



Policy Notices

## Statutory Liability Insurance

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

The AIG Building  
41 Shortland Street, Level 19  
PO Box 1745, Shortland Street  
Auckland 1140  
New Zealand

### **Fair Insurance Code**

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

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



The **Insurer** has received a written proposal which shall be the basis of this contract and which is incorporated into and forms part of this contract. In consideration of the payment of the premium the **Insurer** agrees as follows:

## 1. Insuring Clause

The **Insurer** will pay on the behalf of the **Insured** in accordance with the terms and conditions of this policy any:

1.1 **Penalty**; and

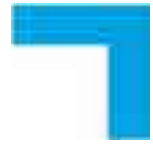
1.2 **Defence Costs**.

## 2. Extensions

Subject to all of the terms and conditions of the policy, cover is extended as outlined below. The total of all payments made under these Extensions shall be part of and not in addition to the **Limit of Liability** unless the **Insurer** agrees otherwise in writing.

### 2.1 New Subsidiary

- (a) Subject to 2.1(b), this policy will automatically extend to any entity which becomes a **Subsidiary** during the **Policy Period** provided that such entity is not a **Financial Institution**;
- (b) For any such new **Subsidiary** with total gross assets that are greater than twenty five percent (25%) of the consolidated gross assets of the **Policyholder**, as at the inception date of this policy:
  - (i) This Extension 2.1 "New Subsidiary" shall apply automatically for a period of 60 days from the date the **Policyholder** acquires control or holding of such entity provided the **Policyholder** shall submit in writing to the **Insurer** the particulars of such entity within such 60 day period (but before the end of the **Policy Period** in any event); and
  - (ii) At the **Policyholder's** request, cover may be extended for a longer period of time provided that the **Policyholder** provides the **Insurer** with sufficient details during such 60 day period to permit the **Insurer** to assess and evaluate its exposure with respect to such entity and the **Policyholder** accepts any consequent amendments to the policy terms and conditions, and pays any additional premium required by the **Insurer**.



## 2.2 Discovery Clause

The *Policyholder* shall be entitled to a *Discovery Period*:

- (a) automatically for 60 days if this policy is not renewed or replaced; or
- (b) as specified in Item 10 of the Schedule subject to the *Policyholder* making a request for such *Discovery Period* in writing and paying any additional premium required, no later than 30 days after the expiry of the *Policy Period*.

A *Discovery Period* specified in 2.2 (a) and (b) is non-cancellable and shall not apply if a *Transaction* occurs during the *Policy Period*.

## 2.3 Reparation Costs Extension

The *Insurer* will pay on behalf of the *Insured* any sentence of reparations imposed by a court pursuant to the Health and Safety in Employment Act 1992.

## 2.4 Investigation Costs

The *Insurer* will pay on behalf of the *Insured* any *Investigation Costs*.

## 2.5 Commerce, Securities & Securities Markets Acts' Extension

Notwithstanding Exclusion 4.1, cover is provided for the following acts:

Commerce Act 1986

Securities Act 1978

Securities Markets Act 2006

## 2.6 Individual Insured

The Definition of *Insured* is extended to include *Insured Persons*.



### 3. Definitions

- 3.1 “**Company**” means the **Policyholder** specified in the Schedule, and includes any **Subsidiary**.
- 3.2 “**Continuity Date**” the applicable date specified in Item 7 of the Schedule.
- 3.3 “**Defence Costs**” means any reasonable fees, costs and expenses that are necessarily incurred by or on behalf of any **Insured** with the prior written consent of the **Insurer** in the investigation, defence, settlement or appeal of any **Proceeding**.
- 3.4 “**Discovery Period**” means the period immediately following the expiration of the **Policy Period** during which written notice may be given to the **Insurer** of a **Proceeding** or **Investigation** first made during such period for an **Event** occurring prior to the expiry of the **Policy Period**
- 3.5 “**Event**” means any alleged act, error or omission of the **Insured** and referred to in a notice or an information where that notice or information results in, or is very likely to result in, or is part of, an **Investigation** or **Proceeding**.
- 3.6 **Financial Institution** means any a bank, clearing house, credit institution, undertaking for collective investment in securities, investment firm, investment advisor/manager, investment fund or mutual fund, private equity or venture capital company, stock brokerage firm, insurance company or any similar entity.
- 3.7 “**Insured**” means the **Company**; but is extended to include **Insured Persons** if Extension 2.6 applies.
- 3.8 “**Insured Person**” means any natural person who was, is or during the **Policy Period** becomes:
- (a) a director or officer, but not an externally appointed auditor, receiver, manager, administrator or liquidator of a **Company** or a person administering a deed of company arrangement or other agreement of compromise made between the **Company** and another party;
  - (b) a person who acts as a member of a committee established by or approved by the board of directors of any **Company** whether under statute or otherwise;
  - (c) in respect of a superannuation fund established for the benefit of the employees of any **Company**: (i) a director or corporate trustee; or (ii) a policy committee member;
  - (d) an employee of a **Company**;
  - (e) a de facto director or prospective director named as such in any listing particulars or prospectus issued by a **Company**;

but only when and to the extent that such Person is acting in an **Insured Person** capacity.

“**Insured Person**” is extended to include the administrator, heirs, legal representatives, or executor of a deceased, incompetent, insolvent or bankrupt estate; of an **Insured Person** referred to in (a) to (d) above, to the extent that a **Claim** is brought against them solely by reason of them having an interest in property that is sought to be recovered in a **Claim**.

- 3.9 “**Insurer**” means **AIG Insurance New Zealand Limited**.
- 3.10 “**Investigation**” means any formal inquiry or hearing before a regulatory body pursuant to a **Statute**, and which is likely to lead to a **Proceeding**.
- 3.11 **Investigation Costs** mean the reasonable fees, costs and expenses of any legal advisor retained by the **Insurer** on behalf of the **Insureds** for the principal purpose of representing the **Insured** at an Investigation and which have been necessarily incurred with the **Insurer’s** prior written consent.
- “**Investigation Costs**” shall not include the remuneration of any **Insured Person**, cost of their time or overhead of or any other costs of any **Company**.



- 3.12 **“Loss”** means **Defence Costs** and any **Penalties**.
- 3.13 **“Penalty”** means any fine or other monetary penalty or costs assessed for which the **Insured** may be liable following a Court determination under a **Statute** that the **Insured** should be convicted of any offence, or should pay any **Penalty** to the Crown, except where it is illegal to insure a fine or other monetary penalty or costs under a **Statute**.
- 3.14 **“Policyholder”** means the entity specified in Item 1 of the Schedule.
- 3.15 **“Policy Period”** means the period from the inception date to the expiry date specified in Item 2 of the Schedule.
- 3.16 **“Proceeding”** means any legal proceeding brought by a statutory authority or enforcement agency given that responsibility under a **Statute** seeking to impose a **Penalty**.
- 3.17 **“Single Event”** means an **Event** or any related or continuous or repeated **Events** whether committed by the **Company** or an **Insured Person** jointly or severally or by more than one **Insured Person** and whether directed to or affecting one or more than one person or legal entity.
- 3.18 **“Statute”** means, any Act of the New Zealand Parliament, not otherwise excluded by Exclusion 4.1, and includes any amendment to or re-enactment of those Acts, and any Regulations or other subordinate legislation made under those Acts.
- 3.19 **“Subsidiary”** means any entity in which the **Policyholder** either directly or indirectly through one or more other entities:
- (a) controls the composition of the board of directors;
  - (b) controls more than half of the shareholder or equity voting power; or
  - (c) holds more than half of the issued share capital or equity,
- on or before the inception date of this policy or, for the purpose of Extension 2.1, during the **Policy Period**.
- 3.20 **“Transaction”** means any one of the following events:
- (a) the **Policyholder** consolidates with or merges into or sells all or a majority of its assets to any other person or entity or group of persons and/or entities acting in concert, resulting in the extinction of the **Policyholder** as an independent legal entity; or
  - (b) any person or entity, or persons or entities acting in concert (other than a **Subsidiary** or **Subsidiaries**) becomes entitled to cast, or control the casting of, more than fifty percent (50%) of the rights to vote at general meetings of the **Policyholder** or control the appointment of directors who are able to exercise a majority of votes at meetings of the board of directors of the **Policyholder**.

Words and expressions in the singular shall include the plural, and vice versa. Additionally, where a term of this policy is not specifically defined in this document in the Definition section or the Schedule, it is agreed that the definition normally attributed to it by any applicable law or business practice shall apply.



## 4. Exclusions

The *Insurer* shall not be liable to make any payment under this policy for **Loss**:

4.1 Arising out of, based upon, attributable to, or in any way involving, directly or indirectly the following **Statutes** or any amendment to or re-enactment of these Acts, and any Regulations or other subordinate legislation made under those:

Arms Act 1983

Aviation Crimes Act 1972

Crimes Act 1961

Proceeds of Crime Act 1991

Summary Offences Act 1981

Transport Act 1962

Land Transport Act 1988

Transport (Vehicle and Driver Registration and Licensing) Act 1986

Commerce Act 1986 (unless extension 2.5 applies)

Securities Act 1978 (unless extension 2.5 applies)

Securities Markets Act 1988 (unless extension 2.5 applies).

4.2 Arising out of, based upon, attributable to, or in any way involving, directly or indirectly ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

4.3 Arising out of, based upon, attributable to, or in any way involving, directly or indirectly any **Event** which:

(a) would appear to have resulted from the *Insured's* intentional, knowing, wilful or reckless disregard for the provisions of any **Statute**; unless the *Insured* is subsequently acquitted under a statute in direct relation to that **Event**.

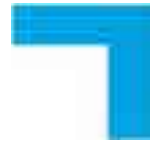
(b) has resulted from the *Insured's* intentional, knowing or reckless failure to comply with any lawful abatement notice or enforcement order, improvement notice, prohibition notice or suspension notice, building notice, Notice to Rectify, Compliance Schedule, Gazetted Notice, or order made by a Commission, Tribunal, or Standards Review Board.

4.4 Arising out of, based upon or attributable to;

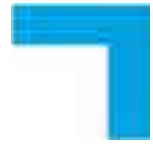
(a) any litigation which is pending at, or pending prior to the **Continuity Date**; or

(b) any facts or circumstances reported (or that should have been reported) under prior policies including matters related to or arising out of them; or

(c) any **Event** occurring prior to the **Retroactive Date**.



- 4.5** In the form of a **Penalty** imposed on the **Insured** in relation to:
- (a) an **Event**, including any ongoing duty or an **Event** or offence to the extent that the **Penalty** relates to the period of time after the **Insured** first received notice of the prosecution or of the intention to commence the prosecution; or
  - (b) the cost or payment of any enforcement order, remedial order or compliance order; or
  - (c) any damages or compensation, not part of a **Penalty**, imposed by a court of competent jurisdiction, except reparation costs provided under Extension 2.3 "Reparation Costs Extension"
- 4.6** **Penalty** or **Defence Costs** payable in relation to any **Proceedings** brought by the Inland Revenue Department
- 4.7** Arising out of, based upon, attributable to, or in any way involving, directly or indirectly any **Event** directly or indirectly arising out of, based upon, attributable to or in any way connected with any prospectus which is, or should have been, registered with the New Zealand Securities Commission, and contains an offer for the issue, sale or transfer of securities.
- 4.8** Arising out of, based upon or attributable to any personal grievance brought against the **Insured** under the Employment Relations Act 2000.



## 5. Conditions

### 5.1 Transactions

The *Insurer* shall not be liable to make payment under this policy arising out of, based upon or attributable to any *Event* committed or allegedly committed after the effective date of a *Transaction*.

### 5.2 Notification

The Covers provided under this policy are granted solely with respect to *Proceedings* or an *Investigation* first brought against the *Insured* during the *Policy Period*, or applicable *Discovery Period*, only if such *Proceedings* or *Investigation* have been notified to the *Insurer* as soon as practicable, after the *Insured* first becomes aware of such *Proceeding* or *Investigation*, but in all events no later than during the *Policy Period* or applicable *Discovery Period*.

Any *Insured* may, during the *Policy Period* or applicable *Discovery Period*, notify the *Insurer* of any circumstance reasonably expected to give rise to *Proceedings* or *Investigation*. The notice must include the notice of *Proceeding* or *Investigation* and full relevant particulars with respect to dates, the *Event*, the potential *Insured*, and anticipated regulator or tribunal.

The details of any other insurance policy which may apply to any *Penalty* or *Defence Costs* covered under this policy shall be reported to the *Insurer* within a reasonable time of any *Proceeding* or *Investigation* notification.

All notifications relating to *Proceeding* or *Investigation* or circumstances likely to give rise to a *Proceeding* must be in writing, or sent by facsimile to the address in Item 12 of the Schedule.

### 5.3 Continuity

Notwithstanding Exclusion 3.5, cover is provided under this policy for any *Proceeding* or *Investigation*, fact, matter or circumstance which could or should have been notified under any earlier policy issued by the *Insurer*. Provided always that:

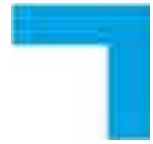
- (a) the *Proceeding* or *Investigation*, or circumstance, could and should have been notified after the *Continuity Date*; and
- (b) the *Proceeding* or *Investigation* shall be dealt with in accordance with all the terms, conditions, exclusions and limitations of the policy under which the *Proceeding* or *Investigation*, or circumstance, could and should have been notified: and
- (c) to the extent it is not recoverable under the earlier policy.

### 5.4 Limit of Liability and Retention

The total Limit of Liability payable by the *Insurer* during any *Policy Period* shall not exceed the amount stated in Item 3 of the Schedule. This shall be the total limit of the *Insurer's* liability for all *Loss* under all sections of this policy combined, arising out of any *Proceeding* or *Investigation* notified pursuant to Condition 5.2 above.

The Limit of Liability for the *Discovery Period* shall be part of and not in addition to the total aggregate Limit of Liability for the *Policy Period*.





If an *Event* or *Single Event* occurs over more than one *Policy Period*, the *Event* or *Single Event* shall be treated as if it occurred in the *Policy Period* in which the Insured should have complied with Condition 5.2.

The *Insurer* shall only pay for that amount of any *Loss* which is in excess of the Retention stated in the Schedule. This Retention is to be borne by the *Company* and shall remain uninsured.

A single Retention amount shall apply to *Loss* arising from all *Proceedings* or *Investigations* alleging or arising from a *Single Event*.

#### **5.5 Defence and settlement of Claims**

The *Insurer* shall at its own expense but for the benefit of the *Insured* assume conduct in the name of the *Insured* for the purpose of conducting the defence or settlement of any *Proceeding* or *Investigation*.

#### **5.6 Preservation of right to Indemnity**

If Extension 2.6 applies and to the extent that the *Company* is permitted or required to indemnify any *Insured Person*, but for whatever reason fails or refuses to do so, then the *Insurer* shall pay on behalf of the *Insured Persons*. In such event the Retention amount stated as being applicable to Item. 4 of the Schedule shall be paid by the *Company* to the *Insurer*. In the event of the *Company* being placed in liquidation (other than voluntary liquidation), no Retention shall apply.

#### **5.7 Disputes involving whether to contest Claims**

Should a dispute arise as to the defence of management of any *Proceedings* or *Investigation*, and the parties have not been able to agree a cause of action after discussions in good faith then the *Insurer* agrees to the appointment, at the *Insured's* request, of a Barrister, or Barrister and Solicitor, of the High Court of New Zealand (to be mutually agreed upon by the *Insured* and the *Insurer*) to resolve that dispute. The said Barrister, or Barrister and Solicitor shall take into consideration the economics of the matter, the *Penalties* which are likely to be assessed, the likely *Defence* or *Investigation Costs* and the likely outcome of the *Proceeding* or *Investigation*. The costs of the said Barrister, or Barrister and Solicitor's opinion shall be borne by the *Insurer*, and shall be payable in addition to the Limit of Liability.

#### **5.8 Notice and authority**

It is agreed that the *Policyholder* shall act on behalf of all its *Subsidiary Companies* and all *Insured Persons* with respect to:

- (a) the giving of notice of a *Proceeding*, or
- (b) the payment of premium and the receipt of any refund of premium that may become due, or
- (c) the negotiation and receipt of any endorsement, or
- (d) the election of any right to a *Discovery Period*.

#### **5.9 Assignability**

This policy and any rights under or in respect of it shall not be assignable without the *Insurer's* prior written consent.



#### 5.10 Representation and Severability

In granting cover under this policy, the *Insurer* has relied upon the declarations and statements which are contained in or constitute the written proposal form forming part of this policy. Such written proposal form for coverage shall be construed as a separate proposal form for coverage individually submitted by each *Insured*.

No state of mind or knowledge possessed by, any *Insured Person* shall be imputed to any other *Insured Person* for the purpose of determining coverage.

#### 5.11 Taxes and Duties

All amounts indicated in this policy and the attached Schedule are exclusive of Goods and Services Tax where payable by law.

#### 5.12 Other Insurance

If any *Loss* can be indemnified under any other valid policy or policies, prior, current or subsequently, then this policy shall cover such *Loss* subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such *Loss* is in excess of the amount of payment from such other insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the limits provided in this policy.

#### 5.13 Alteration and Assignability

No change in, modification of or assignment of interest or rights under this policy shall be effective except where made by written endorsement to this policy, and signed by an authorised employee of the *Insurer*.

#### 5.14 Enforceability

Should any clause or part of a clause of this policy be held to be invalid or unenforceable for any reason, but would have been valid if part of the wording had been modified, such clauses shall apply with such modification as may be necessary to make them valid and effective. The *Insurer* shall not oppose any application made pursuant to the Illegal Contracts Act 1970 to enforce any clause or any part of a clause of this policy which may have been held to be illegal or unenforceable.

**IN WITNESS OF WHICH** this policy has been signed on behalf of the *Insurer*, but it shall not be binding upon the *Insurer* unless countersigned on the Schedule by an authorised representative of the *Insurer*.

#### **AIG INSURANCE NEW ZEALAND LIMITED**

**Authorised Representative**