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NOTICES

These notices do not form part of the policy.

1. Duty of Disclosure

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

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

Your duty, however, does not require disclosure of any matter:

- that diminishes the risk to be undertaken by the insurer;
- that is of common knowledge;
- that your insurer knows or, in the ordinary course of his business, ought to know;
- as to which compliance with your duty is waived by the insurer.

Non-disclosure

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a claim, refuse to pay the claim or may cancel the contract. If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning.

2. Claims Made and Notified Basis of Coverage

The Directors and Officers Liability Insurance Policy is issued on a 'Claims made and Notified' basis.

This means that the policy responds to:

- a) claims first made against you during the policy period and notified to the insurer during the policy period, provided that you were not aware at any time prior to the policy inception of circumstances which would have put a reasonable person in your position on notice that a claim may be made against him/her; and:
- b) written notification of facts pursuant to section 40(3) of the Insurance Contracts Act 1984. The facts that you may decide to notify are those which might give rise to a claim against you. Such notification must be given as soon as reasonably practicable after you become aware of the facts and prior to the time at which the policy expires. If you give written notification of facts the policy will respond even though a claim arising from those facts is made against you after the policy has expired. For your information, s40(3) of the Insurance Contracts Act 1984 is set out below;

"S40(3) Where the insured gave notice in writing to the insurer of *facts* that might give rise to claim against the insured 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 insurance cover provided by the contract."

When the policy period expires, no new notification of Claims or facts can be made on the expired policy even though the event giving rise to the claim against you may have occurred during the policy period. An exception to this is under the Discovery Period Extension. If a Discovery Period is purchased as provided for in the Extension, then some cover for new notification of Claims or facts is available.

3. Retroactive Date

If a retroactive date applies to a section of this policy then it means that cover is excluded for any wrongful act occurring or committed prior to the retroactive date.

Our policy also contains provisions that exclude cover for any wrongful act occurring or committed by a subsidiary and its directors, officers or employees prior to its acquisition or creation by the policyholder.

4. Preservation of rights of recovery

Our policy contains a provision that has the effect of excluding or limiting our liability in respect of a loss, if the Insured releases, agrees not to sue on, waives or prejudices its rights of recovery, or enters into any arrangement or compromise or does any act whereby any rights or remedies to which the Insurer would be subrogated are or may be prejudiced.

5. Subrogation Waiver

Our policy contains a provision that has the effect of excluding or limiting our liability in respect of a liability incurred solely by reason of the Insured entering into a deed or agreement excluding, limiting or delaying the legal rights or of recovery against another.

6. Privacy Statement

The Privacy Act 1988 requires us to inform you that:

Purpose of collection

We collect personal information (this is information or an opinion about an individual whose identity is apparent or can reasonably be ascertained and which relates to a natural living person) for the purposes of: providing insurance services to you, including to evaluate your application, to evaluate any request for a change to any insurance provided; to provide, administer and manage the insurance services following acceptance of an application; to investigate and, if covered, manage claims made in relation to any insurance you have with us or other companies within the same group.

The personal information collected can be used or disclosed by us for a secondary purpose related to those purposes listed above, but only if you would reasonably expect us to use or disclose the information for this secondary purpose. However for sensitive information, the secondary purpose must be directly related to one or more of the purposes listed above.

Disclosure

We may disclose your personal information (and receive some personal information from), when necessary and in connection with the purposes listed above, to other companies within the same group, your insurance broker or our agent, Government bodies, loss assessors, claim investigators, reinsurers, other insurance companies, mailing houses, claims reference providers, other service providers, hospitals, medical and health professionals, legal and other professional advisers.

Consequences if information is not provided

If you do not provide us with the information we need we will be unable to consider your application for insurance cover.

Access

You can request access to the personal information by contacting a Vero at the address below.

Privacy Statement issued: Vero Insurance Limited, 465 Victoria Avenue, Chatswood, NSW 2067.

7. General Insurance Code of Practice

Vero Insurance Limited (Vero) has adopted the General Insurance Code of Practice which has been developed by the Insurance Council of Australia. The Code is designed to promote good relations and good insurance practice between insurers, intermediaries and consumers.

The Code sets out what insurers must do when dealing with the insured. Please contact Vero for more information about the Code, if required.

8. Our Complaints Handling Procedures

Resolving your complaints

If you think we have let you down in any way, or our service is not what you expect (even if through one of our agents or representatives), please tell us so we can help. You can tell us by phone, in writing or in person.

Should you tell us in writing it will help to send us the full details of your complaint together with any supporting documents and an explanation of what you want us to do. If you would like to come in to talk to us face to face, please call and we will arrange an appointment for a meeting.

What we will do to resolve your complaint

When you first let us know about your complaint or concern the person trying to resolve your complaint will listen to you, consider the facts and contact you to resolve your complaint as soon as possible, usually within 24 hours.

If you are not satisfied with this person's decision on your complaint, then it will be referred to the relevant Operational Manager, who will contact you within 5 working days.

Should you not be satisfied with the Operational Manager's decision, then it will be referred to the General Manager (or their delegate). We will send you our final decision within 15 working days from the date you first made your complaint.

What if you are not satisfied with our final decision?

We expect our procedures will deal fairly and promptly with your complaint. However if you are not satisfied with our final decision there are external dispute remedies such as mediation, arbitration or legal action.

Directors & Officers Liability Insurance Policy



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1. INSURING CLAUSES

1.1 DIRECTORS AND OFFICERS LIABILITY COVER

The **Insurer** will pay, on behalf of the **Insured Persons**, **Loss** resulting from **Claims** first made against the **Insured Persons** and notified to the **Insurer** during the **Policy Period** based on **Wrongful Acts** for which the **Company** has not agreed to provide indemnity.

1.2 COMPANY REIMBURSEMENT COVER

The **Insurer** will pay, on behalf of the **Company**, **Loss** resulting from **Claims** first made against the **Insured Persons** and notified to the **Insurer** during the **Policy Period** based on **Wrongful Acts** if, and to the extent that, the **Company** has agreed to provide indemnity to the **Insured Persons** for such **Loss**.

2. EXTENSIONS

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

2.1 ACQUISITION OR CREATION OF NEW SUBSIDIARIES

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

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

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

- a. give the **Insurer** written notice of any such acquisition or creation together with such additional information as the **Insurer** may require so that the **Insurer** can exercise its discretion whether or not to extend the cover; and
- b. accept any notified alteration in the terms of this **Policy**; and
- c. pay any additional premium required by the **Insurer**.

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

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

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

2.2 ADVANCEMENT OF DEFENCE COSTS AND REPRESENTATION EXPENSES

The **Insurer** will advance **Defence Costs** and, under the Representation Expenses Extension and the Pollution Defence Costs and Representation Expenses Extension, **Representation Expenses**. However, if and to the extent that the **Insured Person** is not entitled to coverage for **Loss** under the terms and conditions of this **Policy**, then the **Insurer** will cease to advance **Defence Costs** and **Representation Expenses** and any amounts previously advanced shall be repaid to the **Insurer** by the **Insured Person** (or the **Company**) within thirty days following a request by the **Insurer** for such repayment.

If a **Claim** alleges a **Wrongful Act** or illegal or improper conduct as described in parts a, b or c of the Dishonest or Criminal Intent / Improper Gain / Insider Trading Exclusion, then the **Insurer** will advance **Defence Costs** and **Representation Expenses** in respect of such **Claim** until it is found by way of an admission by the **Insured Person**, final judgment or final adjudication that such **Insured Person** did in fact commit such **Wrongful Act** or engage in such illegal or improper conduct and any amounts previously advanced shall be repaid to the **Insurer** by the **Insured Person** (or the **Company**) within thirty days following a request by the **Insurer** for such repayment.

2.3 **CONTINUITY**

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

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

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

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

2.4 **DISCOVERY PERIOD**

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

The additional premium for the **Discovery Period** will be as specified in Item 8 (b) of the **Policy Schedule**.

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

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

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

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

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

2.5 EMERGENCY DEFENCE COSTS AND REPRESENTATION EXPENSES

In the event of an emergency and if the **Insured Persons** are unable to contact the **Insurer** after having made reasonable attempts to do so in accordance with the methods of contact specified in Item 11 a of the **Policy Schedule** in order to obtain the **Insurer's** prior written consent to the incurring of **Defence Costs** or **Representation Expenses** as required by this **Policy**, then the **Insured Persons** may incur reasonable and necessary **Defence Costs** to the extent covered under the **Policy** or **Representation Expenses** until such time as the **Insured Persons** contact or could have contacted the **Insurer**.

Provided that:

- a. the **Insured Persons** continue to make all reasonable attempts to contact the **Insurer** as soon as reasonably practicable, in order to seek the **Insurer's** consent; and
- b. the Insurer's liability under this Extension is limited to **Defence Costs** or **Representation Expenses** of no more than 10% of the **Limit of Liability** or any applicable aggregate limit; and
- c. any payments made under this Extension are subject to the Advancement of Defence Costs and Representation Expenses Extension.

2.6 EXTENDED DISCOVERY PERIOD FOR RETIRING DIRECTORS AND OFFICERS

In the event that this **Policy** is neither renewed nor replaced at the end of the **Policy Period** with insurance covering at least substantially the same risk exposure as Insuring Clauses 1 and 2, then any **Director** or **Officer** who retires from all paid employment and office during the **Policy Period**, but prior to a **Merger** or **Acquisition**, shall be entitled to an extended discovery period of 7 years following expiry of the **Policy Period**.

During the extended discovery period the **Director** or **Officer** may continue to notify **Claims** to the **Insurer**, but only **Claims** based on **Wrongful Acts** committed or alleged to have been committed prior to the date of retirement.

Any **Claim** made and notified to the **Insurer** during this extended discovery period will be deemed to have been first made and notified to the **Insurer** during the **Policy Period**.

2.7 LEGAL REPRESENTATIVES

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

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

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

2.8 NON-RESCISSION IN RESPECT OF MISREPRESENTATION OR NON DISCLOSURE

In the event of the **Insurer** being entitled to exercise any rights under section 28 of the Insurance Contracts Act 1984 (Cth) due to non-disclosure or misrepresentation by any **Insured** or one or more **Insured Persons**, the **Insurer** will only exercise any such right in respect of an **Insured Person** if the **Insurer** is able to establish that such **Insured Person** was directly involved in or aware of any such non-disclosure or misrepresentation. It is agreed that the **Insurer** may, if appropriate to do so under section 28, reduce its liability to nil in respect of any **Insured Person** directly involved in or aware of any such non-disclosure or misrepresentation.

2.9 **OCCUPATIONAL HEALTH AND SAFETY DEFENCE COSTS**

The **Insurer** will pay, on behalf of the **Insured Persons**, **Defence Costs** incurred in defending **Claims** (other than a civil proceeding or other written demand for compensation or damages) first made against the **Insured Persons** and notified to the **Insurer** during the **Policy Period** based upon occupational health and safety, which result from a Wrongful Act.

The cover provided under this Extension will only apply to **Claims** made in the jurisdictions of Australia and New Zealand and pursuant to the laws of Australia or New Zealand.

The total liability of the **Insurer** under this Extension will not exceed the aggregate limit specified in Item 4 (c) of the **Policy Schedule**.

If there is an entitlement to payment under this Extension, then there is no entitlement to payment under the Representation Expenses Extension.

2.10 **OUTSIDE DIRECTORSHIPS**

2.10.1 Insuring Clauses 1.1 and 1.2 are extended to include as an **Insured Person** a person who, at the written request of the **Company**:

- a. was prior to the **Policy Period**, or is during or after the **Policy Period** a director or officer of, or occupies a position of equivalent status in any **Non-Profit Outside Entity**; or
- b. was prior to the **Policy Period** or is at the commencement of the **Policy Period** a director or officer of, or occupies a position of equivalent status in any **Outside Entity**.

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

- a. any indemnity; or
- b. any insurance contract, as specified in Item 7 (b) of the **Policy Schedule** or by **Endorsement**,

available from or through the **Non-Profit Outside Entity** or **Outside Entity**.

The **Policyholder** must notify the **Insurer** of any insurance contract under which any **Insured Person** is entitled to an indemnity in respect of an **Outside Entity** as soon as reasonably practicable, providing full details of such other insurance contract, including the identity of the insurer, the policy number and such further information as the **Insurer** may reasonably require.

2.10.3 The **Insurer** will not be liable under this Extension, for **Loss** resulting from any **Claim** by a **Non-Profit Outside Entity** or **Outside Entity**, or any director or officer of, or any person of equivalent status in, a **Non-Profit Outside Entity** or **Outside Entity**, except for any **Claim**:

- a. resulting from an **Employment Wrongful Act**; or
- b. solely for a contribution or indemnity in respect of a **Claim** which is brought against another **Insured Person** and is covered under this **Policy**; or
- c. by that **Non-Profit Outside Entity** or **Outside Entity** as a statutory derivative action, but not voluntarily solicited or assisted by that **Non-Profit Outside Entity** or **Outside Entity** or by a director or officer of, or a person of equivalent status in, that **Non-Profit Outside Entity** or **Outside Entity**; or
- d. by a liquidator, administrator or receiver or equivalent in any jurisdiction, but not voluntarily solicited or assisted by that **Non-Profit Outside Entity** or **Outside Entity** or by a director or officer of, or a person of equivalent status in, that **Non-Profit Outside Entity** or **Outside Entity**; or
- e. by a **Non-Profit Outside Entity** or **Outside Entity** pursuant to Section 50 of the Australian Securities and Investments Commission Act 2001.

2.11 **PECUNIARY PENALTIES**

The **Insurer** will pay, on behalf of the **Insured Persons** and to the extent permitted by law, any pecuniary penalties imposed upon the **Insured Persons** as a result of **Claims** first made against the **Insured Persons** and notified to the **Insurer** during the **Policy Period** based on **Wrongful Acts**.

The cover provided under this Extension will only apply to such pecuniary penalties imposed in the jurisdictions of Australia and New Zealand and pursuant to the laws of Australia or New Zealand.

The total liability of the **Insurer** under this Extension will not exceed the aggregate limit specified in Item 4 (d) of the **Policy Schedule**.

2.12 **POLLUTION DEFENCE COSTS AND REPRESENTATION EXPENSES**

Subject to the provisions of the Advancement of Defence Costs and Representation Expenses Extension and notwithstanding the Pollution Exclusion, the **Insurer** will pay, on behalf of the **Insured Persons** in the case of Insuring Clause 1.1 or on behalf of the **Company** in the case of Insuring Clause 1.2:

- a. **Defence Costs** incurred in defending **Claims** (other than a civil proceeding or other written demand for compensation or damages) first made against the **Insured Persons** and notified to the **Insurer** during the **Policy Period**, based on **Pollution** which result from a **Wrongful Act**; and
- b. **Representation Expenses**, where the subject matter of the official investigation, examination, inquiry or other proceedings is **Pollution**,
- c. The total liability of the **Insurer** under this Extension will not exceed the aggregate limit specified in Item 4 (e) of the **Policy Schedule**.

2.13 **PUBLIC RELATIONS EXPENSES**

The **Insurer** will pay, on behalf of the **Insured Persons**, **Public Relations Expenses** in respect of any **Claim** first made against the **Insured Persons** and notified to the **Insurer** during the **Policy Period**.

The total liability of the **Insurer** under this Extension will not exceed \$100,000 in the aggregate during the **Policy Period**.

2.14 **REPRESENTATION EXPENSES**

The **Insurer** will pay **Representation Expenses**, on behalf of the **Insured Persons** in the case of Insuring Clause 1.1 or on behalf of the **Company** in the case of Insuring Clause 1.2, subject to the provisions of the Advancement of Defence Costs and Representation Expenses Extension.

The total liability of the **Insurer** under this Extension will not exceed the aggregate limit specified in Item 4 (b) of the **Policy Schedule**.

2.15 **SPOUSES**

If a **Claim** against an **Insured Person** includes a claim against such **Insured Person's Spouse** solely by reason of (i) such **Spouse's** legal status as a **Spouse** of such **Insured Person**, or (ii) such **Spouse's** ownership interest in property which the claimant seeks as recovery for **Claims** made against such **Insured Person**, then all loss which such **Spouse** becomes legally liable to pay resulting from such **Claim** will be treated for the purposes of this **Policy** as **Loss**.

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

3. EXCLUSIONS

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

3.1 ASBESTOS

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

3.2 BODILY INJURY AND PROPERTY DAMAGE

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

3.3 CAPITAL RAISING

Loss resulting from **Claims** arising directly or indirectly from or in respect of any offer for the raising of capital by debt or equity, including but not limited to any prospectus.

3.4 DEFENCE COSTS AND LEGAL LIABILITY OF THE COMPANY

any:

- a. defence costs or representation expenses of , or incurred by , the **Company** itself; or
- b. any liability of the **Company** to any person , subject to Insuring Clause 1.2,

whether joint, several or shared.

3.5 DISHONEST OR CRIMINAL INTENT / IMPROPER GAIN / INSIDER TRADING

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

- a. any **Wrongful Act** committed by that **Insured Person** with wilful, reckless, dishonest, fraudulent, malicious or criminal intent; or
- b. that **Insured Person** having received any gain, profit, advantage or remuneration to which that **Insured Person** was not legally entitled; or
- c. that **Insured Person** having made profits from improperly dealing in **Securities** while in the possession of information not generally available, or improperly communicating that information to some other person,

if it is found by way of any admission by the **Insured Person**, final judgment or final adjudication that such **Insured Person** did in fact commit such **Wrongful Act** or engage in such illegal or improper conduct.

For the purpose of this Exclusion, the fact that one **Insured Person** has committed or is alleged to have committed the conduct described in parts a, b or c of this Exclusion will not be imputed to any other **Insured Person**.

3.6 DUAL EMPLOYMENT PRACTICE LIABILITY COVER

Loss resulting from **Claims** based on **Employment Wrongful Acts**, if both this **Policy** and the Vero Profin Employment Practice Liability Policy are purchased, except that this Exclusion does not apply to the Outside Directorships Extension.

3.7 INSURED V INSURED

Loss, other than **Defence Costs**, resulting from any **Claim** brought with the prior direct or indirect consent, solicitation, enticement or co-operation (except co-operation required at law) of the **Insured Person** against whom the **Claim** is made.

3.8 KNOWN CLAIMS AND CIRCUMSTANCES

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

- a. known to any **Insured** at the inception of this **Policy** and which a reasonable person in the circumstances might reasonably expect to give rise to a **Claim**; or
- b. which has been or should reasonably have been the subject of any written notice given under any policy of which this **Policy** is a direct or indirect renewal or replacement; or
- c. alleged in, discovered in, relating to or underlying any **Claim** against any **Insured** prior to the Prior Litigation Date specified in Item 9 of the **Policy Schedule**,

except as provided for in the Continuity Extension.

3.9 MAJOR SHAREHOLDER

Loss resulting from **Claims** (whether in the name of the **Company** or not) by any shareholder having directly or indirectly **Control** of fifteen per cent or more of the **Company**.

3.10 NUCLEAR

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

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

3.11 POLLUTION

Loss resulting from **Claims** arising directly or indirectly from or in respect of **Pollution** including without limitation any **Claim** for financial loss to the **Company** arising directly or indirectly from **Pollution**, except as provided for in the Pollution Defence Costs and Representation Expenses Extension.

This Exclusion does not apply to any **Claim** brought by a shareholder or a group of shareholders of the **Company** directly or in the name of the **Company** without the prior direct or indirect consent, solicitation, enticement or co-operation (except co-operation required at law) of the **Insured Person** against whom the **Claim** is made.

3.12 PROFESSIONAL SERVICES

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

- a. any breach of duty in respect of any professional services or professional advice by the **Insured**; or
- b. any breach of any contract for the provision of professional services or professional advice by the **Insured**.

except that this Exclusion will not apply in respect of any actual or alleged professional services or professional advice which is provided by an **Insured Person** when acting solely in their capacity as an **Insured Person** and in circumstances where such professional services or professional advice is provided to the **Insured** and not to third parties in the course of the **Company's** professional business.

3.13 SUPERANNUATION FUND TRUSTEES

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

3.14 WAR AND TERRORISM

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

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

4. LIMIT OF LIABILITY AND EXCESS

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

4.1 LIMIT OF LIABILITY

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

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

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

4.2 EXCESS

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

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

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

The **Insured** agrees that the **Excesses** specified in Items 5 (a) and (b) of the **Policy Schedule** must be retained by the **Insured** and are to remain uninsured.

4.3 RELATED CLAIMS

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

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

5. CLAIMS CONDITIONS

5.1 NOTICE

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

- a. as soon as reasonably practicable within the **Policy Period** or within any applicable **Discovery Period**; and
- b. at the address or facsimile number specified in Item 10 (a) of the **Policy Schedule**.

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

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

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

5.2 CLAIMS CO-OPERATION

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

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

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

5.3 DEFENCE OF CLAIMS

5.3.1 **Claims Conduct**

The **Insurer** is entitled to take over and conduct in the name of the **Insured** the defence or settlement of any **Claim** and will have full discretion in the conduct of any proceedings and in the settlement of any **Claim**.

The **Insurer** reserves entirely its rights under this **Policy**, including its right to agree or deny cover while it assesses a **Claim** or conducts the defence. The **Insurer's** rights under this **Policy** are not affected if it does not conduct the defence.

Neither the **Insured** nor the **Insurer** will be required to contest or litigate any **Claim** if, in the opinion of Senior Counsel, reasonable attempts should be made to settle the **Claim**. The Senior Counsel shall be mutually agreed upon, or in the absence of such agreement, as nominated by the President of the NSW Bar Association. The cost to obtain the opinion will be advanced by the **Insurer** and treated as **Defence Costs**.

Senior Counsel shall provide the opinion in writing. In formulating the opinion Senior Counsel shall consider commercial matters including the amount of the **Claim**, the actual and potential **Loss** (including **Defence Costs**) that may reasonably be incurred in contesting the **Claim**, the liability prospects and the prospect of recovering costs against the claimant in the event that the defence is successful. Senior Counsel shall also provide a settlement range within which reasonable attempts should be made to settle the **Claim**.

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

5.3.2 **Settlement**

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

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

5.4 **ALLOCATION OF LOSS**

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

- a. of one **Insured Person** only; or
- b. of more than one **Insured Person**, whether jointly or severally; or
- c. of one or more **Insured Persons** and one or more persons who is not an **Insured Person**, whether jointly or severally,

including **Loss** that is partly covered and partly not covered under this **Policy**,

(together 'Loss to be Allocated').

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

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

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

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

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

This allocation applies for all purposes under this **Policy** including the Advancement of Defence Costs and Representation Expenses Extension and the Subrogation and Recoveries Claims Condition.

Any allocation of **Loss** will not apply to or create a presumption with respect to the allocation of other **Loss** on account of such **Claim**.

5.5 **SUBROGATION AND RECOVERIES**

5.5.1 **Preservation of rights of recovery**

The **Insured** will take all necessary steps to preserve its rights of recovery. The **Insured** will not, without the **Insurer's** prior consent in writing:

- a. release, agree not to sue on, waive or prejudice, any such rights; or
- b. enter into any arrangement or compromise or do any act whereby any rights or remedies to which the **Insurer** would be subrogated are or may be prejudiced.

5.5.2 **Provision of information and assistance**

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

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

5.5.3 **Recoveries**

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

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

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

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

6. GENERAL TERMS

6.1 ASSIGNMENT

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

6.2 ACQUISITION, MERGER OR WINDING UP OF POLICYHOLDER

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

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

then this **Policy** will remain in force until the expiry of the **Policy Period**, but only in respect of **Loss** resulting from **Claims** based on **Wrongful Acts** committed or alleged to have been committed prior to the event described in parts a or b of this General Term.

6.3 AUTHORISATION

The **Policyholder** is the agent for each **Insured** and each **Insured** is bound by any statement, act or omission of the **Policyholder** for all purposes under this **Policy**, subject to the Disclosure and Non-imputation General Terms and the Claims Conduct Claims Condition.

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

6.4 CANCELLATION

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

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

The **Insurer** may cancel this **Policy** in accordance with the Insurance Contracts Act 1984.

6.5 COMPANY FAILURE TO INDEMNIFY

Where Insuring Clause 1.1 applies and the **Company** is in liquidation (other than voluntary liquidation) and has insufficient funds available to indemnify the **Insured Persons** for **Loss** as agreed, then the **Excess** applicable to the **Company** specified in the **Policy Schedule** is not payable to the **Insurer**.

6.6 CONFIDENTIALITY

The **Insured** must not disclose the existence or terms of this **Policy**, including without limitation 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; or
- b. the **Insurer** provides its prior written consent to such disclosure.

6.7 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 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.

6.8 DISCLOSURE

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

6.9 **GOODS AND SERVICES TAX**

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

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

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

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

6.10 **GOVERNING LAW**

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

6.11 **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.

6.12 **JURISDICTION**

Except where otherwise provided, this **Policy** provides cover for **Claims** made anywhere in the world except for those **Claims**:

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

6.13 **MANNER OF GIVING NOTICES**

Notification of a **Claim** and other notices given to the **Insurer** under this **Policy** will be taken to have been received:

- a. if delivered by hand to the **Insurer's** address specified in Item 10(a) or 10(b) of the **Policy Schedule** as appropriate, on the date of delivery, provided that delivery is acknowledged in writing by the **Insurer**; or
- b. if sent by post to the **Insurer's** address specified in Item 10(a) or 10(b) of the **Policy Schedule** as appropriate, five working days after posting; or
- c. if sent by facsimile to the **Insurer's** facsimile number specified in Item 10(a) or 10(b) of the **Policy Schedule** as appropriate on a business day at the **Insurer's**, on the date of transmission, or if sent on a non-business day at the **Insurer's**, on the next working day, provided that in both cases the sender's facsimile machine records a successful transmission.

6.14 MATERIAL CHANGE

The **Insured** must notify the **Insurer** as soon as reasonably practicable of any material change in the risk insured by this **Policy**. The **Insurer** is entitled to amend the terms of this **Policy** and/or charge an additional premium based on the **Insurer's** assessment of any change in the risk insured by this **Policy**.

6.15 NON-IMPUTATION

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

6.16 OTHER INSURANCE

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

6.17 OTHER NOTICES

Any communications or notices to the **Insurer** under this **Policy** (other than a notification of a **Claim** to which the Claims Conditions apply), including but not limited to any application to purchase a **Discovery Period** or any notice of a material change in the risk, must be sent by the **Policyholder** to the **Insurer** at the address or facsimile number specified in Item 10 (b) of the **Policy Schedule**.

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

6.18 PAYMENT OF PREMIUM

The **Policyholder** must pay the premium specified in Item 3 of the **Policy Schedule** for the **Policy Period** to the **Insurer** by the Due Date. The Due Date is on or before ninety days after the inception date of the **Policy Period** specified in Item 2 of the **Policy Schedule** or such other time that the **Insurer** agrees in writing. If the **Policyholder** fails to pay the premium by the Due Date, the **Insurer** is entitled to cancel this **Policy** in accordance with the Insurance Contracts Act 1984.

6.19 VARIATION OF THE POLICY

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

7. DEFINITIONS

When used in this **Policy**:

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

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

7.3 Benefits means:

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

7.4 **Claim** means:

- a. a written communication, including electronic communications, to an **Insured**, containing a demand for compensation or damages, alleging an act, error, omission, conduct, facts or circumstances that may constitute a **Wrongful Act**; or
- b. a civil proceeding commenced by the service of a written complaint, summons, statement of claim, writ or similar pleading or an arbitral process, cross-claim, or counter claim against an **Insured Person** alleging an act, error, omission, conduct, facts or circumstances that may constitute a **Wrongful Act**; or
- c. any criminal proceeding commenced by a summons or charge of an **Insured Person** arising from a **Wrongful Act**; or
- d. under the Emergency Representation Expenses and Defence Costs Extension, the Representation Expenses Extension and the Pollution Defence Costs and Representation Expenses Extension, only, any official investigation, examination, inquiry or other proceedings which gives rise to **Representation Expenses**.

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

7.5 **Company** means:

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

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

7.7 **Defence Costs** means the **Insured Person's** share, according to the Allocation of Loss Claims Condition, of necessary and reasonable costs, charges, fees and expenses (other than regular or overtime wages, salaries, fees or **Benefits** of the **Directors**, **Officers** or employees of the **Company**) incurred by that **Insured Person** with the **Insurer's** prior written consent, in defending, investigating or settling covered **Claims**.

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

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

- a. the period of time specified in Item 8 (a) of the **Policy Schedule** beginning immediately following the expiry of the **Policy Period** and ending on the date and time specified in Item 8 (a) of the **Policy Schedule**; or
- b. the period of time beginning immediately following the expiry of the **Policy Period** and ending on the effective date and time on which the **Insured** obtains insurance cover similar to this **Policy** from another insurer.

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

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

- 7.12 Excess** means the sum of:
- the **Excess** specified in Item 5 of the **Policy Schedule**; and
 - any amount payable under a **Specified Policy**; and
 - under the Outside Directorships Extension, any other indemnity available from a **Non-Profit Outside Entity** or **Outside Entity**.
- 7.13 Full Annual Premium** means the annual premium payable by the **Insured**, including any additional premium which becomes payable in respect of the **Policy Period** in question.
- 7.14 Insured** means:
- the **Company**; and
 - the **Insured Persons**.
- 7.15 Insured Person** means any natural person who was prior to the **Policy Period**, or is during the **Policy Period**, a **Director** or **Officer**.
- 7.16 Insurer** means Vero Insurance Limited ABN 48 005 297 807.
- 7.17 Limit of Liability** means the **Limit of Liability** specified in Item 4 (a) of the **Policy Schedule**
- 7.18 Loss** means:
- the amount, whether determined by judgment, verdict or award for which the **Insured Persons** are legally liable to a third party for a **Claim** and includes damages, compensation orders, interest and claimant's costs and expenses; and
 - a settlement of a **Claim** by a third party against an **Insured Person**, which complies with the Settlement Claims Condition; and
 - Defence Costs**; and
 - under the Public Relations Expenses Extension, only, **Public Relations Expenses**; and
 - under the Emergency Representation Expenses and Defence Costs Extension, Representation Expenses Extension and the Pollution Defence Costs and Representation Expenses Extension, only, **Representation Expenses**; and
 - under the Pecuniary Penalties Extension, only, pecuniary penalties,
- each subject to the Allocation of Loss Claims Condition.
- Loss** does not mean:
- taxes, fines and penalties imposed by law, other than those covered under the Pecuniary Penalties Extension; or
 - punitive, exemplary or aggravated damages.
- 7.19 Merger or Acquisition** means:
- 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
 - any entity obtaining **Control** of the **Policyholder** or the **Company**.
- 7.20 Non-Profit Outside Entity** means any non-profit organisation of any kind that is exempt from the payment of income tax, other than a **Subsidiary**.
- 7.21 North America** means the United States of America and Canada and in each case its territories and protectorates.

- 7.22 Officer** means any natural person who was prior to the **Policy Period**, or is during or after the **Policy Period**:
- a. a company secretary of the **Company**; or
 - b. a person:
 - i. who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the **Company**; or
 - ii. who has the capacity to affect significantly the **Company's** financial standing; or
 - iii. in accordance with whose instructions or wishes the **Directors** of the **Company** are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the **Directors** or the **Company**),other than:
 - iv. a receiver, or receiver and manager; or
 - v. an administrator or an administrator of a deed of company arrangement; or
 - vi. a liquidator; or
 - vii. a trustee or other person administering a compromise or arrangement made between the **Company** and someone else.
- 7.23 Outside Entity** means any company specified in 7 (a) of the **Policy Schedule** or by **Endorsement**, other than a **Subsidiary**.
- 7.24 Policy** means and consists of this directors and officers liability insurance policy wording, the **Policy Schedule** and any **Endorsement** and their terms are incorporated into the terms of this **Policy**.
- 7.25 Policyholder** means the organisation specified in Item 1 of the **Policy Schedule**.
- 7.26 Policy Period** means the period of time specified in Item 2 of the **Policy Schedule**.
- 7.27 Policy Schedule** means the schedule attaching to the **Policy**.
- 7.28 Pollutants** means any solids, liquids, gaseous or thermal irritants, contaminants, smoke, vapour, soot, fumes, odour or any other air emission, acids, alkalis, chemicals, waste materials, waste water, oil or oil products, infectious biological or medical waste, **Asbestos**, electric or magnetic or electromagnetic fields, noise and any ionising radiations or contamination by radioactivity.
- 7.29 Pollution** means:
- a. the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or
 - b. any direction or request to test for, monitor, clean up, treat, detoxify or neutralise **Pollutants**.
- 7.30 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**.
- 7.31 Public Relations Expenses** means the reasonable costs, charges, fees and expenses of a public relations firm or consultant engaged to prevent or limit adverse effects or negative publicity resulting from a **Claim** that is covered under this **Policy**, which an **Insured Person** in the reasonable exercise of his or her discretion may engage with the prior written consent of the **Insurer**.
- 7.32 Related Claims** means all **Claims** arising directly or indirectly from or in respect of the same or causally related or continuous or repeated **Wrongful Acts** whether committed by one or more of the **Insured Persons** and whether directed to or affecting one or more than one person or legal entity.

7.33 Representation Expenses means the **Insured Person's** share, according to the Allocation of Loss General Term, of necessary and reasonable costs, charges and expenses (other than regular or overtime wages, salaries, fees or **Benefits** from the **Company** or of the **Insured Persons**) incurred by that **Insured Person** with the **Insurer's** prior written consent, in preparing for, attending and being represented at any official investigation, examination, inquiry or other proceedings (other than the **Company's** own internal investigation) ordered or commissioned by any regulator, government body or authority, governmental or administrative agency, official body or institution that:

- a. the **Insured Persons** are requested to attend; and
- b. has as its subject matter the affairs of the **Company**; or
- c. has as its subject matter the conduct of the **Insured Persons** in their capacity as such or as a director or officer of, or the holder of a position of equivalent status in a **Non-Profit Outside Entity** or **Outside Entity** in their capacity as such,

provided that notice of the investigation, examination, inquiry or other proceedings is first received by the **Insured Persons** and notified to the **Insurer** during the **Policy Period**.

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

7.35 Specified Policy means:

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

7.36 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.

7.37 Subsidiary means:

- a. a subsidiary of the **Policyholder** as defined in the Corporations Act 2001; or
- b. any body corporate in which the **Policyholder**:
 - i. controls the composition of the board of the body corporate; or
 - ii. is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the body corporate; or
 - iii. holds more than one-half of the issued share capital of the first body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- c. any body corporate which is a subsidiary of a body corporate described in 6.36 a or 6.36 b above: or
- d. any other body corporate whose accounts are consolidated into those of the **Policyholder** in accordance with the relevant Australian Accounting Standard.

7.38 Wrongful Act means any act, error, omission, conduct, misstatement, misleading statement, neglect, breach of duty, breach of trust, breach of contract, breach of warranty of authority or **Employment Wrongful Act** actually or allegedly committed by any **Insured Person** in his or her capacity:

- a. as a **Director** or **Officer**; or
- b. under the Outside Directorships Extension, only, as a director or officer of, or as the holder of a position of equivalent status in, any **Non-Profit Outside Entity** or **Outside Entity**,

or any matter claimed against any **Insured Person** solely by reason of his or her serving in such capacities.

End of wording