

# 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 and notified basis, which means that, subject to the 'Continuity' extension, it will only respond to claims first made against the insured and notified to the insurer during the policy period (or notified in accordance with the terms of any applicable additional or extended discovery period).

Any word or expression to which a specific meaning has been attached will have that specific meaning wherever it appears.

You received important notices about your duty of disclosure, unusual terms in directors and officers liability insurance policies and our privacy statement prior to purchasing this policy. The notices are replicated at the back of this document for your reference. A reference to "you" or "your" in the notices section at the back of this document includes the Insured.

## Policy wording

The **Policyholder** and the **Insurer** agree that in consideration of the premium and subject to all of the terms, conditions, exclusions and limitations of the **Policy** the **Insurer** will provide insurance as follows:

### 1. Insuring clauses

Insurance is only provided for those insuring clauses that are shown as 'Included' in the **Schedule**. The amount of any sub-limit applicable to an insuring clause is specified in the **Schedule**.

#### 1.1 Directors and officers liability cover

The **Insurer** will pay to or on behalf of an **Insured Person**, **Loss** resulting from a **Claim** first made against an **Insured Person** during the **Policy Period**, except for **Loss** for which the **Insured Person** has been indemnified by the **Company**.

#### 1.2 Company reimbursement cover

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

#### 1.3 Company securities cover

The **Insurer** will pay to or on behalf of the **Company**, **Loss** resulting from a **Securities Claim** first made against the **Company** during the **Policy Period**.

#### 1.4 Investigations

The **Insurer** will pay **Investigation Costs** incurred by or on behalf of an **Insured Person**, or **Investigation Costs** for which the **Company** has granted indemnity to the **Insured Person**, relating to any **Investigation**, provided that the **Investigation Notice** is first issued to the **Insured Person** during the **Policy Period**.

### 2. Extensions

Insurance is only provided for those extensions that are shown as 'Included' in the **Schedule**. The amount of any sub-limit applicable to an extension is specified in the **Schedule**.

The total of all payments made under these extensions, including under any applicable sub-limit, will be part of and not in addition to the **Limit of Liability**, unless otherwise stated.

#### 2.1 Advancement of costs and expenses

The **Insurer** will advance **Defence Costs**, **Investigation Costs**, **Derivative Investigation Costs**, **Bail Bond and Civil Bond Costs**, **Insolvency Hearing Costs**, **Prosecution Costs** or **Raid Response Costs**, for any **Claim**, **Securities Claim**, **Investigation**, **Derivative Proceeding**, **Derivative Demand**, **Extradition Proceeding**, **Insolvency Hearing**, **Prosecution** or **Raid** as and when they are incurred and prior to final resolution of the relevant **Claim**, **Securities Claim**, **Investigation**, **Derivative Proceeding**, **Derivative Demand**, **Extradition Proceeding**, **Insolvency Hearing**, **Prosecution** or **Raid**.

If and to the extent that an **Insured** is not entitled to coverage under the terms and conditions of this **Policy**, the **Insurer** will cease to advance such costs and expenses to or on behalf of that **Insured** and any amounts previously advanced to or on behalf of that **Insured** must be repaid to the **Insurer** by that **Insured**.

#### 2.2 Business crisis consultant fees

The **Insurer** will pay **Business Crisis Consultant Fees** incurred by the **Company** with the **Insurer's** prior consent during the first 30 days immediately following a **Business Crisis Event** that first occurs during the **Policy Period**.

An **Excess** does not apply to this extension.

#### 2.3 Continuity

Paragraph (a) of exclusion 3.3 'Prior claims and circumstances' will not apply in respect of any fact, event, circumstance, **Wrongful Act** or **Company Wrongful Act** of which the **Insured** first became aware after the **Continuity Date**, provided that such fact, event, circumstance, **Wrongful Act** or **Company Wrongful Act** was not the subject of any:

- (a) fraudulent misrepresentation or fraudulent non-disclosure by the **Insured** in respect of this **Policy** or any earlier policy of which this **Policy** is a direct or indirect renewal or replacement; or
- (b) **Claim, Securities Claim, Investigation, Derivative Proceeding or Derivative Demand** prior to the **Policy Period**.

The cover provided in respect of any **Claim, Securities Claim, Investigation, Derivative Proceeding or Derivative Demand** that would, but for this extension, be excluded by paragraph (a) of exclusion 3.3 'Prior claims and circumstances' is subject to the following conditions:

- A. The cover will be in accordance with the terms and conditions of the policy in place at the time the **Insured** first became aware of such fact, event, circumstance, **Wrongful Act** or **Company Wrongful Act** (referred to as the "previous policy" in this extension), except where the previous policy provides broader cover than this **Policy**, in which case the terms and conditions of this **Policy** will apply.
- B. The **Insurer's** limit of liability in respect of a **Claim, Securities Claim, Investigation, Derivative Proceeding or Derivative Demand** resulting from such fact, event, circumstance, **Wrongful Act** or **Company Wrongful Act** is the lesser of:
  - (i) the insurer's limit of liability under the terms of the previous policy;
  - (ii) if the limit of liability of the previous policy, including any reinstatements of the limit of liability that would have been applicable to such **Claim, Securities Claim, Investigation, Derivative Proceeding or Derivative Demand**, has been eroded by the payment of claims or other amounts, including agreement to pay such claims or other amounts, such that the remaining limit of liability of the previous policy is less than the amount noted under (i) above, such remaining limit of liability;
  - (iii) any relevant sub-limit of liability under the previous policy;
  - (iv) if the relevant sub-limit of liability of the previous policy has been eroded by the payment of claims or other amounts, including agreement to pay such claims or other amounts, such that the remaining sub-limit of liability of the previous policy is less than the amount noted under (iii) above, such remaining sub-limit of liability;
  - (v) the **Limit of Liability** under this **Policy**; or
  - (vi) any relevant sub-limit of liability under this **Policy**.

As an example of the operation of paragraph B above, if the limit of liability of the previous policy, including any applicable reinstatements, has been completely eroded by the payment of claims or other amounts under the previous policy, such that there is no remaining limit of liability, then no cover will be available under this **Policy**.

## 2.4 Deprivation of assets expenses

The **Insurer** will pay on behalf of an **Insured Person, Deprivation of Assets Expenses** in connection with a covered **Claim, Derivative Proceeding, Extradition Proceeding, Insolvency Hearing, Investigation, Raid or Securities Claim**.

Such expenses will only be payable by the **Insurer**:

- (a) after any personal allowance directed by a court to meet such expenses has been exhausted; and
- (b) for a maximum of 12 months from the date of the first **Deprivation of Assets Order**.

## 2.5 Derivative action investigation costs

The **Insurer** will pay **Derivative Investigation Costs** incurred by the **Company** with the **Insurer's** prior consent in connection with a **Derivative Proceeding** first commenced during the **Policy Period** or **Derivative Demand** first received by the **Insured** during the **Policy Period**.

Provided that the **Insurer** will not pay any **Derivative Investigation Costs** in connection with a **Securities Claim**.

If cover is provided under this extension in respect of a **Derivative Proceeding or Derivative Demand**, no cover will be provided under extension 2.16 'Mitigation costs' in respect of that **Derivative Proceeding or Derivative Demand**.

## 2.6 Discovery period

### 2.6.1 When this extension applies

This extension applies if this **Policy** is neither renewed nor replaced at the end of the **Policy Period** with insurance that covers substantially the same risk exposure as this **Policy**.

This extension doesn't apply if this **Policy** is cancelled by the **Insurer** for non-payment of premium.

### 2.6.2 Entitlement to a discovery period where a merger or acquisition has not occurred

If no **Merger or Acquisition** has occurred in the **Policy Period**, the **Policyholder** is entitled to:

- (a) an automatic **Discovery Period** of 90 days commencing immediately from the expiry date of the **Policy Period** at no additional premium;
- (b) purchase a **Discovery Period** for the amount of time specified in the **Schedule**, at an additional premium specified in the **Schedule**, provided that the **Policyholder** adheres to clause 6.7.1 of general condition 6.7 'Discovery period conditions'; or

- (c) apply to the **Insurer** for a **Discovery Period** of up to 120 months in accordance with clause 6.7.2 of general condition 6.7 'Discovery period conditions'.

A **Discovery Period** purchased or applied for under (b) or (c) above includes, and is not in addition to, an automatic **Discovery Period** under (a) above.

#### 2.6.3 Application for discovery period where merger or acquisition has occurred

If a **Merger or Acquisition** has occurred during the **Policy Period**, the **Policyholder** is entitled to apply to the **Insurer** for a **Discovery Period** in accordance with clause 6.7.2 of general condition 6.7 'Discovery period conditions'.

#### 2.6.4 Details of the discovery period

During the **Discovery Period**, the **Insured** may notify the **Insurer** of:

- (a) **Claims** first made against the **Insured** during the **Policy Period** or **Discovery Period** provided the **Claims** are for **Wrongful Acts** occurring;
- (b) **Securities Claims** first made against the **Insured** during the **Policy Period** or **Discovery Period** provided the **Securities Claims** are for **Company Wrongful Acts** occurring;
- (c) **Investigation Notices** first issued to an **Insured Person** during the **Policy Period** or **Discovery Period** provided the **Investigation** relates to matters occurring or arising;
- (d) **Extradition Proceedings** first commenced against an **Insured Person** during the **Policy Period** or **Discovery Period** provided the **Extradition Proceeding** relates to matters occurring or arising;
- (e) **Insolvency Hearings** for which notice is first received by an **Insured Person** during the **Policy Period** or **Discovery Period** provided that the **Insolvency Hearing** relates to matters occurring or arising;
- (f) **Raids** that first take place during the **Policy Period** or **Discovery Period**, provided the **Raid** relates to matters occurring or arising; and
- (g) **Derivative Proceedings** first commenced or **Derivative Demands** first received by the **Insured** during the **Policy Period** or **Discovery Period**, provided the **Derivative Proceeding** or **Derivative Demand** is for **Wrongful Acts** occurring,

prior to:

- (i) in the case of a **Discovery Period** granted under clause 2.6.2 above, the expiry of the **Policy Period**; or
- (ii) in the case of a **Discovery Period** granted under clause 2.6.3 above, the **Merger or Acquisition**.

The **Insured** may also continue to notify the **Insurer** of **Deprivation of Assets Orders** made in connection with a matter listed above.

**Discovery Periods** applied in accordance with this extension are non-cancellable and any additional premium paid or payable is non-refundable.

The application of this **Discovery Period** extension will not increase or reinstate the **Limit of Liability**.

## 2.7 Discovery period for retiring directors and officers

### 2.7.1 Entitlement to discovery period for retiring directors and officers

If this **Policy** is neither renewed nor replaced at the end of the **Policy Period** for any reason, then any **Director** or **Officer** who retires from all employment and office with a **Company** during the **Policy Period** (other than due to disqualification from the holding of an office or in anticipation of, following or due to a **Merger or Acquisition** or insolvency of a **Company**), will be provided with an automatic **Discovery Period** of 120 months from the expiry date of the **Policy Period**, for no additional premium.

The **Discovery Period** under this extension will not be in addition to any **Discovery Period** effected pursuant to extension 2.6 'Discovery period'.

This extension doesn't apply if this **Policy** is cancelled by the **Insurer** for non-payment of premium.

### 2.7.2 Details of the discovery period for retiring directors and officers

If a **Discovery Period** under this extension applies to a **Director** or **Officer**, that **Director** or **Officer** may notify the **Insurer** during the **Discovery Period** of:

- (a) **Claims** first made against such **Director** or **Officer** during the **Policy Period** or **Discovery Period** provided the **Claims** are for **Wrongful Acts** occurring prior to the expiry of the **Policy Period**;
- (b) **Investigation Notices** first issued to such **Director** or **Officer** during the **Policy Period** or **Discovery Period** provided the **Investigation** relates to matters occurring or arising prior to the expiry of the **Policy Period**;
- (c) **Extradition Proceedings** first commenced against such **Director** or **Officer** during the **Policy Period** or **Discovery Period** provided the **Extradition Proceeding** relates to matters occurring or arising prior to the expiry of the **Policy Period**;
- (d) **Insolvency Hearings** for which notice is first received by such **Director** or **Officer** during the **Policy Period** or **Discovery Period** provided that the **Insolvency Hearing** relates to matters occurring or arising prior to the expiry of the **Policy Period**;

- (e) **Raids** that first take place during the **Policy Period** or **Discovery Period**, provided the **Raid** relates to matters occurring or arising prior to the expiry of the **Policy Period**; and
- (f) **Deprivation of Assets Orders** made in connection with a covered matter listed in (a) to (e) above.

## 2.8 Emergency costs

Notwithstanding claims condition 5.4 'Consent', if, due to an emergency, the **Insured** is unable to obtain the **Insurer's** consent prior to incurring **Defence Costs, Investigation Costs, Insolvency Hearing Costs, Raid Response Costs** or **Derivative Investigation Costs**, the **Insured** may incur **Defence Costs, Investigation Costs, Insolvency Hearing Costs, Raid Response Costs** or **Derivative Investigation Costs** without the **Insurer's** prior consent until such time as the **Insured** is able to contact or could reasonably have contacted the **Insurer** to seek such consent, at which time consent must be requested.

An emergency may include a circumstance where the **Insured** needs to respond to a legal request in a very short timeframe (for example, outside of business hours) and where the **Insured** is not reasonably able to contact the **Insurer** in that timeframe.

## 2.9 Environmental liability

Exclusion 3.1 'Bodily injury and property damage' of this **Policy** will not apply to:

- (a) **Defence Costs**;
- (b) **Investigation Costs**; or
- (c) fines and penalties within the scope of cover provided by extension 2.11 'Fines and penalties', arising from any **Claim** or **Investigation** in connection with an **Environmental Violation** provided that and to the extent that the applicable **Claim** or **Investigation**:
  - (i) is in connection with the obligations of an **Insured Person** under any legislation or regulations relating to **Environmental Violations**; or
  - (ii) results in **Loss** in respect of which the **Company** or **Outside Entity** is not legally required or permitted to indemnify the **Insured Person**.

## 2.10 Extradition costs

The **Insurer** will pay the reasonable fees, costs, charges and expenses (including **Bail Bond and Civil Bond Costs**) incurred by an **Insured Person** with the prior consent of the **Insurer** in connection with an **Extradition Proceeding** first commenced against such **Insured Person** during the **Policy Period**.

## 2.11 Fines and penalties

Notwithstanding any provision to the contrary contained in this **Policy**, but subject to exclusion 3.2 'Intentional misconduct', the **Insurer** will cover as **Loss** any civil fine or pecuniary penalty imposed by law on an **Insured Person** as a direct result of a covered **Claim** or covered **Investigation**, unless impermissible or uninsurable under any laws that apply to this **Policy**.

## 2.12 Insolvency hearing cover

The **Insurer** will pay **Insolvency Hearing Costs** incurred by or on behalf of an **Insured Person**, or the **Company** on behalf of an **Insured Person**, with the prior consent of the **Insurer** in respect of an **Insolvency Hearing**, provided that:

- (a) the facts or circumstances giving rise to the **Insolvency Hearing** might be reasonably expected to give rise to a covered **Claim** against or covered **Investigation** into that **Insured Person**; and
- (b) written notice of the **Insolvency Hearing** is first received by the **Insured Person** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** or any applicable **Discovery Period**.

If cover is provided under this extension in respect of an **Insolvency Hearing**, no cover will be provided under extension 2.16 'Mitigation costs' in respect of that **Insolvency Hearing**.

## 2.13 Internal investigation costs and expenses

The definition of **Investigation** is extended to include an internal investigation or inquiry conducted by the **Company** or an **Outside Entity** into its affairs or those of an **Insured Person** in their capacity as such:

- (a) which arises out of an **Investigation**;
- (b) that follows notification by that **Company** or **Outside Entity**, an **Insured Person** or a whistleblower to an **Official Body** of an actual or suspected **Wrongful Act** or breach of legal, statutory or regulatory duties by an **Insured Person** or the **Company**; or
- (c) to investigate whether that **Company** or **Outside Entity** is legally required to formally notify any **Official Body** of an actual or suspected **Wrongful Act** or breach of legal, statutory or regulatory duties by an **Insured Person** or that **Company** or **Outside Entity**.

However, (a) to (c) above excludes a routine or scheduled supervision, inspection, licensing, accreditation or compliance audit or similar review.



In respect of such internal investigation or inquiry, the definition of **Investigation Costs** is extended to include the reasonable costs incurred by or on behalf of an **Insured Person** for attendance at any interview or meeting, preparation of a witness statement or production of documents in relation to such internal investigation or inquiry.

The definition of **Investigation Notice** is extended to include a notice of such internal investigation or inquiry issued by the **Company** or **Outside Entity** to the **Insured Person**.

#### 2.14 Legal consultation

The **Insured** is entitled to up to a maximum of two hours of legal advice from a **Panel Member Law Firm** on matters related to the risks insured under this **Policy**, but not in relation to the scope of cover provided under this **Policy** or claims disputes or complaints against the **Insurer**, provided that:

- (a) the legal advice is sought during the **Policy Period**; and
- (b) the **Insured** must provide the **Panel Member Law Firm** with details of the policy number, **Policy Period** and the name of the **Policyholder**.

There is no cost payable by the **Policyholder** or **Insured** for the legal advice.

An **Excess** does not apply to this extension.

#### 2.15 Legal representatives and spouses

- (a) If an **Insured Person** dies or becomes legally incapable, insolvent or bankrupt, this **Policy** will cover **Loss** resulting from a **Claim** first made against such **Insured Person's** estate, heirs, executors or other legal representatives:

- (i) during the **Policy Period** (or any applicable **Discovery Period**); and
  - (ii) provided that the estate, heirs, executors or other legal representatives comply with the terms and conditions 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 a **Claim** 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**.

#### 2.16 Mitigation costs

The **Insurer** will pay any **Mitigation Costs** incurred by or on behalf of the **Insured** during the **Policy Period** to avoid, reduce or mitigate a potential covered **Loss** that would otherwise be the subject of a covered **Claim** under the **Policy** if such **Claim** were made against the **Insured** during the **Policy Period**.

Prior to incurring such **Mitigation Costs**:

- (a) the **Insured** must obtain the consent of the **Insurer**; and
- (b) the **Insured** must demonstrate, at its own expense, to the reasonable satisfaction of the **Insurer**, that incurring such **Mitigation Costs** is reasonably likely to avoid, reduce or mitigate covered **Loss** that would otherwise be the subject of a covered **Claim**.

#### 2.17 New subsidiaries

2.171 Subject to 2.172, the definition of **Company** is extended to include any entity which becomes a **Subsidiary** during the **Policy Period**.

2.172 Clause 2.171 does not apply to any **Subsidiary** that has:

- (a) total assets at the time such entity becomes a **Subsidiary** that are greater than 25% of the total consolidated assets of the **Policyholder** (as shown in the **Policyholder's** most recent audited financial statement); or
- (b) any of its **Securities** listed on an exchange in the United States of America or its territories or protectorates.

2.173 Notwithstanding clause 2.172 above, if such entity has total assets that are greater than 25% of the total consolidated assets of the **Policyholder** (as shown in the **Policyholder's** most recent audited financial statement), but does not have any of its **Securities** listed on any exchange in the United States of America or its territories or protectorates, then the definition of **Company** will be extended to include such entity for a 90 day period from the date the entity becomes a **Subsidiary** during the **Policy Period**. The **Policyholder** can apply to the **Insurer** in accordance with general condition 6.9 'Further coverage for new subsidiaries' for cover beyond the 90 day period.



2.174 Cover in respect of a new **Subsidiary** under clause 2.17.1 or clause 2.17.3 above or general condition 6.9 'Further coverage for new subsidiaries' is only provided in respect of:

- (a) **Wrongful Acts** and **Company Wrongful Acts** occurring;
- (b) conduct committed or allegedly committed; and
- (c) matters or circumstances which are the basis of an **Investigation, Extradition Proceeding, Insolvency Hearing or Raid** occurring or arising,

whilst such entity is a **Subsidiary** of the **Policyholder**.

## 2.18 Occupational health and safety

### 2.18.1 OHS investigations

The definition of **Investigation** is extended to include any inspection, audit or other compliance monitoring activity undertaken by any occupational or workplace health and safety regulator (or any person authorised by an occupational or workplace 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 which has as its subject matter:

- (a) the affairs of the **Company** or the conduct of that **Insured Person** in their capacity as such; or
- (b) with respect to extension 2.19 'Outside directorships', 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' will not apply to any cover provided by this clause 2.18.1.

### 2.18.2 Claims for OHS breaches

Exclusion 3.1 'Bodily injury and property damage' will not apply to **Loss** resulting from **Claims or Investigations** for an actual or alleged breach of any occupational or workplace health and safety law or regulation, including any law or regulation pertaining to workplace death or industrial or corporate manslaughter.

## 2.19 Outside directorships

The definition of **Insured Person** is extended to include a person who, at the specific request of the **Company** was, at any time a director, officer, trustee, governor, councilor, chancellor or in a position of equivalent status in an **Outside Entity**, but only to the extent they are acting for and on behalf of the **Company** in their capacity as such. Any cover afforded by this extension will, subject to section 45 of the Insurance Contracts Act 1984 (Cth), specifically only apply in excess of:

- (a) any indemnity available from or through the **Outside Entity** (other than under an insurance policy);
- (b) any other insurance in force entered into by the **Outside Entity** that covers substantially the same risk exposure as this **Policy**;
- (c) any other insurance in force entered into by the **Insured Person** that covers substantially the same risk exposure as this **Policy**; and
- (d) any applicable **Specified Policy** available from or through the **Outside Entity**.

## 2.20 Personal tax liability

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

## 2.21 Prosecution costs

The **Insurer** will pay **Prosecution Costs** incurred with the **Insurer's** prior consent arising from a covered **Claim** first made against the **Insured Person** during the **Policy Period** or a covered **Investigation** if the **Investigation Notice** was first issued to the **Insured Person** during the **Policy Period**.

## 2.22 Public relations and reputation expenses

The definition of **Loss** is extended to include the reasonable costs, charges, fees and expenses of a public relations firm or consultant incurred by an **Insured Person** with the prior consent of the **Insurer** to:

- (a) prevent or limit the adverse effects of any negative publicity on an **Insured Person's** reputation which a person in the **Insured Person's** position might reasonably expect to result from or is anticipated to result from a covered **Claim** first made during the **Policy Period** or a covered **Investigation** if the **Investigation Notice** was first issued during the **Policy Period**; or
- (b) disseminate the findings of a final adjudication in favour of such **Insured Person** arising from any **Claim** or **Investigation** described in (a) above.

## 2.23 Raid response costs

The **Insurer** will pay **Raid Response Costs** incurred by or on behalf of an **Insured Person**, or for which the **Company** has granted indemnity to an **Insured Person**, in respect of:

- (a) a **Raid** that first takes place during the **Policy Period** and is notified to the **Insurer** during the **Policy Period** or any applicable **Discovery Period**; or

(b) a public announcement relating to a **Raid** described in (a) above.

## 2.24 Special excess limit for insured persons

Notwithstanding clause 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**, including any applicable **Specified Policy**,
- are fully exhausted, the **Limit of Liability** with respect to:

- (i) **Loss** covered under insuring clause 1.1; and
- (ii) **Loss** incurred by or on behalf of an **Insured Person** and covered under insuring clause 1.4,

will be fully reinstated once and only to the extent that such **Loss** results from a **Claim** or **Investigation** that is not a Related Claim as specified in clause 4.3 'Related claims'.

## 2.25 Travel and accommodation expenses

The definition of **Investigation Costs** is extended to include reasonable travel and accommodation expenses incurred with the **Insurer's** prior consent.

Provided that:

- (a) such expenses are incurred by an **Insured Person** in attending an **Investigation** in a State or Territory of Australia or in a country which is not their ordinary or usual residence; and
- (b) the **Company** is unable to indemnify the **Insured Person** for such expenses as a result of insolvency or legal or regulatory prohibition.

Regular or overtime wages, salaries, fees or other remuneration of the **Insured Persons**, or costs or overhead of the **Company** are excluded from this cover.

## 3. Exclusions

### 3.1 Bodily injury and property damage

The **Insurer** will not be liable for **Loss** 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 property, including any consequent loss of use thereof.

This exclusion will not apply:

- (a) in respect of any actual or alleged psychiatric, psychological or mental injury alleged in any covered **Claim** resulting from any **Employment Wrongful Act**;
- (b) to the extent cover is provided under extension 2.18 'Occupational health and safety';
- (c) to **Defence Costs**;
- (d) to **Investigation Costs**;
- (e) to a **Securities Claim**; and
- (f) to any **Claim** for defamation.

Provided that cover for **Defence Costs** and **Investigation Costs** under (c) and (d) above will not apply to a **Claim** or **Investigation** in connection with an **Environmental Violation**, except to the extent provided for in extension 2.9 'Environmental liability'.

### 3.2 Intentional misconduct

The **Insurer** will not be liable for **Loss** resulting from **Claims, Securities Claims, Investigations, Extradition Proceedings, Insolvency Hearings, Raids, Derivative Proceedings, Derivative Demands, Business Crisis Events or Deprivation of Assets Orders** arising directly or indirectly from, in connection with 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) including any amendment, consolidation, re-enactment, replacement or successor of such legislation;
- (b) any deliberately fraudulent act or omission;
- (c) any deliberately dishonest act or omission;
- (d) any intentional violation of law; or
- (e) any intentional breach of duty imposed by any law,

provided that this exclusion will not apply until the conduct described in (a), (b), (c), (d) or (e) 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**).

For the purpose of this exclusion, the fact that one **Insured** has committed or is alleged to have committed the conduct described in (a), (b), (c) (d), or (e) above will not be imputed to any other **Insured**.

### 3.3 Prior claims and circumstances

The **Insurer** will not be liable for **Loss** resulting from **Claims, Securities Claims, Investigations, Extradition Proceedings, Insolvency Hearings, Raids, Derivative Proceedings or Derivative Demands** arising directly or indirectly from, in connection with or in respect of:

- (a) any fact, event, circumstance, **Wrongful Act** or **Company Wrongful Act** which:
  - (i) was the subject of notice given under any other policy prior to the **Policy Period**; or
  - (ii) the **Insured** was aware or should reasonably have been aware prior to the **Policy Period** might give rise to a **Claim, Securities Claim, Investigation, Extradition Proceeding, Insolvency Hearing, Raid, Derivative Proceeding, Derivative Demand, Business Crisis Event or Deprivation of Assets Order**; 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
- (c) any demand, suit or proceeding derived from the same or substantially the same facts or circumstances as contained in a demand, suit or proceeding referred to in paragraph (b) above.

### 3.4 Sanctions

The **Insurer** will not be liable for **Loss** or provide any cover, pay any claim, make any payment (including any refund), or provide any benefit under this **Policy** if doing so will expose the **Insurer** to, or contravene or violate any sanction, prohibition, restriction, proscription or prevention under any sanctions, laws or regulations, including but not limited to sanctions, laws or regulations of Australia, New Zealand, the European Union, the United Kingdom or the United States of America or those set out in any United Nations resolutions.

### 3.5 U.S.A. jurisdiction

The **Insurer** will not be liable for **Loss** resulting from any **Claim, Securities Claim, Investigation, Extradition Proceeding, Insolvency Hearing, Derivative Proceeding or Deprivation of Assets Order** 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, Securities Claims, Investigations, Extradition Proceedings, Insolvency Hearings, Raids, Derivative Proceedings, Derivative Demands, Business Crisis Events or Deprivation of Assets Orders**, the number of **Insureds**, or the amount of such **Loss**.

The **Insurer** has no liability for any amount above the **Limit of Liability**, other than as provided for in extension 2.24 'Special excess limit for insured persons'.

Any sub-limit specified in the **Policy** is the **Insurer's** maximum aggregate liability for the applicable insuring clause, extension, **Endorsement** or type of **Loss**, irrespective of the number of **Insureds**, and is part of and not in addition to the **Limit of Liability**.

The application of a **Discovery Period** will not increase or reinstate the **Limit of Liability** or any sub-limit specified in the **Policy**.

### 4.2 Excess

The **Insured** is liable for the amount of **Loss** that is equal to or less than the **Excess** for each **Claim, Securities Claim, Investigation, Extradition Proceeding, Insolvency Hearing, Raid, Derivative Proceeding, Derivative Demand, Business Crisis Event or Deprivation of Assets Order**.

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

The **Excess** is deducted from **Loss** payable before the application of the **Limit of Liability** or any applicable sub-limit as specified in the **Policy**.

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

Where the **Company** is insolvent (other than by voluntary liquidation) and has insufficient funds available to indemnify the **Insured Persons** for **Loss** as agreed, then any **Excess** that is applicable to the **Company** does not apply to the **Insured Persons**.

Unless otherwise provided by an insuring clause or extension, the **Excess** applicable under each insuring clause and/or extension where an **Excess** is applicable will be the 'Excess' stated in the **Schedule**.



### 4.3 Related claims

All **Claims, Securities Claims, Investigations, Extradition Proceedings, Insolvency Hearings, Raids, Derivative Proceedings, Derivative Demands, Business Crisis Events or Deprivation of Assets Orders** (referred to collectively as "Related Claim" in this clause) arising directly or indirectly from, in connection with or in respect of the same or causally related, or continuous or repeated facts, events, circumstances, **Wrongful Acts or Company Wrongful Acts**, or series of facts, events, circumstances, **Wrongful Acts or Company Wrongful Acts**, whether committed by one or more **Insured** and whether directed to or affecting one or more than one person or legal entity will, for the purposes of this **Policy**, be considered as a single Related Claim first made or commenced against the **Insured** at the time the first such Related Claim was first made or commenced against the **Insured**.

If a Related Claim would be subject to more than one **Excess**, only the largest applicable **Excess** will apply to that Related Claim. The **Insured Persons** will not be liable for any **Excess** applicable to the **Company**.

## 5. Claims conditions

### 5.1 Notification of claims and circumstances

The **Insured** must give to the **Insurer** notification of any **Claim, Securities Claim, Investigation, Extradition Proceeding, Insolvency Hearing, Raid, Derivative Proceeding and Derivative Demand**:

- (a) as soon as reasonably practicable after the **Insured** first becomes aware of such **Claim** or other matter listed above; and
- (b) no later than the expiry of the **Policy Period** or any applicable **Discovery Period**.

Each notification of a **Claim** or other matter listed above must include so far as reasonably practicable:

- (i) the identity of the claimant or potential claimant;
- (ii) the nature of the **Claim** or other matter listed above; and
- (iii) in the case of a **Claim** or **Securities Claim**, the likely quantum of such **Claim** or **Securities Claim**.

The **Insured** must provide the **Insurer** with every legal document or other communication the **Insured** receives (including letters, demands, writs, summons or other legal processes) relating to a **Claim** or other matter listed above as soon as reasonably practicable after receipt.

The **Insured** must give to the **Insurer** notification of any **Business Crisis Event** as soon as reasonably practicable following such **Business Crisis Event** and during the **Policy Period**. Each notification of a **Business Crisis Event** must include so far as reasonably practicable a full description of the **Business Crisis Event**.

The **Insured** must give to the **Insurer** notification of any **Deprivation of Assets Order** as soon as reasonably practicable after the **Insured** first becomes aware of such **Deprivation of Assets Order**.

All notifications to the **Insurer** including but not limited to **Claims** or other matters listed above and any legal documents or other communications specified above must be sent to the Claims Notification address specified in the **Schedule**.

The **Insured** may elect to notify the **Insurer** as soon as reasonably practicable during the **Policy Period** or **Discovery Period** of a fact, event, circumstance, **Wrongful Act or Company Wrongful Act** of which the **Insured** first becomes aware during the **Policy Period** or **Discovery Period** that might give rise to a **Claim, Securities Claim, Investigation, Extradition Proceeding, Insolvency Hearing, Raid, Derivative Proceeding or Derivative Demand**. The **Insurer** will treat any **Claim, Securities Claim, Investigation, Extradition Proceeding, Insolvency Hearing, Raid, Derivative Proceeding or Derivative Demand** arising from such fact, event, circumstance, **Wrongful Act or Company Wrongful Act** as though it was first made against the **Insured** or issued to the **Insured** (as the case may be) during the **Policy Period**.

The preceding paragraph does not limit or reduce the **Insured's** disclosure obligations under the Insurance Contracts Act 1984 (Cth) and it does not limit or reduce the operation of section 40 of the Insurance Contracts Act 1984 (Cth).

### 5.2 Claims co-operation

In the event of a **Claim, Securities Claim, Investigation, Extradition Proceeding, Insolvency Hearing, Raid, Derivative Proceeding and Derivative Demand**, the **Insured** will at all times, in so far as reasonably practicable 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** may reasonably require.

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

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

In the event an **Investigation** is covered under extension 2.13 'Internal investigation costs and expenses', the **Insurer** will have no obligation to communicate with any other **Insured Person** or the **Company** in relation to that **Investigation**.

The **Insurer** may make any investigation as is reasonably required in relation to the **Claim** or other matter listed above.

### 5.3 Claims conduct

#### 5.3.1 Conducting the defence and settlement of the claim

The **Insured** has a duty to contest and defend any **Claim, Securities Claim, Derivative Demand, Derivative Proceeding, Extradition Proceeding or Insolvency Hearing** made or commenced against them and to respond to any **Investigation** commenced against them.

The **Insured** has the right to appoint a **Panel Member Law Firm** to act on the **Insured's** behalf in respect of any **Claim, Securities Claim, Investigation, Extradition Proceeding, Insolvency Hearing, Raid, Derivative Proceeding and Derivative Demand**.

The **Insured** is not entitled to appoint a solicitor outside of the **Panel Member Law Firms** without the **Insurer's** prior written consent.

If the **Insured** requests such consent, the **Insurer** will consider, among any other reasonable matters, whether such solicitor has the necessary skill, expertise and experience to act in the matter and whether that solicitor's proposed hourly rates are comparable to those agreed with **Panel Member Law Firms**.

Where the same or similar **Claims** or other matters listed above are made or commenced against more than one **Insured**, the **Insured** must appoint the same **Panel Member Law Firm** (or other legal firm or solicitors subject to the **Insurer's** prior consent), unless a material conflict of interest exists.

The **Insurer** has the right and full discretion but is not obligated to associate and participate fully in the defence or settlement of any **Claim** or other matter listed above (including in relation to insured, underinsured and uninsured losses). The **Insurer** reserves entirely its rights under this **Policy**, including its right to assess its obligation to meet a **Claim** or other matter listed above or participate in the defence of any **Claim** or other matter listed above. The **Insurer's** rights under this **Policy** are not affected if it does not participate in the defence.

#### 5.3.2 Where the insured and insurer disagree about the defence or settlement of the claim

If the **Insured** and the **Insurer** disagree about the approach to defending a **Claim, Securities Claim, Investigation, Extradition Proceeding, Insolvency Hearing, Raid, Derivative Proceeding or Derivative Demand** or whether the **Claim**, or other matter listed above should be settled or compromised, the matter will be referred to Senior Counsel for an opinion on such matters.

The **Insured** and the **Insurer** will mutually agree on the appointment of the Senior Counsel, or in the absence of such agreement, as nominated by the President of the NSW Bar Association. The **Insurer** will bear the cost to obtain the opinion and any such amount will not erode the **Limit of Liability**. Senior Counsel will provide the opinion in writing.

Senior Counsel must consider the following matters when forming an opinion:

- (a) the amount of the **Claim** or other matter listed above;
- (b) the actual and potential **Loss** that may reasonably be incurred in contesting the **Claim** or other matter listed above;
- (c) liability prospects; and
- (d) the prospect of recovering costs against the claimant in the event that the defence is successful.

If Senior Counsel considers that reasonable attempts should be made to settle the **Claim** or other matter listed above, Senior Counsel will provide a settlement range within which such attempts should be made to settle the **Claim** or other matter listed above.

If Senior Counsel's opinion is that reasonable attempts should be made to settle the **Claim** or other matter listed above, the **Insured** must not object to the **Insurer's** attempt to do so and must provide reasonable assistance to the **Insurer** to enable such attempts.

### 5.4 Consent

Subject to extension 2.8 'Emergency costs', the **Insured** must not settle or offer to settle any **Claim or Securities Claim**, incur any **Defence Costs, Business Crisis Consultant Fees, Prosecution Costs, Bail Bond and Civil Bond Costs, Investigation Costs, Insolvency Hearing Costs, Raid Response Costs, Derivative Investigation Costs, Mitigation Costs** or costs, charges, fees or expenses incurred under any extension or **Endorsement**, or otherwise assume any contractual obligation or admit any liability in respect of any **Claim** without the **Insurer's** prior consent.

### 5.5 Allocation of loss

#### 5.5.1 When this clause applies

This clause applies to any part of any **Loss** resulting from a **Claim, Securities Claim, Investigation, Extradition Proceeding, Insolvency Hearing, Raid, Derivative Proceeding or Derivative Demand** which is in respect of:

- (a) one **Insured** only;
- (b) more than one **Insured**, whether jointly or severally; or
- (c) 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').

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.

#### 5.5.2 What the insurer must take into account when deciding loss to be allocated

The **Insurer's** consideration of what is fair and reasonable will include, where applicable, the following factors:

- (a) the nature of the **Claim** or other matter listed above 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** or other matter listed above;
- (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** or other matter listed above against that **Insured** are in common with the issues in the **Claim** or other matter listed above against any other person or entity;
- (i) the extent to which the **Loss** is partly covered and partly not covered under this **Policy**; and
- (j) in the event of a settlement, the likely comparative responsibility had the settlement not occurred.

#### 5.5.3 Where the insured disagrees with the insurer's decision relating to allocation of loss

If the **Insured** and the **Insurer** disagree on the allocation determination, each party agrees that the allocation dispute will be referred to Senior Counsel for determination. The **Insured** and the **Insurer** will mutually agree to the appointment of the Senior Counsel, or in the absence of such agreement, as nominated by the President of the NSW Bar Association. The **Insurer** will bear the cost to obtain the determination and such amount will not erode the **Limit of Liability**. Senior Counsel will provide the determination in writing.

The **Insured** and the **Insurer** will each be entitled to make a written submission to Senior Counsel and provide any other information that Senior Counsel may request.

Senior Counsel will take into account each of the parties' submissions, but is not confined by those submissions, in determining the fair and reasonable allocation.

While a dispute as to the allocation is unresolved, the **Insurer** will advance such amounts it considers to be a fair and reasonable allocation.

The allocation of **Loss** as determined by Senior Counsel will apply for all purposes under this **Policy** and will not apply to or create a presumption with respect to the allocation of other **Loss** on account of such **Claim**.

### 5.6 Priority of payments

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

If the **Limit of Liability** is or is likely to be insufficient with respect to covering all **Loss** concurrently due under the **Policy**, the **Insurer** will pay **Loss** in the following order:

- (a) the **Loss** of **Insured Persons** under insuring clause 1.1 and insuring clause 1.4; then
- (b) the **Loss** of any **Insured Person** under any other insuring clause or extension; and then
- (c) the **Loss** of the **Company**.

Subject to the above, where multiple payments of covered **Loss** are due under the same insuring clause or extension, the **Insurer** will pay such **Loss** amounts in the order they are presented to the **Insurer**.

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

### 5.7 Subrogation and recoveries

#### 5.7.1 Preservation of rights of recovery

The **Insured** must not, without the **Insurer's** prior consent:

- (a) enter into any deed or agreement excluding, limiting or delaying any legal rights of recovery against any other party;
- (b) do any act whereby any rights or remedies to which the **Insurer** would or may be subrogated in respect to any loss, damage or legal liability are or may be prejudiced; or
- (c) issue proceedings against any other party for losses that are or may be indemnified under this **Policy**.



### 5.7.2 Rights of recovery

In the event of any payment under this **Policy**, the **Insurer** will be subrogated to all the **Insured's** rights of recovery.

The **Insurer** has the right and full discretion, but is not obligated, to take over and conduct in the name of the **Insured** any recovery action (including in relation to insured, underinsured and uninsured losses). The **Insurer** may engage legal or other representatives to assist in the conduct of the recovery action.

The **Insurer** will not exercise its rights of subrogation against an **Insured Person** in connection with a **Claim, Securities Claim, Investigation, Extradition Proceeding, Insolvency Hearing or Raid** unless it can establish that exclusion 3.2 'Intentional misconduct' applies to that **Claim** or other matter listed above and to that **Insured Person**.

### 5.7.3 Application of recoveries

All recoveries obtained from other parties will be allocated, after settlement of any **Claim, Securities Claim, Investigation, Extradition Proceeding, Insolvency Hearing, Raid, Derivative Proceeding or Derivative Demand** under this **Policy**, as follows:

- (a) first, to reimburse the **Insurer** for all sums incurred in obtaining such recovery;
- (b) second, to the **Insurer** for all sums paid by the **Insurer** under this **Policy**, with such amounts to replenish the applicable **Limit of Liability** including any applicable sub-limit; and
- (c) third, any remaining monies recovered to be paid to the **Insured**.

All recoveries made prior to settlement of any **Claim** or other matter listed above under this **Policy** will be held for the benefit of the **Insurer** and applied as stated above after settlement if any is made.

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

### 5.8 Company failure to indemnify

If a **Company** has granted indemnity to an **Insured Person** for a covered **Claim** or covered **Investigation** but fails to indemnify the **Insured Person** within 30 days of such grant, the **Insurer** will indemnify the **Insured Person**. The **Company** is required to reimburse the **Insurer** the **Excess** that would have applied to the **Company** under this **Policy**.

## 6. General conditions

### 6.1 Acquisition, merger or winding up of policyholder

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

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

then cover under this **Policy** will remain in force until the expiry of the **Policy Period** for that **Policyholder** and that **Policyholder's Insureds**, but only in respect of **Loss** resulting from:

- (i) **Claims, Derivative Proceedings or Derivative Demands** based on **Wrongful Acts** occurring;
- (ii) **Securities Claims** based on **Company Wrongful Acts** occurring; or
- (iii) **Investigations, Extradition Proceedings, Insolvency Hearings or Raids** relating to matters occurring or arising,

prior to the event described, as relevant, in parts (a) or (b) of this general condition.

### 6.2 Assignment

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

### 6.3 Authorisation

The **Principal Policyholder** is the agent for each **Insured** and each **Insured** is bound by any direction, statement, act or omission of the **Principal Policyholder** for all purposes under this **Policy**, subject to general condition 6.14 'Severability'.

If the **Principal Policyholder** is insolvent, each **Insured** will act on their own behalf.

### 6.4 Cancellation

The **Principal Policyholder** is entitled to cancel this **Policy** at any time, by giving written notice to the **Insurer**, and specifying the date from which it would like to cancel the **Policy**. The date cannot be earlier than the date the **Insurer** receives the request.

Upon cancellation the **Insurer** will retain a short period premium calculated at a pro rata proportion of the **Full Annual Premium** for the time it has been on risk and the **Insurer** will refund to the **Principal Policyholder** the balance of the premium actually paid (including GST if applicable) less non-refundable government charges, unless there have been any notifications during the **Policy Period**, in which case no refund will be given.

The **Insurer** may only cancel this **Policy** for non-payment of premium, and in accordance with the requirements of the law.

## 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 consent to such disclosure; or
- (c) the intended recipient is a professional adviser to the **Insured**.

## 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 Discovery period conditions

### 6.7.1 Purchasing a discovery period

If the **Policyholder** is entitled to, and elects to, exercise their entitlement under paragraph (b) of clause 2.6.2 of extension 2.6 'Discovery period' to purchase a **Discovery Period**, the **Policyholder** must:

- (a) notify the **Insurer**, prior to the expiry of the **Policy Period**, that they are exercising that entitlement; and
- (b) pay the additional premium specified in the **Schedule** within 30 days of the expiry of the **Policy Period**, or such other date the **Insurer** specifies in writing.

If the **Policyholder** fails to pay the additional premium by the due date, the **Discovery Period** will be cancelled with effect from its commencement.

The entitlement to purchase the **Discovery Period** lapses upon expiry of the **Policy Period** unless otherwise agreed by the **Insurer** in writing.

### 6.7.2 Applying for a discovery period

If the **Policyholder** wishes to apply for a **Discovery Period** under either:

- 1. paragraph (c) of clause 2.6.2 of extension 2.6 'Discovery period'; or
- 2. clause 2.6.3 of extension 2.6 'Discovery period',

the **Policyholder** must make a request in writing to the **Insurer** prior to the expiry of the **Policy Period**.

The **Insurer** will provide its response, including whether it is willing to offer cover, on what terms and for what additional premium, as soon as reasonably practicable but no later than:

- (a) the expiry of the **Policy Period**; and
- (b) if the **Policyholder** submits its request for a **Discovery Period** less than five (5) business days before the expiry of the **Policy Period**, then the **Insurer** must provide its response within five (5) business days.

The **Insurer** will consider such application on its merits, including such factors as, in the case of clause 2.6.3 of extension 2.6 'Discovery period', the **Policyholder's** claims experience since the date of the **Merger or Acquisition** and any change in the risk that has occurred as a result of the **Merger or Acquisition**.

Any offer by the **Insurer** of such a **Discovery Period** will include:

- (a) the duration of the **Discovery Period**;
- (b) any additional terms of the **Discovery Period**, for example any additional endorsements amending cover or special conditions that may need to be applied; and
- (c) the amount of any additional premium applicable for the **Discovery Period**.

The **Discovery Period** is not effective until the **Policyholder** provides written acceptance of the **Insurer's** offer. Payment of any additional premium applicable for the **Discovery Period** must be made within 30 days of the date of the **Policyholder's** written acceptance of the **Insurer's** offer, or such other date the **Insurer** specifies in writing. If the **Policyholder** fails to pay the additional premium by the due date, the **Discovery Period** will be cancelled with effect from its commencement.

The entitlement to apply for a **Discovery Period** lapses upon expiry of the **Policy Period** unless otherwise agreed by the **Insurer** in writing.

## 6.8 Endorsements

Each **Endorsement** is otherwise subject to all the terms of this **Policy**.

An **Endorsement** does not affect or increase the **Limit of Liability**, any sub-limit or any other term, except to the extent specifically provided in the **Endorsement**.

## 6.9 Further coverage for new subsidiaries

If an entity which becomes a **Subsidiary** during the **Policy Period** is included in the definition of **Company** for a 90 day period under clause 2.17.3 of extension 2.17 'New subsidiaries' and the **Policyholder** wishes to have cover for such entity beyond the 90 day period, the **Policyholder** must provide full details of the new **Subsidiary** and make a request for coverage in writing to the **Insurer**.

The **Insurer** will provide its response, including whether it is willing to offer cover, on what terms and for what additional premium as soon as reasonably practicable but no later than:

- (a) the end of the 90 day period; and
- (b) if the **Policyholder** submits its request for coverage to be extended less than five (5) business days before the end of the 90 day period, then the **Insurer** must provide its response within five (5) business days.

Any offer by the **Insurer** to provide extended coverage for such new **Subsidiary** is not effective until the **Policyholder** provides the **Insurer** with written acceptance of the **Insurer's** offer, including any additional terms and premium, within five (5) business days of the offer being made or such other period of time specified by the **Insurer** in writing.

## 6.10 Goods and Services Tax

As part of the premium, the **Insurer** will charge the **Policyholder** an amount on account of GST, stamp duty and any other government charges and levies that apply. The premium also includes any discounts the **Insurer** has given the **Policyholder**, and these discounts are applied before the addition of any applicable government taxes and charges.

The **Insured** must tell the **Insurer** about the input tax credit (ITC) the **Insured** is entitled to for their premium and the **Insured's** claim, each time the **Insured** makes a claim. If the **Insured** does not give the **Insurer** this information or if the **Insured** tells the **Insurer** an incorrect ITC, the **Insurer** will not pay any GST liability the **Insured** incurs.

The **Insurer's** liability to the **Insured** will be calculated taking into account any ITC to which the **Insured** is entitled for any acquisition which is relevant to the claim, or to which the **Insured** would have been entitled had the **Insured** made a relevant acquisition.

In respect of the **Insured's Policy**, where the **Insured** is registered for GST purposes the **Insured** should calculate the insured amount having regard to the **Insured's** entitlement to ITCs. The **Insured** should, therefore, consider the net amount (after all ITCs) which is to be insured and determine an insured amount on a GST exclusive basis.

This outline of the effect of the GST on the **Insured's Policy** is for general information only. The **Insured** should not rely on this information without first seeking expert advice on the application of the GST to the **Insured's** circumstances.

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

## 6.11 Governing law

The construction, interpretation and meaning of the terms of this **Policy** will be determined in accordance with the laws of the Australian 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 exercising jurisdiction over the law of that State or Territory.

## 6.12 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.

## 6.13 Legislation references

A reference to any legislation in this **Policy** includes any amendment, consolidation, re-enactment, replacement or successor of that legislation.

## 6.14 Severability

The **Proposal** will 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**.

#### 6.15 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.

#### 6.16 Other insurance

If any **Loss** arises under this **Policy** and there is any other insurance contract in force covering the same **Loss**, the **Policyholder** must notify the **Insurer** as soon as reasonably practicable and give the **Insurer** 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.

#### 6.17 Other notices

Any other communications or notices to the **Insurer** under this **Policy** including but not limited to any application to purchase a **Discovery Period**, must be sent to the **Insurer** at the **Insurer's** address, facsimile number or email address specified in the **Schedule**.

This general condition does not apply to communications or notices referred to in claims condition 5.1 'Notification of claims and circumstances'.

#### 6.18 Payment of premium

The **Principal Policyholder** must pay the premium specified in the **Schedule** for the **Policy Period** to the **Insurer** by the date that 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 **Principal 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).

#### 6.19 Payment of reasonable amounts of any costs, charges, expenses and fees under this policy

A range of different costs, charges, expenses and fees are covered under this **Policy**. In some instances the **Policy** specifies that it provides cover for the 'reasonable' amount of such cost, charge, expense or fee.

Reasonable amount means an amount that is fair, proportionate and not excessive and where the **Insured** has given reasonable consideration in the circumstances to the different courses of action available prior to incurring the amount and the course of action taken was prudent in that context.

Where consent is required before incurring such costs, when the **Insured** contacts the **Insurer** to seek the **Insurer's** consent, the **Insured** can let the **Insurer** know the steps it has taken to consider the courses of action available and discuss the circumstances with the **Insurer**. If the amounts which are to be incurred are reasonable in the circumstances, the **Insurer** will provide consent for the costs to be incurred.

#### 6.20 Variation of the policy

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

#### 6.21 Where prior consent is required from the insurer

Some clauses in the **Policy**, including but not limited to claims condition 5.4 'Consent', require the **Insured** to obtain the **Insurer's** prior consent, for example, before incurring costs. Where prior consent is required, consent must be obtained from the **Insurer**, unless extension 2.8 'Emergency costs' applies, or it is otherwise specified in the **Policy**. The **Insurer's** consent will not be unreasonably withheld or delayed.

Where prior consent has not been obtained as required, it does not mean the **Insured** cannot make a claim on the **Policy**. However, pursuant to section 54 of the Insurance Contracts Act 1984 (Cth), the **Insurer** may be able to reduce the claim payable by an amount that fairly represents the extent to which the **Insurer's** interests were prejudiced by the failure to obtain prior consent.

#### 6.22 Words with special meaning

Some of the words in this **Policy** have special meanings. These meanings can be found in section 7 'Definitions' of this policy wording. If a word has a special meaning, it appears in this policy wording in bold type and with a capital letter. Capitalised words used in the **Endorsements** and in the **Schedule** without bolding have the same meaning given to them as in section 7 'Definitions' of this policy wording unless they are defined differently in that document. If the words are defined differently in an **Endorsement** that definition only applies to that **Endorsement**, unless clearly specified otherwise in that **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 other financial instrument that guarantees an **Insured Person's** contingent obligation for bail or equivalent in any jurisdiction required by a court.

**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 events which are sudden, identifiable and unforeseen and, 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 **Company**;
- (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:

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

made against an **Insured Person** for a **Wrongful Act** alleged against that **Insured Person**.

**Claim** does not include a **Securities Claim** or **Investigation**.

**Company** means:

- (a) the **Policyholder**; and
- (b) any entity that is a **Subsidiary** of the **Policyholder** prior to or as at the commencement of the **Policy Period**, but only in respect of:
  - (i) **Wrongful Acts** and **Company Wrongful Acts** occurring;
  - (ii) conduct committed or allegedly committed; and
  - (iii) matters or circumstances which are the basis of an **Investigation**, **Extradition Proceeding**, **Insolvency Hearing** or **Raid** 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, of the **Company** in connection with the purchase, sale, transfer, or ownership of **Securities** from, by or to the **Company**.

**Company Wrongful Act** does not include an **Employment Wrongful Act**.

**Continuity Date** means the 'Continuity Date' as shown in the **Schedule**.

**Control** means "control" as defined in the Corporations Act 2001 (Cth).

**Defence Costs** means the reasonable costs, charges, fees and expenses incurred in defending, investigating, appealing or settling covered **Claims** or covered **Securities Claims**, except in respect of extension 2.1 'Advancement of costs and expenses', in which case **Defence Costs** means the reasonable costs, charges, fees and expenses incurred in defending or investigating **Claims** or **Securities Claims**.

**Defence Costs** do not include:

- (a) regular or overtime wages, salaries, fees or any other remuneration of the **Insured Persons**;
- (b) costs or overhead of the **Company**; or
- (c) **Investigation Costs**.

**Deprivation of Assets Expenses** means the schooling, housing, utility or other personal insurance fees or expenses that cannot be met by an **Insured Person** as a direct consequence of a **Deprivation of Assets Order**.

**Deprivation of Assets Order** means an interim or interlocutory order confiscating, controlling, suspending or freezing rights of ownership of real property or personal assets of an **Insured Person** or creating a charge over real property or personal assets of the **Insured Person** for a period in excess of 30 days.

**Derivative Demand** means any written demand by any shareholder of the **Company** upon the **Company's** board of directors (or equivalent management body) to bring a civil proceeding in the name of or on behalf of the **Company** against an **Insured Person** for a **Wrongful Act** allegedly committed by such **Insured Person**.

**Derivative Investigation 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 by the **Company** in determining its response to a **Derivative Proceeding** or **Derivative Demand**.

**Derivative Investigation Costs** do not include **Mitigation Costs**.

**Derivative Proceeding** means any civil proceeding brought derivatively by a shareholder of the **Company** on behalf of the **Company** against an **Insured Person** for a **Wrongful Act** allegedly committed by such **Insured Person**.

**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**;
- (b) a shadow director, which is a person who acts in the capacity of a director of a **Company** without being listed or formally appointed to the board of the **Company**; or
- (c) a de facto director or prospective director named as such in any listing particulars or prospectus issued by a **Company**,

but only in respect of conduct or alleged conduct in that capacity and excluding actual or alleged 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 of the **Company**.

**Discovery Period** means a period of time immediately following the expiration of the **Policy Period**.

**Employment Wrongful Act** means any actual or alleged act, error, omission, conduct or breach of law or regulation with respect to the employment or prospective employment with the **Company** of any past, present, future or prospective employee or **Insured Person** of the **Company**, including but not limited to:

- (a) wrongful dismissal or treatment;
- (b) discharge or termination of employment;
- (c) wrongful failure to employ or promote;
- (d) wrongful deprivation of career opportunity;
- (e) misleading representation or advertising in respect of employment;
- (f) wrongful disciplinary action;
- (g) negligent employee evaluation;
- (h) wrongful demotion;
- (i) breach of employment contract;
- (j) sexual or workplace harassment (including the creation of a workplace environment conducive to such harassment);
- (k) wrongful discrimination;
- (l) failure to grant tenure;
- (m) invasion of privacy or defamation.

**Endorsement** means any document which is described as an endorsement to this **Policy** and intends to vary it.

**Environmental Violation** means:

- (a) the actual, alleged or threatened discharge, release, dispersal, escape, seepage, migration, transportation, emission, treatment, removal or disposal of pollutants, contaminants, or waste of any kind, including nuclear material or waste; or
- (b) any direction or request to test for, abate, monitor, clean up, recycle, remove, recondition, reclaim, contain, treat, detoxify or neutralise pollutants, contaminants or waste of any kind including nuclear material or waste.

**Excess** means the applicable Excess specified in the **Schedule**.



**Extradition Proceeding** means any:

- (a) proceeding against an **Insured Person** to remove that **Insured Person** to another country or territory against their will; or
- (b) extradition decision by a governmental authority,

in connection with:

- (i) a **Wrongful Act** alleged against that **Insured Person**; or
- (ii) that **Insured Person's** capacity as an **Insured Person**.

**Extradition Proceeding** includes any appeal, judicial review application, challenge or application to a court of competent jurisdiction in respect of such proceedings or extradition decision.

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

**Insolvency Hearing** means any formal or official hearing in connection with the investigation or inquiry into the affairs of the **Company**, or into an **Insured Person's** conduct in their capacity as such, by a registered liquidator, insolvency administrator or receiver, or equivalent insolvency professional in the jurisdiction in which the **Company** is incorporated, appointed to the **Company** in respect of the **Company's** insolvency.

**Insolvency Hearing 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 representing an **Insured Person** at an **Insolvency Hearing**.

**Insolvency Hearing Costs** excludes costs, charges, fees and expenses incurred in preparing to make a **Company** insolvent.

**Insolvency Hearing Costs** do not include **Mitigation Costs**.

**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**, but only to the extent they are acting for and on behalf of the **Company** in their capacity as such;
- (b) a member of a committee established by or approved by the board of directors of the **Company** whether under statute or otherwise, but only to the extent they are acting for and on behalf of the **Company** in their capacity as such;
- (c) a **Director**, corporate trustee or policy committee member of any superannuation fund established for the benefit of employees in a **Company**, but only to the extent they are acting for and on behalf of the **Company** in their capacity as such; or
- (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** but only where such employee is required to attend with any **Director** or **Officer**; or
  - (iv) to the extent such employee is named as a co-defendant in a **Claim** along with a **Director** or **Officer**.

**Insurer** means AAI Limited ABN 48 005 297 807 trading as Vero Insurance.

**Investigation** means any investigation, examination, interview, inquiry, audit, inspection, 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:
  - (i) the affairs of the **Company** or the conduct of that **Insured Person** in their capacity as such; or
  - (ii) with respect to extension 2.19 'Outside directorships', 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**; and
- (b) does not include any routine supervision, inspection, compliance audit or similar review, or **Raid**.

**Investigation Costs** means reasonable costs, charges and expenses incurred by or on behalf of an **Insured Person** in preparing for, responding to, cooperating with, attending or being represented at, or producing documents to any **Investigation**, but do not include:

- (a) the remuneration of any **Insured Person** including wages, salaries, fees or the cost of their time;
- (b) overhead costs or expenses of the **Company**; or
- (c) **Defence Costs**.

**Investigation Notice** means any of the following issued to an **Insured Person**:

- (a) a written notice from an **Official Body** requesting or requiring such **Insured Person** to attend an **Investigation**;
- (b) a written notice from an **Official Body** requesting or requiring such **Insured Person** to produce documents to an **Investigation**; or
- (c) a written notice from an **Official Body** setting out that such **Insured Person**, or a group of people that includes such **Insured Person**, is a subject of an **Investigation**.

For the purposes of (c) above, a written notice issued to a **Company** in the name of an **Insured Person** will be deemed to be issued to such **Insured Person**.

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

**Loss** means:

- (a) in respect of a covered **Claim**:
  - (i) any monetary amount which the **Insured** is legally obligated to pay, including:
    - I. awards of damages (including punitive, exemplary, multiplied or aggravated damages);
    - II. judgments;
    - III. orders made by any court or tribunal to pay compensation, costs (including claimant's costs and expenses) or settlements; or
    - IV. interest (including pre- and post-judgment interest);
  - (ii) **Defence Costs**;
  - (iii) a civil fine or penalty imposed upon an **Insured Person** to the extent provided for in extension 2.11 'Fines and penalties';
  - (iv) any personal liability an **Insured Person** incurs with respect to unpaid taxes of an insolvent **Company** to the extent provided for in extension 2.20 'Personal tax liability';
  - (v) **Prosecution Costs** to the extent provided for in extension 2.21 'Prosecution costs'; and
  - (vi) the reasonable costs, charges, fees and expenses of a public relations firm or consultant to the extent provided for in extension 2.22 'Public relations and reputation expenses'
- (b) in respect of a covered **Securities Claim**:
  - (i) any monetary amount which the **Insured** is legally obligated to pay, including:
    - I. awards of damages (including punitive, exemplary, multiplied or aggravated damages);
    - II. judgments;
    - III. orders made by any court or tribunal to pay compensation, costs (including claimant's costs and expenses) or settlements; and
    - IV. interest (including pre- and post-judgment interest);
  - (ii) **Defence Costs**;
- (c) in respect of a covered **Investigation**:
  - (i) **Investigation Costs**;
  - (ii) a civil fine or penalty imposed upon an **Insured Person** to the extent provided for in extension 2.11 'Fines and penalties';
  - (iii) **Prosecution Costs** to the extent provided for in extension 2.21 'Prosecution costs'; and
  - (iv) the reasonable costs, charges, fees and expenses of a public relations firm or consultant to the extent provided for in extension 2.22 'Public relations and reputation expenses';
- (d) in respect of a covered **Deprivation of Assets Order, Deprivation of Asset Expenses**;
- (e) in respect of a covered **Extradition Proceeding**, the reasonable fees, costs, charges and expenses (including **Bail Bond and Civil Bond Costs**) in connection with that **Extradition Proceeding**;
- (f) in respect of a covered **Insolvency Hearing, Insolvency Hearing Costs**;
- (g) in respect of a covered **Raid, Raid Response Costs**;
- (h) in respect of a covered **Derivative Proceeding or Derivative Demand, Derivative Investigation Costs**; or
- (i) in respect of a covered **Business Crisis Event, Business Crisis Consultant Fees**.

**Loss** does not include:

- A. taxes other than those covered under extension 2.20 'Personal tax liability';
- B. any amount which the **Insurer** is prohibited from paying pursuant to the laws of the jurisdiction in which the **Claim** is determined;
- C. any amount representing a profit or advantage or any amount which is calculated by reference to profit or advantage (such as an account of profits or equitable restitution) to which the **Company** or **Insured Person** was not legally entitled; or
- D. fines and penalties other than as provided for in extension 2.11 'Fines and penalties'; or
- E. any amount relating directly or indirectly to the employment or potential employment of a person including wages, superannuation entitlements or commission.

**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**.

**Mitigation Costs** means direct fees, costs and expenses which are reasonable and proportionate to avoid, reduce or mitigate covered **Loss** that would otherwise be the subject of a covered **Claim**.

**Mitigation Costs** do not include:

- (a) costs, charges, fees and expenses incurred by the **Insured** in proving entitlement to cover under extension 2.16 'Mitigation costs';
- (b) **Defence Costs**;
- (c) **Investigation Costs**;
- (d) **Insolvency Hearing Costs**; or
- (e) **Derivative Investigation Costs**.

**Non-Profit 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.

**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;
- II. an administrator or an administrator of a deed of company arrangement;
- III. a liquidator; or
- IV. a trustee or other person administering a compromise or arrangement made between the **Company** and someone else.

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

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

- (a) is a **Non-Profit Entity**; or
- (b) is specified in the **Schedule** or by **Endorsement**,

provided that the entity:

- (i) has no securities listed on any exchange in the United States of America; and
- (ii) 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.

**Panel Member Law Firm** means a Panel Member Law Firm specified in the **Schedule**, which may be subject to change from time to time.

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

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

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

**Principal Policyholder** means the first organisation listed as the 'Policyholder' in the **Schedule**.

**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** means any legal proceeding to obtain the discharge or revocation of:

- (a) an order disqualifying an **Insured Person** from holding office as a **Director** or **Officer**; or
- (b) an interim or interlocutory order:
  - (i) for the confiscation, control, suspension or freezing of rights of ownership of real property or personal assets of such **Insured Person**;
  - (ii) imposing a charge over real property or personal assets of such **Insured Person**;
  - (iii) imposing a restriction on the liberty of such **Insured Person**; or
  - (iv) for the deportation of such **Insured Person** following revocation of an otherwise proper, current and valid immigration status for any reason other than such **Insured Person's** fully adjudicated criminal conviction.

**Prosecution Costs** means the reasonable costs, charges, fees and expenses incurred by an **Insured Person** to bring a **Prosecution**.

**Raid** means any raid or on-site visit to the **Company's** premises by an **Official Body** that involves:

- (a) the production, inspection, review, copying or removal of documents or data; or
- (b) the interview, detention or arrest of any **Insured Person**.

**Raid** does not include any routine supervision, inspection, compliance audit or similar review or **Investigation**.

**Raid Response 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 for the services of legal advisors, accountants or a public relations, media or crisis management consultant, in respect of a **Raid**.

**Schedule** means the current schedule issued by the **Insurer** in connection with 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:

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

made against the **Company** for a **Company Wrongful Act** alleged against that **Company**.

**Securities Claim** does not include a **Claim** or **Investigation**.

**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 any **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" as defined in the Corporations Act 2001 (Cth) of the **Policyholder**;
- (b) any body corporate in which the **Policyholder** controls the composition of the board;
- (c) any body corporate in which the **Policyholder** 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;
- (d) any body corporate in which the **Policyholder** holds more than one-half of the issued share capital (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);
- (e) any body corporate which is a subsidiary as defined in the Corporations Act 2001 (Cth) of a body corporate described in (a) to (d) above; or
- (f) 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 claimed against an **Insured Person** in their capacity as such;
- (b) any matter claimed against an **Insured Person** solely by reason of their acting in their capacity as an **Insured Person**;
- (c) **Employment Wrongful Act**; or
- (d) other actual or alleged wrongdoing by an **Insured Person** in their capacity as such.

End of policy wording

# Notices

These notices do not form part of the policy.

## Your duty of disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract. You do not need to tell us anything that:

- ▼ reduces the risk we insure you for; or
- ▼ is common knowledge; or
- ▼ we know or should know as an insurer; or
- ▼ we waive your duty to tell us about.

## If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

## Statutory notice – Section 40 Insurance Contracts Act 1984 (Cth)

This is a 'claims made and notified' liability insurance policy. It only provides cover if a claim is made against the insured, by some other person, during the policy period, and notified to the insurer during the policy period.

Where your policy has an additional or extended discovery period, subject to the terms of the policy, you may have:

- (i) an additional period to tell us about claims first made against you during the policy period; and/or
- (ii) cover for claims first made against you during the extended discovery period and which you tell us about during the extended discovery period – provided the claims are based on an act, error or omission alleged to have been committed prior to the expiry of the policy period.

The policy does not cover prior or pending claims or investigations (see exclusion 3.3 'Prior claims and circumstances' in the policy), subject to extension 2.3 'Continuity' in the policy.

Section 40(3) of the Insurance Contracts Act 1984 (Cth) provides that where the insured gave notice in writing to the insurer of facts that might give rise to a claim against the insured in respect of a loss suffered by some other person as soon as was reasonably practicable after the insured became aware of those facts but before the insurance cover provided by the contract expired, the insurer is not relieved of liability under the contract in respect of the claim, when made, by reason only that it was made after the expiration of the period of the insurance cover provided by the contract.

If the insured, inadvertently or otherwise, does not notify the relevant facts to the insurer before the insurance cover provided by the contract expires, the insured may not have the benefit of section 40(3) of the Insurance Contracts Act 1984 (Cth) and the insurer may refuse to pay any subsequent claim, notwithstanding that the events giving rise to it or the wrongful acts alleged in it may have taken place during the policy period.

If a claim is actually made against the insured by some other person during the policy period but is not notified to the insurer until after the policy has expired, the insurer may be able to reduce its liability by an amount that fairly represents the extent to which the insurer's interests were prejudiced as a result of the late notification (including potentially reducing its liability to zero).

## Failure to comply with provisions under this policy

In the event of a failure by the insured to comply with a provision requiring the insured's compliance under this policy, including but not limited to the provisions set out in section 5 'Claims conditions' and section 6 'General conditions', pursuant to section 54 of the Insurance Contracts Act 1984 (Cth), the insurer may be able to:

- (a) refuse a claim but only to the extent that such failure caused or contributed to the loss which gives rise to the claim; or
- (b) reduce its liability to pay a claim by an amount that fairly represents the extent to which the insurer's interests are prejudiced by the failure to comply.

The insurer may also seek to recover from the insured any costs and/or moneys the insurer has paid in relation to a claim.

If the insured fails to comply with general condition 6.18 'Payment of premium', the insurer is entitled to cancel the policy pursuant to section 60 of the Insurance Contracts Act 1984 (Cth).

## Preservation of rights of recovery / subrogation waiver

This policy contains a provision (see claims condition 5.7 'Subrogation and recoveries') that has the effect of limiting or excluding the insurer's liability for a loss or liability due to the insured doing any of the following without the insurer's prior consent:

- (a) entering into any deed or agreement excluding, limiting or delaying the legal rights of recovery against another party;
- (b) doing any act whereby any rights or remedies to which the insurer would be subrogated are or may be prejudiced; or
- (c) issuing proceedings against any other party for losses that are or may be indemnified under this policy.

## Overseas or worldwide activities

If this policy provides cover for the conduct of activities outside of Australia or claims brought in legal jurisdictions outside of Australia, it is possible other countries' laws or regulations may nevertheless prevent this policy from responding to provide that cover. If you conduct activities overseas you may wish to seek specific advice in relation to the relevant countries' insurance requirements from your insurance broker or a legal professional.

## Privacy statement

AAI Limited trading as Vero Insurance is the insurer and issuer of your commercial insurance product, and is a member of the Suncorp Group, which we'll refer to simply as "the Group".

### Why do we collect personal information?

Personal information is information or an opinion about an identified individual or an individual who is reasonably identifiable. We collect personal information so that we can:

- ▼ identify you and conduct appropriate checks;
- ▼ understand your requirements and provide you with a product or service;
- ▼ set up, administer and manage our products and services and systems, including the management and administration of underwriting and claims;
- ▼ assess and investigate any claims you make under one or more of our products;
- ▼ manage, train and develop our employees and representatives;
- ▼ manage complaints and disputes, and report to dispute resolution bodies; and
- ▼ get a better understanding of you, your needs, your behaviours and how you interact with us, so we can engage in product and service research, development and business strategy including managing the delivery of our services and products via the ways we communicate with you.

### What happens if you don't give us your personal information?

If we ask for your personal information and you don't give it to us, we may not be able to provide you with any, some, or all of the features of our products or services.

### How we handle your personal information

We collect your personal information directly from you and, in some cases, from other people or organisations. We also provide your personal information to other related companies in the Group, and they may disclose or use your personal information for the purposes described in 'Why do we collect personal information?' in relation to products and services they may provide to you. They may also use your personal information to help them provide products and services to other customers, but they'll never disclose your personal information to another customer without your consent.

Under various laws we will be (or may be) authorised or required to collect your personal information. These laws include the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth), Personal Property Securities Act 2009 (Cth), Corporations Act 2001 (Cth), Autonomous Sanctions Act 2011 (Cth), Income Tax Assessment Act 1997 (Cth), Income Tax Assessment Act 1936 (Cth), Taxation Administration Act 1953 (Cth), A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the Australian Securities and Investments Commission Act 2001 (Cth), as those laws are amended and includes any associated regulations.

We will use and disclose your personal information for the purposes we collected it as well as purposes that are related, where you would reasonably expect us to. We may disclose your personal information to and/or collect your personal information from:

- ▼ other companies within the Group and other trading divisions or departments within the same company (please see our Group Privacy Policy for a list of brands/companies);
- ▼ former Group companies while within the Group's technology infrastructure;
- ▼ any of our Group joint ventures where authorised or required;
- ▼ customer, product, business or strategic research and development organisations;
- ▼ data warehouse, strategic learning organisations, data partners, analytic consultants;
- ▼ social media and other virtual communities and networks where people create, share or exchange information;

- ▼ publicly available sources of information;
- ▼ clubs, associations, member loyalty or rewards programs and other industry relevant organisations;
- ▼ a third party that we've contracted to provide financial services, financial products or administrative services – for example:
  - ▼ information technology providers,
  - ▼ administration or business management services, consultancy firms, auditors and business management consultants,
  - ▼ marketing agencies and other marketing service providers,
  - ▼ claims management service providers,
  - ▼ print/mail/digital service providers, and
  - ▼ imaging and document management services;
- ▼ any intermediaries, including your agent, adviser, a broker, representative or person acting on your behalf, other Australian Financial Services Licensee or our authorised representatives, advisers and our agents;
- ▼ a third party claimant or witnesses in a claim;
- ▼ accounting or finance professionals and advisers;
- ▼ government, statutory or regulatory bodies and enforcement bodies;
- ▼ policy or product holders or others who are authorised or noted on the policy as having a legal interest, including where you are an insured person but not the policy or product holder;
- ▼ in the case of a relationship with a corporate partner such as a bank or a credit union, the corporate partner and any new incoming insurer;
- ▼ the Australian Financial Complaints Authority or any other external dispute resolution body;
- ▼ credit reporting agencies;
- ▼ other insurers, reinsurers, insurance investigators and claims or insurance reference services, loss assessors, financiers;
- ▼ legal and any other professional advisers or consultants;
- ▼ hospitals, medical, health or wellbeing professionals;
- ▼ debt collection agencies;
- ▼ any other organisation or person, where you've asked them to provide your personal information to us or asked us to obtain personal information from them, eg your mother.

We'll use a variety of methods to collect your personal information from, and disclose your personal information to, these persons or organisations, including written forms, telephone calls and via electronic delivery. We may collect and disclose your personal information to these persons and organisations during the information life cycle, regularly, or on an ad hoc basis, depending on the purpose of collection.

#### Overseas disclosure

Sometimes, we need to provide your personal information to – or get personal information about you from – persons or organisations located overseas, for the same purposes as in 'Why do we collect personal information?'

The complete list of countries is contained in our Group Privacy Policy, which can be accessed at [www.vero.com.au/privacy](http://www.vero.com.au/privacy), or you can call us for a copy.

From time to time, we may need to disclose your personal information to, and collect your personal information from, other countries not on this list. Nevertheless, we will always disclose and collect your personal information in accordance with privacy laws.

#### How to access and correct your personal information or make a complaint

You have the right to access and correct your personal information held by us and you can find information about how to do this in the Suncorp Group Privacy Policy.

The Policy also includes information about how you can complain about a breach of the Australian Privacy Principles and how we'll deal with such a complaint. You can get a copy of the Suncorp Group Privacy Policy.

Please use the contact details in **Contact us**.

#### Contact us

For more information about our privacy practices including accessing or correcting your personal information, making a complaint, obtaining a list of overseas countries or giving us your marketing preferences you can:

- ▼ Visit [www.vero.com.au/privacy](http://www.vero.com.au/privacy)
- ▼ Speak to us directly by phoning us on 1300 888 073; or
- ▼ Email us at [privacyaccessrequests@vero.com](mailto:privacyaccessrequests@vero.com).



## General Insurance Code of Practice

We support the General Insurance Code of Practice (the Code). A copy of the Code can be obtained from the Insurance Council of Australia by:

- ▼ Telephone (02) 9253 5100 or 1300 728 228
- ▼ Website [www.insurancecouncil.com.au](http://www.insurancecouncil.com.au)

The Code Governance Committee is an independent body which monitors and enforces the Code and has power to impose sanctions on Code subscribers for non-compliance.

## Our complaints handling procedures

We are committed to:

- ▼ listening to what you tell us;
- ▼ being accurate and honest in telling you about our products and services;
- ▼ communicating with you clearly; and
- ▼ resolving any complaints or concerns you have in a fair, transparent and timely manner.

### How to contact us with a complaint

#### Let us know

If you experience a problem, are not satisfied with our products or services or a decision we have made, let us know so that we can help.

Contact us:

- ▼ By phone: 1300 888 073
- ▼ By email: [claims@vero.com.au](mailto:claims@vero.com.au)

Complaints can usually be resolved on the spot within 5 business days.

### Review by our Customer Relations Team

If we are not able to resolve your complaint or you would prefer not to contact the people who provided your initial service, our Customer Relations team can assist:

- ▼ By phone: 1300 264 470
- ▼ By email: [idr@vero.com.au](mailto:idr@vero.com.au)
- ▼ In writing: Vero Customer Relations Team, PO Box 14180, Melbourne City Mail Centre VIC 8001

Customer Relations will contact you if they require additional information or they have reached a decision.

When responding to your complaint you will be informed of the progress of and the timeframe for responding to your complaint.

### Seek review by an external service

We expect our procedures will deal fairly and promptly with your complaint. However, if you remain dissatisfied, there are external dispute remedies such as mediation, arbitration or legal action you may pursue.

