

Management Liability Policy Wording

Terms of our policy to cover your
management liability

Effective on all new policies, items and renewals issued between
1 April 2021 and 31 March 2022



FMG
Advice & Insurance

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We are New Zealand's leading rural insurer,
100% New Zealand owned and protecting
property and livelihood in New Zealand
communities since 1905.**

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Important information about your FMG policy

This policy operates on a 'claims made and notified' basis

Some covers in this policy operate on a 'claims made and notified' basis. This means that the claim must be made against the party insured under this policy and notified to us in writing during the period of insurance.

Additionally, this means that there is no cover under this policy for the following:

- Claims made against a party insured under this policy after the period of insurance ends even if the event giving rise to that claim occurred during the period of insurance, unless specified otherwise.
- Claims made against a party insured under this policy notified or arising out of circumstances notified (or which should have reasonably been notified) under a previous policy.
- Claims made against a party insured under this policy threatened or intimated before the period of insurance began.
- Circumstances that a party insured under this policy first became aware of before the period of insurance began which they knew (or should have reasonably known) had the potential to give rise to a claim under this policy.
- Claims arising out of circumstances noted on the written proposal or renewal declaration form for the period of insurance or equivalent form for any previous period of insurance.
- Claims arising from legal proceedings or an investigation, arbitration or adjudication that existed prior to or which were pending before the prior or pending litigation date shown on the certificate.

Please read and file this document and your policy certificate

Please take the time to read carefully through this policy wording and the accompanying policy certificate. Together, these two documents form your insurance contract with us.

The policy certificate shows what you are covered for

Your policy certificate is particularly important. If there is any inconsistency between your FMG policy wording and what is on the certificate, it is the certificate that prevails.

We are here to help

Under this contract, you and FMG both have responsibilities to ensure everything runs smoothly. Read these documents to find out what they are. If there is anything that you don't understand, please contact us.

Please:

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

We will remind you when your policies need to be renewed

The date that cover ceases is shown on the policy certificate. If your policy is renewable, we will contact you about renewing your insurance before that date.

We have defined the meanings of some words

In this document, we use italics to show that the words have the meanings given in the definitions section.

We also use the following common terms throughout the document, with the meanings shown:

- ***Certificate*** means the latest version of the policy certificate issued by us. The certificate contains details of the insurance cover under this policy.
- ***FMG*** means FMG Insurance Limited as shown on the certificate.
- ***Period of insurance*** means the duration of the policy, as shown on the certificate (unless the policy is ended earlier).
- ***We, us, or our*** means FMG.

You must provide information and pay your premium

You agree to give us correct and complete information

We have provided this policy based on the information you have disclosed to us. If you give us information that is incorrect or incomplete, you might not be covered under the policy.

You need to tell us:

- all material information before the cover starts, even if we don't specifically ask about it (material information is information that could change our decision if we knew about it)
- straight away if your circumstances change in any way while you are insured with us, both during the period of insurance and at renewal.

You agree to pay your premiums on time

Cover under your policy will not start 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 by the due date, your insurance could be cancelled and you will not be insured.

You agree to the exclusions and obligations detailed in the policy

You are not covered for some items, events, and circumstances. These are called exclusions. Exclusions are detailed throughout the policy.

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 who is entitled to claim under this policy must also meet these conditions and obligations.

We will be fair in the way we provide this cover

We provide the cover listed on the certificate

The policies and benefits we agree to provide are listed on the certificate. This policy wording details the cover that this policy and benefits provide.

We are bound by the Fair Insurance Code

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

We comply with the Privacy Act 2020

We collect personal information about you, your business, or both. We asked you for personal information to fully evaluate and to administer this policy, and we may ask for more if you make a claim or renew the policy. You also authorise us to:

- collect relevant information about you or your business from third parties, such as other insurers and EQC.
- disclose information about you in connection with insurance to third parties.

We fully understand the importance of protecting your personal, commercial and financial information. We store your information securely, within our organisation, and will not share it except in compliance with the Privacy Act 2020. You have rights under the Privacy Act 2020 to access and correct the information we hold about you.

For information about how we collect, use and store your personal information, see the full Privacy Statement on our website (www.fmg.co.nz).

We provide a 30-day 'cool off' period

We are confident this policy will be right for you. However, you may cancel this policy within 30 days of the start date if you are not entirely happy, without giving us a reason. We will refund any premium you have paid, provided you do not have a claim during this 30-day period.

We agree to cover you and your company's legal liability

We agree to provide you with the insurance set out in this policy, if 'Management Liability' is shown on the certificate.

We cover your liability (section 1 of this policy) and your company's liability (section 2 of this policy).

Section 1 – We agree to cover you

1. What liability you are insured for

1.1 We cover your liability in respect of the affairs of the Company

You are insured for the *legal liability and costs you incur* in respect of a *claim* arising from you performing duties in your capacity as *Director or Officer* of the *Company*.

1.2 We cover your liability in respect of the affairs of an Outside Entity

You are insured for *legal liability and costs you incur* in respect of a *claim* arising from you acting in a directorial or management capacity for an *Outside Entity* to the extent that you were acting in that capacity at the request of the *Company*.

1.3 We cover your liability in respect of an Employment Superannuation Scheme

You are insured for *legal liability and costs you incur* in respect of a *claim* arising from you performing duties in your capacity as *Superannuation Plan Trustee*.

To be covered under clauses 1.1 to 1.3 above the allegation must be first made against you and notified to us in writing during the period of insurance.

No cover is available under clauses 1.1 to 1.3 above or any benefits under this section of the policy if the Company is permitted or required to indemnify you in respect of the liability or costs covered.

2. The cover also includes automatic benefits

Your insurance automatically includes the following benefits.

2.1 We cover your legal defence costs and legal representation expenses

You are insured for the *legal defence costs or legal representation expenses you incur* in respect of a *claim* first made against you and notified to us in writing during the period of insurance.

The *legal representation expenses* must relate to an investigation or inquiry instigated during the period of insurance as a result of you or the *Company* being served with a written request to attend a meeting, hearing or interview because of your role within the *Company*.

We will pay these costs and expenses:

- prior to the final judgment of the *claim*
- within 30 days of receipt of the invoice from defence counsel.

You must repay these costs or expenses back to us to the extent that we determine they are not covered under this policy. If the costs or expenses were incurred for the benefit of one person then only they are obliged to repay these costs or expenses. If the costs or expenses were incurred for the benefit of multiple people then each of them must repay a portion of the costs or expenses determined on a pro-rata basis.

2.2 We cover your emergency legal defence costs

You are insured for the *emergency legal defence costs* you incur during the period of insurance if it is not reasonably possible for you to get our prior written consent before incurring *legal defence costs*.

These emergency legal defence costs must be incurred within 14 days of you or the Company first receiving notice of the relevant claim.

You must repay these costs back to us to the extent that we determine they are not covered under this policy. If the costs or expenses were incurred for the benefit of one person then only they are obliged to repay these costs or expenses. If the costs or expenses were incurred for the benefit of multiple people then each of them must repay a portion of the costs or expenses determined on a pro-rata basis.

2.3 We cover you for employment related claims

You are insured for the *legal liability and costs* you incur in respect of the following that involve an allegation of an *employment related wrongful act*:

- a written claim or demand for monetary compensation or non-pecuniary relief
- civil or arbitration proceedings including by counter-claim
- criminal or extradition proceedings
- mediation, conciliation or other alternative dispute resolution process, or
- a formal regulatory, professional or administrative proceedings, *investigation* or inquiry.

This allegation must be first made against you and notified to us in writing during the period of insurance.

There is no cover for any claim for *employee benefits*.

2.4 We cover personal expenses you incur when you are deprived of your assets

You are insured for the expenses you incur for schooling, housing, utilities or personal insurances if there is an interim or interlocutory order that during the period of insurance:

- confiscates, controls, suspends or freezes your rights of ownership or real property or personal assets, or
- creates a charge over your real property or personal assets.

This order must be made in connection with a claim covered under clauses 1.1 (affairs of the company), 1.2 (affairs of an outside entity) or 1.3 (employment superannuation scheme) above.

We will only pay these expenses:

- 30 days after any personal allowance directed by a court to meet these expenses has been exhausted, and
- for a period of up to 12 months.

2.5 We cover your pre-investigation costs

You are insured for the reasonable and necessary fees, costs and expenses you incur with our prior written consent directly in respect of:

- a *pre-investigation*, or
- the preparation of a written notice or report to an official body in connection with a *pre-investigation*.

The subject matter of this pre-investigation must be reasonably likely to give rise to a claim covered under clauses 1.1 (affairs of the company), 1.2 (affairs of an outside entity) or 1.3 (employment superannuation scheme) above.

There is no cover for your, the *Company's* or a *superannuation plan trustee's* wages, salaries or other remuneration or internal costs or overheads.

2.6 We cover your tax investigation expenses

You are insured for the reasonable and necessary legal and accountancy fees, costs and expenses you incur, with our prior written consent, which are solely a result of a formal or informal investigation into your personal tax affairs by the Inland Revenue Department.

This investigation must begin or be first intimated during the period of insurance.

2.7 We cover your costs following a breach of others' privacy or confidentiality

You are insured for the reasonable and necessary costs you incur with our prior written consent as a direct result of:

- an invasion, infringement or interference with the right to privacy, including disclosure of *data* that amounts to a breach of the Privacy Act 2020, or
- the unauthorised disclosure or use of *confidential information* in *data* form that is subject to a statutory restriction on its disclosure or use.

2.8 We cover health and safety defence costs

We will pay the *legal defence costs* you or the *Company* incurs, with our prior written consent, if:

- during the period of insurance you are legally compelled to attend an official *investigation* or other proceedings ordered or commissioned by an official body or institution, and
- this could give rise to an allegation that you or the *Company* breached the Health and Safety at Work Act 2015.

Section 2 – We cover the Company’s Liability

3. What liability your company is insured for

3.1 We cover the Company if it reimburses you for a covered loss

The *Company* is insured to the extent it is legally required or permitted to reimburse *you* for liability or costs which *you* would otherwise have been entitled to cover under clauses 1.1 (affairs of the company), 1.2 (affairs of an outside entity) or 1.3 (employment superannuation scheme) under section 1 above.

To be covered the allegation must be first made against *you* and notified to us in writing during the period of insurance.

3.2 We cover the Company’s liability in respect of any Employment Superannuation Scheme

The *Company* is insured for the *legal liability and costs* it incurs in respect of a *claim* as a result of it acting as a *Superannuation Plan Trustee*.

This claim must be first made against the *Company* and notified to us in writing during the period of insurance.

4. The cover also includes automatic benefits

Your insurance automatically includes the following benefits.

4.1 We cover the Company’s emergency legal defence costs

The *Company* is insured for the *emergency legal defence costs* it incurs during the period of insurance in the event it is not reasonably possible for it to get our prior written consent before incurring *legal defence costs*.

These emergency legal defence costs must be incurred within 14 days of *you* or the *Company* first receiving notice of the relevant claim.

The *Company* must repay these costs back to us to the extent that we determine they are not covered under this policy.

4.2 We cover the Company for employment related claims

The *Company* is insured for the *legal liability and costs* it incurs in respect of the following that involve an allegation of an *employment related wrongful act*:

- a written claim or demand for monetary compensation or non-pecuniary relief
- civil or arbitration proceedings including by counter-claim
- criminal or extradition proceedings
- mediation, conciliation or other alternative dispute resolution process, or
- a formal regulatory, professional or administrative proceedings, *investigation* or inquiry.

This allegation must be first made against the *Company* and notified to us in writing during the period of insurance.

There is no cover for any claim for *employee benefits*.

4.3 We cover the Company for loss due to crime

4.3.1 What the Company is insured for

The *Company* is insured for company crime loss it first *discovers* during the period of insurance arising from the following:

- acts of fraud or dishonesty committed by an *employee* principally intended to cause company crime loss or for personal financial gain, whether acting alone or in collusion with others
- *theft* or a *fraudulent* act by a *relevant individual*
- physical loss or damage to, or the disappearance of, the *Company's money* or *negotiable instruments* including loss or damage to safes or vaults.

The *Company* is also insured for its legal liability for direct financial loss of a third party's *money*, *negotiable instruments* or other physical property excluding any building and its fixtures and fittings, provided that:

- the *Company* first *discovers* this loss during the period of insurance, and
- this property was in the *Company's* care, custody or control.

To be covered under this benefit *you* or the *Company* must notify us about this loss in writing during the period of insurance.

4.3.2 What we will pay

We will pay up to the amount shown on the certificate for all claims in the aggregate during the period of insurance. We will pay no more than:

- In respect of *negotiable instruments*, *money* or precious metals, the lesser of:
 - the actual market value of this property at the close of business on the day the loss was first *discovered*, as determined by the value published on the www.interest.co.nz website, or
 - the actual cost of replacing this property on the day on which we settle the claim.
- In respect of the reproduction of books of accounts or other records, the cost of blank books, blank pages or other materials plus the cost of labour and computer time to transcribe or copy data provided by the *Company*.
- In respect of the reproduction of electronic data, the cost of labour to transcribe or copy electronic data provided by the *Company*.
- In respect of any other property, the lesser of:
 - the actual cash value of this property at the close of business on the day the loss was first *discovered*, or
 - the actual cost of replacing this property with property of an equivalent quality or value on the day the claim is settled.

4.3.3 Exclusions

There is no cover for loss, damage, liability, costs or expenses sustained after a *responsible person* first becomes aware that:

- a *relevant individual* has committed any *theft* or a *fraudulent act*
- an *employee* has committed any dishonest or *fraudulent act* either:
 - during the term of their employment with the *Company*
 - prior to their employment with the *Company*, provided that this involved *money*, *negotiable instruments* or other property valued at \$50,000 or more.

In respect of *theft* occurring while the property is in the care, custody and control of a security company or armoured motor vehicle company authorised by the *Company*, we will only cover an amount that exceeds the sums available to that security company or armoured motor vehicle company, whether through insurance, by way of indemnity, under contract or otherwise.

4.3.4 Definitions

Company crime loss means direct financial loss sustained by the *Company*.

Electronic and computer crime means the theft of either:

- the *Company's* assets under the direct or indirect control of a computer by a *relevant individual* who is not authorised by the *Company* to access that computer by manipulating computer hardware or software programs of systems, or
- the *Company's* funds from an account it has at a financial institution which the *Company*, or person or organisation it has authorised, can transfer funds from. This must be the result of a *relevant individual* purporting to be the *Company*, or person or organisation it has authorised, fraudulently transmitting, issuing, altering or *forging* instructions to transfer funds from that account.

Computer means:

- a computer, data processing equipment media or a part of these
- a data storage and retrieval or communication system
- a network, protocol or part of these
- a storage device, microchip or integrated circuit
- real-time clock system or similar device, or
- computer software, firmware or microcode.

Computer also includes its components which are available to users, including memory, bandwidth, processor time, use of communication facilities and any other computer-connected equipment.

4.4 We cover the Company's legal costs when there is a crime loss

The *Company* is insured for the reasonable legal fees, costs and expenses it incurs with our prior written consent to defend a written demand, claim, suit or legal proceedings which the *Company* subsequently establishes was a result of a claim covered or potentially covered under automatic benefit 4.3 (crime) above.

You or the *Company* must notify us about these circumstances in writing during the period of insurance.

We will pay up to \$100,000 for all claims in the aggregate during the period of insurance.

4.5 We cover the Company's specialist investigator fees when there is a crime loss

The *Company* is insured for the reasonable fees, costs and expenses it incurs with our prior written consent to retain a specialist investigator to investigate, report on or prove a claim covered under automatic benefit 4.3 (crime) above.

In investigating and reporting on this matter, the specialist investigator will also:

- advise on when and how the *Company's* controls were or may have been breached, and
- summarise recommendations that may prevent similar loss in the future.

We have the right to attend meetings between the *Company* and the specialist investigator and receive copies of the specialist investigator's reports.

We will pay up to \$100,000 for all claims in the aggregate during the period of insurance.

4.6 We cover the Company's tax investigation expenses

The *Company* is insured for the reasonable and necessary legal and accountancy fees, costs and expenses it incurs with our prior written consent that are the result of an informal or formal investigation into the *Company's* tax affairs by the Inland Revenue Department. This investigation must begin or be first intimated during the period of insurance.

4.7 We cover the Company's costs following a breach of privacy or confidentiality

The *Company* is insured for the reasonable and necessary costs it incurs with our prior written consent as a direct result of:

- an invasion, infringement or interference with the right to privacy, including disclosure of *data* that amounts to a breach of the Privacy Act 2020, or
- the unauthorised disclosure or use of *confidential information* in *data* form that is subject to a statutory restriction on its disclosure or use.

4.8 We cover the Company's crisis management costs

The *Company* is insured for the reasonable and necessary costs it incurs with our prior written consent to retain a public relation firm due to a reputational concern arising out of a claim covered under the following:

- clause 3.1 (company reimbursement) above
- automatic benefit 4.2 (employment related claims) in this section, or
- clause 10.8 (late claim or notification) in the 'how we manage your claim' section below to the extent this relates to a claim covered under clause 3.1 (company reimbursement) or automatic benefit 4.2 (employment related claims) above.

The *Company* must provide us with written notice of the reputational concern:

- within 14 days of it arising, and
- during the period of insurance.

4.9 We cover the Company's disruption expenses when directors, officers or employees are required to attend hearings or inquiries

The *Company* is insured for the expenses it incurs during the period of insurance when it is necessary for a *Director or Officer or employee* to attend a court, arbitration or other formal regulatory, professional or administrative proceedings, *investigation* or inquiry as a witness for the defence of a claim covered under:

- clauses 3.1 (company reimbursement) or 3.2 (employment superannuation scheme) above, or
- automatic benefit 4.2 (employment related claims) in this section.

The witness must be required to attend the proceedings for a period exceeding five consecutive business days.

We will pay up to \$500 per day for each *Director or Officer or employee*.

4.10 We cover the Company's legal and public relation costs for key person serious injury or illness

The *Company* is insured for the reasonable and necessary legal and public relation fees, costs and expenses it incurs with our prior written consent as a result of the accidental death or serious injury or illness of a *Director or Officer* during the period of insurance.

Serious injury or illness means an injury, illness or disease that permanently deprives a *Director or Officer* of their ability to materially perform their role.

4.11 We cover the Company's legal defence costs in respect of a breach of contract

The *Company* is insured for the *legal defence costs* it incurs in respect of a *claim* involving an actual or alleged breach by the *Company* of the term of an express oral or written contract.

4.12 We cover the Company's costs if it is the victim of identity fraud

The *Company* is insured for the reasonable fees, costs and expenses it incurs with our prior written consent to establish that a fraudulent representation has occurred in the following circumstances:

- during the period of insurance a third party enters into an agreement with a *relevant individual* that fraudulently purports to have authority to bind the *Company*, and
- that third party then seeks to enforce that agreement against the *Company*.

The *Company* must notify us of these circumstances in writing during the period of insurance.

4.13 We cover the Company's legal defence costs in respect of a pollution event

The *Company* is insured for the *legal defence costs* it incurs in respect of a claim

- arising from a *pollution event*.

5. You can choose to add the following optional benefits

These optional benefits only apply if they are available, have been selected and paid for (if appropriate). If applicable these optional benefits apply to both section 1 and section 2 of this policy.

5.1 We provide extended notification period options when this policy is not renewed or replaced

5.1.1 Extended notification period option if policy is not replaced

We will provide an *extended notification period* of 30 days from the expiry of the period of insurance for no additional premium if:

- this policy is not replaced with other insurance providing management liability cover, and
- there has not been a *merger or acquisition*.

If this option is selected, no further extended notification period may be purchased.

5.1.2 Additional notification period options if this policy is not renewed

If we refuse to renew this policy, *you* or the *Company* may purchase an *extended notification period* of either:

- 12 months from the expiry of the period of insurance for additional premium amounting to 100% of the annual or annualised equivalent premium for this policy.
- 24 months from the expiry of the period of insurance for additional premium amounting to 175% of the annual or annualised equivalent premium for this policy.

If *you* or the *Company* do not renew this policy, *you* or the *Company* may purchase an *extended notification period* of 12 months from the expiry of the period of insurance for additional premium amounting to 100% of the annual or annualised equivalent premium for this policy.

5.1.3 Conditions

Within 30 days prior to the expiry of the period of insurance *you* must:

- provide written confirmation of the option selected, and
- pay any additional premium applicable.

These options do not increase the amounts payable under this policy as set out in the 'what we will pay' section below. An option cannot be cancelled once selected.

5.2 We provide an extended notification period if you retire

You may request an *extended notification period* of 36 months from the date you retire for no additional premium if:

- you retire before the period of insurance expires and any *merger or acquisition*, and
- we do not renew this policy and it is not replaced with other insurance providing management liability cover.

This option runs concurrently with any extended notification period option under optional benefit 5.1 (extended notification options) above and does not increase the amounts payable under this policy as set out in the 'what we will pay' section below.

Retire means you have completely ceased to hold the position as *Director and Officer* on your own volition and without coercion. This excludes circumstances when you are disqualified or dismissed, either actively or constructively, from employment or office.

5.3 We can provide a run-off policy if there is a merger or acquisition

If there is a *merger or acquisition*, you may request a run-off policy for one of the following periods for additional premium:

- 12 months
- 24 months
- 36 months, or
- any other period we agree to.

We are not obliged to offer a run-off policy if we have been notified under clause 8.1 (let us know of a claim) of the 'making a claim' section below.

If a run-off policy is purchased we will refund the unused portion of the premium paid for this policy. This refund will be calculated pro-rata as at the effective date of the *merger or acquisition*.

The run-off policy will be on the same terms as this policy except that:

- the 'period of insurance' will start from the effective date of the *merger or acquisition* for the duration selected above,
- this policy cannot be cancelled except by us giving written notice due to the premium not being paid, and
- the run-off policy only applies to covered acts, errors, omissions or matters actually or allegedly committed by you before the effective date of the *merger or acquisition*.

6. What we will pay

This section applies to both section 1 and section 2 of this policy.

What we will pay depends on:

- whether the cover or benefit has a specific limit (clause 6.1) and is included in or additional to the Sum Insured shown on the certificate (clause 6.2),
- the maximum limit of indemnity (clause 6.3), and
- whether there is a right of reinstatement (clause 6.4).

Additionally, further amounts for legal defence costs and legal representation expenses may be payable if there is a charge on any amount payable under this policy under section 9 of the Law Reform Act 1936 (clause 6).

6.1 What we will pay depends on the specific limit

Subject to the clause 6.2 below, when the certificate, cover or benefit refers to a specific limit for a cover or benefit that is the maximum we will pay in the aggregate for all claims under that cover or benefit during the period of insurance.

In the event a claim is covered under multiple covers or benefits, the most we will pay for that claim is the lowest limit applicable under any of those covers or benefits to the extent that limit has not been exhausted.

6.2 What we will pay will depend on whether the cover is included in or additional to the Sum Insured for this policy shown on the certificate

Subject to clause 6.3 below:

- Amounts payable under automatic benefits 4.10 (key person costs), 4.3 (crime), 4.4 (crime legal fees, costs and expenses) and 4.5 (crime specialist investigator fees) under section 2 are additional to the Sum Insured for this policy shown on the certificate.
- Amounts payable under other covers or benefits are included in the Sum Insured for this policy and the most we will pay for all claims under them in the aggregate during the period of insurance is the Sum Insured for this policy shown on the certificate.

6.3 The maximum limit of indemnity that applies

Subject to clause 6.5 below, the most we will pay for all claims under this policy in the aggregate during the period of insurance is the Maximum Limit of Indemnity shown on the certificate.

6.4 Right to reinstate limits for future claims when the maximum limit of indemnity is not exhausted

If a specific limit of a cover or benefit is exhausted, due to claims payments, this may be reinstated for future claims provided, and to the extent that, the Maximum Limit of Indemnity shown on the certificate has not also been exhausted due to these previous claims payments.

6.5 Additional legal defence costs cover is available in the event there is a charge under section 9 of the Law Reform Act 1936

Legal defence costs or legal representation expenses will be in addition to, rather than included in, the applicable limit for a cover or benefit if a charge under section 9 of the Law Reform Act 1936 applies to any cover under this policy, provided that:

- we have received notice of the existence of this charge, and
- we have assessed that the sum secured by the charge will exhaust the applicable limit.

The most we will pay in the aggregate during the period of insurance under this clause is the lesser of:

- 10 percent of the relevant limit, or
- \$1,000,000.

We may recover payments made under this clause or offset these as a deduction from amounts payable under this policy 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, or
- there is no entitlement to such payment.

7. General Exclusions

7.1 An excess may be payable

If a claim is covered under multiple covers and/or benefits under this policy, you will have to pay only one excess. This will be the highest excess we can apply under these covers and/or benefits.

Additionally, if we accept a claim under one or more of your FMG policies, there is no insurance for the amount of any excess on the certificate.

7.2 There is no cover for independent contractors, brokers, merchants or external solicitors or accountants

There is no cover under this policy for loss, damage, liability, costs or expenses arising directly or indirectly from, or in connection with, the act, error or omission of:

- an independent contractor other than an *employee*
- a broker or merchant
- an external solicitor or accountant
- other similar agent or representative

This exclusion does not apply to any organisation that the *Company* has outsourced a normal administrative function to under a written contract of engagement.

7.3 There is no cover for employee benefits paid by the Company

There is no cover under this policy for loss, damage, liability, costs or expenses arising directly or indirectly from the following that are paid by the *Company* and earned in the normal course of employment:

- salaries, commissions or fees
- bonuses, awards, promotions or profit sharing, or
- superannuation or other *employee benefits*.

7.4 There is no cover when you or the Company has deliberately breached the law, been dishonest, fraudulent or when section 162 of the Companies Act 1993 applies

There is no cover under this policy for loss, damage, liability, costs or expenses arising directly or indirectly from, or in connection with, an act, error, omission or other matter which is:

- found by a court, criminal, quasi-criminal, regulatory, governmental or regulatory tribunal to amount to you or the *Company* deliberately breaching the law or being dishonest or fraudulent, and/or
- prohibited under section 162 of the Companies Act 1993.

This exclusion only applies if:

- this finding is established by the relevant decision making body upon final adjudication of the matter, including any appeal, or
- you and/or the *Company* have admitted to them.

If this exclusion applies, you and/or the *Company* must repay us *legal defence costs* or *emergency legal defence costs* we have paid you and/or the *Company* or on your and/or the *Company's* behalf. These amounts are repayable on demand once the final adjudication or admission has been made.

We will not pay for loss comprising the reimbursement of remuneration or other benefits that you and/or the *Company* received due to the relevant act, error or omission but were not entitled to.

For the purposes of determining whether this exclusion applies, your conduct or knowledge will not be imputed to anyone else insured under this policy and vice versa.

7.5 There is no cover for claims or circumstances that you were aware of before this policy was in place

There is no cover under this policy for loss, damage, liability, costs or expenses arising directly or indirectly from, or in connection with:

- a claim that was first made against *you* or the *Company* before the inception of this policy
- a circumstance first *discovered* before the inception of this policy
- a claim or circumstance which has been notified under any other policy of insurance, or
- civil, administrative, criminal or regulatory proceedings, an investigation, arbitration or adjudication that commenced prior to or that was pending before the prior or pending litigation date shown on the certificate.

For the purposes of determining whether this exclusion applies, *your* conduct or knowledge will not be imputed to anyone else insured under this policy and vice versa.

7.6 There is no cover for claims brought in North America

There is no cover under this policy for loss, damage, liability, costs or expenses arising directly or indirectly from, or in connection with, a claim brought or maintained in full or in part within the jurisdiction or based upon the laws of:

- The United States of America
- Canada
- their territories, dependencies or protectorates, or
- North America.

7.7 There is no cover for professional services

There is no cover under this policy for loss, damage, liability, costs or expenses arising directly or indirectly from, or in connection with, a claim made against *you* or the *Company* for providing or failing to provide professional services or advice to *your* or the *Company's* customers or clients.

7.8 There is no cover when you or the Company are acting as a trustee of an employee benefits programme

There is no cover under this policy for loss, damage, liability, costs or expenses arising directly or indirectly from, or in connection with, a claim against *you* or the *Company* for:

- acting as a fiduciary, trustee or administrator of a *superannuation plan*, pension, superannuation, annuity, profit-sharing, health, welfare or other *employee benefits programme* *you* or the *Company* have established, or
- breaching legislation or regulations related to these activities.

However, this exclusion will not apply if *you* or the *Company* are covered under clause 1.3 (employee superannuation scheme) of section 1 or clause 3.2 (employee superannuation scheme) of section 2 above.

7.9 There is no cover for pollution events

There is no cover under this policy for loss, damage, liability, costs or expenses arising directly or indirectly from or attributable to a claim in connection with a *pollution event*, unless covered under automatic benefit 4.13 (pollution event defence costs) of section 2 above.

7.10 There is no cover for share offerings

There is no cover under this policy for loss, damage, liability, costs or expenses arising directly or indirectly from, or in connection with, a proposed or actual public offering or private placement of *securities* unless:

- we have given our prior written consent to this, and
- the *Company* has paid any additional premium and accepted any amendments we require to the terms and conditions of this policy.

7.11 There is only cover for legal defence costs when an action is brought against you by a liquidator, receiver or other insolvency officer

There is no cover other than *legal defence costs* when a liquidator, receiver, administrative receiver or other similar appointed officer brings a claim against *you* directly or indirectly because of, or in relation to, the insolvency of the *Company*.

There is no other cover available under this policy in connection with such a claim.

7.12 There is no cover after the Company has undergone a merger or acquisition

There is no cover under this policy for loss, damage, liability, costs or expenses arising directly or indirectly from, or in connection with, an act, error, omission or other matter *you* commit after the *Company* undergoes a *merger or acquisition*.

7.13 There is no cover for confiscation, nuclear materials, terrorism or war

There is no cover under this policy for loss, damage, liability, costs or expenses in any way connected with:

- *confiscation* unless covered under automatic benefits 2.4 (deprivation of assets expenses) or 2.5 (pre-investigation expenses) under section 1 above
- *nuclear materials* unless covered under automatic benefit 4.13 (pollution event defence costs) under section 2 above
- *terrorism*
- *war*.

7.14 There is no cover for the Company's overheads or remuneration incurred due to a claim

There is no cover under this policy for the overheads, wages or salaries, the *Company* incurs in relation to a claim, unless covered under automatic benefit 4.9 (disruption expenses) of section 2 above.

7.15 There is no cover for claims between you and the Company

There is no cover under this policy for loss, damage, liability, costs or expenses arising directly or indirectly from, or in connection with, a claim between *you* and the *Company*, unless this is:

- a derivative action brought or maintained on behalf of the *Company* without *your* or the *Company's* solicitation, assistance or active participation
- an action brought or maintained by *you* for an actual or alleged *employment related wrongful act*
- an action brought or maintained by *you* for contribution or indemnity provided that this claim directly results from another claim covered under this policy, or
- an action brought by, or on behalf of, the *Company* at the instigation of a security holder, receiver, receiver and manager, office manager or liquidator.

7.16 There is no cover for property loss or fire

There is no cover under this policy for loss, damage, liability, costs or expenses:

- arising directly or indirectly from, or in connection with damage to, or the impairment, destruction or loss of use of, physical property, or
- caused directly or indirectly by fire other than loss of *money, negotiable instruments, safes or vaults*.

These exclusions do not apply to the extent the claim is covered under automatic benefit 4.4 (legal costs where there is a crime loss) under section 2 above.

7.17 There is no cover for forcible or violent theft

There is no cover under this policy for loss, damage, liability, costs or expenses occurring after a *relevant individual* acting alone and without collusion with an *employee* commits theft after forcibly or violently entering premises occupied by the *Company*, unless covered under automatic benefit 4.3 (loss due to crime) under section 2 above.

7.18 There is no cover for breaches of intellectual property rights or confidentiality

There is no cover under this policy for loss, damage, liability, costs or expenses arising directly or indirectly from, or in connection with, actual or alleged breaches of intellectual property rights, trade secrets, proprietary information, *confidential information* or confidential processing methods, unless covered under:

- automatic benefit 2.7 (breach of privacy or confidentiality) of section 1 above, or
- automatic benefit 4.7 (breach of privacy or confidentiality) of section 2 above.

7.19 There is no cover for insider trading

There is no cover under this policy for loss, damage, liability, costs or expenses arising directly or indirectly from, or in connection with, profits made due to *you* purchasing or selling *securities* where *you* have, or are alleged to have, improperly benefited from information not available to other purchasers or sellers of such securities.

7.20 There is no cover for bodily injury or death

There is no cover under this policy for loss, damage, liability, costs or expenses arising directly or indirectly from, or in connection with, actual or alleged bodily injury, disease, sickness, emotional distress or other mental, psychiatric, emotional or physical injury, unless covered under:

- automatic benefit 2.8 (health and safety defence costs) of section 1 above, or
- automatic benefit 2.3 of section 1 or automatic benefit 4.2 of section 2 above (employment related claims).

There is also no cover under this policy for loss, damage, liability, costs or expenses arising directly or indirectly from, or in connection with the death of a person, unless covered under:

- automatic benefit 2.8 (health and safety defence costs) of section 1 above, or
- automatic benefit 4.10 (key person costs) of section 2 above.

7.21 There is no cover for consequential losses

There is no cover under this policy for liability, costs or expenses arising directly or indirectly from, or in connection with, consequential or indirect loss including loss attributable to claims for apportionment, contribution or indemnity.

7.22 There is no cover for liability assumed by agreement

There is no cover under this policy for liability, costs or expenses that *you* or the *Company* expressly accept under a contract unless:

- this liability would have arisen without that contract, or
- covered under automatic benefit 4.11 (contract defence costs) of section 2 above.

7.23 There is no cover for loss that can only be proved by computation or a comparison

There is no cover under this policy for loss, damage, liability, costs or expenses that can only be proved by a:

- profit and loss comparison or computation, or
- comparison of inventory records with a physical count.

7.24 There is no cover for the publication of false material

There is no cover under this policy for loss, damage, liability, costs or expenses arising directly or indirectly from, or in connection with, the publication of material that *you* or the *Company* know is false.

7.25 There is no cover for lockouts or other industrial action

There is no cover under this policy for loss, damage, liability, costs or expenses arising directly or indirectly from, or in connection with, an act, error, omission or other matter committed during a lockout, strike, picket line, stand-down or other industrial action.

7.26 There is no cover for tax obligations

There is no cover under this policy for loss, damage, liability, costs or expenses arising directly or indirectly from, or in connection with, direct or indirect tax obligations unless covered under automatic benefit 2.6 under section 1 or automatic benefit 4.6 under section 2 above (tax investigation expenses).

7.27 There is no cover for traffic issues

There is no cover under this policy for loss, damage, liability, costs or expenses arising directly or indirectly from, or in connection with, violating law or regulations relating to vehicle, air or marine traffic.

7.28 There is no cover for voluntary exchanges or purchases

There is no cover under this policy for loss, damage, liability, costs or expenses arising directly or indirectly out of voluntarily tendering *money*, *negotiable instruments* or other property in an exchange or purchase, whether or not this is induced by deception, unless the *Company* has taken reasonable steps to prevent this.

7.29 There is no cover for intentional breaches of the Companies Act or for anti-competitive conduct

There is no cover under this policy for loss, damage, liability, costs or expenses arising directly or indirectly from or in connection with:

- intentional breaches of sections 131, 133, 135, 137 and 138 of the Companies Act 1993,
- the actual or alleged violation of any law governing or prohibiting:
 - business competition
 - antitrust
 - price fixing
 - unfair trade practices, or
 - tortious interference in the business of another or contractual relationships,
- Part 6 of the Commerce Act 1986, or
- a law similar to those listed above in a jurisdiction outside of New Zealand.

7.30 There is no cover for loss that would expose us to sanctions

There is no cover under this policy for loss, damage, liability, costs or expenses that would expose us to a sanction, prohibition or restriction under:

- United Nations resolutions or trade or economic sanctions, or
- the law of New Zealand, Australia, the European Union, the United Kingdom or the United States of America.

7.31 There is no cover for health and safety

There is no cover under this policy for loss, damage, liability, costs or expenses arising directly or indirectly from *you* or the *Company* failing to comply with an improvement, prohibition, hazard or infringement notice issued to *you* or the *Company* under the Health and Safety at Work Act 2015, unless covered under automatic benefit 2.8 (health and safety defence costs) of section 1 above.

7.32 There is no cover for the conduct of an entity while it is not a subsidiary of the company

A *subsidiary* or director or officer of a *subsidiary* is not covered under this policy for acts, errors or omissions committed or occurring while that entity was not a *subsidiary*.

7.33 There is no cover for identity fraud

There is no cover under this policy for loss, damage, liability, costs or expenses arising directly or indirectly from or attributable to a claim in connection with a third party entering into an agreement with a *relevant individual* that fraudulently purports to have authority to bind the *Company* where that third party subsequently seeks to enforce that agreement against the *Company*, unless covered under automatic benefit 4.12 (identity fraud costs) of section 2 above.

7.34 There is no cover for Cyber Acts or Incidents

We do not cover any payment for *legal liability* and *costs* resulting from a Claim or Investigation made against the *Company* for, alleging, arising out of, based upon, attributable to, or involving in any way any Cyber Act or any Cyber Incident.

Cyber Act means:

- An unauthorised, malicious or criminal act relating to any Computer System, regardless of time and place.
- a series of related unauthorised, malicious or criminal acts relating to any Computer System, regardless of time and place.
- the threat or hoax involving access to, processing of, use of or operation of, any Computer System, regardless of time and place.

Cyber Incident means:

- any error or omission involving access to, processing of, use of or operation of any Computer System
- any series of related errors or omissions involving access to, processing of, use of or operation of any Computer System
- any partial or total unavailability or failure to access, process, use or operate any Computer System.
- Any series of related partial or total unavailability or failures to access, process, use or operate any Computer System.

Computer System means any of the following owned or operated by the *Company* or any other party:

- computer,
- hardware,
- software,
- communications system,
- electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device),
- server,
- cloud,
- microcontroller (including any similar system or any configuration of the microcontroller)
- any associated
 - input,
 - output,
 - data storage devices,
 - networking equipment
 - back up facility

Making a claim

The conditions in this section are important. All conditions must be met before we will accept a claim under this policy.

8. What you and the Company must do

8.1 You and the Company must let us know as soon as there is a claim or circumstance expected to give rise to one

You and/or the Company must let us know in writing as soon as reasonably practicable within the period of insurance or applicable extended notification period if there is a claim or circumstance which may be reasonably expected to give rise to a claim.

If, during the period of insurance or any applicable extended notification period, *you and/or the Company* become aware of and advise us in writing of a circumstance which may give rise to a claim against *you and/or the Company* and that circumstance does not give rise to a claim until after the end of the period of insurance or the applicable extended notification period, we will treat that claim as if it was first made against *you and/or the Company* during the period of insurance. *You and/or the Company* must provide the names of the potential claimants and the likely allegations.

You and the Company must use all due diligence and take all reasonable steps to minimise the claim and avoid any further claim. *You and/or the Company* must make a complaint to the police if criminal activity is suspected.

8.2 When communicating with us

You and/or the Company must notify us in writing, providing full particulars including relevant dates, events, circumstances and persons or entities involved and the amount of the alleged or potential loss.

You and/or the Company must immediately send us all relevant correspondence and court documentation. *You* must authorise us to:

- get personal information about *you* from *you* and third parties in connection with your insurance
- disclose personal information about *you* to third parties in connection with your insurance.

For more information about how we collect, use and store your personal information, see the full Privacy Statement on our website (www.fmg.co.nz).

8.3 You and the Company must fully co-operate with us

You and the Company must fully co-operate with us regarding the investigation, defence and settlement of any claim.

You and/or the Company must provide us with any information and documentation we reasonably request at *your and/or the Company's* own cost. However, if the *Company* is insolvent we will pay its reasonable costs to comply with this obligation.

If we consider that *you and/or the Company* are not reasonably co-operating with us under this clause we may refer this matter to dispute resolution in accordance with clause 11.7 of the General Conditions section below. *You and/or the Company* must reasonably co-operate and/or provide the information and/or documentation reasonably requested.

8.4 When you have other insurance

You must immediately notify us of any other insurance that covers *you* for any of the risks covered under this policy.

9. What you and the Company must not do

9.1 You and the Company must not accept liability, settle things yourselves or incur defence costs

You and/or the Company must not admit liability, waive a right to recovery or agree to settle a claim or part of a claim without our prior written consent.

Except for *emergency legal defence costs*, you and/or the Company must not incur *legal defence costs* or *legal representation expenses* without our prior written consent.

9.2 You and the Company must not make untrue statements

You and/or the Company must ensure all statements made to us are true and complete.

If the claim is dishonest or fraudulent in any way, we are entitled to:

- decline your claim in whole or in part
- bring this policy to an end from the date of the dishonest or fraudulent act
- bring all other insurance you have with us to an end from the date of the dishonest or fraudulent act.

We may also notify the police, the Serious Fraud Office, or both.

10. How we will manage the claim

10.1 If two or more excesses apply, you need to pay the higher excess

If a claim is covered under more than one of your FMG policies, you will have to pay only one excess. This will be the highest excess we can apply under those policies.

10.2 We will pay the difference between another insurance and this one

You and/or the Company must immediately let us know if you have other insurance covering the risks covered under this policy.

We will only pay over and above the limit payable under that other insurance.

10.3 You and the Company have rights and responsibilities for the conduct of the defence and settlement

If a claim is made under this policy, we have the right, but not the duty, to take control of and conduct the investigation, settlement and/or defence of a claim against you and/or the Company on your and/or the Company's behalf. We will do this in conjunction with you and/or the Company.

We will not require you and/or the Company to defend a claim without your and/or the Company's agreement (as applicable), unless:

- we have received a written opinion from an *independent lawyer* advising that the claim has reasonable prospects of being successfully defended, and
- there is disagreement between you and/or the Company (as applicable) and us about whether a proposed settlement of the claim should be accepted or continue to be defended.

In providing their opinion this independent lawyer will take into account the economics of the matter, the damages and costs likely to be covered by the claimant or litigant and the likely *legal defence costs*. The cost of this opinion will form part of the *legal defence costs*.

10.4 We will review legal defence costs

We will review *legal defence costs* and *legal representation expenses* as they are incurred to assess whether they are covered under this policy. We will advise *you* and/or the *Company* (as applicable) if they are not covered under this policy as soon as practicable.

10.5 Multiple claims arising out of the same conduct or events is treated as one claim

Any two or more claims arising out of, based on, or attributable to, a single act, error or omission or which are attributable to continuous or repeated events or circumstances, or a series of interrelated or connected acts, errors or omissions, are treated as one claim.

10.6 In limited cases obtaining our prior written consent is not necessary

The fact that we have not given our prior written consent will not affect the entitlement to cover under automatic benefits 4.10 (key person costs) or 4.8 (crisis management costs) of section 2 above if the *Company* was prevented from seeking this consent by law or pressing and urgent necessity.

10.7 When our prior written consent is required we will only withhold this if this is reasonable

When *you* and/or the *Company* are required to obtain our prior written consent under this policy we will only withhold this when it is reasonable for us to do so.

10.8 In certain circumstances we will provide cover when there is a late claim or notification

We will extend this policy to cover *you* in respect of a circumstance *you* and/or the *Company* knew about prior to the period of insurance beginning, provided that:

- there is no fraudulent non-disclosure or misrepresentation on *your* or the *Company's* part
- we were the insurer when *you* and/or the *Company* first became aware of that circumstance
- a claim was first made against *you* and/or the *Company* in relation to that circumstance during the period of insurance, or *you* and/or the *Company* notified us in writing about that circumstance during the period of insurance, and
- we have continuously been the insurer from the time that *you* and/or the *Company* first became aware of that circumstance.

This extension is available despite anything in this policy to the contrary. However, we reserve the right to reduce the cover under this clause to the extent that our interests are prejudiced by this late claim or notification.

10.9 The parties will co-operate to determine the appropriate allocation of amounts when only some elements of the claim are covered

You, the *Company* and FMG will jointly use best efforts to agree on a fair and proper allocation of amounts between *you*, the *Company* and us if:

- *you* and/or the *Company* incur a loss or liability covered under this policy together with one that is not covered under this policy, or
- a claim is made against *you* and the *Company* and it is not possible to identify whether this is attributable exclusively or primarily to something covered under this policy or not.

In making the assessment about the fair and proper allocation, in relation to:

- an award of damages or a claimant's costs, we will consider the relative legal and financial exposures of the parties to them, and
- *legal defence costs*, we will consider the relative benefits obtained by each party given the claims they are exposed to and their relative legal and financial exposures in that regard.

If an appropriate allocation cannot be agreed on, FMG, *you* and the *Company* will jointly instruct an *independent lawyer* to advise, at their absolute discretion, a fair and proper allocation using the criteria outlined above. FMG, *you* and the *Company* will be jointly liable for this independent lawyer's fees.

The *independent lawyer* can take whatever accounting or other expert advice they consider appropriate and necessary to determine the appropriate allocation. This recommendation will be final unless there is manifest bias or impropriety on their part.

The allocation will be applied retrospectively. Any previous allocation or advancement does not create a presumption in respect of the final allocation arrived at.

10.10 We have the right to choose the order we pay you and the Company

We have the right to choose the order we pay *your* and the *Company's* claims covered under this policy. This will be in the order that we believe, in good faith, falls properly due for payment under this policy up until the relevant limit is exhausted.

10.11 We may recover costs from those responsible for the loss

If we make any payment under this policy, we may exercise any legal rights *you* and/or the *Company* has to recover these amounts from the persons or entities responsible. Any recovery will be at our cost.

If we exercise these rights, *you* and the *Company* must co-operate with us, giving us any help we ask for and not do anything that may prejudice our rights of subrogation.

We have the right to be reimbursed first if:

- *you* and/or the *Company* suffer a loss not covered under this policy or that is less than the applicable excess, and
- amounts are recovered from another party and it is not clear whether these relate to something that is covered under this policy or not.

We will not exercise these rights of subrogation against an *employee* unless the circumstances were brought about, or contributed to, by dishonest, fraudulent, criminal, reckless or malicious acts or omissions on their part.

10.12 We can choose whether or not to salvage

If the claim relates to damaged property, we are entitled to retain possession of the damaged property and deal with salvage in a reasonable manner.

You and/or the *Company* cannot abandon any property to us.

General conditions of this policy

The following conditions apply to the whole policy, and cover what *you* and the *Company* agree to do, how we manage the policy, and how the policy will be interpreted.

11. What you and the Company agree to do

These conditions must all be met before we will accept a claim under this policy.

11.1 You and the Company must comply with all terms of this policy

You and the *Company* must comply with all the terms of the policy before we will meet any claim under it.

You and the *Company* must tell the truth at all times.

11.2 You and the Company must tell us immediately if anything changes

After this policy starts, *you* and/or the *Company* must notify us immediately of any change in circumstances *you* and/or the *Company* are aware of that affects any risks insured under this policy, whether by increasing or altering them.

Once you have done so, we may change the premium and terms of cover, at our discretion.

If *you* and/or the *Company* fail to let us know about any change in circumstances, we may (from the date of the failure):

- refuse to meet any claim or part of it
- cancel this policy.

11.3 Premiums must be paid on time

Cover under this policy will begin when the *Company* has paid, or agreed to pay, the premium for the period of insurance (including any government charges).

If we have agreed that premium can be paid in instalments, cover under this policy will begin when the first instalment (including any government charges) due under this agreement, has been paid, or agreed to be paid.

Premiums must be paid by the due date.

If there is a total loss:

- we will not settle the claim:
 - until the full annual premium is paid, or
 - if premium is being paid by instalments, until the balance of the full annual premium is paid, and
- we may deduct any outstanding annual premium from the claim settlement.

11.4 This policy cannot be assigned without our consent

This policy cannot be assigned unless we have consented to this in writing.

No change, modification or assignment of interest under this policy will be effective unless it is recorded as an imposed term on the certificate.

11.5 You and the Company must not disclose the terms or limits of this policy

You and/or the *Company* must not disclose the terms, conditions, exclusions, cover limits or premium paid for this policy to any third party, except to the extent that:

- *you* or the *Company* are required to do so by law, or
- we have given our prior written consent.

11.6 You and the Company agree to the Company acting for itself and on your behalf

The entity listed on the certificate agrees to act for itself and on *your* behalf in respect of the following under this policy:

- giving and receiving notices,
- paying premium and receiving premium refunded, and
- negotiating and agreeing to written imposed terms on this policy.

You agree to the entity listed on the certificate acting on your behalf.

11.7 If a dispute cannot be resolved this will be referred to mediation and failing that arbitration

If a dispute between *you* and/or the *Company* and FMG about an aspect of this policy cannot be resolved by us to *your* and/or the *Company's* (as applicable) reasonable satisfaction within six months of it arising, this will be referred for mediation by an *independent lawyer*. *You* and/or the *Company* (as applicable) and FMG will be jointly liable for this lawyer's fees.

If the dispute remains unresolved after mediation, *you* and/or the *Company* (as applicable) and FMG may refer this matter to arbitration in New Zealand. Each party will bear their own costs in this respect.

11.8 Only you and the Company are entitled to claim or enforce a term under this policy

No one other than *you* and the *Company* may make claims under this policy and only the parties to the contract may enforce its terms.

12. How we will manage this policy

12.1 How to make changes to this policy

If we agree, the *Company* may change this policy by giving us notice of the changes.

We may change the terms of this policy at any time by giving the *Company* notice at the last known address we have for it. The changes we make will take effect 30 days after the day we send or deliver the notice to the *Company*.

12.2 How to cancel this policy

The *Company* may cancel this policy at any time by giving notice to us.

We may cancel this policy at any time by giving notice to the *Company* at the last known address we have for it. This policy will be cancelled 30 calendar days after the day we send or deliver the notice to the *Company*.

- If the *Company* cancels this policy, we will (subject to “We will be fair in the way we provide this cover” on page 7) refund 90% of the unexpired portion of the premium.
- If we cancel this policy, we will refund the unexpired portion of the premium.

If *you* and/or the *Company* have made a claim and we have paid the full amount under:

- the policy, we will cancel the policy
- an item, we will cancel the item
- an optional benefit, we will cancel the optional benefit.

In all three cases, the cancellation will be from the date of loss.

12.3 Each Director and Officer is treated separately

This policy will be treated as a separate contract between FMG and each *Director* and *Officer* in that no breach of a term or condition of this policy or other misconduct by one *Director* or *Officer* will be imputed to any other *Director* or *Officer*.

Additionally:

- No information held by one *Director* or *Officer* or statements made in, or associated with, the written proposal or renewal declaration form completed by them will be imputed to any other *Director* or *Officer*.
- The written proposal or renewal declaration form is treated as a separate form for each *Director* or *Officer* and any material non-disclosure or misstatement by one *Director* or *Officer* will not be imputed to any other *Director* or *Officer* provided that they are able to establish, to our reasonable satisfaction, that they were not aware of this non-disclosure or misstatement.

This clause will not apply where there is fraudulent misrepresentation or fraudulent non-compliance with the duty of disclosure to us at the time this policy was entered into.

12.4 We will add Goods and Services Tax where applicable

Where we are able to recover GST under the Goods and Services Tax Act 1985:

- all amounts insured include GST (unless otherwise shown on the certificate), and
- GST will be added, where applicable, to claim payments.

All excesses include GST.

It is mutually agreed that, to the extent possible, neither FMG, *you* or the *Company* will be adversely affected or advantaged by the operation of GST.

If a party requires a tax invoice or another party's assistance to obtain an input tax credit that invoice or assistance will be provided promptly.

How to interpret this policy

13.1 Words in italics have a specific meaning

Words which appear in italics must be interpreted using their defined meaning stated in the definitions section.

13.2 We use New Zealand currency

All monetary amounts referred to in this policy are expressed and payable in New Zealand dollars. If a judgment, settlement or other amount covered under this policy is stated in a currency other than New Zealand dollars we will pay the New Zealand dollar equivalent of that amount based on the cash rate of exchange for the purchase of New Zealand dollars published on the www.rbnz.govt.nz website for the date that judgment is reached, settlement is agreed to or the other amount becomes due.

13.3 The law of New Zealand governs this policy

The law of New Zealand applies to this policy and the New Zealand courts have exclusive jurisdiction.

13.4 'Acts' include amendments and regulations

Any Acts referred to in this policy include any:

- amendments or statutory regulations made under them, and
- Acts or regulations made in substitution for the original Acts or regulations.

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

13.5 Headings are for ease of reading

The headings in this document are merely there to make it easier to read. They do not form part of the policy and are not to be used in interpreting it.

13.6 The remainder of this policy is still in effect if part is invalid, void or unenforceable

If part of this policy is found to be invalid, void or unenforceable, the remainder remains in full force and effect.

Definitions

The following definitions apply to your policy.

Please note:

- references to the singular include the plural and vice versa
- the definitions apply to any derivatives of the word used in this policy.

Claim means any of the following for a *wrongful* act:

- a written claim or demand for monetary compensation or non-pecuniary relief
- civil or arbitration proceedings including by counter-claim
- criminal or extradition proceedings, or
- a formal regulatory, professional or administrative proceeding, *investigation*, inquiry or claim.

Company means:

- the Company, Limited Partnership and/or Trust named on the certificate
- any *subsidiary* that existed when this policy was entered into, and
- any *subsidiary* that becomes a subsidiary of the Company during the period of insurance, excluding any *subsidiary* located outside of New Zealand unless we have agreed to in writing to this being covered.

Confiscation means confiscation, requisition, nationalisation, destruction of, or damage to property by order of Government, a local authority, a court, or any public authority. The definition of confiscation excludes such orders given for the purpose of controlling a peril covered by this policy.

Confidential information means information that the *Company* intends to keep confidential while it is available to its *Directors or Officers*.

Confidential information excludes information:

- that is, or which becomes, generally available to the public other than by way of unauthorised disclosure
- that was made available to a recipient on a non-confidential basis prior to the *Company* disclosing it
- that was already in the lawful possession of the recipient of the unauthorised disclosure before it was disclosed
- that the relevant parties agreed in writing was not confidential or may be disclosed
- developed by or for the recipient independently of the information disclosed.

Data means machine-readable information in digital format regardless of the way it is used, or rendered. This includes text, voice recordings and images.

Data excludes software.

Director or Officer means:

- any past or current director, officer, limited partner, trustee or member of the board of directors of the *Company*
- any past or current *employee* who has or had a managerial or supervisory function, provided they are named together with the director or officer described above in respect of any *claim*
- the legal representative, heir, assignee, or estate of any director, officer or employee described above who is incapable of managing their own affairs, deceased or bankrupt.

Director or Officer also includes the lawful spouse or de facto partner of any director, officer or employee as described above but only:

- for the purposes of a *claim* seeking damages recoverable from:
 - relationship property
 - other property jointly held by that director, officer or employee and that spouse or partner, or
 - property transferred from that director, officer or employee to that spouse or partner, and
- to the extent that spouse or partner is party to the *claim* solely in their capacity as the spouse or partner.

Discovers or discovered means a *responsible person* at the *Company* becomes aware of an act, error, omission or event which that person considers may give rise to a claim under this policy or which may be reasonably expected to give rise to a claim under this policy.

Emergency legal defence costs means the reasonable and necessary legal fees, costs and expenses incurred without our prior written consent that relate solely to the defence or investigation of a claim covered under any of the following:

- Section 1:
 - clauses 1.1 (affairs of the company), 1.2 (affairs of an outside entity) or 1.3 (employee superannuation scheme)
 - automatic benefit 2.3 (employment related claims)
- Section 2:
 - clauses 3.1 (company reimbursement) or 3.2 (employee superannuation scheme)
 - automatic benefit 4.2 (employment related claims)

Employee means any natural person:

- who is a full-time, part-time, seasonal or temporary worker of the *Company* that works under a contract of employment or service with the *Company* and that the *Company* compensates by way of salary, wages and/or commissions
- who is undertaking work experience, that the *Company* has the right to govern and direct and that the *Company* compensates by way of salary, wages and/or commissions
- who is an independent contractor, volunteer seconded to the *Company* or other person provided that they are under the direction and supervision of the *Company* and the *Company* indemnifies them in the same manner as the other individuals referred to directly above.

Employee benefits means:

- fringe benefits, unemployment benefits or compensation, redundancy, health insurance or permanent disability benefits, workers compensation, amounts due or payments made in connection with an employee benefit, *superannuation plan* or pension or 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 excluding basic remuneration made to or for the benefit of an *employee*.

Employment related wrongful act means an actual or alleged act, error or omission committed or allegedly committed relating to the employment of a natural person by the *Company* including but not limited to:

- wrongful or unfair termination of employment
- wrongful failure to employ, promote or provide a career opportunity
- discrimination, harassment or wrongful discipline
- failing to provide an accurate reference and employment related misrepresentation.

Excess means the first amount of a claim that you must pay, as shown on the certificate.

Extended notification period means the extended time after the period of insurance expires when a claim may be first made and notified. The extended notification period does not affect the terms of this policy or the requirement for any act, error, omission or matter giving rise to a claim to occur before the period of insurance expires.

Forgery or **forged** means signing or endorsing the name of a genuine person or copying their signature without their authority and with the intent to deceive.

Fraudulent act means:

- cheque forgery,
- corporate card fraud, or
- imitation fraud.

Cheque forgery means:

- *forging* or fraudulently altering a cheque or similar written promise by the *Company* to pay a veritable sum representing money drawn upon a current or savings account which the *Company* maintains with a bank.
- fraudulently altering a cheque draft drawn upon by any bank or company upon itself.
- fraudulently altering a cheque, written order or direction to pay a veritable sum representing money or a warranty a public body draws upon itself which the *Company* receives at any of its premises in payment or purported payment of tangible property sold and delivered or services rendered.

Corporate card fraud means *forging* or fraudulently altering and then using a corporate credit, debit or charge card issued to the *Company* or an *employee* for business purposes, provided that:

- the *Company* or employee fully complied with the terms the card was issued under, and
- the *Company* is legally liable for the loss.
- Imitation fraud means either of the following provided that the *Company* has acted or relied on them:
 - *forged* or fraudulently altered *money, negotiable instruments* or instructions
 - counterfeited *money or negotiable instruments*.

Counterfeited means imitation money or negotiable instruments that are of such quality that the *Company* believes them to be authentic. This does not include fictitious instruments that merely contain fraudulent misrepresentations of fact which are genuinely signed or endorsed.

Independent lawyer means an independent lawyer that *you* and/or the *Company* and FMG have agreed to and appointed. If it is not possible to reach an agreement, the independent lawyer will be appointed by the President of the New Zealand Law Society.

Investigation means a formal or official external investigation, examination or inquiry into the *Company* that the *Company* or its representative is first requested or required in writing to attend by the investigating body during the period of insurance.

Investigation excludes:

- routine regulatory supervision, inspection or compliance reviews, or
- an investigation focussing on an industry rather than on *you* or the *Company*.

Legal defence costs means the reasonable and necessary legal fees, costs and expenses incurred with our prior written consent related solely to the defence or investigation of a claim covered under any of the following:

- Section 1:
 - clauses 1.1 (affairs of the company), 1.2 (affairs of an outside entity) or 1.3 (employee superannuation scheme)
 - automatic benefits 2.3 (employment related claims) or automatic benefit 2.8 (health and safety defence costs)
- Section 2:
 - clauses 3.1 (company reimbursement) or 3.2 (employee superannuation scheme)
 - automatic benefits 4.2 (employment related claims), 4.11 (breach of contract legal defence costs) or 4.13 (pollution event defence costs).

Legal defence costs do not include *your*, the *Company's* or a *Superannuation Plan Trustee's* wages, salaries or other remuneration or internal costs or overheads.

Legal representation expenses means the reasonable and necessary legal fees, costs and expenses incurred with our prior written consent related solely to *your* representation at a formal, regulatory or professional investigation or inquiry into the *Company's* affairs.

Legal representation expenses excludes *your*, the *Company's* or a *superannuation plan trustee's* wages, salaries or other remuneration or internal costs or overheads.

Legal liability and costs means any award of damages, judgment or settlement amount payable that *you* or the *Company* are legally liable for.

Legal liability and costs include:

- an award of claimant costs
- *legal defence costs*
- legal representation expenses, and
- punitive or exemplary damages that are legally insurable.

Legal liability and costs exclude:

- fines or penalties
- taxes
- any multiplied portion of punitive or exemplary damages awarded
- any increase in consideration or the price paid for securities in a *merger or acquisition*
- any amount uninsurable under the laws governing this policy
- any amount constituting a cost incurred by the *Company* to modify a building, premises, fixtures, fittings, plant, equipment or change to its principal business as described in the written proposal or renewal declaration form and/or its annual report,
- *your*, the *Company's* or a *superannuation plan trustee's* wages, salaries or other remuneration or internal costs or overheads, or
- *employee benefits*.

Merger or acquisition means:

- a merger or consolidation of the *Company* with another company or entity, or
- another company or entity acquiring 50% or more of the *Company's* share capital.

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

Negotiable instruments means 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. Negotiable instruments exclude *money*.

Nuclear materials means:

- ionising radiation or contamination by radioactivity from:
 - any nuclear fuel
 - any nuclear waste
 - the combustion or fission of nuclear fuel, or
- nuclear weapons material.

Outside Entity means:

- a not for profit organisation, or
- an organisation that the *Company* is a shareholder of and which is listed on the certificate as an Outside Entity.

Pollution event means actual, alleged or threatened discharge, dispersal, release or escape of a contaminant, irritant or other substance and/or a direction or formal request to test for, monitor, clean up or detoxify them.

Pre-investigation means:

- *You* or the *Company* are raided or are the subject to an on-site visit by a regulator that involves the production, review, copying or confiscation of records or *you* being interviewed. This raid or visit must first occur during the period of insurance.
- *You* or the *Company* formally notifying a regulator in circumstances where *you* or the *Company* reasonably considers that a material breach of *your* or the *Company's* legal or regulatory duties has occurred or may occur. This notification must be first given during the period of insurance.
- An internal inquiry conducted by the *Company* at the request of a regulator after *you* or the *Company* have formally notified them in the circumstances described above.

The regulator must be established under an Act, regulation or other legislative instrument enacted by the Parliament of New Zealand.

Relevant individual means a natural person other than:

- a *Director or Officer* or other manager of the *Company*
- someone who owns or controls shares in the *Company*
- someone acting in collusion with an *employee, Director or Officer* or other manager of the *Company*
- someone providing services under a contract for services with *you*, the *Company* or a *Superannuation Trustee*.

Responsible person means an *employee* acting in a directorial, managerial or supervisory capacity. This excludes any person who has committed any act of fraud or dishonesty.

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

Subsidiary means any corporate entity including any joint venture that the *Company*:

- directly or indirectly:
 - controls a majority of the voting rights, or
 - exercises effective management control
- controls the right to appoint or remove a majority of its directors, or
- holds more than half of its issued share capital.

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

Superannuation Plan means any of the following established, administered or sponsored by the *Company* for the sole benefit of its *employees*:

- past, current or future *employee benefits* or welfare benefit plan
- past or present superannuation plan

Superannuation Plan also includes any *employee benefits*, welfare benefit or superannuation plan:

- merged, transferred or terminated before or during the period of insurance, and
- created by the *Company* during the period of insurance.

Superannuation Plan Trustee means:

- A natural person who is currently, or will be, an employment superannuation trustee, committee member, administrator or constructive trustee of a *Superannuation Plan*.
- A *Director or Officer* or employee of the *Company*, a *Superannuation Plan* or a company established to act as superannuation trustee or to administer the *Superannuation Plan*, excluding any external auditor or insolvency officer holder.

Terrorism means a particular type of use, threatened use, or preparation for the use, of:

- force or violence towards any person or group(s) of people
- property damage
- conduct that creates a risk to health and safety, or
- interference or disruption with an electronic system.

What makes it terrorism is that these are actions by a person, group or groups (whether acting alone, or on behalf of, or in connection with, any organisation or government):

- designed to influence, coerce or retaliate against, a government or group of people, or
- to bring about change that aligns with the person or group's particular political, religious, ideological, ethnic, economic agenda.

Our definition of 'caused by terrorism' extends to conduct connected with controlling, preventing, suppressing, retaliating against, or responding to such actions.

Theft means unlawfully taking the *Company's money, negotiable instruments* or other physical property excluding any building and its fixtures and fittings:

- from within the *Company's* premises,
- from within the interior of any banking premises or a similar place recognised as holding safe deposits,
- while in transit and in the care, custody and control of an *employee, Director or Officer* or partner of the *Company*, following the actual or threatened use of force or violence, or
- while in the care, custody and control of a security company or armoured motor vehicle company authorised by the *Company*.

You and your means any natural person who at any stage during the period of insurance is a director or officer.

You and your excludes any:

- external auditors of the *Company*
- insolvency officer holder of the *Company*, or
- pension or superannuation trustee.

War means conflict, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to an uprising, insurrection, rebellion, revolution, military or usurped power, and extends to activity connected with controlling, preventing or suppressing such conduct.

Wrongful act means an actual or alleged act, error or omission committed or allegedly committed by *you* or the *Company* after the retroactive date shown on the certificate, including:

- a breach of duty, including a statutory or fiduciary duty
- breach of trust
- breach of warranty of authority
- negligence
- misrepresentation, misstatement or misleading statement, or
- defamatory statement.

Notes

Tell us what you think about us and our service

Your feedback helps 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 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 would like to know about it so we can congratulate our team—so please let us know.

How you can contact us



Call us on 0800 366 466



Contact your local FMG manager



FMG Connect - our online service www.fmg.co.nz/connect



Visit our website www.fmg.co.nz



Email us at contact@fmg.co.nz



Write to us PO Box 1943, Palmerston North 4440, New Zealand



Fax us on 0800 366 455



We're easy to contact



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