could be reasonably expected to know) that a prudent insurer would want to take into account in deciding:</p> <ul style="list-style-type: none">(a) to accept or decline the insurance, and/or(b) the cost or terms of the insurance, including the excess. <p>The insured also has this duty every time their insurance renews and when they make any changes to it.</p> <p>If the insured, or anyone acting on the insured's behalf, breaches this duty, we may treat this policy as being of no effect and to have never existed. Please ask if you are not sure whether you need to tell us about something.</p>
Defined words	If a word is shown in bold , it has a specific meaning. There is a list of these words and what they mean in 'Section 8 – 'Definitions'.
Headings	The headings in this policy document are for reference only and do not form part of it. They must not be used when interpreting the policy document.

1. Insurance agreement

1.1 Our agreement	The insured agrees to pay us the premium and comply with this policy. In exchange, and in reliance on the information provided in the application , we agree to provide cover as set out in this policy.
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2. What this policy covers

2.1 Directors liability	<p>We will cover a director where the company is not legally permitted to indemnify the director, for loss arising out of a claim:</p> <ul style="list-style-type: none">(a) first made against a director and notified to us during the period of insurance or within 30 days of its expiry, and(b) for a wrongful act that happened after the retroactive date.
2.2 Company reimbursement	<p>We will cover the company to the extent it is legally permitted to indemnify a director, for loss arising out of a claim:</p> <ul style="list-style-type: none">(a) first made against a director and notified to us during the period of insurance or within 30 days of its expiry, and(b) for a wrongful act that happened after the retroactive date.
2.3 Defence costs	<p>In addition to the limit of indemnity, we will also cover a director (or the company where it is legally permitted to indemnify the director) for all reasonable and necessary defence costs incurred with our prior written consent for the investigation, defence, settlement or appeal of any claim covered by this policy.</p> <p>The most we will pay for defence costs for all directors during the period of insurance for all claims covered by this policy is \$5,000,000, or an amount equivalent to the limit of indemnity, whichever is the lesser amount.</p>

3. Automatic extensions

Subject to the terms of Section 2 – ‘What this policy covers’, and all the other terms of this policy, the following extensions are included automatically.

Some automatic extensions have a specified sub-limit and these will apply unless specifically stated otherwise in the **schedule**. Unless specifically stated otherwise, all sub-limits are included in, and are not in addition to, the **limit of indemnity** or the amount payable for **defence costs**, whichever is applicable.

3.1 Advancement of defence costs

We will advance **defence costs** in connection with an **investigation** or a **claim** made against a **director** that would be covered by this policy, but for Exclusions 4.7 ‘Fraud or dishonesty’ or 4.12 ‘Personal profit’, prior to the disposition of such **claim**.

If it is established by judgment, written admission or other final adjudication that such **defence costs** are not covered by this policy, that **director** agrees to repay such **defence costs**.

3.2 Civil pecuniary penalties

We will cover a **director** for any civil fine or penalty a **director** is ordered to pay under any applicable law in New Zealand (or Australia where the jurisdiction specified in the **schedule** includes Australia) arising out of a **claim** covered by this policy, provided that **we** are not legally prohibited from paying such fine or penalty.

The most **we** will pay under this extension during the **period of insurance** for all **directors** is \$1,000,000 or the **limit of indemnity**, whichever is the lesser amount.

Exclusion 4.5 ‘Fines and penalties’ does not apply to this extension.

3.3 Continuity of cover

We will cover any **claim** against a **director** that would be covered by this policy but for Exclusion 4.9 ‘Known claims and circumstances’, provided that:

- (a) **we** were the **insured’s** directors and officers insurer under a policy (‘the former policy’) at the time the **insured** should have notified **us** of the **claim** or circumstance that might give rise to a **claim**, and
- (b) **we** have continued without interruption as the **insured’s** directors and officers insurer from the time the **insured** should have notified **us** up until such time as the **claim** was made against the **insured** and notified to **us**, and
- (c) **our** liability is limited to the amount for which **we** would have been liable at the time referred to in (a) in accordance with the terms and conditions of the former policy, and
- (d) **our** liability will be reduced by the amount that fairly represents the extent to which liability for the **claim** could have been reduced had the circumstances been reported under the former policy.

3.4 Court attendance costs

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

The most **we** will pay under this extension during the **period of insurance** for all **directors** is \$20,000.

3.5 Crisis costs

We will cover the reasonable fees, costs, charges and expenses of a public relations consultant, crisis management consultant or law firm engaged by the **company** to minimise the effect of a **crisis** and prevent or limit any adverse or negative publicity in respect of a **crisis**. Provided that the **crisis** has, in the reasonable opinion of the chief executive officer (or the equivalent thereof) of the **company**, the potential to cause a **financial loss** if not managed.

We will only pay such costs:

- (a) if the **crisis** first occurs and is notified to **us** during the **period of insurance**, and
- (b) for a 45 day period immediately following the day on which the **crisis** first occurs.

The most **we** will pay under this extension during the **period of insurance** is \$250,000 or the amount payable for **defence costs**, whichever is the lesser amount.

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3.6 Emergency defence costs	<p>If our prior written consent cannot reasonably be obtained before a director incurs defence costs, we will waive the requirement for prior written consent provided that our written consent is obtained within 14 days following the date such costs start being incurred.</p> <p>We will not pay defence costs in relation to a claim that is not covered by this policy.</p> <p>The most we will pay for defence costs incurred without our prior written consent is 10% of the amount payable for defence costs.</p>
3.7 Employment liability	<p>We will cover a director for loss arising from a claim brought against a director for an employment grievance.</p> <p>Cover under this extension also applies to an employment grievance arising from an outside position covered by Automatic extension 3.17 'Outside position'.</p> <p>There is no cover under this extension for the company.</p> <p>Exclusions 4.2 'Bodily injury' and 4.8 'Insured versus insured' do not apply to this extension.</p>
3.8 Estates, legal representatives and spousal liability	<p>We will cover a director's lawful spouse, estate, heirs, legal representatives or assigns for their liability that arises from a wrongful act committed by a director on the same terms and conditions as we cover the director.</p>
3.9 Extended reporting period	<p>If we do not offer to renew this policy, then the insured may extend cover under this policy for another 12 months. However, this extended period will only cover a wrongful act that happened before the expiry of this policy's period of insurance but not a wrongful act that happens during the extended period.</p> <p>If the insured elects to extend this policy as described above, then notice of such election must be given to us within 30 days of our refusal to renew this policy and the insured must pay us an additional premium (being 50% of the last annual premium).</p> <p>This policy cannot be extended if we cancel this policy or declare this policy unenforceable because the insured did not:</p> <ul style="list-style-type: none">(a) pay the premium, or(b) disclose information material to the risk, or(c) comply with terms of this policy. <p>This extension does not provide a new limit of indemnity for the extended period.</p>
3.10 Extended reporting period for retired directors	<p>If the insured does not renew or replace this policy with any other directors and officers liability or management liability policy, then an extended period of 84 months immediately following the expiry of this policy's period of insurance will be provided to any director who retired or resigned from the company before the date of non-renewal.</p> <p>During this extended period, notice may be given to us of any claim arising from a wrongful act committed by a director prior to the expiry of the period of insurance but not a wrongful act that happens during the extended period.</p> <p>This extension is not available if, at the expiry of this policy's period of insurance:</p> <ul style="list-style-type: none">(a) a transaction has occurred, or(b) the company has exercised the option to extend cover under Automatic extension 3.9 'Extended reporting period', or(c) the company is in liquidation, receivership, insolvency, bankruptcy or administration.
3.11 Extradition costs	<p>We will cover defence costs to challenge, resist and defend any action against a director under the Extradition Act 1999 where such action is in connection with any actual or alleged wrongful act that may lead to a claim, which if made, would be covered by this policy.</p> <p>Provided that:</p> <ul style="list-style-type: none">(a) notice of the extradition is first notified to a director, and to us, during the period of insurance, and(b) the conduct which is the subject of the extradition occurred after the retroactive date, if any. <p>The most we will pay under this extension during the period of insurance for all directors is \$1,000,000 or the amount payable for defence costs, whichever is the lesser amount.</p>

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3.12 Family and personal expenses

We will cover a **director** for the costs of housing, utilities, personal insurances and schooling expenses in the event of:

(a) an interim or interlocutory order confiscating, controlling, suspending or freezing rights or ownership of real property or personal assets of the **director**, or

(b) a charge over real property or personal assets of the **director**,

as a result of a **claim** or an **investigation** covered by this policy during the **period of insurance**.

We will only pay such costs:

(a) directly to the service provider, and

(b) commencing 30 days after the exhaustion of any personal allowance granted by a court for such costs, for a maximum period of 12 months.

The most **we** will pay under this extension during the **period of insurance** will be:

(a) \$200,000 per **director**,

(b) \$1,000,000 or the amount payable for **defence costs**, whichever is the lesser amount, for all **directors**.

3.13 Health and safety defence costs

We will cover a **director** for **defence costs** in respect of a **claim** against a **director**, or in relation to an **investigation**, alleging a breach by a **director** of the Health and Safety at Work Act 2015 or equivalent legislation governing health and safety in the workplace in any other jurisdiction covered by this policy.

Cover under this extension only applies in excess of any other insurance in force in respect of such a breach.

Exclusion 4.2 'Bodily injury' does not apply to this extension.

3.14 Insured versus insured

We will cover a **director** for:

(a) **defence costs** in connection with a **claim** brought by any other **director** or the **company**,

(b) a **claim** brought by or on behalf of the **company** or **outside entity**.

(i) pursued as a shareholder derivative action that has not been solicited or instigated with the voluntary (rather than legally required) intervention, assistance or active participation of the **company** or any **director**, or an **outside entity** or any **outside entity** director, or

(ii) by an insolvency administrator, receiver, trustee or liquidator of the **company** or **outside entity** (either directly or derivatively),

(c) a **claim**:

(i) brought by any other **director** for contribution or indemnity, if the **claim** directly results from another **claim** otherwise covered by this policy,

(ii) brought by any past director or employee of the **company** or **outside entity**.

Exclusion 4.8 'Insured versus insured' does not apply to this extension.

3.15 Investigations and inquiries

We will cover a **director** for **defence costs** in relation to an **investigation** where such **investigation** may lead to a **claim**, which if made, would be covered by this policy, but only where:

(a) the notice of the **investigation** is first notified to a **director**, and to **us**, during the **period of insurance**, and

(b) the conduct which is the subject of the **investigation** occurred after the **retroactive date**, if any.

The **director** must refund **defence costs** advanced by **us** where it is established by the **investigation** that the conduct which is the subject of the **investigation** was:

(a) dishonest, fraudulent or criminal, or

(b) a reckless or knowing breach of any law.

This extension does not cover:

(a) any **investigation** under the Health and Safety at Work Act 2015 or equivalent legislation governing health and safety in the workplace in any other jurisdiction,

(b) any **investigation** brought outside the jurisdiction covered by this policy or within the jurisdiction of, or pursuant to the laws of the United States of America, its territories or possessions.

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3.16 New subsidiary

If the **company** creates an entity or acquires more than 50% of the voting rights of another entity during the **period of insurance**, **we** will automatically cover the new entity:

- (a) from the date of acquisition but only in respect of a **wrongful act** occurring after the date of acquisition, or
 - (b) from the date it was created,
- but only if the entity being acquired or created:
- (a) has total gross assets not exceeding 25% of the total gross consolidated assets of the **company** prior to the acquisition, and
 - (b) is not domiciled in the United States of America, its territories or possessions, and
 - (c) has business activities that are not materially different to the business activities conducted by the **company** at the commencement of this policy's **period of insurance**.

3.17 Outside position

We will cover a **director** for a **claim** in connection with a **director's** appointment undertaken with the knowledge and consent of, or at the request of, the **company**, as a director, officer, trustee or manager (or other equivalent position) of any:

- (a) corporation, association, trust, fund, institution, society, enterprise or foundation not included in the definition of **company** that is established for charitable, community, industry or social purposes,
- (b) entity in which the **company** owns, at the time of the **wrongful act**, (either directly or indirectly) between 20% and 50% of the issued or unissued shares,

provided that such appointment is undertaken with the knowledge and consent of, or at the request of, the **company**.

We will not cover any **claim** made against a **director**:

- (a) by, or on behalf of any entity noted in (a) or (b) above or any of its directors, or
- (b) brought by or on behalf of any past or present shareholder of any entity noted in (a) or (b) above who had or has direct or indirect control or ownership of more than 15% of the shares or rights of that entity.

Cover under this extension only applies in excess of any other insurance in force in respect of such appointment.

This extension does not apply to any appointment to:

- (a) a publicly listed company,
- (b) a company in the United States of America, its territories or possessions,
- (c) an entity that is a **financial institution or financial services** company.

3.18 Public relations expenses

We will cover the reasonable fees, costs, charges and expenses incurred with **our** prior consent for a public relations consultant retained to mitigate the adverse effect on the reputation of a **director** as a result of a **claim** covered by this policy.

We will only pay the cost of publicising findings made in a final judicial disposition of a **claim** in the **director's** favour.

The most **we** will pay under this extension during the **period of insurance** for all **directors** is \$250,000, or the amount payable for **defence costs**, whichever is the lesser amount.

3.19 Reinstatement of limit of indemnity upon recovery

Any amounts that **we** recover (net of **our** costs and expenses associated with such recovery) following payment of a **claim** under this policy, will reduce the erosion of the **limit of indemnity** or the amount payable for **defence costs** to the same extent.

3.20 Run off cover for past subsidiaries

If any **subsidiary** is sold or dissolved prior to or during this policy's **period of insurance**, **we** will cover any **claim** against a **director** relating to that **subsidiary** but only in respect of a **wrongful act** occurring prior to the sale or dissolution of the **subsidiary**.

3.21 Superannuation trustees

We will cover a **director** for **loss** arising from a **claim** against a **director** in their individual or collective capacity as trustee of the **company's** own superannuation or pension funds.

We will cover a **director** for a **claim** by a member of the superannuation or pension fund even if the member is also a **director**.

Exclusion 4.8 'Insured vs Insured' does not apply to this extension.

4. Exclusions

- 4.1 Asbestos** This policy does not cover any **claim** arising out of, relating to or in any way connected with asbestos.
- 4.2 Bodily injury** This policy does not cover any **claim** arising from or in connection with bodily injury, sickness, disease, disability, shock, fright, mental anguish, mental injury or death.
- 4.3 Consensual claim** This policy does not cover any **claim** which is brought by or maintained with the intervention, active assistance or active participation (unless required by law) of any **director** against whom the **claim** is brought.
- 4.4 Existing litigation** This policy does not cover any **claim** in connection with any pending or prior litigation or any civil, criminal, administrative or regulatory proceeding or investigation or inquiry in existence at the commencement of the **period of insurance**.
- 4.5 Fines and penalties** This policy does not cover any:
(a) fine or penalty imposed, whether under contract or statute,
(b) punitive, aggravated, liquidated or exemplary damages.
- 4.6 Foreign courts** This policy does not cover any **claim** arising from or in connection with any legal action or proceedings:
(a) first brought in a court outside of the jurisdiction stated in the **schedule**,
(b) brought in a court within the jurisdiction stated in the **schedule** for the purposes of enforcing a judgment made by a court outside the jurisdiction stated in the **schedule**,
(c) where the proper law to be applied to the issue/s is that of a country outside the jurisdiction stated in the **schedule**.
- 4.7 Fraud or dishonesty** This policy does not cover any **claim** arising from or in connection with any:
(a) dishonest, fraudulent or criminal act,
(b) reckless or knowing breach of any law.
This exclusion will only apply where there is a written admission, settlement, judgment or other final adjudication that establishes that such conduct did in fact occur.
- 4.8 Insured versus insured** This policy does not cover any **claim** which is brought by or on behalf of a **director** or by the **company**.
- 4.9 Known claims and circumstances** This policy does not cover any **claim**:
(a) made or intimated against a **director** prior to the commencement of the **period of insurance**,
(b) notified under a previous policy,
(c) arising from or in connection with circumstances:
(i) that a **director** was aware of prior to the **period of insurance**, and
(ii) that a reasonable person in the position of a **director** would have considered might give rise to a **claim**.
- 4.10 Major shareholder exclusion** This policy does not cover any **claim** that is brought by or on behalf of any shareholder who either directly or indirectly, holds or controls 15% or more of the voting shares or rights or issued capital of the **company**.
- 4.11 Nuclear** This policy does not cover any **claim** arising from or in connection with any atomic energy risks, being operations employing the process of nuclear fission or fusion or handling of radioactive material, which operations include but are not limited to:
(a) the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices,
(b) the use, handling or transportation of radioactive materials,
(c) the use, handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion.

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4.12 Personal profit	<p>This policy does not cover any claim arising from or in connection with:</p> <ul style="list-style-type: none">(a) a director gaining any personal profit, remuneration or financial advantage to which they were not legally entitled, or(b) the improper use of position or information to gain personal profit or advantage or cause detriment to the company. <p>This exclusion will only apply if there is a written admission, settlement, judgment or other final adjudication which establishes that such conduct did in fact occur.</p>
4.13 Pollution	<p>This policy does not cover any claim arising from or in connection with pollution or contamination:</p> <ul style="list-style-type: none">(a) in the United States of America, its territories or possessions, or(b) outside of the territorial limit or jurisdiction specified in the schedule.
4.14 Professional services	<p>This policy does not cover any claim arising from or in connection with any duties owed in relation to the giving of professional services or advice.</p>
4.15 Property damage	<p>This policy does not cover any claim for damage to or destruction of any tangible property, including loss of use.</p>
4.16 Prospectus liability	<p>This policy does not cover any claim arising from or in connection with:</p> <ul style="list-style-type: none">(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, memorandum of information or similar document or the making of any written or oral representation, in connection with (a) above.
4.17 Sanctions	<p>This policy does not cover any claim or provide any cover to the extent such cover would expose us to any sanction, prohibition or restriction under any United Nations resolution, or any trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America, Australia or New Zealand.</p>
4.18 Territorial limits	<p>This policy does not cover any claim arising from or in connection with any wrongful act that occurred outside of the territorial limits specified in the schedule.</p>
4.19 Terrorism	<p>This policy does not cover any claim for death, injury, illness, loss or damage directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any act of terrorism, regardless of any other cause or event contributing concurrently or in any other sequence to the loss including in connection with controlling, preventing, suppressing, retaliating against, or responding to an act of terrorism.</p>
4.20 War	<p>This policy does not cover any claim for loss or damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection, military or usurped power or 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.</p>

5. Basis of settlement

5.1 Maximum amount payable	<p>The most we will pay in total for any one claim and all claims covered by this policy during the period of insurance is the limit of indemnity.</p>
5.2 Excess payable	<p>We will only pay that part of either loss or defence costs that exceeds the amount of the excess, but in respect of any one claim, only one excess is payable.</p> <p>We will only deduct one excess for a series of claims arising out of the same wrongful act.</p> <p>No excess applies to loss or associated defence costs, covered under clause 2.1 'Directors liability'.</p>

6. Claims conditions

The Directors' obligations

- 6.1 Advise us of a claim or circumstance** If the **directors** become aware of any **claim**, or circumstance that may give rise to a **claim** under this policy, regardless of the anticipated amount, they must notify **us** as soon as possible.
- Once a circumstance is notified to **us** in writing, any subsequent **claim** is deemed to be a **claim** in the **period of insurance** in which the circumstance was notified.
- 6.2 Co-operation** The **directors** must, at their own cost, provide all information and reasonable assistance to **us** to determine cover under this policy and to enable **us** to investigate, defend or settle a **claim**. The **directors** must fully co-operate with any recovery process.
- 6.3 Dishonest or fraudulent statements** If a **director** makes any dishonest or fraudulent statement in connection with a **claim** or any application for indemnity under this policy, **we** may:
- (a) decline the **claim** either in whole or in part, and/or
 - (b) declare either this policy or all insurance the **director** has with **us** to be of no effect and to no longer exist from the date of the dishonest or fraudulent act.
- 6.4 Do not admit liability** The **directors** must not:
- (a) admit liability,
 - (b) do or say anything that may prejudice **our** ability to defend a **claim** against a **director** or take recovery action in the **director's** name.
- 6.5 Minimise the claim** The **directors** must, at their own cost, take all reasonable steps to minimise a **claim** and avoid any further loss or liability arising.
- 6.6 Obtain our agreement** The **directors** must obtain **our** agreement before:
- (a) incurring any **defence costs** or other expenses in connection with any **claim** under this policy,
 - (b) negotiating, paying, settling, admitting or denying any **claim** against them.
- 6.7 Other insurance** The **directors** must notify **us** as soon as they know of any other insurance policy that covers them for any of the risks covered under this policy.
- If the **directors** hold other insurance cover with any other insurer in respect of any **claim** covered by this policy, then **we** will only pay under this policy once cover under the other policy has been exhausted.
- 6.8 Waiver of legal privilege** The lawyers **we** instruct to act on behalf of the **directors** in relation to any **claim** against the **directors**, are at liberty to disclose to **us** any information they receive in that capacity, including information they receive from a **director**.
- The **directors** authorise the lawyers to disclose this information to **us**.

How we manage a claim

- 6.9 Allocation of defence costs** If a **claim** is only partly covered by this policy, or is made against other parties, one or more of whom is covered and others who are not covered under this policy, **we** will attempt to ensure fair and proper allocation of the **defence costs** for covered and uninsured portions or parties.
- If **we** and the **directors** are unable to agree upon the allocation of the **defence costs**, then that allocation will be decided by a lawyer that **we** and the **directors** agree to instruct, whose determination will be binding. The cost of the lawyer's determination is to be taken as part of the **defence costs** covered under this policy.
- If **we** and the **directors** cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society.
- 6.10 Defence costs** **Our** consent to allow the **directors** to incur **defence costs** covered by this policy will not be unreasonably delayed or withheld.

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6.11 Defence of a claim

We are entitled, but not obliged to:

- (a) act in the **director's** name and on the **director's** behalf to defend, negotiate or settle any **claim** as **we** see fit,
- (b) appoint **our** own lawyers to defend or legally represent a **director** and the lawyers will report directly to **us**.

6.12 Directors right to contest settlement of a claim

If the **directors** do not agree with a decision by **us** to settle a **claim**, the **directors** can elect to contest the **claim** at their own expense but **our** liability will not exceed the amount for which the **claim** could have been settled in the opinion of the lawyer appointed under Condition 6.14 'Requirement to defend a claim'.

We will pay **defence costs** incurred up to the date the **directors** notify **us** in writing of their election under this clause, and will pay the **directors** (subject to the **excess**, if applicable) the amount for which the **claim** could have been settled. The **directors** expressly agree that **our** liability in respect of such **claim** will then be at an end.

6.13 Preservation of indemnity

If the **company** is legally permitted to indemnify a **director** in respect of a **claim** which would be covered under clause 2.2 'Company reimbursement' but for whatever reason the **company** fails or refuses to provide indemnity, then **we** will cover the **director** under clause 2.1 'Directors liability'.

6.14 Requirement to defend a claim

We will not require a **director** to defend any legal proceedings in respect of a **claim**, nor will the **director** require **us** to defend on his or her behalf, any legal proceedings in respect of a **claim**, unless a lawyer mutually agreed by **us** and the **director** to defend the **director** advises such proceedings should be defended. In formulating his or her advice, the lawyer will be instructed to consider the:

- (a) damages and costs likely to be recovered,
- (b) likely costs of defence of the **claim**,
- (c) prospects of successfully defending the **claim**.

The cost of the lawyer's opinion is to be taken as part of the **defence costs** covered under this policy.

If the lawyer advises that the **claim** should be settled and if the terms on which settlement can be achieved are within limits that are reasonable (in the lawyer's opinion, and in consideration of the matters), then the **directors**:

- (a) will cooperate with **us** to effect such settlement, and
- (b) if applicable, must pay the **excess** specified in the **schedule**.

6.15 Severability

If a **director** fails to comply with their duty of disclosure, makes a misrepresentation or breaches any condition of this policy, **we** will not deny cover to any other **director** on these grounds if that **director** was unaware of the matter not disclosed or the fact of the misrepresentation or did not breach the policy condition.

The conduct of a **director** will not be imputed to any other **director** for the purposes of determining cover under this policy.

6.16 Subrogation

We may assume the **director's** legal right of recovery.

We will not exercise any rights of recovery against a **director** unless it is established by written admission, settlement, judgment or other final adjudication that the **director** has committed a:

- (a) dishonest, fraudulent or criminal act, or
- (b) reckless or knowing breach of any law.

7. General conditions

How we administer this policy

- 7.1 Assignment** The **directors** may not assign this policy or any interest under this policy without **our** prior written consent.
- 7.2 Authorisation** By acceptance of this policy, the **company** agrees to act on behalf of the **directors** in respect of:
- (a) negotiating and binding the terms of cover,
 - (b) giving and receiving of any notice of a **claim**, cancellation or any other notice required in this policy,
 - (c) payment of premiums and the receiving of any return premiums,
 - (d) agreement to and acceptance of endorsements.
- 7.3 Cancellation**
- By the insured
- The **insured** may cancel this policy at any time by giving **us**, or their broker, notice in writing or by electronic means. If they do, **we** will refund any premium that is due to the **insured** based on the unused portion of the **period of insurance**. The **insured** must pay any outstanding premium due for the expired portion of the **period of insurance**.
- By us
- We** may cancel this policy by giving the **insured**, or their broker, notice in writing or by electronic means, at the **insured's**, or their broker's, last known address. The policy will be cancelled from 4pm on the 30th day after the date of the notice. **We** will refund any premium that is due to the **insured** based on the unused portion of the **period of insurance**.
- 7.4 Currency** Any amounts shown in this policy or in the **schedule** are in New Zealand dollars, unless otherwise specified in the **schedule**.
- 7.5 Disputes about this policy** The law of New Zealand applies to disputes about this policy and New Zealand Courts have exclusive jurisdiction.
- 7.6 Goods and Services Tax** Where GST is recoverable by **us** under the Goods and Services Tax Act 1985:
- (a) the limits of indemnity exclude GST, and
 - (b) all sub limits exclude GST, and
 - (c) any **excess** includes GST, and
 - (d) GST will be added, where applicable, to any payments.
- 7.7 Inadvertent non-disclosure** **We** will waive **our** right to avoid this policy or decline a **claim** under Condition 7.10 'Change in circumstances' for non-disclosure or misrepresentation of any material increase or alteration to the risk insured but only if the **director** can establish to **our** satisfaction that such non-disclosure or misrepresentation was innocent and free from any dishonesty or intent to deceive.
- Provided that:
- (a) **we** must have continued without interruption as the **company's** directors and officers insurer from the time the **director** should have disclosed or correctly represented material facts to **us** up until such time as the non-disclosure or misrepresentation is notified to **us**, and
 - (b) **we** will be entitled to adjust the premium and terms of this policy to reflect those which would have been applied by **us** had the proper disclosure or representation been made at the correct time, and
 - (c) **our** liability under this policy is limited to the amount for which **we** would have been liable for had the proper disclosure or representation been made at the correct time.
- 7.8 Legislation changes** Any reference to any Act of Parliament or subordinate rules referred to in this policy includes any amendments made or substitutions to that law.
- 7.9 Takeover/merger** If a **transaction** occurs during the **period of insurance**, then cover under this policy is amended to only apply in respect of **wrongful acts** committed prior to the effective date of the **transaction**. The **company** must give **us** written notice of the **transaction** as soon as possible but no later than 30 days after the effective date of the **transaction**.

The insured's obligations

7.10 Change in circumstances

The **insured** must tell **us** immediately if there is a material:

- (a) increase in the risk insured, or
- (b) alteration of the risk insured.

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

If the **insured** fails to notify **us** about an increase or alteration to the risk insured, **we** may:

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

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

7.11 Comply with this policy

The **insured** must comply with the terms of this policy. If a **director** breaches any of the terms of this policy, **we** may decline the **claim** either in whole or in part for that **director**.

8. Definitions

The definitions apply to the plural and any derivatives of the bolded words.

act of terrorism	<p>Any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:</p> <ul style="list-style-type: none">(a) involves violence against one or more persons,(b) involves damage to property,(c) endangers life other than that of the person committing the action,(d) creates a risk to health or safety of the public or a section of the public,(e) is designed to interfere with or to disrupt an electronic system.
application	<p>The information provided to us by the insured, or on the insured's behalf, when the insured purchased this insurance or requested a quotation for this insurance from us.</p>
claim	<ul style="list-style-type: none">(a) a demand for compensation, damages or other relief,(b) a formal, administrative, disciplinary or regulatory proceeding in which a complaint, charge or other allegation is made,(c) a criminal proceeding,(d) any civil proceeding or alternative dispute resolution process including but not limited to any arbitration or mediation, <p>made against a director as a result of a wrongful act.</p>
company	<p>The entity specified as the 'Insured' in the schedule and any subsidiary.</p>
crisis	<p>Unforeseen and unexpected:</p> <ul style="list-style-type: none">(a) loss of the company's intellectual property rights previously acquired under law by the company for a patent, trademark or copyright, or(b) loss of a major customer or major contract of the company, or(c) act or omission committed or omitted on the premises that results in any employee or customer suffering:<ul style="list-style-type: none">(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 the premises or other tangible property belonging to the company caused by oil spills, crashes, fires, building collapse (other than by earthquake, windstorm or other natural events) and other similar events, or(e) recall of any product due to its potential to cause property damage or bodily injury which has been produced, prepared, manufactured or packaged by the company. <p>It does not include an event that affects the industry in which the company operates as opposed to an event that is isolated to the company.</p>
defence costs	<p>Legal costs, expenses and disbursements, witnesses' costs, assessors or experts fees.</p> <p>It does not include any remuneration or reimbursement of time spent by directors of the company.</p>
director	<p>Any natural person who is, or at the time of the wrongful act was, a director of the company including anyone who is:</p> <ul style="list-style-type: none">(a) deemed to be a director of the company,(b) an employee of the company while acting in a managerial or supervisory capacity for the company, or(c) a contractor who acts as a member of a committee elected or appointed by resolution of the board of directors of the company to perform specific directorial acts on behalf of the company. <p>It does not include any externally appointed officers, including but not limited to, auditors, receivers, statutory managers, trustees, liquidators or mortgagees in possession.</p>

Directors and Officers Liability / Policy wording

employee	Any natural person who: (a) is employed by the company in the course of the business, and (b) the company compensates by way of remuneration, and (c) the company has the right to govern and direct the performance of that person's duties. It does not include consultants, contractors, agents or any director of the company .
excess	The amount specified as the 'Excess' in the schedule .
financial institution or financial services	registered bank, merchant or investment bank, finance company, building society, credit union, insurance or reinsurance company, hedge fund, fund manager, property trust, investment trust or unit trust, stockbroker, or futures, commodities or foreign exchange trading.
financial loss	A significant or substantial decrease of the total consolidated annual revenue of the company as at the end of the company's last financial year.
insured	The company and any director .
investigation	(a) an official investigation, hearing, examination or inquiry in relation to the affairs of the company , (b) a request for information to a director by any regulator, government body or authority, governmental or administrative agency or self-regulatory body.
limit of indemnity	The amount specified as the 'Limit of indemnity' in the schedule .
loss	Any amount which a director becomes legally liable to pay on account of any claim , for: (a) compensatory damages and interest ordered by a civil court or arbitrator in civil proceedings, and (b) legal costs and expenses awarded against the company or director in connection with a covered award or judgment, and (c) settlements negotiated with our prior written consent. It does not include: (a) liability for taxes, except as covered under Condition 7.6 'Goods and Services Tax', or (b) any amount which is uninsurable under the laws of any jurisdiction covered by this policy.
outside entity	Any entity for which a director has cover under Automatic extension 3.17 'Outside position'.
period of insurance	The 'Period of insurance' shown in the schedule that states the start and end dates of this insurance policy.
retroactive date	The 'Retroactive date' shown in the schedule .
schedule	The latest version of the schedule we have issued to the insured for this policy.
subsidiary	An entity in which the company , at the commencement of the period of insurance , either directly or indirectly through one or more other entities: (a) controls the composition of the board of directors, or (b) controls more than half of the shareholder voting rights, or (c) holds more than 50% of the issued share capital, or (d) exercises effective management control.
transaction	(a) the company merges into or consolidates with another entity, or (b) another entity, or person or group of entities or persons acting in concert acquires securities or voting rights that result in ownership or voting control by the other entity, person or group of more than 50% of the voting rights of the company .
we/us/our	NZI, a business division of IAG New Zealand Limited.
wrongful act	Any actual or alleged misstatement, misleading statement, act, error or omission, negligence, breach of duty, breach of trust, breach of authority or other act committed or attempted by a director in their capacity as a director in the course of performing his or her duties as a director of the company or as a director of any outside entity .

