

# Employment Practice Liability Insurance Policy

Professional and financial risk solutions



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# Policy wording

## 1. Insuring clause

The **Insurer** will pay, on behalf of the **Insured**, **Loss** based on **Employment Wrongful Acts**, resulting from **Claims** first made against the **Insured** and notified to the **Insurer** during the **Policy Period**.

## 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 Acquisition or creation of new subsidiaries

2.1.1 If, during the **Policy Period**, the **Company** acquires or creates a new **Subsidiary** that has total assets (by reference to the new **Subsidiary's** most recent financial statements as at the time of acquisition or creation) that are no more than ten per cent of the total assets of the **Company** (by reference to the **Company's** most recent financial statements as at the time of acquisition or creation), then the definition of **Company** will be extended to include the new **Subsidiary**.

2.1.2 If, during the **Policy Period**, the **Company** acquires or creates a new **Subsidiary** that has total assets (by reference to the new **Subsidiary's** most recent financial statements as at the time of acquisition or creation) that are greater than ten per cent of the total assets of the **Company** (by reference to the **Company's** most recent financial statements as at the time of acquisition or creation), then the definition of **Company** will be extended to include the new **Subsidiary** for a sixty day period from the date of acquisition or creation.

In order for cover to be extended beyond the sixty day period, the **Policyholder** must, prior to the end of the sixty day period:

- (a) give the **Insurer** written notice of any such acquisition or creation together with such additional information as the **Insurer** may require; and
- (b) accept any notified alteration in the terms of this **Policy**; and
- (c) pay any additional premium required by the **Insurer**.

2.1.3 If the new **Subsidiary** or **Company** prepares consolidated financial statements, then the calculation of total assets will be by reference to the most recent consolidated financial statements.

2.1.4 The definition of **Company** will not be extended to include any new **Subsidiary** acquired or created by the **Company** that:

- (a) has any of its **Securities** listed on any exchange in **North America**; or
- (b) is domiciled or incorporated in **North America**; or
- (c) employs any person in **North America**.

### 2.2 Discovery period

2.2.1 In the event that the **Insurer** declines to offer terms for renewal of this **Policy**, other than for non-payment of premium, the **Policyholder** will be entitled to purchase a **Discovery Period**. The offer of renewal terms or premiums different from those in effect prior to renewal or cancellation of the **Policy** will not constitute the **Insurer** declining to offer terms for renewal.

The additional premium for the **Discovery Period** will be as specified in Item 7 (b) of the **Policy Schedule**.

2.2.2 The entitlement to purchase a **Discovery Period** lapses upon expiry of the **Policy Period**.

2.2.3 The application to purchase a **Discovery Period** must be received by the **Insurer** prior to the expiry of the **Policy Period**, and payment of the additional premium must be made to the **Insurer** within thirty days of the same date.

2.2.4 In the event that a **Merger or Acquisition** takes place, the **Policyholder** will not be entitled to purchase a **Discovery Period**.

2.2.5 During the **Discovery Period** the **Policyholder** may continue to notify **Claims** to the **Insurer**, but only **Claims** based on **Employment Wrongful Acts** committed or alleged to have been committed prior to the expiry of the **Policy Period**.

Any **Claim** made and notified to the **Insurer** during the **Discovery Period** will be deemed to have been first made and notified to the **Insurer** during the immediately preceding **Policy Period**.

### 2.3 Legal representatives

If an **Insured Person** dies or becomes legally incapable or bankrupt, then this **Policy** will afford cover for **Loss** resulting from **Claims**:

- (a) first made against such **Insured Person's** estate, heirs, executors or other legal representatives; and
- (b) notified to the **Insurer**,

during the **Policy Period** based on **Employment Wrongful Acts** by such **Insured Person**. However, the estate, heirs, executors or other legal representatives must comply with the terms of this **Policy**.

## 2.4 Spouses

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**.

This Extension does not apply to the extent the **Claim** alleges any act, error or omission by such **Insured Person's Spouse**.

## 3. Exclusions

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

### 3.1 Known claims and circumstances

**Loss** resulting from **Claims** arising directly or indirectly from or in respect of any fact, event, circumstance or **Employment Wrongful Act**:

- (a) known to any **Insured** at the inception of this **Policy** and which a reasonable person in the circumstances might reasonably expect to give rise to a **Claim**; or
- (b) which has been or should reasonably have been the subject of any written notice given under any policy of which this **Policy** is a direct or indirect renewal or replacement; or
- (c) alleged in, discovered in, relating to or underlying any **Claim** against any **Insured** on or prior to the Prior Litigation Date specified in Item 8 of the **Policy Schedule**,

except as provided for in General Term 5.5 Continuity.

### 3.2 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** resulting from any **Employment Wrongful Act**.

### 3.3 Liability of others

**Loss** resulting from **Claims** arising directly or indirectly from or in respect of the liability of others assumed by any **Insured** under any contract or agreement unless such liability would have attached in the absence of such contract or agreement.

### 3.4 Specified period employment contract

- (a) **Loss**, other than **Defence Costs**, resulting from **Claims** arising directly or indirectly from or in respect of a breach of a specified period employment contract; or
- (b) **Defence Costs** resulting from **Claims** arising directly or indirectly from or in respect of a breach of a specified period employment contract:
  - (i) unless and until the **Insured** has received legal advice based on the facts as they existed as at time of the actual or alleged breach from a competent legal advisor stating that the **Insured** has legal grounds to amend or terminate such specified period employment contract; and
  - (ii) provided that the **Insured** has not received legal advice from a competent legal advisor stating that the **Insured** does not have legal grounds to terminate specified period employment contract.

For the purposes of this Exclusion a specified period employment contract will be a specified period employment contract irrespective of whether or not such contract has a qualified or unqualified right to terminate the contract on notice prior to its expiry date.

### 3.5 Unfair employment contract

**Loss** resulting from **Claims** for or in respect of:

- (a) a contract of employment alleged to be unfair; or
- (b) the seeking of relief pursuant to Section 127 A of the Workplace Relations Act (Commonwealth) or Section 106 of the Industrial Relations Act (NSW) 1996 or Section 276 of the Industrial Relations Act (Queensland) or similar legislation in other jurisdictions.

### 3.6 Industrial relations

**Loss** resulting from arising directly or indirectly from or in respect of collective industrial or labour relations including but not limited to: strikes; lock-outs; demarcation disputes; negotiating awards or enterprise agreements; collective redundancies; obligations to consult representatives and employees in relation to redundancies and other actions that arise; other than **Claims** based on an individual employment relationship.

### 3.7 Government benefits

**Loss** resulting from **Claims** arising directly or indirectly from or in respect of an actual or alleged violation of the responsibilities, obligations or duties imposed by any law relating to occupational health and safety, workers compensation, unemployment insurance, retirement benefits, social security or disability benefits.

### 3.8 Dishonest or criminal intent

**Loss** resulting from **Claims** against any **Insured** arising directly or indirectly from or in respect of any **Employment Wrongful Act** committed by that **Insured** with dishonest, fraudulent, malicious or criminal intent, if it is found by way of any judgement or other final adjudication that such **Insured** did in fact commit such **Employment Wrongful Act**.

### 3.9 Superannuation fund trustees

**Loss** resulting from **Claims** arising directly or indirectly from or in respect of any act, error, omission, conduct, misstatement, misleading statement, neglect, breach of duty, breach of trust, breach of contract or breach of warranty of authority of the **Insured** acting in the capacity of trustee, administrator or manager of any superannuation, pension, health and welfare, profit sharing or other employee benefit plan, trust or fund including, but not limited to, any obligation incurred under the Australian Superannuation Industry (Supervision) Act 1993 or similar legislation in other jurisdictions.

### 3.10 Pollution

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

### 3.11 War and terrorism

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

- (a) declared or undeclared war, civil war, insurrection, riot, rebellion or revolution, military, naval or usurped power, governmental intervention, expropriation or nationalisation or any **Act of Terrorism**, regardless of any other cause or event contributing concurrently or in any other sequence; or
- (b) any action taken in controlling, preventing, suppressing or in any way relating to any **Act of Terrorism**.

### 3.12 Nuclear

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

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

### 3.13 Asbestos

**Loss** resulting from **Claims** arising directly or indirectly from or in respect of **Asbestos, Asbestos fibres** or derivatives of **Asbestos**.

## 4. Limit of liability and excess

If the **Insured** is comprised of more than one entity, the **Limit of Liability** and **Excess** applies to the group of such entities as a whole.

### 4.1 Limit of liability

The **Insurer's** liability to the **Insured** under this **Policy** will not exceed the **Limit of Liability** in the aggregate for all **Loss** resulting from all **Claims** first made and notified to the **Insurer** during the **Policy Period**.

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

The purchase of any **Discovery Period** will not increase or reinstate the **Limit of Liability**, which will be the **Insurer's** maximum liability for the **Policy Period** and **Discovery Period**, combined.

### 4.2 Excess

The **Insured** is liable for the amount of **Loss** that is less than the **Excess** for each **Claim**.

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

The **Insurer** has no liability for the amount of **Loss** that is less than the **Excess**.

The **Insured** agrees that the **Excess** specified in Item 5 (a) of the **Policy Schedule** and the **Excess** that is calculated by reference to Items 5 (a) and 5 (b) of the **Policy Schedule** must be retained by the **Insured** and is to remain uninsured.

### 4.3 Related claims

All **Related Claims** will be deemed to be one **Claim** and cover for all **Related Claims** will be provided as follows:

- (a) if the first **Related Claim** is first made during this **Policy Period** and notified to the **Insurer** during this **Policy Period** or any applicable **Discovery Period**, then coverage for all subsequent **Related Claims** will only be provided under this **Policy**; and
- (b) if the first **Related Claim** was first made and notified to this **Insurer** during a period prior to this **Policy Period**, during which the **Insured** had cover with this **Insurer**, then cover for all **Related Claims** will only be provided under that earlier policy with this **Insurer**, subject to the terms, excess and limit of liability of that earlier policy; and
- (c) if the first **Related Claim** was first made during a period prior to this **Policy Period**, during which the **Insured** did not have cover with this **Insurer**, then no cover for any **Related Claim** will be provided under this **Policy**.

## 5. General terms

### 5.1 Payment of premium

The **Policyholder** must pay the premium specified in Item 3 of the **Policy 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 Item 2 of the **Policy 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.

### 5.2 Authorisation

The **Policyholder** is 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 to General Terms 5.3, Disclosure and 5.4, Non-imputation and 5.10.1, Claims Conduct.

If the **Policyholder** is more than one entity, then the first entity listed in Item 1 of the **Policy Schedule** will be deemed to be the **Policyholder**.

### 5.3 Disclosure

Each **Insured** represents that the information about each **Insured** supplied to the **Insurer** before the **Policy Period** in respect of this **Policy** is correct, true and complete. The **Insured** acknowledges that the **Insurer** relies on this information and this representation.

### 5.4 Non-imputation

An **Insured Person** is not liable for any misrepresentation or non-disclosure in respect of or breach of, this **Policy**, in each case by any other **Insured Person**. Each **Insured** is entitled to make a claim against the **Insurer** under this **Policy**. The knowledge or state of mind of one **Insured Person** is not imputed to any other **Insured Person**.

### 5.5 Continuity

In the absence of fraudulent non-disclosure or fraudulent misrepresentation, where a **Claim** that would otherwise be covered by this **Policy** is excluded by Exclusion 3.1 a or 3.1 b, then cover is provided under this **Policy**, provided that:

- (a) the **Insured** first became aware of the fact, event, circumstance or **Employment Wrongful Act** that gave rise to the **Claim** after the Continuity Date specified in Item 6 of the **Policy Schedule**; and
- (b) the **Insured** was insured by the **Insurer** at the time when the **Insured** first became aware of such fact, event, circumstance or **Employment Wrongful Act** and has since been insured continuously by the **Insurer**, under a policy of which this **Policy** is a replacement; and
- (c) no **Related Claim** has been made against the **Insured** prior to the **Policy Period**.

The cover provided under this General Term will be in accordance with this **Policy**, except that:

- (i) if the excess applicable to the policy in force at the time when the **Insured** first became aware of such fact, event, circumstance or **Employment Wrongful Act** is higher than that part of the **Excess** that is calculated by reference to Items 5 (a) and 5 (b) of the **Policy Schedule**, then that higher amount will be deemed to be that part of the **Excess** that is calculated by reference to Items 5 (a) and 5 (b) of the **Policy Schedule** in respect of such **Claim**; and
- (ii) if the amount of the limit of liability applicable to the policy in force at the time when the **Insured** first became aware of such fact, event, circumstance or **Employment Wrongful Act** is lower than the amount of the **Limit of Liability**, then that lower amount will be deemed to be the amount of the **Limit of Liability** in respect of such **Claim**.

### 5.6 Jurisdiction

This **Policy** provides cover for **Claims** made anywhere in the world except for those **Claims**:

- (a) brought in a court of law, arbitration, tribunal forum or other body entitled to impose enforceable orders against the **Insured** in **North America**; or
- (b) arising from the enforcement of any judgment, order or award in respect of any action brought in any court of law in **North America**.

### 5.7 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.

### 5.8 Notice

#### 5.8.1 Notification of claims

The **Policyholder** must give to the **Insurer** notification of any **Claim** made against any **Insured**:

- (a) as soon as reasonably practicable within the **Policy Period** or within any applicable **Discovery Period**; and
- (b) at the address or facsimile number specified in Item 9 (a) of the **Policy Schedule**.

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.

#### 5.8.2 Other notices

Any other communications to the **Insurer** under this **Policy**, including any application to purchase a **Discovery Period**, must be sent by the **Policyholder** to the **Insurer** at the address or facsimile number specified in Item 9 (b) of the **Policy Schedule**.

Notice to the **Insured** may be given to the **Policyholder** or its agent at the address specified in Item 1 of the **Policy Schedule**.

#### 5.8.3 Manner of giving notices

Notification and notices given to the **Insurer** in accordance with 5.8.1 or 5.8.2 above will be taken to have been received:

- (a) if delivered by hand to the **Insurer's** address, on the date of delivery, provided that delivery is acknowledged in writing by the **Insurer**; or
- (b) if sent by post, five working days after posting; or
- (c) if sent by facsimile 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 records a successful transmission.

#### 5.9 Claims 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**.

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

#### 5.10 Defence of claims

##### 5.10.1 Claims conduct

The **Insurer** is entitled to take over and conduct in the name of the **Insured** the defence or settlement of any **Claim** and will have full discretion in the conduct of any proceedings and in the 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 conducts the defence. The **Insurer's** rights under this **Policy** are not affected if it does not conduct the defence.

If the **Insured** objects to a proposal by the **Insurer** to settle or compromise any **Claim** payable under this **Policy** and wishes to contest or litigate the matter, then the **Insured** may so elect, but the **Insurer's** liability in respect of any such **Claim** so contested or litigated will not exceed the amount for which, but for such election, it could have been settled or compromised by the **Insurer**, together with **Defence Costs** payable in accordance with the terms of this **Policy** and incurred up to the time of such election.

##### 5.10.2 Advancement of defence costs

The **Insurer** will advance **Defence Costs**, except that if and to the extent the **Insurer** requests repayment of those amounts because its assessment indicates that the amounts advanced were not covered under this **Policy**, the respective **Insured** must repay immediately to the **Insurer** the amount of the advance specified by the **Insurer** within thirty days.

##### 5.10.3 Settlement

The **Insured** must not settle or offer to settle any **Claim**, incur any **Defence Costs** or otherwise assume any contractual obligation or admit any liability in respect of any **Claim** without the **Insurer's** prior written consent.

#### 5.11 Subrogation and recoveries

##### 5.11.1 Preservation of rights of recovery

The **Insured** will take all necessary steps to preserve its rights of recovery. 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.

### 5.11.2 Provision of information and assistance

The **Insured** agrees to provide the **Insurer** with all information, evidence, documentation, assistance and co-operation and to execute such documents, including signed statements and affidavits, which the **Insurer** reasonably requests in the exercise of those rights.

The **Insured** will at all times and at its own cost use reasonable endeavours to do and concur in doing everything reasonably practicable to assist in the exercise of those rights.

### 5.11.3 Recoveries

All recoveries obtained by the **Insured** from other parties will be allocated, after the settlement of any **Claim** under this **Policy** as follows:

- (a) firstly, to the benefit of the **Insured** to reduce or extinguish the amount of the **Insured's Loss** to the extent that it would have been paid under this **Policy** but for the fact that such **Loss** exceeds the sum of the **Limit of Liability** and the **Excess** where applicable; and
- (b) secondly, to the benefit of the **Insurer** for all sums paid in settlement of **Loss** arising under this **Policy**; and
- (c) thirdly, to the benefit of the **Insured** for the **Excess** under this **Policy**.

All recoveries will be applied as herein only after deduction of the reasonable cost of obtaining such recovery. All recoveries made prior to settlement of any **Claim** under this **Policy** will be held for the benefit of the **Insurer** and applied as stated herein after settlement if any is made.

Recoveries do not include any amount recovered from insurance, suretyship, reinsurance, security or indemnity taken for the benefit of the **Insurer**.

### 5.12 Variation of the policy

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

### 5.13 Assignment

This **Policy** cannot be assigned by the **Policyholder**.

### 5.14 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 **Employment Wrongful Acts** committed or alleged to have been committed prior to the event described in 5.14 (a) or 5.14 (b) above.

### 5.15 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 cancel this **Policy** in accordance with the Insurance Contracts Act 1984.

### 5.16 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.

### 5.17 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.

### 5.18 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.

### 5.19 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. Definitions

When used in this **Policy**:

**6.1 Act of Terrorism** means an act, including but not limited to the use of force or violence or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government or to put the public, or any section of the public, in fear.

**6.2 Asbestos** means asbestos in whatever form including, without limitation, asbestos products or products containing asbestos.

**6.3 Benefits** means:

- (a) fringe benefits and perquisites; or
- (b) amounts due or payments made in connection with an employee benefit plan or pension scheme; or
- (c) share or stock options or any other right to purchase, acquire or sell shares or stock; or
- (d) any other payment, other than salary or wages as described in 6.19 (c), to or for the benefit of an employee arising out of the employment relationship

**6.4 Claim** means:

- (a) a written communication, including electronic communications, to an **Insured**, containing a demand for compensation or damages, alleging an act, error, omission, conduct, facts or circumstances that may constitute an **Employment Wrongful Act**; or
- (b) a civil proceeding commenced by the service of a written complaint, summons, statement of claim, writ or similar pleading or an arbitral process, cross-claim, or counter claim against an **Insured** alleging an act, error, omission, conduct, facts or circumstances that may constitute an **Employment Wrongful Act**; or
- (c) any criminal proceeding commenced by a summons or charge of an **Insured** relating to an **Employment Wrongful Act**.

**Claim** does not mean an action solely for declaratory or injunctive relief where there is no demand for compensation or damages.

**6.5 Company** means:

- (a) the **Policyholder**; and
- (b) **Subsidiaries** of the **Policyholder** prior to or as at the commencement of the **Policy Period**, but cover in respect of any **Subsidiary** and the **Directors** or **Officers** of the any **Subsidiary** only applies in respect of **Employment Wrongful Acts** committed or alleged to have been committed subsequent to the acquisition or creation of such **Subsidiary**.

**6.6 Control** means the definition of control in the Corporations Act 2001.

**6.7 Defence Costs** means the **Insured's** share of necessary and reasonable costs, charges, fees and expenses (other than regular or overtime wages, salaries, fees or **Benefits** of the **Directors**, **Officers** or **Employees** of the **Company**), incurred by the **Insured** with the **Insurer's** prior written consent, in defending, investigating or settling **Claims**.

**6.8 Director** means any natural person who was prior to the **Policy Period**, or is during the **Policy Period** a validly appointed director (as defined in the Corporations Act 2001 or any equivalent provision in the jurisdiction in which the **Company** is incorporated) of the **Company**.

**6.9 Discovery Period** means the shorter of the following:

- (a) the period of time specified in Item 7 (a) of the **Policy Schedule** beginning immediately following the expiry of the **Policy Period** and ending on the date and time specified in Item 7 (a) of the **Policy Schedule**; or

(b) the period of time beginning immediately following the expiry of the **Policy Period** and ending on the effective date and time on which the **Insured** obtains insurance cover similar to this **Policy** from another insurer.

**6.10 Employee** means any natural person who was prior to the **Policy Period**, or is during the **Policy Period** an employee of the **Company**, (which will include trainees, casual, part-time, seasonal, temporary, voluntary and work experience personnel) acting in such capacity.

**6.11 Employment Wrongful Act** means any 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.

**6.12 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**. For the avoidance of doubt, each **Endorsement** is otherwise subject to all the terms of this **Policy**.

**6.13 Excess** means the sum of:

- (a) the **Excess** specified in Item 5 (a) of the **Policy Schedule**; and
- (b) the per cent of **Loss**, excess of the **Excess** specified in Item 5 (a) of the **Policy Schedule**, that is specified as the self-insured participation per cent in Item 5 (b) of the **Policy Schedule**; and
- (c) any amount payable under a **Specified Policy**.

**6.14 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.

**6.15 Insured** means:

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

**6.16 Insured Persons** means any natural person who was prior to the **Policy Period**, or is during the **Policy Period** a **Director, Officer** or **Employee** of the **Company**.

**6.17 Insurer** means Vero Insurance Limited ABN 48 005 297 807.

**6.18 Limit of Liability** means the amount specified in Item 4 of the **Policy Schedule**.

**6.19 Loss** means:

- (a) the amount, whether determined by judgment, verdict or award for which the **Insured** is legally liable to a third party for a **Claim** and includes damages, interest and claimant's costs and expenses; and
- (b) a settlement of a **Claim** by a third party against the **Insured**, which complies with General Term 5.10.3; and
- (c) **Defence Costs**; and
- (d) in the event of the **Company** being ordered to reinstate or re-employ an **Employee**, the cost to the **Company** of complying with any order to pay salary or wages, or damages calculated by reference to salary or wages, to an **Employee** for the period from the date of the purported dismissal or termination to the date on which the court, tribunal or similar body delivered its judgement to the parties.

**Loss** does not mean:

- (i) **Benefits** or damages calculated by reference to **Benefits**; or
- (ii) salary or wages earned prior to the date of termination or damages calculated by reference to salary or wages earned prior to the date of termination; or
- (iii) any amount not indemnified by the **Company** for which any **Insured** is absolved from payment by reason of any covenant, agreement or court order; or
- (iv) the value of any share or stock options or any other right to purchase, acquire or sell shares or stock; or
- (v) the cost of complying with any injunctive or other non-monetary relief or any agreement to provide any such relief; or
- (vi) costs incurred by any **Insured** to make any accommodation in respect of working practices or otherwise on the basis of a person's disability or family responsibilities or as may be required under any law relating anti-discrimination; or
- (vii) taxes, fines and penalties imposed by law; or
- (viii) punitive, exemplary or aggravated damages.

**6.20 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**.

**6.21 North America** means the United States of America and Canada and in each case its territories and protectorates

**6.22 Officer** means any natural person who was prior to the **Policy Period**, or is during the **Policy Period**:

- (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**; or
  - (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:
    - (iv) a receiver, or receiver and manager; or
    - (v) an administrator or an administrator of a deed of company arrangement; or
    - (vi) a liquidator; or
    - (vii) a trustee or other person administering a compromise or arrangement made between the **Company** and someone else.

**6.23 Policy** means and consists of this employment practices liability insurance policy wording, the **Policy Schedule** and any **Endorsement** and their terms are incorporated into the terms of this **Policy**.

**6.24 Policyholder** means the organisation specified in Item 1 of the **Policy Schedule**.

**6.25 Policy Period** means the period of time specified in Item 2 of the **Policy Schedule**.

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

**6.27 Pollutants** means any solids, liquids, gaseous or thermal irritants, contaminants, smoke, vapour, soot, fumes, odour or any other air emission, acids, alkalis, chemicals, waste materials, waste water, oil or oil products, infectious biological or medical waste, **Asbestos**, electric or magnetic or electromagnetic fields, noise and any ionising radiations or contamination by radioactivity.

**6.28 Pollution** means:

- (a) the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or
- (b) any direction or request to test for, monitor, clean up, treat, detoxify or neutralise **Pollutants**.

**6.29 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**.

**6.30 Related Claims** means all **Claims** arising directly or indirectly from or in respect of the same or causally related **Employment Wrongful Acts**.

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

**6.32 Specified Policy** means:

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

**6.33 Spouse** means a lawful spouse or any person deriving similar status by reason of the common law or statute.

**6.34 Subsidiary** means:

- (a) a subsidiary of the **Policyholder** as defined in the Corporations Act 2001; 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.

**End of wording**

