

Ando Directors & Officers 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

We will indemnify **You** in respect of a **Claim** made against an **Insured** during the **Period of Insurance** as follows:

1.1 Directors and Officers Individual Cover

We will pay on **Your** behalf all **Loss** arising from any **Wrongful Act** provided that **You** are not indemnified by the **Company**.

1.2 Company Reimbursement Cover

We will pay on **Your** behalf all **Loss** arising from the **Company** indemnifying **You** as permitted or required by law arising from any **Wrongful Act**.

Section 2: Automatic Coverage Clauses

The following extensions to this **Policy** are included automatically provided always that each extension is subject to the terms of this **Policy** (unless otherwise stated). 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 Advancement of Defence Costs

- (a) Notwithstanding Exclusion 4.4 (Fraud/Personal Profit) **We** will advance to or on **Your** behalf **Defence Costs** as they are incurred by or on **Your** behalf in connection with any **Claim** made against **You**, and prior to the disposition of such **Claim**.

Provided that to the extent it is finally established by judgment, other adjudication or any settlement that any such **Defence Costs** are not covered under this **Policy** **You**, severally according to **Your** respective interests, **You** agree to repay **Us** such **Defence Costs**.

- (b) This Coverage Clause is subject to General Condition 5.1 (Allocation).

2.2 Company Securities Entity Cover

- (a) **We** will pay any **Loss** incurred by the **Company** arising from a **Securities Claim** subject to payment of the greater of:
 - (i) an **Excess** of \$10,000; or
 - (ii) the **Excess** stated in the **Schedule**.

- (b) The maximum aggregate amount payable under this Coverage Clause shall be the lesser of \$250,000 or the **Limit of Indemnity**.

2.3 Compensation for Court Attendance

- (a) If **You** are legally required to attend a court or employment tribunal as a witness in connection with a **Claim** for which **You** are to be indemnified under this **Policy**, **We** will provide cover in respect of the cost for such attendance to an amount not exceeding \$500 for each day on which attendance is required.
- (b) The cover provided under this Coverage Clause shall be subject to a limit of \$50,000 in the aggregate and shall be part of and not in addition to the **Limit of Indemnity**.

2.4 Continuous Cover

Notwithstanding Exclusion 4.7 (Known Claims and Circumstances) **We** will pay all **Loss** arising from a **Claim** subject to the following additional conditions:

- (a) the **Company** has maintained without interruption primary directors and officers liability insurance with **Us** between the date when the notification should have been given and the date this **Policy** came into effect; and
- (b) there has been no fraudulent non-disclosure or fraudulent misrepresentation to **Us** in respect of the circumstance or **Claim**; and
- (c) **We** have total discretion to apply either the terms and conditions of the policy in force at the time the notification should have been given, or the terms and conditions of this **Policy**; and
- (d) **Our** liability may be reduced by the amount that **We** determine fairly represents the extent to which liability for the **Claim** could have been reduced had the circumstance been reported under the earlier policy.

2.5 Crisis Containment

- (a) **We** will indemnify the **Company** for **Crisis Loss** which the **Company** incurs by reason of a **Crisis** which first occurs and is notified to **Us** during the **Period of Insurance**.
- (b) The maximum aggregate amount payable under this Coverage Clause shall be \$250,000 or the policy limit whichever is the lesser. This amount is part of and not in addition to the **Limit of Indemnity**.

2.6 Discovery Period

If **We** cancel this **Policy** or do not offer renewal upon expiry, then the **Company** has the right, upon payment of 100% of the current annual premium, to extend the expiry date of this **Policy** for a further period of 12 months following the effective date of such non-renewal, hereafter referred to as the 'Discovery Period', subject to the following additional conditions:

- (a) the Discovery Period applies only to a **Wrongful Act** allegedly committed prior to the effective date on which the Discovery Period begins; and
- (b) the right to extend the expiry date under this extension shall lapse unless written notice of such election, together with payment of the additional premium due, is received by **Us** within 30 days following the effective date of non-renewal. If the right of extension lapses then cover under this **Policy** ceases as at the effective date of non-renewal; and
- (c) the **Limit of Indemnity** under this Coverage Clause is part of and not in addition to the **Limit of Indemnity**; and
- (d) this **Policy** has not been cancelled or replaced with any other directors and officers or management liability policy; and
- (e) the Discovery Period is non-cancellable, except for non-payment of premium. The **Company** is not entitled to elect the Discovery Period under this extension if an extension of cover is elected pursuant to General Condition 5.15 (Merger/Takeover).

If the **Company** cancels this **Policy** or declines to accept renewal terms, **We** may at **Our** sole discretion elect to grant a similar Discovery Period.

2.7 Discovery Period for Retired Insured Persons

- (a) If the **Company** does not renew, or replace, this **Policy** with any other directors and officers or management liability policy or purchase the Discovery Period cover, then a run-off period of 84 months immediately following the **Indemnity Period** shall be provided for **You** if **You** have retired from the **Company** before the date of non-renewal. During this period notice may be given to **Us** of any **Claim** arising from a **Wrongful Act** committed by **You** prior to the date of non-renewal.
- (b) This Coverage Clause is not available if, at the date of non-renewal:
 - (i) A **Transaction** has occurred; or
 - (ii) The **Company** is in liquidation, receivership, insolvency, bankruptcy or administration.

2.8 Emergency Defence Costs

- (a) If **Our** written consent cannot reasonably be obtained before **Defence Costs** or Public Relations Expenses are incurred, **We** will grant retrospective approval for such costs of up to 10% of the **Limit of Indemnity** provided that **Our** consent is obtained within 14 days following the first such costs being incurred.
- (b) The cover provided under this Coverage Clause shall form part of, not be in addition to, the **Limit of Indemnity**.

2.9 Employment Practices Liability Cover for Insured Persons

We will indemnify **You** for **Loss** arising from an **Employment Related Wrongful Act**. This Coverage Clause does not require an **Insured** to commit a **Wrongful Act**.

2.10 Estates and Legal Representatives / Spousal Liability

- (a) **We** will pay all **Loss** arising from a **Claim** made against **Your** estate, heir, legal representatives or assigns where **You** are deceased, incompetent, insolvent or bankrupt.
- (b) If a **Claim** against **You** includes a claim against **Your** partner, solely by reason of such partner's:
 - (i) status as **Your** partner, or
 - (ii) ownership or interest in property which the claimant seeks as recovery for alleged **Wrongful Acts of Yours**, all **Loss** which such partner becomes legally obliged to pay by reason of such **Claim** shall be treated for the purposes of this **Policy** as **Loss** which **You** become legally obliged to pay on account of the **Claim** made against **You**.

Provided always that any estate, heirs, legal representatives, spouse or assigns shall observe and be subject to all the provisions of this **Policy**.

2.11 Extradition Costs

- (a) **We** will pay any reasonable fees, costs, charges and expenses incurred with **Our** prior written consent by or on behalf of **You** in challenging, resisting and defending an **Extradition Proceeding**, including any appeal, brought against **You**. However, fees, costs, charges and expenses under this extension do not include any remuneration or reimbursement of time spent by **You** or **Employees**.
- (b) This Coverage Clause does not require an **Insured** to commit a **Wrongful Act**.
- (c) The maximum aggregate amount payable under this Coverage Clause shall be the lesser of \$500,000 or the **Limit of Indemnity**.

2.12 Family/Personal Expenses

- (a) This **Policy** includes payment of **Deprivation of Assets Expenses** arising from a **Claim** or related investigation first made during the **Period of Insurance**.
- (b) The maximum amount payable under this Coverage Clause shall be the lesser of \$200,000 per individual **Insured** and \$1,000,000 in the aggregate, or the **Limit of Indemnity**.

2.13 New Subsidiary

The definition of **Subsidiary** will extend to include any entity which is acquired or created during the **Period of Insurance**, provided that:

- (a) the total gross assets of the new entity, hereafter referred to as 'New Subsidiary', do not exceed 20% of the total gross consolidated assets of the **Company**; and
- (b) if the New Subsidiary is located in the USA or Canada the revenue does not exceed NZ\$50m.
- (c) the New Subsidiary has no securities traded or listed in the USA or Canada; and
- (d) the New Subsidiary's business activities are not materially different to the activities conducted by the **Company** in the **Period of Insurance**. The cover provided under this Coverage Clause shall only apply to a **Wrongful Act** occurring after the date of creation or acquisition of the New Subsidiary.

2.14 Occupational Health & Safety

- (a) Notwithstanding Exclusion 4.2 (Bodily Injury / Property Damage), **We** will pay **Defence Costs** in respect of any **Claim**, or **Defence Costs** relating to an official investigation or inquiry alleging a breach under New Zealand's Health and Safety at Work Act 2015 or any amendment or re-enactment thereof, or any other New Zealand or Australian legislation governing health and safety in the workplace.
- (b) The maximum aggregate amount payable under this Coverage Clause shall be the lesser of \$1,000,000 or the **Limit of Indemnity**.

2.15 Official Investigations and Inquiries

We will pay **Defence Costs** arising out of:

- (a) any request to **You** for information by any regulator, government body or authority, governmental or administrative agency or self-regulatory body established by statute.
- (b) any legally compellable attendance by **You** at any official investigation, hearing, examination or inquiry in relation to the affairs of the **Company**, by virtue of **Your** position with the **Company**, where such official investigation, hearing, examination or inquiry may lead to a **Claim**.
provided that:
 - (i) the actual or notice of intended investigation, hearing, examination or inquiry is first notified to **You**, and by **You** to **Us**, during the **Period of Insurance**; and
 - (ii) **You shall** refund **Defence Costs** advanced by **Us** to the extent that **We** are satisfied that **You** were not entitled to such **Defence Costs**, unless **We** agree in writing to waive any such refund.
 - (iii) cover under (a) and (b) above shall only apply to any investigation, hearing, examination or inquiry brought within the **Jurisdictional Limits** or **Territorial Limits** of New Zealand or Australia.

For the purposes of this Coverage Clause, **Claim** also includes an official investigation, hearing, examination or inquiry where there is no **Wrongful Act** alleged against **You**.

2.16 Outside Positions Liability

We will pay on **Your** behalf, **Loss** arising from a **Claim** committed whilst serving in an **Outside Position**.

Any cover provided in this Coverage Clause:

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

2.17 Pollution Legal Defence Costs

- (a) Notwithstanding Exclusion 4.9 (Pollution) **We** will pay on **Your** behalf any **Defence Costs** incurred in defending any **Claim** resulting in **Loss** arising out of the discharge, release or escape of **Pollutants**.
- (b) The maximum aggregate amount payable under this Coverage Clause shall be the lesser of \$1,000,000 or the **Limit of Indemnity**.

2.18 Pollution Loss

- (a) Notwithstanding Exclusion 4.9 (Pollution) **We** will indemnify **You** for any **Claim** brought directly or indirectly or derivatively by any shareholder of the **Company** alleging **Loss** to the **Company** or its shareholders in connection with any **Wrongful Act** resulting in the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of **Pollutants** into or on real or personal property, water or the atmosphere.
- (b) The maximum aggregate amount payable under this Coverage Clause shall be the lesser of \$1,000,000 or the **Limit of Indemnity**.

2.19 Preservation of Indemnity

- (a) In the event and to the extent that the **Company** is permitted or required to indemnify **You** in respect of a **Claim** but for whatever reason fails or refuses to do so then **We** will pay on **Your** behalf any **Loss** arising from a **Claim**.
- (b) The **Excess** applicable to Insuring Clause 1.2 (Company Reimbursement Cover) shall apply to such **Claims** unless the **Company** is placed in liquidation (other than voluntary liquidation) in which case the **Excess** applicable to Insuring Clause 1.1 (Directors and Officers Individual Cover) shall apply.

2.20 Public Relations Expenses

- (a) We will pay the reasonable fees, costs, charges and expenses of a public relations consultant retained by or on Your behalf to mitigate the adverse effect on Your reputation from a Claim first made during the Period of Insurance for any Wrongful Act.
- (b) The maximum aggregate amount payable under this Coverage Clause shall be the lesser of \$250,000 or the Limit of Indemnity.

2.21 Reinstatement of Limit Upon a Recovery

Any amounts which We recover (net of Our costs and expenses associated with such recovery) following a paid Claim or other Loss covered by this Policy shall reduce the erosion of the Limit of Indemnity to the same extent.

2.22 Run-off Cover in Respect of Subsidiaries

In the event of the sale, dissolution or disposal of a Subsidiary during the Period of Insurance, We will pay Loss for any Claim relating to that Subsidiary but only in respect of a Wrongful Act occurring prior to the sale, dissolution or disposal of the Subsidiary.

2.23 Superannuation Trustees

We will pay all Loss arising from any Claim made against You in Your individual or collective capacities as trustees of the Company's own superannuation or pension funds. Such cover shall apply to any Claim by any member of the superannuation or pension funds notwithstanding that they may also be an Insured.

Section 3: Definitions

Any word or expression that this Policy defines as having a particular meaning will have that meaning everywhere it appears.

3.1 Associated Company means:

Any 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.

3.2 Claim means:

- (a) a demand for compensation, damages or other relief; or
- (b) a formal, administrative, disciplinary or regulatory proceeding in which a complaint, charge or other allegation is made; or
- (c) a criminal proceeding; or
- (d) any civil proceeding or alternative dispute resolution process including but not limited to any arbitration or mediation against any Insured

which alleges a Wrongful Act.

3.3 Company means:

The entity, and its Subsidiaries, named in the Schedule.

3.4 Crisis means:

Any of the following unforeseen and unexpected events:

- (a) the loss of the Company's intellectual property rights previously acquired under law by the Company for a patent, trademark or copyright;
- (b) the loss of a major customer or major contract of the Company;
- (c) any act committed on the Premises that results in any Employee, company or customer suffering:
 - (i) physical injury or death, and/or
 - (ii) emotional trauma from witnessing the physical injury or death of any other person;
- (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;
- (e) the 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.

Provided that the Crisis:

- (i) has, in the reasonable opinion of the chief executive officer of the Company (or the equivalent thereof), the potential to cause imminent Financial Loss to the Company if not managed; and

- (ii) 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**.

3.5 **Crisis Loss** means:

Any reasonable fees, costs, charges and expenses incurred by an **Insured** following a **Crisis** as a result of the **Company** engaging a public relations firm or consultant, crisis management consultant or law firm in order to minimise the effect of a **Crisis** and to prevent or limit any adverse or negative publicity in respect of a **Claim**. This cover applies only for the first 45-day period immediately following the day on which the **Crisis** first occurs.

3.6 **Defence Costs** means:

- (a) any reasonable fees, costs, charges, fees and expenses, incurred by or on **Your** behalf whether as **Emergency Costs** or with **Our** prior written consent (which shall not be unreasonably delayed or withheld) after a **Claim** is made directly in connection with its defence, investigation, settlement or appeal.
- (b) and shall include the reasonable fees, costs, charges and expenses incurred by or on behalf of an independent third party engaged by the **Company** to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in connection with the defence, investigation, settlement or appeal of a **Claim**.

Defence costs however does not include any remuneration or reimbursement of time spent by directors, officers or **Employees**.

3.7 **Deprivation of Assets Expenses** means:

- (a) the payment of expenses in the event of an interim or interlocutory order confiscating, controlling, suspending or freezing rights or ownership or real property or personal assets of **Yours** or creating a charge over real property or personal assets of **Yours** during the **Period of Insurance**. The expenses will be limited to housing, utilities, personal insurances and schooling;
- (b) Such expenses will only be payable directly to the service provider and in the event of a personal allowance for such costs having been granted by a court shall only apply where such personal allowance has been exhausted;
- (c) Such expenses will be payable after 30 days following the event for a period of up to 12 months.

3.8 **Employee** means:

- (a) any natural person employed by the **Company** in the course of **Your** business, and
- (b) whom 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. Employee does not include consultants, contractors or agents or any director of the **Company**.

3.9 **Employment Related Wrongful Act** means:

Any actual or alleged:

- (a) personal grievance or wrongful dismissal;
- (b) defamation relating to or arising from a personal grievance or wrongful dismissal;
- (c) harassment (sexual or otherwise) or victimisation;
- (d) wrongful demotion, failure or refusal to employ or promote, unfair discipline or negligent **Employee** evaluation;
- (e) wrongful termination or discharge of employment;
- (f) discrimination, humiliation or breach of privacy

brought by an **Employee** or prospective **Employee** in relation to actual or proposed employment.

3.10 **Excess** means:

The excess specified in the **Schedule**.

3.11 **Extradition Proceeding** means:

In respect of the provisions of the Extradition Act 1999 or any of its replacements or amendments:

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

3.12 Financial Loss means:

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

3.13 Indemnity Period means:

- (a) the Period of Insurance; or
- (b) the first 28 days immediately after the Period of Insurance; or
- (c) the Discovery Period, if applicable.

3.14 Insured(s) means:

The insured persons, however in respect of Coverage Clause 1.2 (Company Reimbursement Cover) and Automatic Cover Clause 2.2 (Company Securities Entity Cover) only, the insured means the **Company**.

3.15 Interrelated Wrongful Acts means:

All **Wrongful Acts** that have as a common nexus any single or series of related, facts, circumstances, situations, events, transactions or causes.

3.16 Jurisdictional Limits means:

The jurisdictional limits specified in the **Schedule**.

3.17 Limit of Indemnity means:

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

3.18 Loss means:

Any amount which **You** or the **Company** become legally liable to pay on account of any **Claim**, including:

- (a) damages awarded or judgments entered against the **Company** or **You**; and
- (b) legal costs and expenses awarded against the **Company** or **You** in connection with a covered award, judgment or settlement; and
- (c) settlements negotiated with **Our** prior written consent; and
- (d) **Crisis Loss**; and
- (e) **Defence Costs** and **Emergency Defence Costs**.

Loss does not include:

- (i) any amount for which the **Company** or **You** are not legally obligated; or
- (ii) taxes, except as covered under Condition 5.9 (GST); or
- (iii) fines or penalties imposed by law; or
- (iv) the multiple portion of any multiplied damage award; or
- (v) punitive or exemplary damages; or
- (vi) any amount which is uninsurable under the laws of the country under which indemnity is to be provided.

3.19 Non-Profit Entity means:

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

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

3.20 Outside Entity means:

Any:

- (a) Non-Profit Entity or Associated Company; or
- (b) other entity where Outside Position cover is noted in the Policy by endorsement.

3.21 Outside Position means:

The role of director, officer, manager, trustee or other equivalent position held by **You** in an **Outside Entity**.

3.22 Period of Insurance means:

The period of insurance specified in the **Schedule**.

3.23 Policy means:

Collectively, the **Schedule**, the **Proposal**, this policy wording and any endorsements.

3.24 Pollutants means:

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

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

3.25 Premises means:

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

3.26 Proposal means:

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

3.27 Retroactive Date means:

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

3.28 Schedule means:

The current schedule issued by **Us**.

3.29 Securities Claim means:

A demand for compensation, monetary damages or other relief instituted against the **Company** alleging a **Wrongful Act** in connection with the purchase or sale, or the offer to purchase or sell, any security representing an equity interest in or debt of the **Company**.

3.30 Senior Counsel means:

A senior lawyer to be mutually agreed between **Us** and **You**. In the absence of such agreement, the Senior Counsel shall be selected by the President of the New Zealand Bar Association from a list of three nominations from **Us** and **You**.

3.31 Subsidiary means:

- (a) an entity in which the **Company**, either directly or indirectly through one or more other entities:
 - (i) controls the composition of the board of directors; and/or
 - (ii) controls more than half of the shareholder voting power; and/or
- (b) holds more than 50% of the issued share capital; and/or
- (c) any entity over which the **Company** exercises effective management control.

3.32 Territorial Limits means:

The territorial limits specified in the **Schedule**.

3.33 Transaction means:

- (a) the **Company** merges into or consolidates with another organisation; or
- (b) another organisation, or person or group of organisations or persons acting in concert, acquires securities or voting rights that result in ownership or voting control by the other organisation or person of more than 50% of the voting rights of the **Company**.

3.34 **We or Our or Us** means:

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

3.35 **Wrongful Act** means:

- (a) In respect of Coverage Clause 1.1 (Directors and Officers Individual Cover):
any actual or alleged error, misstatement, misleading statement, act, omission, negligence, breach of duty, breach of trust, breach of authority or other act committed or attempted by **You** solely in the capacity as a director or officer in the course of performing **Your** duties to the **Company** or in an **Outside Position**.
- (b) In respect of Automatic Coverage Clause 2.2 (Company Securities Entity Cover):
any actual or alleged error, misstatement, misleading statement, act, omission, negligence, breach of duty, breach of trust, breach of authority or other act committed or attempted by the **Company** but solely in respect of a **Securities Claim**.

3.36 **You, Your or Yours** means:

Any person who was, is, or during the **Period of Insurance** becomes:

- (a) a director, alternate director, de facto director or secretary of the **Company**; or
- (b) a company officer who though not a director, is concerned in, or takes part in, the management of the **Company**; or
- (c) an **Employee** of the **Company**:
 - (i) while acting in a managerial or supervisory capacity for that **Company**, or
 - (ii) with respect to a **Claim** alleging an **Employment Related Wrongful Act**, or
 - (iii) named as a co-defendant with a director or officer of the **Company**; or
- (d) any person who was, is, or may become a trustee of a superannuation fund or pension plan established for the sole benefit of a **Company Employee**; or
- (e) any person who by virtue of any law is deemed to be a director of the **Company**; or
- (f) 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**.

In respect of any claim for indemnity under clauses 2.2, 2.4, 2.5 or 2.6 of the **Policy** you, your or yours shall be deemed to include the **Company**.

The term you shall not include any externally appointed officers, including but not limited to, auditors, receivers, statutory managers, trustees, liquidators or mortgagees in possession.

Section 4: Exclusions

We will not be liable for **Loss** or any claim under this **Policy**

4.1 **Asbestos**

For any actual or alleged liability whatsoever in respect of, directly or indirectly arising out of, or resulting from or in consequence of, asbestos.

4.2 **Bodily Injury / Property Damage**

For bodily or mental injury, emotional distress, illness, disease or death of any person (other than in respect of an **Employment Related Wrongful Act**) or for damage to or destruction of any tangible property, including loss of use.

4.3 **Consensual Claim**

Which is brought or maintained with the intervention, active assistance or active participation (unless required by law) of any **Insured** against whom the **Claim** is brought.

4.4 **Fraud / Personal Profit**

Directly or indirectly arising from or out of:

- (a) the improper use of position or information by **You** to gain personal profit or advantage or cause detriment to the **Company**; or
- (b) any dishonest, fraudulent, criminal, malicious or deliberate act or omission by **You**; or
- (c) any wilful violation or breach of any statute or regulation by **You**; or
- (d) **You** gaining any personal profit, remuneration or financial advantage to which they were not legally entitled.

Your knowledge and/or conduct will not be imputed to any other **Insured** (other than the **Company**) when determining the application of this exclusion.

Provided that this exclusion shall only apply if there is a written admission, settlement, judgment or other final adjudication which establishes that such conduct did in fact occur.

4.5 Insured vs Insured

Which is brought by or on behalf of **You** or the **Company**; however, this exclusion shall not apply to:

- (a) any **Claim** against **You**:
 - (i) pursued as a shareholder derivative action brought or maintained on behalf of a **Company** or **Outside Entity**; and that has not been solicited or instigated with the voluntary (rather than legally required) intervention, assistance or active participation of the **Company** or any Insured Person or any **Outside Entity** director,
 - (ii) for any **Employment Related Wrongful Act** brought or maintained by **You**,
 - (iii) brought by **You** for contribution or indemnity, if the **Claim** directly results from another **Claim** otherwise covered under this **Policy**,
 - (iv) brought by any past director, officer or **Employee** of a **Company** or **Outside Entity**, or
 - (v) brought by an insolvency administrator, receiver, trustee or liquidator of any **Company** or **Outside Entity** either directly or derivatively on behalf of a **Company** or **Outside Entity**;
- (b) **Defence Costs**.

4.6 Jurisdiction

Directly or indirectly arising from or out of any legal action or litigation:

- (a) first brought in a court outside the **Jurisdictional Limits**; or
- (b) brought in a court within the **Jurisdictional Limits** to enforce a judgment handed down in a court outside the **Jurisdictional Limits** whether by way of a reciprocal agreement or otherwise; or
- (c) in which the proper law to be applied to the issue or any of them in that action is that of a country outside the **Jurisdictional Limits**.

4.7 Known Claims and Circumstances

- (a) made against, threatened against or intimated to **You** or the **Company** prior to the commencement of the **Period of Insurance**; or
- (b) notified under any previous policy of insurance; or
- (c) arising out of circumstances of which:
 - (i) an Insured was aware, or ought reasonably to have been aware, 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 against **You**.

4.8 Major Shareholder Exclusion

Brought by or on behalf of any shareholder, who directly or beneficially holds or controls 15% or more of the voting shares or rights or issued capital of the **Company**.

4.9 Pollution

Directly or indirectly arising from or out of:

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

4.10 Professional Services

Directly or indirectly arising from or out of a breach of professional duty owed in a capacity other than as specified in Definition 3.35 (You, Your or Yours) (a), (b), (d), and (e).

4.11 Prospectus / Capital Raising Exclusion

Directly or indirectly arising from or out of:

- (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.

4.12 Retroactive date

Directly or indirectly arising from or out of any **Wrongful Act** which occurred prior to the **Retroactive Date** set forth in the **Schedule**.

4.13 Territory

Directly or indirectly arising from or out of any **Wrongful Act** which occurred outside the **Territorial Limits** stated in the **Schedule**.

4.14 War / Nuclear / Terrorism

Directly or indirectly arising from or out of:

- (a) war, invasions, acts of foreign enemies, hostilities or warlike operations (whether war is declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power or requisition or destruction or damage to property by or under the order of any government or public or local authority; or
- (b) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (c) operations employing the process of nuclear fission or fusion or handling radioactive material which operations include but are not limited to:
 - (i) the use of nuclear reactors such as atomic piles, particle accelerators, generators or similar devices; or
 - (ii) the use, handling or transportation of radioactive materials; or
 - (iii) the use, handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion; or
- (d) any liability, loss, damage or expenses of whatsoever nature directly or indirectly caused by, resulting from, or happening through any act of terrorism, regardless of any other cause contributing concurrently or in any other sequence to the loss, damage or expense.

For the purposes of this exclusion, terrorism means an act, including but not limited to the use or threatened use of force or violence, or an act dangerous to human life, tangible or intangible property or infrastructure with the intention or effect to influence any government or to put the public or any section of the public in fear.

Section 5: General Conditions

5.1 Allocation

- (a) If in any **Claim** the **Insured** incurs a **Loss** jointly with others, or incurs **Loss** which is partly covered by this **Policy** and partly not covered by this **Policy** then the **Company** and **You** and **Us** shall allocate such amount between covered **Loss** and uncovered **Loss** based upon the relative legal exposures of the parties to covered and uncovered matters.
- (b) If **We** and each **Insured** against whom a **Claim** is made agree on the allocation of **Defence Costs**, **We** will advance **Defence Costs** allocated to the covered **Loss**. If there is no agreement on allocation then **We** and the **Insured** agree to refer the dispute to a **Senior Counsel** to determine the basis for allocation which shall be final and binding on all parties. **We** will pay, in addition to the **Limit of Indemnity**, the **Senior Counsel's** expenses in providing such determination.
- (c) Any negotiated, arbitrated or judicially determined allocation of **Defence Costs** on account of a **Claim** shall be applied retrospectively to all **Defence Costs** on account of such **Claim**, notwithstanding any prior payment to the contrary. Any allocation or payment of advance **Defence Costs** on account of a **Claim** shall not apply to or create any presumption in respect of the allocation of other **Loss** on account of such **Claim** or any other **Claim**.

5.2 Alteration and Assignment

No change in, modification of or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by **Our** authorised representative.

5.3 Authorisation Clause

By acceptance of this **Policy**, the **Company** and **You** agree that the **Company** agrees to act on **Your** behalf in respect of:

- (a) the giving and receiving of any notice of **Claim** or cancellation;
- (b) the payment of premiums and the receiving of any return premiums that may become due under this **Policy**;
- (c) the agreement to and acceptance of endorsements; and
- (d) the giving or receiving of any notice provided for in this **Policy** except the giving of notice to apply for the **Discovery Period** pursuant to Automatic Coverage Clause 2.6 (Discovery Period) or 2.7 (Discovery Period for Retired **Insured Person**).

5.4 Breach of Condition

- (a) Where **Your** breach of any condition of this **Policy** has resulted in prejudice to the handling and/or settlement of any **Claim** or **Loss**, which in all other respects qualifies to be indemnified under this **Policy**, the indemnity afforded by this **Policy** in respect of such **Claim** or **Loss** shall be reduced to such sum as would have been payable by **Us** in the absence of such prejudice.
- (b) For the purposes of this clause any statements made, particulars provided or acts or omissions by any **Insured** shall not be imputed to any other **Insured**.

5.5 Cancellation

- (a) The **Company** may cancel this **Policy** at any time by notifying **Us** in writing.
- (b) **We** may cancel this **Policy** at any time by giving 30 days' notice in writing to the **Company** of the date from which cancellation is to take effect. Such notification is to be delivered personally or posted by registered mail to the **Company** at the address last notified to **Us**. Proof of mailing is sufficient proof of notification.
- (c) Upon cancellation by **Us** or the **Company**, the **Company** is entitled to a pro rata refund of the last annual premium based on **Our** cancellation rates.

5.6 Claims Co-operation

- (a) The **Insured** shall take all reasonable steps to avoid or diminish any **Claim** or **Loss** in respect of any claim and shall, at its own cost, immediately disclose all information and provide **Us** assistance in order to investigate and defend the **Claim** or determine the liability under the **Policy**. An unreasonable failure to comply with this obligation may entitle **Us** to deny liability for the **Claim** in whole or in part.
- (b) Upon receipt of notice from the **Insured** for any request for indemnity under this **Policy**, **We** may take any action **We** consider appropriate to protect the **Your** position in respect of the **Claim**, and any such action by **Us** shall not be regarded in any way as prejudicing the **Insured's** or **Our** position and will not be construed as an admission of the **Insured's** entitlement to indemnity.
- (c) The **Insured** waives all rights to legal professional privilege between themselves and any solicitor retained by **Us** to act on the **Insured's** behalf in respect to any **Claim**. The **Insured** will allow the solicitor to disclose to **Us** and **Our** reinsurers any information obtained in the course of his/her duties.

5.7 Defence and Settlement

- (a) The **Company** and **You** shall not admit liability for or settle any **Claim**, make any admission, offer or payment, incur any **Defence Costs** or otherwise assume any obligation with respect to any **Claim** without **Our** written consent. **We** will not be liable for any settlement, **Defence Costs**, admission, offer, payment or assumed obligation to which **We** have not consented.
- (b) **We** will be entitled, but not obliged, to assume and conduct in **Your** name the defence or settlement of any **Claim** and **We** will have full discretion in managing any proceedings or in negotiating the resolution of any **Claim**.
- (c) **We** will be entitled to appoint legal counsel to represent **You** in defence of any **Claim**.
- (d) The **Company** or **You** will provide **Us** with all information, assistance and cooperation **We** reasonably request. Further, in the event of a **Claim** the **Company** and **You** will not prejudice **Our** position or **Our** potential or actual rights of recovery.
- (e) **We** may make any investigation it reasonably deems necessary.

5.8 Excess

- (a) Except as otherwise provided in this general condition, **Our** liability in respect of each **Claim** applies only to that part of **Loss**, including **Defence Costs**, which is over and above of the applicable excess stated in the **Schedule**. Such excess shall be borne by the **Company** uninsured and at its own risk.

- (b) No excess applies to **Loss** covered by Coverage Clause 1.1 (Directors and Officers Individual Cover). If **Loss** arising from a single **Claim** is covered in part under Coverage Clause 1.1 (Directors and Officers Individual Cover) and in part under Coverage Clause 1.2 (Company Reimbursement Cover), the applicable excess set forth in the **Schedule** applies to that part of the **Loss** covered by Insuring Clause 1.2, subject to Automatic Coverage Clause 2.19 (Preservation of Indemnity). The largest applicable excess in the **Schedule** shall be the maximum excess applicable to all **Loss** on account of such **Claim**.

5.9 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**.

5.10 Inadvertent Non-Disclosure

We will waive **Our** rights to avoid the **Policy** and confirm indemnity to **You** provided always that:

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

5.11 Legal Counsel

- (a) Neither **Us** or **You** shall require each other to contest any legal proceedings in respect to any **Claim** against **You**, unless **Senior Counsel** shall recommend that such proceedings should be contested.
- (b) In formulating such recommendation, the **Senior Counsel** shall take into account the economics of the matter, the damages and costs that are likely to be recovered by the plaintiff, the likely **Defence Costs** and the prospects of **You** successfully defending the action. The cost of **Senior Counsel's** opinion shall, for the purposes of this **Policy**, be regarded as part of the **Defence Costs** and therefore form part of the **Limit of Indemnity**.
- (c) In the event that the **Senior Counsel** recommends that, having regard to all relevant circumstances, the matter should not be contested but should be settled, provided that settlement can be achieved within limits which in the **Senior Counsel's** opinion are reasonable, then **You** shall not object to any such settlement and shall cooperate with **Us** to effect such settlement in accordance with this **Policy**, subject to Condition 5.7 (Defence and Settlement).

5.12 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.

5.13 Limit of Liability

- (a) For the purposes of this **Policy**, all **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** shall be deemed one **Claim**.
- (b) Our maximum liability for **Loss** on account of all **Claims** first made during the same **Period of Insurance** shall be the total **Limit of Indemnity** for the **Period of Insurance**.
- (c) **Defence Costs** are part of and not in addition to the total **Limit of Indemnity**.
- (d) For the purposes of this general condition, the limit for the **Discovery Period** (if applicable) shall be part of and not in addition to the **Limit of Indemnity** for the **Period of Insurance**. The purchase of the **Discovery Period** does not increase or reinstate the **Limit of Indemnity**. The **Limit of Indemnity** is **Our** maximum liability for all **Loss** on account of all **Claims** first made during such **Period of Insurance** and **Discovery Period** combined.

5.14 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.

5.15 Merger/Takeover

If during the **Period of Insurance** a **Transaction** occurs, then cover under this **Policy** is amended to apply only in respect of **Wrongful Acts** committed prior to the effective date of the **Transaction**.

The **Insured** agrees to give **Us** written notice of the **Transaction** as soon as practicable but no later than 30 days after the effective date of the **Transaction**.

5.16 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.

5.17 Notice of Claims

- (a) The **Company** or **You** shall give **Us** written notice of any **Claim** as soon as practicable, but in any event no later than 28 days after expiry of the **Period of Insurance** or during the **Discovery Period** (if applicable).
- (b) If during the **Period of Insurance** or during the **Discovery Period** (if applicable) the **Company** or **You** become aware of circumstance which may give rise to a **Claim** taking place during the **Period of Insurance** and give written notice of such circumstance and the other information referenced below to **Us** during the **Period of Insurance** or **Discovery Period** (if applicable), then any **Claim(s)** subsequently arising from such circumstances is considered to have been made during the **Period of Insurance** or the **Discovery Period** in which the circumstance(s) was first reported to **Us**.
- (c) The **Company** and **You** shall:
 - (i) include within any notice of **Claim** or circumstance a description of the **Claim** or circumstance, the nature of the alleged **Wrongful Act** (if applicable), the nature of the alleged or potential loss, the names of actual or potential claimants and the **Insured** involved together with the manner in which the **Company** or **You** first became aware of the **Claim** or circumstance; and
 - (ii) give **Us** such other information and cooperation as **We** may reasonably request.
- (d) All notices to **Us** under any provision of this **Policy** shall be in writing and given by courier, certified mail or e-mail properly addressed to the appropriate Ando personnel.
- (e) Notice to Ando of any **Claim** or circumstance shall be sent to:

Ando Insurance Group Limited,
PO Box 6649
Wellesley Street, or
Level 5, 62 Victoria Street West
Auckland 1010,
New Zealand
Email: liabilityclaims@ando.co.nz

Notice given as described above shall be deemed to be received and effective upon actual receipt.

5.18 Other Insurance

Upon giving notice of any **Claim** the **Company** and **You** agree to provide **Us** with written details of any other insurance that may cover or partially cover that **Claim**. In the event that the **Company** or **You** holds 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. However this shall not apply if the other insurance or indemnity is a specific excess layer cover over this **Policy**.

5.19 Policy Disputes

This **Policy** shall be governed by the laws of New Zealand whose courts shall have sole and exclusive jurisdiction in any dispute which may arise relating to **Policy** interpretation.

5.20 Proposal Form Representation and Severability

The **Proposal** will be construed as a separate **Proposal** by each **Insured**. In respect of statements made and particulars provided in the **Proposal**, no such statements or particulars, and no information possessed by any **Insured**, shall be imputed to any other **Insured** to determine whether cover is available for any **Claim** against the other **Insured**.

5.21 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.

5.22 Your Right to Contest Claims

If the **Insured** against whom the **Claim** is made, refuses to consent to any settlement which **We** recommend and shall elect to contest or continue legal proceedings, **Our** liability shall not exceed the amount for which the **Claim** or circumstance could have been settled, less any **Excess**, plus **Defence Costs** incurred up to the date of such refusal.

Call us: 09 377 1432
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