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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 Cover

Some sections of this Management Liability Insurance Policy are issued on a 'claims made and notified' basis.

This means that these sections of the policy respond 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 extended reporting period extension. If an extended reporting period is purchased as provided for in the extension, then some cover for new notification of claims or facts is available.

Management Liability Insurance

You will not be entitled to indemnity under your new policy in respect of any claim resulting from an act, error or omission occurring or committed or alleged to have occurred or been committed prior to the retroactive date, where one is specified in the policy terms which are offered to you.

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 (as amended) now applies and 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 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.

Management Liability Insurance

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.

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Management Liability Insurance

PREAMBLE

Please read this **Policy** carefully to ensure that it meets your requirements.

In consideration of payment of the premium the **Insured** and the **Insurer** agree that the **Insurer** will provide insurance on the terms of this **Policy**.

1. INSURING CLAUSES

Insuring Clause 1: Directors and Officers Liability

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 **Management Wrongful Acts** for which the **Company** has not agreed to provide indemnity.

Insuring Clause 2: Company Reimbursement

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 **Management Wrongful Acts** if, and to the extent that, the **Company** has agreed to provide indemnity to the **Insured Persons** for such **Loss**.

Insuring Clause 3: Company Liability

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

Insuring Clause 4: Employment Practice Liability

The **Insurer** will pay, on behalf of the **Insured**, **Loss** resulting from **Claims** first made against the **Insured** and notified to the **Insurer** during the **Policy Period**, where such **Loss** is in respect of or arising out of an **Employment Wrongful Act**.

Insuring Clause 5: Trustee Liability

The **Insurer** will pay, on behalf of the **Trustee**, **Loss** resulting from **Claims** first made against the **Trustee** and notified to the **Insurer** during the **Policy Period**, based on **Trustee Wrongful Acts** in connection with the **Superannuation Fund**.

Insuring Clause 6: Fidelity

The **Insurer** will pay the **Company** for **Policy Claims** for **Fidelity Loss** first **Discovered** and notified to the **Insurer** during the **Policy Period**.

The total liability of the **Insurer** under this Insuring Clause will not exceed in the aggregate, the Fidelity Sub-limit specified in the **Policy Schedule**.

Insuring Clause 7: Business Crisis Consultant Fees

The **Insurer** will pay on behalf of the **Company**, **Business Crisis Consultant Fees** incurred by the **Company** in responding to a **Business Crisis Event** that first occurs during the **Policy Period**.

The total liability of the **Insurer** under this Insuring Clause will not exceed in the aggregate, the Business Crisis Consultant Fees Sub-limit specified in the **Policy Schedule**.

Management Liability Insurance

Insuring Clause 8: Legal Consultation

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

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

The cost of the legal advice is to be paid by the **Insurer** and not the **Insured**.

2. **EXTENSIONS**

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. These Extensions only extend the stated Insuring Clauses.

2.1 Acquisition or Creation of New Subsidiaries

Insuring Clauses 1, 2, 3, 4, 5 and 6 are extended as follows:

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 greater than 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**, but cover only applies in respect of **Wrongful Acts** or any dishonest or fraudulent act committed or alleged to have been committed subsequent to the acquisition or creation of such **Subsidiary**.

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

Insuring Clauses 1, 2, 3, 4 and 5 and the Representation Expenses Extension are extended as follows:

The **Insurer** will advance **Defence Costs** and, under the Representation Expenses Extension, Occupational Health and Safety Expenses Extension and Pollution Expenses Extension, **Representation Expenses**. However, if and to the extent that the **Insured** is not entitled to cover for **Loss** under the terms 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** 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 the Dishonest or Criminal Intent / Improper Conduct 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**, judgment or adjudication that such **Insured** 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** within thirty days following a request by the **Insurer** for such repayment.

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2.3 Continuity

Insuring Clauses 1, 2, 3, 4 and 5 are extended as follows :

In the absence of fraudulent non-disclosure or fraudulent misrepresentation, where a **Claim** that would otherwise be covered by this **Policy** is excluded by 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** after the Continuity Date specified in 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** 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 the **Policy Schedule**, then that higher amount will be deemed to be the **Excess** specified in 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 Extended Reporting Period

Insuring Clauses 1, 2, 3, 4, 5 and 6 are extended as follows :

In the event that this **Policy** is neither renewed or replaced at the end of the **Policy Period** with insurance that covers substantially the same risk exposure as this **Policy**, the **Policyholder** will be entitled to purchase an Extended Reporting Period of 90 days.

The Extended Reporting Period begins immediately following the expiry of the **Policy Period** and ends on the earlier of 4.p.m. L.S.T. on the ninetieth day thereafter, or at the time on the effective date on which the **Policyholder** obtains insurance that covers substantially the same risk exposure as this **Policy**.

The additional premium for the Extended Reporting Period will be 25% of the **Full Annual Premium**.

The entitlement to purchase the Extended Reporting Period lapses upon expiry of the **Policy Period**.

The application to purchase the Extended Reporting 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.

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

During the Extended Reporting Period the **Policyholder** may continue to notify the **Insurer** of:

- a. **Claims**, but only **Claims** based on **Wrongful Acts** committed or alleged to have been committed prior to expiry of the **Policy Period**.
- b. **Policy Claims**, but only **Policy Claims** for **Fidelity Loss** caused by dishonest or fraudulent acts committed prior to expiry of the **Policy Period**.

Any notification to the **Insurer** during this Extended Reporting Period will be deemed to have been first notified to the **Insurer** during the **Policy Period**.

Management Liability Insurance

2.5 Extended Reporting Period for Retiring Directors and Officers

Insuring Clauses 1, 2 and 4 are extended as follows :

In the event that the this **Policy** is neither renewed or 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 Reporting Period of 365 days immediately following expiry of the **Policy Period**.

During the Extended Reporting 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 reporting period will be deemed to have been first made and notified to the **Insurer** during the immediately preceding **Policy Period**.

2.6 Fraud Investigator Expenses

Insuring Clause 6 is extended to cover all reasonable expenses (excluding overtime wages, salaries, fees and other internal costs incurred in the normal course of business) incurred by the **Company** with the **Insurer's** prior written consent, solely to investigate, prove and substantiate the amount of the **Policy Claim**.

The total liability of the **Insurer** under this Extension will not exceed in the aggregate the Fraud Investigator Expenses Sub-limit specified in the **Policy Schedule**.

The Fraud Investigator Expenses Sub-limit is in addition to the **Limit of Liability**.

2.7 Legal Representatives

Insuring Clauses 1, 2, 4 and 5 are extended as follows:

If an **Insured Person** or **Trustee** 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** or **Trustee'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** or **Trustee**. However, the estate, heirs, executors or other legal representatives must comply with the terms of this **Policy**.

2.8 Occupational Health and Safety Expenses

Subject to the provisions of the Advancement of Defence Costs and Representation Expenses Extension, Insuring Clauses 1, 2, and 3 are extended as follows:

Notwithstanding the Bodily Injury and Property Damage Exclusion or the Occupational Health and Safety Law Exclusion the **Insurer** will pay, on behalf of the **Insured**:

- a. **Defence Costs** incurred in defending **Claims** (other than a civil claim for compensation or damages) first made against the **Insured** and notified to the **Insurer** during the **Policy Period**, based upon occupational health and safety law which results from a **Wrongful Act**; and
- b. **Representation Expenses**, where the subject matter of the official investigation, examination, inquiry or other proceedings is occupational health and safety law.

Under this Extension, **Representation Expenses** also includes necessary and reasonable costs, charges and expenses (other than regular or overtime wages, salaries, fees or **Benefits** of the **Insured Person**) incurred with the **Insurer's** prior consent, in representing and assisting the **Insured** at a visit from an inspector of a workplace health and safety authority in connection with and following a workplace safety incident, provided that notice of the visit is given to the **Insured** and is notified to the **Insurer** during the **Policy Period**.

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.

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The total liability of the **Insurer** under this Extension to Insuring Clause 3 will not exceed in the aggregate, the Company Occupational Health and Safety Expenses Sub-limit specified in the **Policy Schedule**.

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

2.9 Outside Directorships

Insuring Clauses 1, 2 and 4 are extended to include as an **Insured Person** a person who, at the written request of the **Company** 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 **Outside Entity**.

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

- a. any indemnity; or
- b. any insurance contract specified in 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.

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.

2.10 Pecuniary Penalties

Insuring Clauses 1, 2, 4 and 5 are extended to cover, to the extent permitted by law, any pecuniary penalties imposed upon the **Insured Persons** or **Trustees** based on **Wrongful Acts**.

In the event of any conflict between this Extension and the Bodily Injury and Property Damage Exclusion or the Occupational Health and Safety Law Exclusion, this Extension shall apply.

In the event of any conflict between this Extension and the Pollution Exclusion, this Extension shall apply, except where **Pollution** arises directly or indirectly from or in respect of the Insured's liability as owner or operator of any aircraft, marine craft or motor vehicle of any kind.

Management Liability Insurance

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 in the aggregate, the Pecuniary Penalties Sub-limit specified in the **Policy Schedule**.

2.11 Pollution Expenses

Subject to the provisions of the Advancement of Defence Costs and Representation Expenses Extension, Insuring Clauses 1, 2 and 3 are extended as follows :

Notwithstanding the Bodily Injury and Property Damage Exclusion, the Occupational Health and Safety Law Exclusion or the Pollution Exclusion, the **Insurer** will pay:

- a. on behalf of the **Insured, Defence Costs** incurred in defending **Claims** (other than a civil claim for compensation or damages) first made against the **Insured** and notified to the **Insurer** during the **Policy Period**, based on **Pollution** which results from a **Wrongful Act**; and
- b. on behalf of the **Insured Persons, Representation Expenses**, where the subject matter of the official investigation, examination, inquiry or other proceedings is **Pollution**,

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 in the aggregate, the Pollution Expenses Sub-limit specified in the **Policy Schedule**.

2.12 Representation Expenses

Insuring Clauses 1, 2, 4 and 5 are extended as follows:

The **Insurer** will pay **Representation Expenses** on behalf of the **Insured Persons** or **Trustees** subject to the provisions of the Advancement of Defence Costs and Representation Expenses Extension.

If there is an entitlement to payment under the Occupational Health and Safety Expenses Extension or the Pollution Expenses Extension, then there is no entitlement to payment under this Extension.

2.13 Special Excess Limit for Non-Executive Directors

Insuring Clauses 1, 2 and 4 are extended as follows :

In the event that the **Limit of Liability** and all other indemnification available to a **Non-Executive Director** is exhausted, the **Insurer** will pay on behalf of any **Non-Executive Director**, **Loss** up to \$1,000,000.

The total liability of the **Insurer** under this Extension will not exceed during the **Policy Period** :

- a. \$1,000,000 in the aggregate for each **Non-Executive Director**, and
- b. the **Limit of Liability** specified in the **Policy Schedule** in the aggregate for all **Loss** paid on behalf of all **Non-Executive Directors**.

2.14 Spouses

Insuring Clauses 1, 2, 4 and 5 are extended as follows :

If a **Claim** against an **Insured Person** or **Trustee** includes a claim against such **Insured Person's** or **Trustee's Spouse** solely by reason of (i) such **Spouse's** legal status as a **Spouse** of such **Insured Person** or **Trustee**, or (ii) such **Spouse's** ownership interest in property which the claimant seeks as recovery for **Claims** made against such **Insured Person** or **Trustee**, 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** or **Trustee's Spouse**.

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3. OPTIONAL EXTENSION

3.1 Company Pecuniary Penalties

If the Company Pecuniary Penalties Extension is noted as 'Included' in the **Policy Schedule**, Insuring Clauses 3 and 4 are extended to cover, to the extent permitted by law, any pecuniary penalties imposed upon the **Company** based on **Wrongful Acts**, except for any pecuniary penalties imposed:

- a. pursuant to any **Consumer Protection Act**; or
- b. pursuant to any law regulating air, marine or vehicular traffic; or
- c. directly or indirectly as a result of or in connection with a requirement to pay taxes, duties, rates, levies, charges, fees or any other revenue raising measure; or
- d. where the **Company** knew, or where a reasonable person in the circumstances ought reasonably to have known, prior to the **Policy Period** that the **Company** had contravened a law and committed an offence pursuant to that law; or
- e. as a result of further **Wrongful Acts** committed after the **Company** first knew, or where a reasonable person in the circumstances ought reasonably to have known, that the **Company** had contravened a law and committed an offence pursuant to that law, and which led to the imposition of increased or additional pecuniary penalties.

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

The total liability of the **Insurer** under this Extension will not exceed in the aggregate, the Company Pecuniary Penalties Sub-limit specified in the **Policy Schedule**, and all payments will be part of and not in addition to the **Limit of Liability**.

In the event of any conflict between this Extension and the Bodily Injury and Property Damage Exclusion or the Occupational Health and Safety Law Exclusion, this Extension shall apply.

In the event of any conflict between this Extension and the Pollution Exclusion, this Extension shall apply, except where **Pollution** arises directly or indirectly from or in respect of the Insured's liability as owner or operator of any aircraft, marine craft or motor vehicle of any kind.

4. EXCLUSIONS

These Exclusions apply to all the terms of the **Policy** unless otherwise stated. Where an Exclusion applies to a particular Insuring Clause then it also applied to the Extensions to that Insuring Clause.

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

4.1 Asbestos

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

4.2 Benefits

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

This Exclusion will not apply to Insuring Clauses 1, 2 or 5.

4.3 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** resulting from any **Employment Wrongful Act**.

Management Liability Insurance

4.4 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.

4.5 Dishonest or Criminal Intent / Improper Conduct

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

- a. any **Wrongful Act** committed by that **Insured** with wilful, reckless, dishonest, fraudulent, malicious or criminal intent; or
- b. that **Insured** improperly using their position to gain an advantage for that **Insured** or someone else or to cause a detriment to the **Company**; or
- c. that **Insured** improperly using information obtained as a result of their position to gain an advantage for that **Insured** or someone else or to cause a detriment to the **Company**,

in each case only if established by any admission by the **Insured**, judgment, or other adjudication.

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 or c above will not be imputed to any other **Insured**.

4.6 Industrial Relations

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

This Exclusion will not apply to Insuring Clauses 1 or 2.

4.7 Insured v Insured

Loss, other than **Defence Costs**, resulting from any **Claim** by the **Company** except for any **Claim**:

- a. by the **Company** as a statutory derivative action, but not voluntarily solicited or assisted by the **Company** or an **Insured Person**; or
- b. by a liquidator, administrator, or receiver or equivalent in any jurisdiction, but not voluntarily solicited or assisted by an **Insured Person**; or
- c. by the **Company** pursuant to Section 50 of the Australian Securities and Investments Commission Act 2001.

4.8 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** made against any **Insured** prior to the inception of this **Policy**,

Management Liability Insurance

4.9 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**.

4.10 Nuclear

Loss resulting from **Claims** or **Policy 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.

4.11 Occupational Health and Safety Law

Loss resulting from **Claims** arising directly or indirectly from or in respect of any breach of occupational health and safety law.

4.12 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**.

4.13 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**, or as a **Trustee** 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.

4.14 War and Terrorism

Loss resulting from **Claims** or **Policy 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**.

5. ADDITIONAL EXCLUSIONS APPLICABLE TO INSURING CLAUSE 3: COMPANY LIABILITY

Under Insuring Clause 3, the **Insurer** will not be liable for:

5.1 Contractual Liability

Loss resulting from **Claims** arising directly or indirectly from or in respect of any actual or alleged breach of any term of any contract, whether express or implied.

5.2 Intellectual Property Rights

Loss resulting from **Claims** arising directly or indirectly from or in respect of any alleged or actual breach of any other party's intellectual property rights, or infringement or violation of any trade secret.

Management Liability Insurance

5.3 Privacy Rights

Loss resulting from **Claims** arising directly or indirectly from or in respect of any alleged or actual breach of any other party's privacy rights.

5.4 Product Liability and Product Recall

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

- a. the **Insured's** manufacture, distribution and/or sale of products; or
- b. the recall of any products manufactured, distributed and/or sold by the **Insured**.

5.5 Restrictive Trade Practices

Loss resulting from **Claims** arising directly or indirectly from or in respect of any alleged or actual restrictive trade practices including but not limited to, Part IV of the Trade Practices Act 1974 (Commonwealth) or similar legislation in other jurisdictions, or tortious interference with any other party's business or contractual relationships.

5.6 Superannuation Funds

Loss resulting from **Claims** arising directly or indirectly from or in respect of any alleged or actual **Wrongful Act** in connection with any superannuation fund.

6. ADDITIONAL EXCLUSIONS APPLICABLE TO INSURING CLAUSE 4: EMPLOYMENT PRACTICE LIABILITY

Under Insuring Clause 4, the **Insurer** will not be liable for:

6.1 Employee Entitlements

Loss payable for, or in respect of, or calculated by reference to:

- a. salary or wages earned prior to the date of termination; or
- b. **Benefits**; or
- c. any amount not indemnified by the **Company** for which any **Insured** is absolved for payment by reason of any covenant, agreement or court order; or
- d. payment for time in lieu of notice, severance or redundancy.

6.2 Injunctive Relief or Accommodation

Loss payable for, or in respect of, or calculated by reference to:

- a. the cost of complying with any injunctive or other non-monetary relief or any agreement to provide any such relief; or
- b. costs incurred by any **Insured** to make any accommodation in respect of working practices or otherwise on the basis of a person's disability or family responsibilities or as may be required under any law relating anti-discrimination.

In the event of an inconsistency between this Exclusion and the definition of **Claim**, the provisions of this Exclusion shall prevail.

6.3 Liability of Others

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

Management Liability Insurance

6.4 Specified Period Employment Contract

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

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

6.5 Unfair Employment Contract

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

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

7. ADDITIONAL EXCLUSIONS APPLICABLE TO INSURING CLAUSE 6: FIDELITY

Under Insuring Clause 6, the **Insurer** will not be liable for **Policy Claims** for:

7.1 Confidential Information

Fidelity Loss arising directly or indirectly from or in respect of the accessing or disclosure of any confidential information, including but not limited to trade secret information, computer programs, confidential processing methods or other confidential information of any kind except where such accessing or disclosure enables the commission of any act otherwise covered under Insuring Clause 6.

7.2 Damage to Premises

Fidelity Loss arising directly or indirectly from or in respect of damage or destruction to the **Insured's** premises.

7.3 Discovery Outside the Policy Period

Fidelity Loss first **Discovered** prior to the commencement of the **Policy Period** or after the expiry of the **Policy Period**.

7.4 Dishonesty or Fraud of Director or Employee Shareholder

Fidelity Loss arising directly or indirectly from or in respect of any dishonest or fraudulent act committed by:

- a. a **Director** or **Trustee**; or
- b. an **Employee** acting in collusion with a **Director** or **Trustee**; or
- c. an **Employee** having at any time more than five per cent **Control** of or interest in the **Company**.

7.5 Indirect or Consequential Loss

indirect or consequential loss of any kind, including but not limited to loss of income, potential income, interest, profits or dividends, whether or not earned or accrued.

Management Liability Insurance

7.6 Loss of Records

loss of or damage to records, manuscripts, accounts, microfilms, tapes or other records or the cost of reproducing any information contained in such lost or damaged records.

7.7 Loss Sustained After Discovery

Fidelity Loss, or that part of any **Fidelity Loss**, caused by an **Employee**, which is sustained after **Discovery** of any dishonest or fraudulent act committed by such **Employee**:

7.8 Profit and Loss Computation and Inventory Comparison

Fidelity Loss, or that part of any **Fidelity Loss**, the proof of which is dependent solely upon:

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

provided that where the **Company** establishes wholly apart from such computation or comparison that it has sustained **Fidelity Loss** caused by an identified **Employee**, then it may offer its inventory records and actual physical count of inventory in support of the amount of **Fidelity Loss** claimed.

7.9 Retroactive Date

Fidelity Loss sustained prior to the Continuity Date specified in the **Policy Schedule**, or the date since the **Company** has continuously held uninterrupted fidelity cover, whichever is the earlier.

7.10 Territory

Fidelity Loss arising directly or indirectly from or in respect of any dishonest or fraudulent act committed in whole or part outside of Australia or New Zealand.

7.11 Trading Loss

Fidelity Loss arising directly or indirectly from or in respect of any authorised or unauthorised trading in **Money**, **Securities** or **Covered Property** by an **Employee**, whether acting alone or in collusion with any other person and whether or not such trading is in the name of the **Company** and whether or not such trading is in a genuine or fictitious account.

8. 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.

8.1 Limit of Liability

Except as provided for in the Special Excess Limit for Non-Executive Directors Extension and the Fraud Investigator Expenses Extension, the **Insurer's** liability to the **Insured** under this **Policy** will not exceed the **Limit of Liability** in the aggregate for all :

- a. **Loss** resulting from all **Claims** first made and notified to the **Insurer** during the **Policy Period**; and
- b. **Policy Claims** for **Fidelity Loss** first **Discovered** and notified to the **Insurer** during the **Policy Period**; and
- c. **Business Crisis Consultant Fees** incurred in responding to a **Business Crisis Event** first occurring during the **Policy Period**.

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

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

Management Liability Insurance

8.2 Excess

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

- a. **Claim**; and
- b. **Policy Claim**.

The **Excess** is deducted from **Loss** payable before the application of the **Limit of Liability** or Sub-limit.

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

The **Insured** agrees that the **Excess** specified in the **Policy Schedule** must be retained by the **Insured** and is to remain uninsured.

The **Excess** will not apply to the Fraud Investigator Expenses Extension or **Business Crisis Consultant Fees** or Insuring Clause 8: Legal Consultation or any **Loss** directly payable by any **Insured** who is a natural person.

8.3 Related Claims

For the purpose of the calculation of the **Limit of Liability**, any Sub-limit or **Excess**, 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 Extended Reporting Period, then cover 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**.

8.4 Related Fidelity Loss

For the purpose of the calculation of the Fidelity Sub-limit or **Excess**, all **Policy Claims** for **Fidelity Loss** sustained as a result of the same or causally related acts, causes or events will be deemed to be one **Policy Claim** regardless of when during the **Policy Period** or prior thereto such acts occurred.

9. CLAIMS CONDITIONS

9.1 Notification

The **Policyholder** must give to the **Insurer** notification of any **Claim** made against any **Insured**, **Discovery** of any **Fidelity Loss**, any **Business Crisis Event** or any **Loss**, as soon as reasonably practicable within the **Policy Period** or within any applicable Extended Reporting Period at the Claims Notification address or facsimile number specified in the **Policy Schedule**.

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

- a. the identity of the claimant or potential claimant; and
- b. the nature of the **Claim**; and
- c. the likely quantum of the **Claim**.

Each notification of a **Policy Claim** must include affirmative proof duly sworn, with full particulars of the **Money**, **Securities** or **Covered Property** involved.

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

Management Liability Insurance

9.2 Co-Operation

In the event of a **Claim, Policy Claim, Business Crisis Event** or **Loss**, 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, Policy Claim** or **Business Crisis Event**.

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

9.3 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.

9.4 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.

9.5 Basis of Valuation of Fidelity Loss

Securities

In respect of **Loss of Securities** the **Insurer** will not be liable for more than the actual market value of the **Securities** at the close of business on the business day immediately preceding the day on which the **Loss** was **Discovered** or the actual cost of replacing the **Securities**, whichever is less, plus the cost of posting any required lost instrument bond (which cost will be paid by the **Insurer** on behalf of the **Insured**).

The Indirect or Consequential Loss Exclusion does not apply to the calculation of **Loss of Securities**.

Covered Property

In respect of **Loss of Covered Property** the **Insurer** will not be liable for more than the actual cash value of **Covered Property** at the time of **Loss** or the actual cost of repairing or replacing the **Covered Property** with property of similar quality or value whichever is the lesser.

Management Liability Insurance

9.6 Allocation of Loss

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

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

and which 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. The **Insurer's** consideration of what is fair and reasonable should include without limitation, the following factors:

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

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.

Management Liability Insurance

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**.

9.7 **Subrogation and Recoveries**

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.

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 its rights of recovery.

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 its rights of recovery.

Fidelity Recoveries

In the event of any payment in respect of a **Policy Claim** :

- a. the **Company** must, if requested by the **Insurer**, take all reasonable steps to make recovery from any person committing or condoning the dishonest or fraudulent act or from the legal representatives of such person ; and
- b. to the extent allowed by law, the **Insurer** will deduct the following from any amount payable in respect of **Fidelity Loss** caused by or resulting from a dishonest or fraudulent act:
 - i. any monies which but for such dishonest or fraudulent act would be due from the **Company** to the person committing or condoning such act; and
 - ii. any monies held by the **Company** and belonging to such person; and
 - iii. any monies recovered under a. above; andall such monies will be applied towards reducing the amount of the **Loss**.

All Recoveries

All recoveries obtained by the **Insured** from other parties will be allocated, after the settlement of any **Claim** or **Policy 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** or the Fidelity Sub-limit, 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** or **Policy 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**.

Management Liability Insurance

10. GENERAL TERMS

10.1 Acquisition, Merger or Winding Up of Policyholder

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

- a. a **Merger or Acquisition** of 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**:

- i. under Insuring Clauses 1, 2, 3, 4, and 5, only in respect of **Loss** resulting from **Claims** based on **Wrongful Acts** committed or alleged to have been committed; or
- ii. under Insuring Clause 6, only in respect of **Fidelity Loss** sustained, prior to the events described in a or b above.

There shall be no cover:

- i. under Insuring Clause 7 for **Business Crisis Consultant Fees** in responding to a **Business Crisis Event** occurring; or
- ii. under Insuring Clause 8 for legal advice sought as a result of, or after, the events described in a or b above.

10.2 Assignment

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

10.3 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 Claims Conduct Claims Condition and the Disclosure and the Severability and Imputation General Terms.

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

10.4 Cancellation

The **Policyholder** is entitled to cancel this **Policy** at any time, by notice, to the **Insurer**, except at the time of, or following the events described in the Acquisition, Merger or Winding up of Policyholder General Term.

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.

10.5 Company Failure to Indemnify

Where Insuring Clause 2 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**.

10.6 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.

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10.7 Disclosure

Each **Insured** represents that the information about that **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.

10.8 Severability and Imputation

For the purposes of this **Policy**, any knowledge or information possessed by any past, present or future chief executive officer, chief operating officer, chief financial officer, chief legal officer (or similar positions) or chairman of the board of directors shall be imputed to the **Company**.

The **Proposal** made to the **Insurer** prior to entering into this **Policy** shall be construed as separate applications for cover by the **Company** and each **Insured Person** and, except as provided for above, no information provided by or representation made by one, shall be imputed to another.

No breach of this **Policy** or knowledge or information possessed by the **Company** or any **Insured Person** shall be imputed to another except as provided for above.

10.9 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** or makes a **Policy 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** or **Policy 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 **Policy 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.

10.10 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.

10.11 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.

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10.12 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 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**.

10.13 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**.

10.14 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.

10.15 Other Notices

Any communications to the **Insurer** under this **Policy**, including any application to purchase an Extended Reporting Period, must be sent by the **Policyholder** to the **Insurer** at the **Insurer's** address or facsimile number specified in the **Policy Schedule**.

Notice to the **Insured** may be given to the **Policyholder** or its agent at the broker name and address specified in the **Policy Schedule**.

10.16 Payment of Premium

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

10.17 Variation of the Policy

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

11. DEFINITIONS

When used in this **Policy**:

11.1 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.

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

11.3 Benefits means:

- a. fringe benefits and perquisites; or
- b. amounts due or payments made in connection with superannuation or 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. bonuses, or employee or management incentive schemes or similar.

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- 11.4 Business Crisis Consultant Fees** means the reasonable costs, charges, fees and expenses of an independent management consultant engaged to minimise the effect of the **Business Crisis Event**, but only during the first thirty days immediately following the **Business Crisis Event**.
- 11.5 Business Crisis Event** means any one of the following unforeseen events which, in the reasonable opinion of the Managing Director (or equivalent) of the **Company**, if left unmanaged has the potential to lead to an imminent decrease of 30% or more of the **Company's** consolidated revenues:
- a. the loss of a major customer or contract of the **Company**; or
 - b. the sudden and unexpected death or injury of any **Insured Person**; or
 - c. the unexpected imposition of a tax bill; or
 - d. the recall of any product manufactured, distributed or sold by the **Insured**; or
 - e. the illegal tampering with or contamination of any product manufactured, distributed or sold by the **Insured**.
- 11.6 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** 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. 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.
- 11.7 Company** means:
- a. the **Policyholder**; and
 - b. **Subsidiaries** of the **Policyholder** prior to or as at the commencement of the **Policy Period**, but cover only applies in respect of **Wrongful Acts** or any dishonest or fraudulent act committed or alleged to have been committed subsequent to the acquisition or creation of such **Subsidiary**.
- 11.8 Consumer Protection Act** means any of the following:
- a. Fair Trading Act 1992 (ACT)
 - b. Fair Trading Act 1987 (NSW)
 - c. Consumer Affairs and Fair Trading Act 1996 (NT)
 - d. Fair Trading Act 1989 (QLD)
 - e. Fair Trading Act 1987 (SA)
 - f. Fair Trading Act 1990 (Tas)
 - g. Fair Trading Act 1999 (Vic)
 - h. Fair Trading Act 1987 (WA)
 - i. Trade Practices Act 1974 (Cth)
- and any amendment, consolidation or re-enactment of any of those Acts.
- 11.9 Control** means the definition of control in the Corporations Act 2001.
- 11.10 Covered Property** means tangible property other than **Money** and **Securities**.

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- 11.11 Defence Costs** means the **Insured'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 **Insured Persons** or **Trustees**) incurred by that **Insured** with the **Insurer's** prior written consent, in defending, investigating or settling covered **Claims**.
- 11.12 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**.
- 11.13 Discovered / Discovery** means when any **Director, Officer**, senior manager of the **Insured** or **Trustee**, not in collusion with an **Employee** committing a dishonest or fraudulent act, first becomes aware of facts which would cause a reasonable person in the circumstances to believe that **Loss** covered by this **Policy** has occurred, or is likely to occur, regardless of when the act or acts causing or contributing to such **Loss** occurred and even though the exact amount or details of **Loss** may not then be known.
- 11.14 Employee** means any natural person who was prior to the **Policy Period**, or is during or after the **Policy Period** an employee of the **Company**, (which will include trainees, casual, part-time, seasonal, temporary, voluntary and work experience personnel) acting in such capacity, but excludes **Directors** and independent contractors.
- 11.15 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, committed by the **Insured**.
- 11.16 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**.
- 11.17 Excess** means the sum of:
- a. the Excess specified in the **Policy Schedule**; and
 - b. any amount payable under a **Specified Policy**; and
 - c. under the Outside Directorships Extension, any other indemnity available from a **Non-Profit Outside Entity** or **Outside Entity**.
- 11.18 Fidelity Loss** means direct financial or physical loss of **Money, Securities** and **Covered Property** belonging to, leased by or in the care, custody or control of the **Company**, sustained by the **Company** caused by any dishonest or fraudulent act committed by an **Employee** (whether acting alone or in collusion with any other person). **Fidelity Loss** does not mean:
- a. regular or overtime wages, salaries, fees or **Benefits** earned in the normal course of employment; or
 - b. damages of any type, including but not limited to punitive, exemplary or aggravated damages.
- 11.19 Full Annual Premium** means the annual premium payable by the **Policyholder**, including any additional premium which becomes payable in respect of the **Policy Period** in question.
- 11.20 Insured** means:
- a. the **Company**; and
 - b. the **Insured Persons**; and
 - c. any **Trustee**.

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

11.22 Insurer means Vero Insurance Limited ABN 48 005 297 807.

11.23 Limit of Liability means the Limit of Liability specified in the **Policy Schedule**.

11.24 Loss means:

- a. the amount, whether determined by judgment, verdict or award for which the **Insured** is legally liable to a third party for a **Claim** and includes damages, compensation orders, interest and claimant's costs and expenses; and
- b. a settlement of a **Claim** by a third party against an **Insured Person**, which complies with Settlement Claims Condition; and
- c. **Defence Costs**; and
- d. under Insuring Clause 4, in the event that the **Company** is ordered to reinstate or re-employ an **Employee**, the cost to the **Company** of complying with any order to pay salary or wages, or damages calculated by reference to salary or wages, to an **Employee** for the period from the date of the purported dismissal or termination to the date on which the court, tribunal or similar body delivered its judgment to the Parties; and
- e. under Insuring Clause 6, **Fidelity Loss**; and
- f. under Insuring Clause 7, **Business Crisis Consultant Fees**; and
- g. under the Fraud Investigator Expenses Extension, all reasonable expenses incurred by the **Company** with the **Insurer's** prior written consent, solely to investigate, prove and substantiate the amount of the **Policy Claim**; and
- h. under the Occupational Health and Safety Expenses, Pollution Expenses and Representation Expenses Extensions, **Representation Expenses**; and
- i. under the Pecuniary Penalties Extension and the Company Pecuniary Penalties Optional Extension only, pecuniary penalties

each subject to the Allocation of Loss Claims Condition.

Loss does not mean:

- j. taxes, fines and penalties imposed by law, other than those covered under the Pecuniary Penalties Extension; or
- k. punitive, exemplary or aggravated damages.

11.25 Management Wrongful Act means any act, error, omission, conduct, misstatement, misleading statement, neglect or breach of: duty; trust; contract; warranty of authority; statute or confidentiality, actually or allegedly committed by:

- a. the **Company**; or
- b. any **Insured Person** in his or her capacity:
 - i. as an **Insured Person**; or
 - ii. 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,

but does not include any **Employment Wrongful Act** or **Trustee Wrongful Act**.

11.26 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**.

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- 11.27 Money** means, without limitation, legal tender including bank notes, coins, bullion, cheques, bills of exchange, promissory notes, and claims on bank deposits and accounts.
- 11.28 Non-Executive Director** means any **Director** who, at the time of the alleged **Wrongful Act**, is not an **Officer** or **Employee** of any **Company**, or a paid consultant to the **Company**.
- 11.29 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**.
- 11.30 North America** means the United States of America and Canada and in each case its territories and protectorates.
- 11.31 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.
- 11.32 Outside Entity** means any company specified in the **Policy Schedule** or by **Endorsement**, other than a **Subsidiary**.
- 11.33 Policy** means and consists of this Management Liability Insurance policy wording, the **Policy Schedule** and any **Endorsement** and their terms are incorporated into the terms of this **Policy**.
- 11.34 Policy Claim** means a written demand by or on behalf of the **Company** to the **Insurer** for payment of **Loss** under this **Policy**.
- 11.35 Policy Committee** means a prescribed policy committee for the purposes of Part 9 of the Superannuation Industry (Supervision) Act 1993.
- 11.36 Policyholder** means the organisation specified in the **Policy Schedule**.
- 11.37 Policy Period** means the period of time specified as the **Policy Period** in the **Policy Schedule**.
- 11.38 Policy Schedule** means the schedule attaching to the **Policy**.
- 11.39 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.

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- 11.40 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**.
- 11.41 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**.
- 11.42 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** and whether directed to or affecting one or more than one person or legal entity.
- 11.43 Representation Expenses** means:
- a. the **Insured Person's** or **Trustee's**; and
 - b. under Extension 2.8 Occupational Health and Safety Expenses, the **Company's** share, according to the Allocation of Loss Claims Condition, of necessary and reasonable costs, charges and expenses (other than regular or overtime wages, salaries, fees or **Benefits** of the **Insured Person** or **Trustee**) incurred by:
 - c. that **Insured Person** or **Trustee**; and
 - d. under Extension 2.8 Occupational Health and Safety Expenses, the **Company**, 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** or **Superannuation Fund's** own internal investigation) ordered or commissioned by any regulator, government body or authority, governmental or administrative agency, official body or institution, legally constituted industry or professional board into the affairs of the **Company** or 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** or **Trustees** in their capacity as such, provided that notice of the investigation, examination, inquiry or other proceedings is first received by the **Insured** and notified to the **Insurer** during the **Policy Period**.
- 11.44 Securities** means shares, stocks, bearer instruments, derivatives, bonds, warrants, debentures, units in shares, units in trusts (including any evidence of indebtedness or other equity or debt security), rights under a depository receipt or other securities (or interests therein) of whatever nature.
- 11.45 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.
- 11.46 Spouse** means a lawful spouse or any person deriving similar status by reason of the common law or statute.
- 11.47 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

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- iii. holds more than one-half of the issued share capital of the first body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
 - c. any body corporate which is a subsidiary of a body corporate described in a or b above; or
 - d. any other body corporate whose accounts are consolidated into those of the **Policyholder** in accordance with the relevant Australian Accounting Standard.
- 11.48 **Superannuation Fund** means a corporate superannuation fund established for the benefit of employees of the **Company**, but excludes any industry, master or self managed superannuation fund.
- 11.49 **Trustee** means any **Insured Person** who:
 - a. was prior to the **Policy Period**, or is during or after the **Policy Period** a:
 - i. duly appointed trustee of the **Superannuation Fund**; or
 - ii. member of the **Policy Committee** of the **Superannuation Fund**, to the extent that such person's activities concern the administration of that **Superannuation Fund** as is contemplated under the Superannuation Industry (Supervision) Act 1993; or
 - b. was prior to or at the commencement of the **Policy Period** a trustee of the **Superannuation Fund** duly appointed by a court or regulatory body or pursuant to statute.
- 11.50 **Trustee Wrongful Act** means any means any act, error, omission, conduct, misstatement, misleading statement, neglect, defamation or breach of: duty; contract; confidentiality; trust or statute, actually or allegedly committed by any **Trustee** in connection with the **Superannuation Fund**, but does not include any **Employment Wrongful Act**.
- 11.51 **Wrongful Act** means :
 - a. a **Management Wrongful Act**; or
 - b. an **Employment Wrongful Act** ; or
 - c. a **Trustee Wrongful Act**.

End of wording