

Statutory Liability Policy

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Introduction

We are committed to complying with the Fair Insurance Code as published by the Insurance Council of New Zealand.

This means **We** will:

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

Section 1: Coverage

In consideration of the payment of the premium to **Us** and in reliance on the written proposal and any other underwriting information provided, which will be deemed to be incorporated into and to be the basis of this **Policy**, **We** will indemnify **You**, subject to the **Policy** terms, as follows.

1.1 Your Liability

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

- (a) **Fine** under any **Act of Parliament**;
 - (b) **Order for Reparation**;
 - (c) **Statutory Damages**;
- arising out of a **Valid Claim**.

1.2 Defence Costs

In addition to the applicable **Limit of Indemnity**, **We** shall pay the **Defence Costs** necessarily and reasonably incurred by **You** with **Our** prior written consent, to defend:

- (a) a prosecution that if proven could result in a **Fine** that would be indemnified under this **Policy**;
- (b) a proceeding that if proven could result in **Statutory Damages** that would be indemnified under this **Policy**;
- (c) a prosecution under the Health and Safety at Work Act 2015.

Provided that:

- (i) **Our** maximum liability in the aggregate in respect of all **Defence Costs** during the **Period of Insurance** shall not exceed the amount of the **Limit of Indemnity**;
- (ii) upon payment by **Us** of the **Limit of Indemnity** in respect of any **Fine**, **Order for Reparation** or **Statutory Damages**, **Our** liability in respect of any further **Defence Costs** in connection with that **Claim** shall cease;
- (iii) if a payment exceeding the **Limit of Indemnity** has to be made to dispose of a **Claim**, **Our** liability to pay **Defence Costs** in connection with that **Claim** shall be limited to such proportion of the **Defence Costs** as the **Limit of Indemnity** bears to the amount paid to dispose of the **Claim**.

1.3 Limit of Liability

- (a) Our limit of liability in respect of any one **Claim** shall not exceed the **Limit of Indemnity**.
- (b) Our total aggregate liability during any one **Period of Insurance** for all **Claims** shall not exceed the **Limit of Indemnity**.

1.4 Excess

You must pay the **Excess** in respect of each and every **Claim** inclusive of **Defence Costs**.

Section 2: Automatic Coverage Clauses

To be read in conjunction with the Coverage Clauses above, and subject to the **Policy** terms. The following sub-limits and **Excesses** apply unless there is a different sub-limit or **Excess** shown in the **Schedule**. The sub-limits are included in, not in addition to, and may be less than the **Limit of Indemnity** in the **Schedule**.

2.1 Defence Costs if Acquitted

We shall reimburse **Your** reasonable **Defence Costs** where it is alleged that **You** have acted knowingly, wilfully or intentionally and **You** are subsequently **Acquitted**.

2.2 Extended Reporting Period

- (a) If **We** cancel or refuse to offer renewal terms for this **Policy**, **You** have the right, upon payment of 90% of the annual premium, to an extension of the cover granted by this **Policy** for the period of 12 months following the effective date of such cancellation or non-renewal, but only in respect of an **Event** otherwise covered under this **Policy** that takes place prior to the effective date of such cancellation or non-renewal.
- (b) This right of extension will lapse unless written notice of such election, together with payment of the additional premium due, is given to **Us** within 30 days following the effective date of cancellation or non-renewal. If the right of extension lapses then cover under this **Policy** ceases as at the effective date of the cancellation or non-renewal.
- (c) Any **Claim** made during the extended reporting period will be treated as if it had been made during the last **Period of Insurance** and is subject to the remaining **Limit of Indemnity** at the effective date of cancellation or non-renewal.
- (d) The entire premium for the extended reporting period is non-refundable upon payment.

2.3 Mergers and Consolidations

If the company named as the **Named Entity** in the **Schedule**:

- (a) is merged, amalgamated, or consolidated with or becomes a subsidiary company of another company; or
- (b) sells all or substantially all of its assets to another company;

then this **Policy** will be extended to insure the new company, provided that:

- (i) the operations and activities of the merged, amalgamated or consolidated company are the same as those undertaken by **You** as described in the **Schedule**; and
- (ii) **You** give **Us** notice that **You** wish to extend cover to the new company within 30 days of the merger, amalgamation consolidation or sale; and
- (iii) **We** shall be entitled to vary the **Policy** terms and/or charge an additional premium.

If the provisions of subparagraphs (i), (ii) and (iii) are not met, then the only cover available for any **Claim** in connection with any **Event** that has occurred prior to the date of the merger, amalgamation or consolidation will be for the **Named Entity** in the **Schedule**.

2.4 New Subsidiary Companies

This **Policy** is extended to insure a subsidiary company created or acquired by **You** during the **Period of Insurance** provided that:

- (a) the operations and activities of the new subsidiary company are the same as those undertaken by **You** described in the **Schedule**; and
- (b) **You** give **Us** notice that **You** wish to extend cover to the new subsidiary within 30 days of the acquisition or creation of the new subsidiary company; and
- (c) **We** will be entitled to vary the **Policy** terms and/or charge an additional premium.

There is no cover for any **Claim** in connection with any **Event** that has occurred prior to the date of the creation or acquisition of the subsidiary company.

2.5 Official Investigations

We will indemnify You for **Defence Costs** necessarily and reasonably incurred for You to be represented at any **Official Investigation**, public examination or commission, provided that:

- (a) the investigation arises out of an **Event**, or potential **Event**, that occurred after the **Retroactive Date** in New Zealand in connection with **Your Business**; and
- (b) You first knew, or ought to have known, during the **Period of Insurance**, of the **Official Investigation**, public examination or commission in relation to that **Event**; and
- (c) You have advised Us of the **Official Investigation**, public examination or commission, as soon as possible, but no later than 30 days after the **Period of Insurance** ends.

2.6 Pecuniary Penalties

- (a) We will pay any amount which You are legally obliged to pay by virtue of any applicable law in New Zealand as a pecuniary penalty, provided We are not legally prohibited from indemnifying You for such pecuniary penalty.
- (b) The maximum aggregate amount payable under this Coverage Clause shall be the lesser of \$500,000 or the **Limit of Indemnity**.

2.7 Reparation at Restorative Justice Conferences

We will meet such portion of a reparation payment that is agreed at a Restorative Justice Conference as appropriate and paid prior to sentencing, provided that:

- (a) Counsel instructed by Us attends the Restorative Justice Conference and provides guidance and instructions on the amount We should agree to at the Restorative Justice Conference; and
- (b) Our agreement is obtained prior to entering into any agreement to make a reparation payment at a Restorative Justice Conference; and
- (c) Exclusion 4.15 (Monetary Amounts Paid or Offered before Sentence) and Exclusion 4.20 (Reparation) shall not apply to this Automatic Coverage Clause.

Section 3: Definitions

3.1 Acquitted means:

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

3.2 Act of Parliament means:

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

3.3 Claim means:

- (a) Any threatened or actual prosecution or investigations or inquiry regarding an **Event**; or
- (b) Any circumstances which indicate to a reasonable insured in **Your** position that a prosecution, investigation or inquiry regarding an **Event** may occur, which is connected with **Your Business** and which may give rise to the imposition of a **Fine**.

3.4 Conduct of the Claim means:

The investigation, defence, compromise or handling of the **Claim** on **Your** behalf.

3.5 Defence Costs means:

Reasonable costs, charges, fees and expenses (including but not limited to lawyers' fees, investigators' fees and experts' fees) incurred with **Our** prior written consent which relate directly to the **Conduct of the Claim**.

Defence Costs does not include charges for time spent by partners, directors, officers or employees of **Yours** or reimbursement of any form of remuneration for such people.

3.6 Event means:

Any act or omission done or omitted to be done by **You** in connection with **Your Business** that may result in an allegation that **You** have committed an offence under an **Act of Parliament** punishable by conviction.

3.7 **Excess** means:

The excess specified in the **Schedule**.

3.8 **Fine** means:

Any monetary penalty or costs for which the **Named Entity** and/or **Insured Persons** are liable on conviction of any offence under an **Act of Parliament** in connection with an **Event** for which **We** may legally indemnify **You**.

For the avoidance of doubt this does not include a Fine imposed pursuant to the Health and Safety at Work Act 2015.

3.9 **Insured Person** means:

Any person who is currently, or was at the date of any **Event**, or becomes during the **Period of Insurance**, partner, director, officer or employee of the **Named Entity**.

3.10 **Limit of Indemnity** means:

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

3.11 **Named Entity** means:

The entity specified in the **Schedule** and includes any subsidiary.

The definition of Named Entity will include any entity that ceased to be a subsidiary before or during the **Period of Insurance**, but **We** will not pay on **Your** behalf any **Fine** or **Order for Reparation** arising from an **Event** occurring after it ceased to be a subsidiary, nor will **We** pay on **Your** behalf any **Fine** or **Order for Reparation** arising from an **Event** occurring before it became a subsidiary.

3.12 **Official Investigation** means:

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

3.13 **Order for Reparation** means:

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

3.14 **Period of Insurance** means:

The period specified in the **Schedule**.

3.15 **Policy** means:

This document, the **Schedule** and any endorsements issued by **Us**.

3.16 **Retroactive Date** means:

The date specified in the **Schedule**.

3.17 **Schedule** means:

The current schedule issued by **Us**.

3.18 **Statutory Damages** means:

Damages payable by **You** under either the Privacy Act 1993 or the Human Rights Act 1993 for an accidental breach of the applicable Act.

3.19 **Terrorism** means:

An act, including but not limited to the use or threat of force or violence, by any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government, which from its nature or context is committed for or in connection with political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public or any section of the public in fear.

3.20 **Valid Claim** means:

Any **Claim** that is:

- (a) first made against **You** during the **Period of Insurance**; and

- (b) notified in writing to **Us** by **You** during the **Period of Insurance** or within 28 days after its expiry; and
- (c) arising out of any act, error or omission or conduct in connection with **Your Business** that occurred subsequent to the **Retroactive Date**.

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

3.21 **We or Us or Our** means:

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

3.22 **You or Yours** means:

The **Named Entity** and **Insured Persons**.

3.23 **Your Business** means:

The business and undertakings of the **Named Entity**, as defined in the **Schedule**.

Section 4: Exclusions

We shall not be liable to indemnify **You** in respect of any **Claim**:

4.1 **Asbestos**

Whatsoever, directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

4.2 **Commerce Act**

For any pecuniary penalty, restitution, compensation or order for payment imposed by a court pursuant to Part 6 of the Commerce Act 1986.

4.3 **Compliance costs**

- (a) For payment of any **Fine** (or part of a **Fine**) which is a penalty imposed for failing to comply with any enforcement order or remedial order; or
- (b) For the cost incurred by **You** in complying with any enforcement or remedial order.

4.4 **Continuing Fine**

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

4.5 **Damages and non-criminal penalties**

For payment of money arising from a breach of a legal obligation (including an obligation owed pursuant to an **Act of Parliament**) other than consequent upon **Your** conviction for an offence.

In particular (but without limitation) this **Policy** does not cover any proceeding seeking:

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

4.6 **Date recognition**

Arising directly or indirectly out of or in connection with the failure or inability of:

- (a) any electronic circuit, microchip, integrated circuit, microprocessor, embedded system, BIOS or other instruction set, hardware, software, firmware, program, computer, data processing equipment, telecommunication equipment or systems, or any similar device; or
- (b) any similar device, or media or systems used in connection with any of them;

whether **Your** property or not, at any time to achieve fully and successfully any or all of the purposes and consequential effects intended by the use of any number, symbol or word to denote, represent or express a date including but without being limited to any failure or inability to recognise, capture, save, retain or restore and/or correctly to manipulate, interpret, transmit, return, calculate or process any date, data, information, command, logic or instruction as a result of or in connection with:

- (i) anything referred to in 4.6(a) or 4.6(b) recognising, using or adopting any date, day of the week or period of time, otherwise than as, or other than, the true or correct date, day of the week or period of time; or
- (ii) the operation of any command or logic that has been programmed or incorporated into anything referred to in 4.6(a) or 4.6(b) above.

4.7 Dishonesty and Fraud

Resulting from or contributed to by any dishonest, fraudulent, criminal or malicious act or omission by **You**. Provided that this Exclusion shall not apply to **You** where **You** have not committed or condoned the dishonest, fraudulent, criminal or malicious act or omission.

4.8 Employment Disputes

Arising out of any contract of employment or service or any intended contract of employment or service with any current, former or prospective employee, including any personal grievance or similar action by an employee but this exclusion will not apply to any investigation, inquiry or prosecution by the Ministry of Business, Innovation and Employment pursuant to the Health and Safety at Work Act 2015.

4.9 Excluded acts

Arising out of, based upon, attributable to, or in any way involving, directly or indirectly the following Acts of Parliament:

- Arms Act 1983
- Aviation Crimes Act 1972
- Crimes Act 1961
- Land Transport Act 1998
- Misuse of Drugs Act 1975
- Proceeds of Crime Act 1991
- Summary Offences Act 1981

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

4.10 Health and Safety at Work Act

For any **Fine** or infringement fee (other than an **Order for Reparation**) ordered to be paid by **You** following conviction under the Health and Safety at Work Act 2015.

4.11 Known Claims and Events

- (a) Made against, or intimated to, **You** prior to the commencement of the **Period of Insurance**; or
- (b) Notified under any previous **Policy**; or
- (c) Arising out of or connected with any **Event** that:
 - (i) **You** were aware of prior to commencement of the **Period of Insurance**; and
 - (ii) a reasonable person in **Your** position would have considered may give rise to a **Claim**.

4.12 Infringement Fees

For any infringement fees of any kind.

4.13 Intentional or deliberate disregard

Arising out of or based upon, attributable to, or in any way involving **Your** intentional or reckless disregard of the provisions of any **Act of Parliament**.

4.14 Legal jurisdiction

- (a) In respect of any **Claim** where the threatened or actual prosecution, the investigation or inquiry is brought or may be brought in a court outside New Zealand; or
- (b) In respect of any **Claim** which is brought or may be brought in a court within New Zealand to enforce a **Fine** ordered in a court outside New Zealand whether by way of a reciprocal agreement or otherwise; or
- (c) In respect of any **Claim** in which the proper law to be applied is that of a country other than New Zealand.

4.15 Monetary Amounts Paid or Offered before Sentence

For any sum paid, or offered to be paid, by the **Named Entity** and/or **Insured Persons**, without **Our** prior written consent, to or for a complainant prior to imposition of sentence by the Court, as reparation or otherwise, following an **Event**.

4.16 Nuclear

Arising out of or connected with:

- (a) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (b) the radioactive, toxic, explosive or other hazardous properties of any explosive assembly or its nuclear components.

4.17 Other activities

Arising out of activities otherwise than in the course of or in connection with **Your Business**.

4.18 Private Prosecutions

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

4.19 Punitive or Exemplary Damages

Any damages, including punitive, aggravated, liquidated, multiple or exemplary damages imposed by a court for breach of any **Act of Parliament**.

4.20 Reparation

For any monetary amount ordered to be paid by the **Named Entity** and/or **Insured Persons** by way of an reparation imposed by a Court following conviction under any **Act of Parliament**, except an **Order for Reparation**.

4.21 Retroactive date

That arose out of any **Event** that occurred prior to the **Retroactive Date**.

4.22 Taxes

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

4.23 Terrorism

Arising from or in any way related to death, injury, illness, loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with, any act of **Terrorism** regardless of any contributing cause or **Event**.

This **Policy** also excludes death, injury, illness, loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from, or in connection with, any action taken in controlling, preventing or suppressing **Terrorism**, or in any way relating to the above exclusion.

4.24 War

- (a) Arising out of or connected with war, invasions, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- (b) Arising out of or connected with confiscation, nationalisation or damage to property by or under the order of any government or public or local authority.

Section 5: Conditions

5.1 Allocation of costs

If costs or expenses are incurred both in respect of a **Claim** insured under this **Policy** and a matter that is not insured under this **Policy** then **We** shall be liable to pay only a fair proportion of such costs or expenses. In the **Event** that **You** and **Us** are unable to agree as to a fair proportion, then counsel, mutually agreed upon by both parties and whose decision shall be final, shall determine what is a fair proportion.

5.2 Cancellation

- (a) **You** may cancel this **Policy** at any time by giving notice to **Us**. **We** will refund to **You** on a pro rata basis the amount of the unexpired premium already paid subject to any applicable minimum premium.
- (b) **We** may cancel this **Policy** after sending at least 30 days' notice to **You** in accordance with Conditions 5.9(b) and 5.9(c) (Notices by Us). **We** will refund on a pro rata basis the amount of any unexpired premium already paid.

5.3 Conduct of Claims

- (a) **You** must not make any admission or any decision that affects the **Conduct of the Claim**, or incur any costs or expenses in connection therewith without **Our** prior written consent.
- (b) **We** are entitled at any time to nominate a solicitor to act as **Your** solicitor and shall have total discretion as to the **Conduct of the Claim**, in **Your** name. The solicitor shall at all times be at liberty to disclose to **Us** any information obtained in the course of so acting, whether from **You** or howsoever. **You** hereby waive all claims to legal professional privilege that might otherwise have existed as between **You** and the solicitors retained by **Us** to act on **Your** behalf, in respect of such information.
- (c) If **We** believe that the **Claim** will not exceed the **Excess**, **We** may instruct **You** to assume responsibility for the **Conduct of the Claim** at **Your** expense. Should the **Claim** subsequently exceed the **Excess**, **We** agree to reimburse the reasonable costs and expenses incurred by **You** that exceed the **Excess**. **You** must advise **Us** as soon as the total costs of the **Claim** exceed the **Excess** or it becomes apparent that they are likely to do so.

5.4 Constructive Notice/No Waiver

- (a) Except as provided by statute, notice to any agent or broker or knowledge possessed by any agent, broker or other person will not constitute notice to **Us**.
- (b) The terms of this **Policy** will not be waived or changed, except by written agreement with **Us**.

5.5 Defence of prosecutions

We shall not require **You** to defend any prosecution in respect of any **Claim** against **You**, nor shall **You** require **Us** to defend, on **Your** behalf, any prosecution in respect of any such **Claim** unless a legal counsel (to be mutually agreed upon by **You** and **Us**) shall advise that such prosecution should be defended.

In formulating such advice, counsel shall take into consideration whether the defence of the prosecution has a reasonable prospect of success. The cost of counsel's opinion shall be regarded as part of the **Defence Costs**.

In the event that counsel advises that, having regard to all the circumstances, the matter should not be defended, then **You** can elect to defend the prosecution at **Your** own expense but **Our** liability will not exceed the amount of the **Fine** (or **Order for Reparation**, if applicable) and **Defence Costs** that would have been payable had **You** elected not to defend.

5.6 Fraud

If any answers or statements in respect of any **Claim**, or in any information provided to obtain, amend or renew this insurance, are false in any way, **We** will not provide any indemnity to **You** under this **Policy**.

5.7 GST

Where, on receiving any indemnity payment under this **Policy**, **You** are liable to pay tax under section 5(13) of the Goods and Services Tax Act 1985 (or any re-enactment or substitute), **We** will indemnify **You** for the cost of that tax. The indemnity under this clause is in addition to the applicable **Limit of Indemnity**.

5.8 Material change

You will give immediate notice to **Us** of any material change to any of the facts or circumstances existing at the commencement of the **Period of Insurance**. **We** will be entitled to vary the **Policy** terms and/or charge an additional premium.

5.9 Notices by Us

- (a) Any notice given in writing by **Us** to the first named insured in the **Schedule**, or to the broker through which **You** arranged this **Policy** with **Us**, will be deemed to be notice to each insured.
- (b) Any notices by **Us** may be effected by sending an email or letter to the last known contact address.
- (c) Any such notice will be deemed to have been received, if sent by email, at the time of transmission, and if sent by post, three business days after the date of posting.

5.10 Other Insurance

Upon giving notice of any claim, **You** will provide **Us** with written details of any other insurance that may cover or partially cover that claim.

In the event that **You** hold other insurance cover with another insurer in respect of any **Claim** then the indemnity under this **Policy** shall not be available until the **Limit of Indemnity** under any other policy has been exhausted.

5.11 Policy disputes

This **Policy** shall be governed by the laws of New Zealand whose courts shall have exclusive jurisdiction in any dispute arising herein.

5.12 Reasonable precautions

You will take all reasonable precautions to:

- (a) avoid or prevent the happening of any circumstances that may give rise to an **Event**; and
- (b) comply, and ensure that **Your** employees, servants and agents comply, with all statutory obligations, by-laws or regulations imposed by a public authority for the safety of persons or property.

5.13 Reporting of Claims

Irrespective of the quantum, **You** must give **Us** immediate notice in writing of:

- (a) any **Claim** made against **You**; or
- (b) the receipt of notice from, or information as to any intention by, any party to make a **Claim** against **You**; or
- (c) any **Event** that a reasonable insured in **Your** position would have considered may give rise to a **Claim**. Where such notice is given to **Us** by **You**, any **Claim** that may subsequently be made against **You** shall be deemed to be a **Claim** made during the **Period of Insurance**.

Provided that in order to qualify as a **Claim** capable of being covered by this **Policy**, **Your** notice in writing must:

- (i) relate to a **Claim** that occurred during the **Period of Insurance**; and
- (ii) be given during the **Period of Insurance** or within 30 days after its expiry.

5.14 Subrogation

- (a) If **We** make any payment under this **Policy** to or on behalf of **You**, **We** will be subrogated to all **Your** rights of recovery.
- (b) **You** will execute all papers and do all that is necessary to assist **Us** in the full exercise of such rights, including prosecuting proceedings in **Your** name at **Our** expense.
- (c) If **You** effect any recovery in respect of the claim, **You** will account to **Us** for the full amount received.

5.15 Words

Certain words in this **Policy** have a specific meaning. These words appear in bold and **You** will find the meaning listed in Section 3 'Definitions' of this **Policy**. Words importing persons will include companies and other legal entities. The singular includes reference to the plural and vice versa, and reference to any gender includes all other genders.

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