

Directors and Officers Liability Insurance Policy



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Introduction

Please read the policy carefully to ensure that it meets your requirements. It is written on a claims made basis, which means that, except where otherwise provided, it will only respond to claims first made against the insured during the policy period.

Any word or expression to which a specific meaning has been attached shall bear that specific meaning wherever it may appear.

Insurance is only provided for those Insuring Clauses and Extensions that are noted as 'Included' in the **Schedule** attaching to this policy, which also specifies the amount of any 'Sub-limit' applicable to those Insuring Clauses or Extensions.

You also received important notices about your duty of disclosure and our privacy statement prior to purchasing this policy. The notices are replicated at the back of this document for your reference.

Policy wording

The **Policyholder** and the **Insurer** agree that in consideration of the premium the **Insurer** will provide insurance as follows:

1. Insuring clauses

1.1 Directors and Officers liability cover

The **Insurer** will pay, on behalf of each **Insured Person**, **Loss** resulting from **Claims** first made against an **Insured Person** during the **Policy Period** (or **Discovery Period**, if applicable), except to the extent that the **Insured Person** has been indemnified by the **Company** for such **Loss**.

1.2 Company reimbursement cover

The **Insurer** will pay, on behalf of the **Company**, **Loss** resulting from **Claims** first made against an **Insured Person** during the **Policy Period** (or **Discovery Period**, if applicable), for which the **Company** has granted indemnity to the **Insured Person** for such **Loss**.

1.3 Company securities cover

The **Insurer** will pay, on behalf of the **Company**, **Loss** resulting from **Securities Claims** first made against the **Company** during the **Policy Period** (or **Discovery Period**, if applicable).

2. Extensions

These Extensions are subject to all the terms of the **Policy**, unless otherwise stated. The total of all payments made under these Extensions will be part of and not in addition to the **Limit of Liability**, unless otherwise stated.

2.1 New subsidiaries

2.1.1 The definition of **Company** is extended to automatically include any entity which becomes a **Subsidiary** during the **Policy Period** unless such entity has:

- (a) total assets that are greater than 25% of the total consolidated assets of the **Policyholder**; or
- (b) any of its **Securities** listed on an exchange in the United States of America.

2.1.2 Notwithstanding the above, if such entity has total assets that are greater than 25% of the total consolidated assets of the **Policyholder**, but does not have any of its **Securities** listed on any exchange in the United States of America, then the definition of **Company** will be extended to include such entity for a 60 day period from the date the entity became a **Subsidiary**.

The **Insurer** may, at its discretion, offer to extend cover for such new **Subsidiary** beyond the 60 day period. In order for cover for such new **Subsidiary** to be extended beyond the 60 day period, the **Policyholder** must, prior to the end of the 60 day period:

- (a) provide the **Insurer** with additional information as the **Insurer** may reasonably require;
- (b) accept any notified alteration in the terms of this **Policy**; and
- (c) pay any additional premium reasonably required by the **Insurer**.

2.2 Advancement of costs and expenses

The **Insurer** will advance **Defence Costs, Representation Expenses, Bail Bond and Civil Bond Costs, Prosecution Costs** and **Business Crisis Consultant Fees** within 30 days of the receipt by the **Insurer** of sufficiently detailed invoices for the same and until such time as it is determined that the **Insured** is not entitled to coverage for such **Loss** under the terms and conditions of the **Policy**.

If and to the extent that the **Insured** is not entitled to coverage for **Loss** under the terms and conditions of this **Policy**, then the **Insurer** will cease to advance such costs and expenses and any amounts previously advanced shall be repaid to the **Insurer** severally and according to the **Insured's** respective interests.

2.3 Continuity

- (a) In the event a **Claim** could or should have been notified on an earlier policy of which this **Policy** is a direct or indirect renewal or replacement, but was not notified for any reason other than as a result of fraudulent non-disclosure or fraudulent misrepresentation, the **Insurer** will treat the **Claim** as having been made during the **Policy Period**, provided that the **Claim** could and should have been notified after the **Continuity Date**.
- (b) Part (i) of the Prior Claims or Circumstance Exclusion does not apply to facts, events, circumstances or **Wrongful Acts** that could or should have been the subject of a notice given on an earlier policy of which this **Policy** is a direct or indirect renewal or replacement, provided that such facts, events, circumstances or **Wrongful Acts**
- (i) could and should have been notified after the **Continuity Date**; and
 - (ii) were not the subject of any notice given on any earlier policy of which this **Policy** is a direct or indirect renewal or replacement.

The cover provided by this Extension will be in accordance with the terms and conditions of the policy in place at the time such **Claim** or fact, event, circumstance or **Wrongful Act** could and should have been notified, except where such policy provides broader cover than this **Policy**, in which case the terms and conditions of this **Policy** will apply.

2.4 Discovery period

2.4.1 In the event that this **Policy** is neither renewed nor replaced for any reason other than for non-payment of premium, and provided that no **Merger or Acquisition** has occurred, the **Policyholder** will be entitled to a **Discovery Period** of:

- (a) the amount of time specified in the **Schedule**, subject to payment of an additional premium as specified in the **Schedule** within 30 days of the date of non-renewal or non-replacement; or
- (b) 90 days, automatically.

2.4.2 Should a **Merger or Acquisition** occur during the **Policy Period** the **Insurer** will, at the request of the **Policyholder**, provide a quote for a run-off **Discovery Period** at terms and conditions that the **Insurer** may reasonably impose.

Discovery Periods are non-cancellable, and any **Claim** made during a **Discovery Period** will be deemed to have been first made during the immediately preceding **Policy Period**.

The purchase of or entitlement to a **Discovery Period** will not increase or reinstate the **Limit of Liability**.

2.5 Emergency defence costs and representation expenses

Notwithstanding condition 5.3.1 'Consent', if, due to an emergency, the **Insured** is unable to request the **Insurer's** prior written consent to the incurring of **Defence Costs** or **Representation Expenses**, then the **Insured Persons** may incur reasonable **Defence Costs** or **Representation Expenses** without the **Insurer's** prior written consent until such time as the **Insured** contacts or could reasonably have contacted the **Insurer**.

2.6 Extended discovery period for retiring directors and officers

In the event that this **Policy** is neither renewed nor replaced for any reason, other than for non-payment of premium, then any **Director** or **Officer** who retires from all paid employment and office with a **Company** during the **Policy Period**, but prior to any **Merger or Acquisition**, shall be entitled to an automatic **Discovery Period** of 120 months following expiry of the **Policy Period**.

2.7 Legal representatives and spouses

- (a) If an **Insured Person** dies or becomes legally incapable, insolvent or bankrupt, then this **Policy** will afford cover for **Loss** resulting from **Claims** first made against such **Insured Person's** estate, heirs, executors or other legal representatives during the **Policy Period** (or **Discovery Period**, if applicable), provided that the estate, heirs, executors or other legal representatives must comply with the terms of this **Policy**.
- (b) If a **Claim** against an **Insured Person** includes a claim against such **Insured Person's Spouse** solely by reason of (i) such **Spouse's** legal status as a **Spouse** of such **Insured Person**, or (ii) such **Spouse's** ownership interest in property which the claimant seeks as recovery for **Claims** made against such **Insured Person**, then all loss which such **Spouse** becomes legally liable to pay resulting from such **Claim** will be treated for the purposes of this **Policy** as **Loss**, except to the extent the **Claim** alleges any act, error or omission by such **Insured Person's Spouse**.

2.8 Travel and accommodation expenses

The definition of **Representation Expenses** is extended to include reasonable travel and accommodation expenses (other than regular or overtime wages, salaries, fees or other remuneration of the **Insured Persons**, or costs or overhead of the **Company**) incurred by an **Insured Person** in attending an **Investigation** in a state, territory or country that they do not normally reside, but only to the extent that the **Company** is unable to indemnify the **Insured Person** for such costs as a result of insolvency or legal or regulatory prohibition.

2.9 Occupational health and safety

The definition of **Investigation** is extended to include any inspection, audit or other compliance monitoring activity undertaken by any occupational health and safety regulator (or any person authorised by a occupational health and safety regulator to conduct such compliance monitoring activity), in which an **Insured Person** is requested or required to attend or produce documents and:

- (a) has as its subject matter the affairs of the **Company** or the conduct of that **Insured Person** in their capacity as such; or
- (b) with respect to Extension 2.10 'Outside Directorships', has its subject matter the affairs of an **Outside Entity** or the conduct of that **Insured Person** in their capacity as a director, officer, trustee, governor, councillor, chancellor or the holder of a position of equivalent status in an **Outside Entity**.

Exclusion 3.1 'Bodily Injury and Property Damage' shall not apply to any cover provided by this Extension, or to **Loss** resulting from **Claims** for an actual or alleged breach of any occupational health and safety law or regulation, including any law or regulation pertaining to workplace death or industrial or corporate manslaughter.

2.10 Outside directorships

The definition of **Insured Person** is extended to include a person who holds, held, or after the commencement of the **Policy Period** assumes, the position of director, officer, trustee, governor, councilor, chancellor or equivalent in an **Outside Entity**, provided that such position was held or is assumed and maintained with the knowledge and consent of, or at the request of, any **Company**.

Any cover afforded by this Extension will be specifically excess of:

- (a) any indemnity; or
- (b) any insurance contract, including any applicable **Specified Policy**, available from or through the **Outside Entity**.

2.11 Personal tax liability

The definition of **Loss** is extended to include any personal liability an **Insured Person** incurs with respect to unpaid taxes of an insolvent **Company**.

2.12 Public relations expenses

The definition of **Loss** is extended to include the reasonable costs, charges, fees and expenses of a public relations firm or consultant which an **Insured Person** engages to:

- (a) Prevent or limit the adverse effects or negative publicity which results from or is anticipated to result from a **Claim**; or
- (b) Disseminate the findings of a final adjudication in favour of such **Insured Person**.

2.13 Special excess limit for insured persons

Notwithstanding condition 4.1 'Limit of Liability', in the event that:

- (a) the **Limit of Liability**;
- (b) any valid and collectible insurance that is specifically excess of this **Policy**; and
- (c) all other indemnification available to an **Insured Person**,

are fully exhausted, an additional **Special Excess Limit** shall apply, but only in respect of **Loss** covered under Insuring Clause 1.1 and only to the extent that such **Loss** results from a **Claim** that is not a related **Claim** as specified in condition 4.3 'Related Claims'.

2.14 Legal consultation

The **Insured** is entitled to a total of two hours of legal advice from the legal firm specified in the **Schedule** on any matter related to the risks insured under this **Policy**, except in relation to the scope of cover provided under this **Policy**, or claims disputes or complaints against the **Insurer**, provided that:

- (a) The advice is sought during the **Policy Period**; and
- (b) The **Insured** must provide the legal adviser with details of the policy number, **Policy Period** and the name of the **Policyholder**; and
- (c) The legal advice is limited to 30 minutes in relation to any particular matter.

The cost of the legal advice is to be borne by the **Insurer** and will not erode the **Limit of Liability**.

2.15 Business crisis consultant fees

The **Insurer** will pay on behalf of the **Company**, **Business Crisis Consultant Fees** incurred by the **Company** during the first thirty days immediately following a **Business Crisis Event** that first occurs during the **Policy Period**. No **Excess** is applicable to this Extension.

3. Exclusions

The **Insurer** will not be liable for:

3.1 Bodily injury and property damage

Loss resulting from **Claims** for bodily injury, any form of psychiatric, psychological or mental injury, illness, disease or death of any person, or damage to or destruction of any tangible property, including any consequent loss of use thereof, except that this Exclusion will not apply in respect of any actual or alleged psychiatric, psychological or mental injury alleged in any **Claim** by any **Insured Person** or employee of the **Company**, resulting from any **Employment Wrongful Act**.

3.2 Intentional misconduct

Loss resulting from **Claims** against any **Insured** arising directly or indirectly from or in respect of:

- (a) any conduct or contravention in respect of which a liability is the subject of a prohibition in section 199B(1) of the Corporations Act 2001 (Cth);
- (b) any deliberately fraudulent or deliberately dishonest act or omission; or
- (c) any willful violation of law or willful breach of duty imposed by any law,

provided that this Exclusion shall not apply until the conduct described in (a), (b) or (c) above is established by a formal written admission by the **Insured** or final, non-appealable adjudication of a judicial or arbitral tribunal (other than in a proceeding brought by the **Insurer**).

3.3 Prior claims and circumstances

Loss resulting from **Claims** arising directly or indirectly from or in respect of:

- (a) any actual or alleged fact, event, circumstance or **Wrongful Act** which has been, could or should reasonably have been the subject of any notice given under any policy of which this **Policy** is a direct or indirect renewal or replacement; or
- (b) any pending or prior demand, suit or proceeding:
 - (i) involving an **Insured** or **Outside Entity**; and
 - (ii) initiated or otherwise begun prior to the **Continuity Date**,
or derived from the same or substantially the same facts or circumstances contained therein.

3.4 U.S.A. jurisdiction

Loss resulting from any **Claim** brought in a court of law, arbitration, tribunal, forum or other body entitled to impose enforceable orders against the **Insured** in the United States of America or any of its protectorates or territories.

4. Limit of liability and excess

4.1 Limit of liability

The **Insurer's** liability under this **Policy** will not exceed the **Limit of Liability** in the aggregate for all **Loss**, irrespective of the number of **Claims** or **Business Crisis Events**, the number of **Insureds**, or the amount of such **Loss**.

The **Insurer** has no liability for any amount above the **Limit of Liability**.

Any sub-limit specified in this **Policy** is the **Insurer's** maximum aggregate liability for **Loss** to which the sub-limit applies, and is part of and not in addition to the **Limit of Liability**.

The purchase of or entitlement to a **Discovery Period** will not increase or reinstate the **Limit of Liability**.

4.2 Excess

The **Insured** is liable for the amount of **Loss** that is less than the **Excess** for each **Claim**, and the **Insurer** has no liability for the amount of **Loss** that is less than the **Excess**.

The **Excess** is deducted from **Loss** payable before the application of section 4.1, Limit of Liability.

The **Insured** agrees that the **Excesses** specified in the **Schedule** must be retained by the **Insured** and are to remain uninsured.

Where the **Company** is in liquidation (other than voluntary liquidation) and has insufficient funds available to indemnify the **Insured Persons** for **Loss** as agreed, then the **Excess** applicable to the **Company** specified in the **Schedule** is not payable to the **Insurer**.

If a **Company** has granted indemnity to an **Insured Person** but fails to indemnify the **Insured Person** within 30 days, the **Insurer** shall pay any applicable **Excess** and the **Company** shall reimburse the **Insurer** accordingly.

4.3 Related claims

All **Claims** arising directly or indirectly from or in respect of the same or causally related, or continuous or repeated facts, events, circumstances or **Wrongful Acts**, or series of facts, events, circumstances or **Wrongful Acts**, whether committed by one or more **Insured** and whether directed to or affecting one or more than one person or legal entity shall, for the purposes of this **Policy**, be considered as a single **Claim**.

In the event a **Claim** is notified to the **Insurer**, any subsequent **Claim** that arises directly or indirectly from or in respect of the facts or **Wrongful Acts** alleged in the original **Claim** will be deemed to have been first made at the time the original **Claim** was first made and notified on the date the original **Claim** was first notified to the **Insurer**.

5. Claims conditions

5.1 Notifications

The **Policyholder** must give to the **Insurer** notification of any **Claim** as soon as reasonably practicable after the responsible **Officer** first becomes aware of such **Claim** but no later than 60 days after the expiration of the **Policy Period** or any applicable **Discovery Period**; and

Each notification of a **Claim** must include so far as practicable:

- (i) the identity of the claimant or potential claimant; and
- (ii) the nature of the **Claim**; and
- (iii) the likely quantum of the **Claim**.

The **Policyholder** must provide the **Insurer** with such further information and documentation as it may reasonably require.

The **Policyholder** must give to the **Insurer** notification of any **Business Crisis Event** as soon as reasonably practicable and during the **Policy Period**. Each notification of a **Business Crisis Event** must include a full description of the event.

5.2 Co-operation

In the event of a **Claim**, the **Insured** will at all times and at its own cost provide the **Insurer** with all information, evidence, documentation, assistance and co-operation and will execute such documents, including signed statements and affidavits, which the **Insurer** reasonably requests.

The **Insured** will at all times and at its own cost use reasonable endeavours to do and concur in doing everything reasonably practicable to avoid or diminish **Loss** and to assist with the defence, investigation or settlement of any **Claim**.

In the event a **Claim** is made against an **Insured Person** by a **Company**, the **Insurer** shall have no obligation to communicate with any other **Insured Person** or the **Company** in relation to that **Claim**.

The **Insurer** may make any investigation it deems necessary.

5.3 Claims conduct

It is the duty of the **Insured** to contest and defend any **Claim** made against them.

The **Insurer** is entitled to associate and participate fully in the defence or settlement of any **Claim**. The **Insurer** reserves entirely its rights under this **Policy**, including its right to agree or deny cover while it assesses a **Claim** or participates in the defence of any **Claim**. The **Insurer's** rights under this **Policy** are not affected if it does not participate in the defence.

Neither the **Insured** nor the **Insurer** will be required to contest or litigate any **Claim** if, in the opinion of Senior Counsel, reasonable attempts should be made to settle the **Claim**. The Senior Counsel shall be mutually agreed upon, or in the absence of such agreement, as nominated by the President of the NSW Bar Association. The cost to obtain the opinion will be borne by the **Insurer** and will not erode the **Limit of Liability**. Senior Counsel shall provide the opinion in writing. In formulating the opinion Senior Counsel shall consider commercial matters including the amount of the **Claim**, the actual and potential **Loss** that may reasonably be incurred in contesting the **Claim**, the liability prospects and the prospect of recovering costs against the claimant in the event that the defence is successful. Senior Counsel shall also provide a settlement range within which reasonable attempts should be made to settle the **Claim**.

If it is the opinion of Senior Counsel that reasonable attempts should be made to settle the **Claim**, the **Insured** shall not object to the **Insurer's** attempt to do so.

The applicable **Insured** or **Policyholder** shall reimburse the **Insurer**, severally and according to their respective interests, for any payments which are ultimately determined not to be covered by this policy.

The **Insurer** accepts the retention of separate legal counsel where material conflict exists between **Insureds**. In the event a **Claim** is made against both the **Company** and one or more **Insured Persons**, such **Company** and **Insured Persons** shall retain separate counsel.

5.3.1 Consent

The **Insured** must not settle or offer to settle any **Claim**, incur any **Defence Costs, Business Crisis Consultant Fees, Prosecution Costs, Bail Bond and Civil Bond Costs, Representation Expenses** or costs, charges, fees or expenses incurred under any Extension, or otherwise assume any contractual obligation or admit any liability in respect of any **Claim** without the **Insurer's** prior written consent, which shall not be unreasonably delayed or withheld.

The **Insurer** consents to the appointment of any **Panel Member Firm** to act on the **Insured's** behalf in respect of any **Claim**.

5.4 Allocation of loss

5.4.1 This Claims Condition applies to any part of any **Loss** resulting from a **Claim** which is in respect:

- (a) of one **Insured** only; or
 - (b) of more than one **Insured**, whether jointly or severally; or
 - (c) of one or more **Insured** and one or more persons or entities who is not an **Insured**, whether jointly or severally,
- including **Loss** that is partly covered and partly not covered under this **Policy**,
(together 'Loss to be Allocated').

5.4.2 The **Insurer** must determine a fair and reasonable allocation of the covered part of the Loss to be Allocated among the relevant **Insureds** and the **Insurer** having regard to the extent of each **Insured's** comparative responsibility for the Loss to be Allocated. The **Insurer's** consideration of what is fair and reasonable should include without limitation, the following factors:

- (a) the nature of the **Claim** against each **Insured**;
- (b) the issues of fact and law in relation to each **Insured**;
- (c) the content and the manner of the conduct of any defence of the **Claim**;
- (d) the relative degree of personal responsibility for the **Loss**;
- (e) the extent to which the **Insured's** responsibility for the **Loss** is joint, several or shared;
- (f) the extent to which any person or entity, other than that **Insured**, would obtain a benefit from the payment by the **Insurer**;
- (g) the extent to which the **Loss** is solely of that **Insured**;
- (h) the extent to which the issues in the **Claim** against that **Insured** are in common with the issues in the **Claim** against any other person or entity;
- (i) the extent to which the **Loss** is partly covered and partly not covered under this **Policy**;
- (j) in the event of a settlement, the likely comparative responsibility had the settlement not occurred.

5.4.3 If the **Insured** wishes to dispute the **Insurer's** determination of the allocation, each party agrees that the dispute must be referred for expert determination in accordance with the Australian Commercial Disputes Centre ("ACDC") Mediation Guidelines, to an expert agreed by the parties, or if the parties do not agree on an expert, an expert nominated by the then current CEO of ACDC or the CEO's nominee.

5.4.4 Each party agrees to sign an agreement with the expert that confirms the following:

- (a) the expert may:
 - (i) consider relevant industry practice;
 - (ii) consider all information presented to the expert by either party;
 - (iii) request more information from either party;
 - (iv) request a meeting with the parties (to which they may bring their lawyers); and
- (b) the expert must decide within thirty days after the agreement is signed, and need not give reasons;
- (c) the expert's decision will be binding on the parties and final;
- (d) the expert will exclude all liability of the expert to either party (including liability for negligence) to the full extent permitted by law; and
- (e) the fees for the appointed expert (to be charged at the expert's usual rate) will be borne by the **Insurer** and will not erode the **Limit of Liability**.

This allocation applies for all purposes under this **Policy** and any allocation of **Loss** will not apply to or create a presumption with respect to the allocation of other **Loss** on account of such **Claim**.

5.5 Priority of payments

The **Insurer** will pay covered **Loss** as it becomes due.

If the **Limit of Liability** is insufficient with respect to covering all **Loss** concurrently due under the **Policy**, the **Insurer** will first pay the **Loss** of **Insured Persons** under Insuring Clause 1.1.

To the extent any additional covered **Loss** is due, the **Insurer** will pay such **Loss** in the order stipulated by the **Policyholder**.

5.6 Subrogation and recoveries

The **Insured** will take all necessary steps to preserve its rights of recovery in the event the **Insurer** makes any payment under this policy. The **Insured** will not, without the **Insurer's** prior consent in writing:

- (a) release, agree not to sue on, waive or prejudice, any such rights; or

- (b) enter into any arrangement or compromise or do any act whereby any rights or remedies to which the **Insurer** would be subrogated are or may be prejudiced.

With respect to any capping of liability of any external professional services firm by any applicable legislation or otherwise as agreed in contract with an **Insured**, such capping is deemed not to have prejudiced any rights or remedies to which the **Insurer** may have been subrogated in the absence of such legislation or contract.

The **Insurer** will only exercise its rights of subrogation against an **Insured Person** in respect of any **Claim** if Exclusion 3.2 'Intentional Misconduct' applies to that **Claim** and that **Insured Person**.

6. General conditions

6.1 Assignment

This **Policy** cannot be assigned by the **Policyholder** without the prior written consent of the **Insurer**.

6.2 Acquisition, merger or winding up of policyholder

If, during the **Policy Period**, any of the following events occur:

- (a) a **Merger or Acquisition** of the **Policyholder**; or
- (b) the appointment of a receiver, controller, administrator or liquidator to the **Policyholder** or, the commencement of a scheme of arrangement or compromise or a winding up process in respect of the **Policyholder**,

then this **Policy** will remain in force until the expiry of the **Policy Period**, but only in respect of **Loss** resulting from **Claims** based on **Wrongful Acts** occurring, or matters that are the basis of an **Investigation** or an extradition proceeding occurring or arising, prior to the event described in parts (a) or (b) of this General Condition.

6.3 Authorisation

The **Policyholder** shall act as the agent for each **Insured** and each **Insured** is bound by any statement, act or omission of the **Policyholder** for all purposes under this **Policy**, subject always to condition 6.11 'Severability'.

If the **Policyholder** is insolvent each **Insured** shall act on their own behalf.

If the **Policyholder** is more than one entity, then the first entity listed in the **Schedule** will be deemed to be the **Policyholder**.

6.4 Cancellation

The **Policyholder** is entitled to cancel this **Policy** at any time, by notice, to the **Insurer**.

Upon receipt of such request the **Insurer** will retain a short period premium calculated at a pro rate of the **Full Annual Premium** for the time it has been on risk plus ten per cent and the **Policyholder** will receive a refund of any balance of the premium.

The **Insurer** may only cancel this **Policy** for non-payment of premium.

6.5 Confidentiality

The **Insured** must not disclose the existence or terms of this **Policy**, including but not limited to the **Limit of Liability**, the nature of the insurance or the premium payable under the **Policy** to any person who is not an **Insured** except where:

- (a) the **Insured** is required by law or stock exchange rules to do so;
- (b) the **Insurer** provides its prior written consent to such disclosure; or
- (c) the person is a professional adviser.

6.6 Currency

All premiums, **Limits of Liability**, **Excesses**, **Loss** and other amounts under this **Policy** are expressed and payable in Australian dollars, unless otherwise stated. If judgment is rendered, settlement is denominated or another element of **Loss** under this **Policy** is stated in a currency other than Australian dollars, then payment under this **Policy** will be made in Australian dollars calculated at the rate of exchange published in the Australian Financial Review as the wholesale market closing rate on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively.

6.7 Goods and Services Tax

As part of the premium, the **Insurer** will charge the **Policyholder** an amount on account of GST.

The **Policyholder** must inform the **Insurer** of the extent to which it is entitled to an input tax credit for that GST amount each time that it notifies a **Claim** under this **Policy**. No payment will be made to the **Policyholder** for any GST liability that it may incur on the settlement of a **Claim** if it does not inform the **Insurer** of its entitlement or correct entitlement to an input tax credit.

Despite the other terms of this **Policy**, the **Insurer's** liability to the **Policyholder** will be calculated taking into account any input tax credit to which the **Policyholder** is entitled for any acquisition which is relevant to the **Claim**, or to which it would have been entitled had it made a relevant acquisition.

'GST', 'input tax credit', 'acquisition' and 'supply' have the meaning given in A New Tax System (Goods and Services Tax) Act 1999.

6.8 Governing law

The construction, interpretation and meaning of the terms of this **Policy** will be determined in accordance with the laws of the Commonwealth of Australia and the State or Territory where the **Policy** was issued. Any disputes relating to the construction, interpretation and meaning of the terms of this **Policy** will be submitted to the exclusive jurisdiction of the courts of the Commonwealth of Australia.

6.9 Interpretation

In this **Policy** the singular includes the plural and vice versa. The male gender includes the female and neutral genders. Person includes bodies corporate, except in the term **Insured Person** when it does not include bodies corporate.

A reference in this **Policy** to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision (whether of the Commonwealth of Australia or elsewhere).

The titles and headings to the various sections of the **Policy** are included solely for ease of reference and do not in any way limit or expand or otherwise affect the terms of such sections.

6.10 Manner of giving notices

Notification of a **Claim** or **Business Crisis Event** given to the **Insurer** under this **Policy** will be taken to have been received:

- (a) if delivered by hand to the 'Claims Notification' address specified in the **Schedule** as appropriate, on the date of delivery, provided that delivery is acknowledged in writing by the **Insurer**; or
- (b) if sent by post to the 'Claims Notification' address specified in the **Schedule** as appropriate, five working days after posting; or
- (c) if sent by facsimile or email to the 'Claims Notification' facsimile number or email address specified in the **Schedule** as appropriate on a business day at the **Insurer's**, on the date of transmission, or if sent on a non-business day at the **Insurer's**, on the next working day, provided that in both cases the sender's facsimile machine or email software records a successful transmission.

6.11 Severability

The **Proposal** shall be construed as a separate proposal by each **Insured Person**.

For the purpose of determining the availability of cover under this **Policy**, including the applicability of the Exclusions and with respect to a breach of any term or condition of this **Policy**:

- (a) the statements made by, facts pertaining to, conduct, knowledge or state of mind of, or acts, errors, or omissions of one (or more) **Insured** will not be imputed to any other **Insured Person**; and
- (b) the statements made by, facts pertaining to, conduct, knowledge or state of mind of, or acts, errors, or omissions of the Managing Director, the Chairman, the Chief Executive Officer, the Chief Financial Officer, General Counsel or holders of equivalent positions of a **Company**, will be imputed to that **Company**.

6.12 Non-avoidance

This **Policy** will never be rescinded or avoided, in whole or in part, for any reason.

The **Insurer** waives all rights under Section 28 of the Insurance Contracts Act 1984 (Cth) with respect to non-fraudulent non-disclosure or non-fraudulent misrepresentation by an **Insured**.

In the event that the **Insurer** is entitled to reduce liability pursuant to section 28(3) of the Insurance Contracts Act 1984 (Cth), as a result of fraudulent non-disclosure or fraudulent misrepresentation by an **Insured Person**, the **Insurer** will only reduce liability in respect of such **Insured Person** if the **Insurer** is able to establish that such **Insured Person** was directly involved in or aware of such fraudulent non-disclosure or fraudulent misrepresentation.

6.13 Other insurance

If, at the time any **Loss** arises under this **Policy**, there is any other insurance contract in force covering the same **Loss**, the **Policyholder** must notify the **Insurer** as soon as reasonably practicable providing full details of such other insurance contract, including the identity of the insurer, the policy number and such further information as the **Insurer** may reasonably require.

6.14 Other notices

Any communications or notices to the **Insurer** under this **Policy** (other than a notification of a **Claim** or **Business Crisis Event** to which the Claims Conditions apply), including but not limited to any application to purchase a **Discovery Period**, must be sent by the **Policyholder** to the **Insurer** at the 'Insurer Address' or facsimile number specified in the **Schedule**.

6.15 Payment of premium

The **Policyholder** must pay the premium specified in the **Schedule** for the **Policy Period** to the **Insurer** by the Due Date. The Due Date is on or before ninety days after the inception date of the **Policy Period** specified in the **Schedule** or such other time that the **Insurer** agrees in writing. If the **Policyholder** fails to pay the premium by the Due Date, the **Insurer** is entitled to cancel this **Policy** in accordance with the Insurance Contracts Act 1984 (Cth).

6.16 Variation of the policy

No variation of this **Policy** will be effective, except when made by written **Endorsement**.

7. Definitions

When used in this **Policy**:

Bail Bond and Civil Bond Costs means the reasonable premium, including any fees but not any required collateral, to purchase a bond or similar financial instrument that guarantees an **Insured Person's** contingent obligation for bail or equivalent in any jurisdiction required by a court in respect of any **Claim**.

Business Crisis Consultant Fees means the reasonable costs, charges, fees and expenses of an independent management consultant engaged to minimise the effect of a **Business Crisis Event**.

Business Crisis Event means any one of the following unforeseen events which, in the reasonable opinion of the Chief Executive Officer (or equivalent) of the **Policyholder**, if left unmanaged has the potential to lead to an imminent decrease of 30% or more of the **Company's** consolidated annual revenues:

- (a) The loss of a major customer, contract or credit facility of any **Company**;
- (b) The unexpected death, injury, resignation, or removal of any **Insured Person**;
- (c) The recall or boycott of any product manufactured, distributed or sold by any **Company**;
- (d) The illegal tampering with or contamination of any product manufactured, distributed or sold by the **Insured**;
- (e) The invalidation of a patent, trademark or copyright held by the **Company**;
- (f) Damage to the premises of any **Company** as a result of any man-made disaster;
- (g) The theft of intellectual property by way of unauthorised intrusion into the computer systems of any **Company**; or
- (h) Industrial unrest or workplace violence first occurring in the vicinity of any **Company**.

Claim means any:

- (a) written demand;
- (b) civil, administrative, regulatory or arbitration proceeding (including any mediation, conciliation or other alternate dispute resolution process), suit or counter-claim; or
- (c) criminal proceeding;

made against an **Insured Person** for a specified **Wrongful Act** or

- (d) a **Securities Claim**;
- (e) an **Investigation**, deemed to be made at the time the **Insured Person** is first requested or required to attend or produce documents to such **Investigation**; or
- (f) an extradition proceeding.

Company means:

- (a) the **Policyholder**; and
- (b) any entity that:
 - (i) is a **Subsidiary** of the **Policyholder** prior to or as at the commencement of the **Policy Period**; or
 - (ii) with respect to Extension 2.1 'New Subsidiaries', becomes a **Subsidiary** of the **Policyholder** during the **Policy Period**

but only in respect of **Wrongful Acts** occurring, or matters which are the basis of an **Investigation** or extradition proceeding occurring or arising, subsequent to such entity becoming and whilst such entity is, a **Subsidiary** of the **Policyholder**.

Company Wrongful Act means any actual or alleged act, error or omission, but solely with respect to the purchase, sale, transfer, or ownership of **Securities** from, by or to the **Company**.

Continuity Date means the date specified in the **Schedule**.

Control means the definition of control in the Corporations Act 2001 (Cth).

Defence Costs means the reasonable costs, charges, fees and expenses (other than regular or overtime wages, salaries, fees or any other remuneration of the **Insured Persons**, or costs or overhead of the **Company**) incurred in defending, investigating, appealing or settling **Claims**.

Director means:

- (a) a validly appointed director (as defined in the Corporations Act 2001 (Cth) or any equivalent provision in any jurisdiction in which a **Company** is incorporated) of the **Company**; or
- (b) a shadow director; or
- (c) a de facto director or prospective director named as such in any listing particulars or prospectus issued by a **Company**.

Discovery Period means a period of time immediately following the expiration of the **Policy Period** during which written notice may be given to the **Insurer** of a **Claim** first made during such period of time, and based on **Wrongful Acts** occurring, or matters which are the subject of an **Investigation** or extradition proceeding occurring or arising, prior to the expiry of the **Policy Period**.

Employment Wrongful Act means any actual or alleged employment-related act, error, omission or conduct constituting actual, constructive or alleged: wrongful dismissal, discharge or termination of employment; wrongful failure to employ or promote; wrongful deprivation of career opportunity; misleading representation or advertising in respect of employment; wrongful disciplinary action; negligent employee evaluation; wrongful demotion; breach of employment contract; sexual or workplace harassment (including the creation of a workplace environment conducive to such harassment); wrongful discrimination; failure to grant tenure; invasion of privacy or defamation.

Endorsement means any document which is described as an endorsement to this **Policy** and intends to vary it. An **Endorsement** does not affect or increase the **Limit of Liability**, or any other term, except to the extent specifically provided in the **Endorsement**. Each **Endorsement** is otherwise subject to all the terms and conditions of this **Policy**.

Excess means the sum of:

- (a) the applicable **Excess** specified in the **Schedule**; and
- (b) any amount payable under a **Specified Policy**; and
- (c) under the Outside Directorships Extension, any other indemnity available from an **Outside Entity**.

Full Annual Premium means the annual premium payable by the **Insured**, including any additional premium which becomes payable in respect of the **Policy Period** in question.

Insured means:

- (a) the **Company**; and
- (b) the **Insured Persons**.

Insured Person means any natural person who was, is or after the commencement of the **Policy Period** becomes:

- (a) a **Director** or **Officer**;
- (b) a member of a committee established by or approved by the board of directors of the **Company** whether under statute or otherwise;
- (c) a **Director**, corporate trustee or policy committee member of any superannuation fund established for the benefit of employees in a **Company**;
- (d) an employee of a **Company**:
 - (i) to the extent such employee is acting in a managerial or supervisory capacity;
 - (ii) with respect to a **Claim** alleging an **Employment Wrongful Act**;
 - (iii) in connection with an **Investigation**; or
 - (iv) to the extent such employee is implicated in a **Claim** along with a **Director** or **Officer**.

Insurer means Vero Insurance Limited ABN 48 005 297 807.

Internal Inquiry means any internal investigation or inquiry within a **Company** or **Outside Entity** initiated in response to a direct request by an **Official Body** that has its subject matter the conduct of an **Insured Person** in their capacity as such (or, with respect to Extension 2.11 'Outside Directorships', in their capacity as a director, officer, trustee, governor, councillor, chancellor or the holder of a position of equivalent status, in an **Outside Entity**) and in which such **Insured Person** is requested or required to attend or produce documents.

Investigation means any investigation, examination, interview, inquiry, audit, inspection, raid, site visit or other proceeding ordered or commissioned by any **Official Body** in which an **Insured Person** is requested or required by such **Official Body** to attend or produce documents and:

- (a) has as its subject matter the affairs of the **Company** or the conduct of that **Insured Person** in their capacity as such; or
- (b) with respect to Extension 2.10 'Outside Directorships', has its subject matter the affairs of an **Outside Entity** or the conduct of that **Insured Person** in their capacity as a director, officer, trustee, governor, councillor, chancellor or the holder of a position of equivalent status in an **Outside Entity**.

Investigation shall also include an **Internal Inquiry**.

Limit of Liability means the amount specified in the **Schedule**.

Loss means any amount which the **Insured** is legally obligated to pay, including:

- (a) awards of damages (including punitive, exemplary, multiplied or aggravated damages);
- (b) judgements;
- (c) orders made by any court or tribunal to pay compensation;
- (d) interest (including pre- and post-judgment interest);

- (e) awards of costs or settlements (including claimant's costs and expenses);
- (f) fines and penalties imposed upon **Insured Persons**;
- (g) **Defence Costs**;
- (h) with respect to **Claims** made against **Insured Persons** only: **Representation Expenses, Prosecution Costs and Bail Bond and Civil Bond Costs**; and
- (i) under the Business Crisis Consultant Fees Extension only, **Business Crisis Consultant Fees**.

Notwithstanding the above, **Loss** does not include:

- (i) taxes other than those covered under Extension 2.11 'Personal Tax Liability';
- (ii) any amount which the **Insurer** is prohibited from paying pursuant to the laws of the jurisdiction in which the **Claim** is determined;
- (iii) any amount representing a profit or advantage to which the **Company** was not legally entitled; or
- (iv) fines and penalties for intentional or reckless acts.

Merger or Acquisition means:

- (a) the **Policyholder** or the **Company** consolidating with, merging into or selling all or substantially all of its assets such that the **Policyholder** or the **Company** is not the surviving entity; or
- (b) any entity obtaining **Control** of the **Policyholder** or the **Company**.

Non-Profit Outside Entity means a registered charity or a trade association or other non-profit organisation of any kind, whether or not that organisation is exempt from the payment of income tax.

Official Body means any regulator, government body or authority, governmental or authoritative agency, body or authority, governmental or authoritative agency, body or institution.

Officer means:

- (a) a company secretary of the **Company**; or
- (b) a person:
 - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the **Company**;
 - (ii) who has the capacity to affect significantly the **Company's** financial standing; or
 - (iii) in accordance with whose instructions or wishes the **Directors** of the **Company** are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the **Directors** or the **Company**),
 other than:
 - (i) a receiver, or receiver and manager; or
 - (ii) an administrator or an administrator of a deed of company arrangement; or
 - (iii) a liquidator; or
 - (iv) a trustee or other person administering a compromise or arrangement made between the **Company** and someone else.

Outside Entity means any entity, other than a **Subsidiary**, that:

- (a) is a **Non-Profit Entity**;
- (b) has no securities listed on any exchange in the United States of America;
- (c) is not a bank, building society, credit union, stockbroker, venture capital company, private equity company, insurance or reinsurance company, investment manager, fund manager or similar entity; or
- (d) is specified in the **Schedule** or by **Endorsement**.

Policy means this policy wording, its appendices, the **Schedule** and any **Endorsements**.

Policyholder means the organisation specified as Policyholder in the **Schedule**.

Policy Period means the the time between 'From' and 'To' noted beside 'Policy Period' in the **Schedule**.

Panel Member Firm means any of the firms listed in the Appendix to this **Policy**.

Proposal means the signed proposal form and declaration completed in respect of this **Policy**, including any renewal declaration and any information supplied by the **Insured** about any matter or risk the subject of or relevant to this insurance or **Policy**.

Prosecution Costs means the reasonable costs, charges, fees and expenses incurred by an **Insured Person** to bring legal proceedings to overturn, or obtain the discharge, revocation or stay of any judicial order by an **Official Body** that is to the detriment of such **Insured Person** and arises from a **Claim**.

Representation Expenses means the **Insured Person's** share, according to condition 5.4 'Allocation of Loss', of reasonable costs, charges and expenses (other than regular or overtime wages, salaries, fees or other remuneration of the **Insured Persons**, or costs or overhead of the **Company**) incurred by or on behalf of that **Insured Person** in their capacity as such, in preparing for, attending, cooperating with and being represented at any **Investigation**.

Schedule means the schedule attaching to this **Policy**.

Securities means shares, stocks, bearer instruments, derivatives, bonds, warrants, debentures, rights under a depositary receipt or other securities (or interests therein) of whatever nature.

Securities Claim means any written demand, civil, criminal, formal administrative, regulatory or arbitration proceeding (including any mediation, conciliation or other alternative dispute resolution process), suit or counter-claim made against any **Company** for a specified **Company Wrongful Act**.

Special Excess Limit means the aggregate liability of the **Insurer** for all **Loss** covered under Extension 2.13 'Special Excess Limit for Insured Persons', up to the **Limit of Liability**.

Specified Policy means:

- (a) Any valid and collectible insurance contract under which the **Policyholder** or any **Insured** is entitled to an indemnity and which is specified in the **Schedule**, the **Proposal** or by **Endorsement**; or
- (b) any renewal or replacement of that insurance contract.

Spouse means a lawful spouse, domestic partner (including without limitation same sex partner) or any person deriving similar status by reason of the common law or statute.

Subsidiary means:

- (a) a subsidiary of the **Policyholder** as defined in the Corporations Act 2001 (Cth); or
- (b) any body corporate in which the **Policyholder**:
 - (i) controls the composition of the board of the body corporate; or
 - (ii) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the body corporate; or
 - (iii) holds more than one-half of the issued share capital of the first body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (c) any body corporate which is a subsidiary of a body corporate described in (a) or (b) above; or
- (d) any other body corporate whose accounts are consolidated into those of the **Policyholder** in accordance with the relevant Australian Accounting Standard.

Wrongful Act means any:

- (a) actual or alleged act, error, omission, conduct, misstatement, misleading statement, neglect, breach of duty, breach of trust, breach of contract, or breach of warranty of authority by an **Insured Person** in their capacity as such;
- (b) **Employment Wrongful Act**;
- (c) other actual or alleged wrongdoing by an **Insured Person** in their capacity as such; or
- (d) **Company Wrongful Act**, but only with respect to a **Securities Claim**.

End of wording

Appendix – Panel member firms

New South Wales

Moray & Agnew

Ian Denham
idenham@moray.com.au
Telephone 02 9234 4544

Kennedys

Penny Taylor
p.taylor@kennedyslaw.com.au
Telephone 02 8215 5912

Curwoods

Paul Garnon
paul.garnon@curwoods.com.au
Telephone 02 8231 6204

Lander and Rogers

Jon Hunt
jhunt@landers.com.au
Telephone 02 8020 7614

Victoria

Moray & Agnew

Anthony Scott
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Telephone 03 8687 7359

Lander & Rogers

Julie Smith
jsmith@landers.com.au
Telephone 03 9269 9341

Queensland

Barry Nilsson

Richard Leahy
richard.leahy@bnlaw.com.au
Telephone 07 3231 6318

Gadens

David Slatyer
dslatyer@qld.gadens.com.au
Telephone 07 3231 1532

Carter Newell

Mark Brookes
mbrookes@carternewell.com
Telephone 07 3000 8301

Moray & Agnew

Anthony Henley
ahenley@moray.com.au
Telephone 07 3225 5968

Western Australia

DLA Piper

Toby Barrie
toby.barrie@dlapiper.com
Telephone 08 6467 6029

Downings Legal

Andrew Davidson
adavidson@downings.com.au
Telephone 08 9420 1523

South Australia

Lawson Smith

Anthony Hillary
ahillary@lawsonsmith.com.au
Telephone 08 8210 2600

Notices

These notices do not form part of the policy.

Duty of disclosure

Before you enter into a contract of general insurance with an insurer, you have a duty, under the Insurance Contracts Act 1984, to disclose to the insurer every matter that you know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of insurance, and if so, on what terms.

You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance.

Your duty does not require the disclosure of matters: that diminish the risk to be undertaken by the insurer; that are of common knowledge; that your insurer knows or, in the ordinary course of his business, ought to know, or as to which compliance with your duty is waived by the insurer.

Non-disclosure

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a claim.

General Insurance Code of Practice

We support and adhere to the General Insurance Code of Practice. By incorporating these standards into our business, we are committed to providing the highest level of service to our customers, every time. Access a copy of the Code at <http://www.codeofpractice.com.au/> or alternatively, contact the Insurance Council of Australia on 9253 5100.

Privacy statement

Vero complies with the National Privacy Principles.

Please visit our website at www.vero.com.au to view our Privacy Statement in full.

