

Association Liability Policy

FMG
Advice & Insurance

FMG has been protecting the property and livelihoods of people up and down the country since 1905. We're 100% New Zealand owned and operated and are proud to be the country's only rurally-based insurance company around today.

You don't get to be over 100 years old without learning a thing or two; because we've worked closely with New Zealand communities over the years we can help find what works for you.

And we're still listening to what you're saying which is why we continually strive to improve our products and services, and why we have something to offer all New Zealanders. It's also why we focus on partnering with you to plan for the risks and challenges you face, not just the insurance you need to deal with them.

Welcome to FMG

Introduction	2
Your Responsibilities	2
Our Responsibilities	3
Your Feedback	3
How you can contact us	3

Your Association Liability Policy

Important Notices	4
What is covered by the Policy	4
What liability insured persons are insured for	4
What liability the association is insured for	6
Further Clauses	8
Optional Benefits	9
General Exclusions	9
General Conditions	14
Definitions	19

Introduction

Please take the time to read through these documents carefully because they form the insurance contract you have with us. Your policy certificate is particularly important because if there is any inconsistency between your FMG policy wording and what is on the certificate, it is the certificate that applies. Under this contract, we both have responsibilities to ensure everything runs smoothly. These are detailed as follows, and if there is anything that you don't understand, please contact us. The expiry date of your Policies is shown on the policy certificates. We will be in contact with you regarding renewal of your insurance around that time.

Your Responsibilities

This FMG Policy has been provided to you based on your disclosure to us.

If there is any material information which could relate to the cover provided under this Policy, you need to let us know. Please be aware that disclosure of material information will not necessarily affect your ability to obtain cover, but not informing us might result in you having no insurance at all. It is important that you:

- Please tell us all material information before the cover starts, even if we don't specifically ask about it.
- Please update us should anything about your circumstances change, both during the period of insurance and at renewal.

Cover under your Policy will not commence until you have paid, or have agreed to pay, the premium (including any Government charges) for the period of insurance. If your premiums are not paid on time, your insurance could be cancelled and you will not be insured.

It is essential that you:

- tell us of any errors in your documentation,
- contact us if there is anything you don't understand and would like explained more fully, and
- keep this Policy in a safe place along with your renewal notice(s).

This Policy contains some exclusions and these are detailed throughout the Policy. It is important that you read these and are aware of them.

This Policy also contains certain conditions and obligations that you must meet. If you don't, we may decline any claim you make. Any other person that is entitled to claim under this Policy must also meet these conditions and obligations.

Welcome to FMG

Our Responsibilities

We agree to provide the cover set out in the Policy below that is shown on your certificate. Throughout the Policy certain important words are in bold type; please refer to the Definitions section for the specific meaning of these words.

FMG is a member of the Insurance Council of New Zealand and, as such, we are bound by the Council's Fair Insurance Code. For a copy of the Code, please call us on 0800 366 466.

As you will be aware, the proposal you completed contains personal information relating to you and/or your business. We collect this information to enable us to fully evaluate your proposal and subsequently administer this Policy. We may require further information later on if you make a claim or wish to renew this Policy with us. The proposal you completed also authorises us to collect relevant information about you and/or your business from third parties, such as other insurers and insurance brokers.

However, we fully understand the importance of protecting your personal, commercial and financial information and therefore we will not share your information unless authorised to do so under the Privacy Act 1993.

Your information will be held securely by us, within our organisation, and you are entitled to access and correct the information you have provided, as set out in the Privacy Act 1993.

We are confident this Policy will be right for you. However, you may cancel this Policy within 30 days of the commencement date for any reason if you are not entirely happy. We will refund any premium you have paid provided you do not have a claim during this 30 day period.

Your Feedback

Your feedback enables us to identify opportunities to make our products and services even better. If you have any feedback – good or bad – we would like to hear from you.

If you have a concern about something that has happened, tell us and we will investigate the issue quickly and inform you of the outcome, either by phone, in writing or by visiting you at a convenient time.

Similarly, if you have received exceptional service, we need to know about it in order to congratulate our team - so please let us know.

How you can contact us

- Call us on **0800 366 466**
- Contact your local FMG manager
- Write to us at FMG, PO Box 1943
Palmerston North 4440
New Zealand
- Visit our website www.fmg.co.nz
- Email us at contact@fmg.co.nz
- Fax us on **0800 366 455**

Important Notices

“Claims made and notified” general information

The information under this heading is provided for general information purposes only and does not:

- Form part of the **Policy**.
- Impose any contractual obligations on any **insured** or create contractual rights between **us**.

Certain insuring clauses in this **Policy** wording operate on a “Claims made and notified” basis, which means that they:

- Cover claims made against the relevant **insured** and notified to **us** in writing during the **period of insurance**.
- Do not provide cover in relation to:
 - claims made against an **insured** after the expiry of the **period of insurance**, even though the event giving rise to the claim may have occurred during the **period of insurance** (unless specified otherwise),
 - claims made against an **insured** notified or arising out of facts or circumstances notified (or which ought reasonably to have been notified) under any previous policy,
 - claims made, threatened or intimated against an **insured** prior to the commencement of the **period of insurance**,
 - facts or circumstances of which an **insured** first became aware prior to the **period of insurance**, and which they knew, or ought reasonably to have known, had the potential to give rise to a claim under the **Policy**,
 - claims arising out of circumstances noted on the proposal for the current **period of insurance** or on any previous proposal form, and
 - claims arising from civil, administrative, criminal or regulatory proceeding, investigation, arbitration or adjudication that existed prior to, or was pending before, the **prior or pending litigation date**.

What is covered by the Policy

The covers (including the clauses set out in the What liability insured persons are insured for, What liability the association is insured for and the Optional Benefits sections) in this section (What is covered by the Policy) are subject to the:

- other terms and conditions of the **Policy**,
- relevant **limits of indemnity**, **sub limits of indemnity** or **additional limits of indemnity** shown on the **certificate** as applicable to the cover and the **maximum limit of indemnity**, and
- the **excess**,

unless expressly specified otherwise.

Clauses 2. (Office Bearers) and 3. (Outside Directorships) under the What liability insured persons are insured for section below only apply to the extent that the **insured** has not been indemnified for the relevant loss they can claim for under the relevant clause.

Except to the extent otherwise provided any **claim** under the clauses set out in this section must be:

- first made against the **insured**, and
- notified to **us**,

during the **period of insurance**.

What liability insured persons are insured for

1. Professional Indemnity

- (a) **We** will pay on behalf of the **insured persons** all **loss** arising from any **claim** in respect of civil liability for any **wrongful act** in the course of the **Association’s professional business**.

2. Office Bearers

- (a) **We** will pay on behalf of the **Office Bearers** all **loss** arising from any **association claim** in respect of civil liability for any **wrongful act** committed by them in the capacity of **Office Bearer**.

3. Outside Directorships

- (a) **We** will pay on behalf of any **Office Bearer** who, in that capacity, performs a directorial or management function in an **Outside Entity** at the **Association’s** written request, up to the **limit of indemnity**, as if the **Outside Entity** was the **Association**.
- (b) Provided that:
 - (i) this indemnity operates specifically in excess of any indemnity and insurance or cover available through or from the **Outside Entity**,
 - (ii) **we** have noted and agreed to the **Outside Entity**, and
 - (iii) the **insured** has paid any additional premium charged by **us** at **our** discretion.

4. Emergency Defence Costs

- (a) In the event it is not reasonably possible for the **insured person** to obtain **our** prior written consent prior to incurring **defence costs**, **we** will pay **emergency defence costs** incurred by the **insured person** during the **period of insurance**, subject to the **defence costs repayment obligation**.

Your Association Liability Policy

5. Health and Safety Defence Costs

- (a) **We** will pay all **defence costs** incurred by an **insured person** with **our** prior written consent, where an **insured person** is legally compelled, during the **period of insurance**, to attend any official **investigation**, examination, inquiry or other proceedings ordered or commissioned by any official body or institution (including proceedings alleging involuntary manslaughter or gross negligence manslaughter), and which involves an allegation that an **insured** has breached health and safety laws. This cover applies notwithstanding clause 4. (Bodily Injury, Property Damage, Consequential Losses and Liability under Contract) under the General Exclusions section below.

6. Pre-Investigation Costs

- (a) **We** will pay **pre-investigation costs** incurred by an **insured person** in respect of any claim covered under clauses 2. (Offices Bearers) or 3. (Outside Directorships) in the What liability insured persons are insured for section.

7. Cyber Privacy and Confidentiality Costs (Third Party)

- (a) **We** will pay **cyber privacy and confidentiality costs** incurred by an **insured person** in respect of any claim covered under clauses 2. (Office Bearers), 3. (Outside Directorships) or 14. (Employment Practices Claims) in the What liability insured persons are insured for section.

8. Advancement of Defence Costs or Legal Representation Expenses

- (a) **We** will pay, prior to the final judgment of any **covered loss, defence costs** or **legal representation expenses** incurred by an **insured person** in respect of any **association claim**, subject to the **defence costs repayment obligation**.
- (b) **We** will pay within 30 days of receipt of invoices from defence counsel.

9. Tax Investigation Expenses Incurred by Office Bearer(s)

- (a) **We** will pay any **tax investigation expenses incurred by office bearer(s)**.

10. Consumer Guarantees Act and Related Legislation

- (a) **We** will pay on behalf of an **insured person loss** in respect of any **claim** for any unintentional breach of the Consumer Guarantees Act 1993 or Fair Trading Act 1986.

However this clause does not cover any **claim** or **defence costs**:

- (i) arising out of, or in connection with, deliberate or fraudulent conduct, or
- (ii) made pursuant to the criminal provisions of the said legislation.

11. Loss of Documents

- (a) **We** will pay on behalf of an **insured person loss** in respect of any **claim**, up to but not exceeding in the aggregate for all **claims** under this clause, the **limit of indemnity** for loss of, damage to, or destruction of any **documents** within the territorial limits of the Commonwealth of Australia and New Zealand during the **period of insurance**.
- (b) Provided always that:
- (i) the **insured** shall as soon as reasonably practicable after discovery thereof give written notice to **us** that any documents have been destroyed, or damaged, or lost, or mislaid, and after diligent search cannot be found,
 - (ii) the amount of any **claim** shall be supported by invoices which shall be subject to approval by a competent person to be nominated by **us** with the approval of the **insured**, but failing approval, **Senior Counsel** will be appointed by the President of the New Zealand Law Society,
 - (iii) no liability shall attach for any **claim** in connection with wear, tear, vermin, mould or mildew or any other gradual operating cause,
 - (iv) the **insured** shall subrogate to **us** its right of prosecution against any other person(s) for the recovery thereof, and
 - (v) this clause does not indemnify the **insured person** against any liability, costs or expenses for which the **insured** is entitled to an indemnity under the **Policy** apart from under this clause.

12. Defamation

- (a) **We** will pay on behalf of an **insured person loss** in respect of any **claim** for the making of an unintentional defamatory statement by the **insured** by reason of words written or spoken in connection with the conduct of the **Association's professional business**.
- (b) Clause 29. (Insured versus Insured) in the General Exclusions section below shall not apply to this clause.

13. Intellectual Property Rights

- (a) We will pay on behalf of an **insured person loss** in respect of any **claim** arising from unintentional breach, or infringement of privacy, or breach of confidentiality or **intellectual property rights** of others, committed by the **insured** in the course of the **Association's professional business**. Provided always that no indemnity shall be afforded to any **insured person** intentionally committing, assisting or condoning such conduct.

14. Employment Practices Claims

- (a) We will pay **covered loss** incurred by the **Office Bearer** in respect of an **employment practices claim**.

What liability the association is insured for

1. Professional Indemnity

- (a) We will pay on behalf of the **Association** all **loss** arising from any **claim** in respect of civil liability for any **wrongful act** committed by an **insured** in the course of the **Association's professional business**.

2. Association Liability

- (a) We will pay on behalf of the **Association** all **loss** for which it becomes legally liable by reason of any **wrongful act** committed by an **Office Bearer**, for which indemnity is not provided under clauses 2. (Office Bearers) or 3. (Outside Directorships) in the What liability insured persons are insured for section above.

3. Association Reimbursement

- (a) We will pay to or on behalf of the **Association** all **loss** for which the **Association** grants indemnification to each **insured person**, as permitted or required by law, which the **insured person** has become legally obligated to pay on account of any **claim** in respect of civil liability for a **wrongful act** committed by such **insured person** before or during the **period of insurance**.

4. Employment Practices Claims

- (a) We will pay **covered loss** incurred by the **Association** in respect of an **employment practices claim**.

5. Crisis Management Costs

- (a) We will pay **crisis management costs** incurred by the **Association** by reason of a claim covered under clause 3. (Association Reimbursement) or 4. (Employment Practices Claims) in the What liability the association is insured for section above or a circumstance which would have been accepted by **us** under clause 2. (Continuous Coverage) under the Other Conditions section below as one from which a covered **claim** under clauses 2. (Association Liability), 3. (Association Reimbursement) or 4. (Employment Practices Claims) in the What liability the association is insured for section above may arise.
- (b) In order for the **Association** to have the benefit of this cover the **Association** must give written notice to **us** of details of the **reputation concern** within 14 days of the **reputation concern** arising and in any event during the **period of insurance**.

6. Disruption Expenses for Hearings and Inquiries

- (a) We will pay **disruption expenses** incurred by the **Association** during the **period of insurance**.

7. Cyber Privacy, Confidentiality Costs and Computer Viruses (Third Party)

- (a) We will pay **cyber privacy and confidentiality costs** incurred by the **Association** in respect of any claim under clauses 3. (Association Reimbursement) and 4. (Employment Practices Claims) in the What liability the association is insured for section first made against the **Association** during the **period of insurance**.
- (b) We will also pay for any **computer virus loss** the **Association** becomes legally liable to pay following a claim first made against the **Association** during the **period of insurance**.

8. Emergency Defence Costs

- (a) In the event it is not reasonably possible for the **Association** to obtain **our** prior written consent prior to incurring **defence costs**, we will pay **emergency defence costs** incurred by the **Association** during the **period of insurance**, subject to the **defence costs repayment obligation**.

Your Association Liability Policy

9. Breach of Contract Defence Costs

- (a) **We** will pay **defence costs** incurred by the **Association** in respect of a claim covered under clauses 2. (Office Bearers) or 3. (Outside Directorships) in the What liability insured persons are insured for section above involving any actual or alleged breach of an express oral or written term of a contract by the **Association**.

10. Identity Fraud Costs

- (a) If during the **period of insurance** any third party other than the **Association** enters into any agreement with a **relevant individual** who fraudulently represents themselves as the **Association**, and then that third party seeks to enforce such an agreement against the **Association**, **we** will pay any reasonable fees, costs and expenses incurred by the **Association** in establishing that a fraudulent misrepresentation has occurred.

11. Tax Investigation Expenses Incurred by the Association

- (a) **We** pay any **tax investigation expenses incurred by the Association**.

12. Pollution Defence Costs

- (a) **We** will pay **defence costs** incurred by the **Association** in respect of a claim covered under clauses 2. (Office Bearers) or 3. (Outside Directorships) in the What liability insured persons are insured for section above involving or arising from a **pollution event**.

13. Consumer Guarantees Act and Related Legislation

- (a) **We** will pay, on behalf of an **Association, loss** in respect of any **claim** for any unintentional breach of the Consumer Guarantees Act 1993 or the Fair Trading Act 1986.
- (b) However this clause does not cover any **claim** or **defence costs**:
- (i) arising out of, or in connection with, deliberate or fraudulent conduct, or
 - (ii) made pursuant to the criminal provisions of the said legislation.

14. Loss of Documents

- (a) **We** will pay, on behalf of an **Association, loss** in respect of any **claim** up to but not exceeding in the aggregate for all **claims** under this benefit, the **limit of indemnity** for loss of, damage to, or destruction of any **documents** within the territorial limits of the Commonwealth of Australia and New Zealand, during the **period of insurance**.

- (b) Provided always that:

- (i) the **insured** shall as soon as reasonably practicable after discovery thereof give written notice to **us** that any documents have been destroyed, or damaged, or lost, or mislaid, and after diligent search cannot be found,
- (ii) the amount of any **claim** shall be supported by invoices which shall be subject to approval by a competent person to be nominated by **us** with the approval of the **insured**, but failing approval, **Senior Counsel** will be appointed by the President of the New Zealand Law Society,
- (iii) no liability shall attach for any **claim** in connection with wear, tear, vermin, mould or mildew or any other gradual operating cause,
- (iv) the **insured** shall subrogate to **us** its right of prosecution against any other person(s) for the recovery thereof, and
- (v) this benefit does not indemnify the **Association** against any liability, costs or expenses for which the **insured** are entitled to an indemnity under the **Policy** apart from this benefit.

15. Defamation

- (a) **We** will pay, on behalf of an **Association, loss** in respect of any **claim** for the making of an unintentional defamatory statement by the **insured** by reason of words written or spoken in connection with the conduct of the **Association's professional business**.

16. Intellectual Property Rights

- (a) **We** will pay on behalf of the **Association loss** in respect of any **claim** arising from unintentional breach, or infringement of privacy, or breach of confidentiality or **intellectual property rights** of others, committed by the **insured** in the course of the **Association's professional business**. Provided always that no indemnity shall be afforded to the **Association** intentionally committing, assisting or condoning such conduct.

17. Crime

- (a) **We** will pay for:
- (i) Employee fraud
 - 1. **Association crime loss** first **discovered** by the **Association** during the **period of insurance** arising from acts of fraud or dishonesty committed by an **employee** with the principle

intent of causing the **Association crime loss** or to obtain personal financial gain (whether acting alone or in collusion with others).

(ii) Third Party Crime

1. **Association crime loss** first **discovered** by the **Association** during the **period of insurance** arising from any **theft** or **fraudulent act** of a **relevant individual**.

(iii) Electronic and Computer Crime

1. **Covered loss** first **discovered** by the **Association** during the **period of insurance** arising from any **electronic and computer crime** of a **relevant individual**.

(iv) Destruction and Damage of Money or Negotiable Instruments

1. **Association crime loss** first **discovered** by the **Association** during the **period of insurance** arising from any physical loss of or damage to, or actual destruction of or disappearance of any of the **Association's money** or **negotiable instruments**, including damage to or actual destruction of safes or vaults.

(v) Third Party Custody, Care and Control

1. Direct financial loss of **money**, **negotiable instruments** or other **property** belonging to a third party, provided:
 - a. the loss is first **discovered** by the **Association** during the **period of insurance**,
 - b. the **Association** had the **money**, **negotiable instruments** or other **property** in its care, custody or control, and
 - c. the **Association** is liable to that third party for the loss.

18. Crime – Legal Fees, Costs and Expenses

- (a) **We** will pay the **Association**, up to an aggregate amount of \$100,000, for the reasonable legal, fees, costs and expenses incurred by the **Association** in the defence of any written demand, claim, suit or legal proceedings which the **Association** subsequently establishes results directly from a **crime loss** that is covered or potentially covered under clause 17. (Crime) in the What liability the association is insured for section above.

19. Crime – Specialist Investigative Fees

- (a) **We** will pay the **Association**, up to an aggregate amount of \$100,000, for the reasonable fees, costs and expenses incurred by the **Association** with **our** prior written consent, to retain a specialist investigator to investigate, report on or prove a covered or potentially covered **crime loss** under clause 17. (Crime) in the What liability the association is insured for section above. The specialist investigator must be pre-approved by **us** in writing and not have any conflict of interest concerning the retainer.

Further Clauses

1. Further Clause Relating to Clauses 17., 18. and 19.

- (a) The aggregate amounts detailed in clauses 17. (Crime), 18. (Crime – Legal Fees, Costs and Expenses) and 19. (Crime – Specialist Investigative Fees) are **additional limits of indemnity**. Clauses 18. (Crime – Legal Fees, Costs and Expenses) and 19. (Crime – Specialist Investigative Fees) are not subject to an **excess**.

2. Further Clause Relating to Additional Defence Costs

- (a) In the event that a charge under section 9 of the Law Reform Act 1936 applies to any cover under this **Policy**, **we** have received actual notice of the existence of this charge, and **we** have assessed that the sum secured by the charge will exhaust the relevant **limit of indemnity** for the cover inclusive of any applicable **defence costs** or **legal representation expenses**, **we** will pay such costs or expenses in addition to the relevant **limit of indemnity** rather than inclusive of it.
- (b) The maximum **we** will pay under this clause is 10 percent of the relevant **limit of indemnity** or \$1,000,000, whichever is less, in the aggregate during the **period of insurance**.
- (c) If, after payment is made under this clause, **we** determine that the charge did not apply, is lifted, or discharged, the sum secured by the charge did not exhaust the relevant **limit of indemnity**, or there is not otherwise an entitlement to such payments, any amount so paid shall be, at our discretion, either recovered by **us**, or offset as a deduction from the amounts otherwise payable under the **Policy**.

Your Association Liability Policy

Optional Benefits

These Optional Benefits apply only if **you** have purchased them and they are shown on the **certificate**. These benefits are subject to the terms of this **Policy** except to the extent those terms are varied by each benefit.

1. Discovery Period Options

(a) If the **Policy** is not replaced by any other insurance affording **insured persons** liability cover and there has not been a **merger or acquisition**, **we** will provide an automatic **discovery period** of 30 days from the expiry of the **period of insurance** for no additional premium (following which no further **discovery period** cover can be purchased), or you can purchase one of the following **discovery period** options (as applicable) subject to the following:

- (i) the **insured** must give **us** written confirmation of the **discovery period** option required within 30 days prior to the expiry of the **period of insurance**, and
- (ii) the **insured** must have paid the additional premium within 30 days prior to the expiry of the **period of insurance**.

(b) Discovery Period Option (1)

- (i) If **we** refuse to offer to renew the **Policy**, then an **insured** may purchase a **discovery period** of either:
 1. 12 months from the expiry of the **period of insurance** upon payment of an additional premium of 100% of the annual or annualised equivalent of the premium, or
 2. 24 months from the expiry of the **period of insurance** upon payment of an additional premium of 175% of the annual or annualised equivalent of the premium.

(c) Discovery Period Option (2)

- (i) If an **insured** chooses not to renew the **Policy**, then the **insured** may purchase a **discovery period** of 12 months from the expiry of the **period of insurance** upon payment of 100% of the annual or annualised equivalent of the premium.

(d) This **discovery period** option:

- (i) does not serve to increase the **limit of indemnity**, **sub limit of indemnity**, **maximum limit of indemnity** or **additional limits of indemnity** in any way, and
- (ii) may not be cancelled and the additional premium for a **discovery period** is not refundable.

2. Retirement Cover Discovery Period Option

- (a) If:
 - (i) an **Office Bearer retires** prior to the expiry of the **period of insurance** and before a **merger or acquisition**, and
 - (ii) **we** do not renew the **Policy** or replace it with any other insurance providing **Office Bearer's** liability cover,the **Office Bearer(s)** will be entitled to a 36 month **discovery period** to cover under the **Policy** at no additional premium. The 36 month **discovery period** shall run from the date an **Office Bearer retires** and will run concurrently with any **discovery period** in force under the **discovery period** Options above.
- (b) This Retirement Cover Discovery Period Option does not serve to increase the **limit of indemnity**, **sub limit of indemnity**, **maximum limit of indemnity** or **additional limits of indemnity** in any way.

3. Runoff Policy Option

- (a) **We** will indemnify the **insured** from the date upon which the **Association** may cease to exist, or is merged with or acquired by another entity, to the expiry of the **period of insurance** but only in respect of acts, omissions and events prior to such cessation, merger or acquisition.

General Exclusions

We shall not be liable for any claim made under the **Policy** for, or directly or indirectly arising from, or in connection with:

1. Jurisdiction

- (a) Any action brought in a court of law within New Zealand or Australia to enforce a foreign judgment whether by way of reciprocal agreement or otherwise.

2. USA and Canada

- (a) Work carried out within, or to persons in, the United States of America or the Dominion of Canada and their Territories, Dependencies or Protectorates.
- (b) Claims or actions brought within the United States of America or the Dominion of Canada and their Territories, Dependencies or Protectorates.
- (c) The enforcement of any award, order or judgment arising from any claim or action described in clause (b) above.

3. Retroactive Date

- (a) Any act error or omission or any **wrongful act** committed or alleged to have been committed prior to the **retroactive date**. This exclusion extends to and includes any claim or **loss** relating to or in any way connected with the original subject matter or conduct giving rise to such claim or **loss** including any repetition or continuation of such act error or omission or **wrongful act** occurring after the **retroactive date**.

4. Bodily Injury, Property Damage, Consequential Losses and Liability Under Contract

- (a) We will not pay for any **loss** arising directly or indirectly from, or in connection with:
 - (i) any actual or alleged **bodily injury**, disease, sickness, emotional distress, or any other mental, psychiatric, emotional or physical injury (except only to the extent it forms part of a covered **employment practices claim**), or death of any person (except only to the extent that it is covered by clause 5. (Health and Safety Defence Costs) in the What liability insured persons are insured for section above), or
 - (ii) damage to or defect, impairment or the destruction of or loss of use of any tangible property, or
 - (iii) any consequential or indirect losses (including losses attributable to claims for apportionment, contribution or indemnity, howsoever formulated), or
 - (iv) any actual or alleged liability under any express contract or agreement, unless liability would have arisen irrespective of the contract or to the extent cover is provided for **defence costs** under clause 9. (Breach of Contract Defence Costs) in the What liability the association is insured for section above.

5. Agent Acts

- (a) Any independent contractor (other than an **employee**), broker, merchant, external solicitor or external accountant, or other similar agent or representative. The exclusion shall not apply to any organisation to which the **Association** has outsourced any normal administrative function under a written contract of engagement with such organisation.

6. Benefits

- (a) Any salaries, commissions, fees and bonuses, promotions, awards, profit sharing, superannuation or other **employee benefits** paid by the **Association** where earned in the normal course of employment.

7. Professional Services

- (a) Any claim made against an **insured** for providing or failing to provide professional services or advice to a customer or client of the **Association** where such professional services or advice are not provided in the ordinary course of the **Association's professional business**.

8. Trustees

- (a) Any claim against an **insured** acting as a fiduciary, trustee or administrator of any plan, pension, superannuation, annuity, profit sharing, health, welfare or other **employee benefit** programme established by the **Association** or an **insured's** breach of any legislation or regulation relating to these.

9. Takeovers and Mergers

- (a) Any act error or omission or other matter, committed by an **insured** after the **Association** undergoes a **merger or acquisition**.

10. Association's Overheads

- (a) The **Association's** overheads, any wages, salaries, fees or expenses incurred in relation to any claim or **loss** except insofar as it is covered by clause 6. (Disruption Expenses for Hearings and Inquiries) in the What liability the association is insured for section above.

11. Loss Sustained After Knowledge

- (a) Under clause 17. (Crime) in the What liability the association is insured for section above any **loss** sustained after any **responsible person** of the **Association** first becomes aware that:
 - (i) any **theft** or **fraudulent act** has been committed by a **relevant individual** or any person who owns or controls more than 10% of the **Association's** issued share capital,
 - (ii) an **employee** has committed a dishonest or **fraudulent act** during the term of his or her employment with the **Association**, or

Your Association Liability Policy

- (iii) an **employee** has previously committed a dishonest or **fraudulent act** prior to employment with the **Association** where the act or acts involved **money, negotiable instruments** or other property valued at \$50,000 or more.

12. Forcible and Violent Theft

- (a) Any loss occurring following theft as a result of forcible or violent entry to any premises occupied by the **Association** by any **relevant individual**, where such **relevant individual** is acting alone and not in collusion with any **employee**, other than to the extent covered under clause 17.(a)(iv) (Crime – Destruction and Damage of Money or Negotiable Instruments) in the What liability the association is insured for section above.

13. Profit, Loss or Inventory Computation

- (a) Any **loss** which can only be proved solely by:
 - (i) a profit and loss computation or comparison; or
 - (ii) a comparison of inventory records with an actual physical count.

14. Publication of False Material

- (a) The publication of any material known by an **insured** to be false.

15. Voluntary Exchange or Purchase

- (a) Any **loss** arising out of the voluntary giving or surrendering (whether or not such giving and surrendering is induced by deception) of **money, negotiable instruments** or other property in any exchange or purchase, unless the **Association** has taken reasonable steps to prevent such **loss** and it is otherwise covered by the **Policy**.

16. Statutory Liability

- (a) Any **statute** relating to workers compensation or health and safety except to the extent covered under clauses 5. (Health and Safety Defence Costs) in the What liability insured persons are insured for section above.

17. Health and Safety Notices

- (a) Any **loss** arising directly or indirectly from the **insured** failing to comply with any improvement, prohibition, hazard or infringement notice issued to the **insured** under the Health and Safety in Employment Act 1992 or the Health and Safety at Work Act 2015.

18. Pollution Claims

- (a) Any **loss** arising directly or indirectly from or attributable to any claim in connection with a **pollution event**, except to the extent covered under clause 12. (Pollution Defence Costs) in the What liability the association is insured for section above.

19. Products Liability

- (a) Goods, products or merchandise (including containers thereof), manufactured, produced, processed, treated, sold, supplied, distributed, assembled, installed, serviced, handled or dealt with in any way, by or on behalf of the **insured**.

20. Trading Debts

- (a) Payment of any trading debt incurred by the **insured** or any refund of professional fees or charges of the **insured**.

21. Misconduct of Insured

- (a) Wilful breach of duty, the dishonest, fraudulent or malicious act or omission or other act or omission committed with criminal intent of any **insured**.
- (b) Any **insured** having improperly benefited in fact from **securities** transactions as a result of information that was not available to other sellers and/or purchasers of such **securities**.
- (c) Any **insured** having gained in fact any personal advantage to which they were not legally entitled.

22. Dishonesty

- (a) In respect of clause 1. (Professional Indemnity) in the What liability insured persons are insured for section above, any dishonest, fraudulent, criminal or malicious act or omission (whether intentional or otherwise) except to the extent covered under clause 17. (Crime) in the What liability the association is insured for section above.

23. Unfair Advantage

- (a) In respect of clause 2. (Office Bearers) in the What liability insured persons are insured for section above, any **Office Bearer** gaining any profit or advantage or receiving any remuneration to which they were not legally entitled. For the purpose of this exclusion no fact pertaining to or knowledge possessed by any **Office Bearer** shall be imputed to any other **Office Bearer**.

24. Return of Remuneration

- (a) In respect of clause 2. (Office Bearers) in the What liability insured persons are insured for section above, the return by the **Office Bearers** of any remuneration paid to them without the prior approval of the members of the **Association** which payment, without such prior approval, shall be held by the Court to be in violation of the law. For the purpose of this exclusion no fact pertaining to or knowledge possessed by any **Office Bearer** shall be imputed to any other **Office Bearer**.

25. Controlling Interests

- (a) A claim by any **Office Bearer** or any entity in which any **Office Bearer** has a controlling interest of 10% or more, against any other **Office Bearer** of the **Association**.

26. Prior Circumstances

- (a) Any **claim** made prior to the commencement of the **period of insurance** or in respect of any **claim**, circumstance, fact or situation or matter substantially the same as that:
- (i) notified under any previous policy or insurance existing or expired before or on the inception date of the **Policy**,
 - (ii) which was known or ought reasonably to have known to the **insured** before **we** agreed to enter into the **Policy**, or
 - (iii) which is stated in any proposal form or declaration in relation to the **Policy** or any earlier policy or contract, or
 - (iv) civil administrative, criminal or regulatory proceeding, investigation, arbitration or adjudication that existed prior to or were pending before the **prior or pending litigation date**.

This exclusion relates to all **claims** and **loss** arising out of any **wrongful act** which gives rise to the excluded circumstance irrespective of how that circumstance is reported, discovered, notified or expressed. For the purpose of this exclusion no conduct, fact pertaining to or knowledge possessed by any **insured** shall be imputed to any other **insured** and vice versa.

27. Fines and Penalties

- (a) Any punitive, aggravated, multiple or exemplary damages, or fines or penalties imposed by law or taxes or any direct or indirect tax obligations of any kind or levies or imposts or duties or any investigation or **defence costs** arising as a consequence thereof. However:
- (i) this exclusion shall not apply to any parts of a **claim** which are not for fines, penalties, punitive or exemplary damages, taxes, levies, imposts or duties, and
 - (ii) as regards clauses 1. (Professional Indemnity) and 2. (Office Bearers) in the What liability insured persons are insured for section, and 1. (Professional Indemnity), and 2. (Association Liability) in the What liability the association is insured for section, this exclusion shall not apply to costs and expenses which are incurred in the successful defence of any legal action involving fines, penalties, punitive or exemplary damages, taxes, levies, imposts or duties.

28. Contractual Liabilities

- (a) Any contractual liability, warranty or guarantee assumed or provided by the **insured**, except if the **insured** would have been legally liable in the absence of that contractual liability, warranty or guarantee.

29. Insured versus Insured

- (a) Any **claim** brought against any **insured**, by or on behalf of any other **insured** except to the extent covered under clause 12. (Defamation) or clause 14. (Employment Practices Claims) of the What liability insured persons are insured for section above, and 4. (Employment Practices Claims) and 15. (Defamation) in the What liability the association is insured for section above.

30. Vehicles, Land, Other

- (a) The use, ownership or possession of (including any violation of the responsibilities, obligations or duties imposed by any law or regulation), or damage or destruction to any:
- (i) aircraft, marine craft, motor vehicle of any kind or other means of transportation, or
 - (ii) land, property, buildings, premises or structures (whether mobile or immobile).

Your Association Liability Policy

31. Nuclear

- (a) Nuclear weapons materials.
- (b) Ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self-sustaining process of nuclear fission.

32. War and Terrorism

- (a) Any **loss** arising from, or in connection with, war, invasion, 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. **We** will not pay for any **loss** arising from or attributable in any way to any terrorist act.

33. Asbestos

- (a) **Bodily injury** or **property damage** in any way related to:
 - (i) mining, processing, transport, distribution and/or storage of asbestos,
 - (ii) manufacture of asbestos products or processing materials containing asbestos, or
 - (iii) any process of decontamination, treatment or control of asbestos.

Sub-paragraph (a)(iii) shall apply to those **claims** arising in consequence of inhalation of asbestos fibre or damage to or loss of use of property due to the presence of asbestos.

34. Toxic Mould

- (a) The actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores or mycotoxins of any kind.
- (b) Any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins.
- (c) Any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins.

35. Fire

- (a) **We** will not pay for any **loss** caused by fire, other than loss of **money, negotiable instruments, safes** or vaults to the extent covered under clause 17.(a) (iv) (Crime – Destruction and Damage of Money or Negotiable Instruments) in the What liability the association is insured for section above.

36. Criminal or Unprofessional Acts

- (a) Sexual Abuse or Misconduct
 - (i) any actual or alleged sexual abuse or misconduct by the **insured** which shall mean but is not limited to, physical abuse, sexual assault, molestation, indecent interference, sexual harassment or coercion of any person (including any corpse) or licentious or immoral behaviour or attempt thereof or their consequences except to the extent covered under clause 14. (Employment Practices Claims) of the What liability insured persons are insured for section above or clause 4. (Employment Practices Claims) in the What liability the association is insured for section above.
- (b) Criminal Acts
 - (i) the involvement of the **insured** with any proven criminal act whatsoever. In the case of **defence costs** or **emergency defence costs** excluded by this clause, the **insured** (as applicable) agrees to repay any sums which have been paid by **us** to them or by **us** on their behalf on demand once any such finding or admission is made.

37. Intellectual Property

- (a) Any infringement of any **intellectual property rights**, copyright, trademark, trade secrets, proprietary information or confidential processing methods, registered design or patent, or any plagiarism, or breach of confidentiality, or breach of or infringement of privacy, except to the extent covered under clause 13. (Intellectual Property Rights) in the What liability insured persons are insured for section and clause 16. (Intellectual Property Rights) in the What liability the association is insured for section above.

38. Events Insurance

- (a) Failing to arrange appropriate liability insurance for events staged or organised by or on behalf of the **insured**.

39. Financial Service

- (a) Any advice or forecast given by the **insured** concerning:
 - (i) the performance of any investment or asset, or
 - (ii) the making of any discretionary fund decision.

40. Medical Services

- (a) Medical advice or treatment or the provision of medical services by the **insured** or any medical research.

41. Securities Claims

- (a) Any **securities claims**.
- (b) Any proposed or actual public offering or private placement of **securities**.
- (c) Any profits made from the purchase or sale of **securities** by an **insured** where the **insured** had, or it is alleged to have, improperly benefited as a result of information that is not available to other sellers or purchasers of such **securities**.

42. Computer Security/Electronic Funds

- (a) A breach in computer firewalls or security systems.
- (b) Misuse or unauthorised use of electronic transfer of funds or payments (including the failure to electronically transfer funds or payments) via the internet.
- (c) Except to the extent cover is provided under clause 17.(a)(iii) (Crime – Electronic and Computer Crime) in the What liability the association is insured for section above.

43. Lockout and Other Industrial Action

- (a) Any lockout, strike, picket line, stand down or other industrial action.

44. Sanction Limitation

- (a) Any loss or claim made under the **Policy** which would expose **us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of New Zealand, Australia, the European Union, the United Kingdom or the United States of America.

All exclusions in clause 1 to 44 above or by imposed term shall apply to any payments or indemnity sought by any **insured** under the **Policy**.

General Conditions

1. Insured's Obligations

- (a) The following clauses are conditions of the **Policy** which must be strictly complied with. Please remember that if an **insured** does not comply with any term or condition, **we** may (to the extent permitted by law) decline or reduce any claim payment and/or cancel the **Policy**.

2. Continuous Coverage

- (a) In the absence of any fraudulent non-disclosure or misrepresentation and subject to clauses (b) and (c) below, where:
 - (i) a **claim** is first made against the **insured person** and/or the **Association**, or a circumstance is notified by the **insured person** and/or the **Association** in writing to **us**, during the **period of insurance**, in respect of a liability under the **Policy** and it arises from a circumstance known by the **insured person** and/or the **Association** prior to the commencement of the **period of insurance**, and
 - (ii) **we** were the insurer from the time when the **insured person** and/or the **Association** first became aware of that circumstance which subsequently gave rise to the **claim** or notification, and
 - (iii) **we** have from that time, to the time when the **claim** is made or the notification is given, continued without interruption to be the insurer, then, in respect of such **claim** or notification, notwithstanding anything to the contrary contained in this **Policy**, **we** agree to indemnify **you** in respect of that **claim** or notification in accordance with all other clauses of this **Policy**.
- (b) **We** reserve the right to reduce **our** liability in respect of any **claim** or notification under this coverage to the extent that **our** interests are prejudiced as a result of the late notification of the **claim** or circumstance.
- (c) Where clauses (a) and (b) apply, **we** will not deny indemnity for the **claim** or notification as a consequence of a non-fraudulent non-disclosure or misrepresentation on the **insured person's** and/or the **Association's** part with respect to the **claim** or circumstance.

Your Association Liability Policy

3. Limit of Our Liability and Excess

- (a) The limit of **our** liability for each claim under the **Policy**, whether covered by one or more clauses under the What is covered by the Policy section above, shall be the **limit of indemnity** shown on the **certificate**, but subject to the **sub limits of indemnity** specified in the **Policy** and minus the **excess** (if applicable). **Our** total aggregate liability for all claims under the **Policy** during the **period of insurance**, whether covered by one or more clauses under the What is covered by the Policy section above, shall be the **maximum limit of indemnity** shown on the **certificate** minus any applicable **excess**.
- (b) More than one **claim** involving the same **wrongful act** or series of causally connected or interrelated **wrongful acts** shall be deemed to constitute a single **claim**. Such single **claim** shall be deemed to have been made against the **insured** on the first to occur of:
- the date the first **claim** involving such **wrongful act(s)** was made against the **insured**, or
 - the date on which the **insured** first became aware of any intention to hold any Insured responsible for such **wrongful act(s)**.
- (c) Where the one **wrongful act** or series of causally connected or interrelated **wrongful acts** results in more than one **claim** against the **insured** which is the subject of indemnity hereunder, all such **claims** shall jointly constitute one **claim** under the **Policy**.
- (d) **We** shall only be liable to indemnify the **insured** in excess of any **excess**, for each claim under the **Policy**. Such **excess**:
- includes all costs, charges and expenses, and
 - is to be borne by the **Association** and is not to be insured.
- (e) The **excess** shall apply in respect of clause 3. (Association Reimbursement) under the What liability the association is insured for section above to **loss** resulting from any **claim** if indemnification by the **Association** is required by law or is legally permissible by law, regardless of whether or not actual indemnification is made, unless the **Association** is unable to make such actual indemnification solely by reason of its insolvency.
- (f) If a **claim** is covered in whole or in part under more than one clause under the What is covered by the Policy section above, the **excess** shall be applied separately to that part of the **loss** resulting from

such **claim** covered by each clause under the What is covered by the Policy section above and the sum of the **excesses** so applied shall constitute the **excess** applicable to such **claim**, provided that the total **excess** as finally determined shall not exceed the **excess** applicable to clause 1. (Professional Indemnity) under the What liability insured persons are insured for section above.

4. Notification and Co-operation

- (a) The **insured** shall, during the **period of insurance**, give **us** written notice, as soon as reasonably practicable, within the **period of insurance** or the applicable **discovery period**, of any **claim** or threatened **claim** against any of them.
- (b) The **insured** shall give **us** such information and co-operation as **we** may reasonably require, including but not limited to a description of the **claim**, the nature of the alleged **claim**, the nature of the alleged or potential damage, the names of actual or potential claimants, and the manner in which the **insured** first became aware of the **claim** or threatened **claim** and shall co-operate fully with **us** in relation to the investigation, defence and settlement of any **claim** or any claim under the **Policy** and must provide **us** with any information or documentation that **we** may reasonably request and shall do this at the **Association's** own cost (if solvent).
- (c) Notice to **us** under the **Policy** shall be given in writing to:
FMG Insurance Limited,
PO Box 1943,
Palmerston North, 4440
Such notice shall be effective on the date of actual receipt at the above address.

5. Presumptive Indemnification

- (a) **We** will pay on behalf of an **insured** directly for **loss** covered under the **Policy**, if **we** so elect, when the **Association**, although permitted or required by law, fails or refuses to indemnify such **insured**:
- where the failure or refusal is other than by reason of **financial impairment**, or
 - where such failure or refusal is by reason of **financial impairment** the **insured** must, to obtain the benefit of indemnification under this subparagraph, produce documentary evidence to prove to **our** satisfaction the **financial impairment** of the **Association**.

- (b) Notwithstanding any other conditions, provisions or terms of the **Policy** to the contrary, any payment by **us** of such **loss** shall be subject to the **excess** and to all the exclusions of the **Policy**.

6. Mitigation of Loss

- (a) The **insured** shall use all diligence and shall ensure that all reasonable steps are taken to avoid or diminish any liability which may give rise to **loss** or to a **claim**.

7. Prior Consent

- (a) The absence of **our** prior written consent to any costs incurred by an **insured** will not affect the entitlement to indemnity under the **Policy** if:
 - (i) the costs are **emergency defence costs**;
 - (ii) in the case of **crisis management costs**, the **Association** is prevented from seeking **our** prior written consent by relevant applicable laws or by a pressing and urgent necessity.
- (b) Where prior written consent is sought by an **insured** under the **Policy**, **we** will only withhold giving our consent where it is reasonable for **us** to do so.

8. Defence and Settlement

- (a) Subject to the other clauses in this section, it shall be the duty of the **insured** and not **our** duty to defend **claims** made against the **insured**.
- (b) The **insured** agrees not to settle any **claim**, except in respect of **emergency defence costs**, incur **defence costs** or **legal representation expenses** or otherwise assume any contractual obligation or admit any liability with respect to any **claim** without **our** prior written consent, which shall not be unreasonably withheld.

We shall not be liable for any **loss** or assumed obligation or admission to which **we** have not consented in writing.
- (c) **We** shall have the right and shall be given the opportunity to effectively associate with the **insured** in the investigation, defence and settlement, including but not limited to the negotiation of a settlement, of any **claim** that appears reasonably likely to be covered in whole or in part by the **Policy**. Furthermore **we** are entitled to, at any time, take over conduct in the name of the **insured** of the investigation, defence or settlement of any claim.
- (d) The **insured** agrees to provide **us** with all information, assistance and co-operation which **we** reasonably request and the **insured** agrees that in the event of a **claim** the **insured** will do nothing that may prejudice **our** position or their potential or actual rights of recovery.

- (e) Except in circumstances when the 'Further Clause Relating to Additional Defence Costs' clause under the What is covered by this Policy section applies, **defence costs** are part of and not in addition to the **limit of indemnity** shown on the **certificate**, and the payment by **us** of **defence costs** reduces such **limit of indemnity**.
- (f) **We** may make any investigation **we** deem necessary and may, with the written consent of the **insured**, make any settlement of a **claim we** deem expedient.
- (g) If the **Association** or any **insured** refuses to consent to any settlement recommended by **us** and contests or continues any actions or proceedings in connection with a **claim** then, subject to the available or remaining **limit of indemnity**, **our** liability in connection with such **claim** shall not exceed the amount for which the **claim** could have been settled, plus the **defence costs** incurred with **our** consent up to the date of such refusal.

9. Insured Not Required to Defend

- (a) The **insured** will not be required to defend any **claim** unless **Senior Counsel** (to be agreed by the **insured** and **us**) appointed advises that the **claim** should be defended. Such counsel shall be instructed to formulate the advice taking into account the economics of the matter including:
 - (i) the likely cost of defending the **claim**,
 - (ii) the amount of the **claim**, and
 - (iii) the prospects of
 - 1. a successful defence, and
 - 2. costs recovery from the claimant.

10. Allocation

- (a) If a claim covered by the **Policy** includes **loss** or liability which is not covered by the **Policy**, **we** and the **insured** shall use our best efforts to agree upon a fair and proper allocation between covered and uncovered **loss** or liability.
- (b) If **we** and **insured** cannot agree on an allocation of **loss** or liability, they shall jointly instruct an **independent lawyer** to recommend an allocation of loss, which in their absolute discretion, reflects a fair and proper apportionment of the relevant **loss**. The **independent lawyer** can take whatever accountancy or other expert advice they consider appropriate and necessary to determine the allocation of loss. **We** and the **insured** agree that allocation recommended by the **independent lawyer** will be final and will apply to the **loss** in the absence of manifest bias or impropriety.

Your Association Liability Policy

on the **independent lawyer's** part. Allocation of **loss** or liability shall be applied retrospectively to all **loss** or liability under the **Policy** and any prior allocation or advancement shall not apply to or create any presumption with respect to the final allocation of loss.

11. Governing Law

- (a) The **Policy** is governed by the laws of New Zealand. Any dispute relating to the **Policy** shall be submitted to the exclusive jurisdiction of the Courts of New Zealand.

12. Other Relevant Insurance Contracts or Policies

- (a) If an **insured** has other insurance which covers **loss** which is also covered by the **Policy**, the **insured** must claim under the other policy first and **we** are under no obligation to pay to the extent that the other policy applies (or would apply if your **Policy** did not exist). In such a case, if the **loss** that you suffer is greater than the limit of indemnity available under the other policy, the **Policy** will operate and **we** will pay in excess of that limit of indemnity up to the applicable **limit of indemnity, sub limit of indemnity, maximum limit of indemnity or additional limit of indemnity**, as appropriate.

13. Subrogation

- (a) In the event of any payment under the **Policy**, **we** shall be subrogated to the extent of such payment to all the **insured's** rights of recovery, contribution or indemnity and the **insured** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable **us** effectively to bring suit in the name of the **insured**. **Our** right of subrogation shall not extend to a right of recovery from any **employee** or **Office Bearer**, except where such right arises from conduct on the part of the **employee** or **Office Bearer** which is dishonest, fraudulent or criminal.

14. Subrogation Against Named Consultants Waived

- (a) Notwithstanding clause 13. (Subrogation) above, if a consultant to the **Association** (being a natural person) is notified to and agreed by **us** by way of an imposed term, **we** shall waive any subrogation rights against that person unless **our** liability under the **Policy** is in any way connected with the actual or alleged dishonest, fraudulent, illegal or malicious conduct of that person.

15. Cancellation and Assignment

- (a) The **Policy** cannot be assigned unless **we** give **our** consent in writing.
- (b) **You** may cancel this **Policy** at any time by giving notice to **us**.
- (c) **We** may cancel this **Policy** at any time by giving notice to **you** at **your** last known address as held by **us**. Cancellation will take effect 30 days after the day **we** send or deliver the notice to **you**.
- (d) If:
 - (i) **you** cancel this **Policy** **we** will (subject to "Our Responsibilities" in the Welcome to FMG section above) refund 90% of the unexpired portion of **your** premium,
 - (ii) **we** cancel this **Policy**, **we** will refund the unexpired portion of **your** premium,
 - (iii) **you** have made a **claim** and **we** have paid the full amount under:
 - a. the **Policy**,
 - b. an Item, or
 - c. an Optional Benefit,**we** will cancel this **Policy**, Item or Optional Benefit from the date of **loss**.

16. Alteration and Assignment

- (a) No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written imposed term to the **Policy** which is signed by an authorised signatory on **our** behalf.

17. Material Change

- (a) In the event of any material change in the risk insured by the **Policy**, the **insured** must notify **us** as soon as reasonably practicable and **we** may at **our** discretion amend the **Policy** and charge an additional premium as a consequence.

18. Severability and Non Imputation

- (a) For the sake of determining cover under the **Policy**:
 - (i) the written proposal shall be construed to be a separate application for cover by each of the **insured persons** and no statement or representation in or with respect to the proposal by an **insured person** shall be imputed to any other **insured person**,

- (ii) a material non-disclosure or misstatement by one **insured person** shall not be imputed to any other **insured person** provided that they are able to establish to **our** satisfaction that they were not aware of the material non-disclosure or misstatement in question,
 - (iii) the **Policy** shall be construed to be a separate **Policy** between **us** and each **insured person** and no breach of any term or condition of the **Policy** or other misconduct by any **insured person** shall be imputed to any other **insured person**, and
 - (iv) no fact or knowledge possessed by one **insured person** shall be imputed to any other **insured person**.
- (b) Provided always that this condition shall not apply where there was a fraudulent misrepresentation or fraudulent non-compliance with the duty of disclosure to **us** at the time of entering into the **Policy**.

19. Authorisation

- (a) By acceptance of the **Policy**, the **Policyholder** agrees to act on behalf of the **insured(s)** as well as itself with respect to the giving and receiving of notice of claim or termination, the payment of premiums and the receiving of any return premium become due under the **Policy**, the negotiation, agreement to and acceptance of imposed terms, and the giving and receiving of any notice provided in the **Policy**, and the insured(s) agree that the **Policyholder** shall act on your behalf.

20. Use of Specialist Investigators

- (a) In reporting and investigating **crime loss** in accordance with clause 17. (Crime) under the What liability the association is insured for section above, the specialist investigator shall also advise as to when and how the **Association's** controls were or may have been breached and summarise recommendations which may prevent future similar **crime loss**. **We** have the right to attend the initial meeting between the **Association** and the specialist investigator.

21. Basis of Valuation – Crime

- (a) In clause 17. (Crime) under the What liability the association is insured for section above, **we** will not be liable for more than:
 - (i) the actual market value of **negotiable instruments, money** or precious metals at the

close of business on the day the covered loss was first **discovered** (determined by the value published on the www.interest.co.nz website), or the actual cost of replacing the **negotiable instruments, money** or precious metals, whichever is less,

- (ii) the actual cash value of other property (not referred to in (i) above) at the close of business on the day the **loss** was first **discovered**, or the actual cost of replacing the property with property of a like quality or value, whichever is less,
- (iii) the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of data furnished by the **Association** in order to reproduce books of account or other records, or
- (iv) the cost of labour for the actual transcription or copying of electronic data furnished by the **Association** on order to reproduce such electronic data.

22. Confidentiality Agreement

- (a) The **insured person(s)** and the **Association** and their representatives, shall not disclose the existence of the **Policy**, its **limits of indemnity**, the nature of the liability indemnified, or the **premium**, to any third party except to the extent that:
 - (i) they are required by law to do so, or
 - (ii) **we** consent, in writing, to such disclosure.

23. Valuation and Foreign Currency

- (a) All premiums, limits, **excesses**, loss and other amounts under the **Policy** are expressed and payable in New Zealand currency. Except as otherwise provided, if judgment is rendered, settlement is denominated or another element of **loss** or liability under the **Policy** is stated in a currency other than New Zealand dollars, payment under the **Policy** shall be made in New Zealand dollars at the cash rate of exchange for the purchase of New Zealand dollars published on the www.rbnz.govt.nz website for the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **loss** or liability is due, respectively.

Your Association Liability Policy

24. Goods and Services Tax Neutrality

- (a) **We** and the **insured** agree that to the extent possible as between them neither is to be adversely affected or advantaged by the operation of “GST”. If any party requires a tax invoice or the assistance of any other party to obtain an input tax credit the other party will provide such invoice or assistance promptly upon being requested to do so.
- (b) For the purposes of this condition “GST” means tax payable under the Goods and Services Tax Act 1985 and, unless the context otherwise requires, other expressions used in this section have the meanings given to those expressions in that Act.
- (c) Where GST is recoverable by **us** under the Goods and Services Tax Act 1985:
 - (i) all amounts insured include GST (unless otherwise shown on the **certificate**), and
 - (ii) GST will be added, where applicable, to claim payments.
- (d) All **excesses** include GST.

25. Interpretation

- (a) Headings of sections, paragraphs, clauses or imposed terms to the **Policy** are for reference only. They do not form part of the **Policy** and are not to be used in interpreting it.
- (b) To clarify the cover you have in this **Policy** some words appear in bold. These words have a specific meaning, which is outlined in the Definitions section. Defined words specific to some clauses are outlined within those clauses.
- (c) Unless the contrary intention appears in the **Policy**:
 - (i) words importing a gender include any other gender,
 - (ii) words in the singular include the plural and words in the plural include the singular, and
 - (iii) references to **statutes** include amendments thereof, regulations thereunder, and re-enactments or consolidations thereof.
- (d) In the event that any part of the **Policy** is found to be invalid, void or unenforceable, the remainder shall remain in full force and effect.

26. Privacy Statement

- (a) **You** must authorise **us** to:
 - (i) Obtain personal information about **you** from **you** and third parties in connection with **your** insurance.

- (ii) Disclose personal information about **you** to third parties in connection with **your** insurance.
- (b) Please see the full Privacy Statement on **our** website (www.fmg.co.nz) for information about how **we** collect, use and store **your** personal information.

27. Dispute Resolution

- (a) Any dispute between an **insured** and **us** regarding any aspect of the **Policy** which cannot be resolved by **us** to your satisfaction within six months of the dispute arising shall be referred for mediation by a **Senior Counsel** who shall have been appointed by **you** and **us** (or failing agreement, to be appointed by the President of the New Zealand Law Society). If the dispute remains unresolved after mediation, **we** and **you** may refer it to arbitration in the jurisdiction in which the **Policy** is issued. The **insured** and **we** will each bear our own costs of any arbitration.

28. Rights of other parties

- (a) No other party except an **insured** shall be entitled to make a claim or enforce any term of the **Policy**.

To be valid, this policy wording must be attached to a **certificate** signed by an authorised officer of **ours**.

Definitions

The following words used in the **Policy** have these special meanings unless otherwise specified.

Additional limit(s) of indemnity means the aggregate limit of **our** liability under the cover provided under clauses 17. (Crime), 18. (Crime – Legal fees, cost and expenses) and 19. (Crime – Specialist Investigative Fees) of the What liability the association is insured for section above. Any additional limit of indemnity applies in addition to the **limit of indemnity** but is included in the **maximum limit of indemnity**.

Association means:

- (a) the organisation named as an Association on the **certificate** (individually or collectively) or any imposed term, and
- (b) **Subsidiaries** of such Association existing prior to or as at the commencement of the **period of insurance**, and
- (c) any **Subsidiary** that becomes a subsidiary of the **Association** during the **period of insurance**, but excluding any **Subsidiary** located outside New Zealand, unless agreed by **us** in writing to be covered, and

- (d) any entity through which the **Association** previously conducted its **professional business** provided that such entity is notified to and accepted by **us** as subject to this extension by way of an imposed term and upon payment of an additional premium if deemed appropriate by **us**.

Association claim means any:

- (a) written claim or demand for monetary compensation or other non-pecuniary relief, or
- (b) civil or arbitration proceedings including by way of a counter claim, or
- (c) criminal or extradition proceedings, or
- (d) formal regulatory professional or administrative proceedings, investigation or inquiry **claim**, for a **wrongful act**.

Association crime loss means direct financial loss (excluding consequential loss or loss of profit) sustained by the **Association**.

Bodily injury means bodily injury, sickness, disease, emotional distress or any other mental, psychiatric, emotional or physical injury or death of any person.

Certificate means the certificate of insurance document evidencing the insurance cover provided by **us** incorporating the schedule on this certificate.

Cheque forgery means:

- (a) the **forgery** or **fraudulent alteration** of any cheque or similar written promise by the **Association** to pay a veritable sum representing money drawn upon the **Association's** account at any bank at which the **Association** maintains a current or savings account,
- (b) the **fraudulent alteration** of, on or in any cheque draft:
 - (i) drawn upon by any bank, or
 - (ii) drawn upon by any corporation upon itself,
- (c) the **fraudulent alteration** of, on or in any cheque or written order or direction to pay a veritable sum representing money drawn by any public body upon itself, or any warrant drawn by any public body which the **Association** shall receive at any of its premises in payment or purported payment for:
 - (i) tangible property sold and delivered, or
 - (ii) services rendered.

Claim means:

- (a) **association claim**,
- (b) **employment practices claim**,
- (c) **investigation**, or
- (d) **crime loss**.

Computer means any computer, data processing equipment media or part thereof, or system of data storage and retrieval or communications system, network, protocol or part thereof, or storage device, microchip, integrated circuit, real-time clock system, or similar device or any computer software, firmware or microcode. Computer shall also include its components available to its users, including but not limited to memory, bandwidth, processor time, use of communication facilities and any other computer-connected equipment.

Computer fraud means the theft of the **Association's** assets under the direct or indirect control of a **computer** by manipulation of computer hardware or software programs of systems by any **relevant individual** who is not authorised by the **Association** to access that **computer**.

Computer virus means any program or code that causes loss or damage to any computer system and/or prevents or impairs any computer system from performing and/or functioning accurately and/or properly.

Computer virus loss means a **loss** as a result of the transmission of a **computer virus** (whether over the **internet** or otherwise).

Confidential information means all information intended by the **Association** to remain confidential which is available to its **Office Bearers**. **Confidential information** shall not include any information that is or becomes generally available to the public (other than as a result of its unauthorised disclosure) or was available to a recipient on a non-confidential basis prior to disclosure by the **Association**, or was lawfully in the possession of the recipient before the information was disclosed to it, or the relevant parties agree in writing it is not confidential or may be disclosed, or is developed by or for the recipient independently of the information disclosed, or is trivial, obvious or useless.

Corporate card fraud means the fraudulent use of any corporate credit card, debit or charge card issued to the **Association** or any **insured person** for business purposes where the use of such card is **forged** or is the subject of

Your Association Liability Policy

fraudulent alteration provided that the **Association** or **insured person** has complied fully with the provisions, conditions and other terms under which the card was issued and provided the **Association** is legally liable for such **crime loss**.

Counterfeiting means the imitation of an authentic negotiable instrument such that the **Association** is deceived on the basis of the quality of the imitation to believe that the said item is the authentic original negotiable instrument.

Counterfeiting does not include fictitious instruments which merely contain fraudulent misrepresentations of fact and that are otherwise genuinely signed or endorsed.

Covered loss means any awards of damages, judgments and sums payable pursuant to settlements for which an **insured** (as applicable) is legally liable.

Covered loss includes:

- (a) awards of claimant's costs,
- (b) **defence costs**,
- (c) **legal representation expenses**, and
- (d) punitive or exemplary damages where, and to the extent that, they are legally insurable.

Covered loss does not include:

- (a) fines or penalties and taxes,
- (b) any multiplied portion of any punitive or exemplary damages award,
- (c) any increase in consideration or price paid for securities in a **merger or acquisition**,
- (d) any sum uninsurable under the law that governs the **Policy**,
- (e) any amount which constitutes any costs incurred by the **Association** to modify any building, premises, fixtures, fittings, plant, equipment, or changes to the **Association's** principal business as described in the **Proposal** and/or annual report, or
- (f) wages, salaries or other remuneration or internal costs or overhead of any **insured**.

Crime loss means loss of the type covered under clause 17. (Crime) of the What liability the association is insured for section above.

Crisis management costs means reasonable and necessary costs incurred by the **Association** with **our** prior written consent as a result of the retention of a **Public Relations Firm** arising out of a **reputation concern**.

Cyber privacy and confidentiality costs means reasonable and necessary costs incurred by an **insured** (as applicable) with **our** prior written consent resulting from a claim covered under, as applicable – for **insured persons** – clauses 2. (Office Bearers), 3. (Outside Directorships) or 14. (Employment Practices Claims) in the What liability insured persons are insured for above, or – for the **Association** – clauses 3. (Association Reimbursement) or 4. (Employment Practices Claims) of the What liability the association is insured for section above as a direct result of:

- (a) any invasion, infringement or interference with any right to privacy, including any disclosure of **data** which amounts to a breach of the relevant legislation, or
- (b) any unauthorised disclosure or use of any **confidential information in data** form which is subject to statutory restriction on disclosure or use.

Data means machine-readable information in digital format (excluding software), irrespective of the way it is used or rendered, including but not limited to text, voice recordings and images.

Defence costs means all reasonable and necessary costs, charges, fees and expenses including but not limited to legal counsel's fees and expert's fees (other than regular or overtime wages, salaries or fees of any **insured**) incurred with **our** prior written consent in defending any **claim** covered under the **Policy**.

Defence costs repayment obligation means the obligation to repay to **us** any **emergency defence costs** or **defence costs** or **legal representation expenses** paid by **us** to the relevant person under the **Policy**, severally according to the person's respective interest, if and to the extent it is determined by **us** that such amounts are not covered under the **Policy**.

Discovered means knowledge of any act, omission or event which could reasonably be seen to give rise to the claimed loss by any of the **Association's responsible persons**.

Discovery period means the extended time during which a **claim** may first be made and/or notified after the expiry of the **period of insurance**. This does not otherwise affect the terms of the **Policy** and any act, error or omission or matter giving rise to the **claim** must still occur prior to the expiry of the **period of insurance**.

Disruption expenses means expenses at the rate of NZ\$500 per day per **insured person** where it is necessary for that person to attend a Court or arbitration or other formal regulatory professional or administrative proceedings, **investigation** or inquiry as a witness for the defence of a claim covered under clause 14. (Employment Practices Claims) of the What liability insured persons are insured for section above, or under clauses 3. (Association Reimbursement), 4. (Employment Practices Claims) and 5. (Crisis Management Costs) of the What liability the association is insured for section above, for a period in excess of 5 consecutive business days.

Documents means deeds, wills, agreements, magazines, maps, plans, records, books, letters, contracts of insurance, policies, computer tapes, computer discs, forms and documents of any nature whatsoever (other than bearer bonds, coupons, stamps, banknotes, currency notes, cheques and negotiable instruments) whether written, printed or capable of being reproduced by any other method, (but excluding any computer or electronic data which is destroyed or damaged, lost or mislaid by manual, electronic or mechanical act, error or omission) provided that such items are:

- (a) the property of (or entrusted to) the **insured** in the ordinary course of the **professional business**, and
- (b) now or hereafter (or are believed by the Insured to be) in the **insured's** hands or in the hands of any other party or parties to or with whom such items have been entrusted, lodged or deposited by the **insured** in the ordinary course of the **professional business**.

Electronic and computer crime means any one of the following:

- (a) **computer fraud**, or
- (b) **funds transfer fraud**.

Emergency defence costs means all reasonable and necessary legal fees, costs and expenses incurred solely in the defence or investigation of any claim covered for **insured persons** under clauses 2. (Office Bearers), 3. (Outside Directorships) or 14. (Employment Practices Claims) of the What liability insured persons are insured for section and for the **Association** covered under clauses 3. (Association Reimbursement), 4. (Employment Practices Claims) and 5. (Crisis Management Costs) of the What liability the association is insured for section above, and incurred within 14 days of the **insured** (as applicable) receiving notice of the **claim**.

Employee means any person who was, is, or shall be under a contract of employment or service with the **Association** or who was, is, or shall be a paid or unpaid volunteer, provided always that such definition shall include persons whose positions terminate during the **period of insurance**.

Employee benefits means fringe benefits, unemployment benefits or compensation, redundancy, permanent health insurance benefits or disability benefits, workers compensation, amounts due or payments made in connection with any employee benefit, plan or pension of superannuation scheme, share or stock options or any other right to purchase, acquire or sell shares or stock, incentives or deferred compensation and any other obligation or payment other than basic remuneration made to or for the benefit of an **employee**.

Employment practices claim means:

- (a) a written demand for monetary compensation or other non-pecuniary relief,
- (b) a civil proceeding commenced by the service of a complaint, summons, statement of claim or similar pleading, including any appeal or counterclaim therefrom,
- (c) an arbitration proceeding, mediation, conciliation or other alternative dispute resolution process, or
- (d) a formal administrative or regulatory proceeding, **investigation** or inquiry commenced by the service of a notice of charges, formal investigative order or similar documents,

which is brought or maintained against any **insured** for any **wrongful act** in connection with any employment related:

- (i) discrimination against any **insured**, or applicant for employment, whether because of race, colour, age, sex, disability, pregnancy, marital status, sexual orientation, sexual preference or otherwise,
- (ii) wrongful dismissal of any **insured**,
- (iii) workplace harassment (whether sexual or otherwise) of any **insured**,
- (iv) breach of an implied term of an oral or written employment contract with any **insured**,
- (v) wrongful demotion, failure to promote, wrongful deprivation of career opportunity, wrongful discipline, negligent evaluation or failure to grant tenure of employment to any **insured**,
- (vi) wrongful refusal to employ an applicant,

Your Association Liability Policy

- (vii) unintentional defamation,
- (viii) misrepresentation or misleading advertising as to the terms and conditions of employment, or
- (ix) denial of natural justice to any **insured** concerning their employment.

Employment practices claim does not include any **claim** for **employee benefits**.

Excess means that amount of any claim that would be covered under each of the clauses under the What is covered by the Policy section (or otherwise) as specified in the **Policy** and/or the **certificate** which the **insured** is required to bear or pay before being entitled to make any request for indemnity under the **Policy**. The **excess** shall apply only once to any **claim** or **loss** or any series of **claims** arising out of, based upon or attributable to a single act, error or omission, other matter, or that are attributable to continuous or repeated events or circumstances, a series of interrelated or connected acts, errors or omissions. **We** have no obligation to pay any amount within the excess.

Financial impairment means the status of the **Association** resulting from the appointment by any Government official, agency or Court, of any receiver, administrator, liquidator, trustee, manager, or similar official to take control of, supervise, administer, manage or liquidate the **Association**.

Forgery or forged means the signing or endorsing of the name of a genuine person or a copy of the said person's signature without authority and with the intent to deceive. A signature may be hand-written or mechanically or electronically produced or reproduced. It does not include the signing in whole or in part of one's own name, with or without authority, in any capacity, for any purpose.

Fraudulent act means any one of the following:

- (a) **cheque forgery**,
- (b) **corporate card fraud**, or
- (c) **imitation fraud**.

Fraudulent alteration means a material alteration to an instrument for a fraudulent purpose, unless altered by the person who was authorised to prepare or sign the instrument.

Funds transfer fraud means the theft of the **Association's** funds from an account maintained by the **Association** at a financial institution (from which the **Association** or a person or organisation authorised by the **Association** may request the transfer, payment or delivery of funds), following fraudulent electronic, telegraphic, tested facsimile, tested telex, telephone or written instructions to debit such account and to transfer, pay or deliver funds from such account and which instructions purport to have come from the **Association** or a person or organisation authorised by the **Association** to issue such instruction, but which are fraudulently transmitted, issued, or are **forged** or have been the subject of **fraudulent alteration** by any **relevant individual**.

Imitation fraud means either:

- (a) the **forgery** or **fraudulent alteration** of any **money**, **negotiable instruments** or instruction, or
- (b) the **counterfeiting** of any **money** or **negotiable instruments**,

upon which the **Association** has acted or relied.

Independent lawyer means an independent lawyer to be agreed between and appointed by the **insured** and **us**. If it is not possible for the **insured** and **us** to reach an agreement as to which independent lawyer is to be appointed, the independent lawyer is to be appointed by the President of the New Zealand Law Society. **We** and the **insured** shall be jointly liable to pay the fees of the independent lawyer.

Insured means:

- (a) the **Association**, and
- (b) **insured persons**.

Insured person(s) means any natural person who was prior to, or is during or after, the **period of insurance**:

- (a) an **Office Bearer** of the **Association**,
- (b) an **employee** of the **Association**,
- (c) a lawful **spouse** of anyone in (a) or (b) above, only for the purposes of any **claim** seeking damages recoverable from marital community property, property jointly held by any such natural person and the **spouse**, or property transferred from any such person to the **spouse** and only to the extent that such **spouse** is party to any **claim** solely in the capacity as **spouse** of any such natural person, or
- (d) the legal representatives, heirs, assigns or estate of a natural person in (a) or (b) above who is incapable of managing their own affairs by reason of incapacity or is deceased or bankrupt.

Intellectual property rights means trademarks, trade secrets, patents, copyright, registered designs, systems or programs.

Internet means the **Association's** website, the world wide web, internet, or electronic mail from a **computer**, mobile device or network controlled by the **Association**.

Investigation means any formal or official external investigation, examination or inquiry into the **Association** at which the attendance of the **Association** or its representatives is first required or requested in writing by the investigating body, during the **period of insurance**. Investigation does not include any routine regulatory supervision, inspection or compliance reviews, or any investigation which focuses on an industry rather than an **insured**.

Legal representation expenses means all reasonable and necessary legal fees, costs and expenses incurred with **our** prior written consent solely in an **insured person's** representation at a formal, regulatory or professional Investigation or inquiry into the affairs of the **Association** that is instituted during the **period of insurance** by the service of a written request on an **insured** for an **insured person** to attend a meeting, hearing or interview because of their role within the **Association**. It excludes wages, salaries or other remuneration or internal costs or overhead of any **insured**.

Limit of indemnity means the limit(s) specified on the **certificate** or any imposed term.

Loss means the total amount which any **insured** becomes legally obliged to pay on account of each **claim** and for all **claims** in the **period of insurance**, made against the **insured** including, but not limited to, damages, judgments, settlements, costs and **defence costs**.

Loss does not include:

- (a) any amount not indemnified by the **Association** for which the **insured** is absolved from payment by reason of any covenant, agreement, court order or otherwise,
- (b) any amount incurred by the **Association** (including its board of directors or any committee of the board of directors) in connection with the investigation or evaluation of any **claim** or potential **claim** by or on behalf of the **Association**,
- (c) punitive, aggravated, multiple or exemplary damages, or any tax, fine or penalty imposed by law or any investigation arising as a consequence thereof,

- (d) any amount which constitutes any costs incurred by the **Association** to modify any building, premises, fixtures, fittings, plant, equipment, or changes to the **Association's** principal activities as described in the proposal or annual report,
- (e) any amount which the **Association** is obliged to pay whether pursuant to an express or implied obligation, whether in the nature of, or in the event of termination of employment, whether under a statute, award, contract of employment, as damages or otherwise, or
- (f) matters uninsurable under the law that governs the **Policy**.

Maximum limit of indemnity means the total amount **we** will pay under the **Policy** in the aggregate under the What is covered by the Policy section above and includes any amounts paid under **any limit of indemnity, sub limit of indemnity** and **additional limit of indemnity**. It is specified on the **certificate**.

Merger or acquisition means a merger or consolidation of the **Association** with another company or entity or if any company or entity acquires 50% or more of the **Association's** share capital.

Money means currency, coins, bank notes and bullion, cheques, travellers cheques, registered cheques, postal orders and money orders.

Negotiable instruments means all securities, instruments or contracts, including any note, stock, bond, debenture, evidence of indebtedness, share or other equity or debt security, representing either money or property, but does not include **money**.

Office Bearer(s) means any natural person who was prior to the **period of insurance**, or is during or after the **period of insurance**:

- (a) a director, secretary, officer, trustee, committee member, employee (whether salaried or not) or volunteer of the **Association**, or
- (b) a person acting on behalf of the **Association** at the direction of an officer or board or committee of management of the **Association**,

but only in his or her capacity as such.

Officer Bearer(s) shall not include liquidators, receivers, receivers and managers, official managers, administrators, trustees administering compromises and arrangements, or external auditors or accountants, except where acting under official appointment as an Office Bearer.

Your Association Liability Policy

Outside Entity means any not for profit organisation which is not a **Subsidiary** of the **Association**.

Period of insurance means the period of insurance specified on the **certificate** or any imposed term.

Policy means:

- (a) this document, the **certificate**, insuring clauses, benefits, conditions, definitions, exclusions and other terms contained herein, and
- (b) any imposed term attaching to and forming part of the **Policy** either at inception or during the **period of insurance**.

Policyholder means the entity listed on the **certificate** as the **Policyholder**.

Pollution event means the actual, alleged, or threatened discharge, dispersal, release or escape of and/or any direction or formal request to test for, monitor, clean up or detoxify any contaminant, irritant or other substance including but not limited to oil, smoke, asbestos, fumes, nuclear or radioactive materials, chemicals and waste.

Pre-investigation means:

- (a) a raid or on-site visit to an **insured** by a regulator established under **statute**, first occurring during the **period of insurance** that involves the production, review, copying or confiscation of records or interviews of an **insured person**,
- (b) any formal notification by an **insured** to any regulator established under **statute**, first given during the **period of insurance**, when the **insured** reasonably considers that a material breach of an **insured's** legal or regulatory duty has occurred or may occur, or
- (c) an internal inquiry conducted by the **Association** if and to the extent such an inquiry is requested by such regulator or official body, following a formal notification give in (b) above.

Pre-investigation costs means the reasonable and necessary fees, costs and expenses incurred by an **insured person** with **our** prior written consent (but not including any remuneration to an **insured person**) directly with respect to any **pre-investigation** but excludes wages, salaries or other remuneration or internal costs or overhead of any **insured**.

Premium means the premium specified on the **certificate** or any imposed term.

Prior or pending litigation date shall mean the prior or pending litigation date specified on the **certificate**.

Professional business means the business or activity of the insured **Association** specified on the **certificate** or any imposed term.

Property means physical property, excluding any:

- (a) building and its fixtures and fittings, and
- (b) **money** and **negotiable instruments**.

Property damage means:

- (a) damage to or defect, impairment or destruction or loss of tangible property including consequential loss or the loss of use of that property, or
- (b) consequential loss relating to, or loss of use of, tangible property which has not been damaged as defined in paragraph (a) of this definition.

Public Relations Firm means a professional firm, company or consultancy approved by **us** which advises on public relations matters.

Relevant individual means any natural person other than:

- (a) a director or officer, **Office Bearer** or other manager of the **Association**,
- (b) any person who owns or controls any of the **Association's** issued share capital,
- (c) someone who is acting in collusion with any **insured person** or director or officer or other manager of the **Association**, or
- (d) any natural person providing services under any contract for services, written or implied, with any **insured**.

Reputation concern means a reasonable perception of a need to protect the reputation of the **Association** and/or promote the **Association's** goodwill.

Responsible person means any **employee** acting in a directorial, managerial or supervisory capacity other than any person who has committed any acts of fraud or dishonesty.

Retire means that of your own volition and without coercion, you completely cease to hold your position as an **Office Bearer** of the **Association**. Retire does not mean that you cease to hold your position as an **Office Bearer** because you were disqualified or dismissed (either actively or constructively) from employment or office.

Retroactive date means the retroactive date specified on the **certificate** or any imposed term.

Securities means any security representing a debt or equity interest in the **Association** including shares, debentures, loan stock, bonds and notes of the **Association**, and options or rights to acquire the foregoing, whether secured or unsecured.

Securities claim means any legal proceeding alleging a violation of any country's laws regulating securities arising from:

- (a) the sale or purchase of **securities**, or
- (b) a shareholder's interest in **securities**.

Securities claim does not mean any claim arising from or attributing to the loss of or failure to receive the benefit of any **securities**.

Senior Counsel means a senior lawyer to be mutually agreed upon by the **insured** and **us**, or in the absence of agreement, to be appointed by the President of the New Zealand Law Society (or equivalent organisation) in the jurisdiction in which the **claim** was incurred.

Spouse means a spouse in relation to another person who is legally married to that other person and includes a person in a de facto relationship with that other person and who live with each other as spouses although not legally married to each other.

Statute means any Act, regulation or other legislative instrument enacted by the Parliament of New Zealand.

Sub limit of indemnity means a sub limit of indemnity which is set out on the **certificate** and which is applicable to any one **claim** or **loss** under a specified clause under the What is covered by the Policy section. Any sub limit of indemnity is included in and does not apply in addition to the limit of indemnity. Any sub limit of indemnity is subject to the **limit of indemnity** and the **maximum limit of indemnity**.

Subsidiary means any corporate entity which the **Association**:

- (a) directly or indirectly controls a majority of the voting rights, controls the right to appoint or remove a majority of its directors or holds more than half of the issued share capital, or
- (b) directly or indirectly exercises effective management control including any joint venture.

Subsidiary does not include any entity which has all or part of its **securities** listed on any stock exchange.

No cover is provided for a **Subsidiary** or **Office Bearer** of a **Subsidiary** in relation to any acts, errors or omissions committed or occurring whilst the entity was not a **Subsidiary**.

Tax investigation expenses incurred by Office Bearer(s)

means all reasonable and necessary legal and accountancy fees, costs and expenses incurred by an **Office Bearer** with **our** prior written consent solely as a result of a formal or informal investigation by any fiscal authority into their personal tax affairs which is first commenced or intimated during the **period of insurance**.

Tax investigation expenses incurred by the Association

means all reasonable and necessary legal and accountancy fees, costs and expenses incurred by the **Association** with **our** prior written consent as a result of a formal or informal investigation by any fiscal authority into the **Association's** tax affairs which is first commenced or intimated during the **period of insurance**.

Theft means the unlawful taking of the **Association's money**, **negotiable instruments** or **property** occurring:

- (a) within the premises,
- (b) within the interior of any banking premises or similar recognised place of safe deposit, or
- (c) while in transit and in the care, custody and control of an **employee** or director, supervisor, **Office Bearer** or partner of the **Association** following the actual or threatened use of force or violence, or
- (d) while in the care, custody and control of any security company or armoured motor vehicle company duly authorised by the **Association** to retain such care, custody and control and provided that **we** shall not be liable for the amount that is in excess of the amount of any other valid and collectible insurance or indemnity, contractual or otherwise, available to the security company or armoured motor vehicle company.

Your Association Liability Policy

We, us or our means FMG Insurance Limited as shown on the **certificate**.

Wrongful act means any actual or alleged act, error or omission committed or allegedly committed by (as applicable) an **insured person** or the **Association**, after the **retroactive date** including:

- (a) breach of duty, including statutory or fiduciary duty,
- (b) breach of trust,
- (c) breach of warranty of authority,
- (d) negligence,
- (e) misrepresentation or misstatement or misleading statement, and
- (f) defamatory statement.

We're easy to contact

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Visit our website
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FMG
Advice & Insurance