

# management liability



Management  
Liability  
Insurance Policy

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## MANAGEMENT LIABILITY

### Policy Wording

Nothing contained in any other document shall render this policy wording a product disclosure statement.

The insurer of this Management Liability Package insurance is Wesfarmers General Insurance Limited ABN 24 000 036 279 AFS Licence No. 241461, trading as Lumley Insurance (Lumley Insurance).

This document contains important information about this insurance and how it works.

Before making a decision to take up this insurance, please read this document carefully.

To determine if this insurance is appropriate for You, it is important that You read:

- This Introduction and the Important Information Policy - these contain information on some important matters You need to be aware of before applying for this insurance.
- Section 1 - General Provisions - it sets out:
  - General Definitions - what We mean by certain defined terms in the Policy;
  - General Extensions - the extensions that apply to all Coverage Parts of this Policy;
  - General Conditions - additional terms and conditions that apply to all Coverage Parts of this Policy;
  - General Claims Conditions - the conditions in the event of a Claim;
  - General Exclusions - what We do not cover.
- The 4 specific Coverage Parts (1-4) - each sets out the cover provided by the Coverage Part and any specific definitions, extensions, conditions and exclusions that apply. The Policy Schedule will indicate which Coverage Parts apply to You.
- Any other documents We provide to You about the insurance which set out details relevant to You and may change the standard cover.

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# IMPORTANT INFORMATION

## Entering into the Policy with Us

Where We have agreed to insure You, We confirm this by issuing You with a Policy Schedule which provides details relevant to You such as Limits of Liability, Premium and Excesses.

The Policy, which is Your contract with Us, is entered into on the basis of the information provided by You in the application process. Please ensure You have complied with Your Duty of Disclosure as this can affect Your ability to claim.

The Policy is entered into on the condition that You will pay the Premium required by Us by the agreed time (including any adjustments).

In order to calculate Your premium, We take various factors into consideration, including the level of cover requested.

Your premium also includes amounts that take into account Our actual or estimated obligation to pay any relevant compulsory government charges, taxes or levies (for example Stamp Duty, GST and Fire Services Levy).

The Policy is made up of:

- this document;
- the Proposal;
- the Policy Schedule;
- any endorsements to the Policy issued by Us.

You need to:

- read these documents together as they set out all of the terms and conditions of Your cover;
- check them to make sure that the cover given is what You want;
- keep them together and in a safe place for future reference.

If You do not meet Your obligations under the Policy, We may cancel it and/or reduce Our liability in respect of a Claim to the extent permitted by law.

If You need more information about the Policy please contact Your insurance adviser, insurance broker or Us.

## Duty of disclosure

Before You enter into a contract of insurance with Us, You have a duty under the Insurance Contracts Act to disclose to Us anything that You know, and that You know or could reasonably be expected to know, is relevant to Our decision whether to accept the risk of insurance and if so, on what terms.

You have the same duty to disclose those matters to Us before this Policy is renewed, extended, varied or reinstated.

Your duty however does not require disclosure of any matter:

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

If You fail to comply with Your duty of disclosure, We may be entitled to reduce Our liability under this Policy in respect of a Claim and/or may cancel this Policy.

If Your non-disclosure is fraudulent, We may also have the option of avoiding this Policy from its beginning.

## Section 40 Insurance Contracts Act 1984(Cth)

This insurance contract does not provide any cover for events which occurred before the contract was entered into, unless the Policy Schedule specifies otherwise.

This insurance Policy does not provide any cover for claims made after the expiry of Your Policy. However, under s40(3) of the Insurance Contracts Act 1984(Cth) (ICA) We are not relieved of liability by reason only that the Claim was made after the expiration of the insurance if:

- (a) You give notice before the Policy expires to Us of facts which may give rise to a claim against You; and
- (b) that notice is given to Us as soon as reasonably practicable after You became aware of those facts.

The above explanation of the operation of s40(3) of the ICA does not form part of this Policy wording.

### **Other party's interests**

We only cover persons specified in the Policy as entitled to cover for the relevant interest specified. If You want to cover a person's interest that is not specified You need to apply to Us for this.

### **Cooling off**

If You are not completely satisfied with the Policy You may cancel it by notifying Us in writing within 30 business days of cover having commenced. You will receive a refund of the amount You have paid unless You have made or are entitled to make a Claim under the Policy. You still have cancellation rights after this Cooling Off period ends which are set out in the General Conditions.

### **Code of Practice**

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice, which is a self regulatory code for use by all insurers. The Code aims to raise the standards of practice and service in the insurance industry.

We are a signatory to the Code. If You require further information about the General Insurance Code of Practice, please contact Us.

### **Complaints**

If You do not agree with any decision We make in relation to Your insurance, please contact Us indicating the nature of Your complaint.

We will then either resolve or attempt to resolve Your complaint immediately, or refer the matter to Our Internal Dispute Resolution Committee (IDRC).

### **Premium**

Your Premium also includes amounts that take into account Our obligation (actual or in some cases estimated) to pay any relevant compulsory government charges, taxes or levies (for example, Stamp Duty, GST and any Fire Services and/or Fire and Emergency Services Levy where applicable) in relation to Your Policy.

Where We are required to pay an estimated amount (eg. for Fire Services Levies) based on criteria set by the Government, We allocate to the Policy Our estimate of the amount We will be required to pay. We may under or over recover in any particular year but We will not adjust Your Premium because of this. You can ask Us for more details if You wish.

When You apply for this insurance, You will be advised of the total amount payable, when it needs to be paid and how it can be paid. This amount will be clearly set out in Your Policy Schedule, which will be sent to You following the issue of this product. If You fail to pay, We may reduce any claim payment by the amount of Premium owing and/or cancel the Policy.

### **Privacy**

We are bound by the National Privacy Principles of the Privacy Act 1988 (Cth) when We collect and handle personal information provided by You (this includes the personal information of other persons that You, or others, have provided to Us in relation to this insurance).

We collect personal information for the purpose of providing insurance, including arranging insurance, Policy administration and claims handling. We also collect Your personal information to conduct market or customer satisfaction research and to develop and identify products and services that may interest You. If necessary, We may collect information about Your health and other sensitive information, but We will obtain Your consent before doing so unless the collection is required or permitted by or under law.

We disclose personal information to persons We deal with in providing Our services to You, for example, reinsurers, insurance intermediaries, insurance reference bureaus, credit reference agencies, Our and Your advisers and those involved in the claims handling process, for the purposes of assisting Us and them in providing relevant services and products, and for the purposes of litigation. We limit the use and disclosure of any personal information provided by Us to them to the specific purpose for which We supplied it. By providing Your personal information to Us, You consent to Us making these disclosures.

Without this information, We may not be able to provide You with the services You require.

When You give Us personal information about other individuals, We rely on You to have made or make them aware that You will or may provide their information to Us and the types of third parties We may provide it to, the relevant purposes We and the third parties will use it for, and how they can access it. If You have not done or will not do either of these things, You must tell Us before You provide the relevant information.

If You would like a copy of Our Privacy Policy, would like to seek access to or correct Your personal information, or opt out of receiving materials We send, please contact Us.

## **Goods and Services Tax (GST)**

### **GST and premiums**

The amount of premium payable by You for this Policy includes an amount on account of the GST on the premium.

All amounts insured by the Policy are in accordance with the advice you have given to us regarding your GST status and the GST status of items to be insured.

We will not be liable to pay any GST, or any fine, penalty or charge that You are liable for arising out of Your misrepresentation of, or failure to disclose, Your proper input tax credit entitlement on the Premium relating to the Policy.

In respect of Your Policy with Us where You are registered for GST purposes, You should calculate Your proposed Sums Insured with reference to the GST status of each item of property to be insured. Depending on the GST status of each item of property to be insured, the Sums Insured may or may not include a GST component. An amount for GST should only be included in the Sum Insured if the item of property to be insured is not used 100% for business use. All items of property used 100% for business use should be insured on a GST exclusive basis.

This outline of the effect of the GST on Your Policy is for general information only. You should not rely on this information without first seeking expert advice on the application of the GST to Your particular circumstances.

### **GST and Claim Payments**

When We pay a claim, Your GST status and the GST status of the property or expense which is the subject of the claim, will determine the amount We pay.

When You are:

- (a) not registered for GST, the amount We pay is the Sum Insured/limit of indemnity or the other limits of insurance cover including GST;
- (b) registered for GST and the property which is the subject of the claim is used 100% for business use, We will pay the Sum Insured/ limit of indemnity or the other limits of insurance less any relevant GST component, including but not limited to, any input tax credit to which You are entitled for any acquisition which is relevant to Your claim, or which You would have been entitled were You to have made a relevant acquisition.
- (c) registered for GST and the property which is the subject of the claim is used 100% for personal use , the amount We pay is the Sum Insured/limit of indemnity or the other limits of insurance cover including GST;
- (d) registered for GST and the property which is the subject of the claim is used for business and personal use, We will pay the Sum Insured/limit of indemnity inclusive and exclusive of any relevant GST component with reference to the percentage of personal use and the percentage of business use of the item that is the subject of the claim

You must advise Us of Your correct entitlement to an input tax credit on your Premium and the correct entitlement to an input tax credit on each item of property to be insured. Should the item of property which is the subject of the claim be used for both personal and business use, any amounts we pay will be in accordance with the percentage of personal and business use.

Any GST liability arising from Your incorrect advice is payable by You.

## **Terrorism Insurance Act 2003 (Cth)**

This Policy excludes cover for losses as a result of terrorism.

If the property damage is declared by the responsible Minister to be a terrorist incident, then the Terrorism Insurance Act 2003 (TIA) may afford You protection within the limits of this Policy and may reduce the settlement of Your loss to a percentage of the recoverable loss. A detailed explanation of the TIA can be found at [www.arpc.gov.au](http://www.arpc.gov.au)

## **Provision of General Advice Only**

Wesfarmers General Insurance Limited ABN 24 000 036 279 trading as Lumley Insurance is an Australian Financial Services licensee (No 241461) and is authorised under its licence to deal in and provide general advice about this insurance.

Any advice We or Our representatives provide is general only and does not take into account Your personal objectives, financial situation or needs. Because of this You should, before acting on the advice, decide if it is right for You and consider the information contained in this document carefully.

## **Remuneration**

Lumley Insurance's employees are paid an annual salary and possibly bonuses based on performance criteria and achievement of company goals. They are not otherwise remunerated for any advice or dealing service that they provide to You unless they tell You otherwise. If an intermediary has been used to arrange the Policy, We may pay them remuneration such as a commission or fee.

# MANAGEMENT LIABILITY COVER

## Important Information:

There are four Coverage Parts:

Coverage Part 1 - Directors & Officers Liability

Coverage Part 2 - Employment Practices Liability

Coverage Part 3 - Statutory Liability

Coverage Part 4 - Company Expenses Cover

Your Policy Schedule will indicate which Coverage Parts You have selected.

## General Provisions

### a) General Definitions

The following definitions apply to all Coverage Parts:

**"Acquitted by a Court"** means dismissal of charges prior to a hearing or, upon completion of a defended hearing of a prosecution of an Insured, the delivery by a presiding judge of either: a dismissal of the charges at the conclusion of the prosecution case, or a verdict of Not Guilty at the conclusion of the defended hearing (but shall not include a dismissal pursuant to a plea bargain).

**"Act of Parliament"** means any Act of any parliament or legislative assembly of the Commonwealth of Australia or of any Australian State or Territory, including any amendments, enactments or Statutory Regulations of such Act.

**"Asbestos"** shall mean crocidolite, amosite, chrysotile, fibrous actinolite, fibrous anthophyllite, or fibrous tremolite or any mixture or derivative containing any of those minerals, or dust, fibres or particles of any of those materials.

**"Associated Company"** means any entity in which You own, at the time the Wrongful Act occurred, either directly or indirectly, between 10% and 50% inclusive of the outstanding securities representing the present right to vote for the election of directors.

**"Circumstance"** means an incident, occurrence, fact, matter, act or omission which might be reasonably expected to give rise to a Loss under the Policy.

**"Claim"** means the definition set out in the individual Coverage Part of this Policy under which an indemnity is sought.

**"Coverage Part"** means one of the four divisions within this Policy, comprising: Coverage Part 1 - Directors & Officers Liability; Coverage Part 2 - Employment Practices Liability; Coverage Part 3 - Statutory Liability; Coverage Part 4 - Company Expenses Cover.

**"Defence Costs"** means that part of Loss consisting of reasonable costs, charges, fees and expenses (including but not limited to lawyers' fees, investigators' fees and experts' fees) incurred or agreed by Us in the investigation, defence or settlement of a Claim.

Defence Costs shall include any insurance instruments or bonds which may be required to be paid to institute an appeal or enter an appearance but without any obligation to apply for or furnish such bonds.

Defence Costs shall not include any regular salaries, wages, overtime, fees or benefits of any of Your People.

**"Discovered"** means the moment in which any partner, director or officer, senior manager or equivalent position, not in collusion with any person(s) suspected of a Wrongful Act, becomes aware of a Circumstance.

**"Discovery Period"** means the period after the end of the Period of Insurance where the Insured may continue to notify Us of a Claim but only in relation to Wrongful Acts committed prior to or during the Period of Insurance.



**“Employee”** means any person who is or was (or alleges that but for an Employment Related Wrongful Act would have been) a full-time, part-time or temporary person (including volunteers) working under a contract of service with Your Company and who Your Company has the right to govern and direct in their performance of such services.

Employee does not mean any person who is an independent contractor or agent, partner or director of Your Company.

**“Employment Related Wrongful Act”** means any actual or alleged breach of duty, error, act, omission, neglect or misleading statement by an Insured against Your People in connection with any wrongful, unlawful or unfair:

- (a) discharge or termination of employment, demotion, discipline, dismissal, deprivation of a career opportunity, failure to employ or promote;
- (b) breach of any written or oral employment contract or quasi-employment contract;
- (c) employment-related misrepresentation, invasion of privacy, breach of data protection legislation, humiliation and defamation;
- (d) violation of employment discrimination laws (including sexual or other workplace harassment and discrimination on the grounds of racial or national origin, sex, sexual orientation, religion, maternity, pregnancy, age and disability);
- (e) violation or non-compliance with legislation regulating working hours;
- (f) failure to grant tenure, adopt adequate workplace or employment policies and procedures, furnish accurate job references;
- (g) Retaliatory treatment of whistleblowers and others;
- (h) employment-related wrongful infliction of mental anguish or emotional distress.

**“Excess”** means, where applicable, that part of Loss in respect of each and every Claim:

- (a) which is payable by the Insured; and
- (b) for which We have no liability under this Policy; and
- (c) the amount of which is specified in the Policy Schedule; and
- (d) which does not form part of the Limit Of Liability.

**“Financial Impairment”** means Your status resulting from the appointment by any governmental official, agency or court of any receiver, manager, liquidator (including a provisional liquidator), or similar official to take control of, supervise, manage or liquidate Your Company.

**“Fidelity Loss”** means the ‘actual market value’ for the direct financial loss of an Insured Property caused by an Employee’s fraud or dishonesty in the ordinary course of Your Business.

The ‘actual market value’ shall be determined as the market value of an Insured Property on the day such loss was Discovered.

**“ICA”** means *Insurance Contracts Act 1984 (Cth)*.

**“Insured”** means You and Your People.

**“Insured Property”** means;

- (a) local or foreign currency, coins, bank notes, bullion, cheques, postal orders and money orders; or
- (b) tangible property not including buildings and its fixtures and fittings; or
- (c) Securities;

belonging to, leased by, or in the care custody and control of Your Company.

**“Interrelated Wrongful Acts”** means all Wrongful Acts that have in common any act, error, omission, fact, Circumstance, situation, event, transaction, cause or series of related acts, errors, omissions, facts, Circumstances, situations, events, transactions or causes.

**“Limit of Liability”** for the total period comprising the Period of Insurance and the Discovery Period means the following:

- (a) where there is an overall limit for all Coverage Parts in force, Our maximum liability for each and every Loss and all Losses in the aggregate shall be the overall limit shown in the Policy Schedule;
- (b) where there are individual limits for each Coverage Part, Our maximum liability for each Coverage Part for each and every Loss and all Losses in the aggregate for that Coverage Part shall be the individual limit shown against that Coverage Part in the Policy Schedule;
  - (i) notwithstanding any overall or individual limit a sub-limit shown in this Policy wording restricts the amount payable for each and every Loss and all Losses to which the sub-limit applies;
  - (ii) a sub-limit forms part of the overall or individual limit and is not an additional amount payable beyond the overall or individual limit.

**“Loss”** means the definition set out in the individual Coverage Part of this Policy under which an indemnity is sought.

**“Merger”** means the occurrence of:

- (a) You consolidating, amalgamating or merging all or substantially all of Your assets into, to or with another entity or person or group of persons and/or entities acting in concert; or
- (b) any person(s) and/or entity, whether individually or collectively, acquiring an amount of share capital representing more than fifty per cent (50%) of the voting power for the election of directors of Your Company, or acquiring the voting rights for such an amount of the shares.

**“Non-Profit Entity”** means any corporation, association, trust, fund, institution or foundation:

- (a) not included in the definition of Your Company; and
- (b) established for charitable, community, industry or social purposes, but not for the purpose of making profits.

**“Outside Position”** means the position of director, officer, manager, trustee or other equivalent position held by any of Your People at Your written request in:

- (a) any Non-Profit Entity or Associated Company; or
- (b) any other entity for which Outside Positions cover is confirmed by the Policy Schedule.

**“Policy”** means this document, the Policy Schedule and any attachment or memoranda affixed and any future documents issued to You which amends the Policy wording or Policy Schedule.

**“Period of Insurance”** means the time cover commenced to the time cover expires. The dates are shown on the current Policy Schedule. Unless stated otherwise, cover shall expire at 4.00pm local time at the place where You arranged the cover.

**“Policy Schedule”** means the most recent policy schedule, revised policy schedule or Insurance Certificate issued by Us.

**“Pollutants”** means any substance located anywhere in the world exhibiting any hazardous characteristics including without limitation substances identified on a list of hazardous substances issued by any governmental agency in the country where this Policy is issued. Such substances include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste materials. Pollutants also means any other air emission, odour, waste water, oil or oil products, infectious or medical waste, Asbestos or asbestos products, electric or magnetic or electromagnetic field and noise.

**“Pollution”** means 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, cleanup or associated costs.

**“Proposal”** means all proposals, including attachments and materials submitted therewith, for this Policy or for any Policy of which this Policy is a renewal or replacement. All such proposals, attachments and materials are deemed attached to and incorporated into this Policy.

**“Securities Claim”** means any legal proceeding commenced against an Insured, alleging a violation of any country’s laws in relation to:

- (a) the offering, sale, or listing of any Security; or
- (b) shareholders’ interests in any Security.

**“Security”** shall mean shares, stock, bearer instruments, derivatives, bonds, warrants, debentures, rights under a depository receipt or other securities (or interests therein) of whatever nature.

**“Solicitor”** means any Solicitor, firm of Solicitors, barrister or Queen’s Counsel appointed to act for an Insured in relation to any Claim.

**“Spouse”** means any lawful spouse, civil partner or person deriving a similar status by reason of common law.

**“Stand Alone Superannuation Fund”** means a superannuation fund or pension fund established by Your Company under its own trust structure and either managed by Your Company or on its behalf. It does not include an industry fund, a wholesale master trust, a retail master trust or public sector employees’ funds.

**“Statutory Fine”** means any monetary penalty or costs liable on conviction of any offence under an Act of Parliament.

**“Subsidiary”** means any organisation in which You hold more than 50% of the voting rights of that organisation or have the ability to control decisions made by the board of directors (whether directly or indirectly).

**“Tax Audit Costs”** means the reasonable and necessary professional fees, expenses and disbursements paid to accountants or registered tax agents for advising on and responding to an audit or investigation by a federal or state Commissioner of Taxation into Your liability to pay income tax, fringe benefits tax, capital gains tax, wholesale and sales tax, payroll tax, goods and services tax or superannuation contributions tax in respect to Your Business.

**“Terrorism”** means an act including, but not limited to, the use or threat of force or violence by 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 committed for or in connection with any political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public or any section of the public in fear.

**“We” “Us” “Our”** means Wesfarmers General Insurance Limited ABN. 24 000 036 279 trading as Lumley Insurance.

**“Wrongful Act”** means the definition set out in the individual Coverage Part under which an indemnity is sought.

**“You” “Your” “Your Company”** means, individually and/or collectively, the organisation(s) named in the Policy Schedule and their Subsidiaries in existence at the inception date of the Period of Insurance.

**“Your Business”** means Your business and undertakings, as defined in the Policy Schedule.

**“Your People”** means:

- (a) any one or more persons who were, now are or will be a director, secretary, officer, or Employee of Your Company; or any person who was or now is or may hereafter become a trustee of a superannuation fund established for the benefit of the Employees of Your Company by whatever name called and whether or not validly appointed to occupy or duly authorised to act in such position;
- (b) any person who by virtue of any applicable legislation or law is deemed to be a director of the Your Company.

Provided that the term Your People shall not include:

- (i) any externally appointed officers such as administrators, receivers, statutory managers, liquidators, mortgagees in possession, or the like.

## **b) General Extensions**

The following general extensions apply to all Coverage Parts of this Policy:

### **1) Acquisitions and Creations**

- (a) Subsidiaries created or acquired by You prior to the beginning of the Period of Insurance shall have cover available to them under the terms of this Policy for Wrongful Acts committed or alleged to have been committed after the date of the Subsidiary was created or acquired.
- (b) Subsidiaries created or acquired by You after the beginning of and during the Period of Insurance, either directly or indirectly through any existing Subsidiary, shall have cover automatically available to them under the terms of this Policy for Wrongful Acts committed or alleged to have been committed after such date the Subsidiary was created or acquired subject to the new Subsidiary not being domiciled, registered, incorporated outside the Commonwealth of Australia, and not having any of its Securities listed on any exchange outside of the Commonwealth of Australia.
- (c) Subsidiaries created or acquired by You after the beginning of and during the Period of Insurance which are excluded under (b) above may apply for extension of cover for such Subsidiaries. We will request any additional information required and if We accept them, We will provide terms and conditions, including any additional premium payable, which may be required to extend cover to these Subsidiaries. If We grant cover it will be extended via endorsement and only for Wrongful Acts committed or alleged to have been committed on or after We provide cover.

### **2) Your Previous Subsidiaries**

Subsidiaries sold or dissolved by You after the beginning of the Period of Insurance shall have cover available to them under the terms of this Policy for Wrongful Acts committed or alleged to have been committed prior to the date of sale or dissolution.

### **3) Acquisition of Your Company**

- (a) If during the Period of Insurance:
  - (i) You merge, or consolidate with another organisation or are taken-over; or
  - (ii) another organisation, or person or group of organisations or persons acting in concert acquires Securities or voting rights that result in ownership or voting control by the other organisation or person of more than 50% of the voting rights of the Your Company; or
  - (iii) another organisation, or person or group of organisations or persons acting in concert secures the ability to control decisions made by the board of directors of the Your Company;cover under this Policy continues until termination of the Period of Insurance as set forth in the Policy Schedule to this Policy, but only in respect of Claims for Wrongful Acts taking place prior to such merger, consolidation take-over, acquisition, or the ability to control board of directors' decisions. As of the effective date of such merger, consolidation, take-over, acquisition or the ability to control board of directors' decisions, all premiums paid or due at any time under this Policy are deemed fully earned and non-refundable.
- (b) You agree to provide Us with written notice of such merger, consolidation, take-over, acquisition or ability to control board of directors' decisions as soon as practicable, together with such further information as We may subsequently request.

### **4) Public Relations Costs**

We will pay the costs and expenses of a public relations firm or crisis management firm in the event of a Claim, if such firm would;

- (a) help to reduce any Loss under this Policy; and/or
- (b) assist in exonerating any Insured against an alleged Wrongful Act.

This extension is subject to:

- (a) no costs or expenses being incurred without Our prior written consent; and
- (b) an annual aggregate sub-limit of \$100,000 across all Coverage Parts of this Policy.

## 5) Estates and legal representatives

This Policy provides cover for Claims for the Wrongful Acts of Your People where those Claims are made against the estates, heirs or legal representatives of Your People who are deceased or against the legal representatives, trustees-in-bankruptcy, guardians or attorneys of Your People who are incompetent, infirm, disabled, insolvent or bankrupt, but only to the extent that in the absence of such death, incompetence, infirmity, disability, insolvency or bankruptcy, such Claims would have been covered under this Policy.

## 6) Preservation of indemnity

If any of Your People are unable to obtain the full benefit of a right to indemnity against You to which he or she is entitled, by reason only of Your Company suffering Financial Impairment and having insufficient funds available so as to indemnify Your People, then it is hereby agreed that We shall indemnify Your People against Loss arising from any Claim, up to the annual Limit of Liability to the extent it has not been reduced by any current Claim or earlier Claim. The burden of adducing satisfactory proof to obtain the benefit of this Extension shall rest entirely with Your People and shall include the production of documentary evidence of Your assets and liabilities and any official statements issued by the liquidator, receiver, statutory manager or compromise manager.

## c) General Conditions

The following general conditions apply to all Coverage Parts of this Policy:

### 1) Alteration to risk

No change in, modification of or assignment of interest under this Policy will be effective except when made by a written endorsement to this Policy which is signed by Our authorized representative.

### 2) Authorisation clause

By this Policy, You agree to act on behalf of the Insureds in respect of:

- (a) the giving and receiving of notice of Claim or termination;
- (b) the payment of premiums and the receiving of any return premiums that may become due under this Policy;
- (c) the agreement to and acceptance of endorsements; and
- (d) the giving or receiving of any notice provided for in this Policy except the giving of notice to apply for the Discovery Period.

By this Policy the Insureds agree that You may act on their behalf.

### 3) Breach of conditions

Where any Insured breaches any condition of this Policy and this has resulted in prejudice to the handling and/or settlement of any Claim, which in all other respects qualifies to be indemnified under this Policy, the indemnity afforded by this Policy in respect of such Claim shall be reduced to such sum as would have been payable by Us in the absence of such prejudice.

### 4) Cancelling your Policy

- (a) You may cancel this Policy at any time by giving written notice to Us. We will refund to the Insured the pro-rata premium calculated on the unexpired Period of Insurance from the date of cancellation.
- (b) We may also cancel this Policy in any of the circumstances permitted by the *Insurance Contracts Act 1984 (Cth)*. In the event of the Policy being cancelled by Us, a refund will be paid to the Insured for the pro-rata premium calculated on the unexpired Period of Insurance from the date of cancellation.

## 5) Coverage Parts

The terms and conditions of each Coverage Part of this Policy apply only to that Coverage Part and shall not apply to any other Coverage Part. Each Coverage Part should be read in conjunction with the General Provisions of this Policy. Should there be inconsistency between the General Provisions of the Policy and the terms set in this Policy and each specific Coverage Part, the terms and conditions for the specific Coverage Part shall prevail.

## **6) Fraudulent Claims**

If any Insured, being entitled to indemnity under this Policy, makes any application for indemnity under this Policy, knowing that such application for indemnity is false or fraudulent, We may refuse payment of the claim and may cancel the contract in accordance with the ICA.

## **7) Non-Fraudulent Non-disclosure**

The Insured acknowledges that the information provided to Us in their Proposal for insurance is relied upon by Us in assessing whether to accept the risk and if so, on what terms. The Insured also acknowledges that in the event of a non-fraudulent non-disclosure in the Proposal of a matter the Insured knows or a reasonable person in the circumstances would know is relevant to Our decision whether to accept the risk and on what terms, We are entitled to cancel the contract, if a claim has not been made. Notwithstanding Our right to avoid the Policy for such non-disclosure, We may, in Our absolute discretion, waive Our right to avoid the Policy and confirm indemnity to Your People.

## **8) Interpretation of words**

The singular includes references to the plural and vice versa and any gender includes reference to all other genders.

## **9) Claims and the Limit of Liability**

- (a) All Claims made during the Period of Insurance are subject to Limit of Liability set out in the Policy Schedule for that Period of Insurance.
- (b) A Claim is deemed to be first made on the date the Claim is initially made against any Insured, regardless of whether such date is before or during the Period of Insurance.
- (c) For the purposes of this Policy, all Claims arising out of the same Wrongful Act and all Interrelated Wrongful Acts of any Insured will be deemed one Claim.

## **10) Continuing representations**

In granting cover under this Policy, We relied upon the statements and representations in the Proposal. The Insured represents that all such statements and representations will continue to be true and the continuing accuracy of these statements is deemed material to the acceptance of the risk or the hazard assumed by Us under this Policy.

Notwithstanding what is stated above, any act, error, omission, breach, default or knowledge of any director or officer will be imputed to any Insured for the purposes of a statement or representation made in the Proposal.

## **11) Severability of Exclusions**

In determining cover for Claims against Your People, no fact pertaining to, nor knowledge possessed by, nor any Wrongful Act committed by one of Your People will be imputed to any other of Your People. This severability will not apply in relation to statements or representations in the Proposal.

## **12) Policy Law**

All disputes arising in relation to this Policy shall be determined by an Australian court, and in accordance with the laws of the State or Territory of Australia which this Policy was issued.

## **d) General Claims Conditions**

The following general claims conditions apply to this Policy:

### **1) Reporting and Notification**

- (a) The Insured, will give Us written notice of any Claim made against the Insured, or any Fidelity Loss or any Tax Audit Costs as soon as practicable during the Period of Insurance or during any applicable Discovery Period to:

The Liability Claims Centre of Excellence,  
Lumley Insurance,  
Level 2,  
99 Melbourne Street  
South Brisbane,  
Queensland  
4101

- (b) Full details of the Claim (including any Writ, Summons or other legal document) shall be provided with the notice, which must be forwarded to Us and the Insured shall provide Us with such further information, documentation and co-operation as We may reasonably require.

## **2) Defence Costs**

- (a) Defence Costs are part of and not in addition to the Limit of Indemnity set forth in the Policy Schedule and any Defence Costs paid by Us reduce the available Limit of Indemnity.
- (b) Subject to Claims Condition 6, Allocation, We will advance on behalf of the Insured, Defence Costs that they have incurred in connection with Claims made against them, prior to settlement of such Claims. Provided that to the extent it is finally established by judgment, settlement or other final adjudication that any such Defence Costs are not covered under this Policy, all Insured severally according to their interests, agree to repay to Us such Defence Costs.
- (c) We will indemnify the Insured for Defence Costs arising out of any criminal prosecution in which they are Acquitted by a Court, provided that:
  - (i) no Defence Costs other than those incurred with Our prior written consent shall be payable under this Extension; and
  - (ii) We shall not be under any obligation to advance Defence Costs as they are incurred, but may advance Defence Costs in amounts and at times as We in Our sole and absolute discretion determine; and
  - (iii) the Insured, according to their respective interests, shall repay any payments advanced by Us in the event that they are not entitled to such payment under this Policy.

## **3) Defence and Settlement**

- (a) Unless otherwise agreed by Us in writing; We have the right to investigate any Circumstance and the right, but not the obligation, to conduct in the name of the Insured any investigation and conduct the defence or settlement of any Claim. This right shall cease on the exhaustion of the Limit of Indemnity.
- (b) The Insured agree not to settle or offer to settle any Claim, incur any Defence Costs or otherwise assume any contractual obligation or admit any liability with respect to any Claim without Our prior written consent. We will not be liable for any settlement, Defence Costs, assumed obligation or admission to which We have not so consented in writing.
- (c) The Insured agree to provide Us with all information, assistance and cooperation We reasonably request. Further, the Insured agree that in the event of a Claim, they will do nothing that may prejudice either the Insured's or Our position or any potential or actual rights of recovery. Should the handling or settlement of any Claim be prejudiced by the Insured's actions, the amount payable in respect of such Claim (including costs and expenses) shall be reduced to reflect such prejudice.
- (d) We may settle any Claim for any amount that We deem reasonable and the Insured shall consent to such settlement and provide any assistance with the resolution of the Claim that we reasonably require. If the Insured withholds consent to such settlement or declines to provide the assistance We require, Our liability for all Loss on account of such Claim will not exceed the amount for which We could have settled such Claim plus Defence Costs accrued as of the date such settlement was proposed in writing by Us to the Insured.
- (e) The Insured will not unreasonably withhold any consent referred to in this General Condition.

## **4) Senior Counsel**

We shall not require the Insured to defend any legal proceedings in respect of any Claim against them, nor shall the Insured be able to require Us to defend, on its behalf, any legal proceedings in respect of any such Claim, unless a Senior Counsel (to be mutually agreed upon by the Insured and Us and in default by the chairman of the bar association of the state in which the policy is issued) shall advise that such proceedings should be defended. In formulating such advice, the Senior Counsel shall take into consideration the economics of the matter, the damages and costs that are likely to be recovered by the claimant, the likely Defence Costs and the prospects of the Insured successfully defending the action. The cost of the Senior Counsel's opinion shall be regarded as part of the Defence Costs of any Claim.

In the event that the Senior Counsel advises that, having regard to all the circumstances, the matter should not be defended but should be settled, provided that settlement can be achieved within certain limits that in the Senior Counsel's opinion are reasonable, then the Insured shall co-operate with Us to try to effect such settlement in accordance with this Policy. Should the Insured decide to defend such a Claim, Our liability shall not exceed the amount which the matter could have been resolved for in the advice of the Senior Council.

## 5) Insured's Right to Contest Claims

If the Insured does not agree with a decision made by Us to settle a Claim, the Insured can elect to contest the Claim at its own expense but Our liability will not exceed the amount for which the Claim should be settled in the opinion of a Senior Counsel appointed under Claims Condition 4 (Senior Counsel).

We shall pay all Defence Costs incurred up to the date the Insured notifies Us in writing of its election under this clause, and shall pay the Insured (subject to the Limit Of Liability and the Excess) the amount for which the Claim should be so settled. The Insured expressly agrees that Our liability in respect of such Claim shall then be at an end. If We believe that the Claim will not exceed the Excess, We may instruct the Insured to conduct the investigation, defence and settlement at their own expense. Should the Claim subsequently exceed the Excess, We agree to reimburse the reasonable Defence Costs incurred by the Insured in excess of the Excess, or pay on their behalf any additional Defence Costs, but not exceeding the lesser of the amount Senior Council advised the matter should be settled for or the Limit of Indemnity.

## 6) Allocation

- (a) If in any Claim, the Insured incur Loss jointly with others, or incur in relation to a Claim an amount consisting of both Loss covered by this Policy and Loss not covered by this Policy, then the Insured and We will allocate such amount between covered Loss and uncovered Loss based upon Our assessment of which parts of the amount fall in and which fall outside the policy cover.
- (b) If We and the Insured against whom a Claim is made agree on the allocation of Defence Costs in respect of Loss covered by this Policy and Loss not covered by this Policy, We will advance on a current basis Defence Costs allocated to covered Loss. If there is no agreement on an allocation of Defence Costs, We will advance on a current basis Defence Costs that We believe to be covered under this Policy until a different allocation is agreed, or awarded by an arbitrator if the parties subsequently agree to arbitrate the matter or it is judicially determined.
- (c) Any agreed, or arbitrated or judicially determined allocation of Defence Costs on account of a Claim will be applied retrospectively to all Defence Costs on account of such Claim, notwithstanding any prior advancement to the contrary. Any allocation or advancement of Defence Costs on account of a Claim will not apply to or create any presumption or admission in respect of the allocation of other Loss on account of such Claim or any other Claim.

## 7) Subrogation

We shall be subrogated to the Insured's rights of recovery to the extent of any payment made under this Policy. Each Insured agrees to do everything necessary to secure and preserve such rights, including the execution of such documents as are necessary to enable Us to bring proceedings in the name of the Insured.

## 8) Order of Payment

Where you have an overall annual single aggregate Limit of Liability for this Policy and have a Claim which is covered by one or more Coverage Parts, We will:

- (a) firstly pay Loss due under Coverage Part 1 – Directors' and Officers Liability, b1) Individual Cover;
- (b) then pay Loss under any other applicable Coverage Parts.

## 9) Recoveries

We agree not to exercise Our rights of recovery against an Insured, save where Claims Condition 2(b) applies.

All recoveries obtained by the Insured from parties other than an Insured, after the settlement or resolution of a Claim and after deducting the reasonable cost of obtaining such recovery, shall be applied in the following order:

- (a) To the benefit of the Insured, where the Insured has contributed to a payment exceeding the Limit of Liability made to resolve the Claim;
- (b) To Our benefit for the amount We paid to resolve the Claim;
- (c) To the benefit of the Insured for the Excess paid in respect of the Claim.

All recoveries made prior to settlement of any Claim shall be held by You or the lawyer appointed to act for Our benefit pending any settlement. The monies shall not be applied to You or Us until the matter has been fully resolved and all costs and expenses have been ascertained.



## 10) Alteration and Assignment

No change in, modification of, or assignment of any interest under this Policy shall be effective except when made by Our written endorsement to this Policy which is signed by one of Our authorised signatories.

## 11) Other Insurance

Upon giving notice of any Claim the Insured agrees to provide Us with written details of any other insurance or source of indemnification that may cover or partially cover that Claim.

### e) General Exclusions

The following general exclusions apply to all Coverage Parts of this Policy:

We will not be liable for Loss:

#### 1) Asbestos

arising directly or indirectly, out of inhalation of, or fears of the consequences of exposure to or inhalation of, Asbestos, Asbestos fibres or derivatives of Asbestos; or that part of any loss, cost or expense for the cost of cleaning up, or removal of, or damage to, or loss of use of, property arising out of any Asbestos, Asbestos fibres or derivatives of Asbestos.

#### 2) Bodily Injury and Property Damage

for any bodily injury, mental anguish, emotional distress, sickness, disease or death of any person, or for damage to or destruction of any tangible property including Loss of use thereof, or for defamation or violation of a person's right of privacy except that:

- (a) this exclusion does not apply in respect of: any liability for actual or alleged mental anguish, emotional distress, defamation or violation of a person's right of privacy in any Claim by Your People for any Employment Related Wrongful Act in Coverage Parts 1 and 2; and
- (b) We will pay, on behalf of Your People, Defence Costs arising from any Claim first made against them and notified to Us during the Period of Insurance involving criminal proceedings for corporate killing or corporate manslaughter (or other similar criminal offence in any jurisdiction in which the Company carries on business) provided such payments are not contrary to law.

This exclusion does not relate to any Occupational Health and Safety coverage afforded under Coverage Part 1 and Coverage Part 3.

#### 3) Damages

- (a) for the payment of any tax, including any fine or penalty, resulting from the failure to pay any tax; or
- (b) which consists of punitive, exemplary or aggravated damages; or
- (c) in respect of which it is illegal to insure or indemnify; or
- (d) for damages which are a multiple proportion of any lesser damages award.

#### 4) Fraud

for any dishonest, malicious or fraudulent act or omission or any wilful violation of any statute or regulation if a judgment or other final adjudication adverse to any Insured establishes that such Insured committed such an act, omission or wilful violation.

This exclusion does not apply to Coverage Part 4 – Company Expenses, Extension 2, Fidelity Loss.

#### 5) Insolvency Exclusion

arising directly or indirectly out of, or attributable to or in any way connected to the Financial Impairment, bankruptcy, insolvency, receivership or administration of Your Company.

#### 6) Jurisdiction

brought in a court or tribunal outside of the Commonwealth of Australia or New Zealand; or any liability arising from the application by an Australian court or tribunal of any foreign law.

## **7) Known Claims and Circumstances**

- (a) made against or intimated to the Insured prior to the commencement of the Period of Insurance; or
- (b) notified under any previous policy of insurance; or
- (c) arising out of or connected with any facts or Circumstances which a director or officer of Your Company became aware of prior to the commencement of the Period of Insurance and which a reasonable person in the position of the director or officer would have considered may give rise to a Claim against the Insured.

## **8) Personal Profit**

based upon, arising out of or attributable to any Insured gaining any personal profit, remuneration or financial advantage to which such Insured was not legally entitled.

## **9) Pollution**

based upon, arising out of or attributable to or in any way connected to Pollution, except that:

- (a) under Coverage Part 1 of this Policy, We will pay, on behalf of Your People, Defence Costs with a sub-limit up to the lesser of the Limit of Liability or A\$1,000,000 arising from any Claim first made against them and notified during the Period of Insurance involving criminal or regulatory offences.
- (b) under Coverage Part 1 of this Policy, We will pay, on behalf of Your People, Loss arising from any Claim first made against them and notified during the Period of Insurance involving a shareholder and/or bondholder of Your Company either directly or derivatively alleging loss in the value of the share capital of Your Company by reason of Pollution of any kind; and
- (c) under Coverage Part 3 of this Policy, We will pay, on behalf of Your Company, Loss for any Claim for a Wrongful Act in respect of Pollution.

## **10) Products or Services**

- (a) brought by or on behalf of any Your clients or customers in connection with products or services provided by You; or
- (b) arising directly or indirectly out of any breach of duty in respect of any professional services or professional advice by the Insured; or
- (c) arising directly or indirectly out of any breach of any contract for the provision of professional services or professional advice by the Insured.

## **11) Retroactive date**

arising out of or connected with any facts or Circumstances prior to the retroactive date, if any, specified in the Policy Schedule, provided that nothing contained within this exclusion is interpreted as releasing the Insured from their obligation to disclose prior to the commencement of this Policy all details of Claims already made or outstanding or events likely to give rise to a Claim.

## **12) Securities**

arising directly or indirectly out of, or in any way connected with:

- (a) Your offer, sale or listing of any Securities at any time; or
- (b) any of Your People's offer, sale, or listing of any Securities, but only where such Securities have been offered, sold or listed after commencement of the Period of Insurance;

## **13) Territorial Limits**

brought about by a Wrongful Act under the cover part under which indemnity is sought, committed wholly outside Australia, or arising from a Wrongful Act under the cover part under which indemnity is sought to which the laws of Australia do not apply, or arising from the application by an Australian court or tribunal of any foreign law to a Wrongful Act under the cover part under which indemnity is sought.

## **14) War, terrorism, radioactivity**

occasioned by or through or in consequence directly or indirectly as a result of:

**(a) War**

- (i) war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not) and/or civil war; or
- (ii) mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power; or

**(b) Terrorism**

- (i) death, injury, illness, loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from, or in connection with, any act of Terrorism regardless of any other contributing cause or event; or
- (ii) death, injury, illness, loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from, or in connection with, any action taken in controlling, preventing, suppressing or in any way relating to the matters set out in paragraph (b) (i) of this Exclusion; or

**(c) Radioactive Contamination**

- (i) loss or damage to property eligible for insurance by the relevant Nuclear Insurance Pool and/or Association; or
- (ii) loss, cost, damage, liability or expense directly or indirectly caused by or contributed to by or arising from:
  - (aa) ionising radiation from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
  - (ab) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
  - (ac) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; or
  - (ad) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter.

This Policy also excludes any loss, destruction, damage, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any action taken in controlling, preventing, suppressing, retaliating against, or responding to or in any way relating to the above.

## Coverage Part 1 - Directors & Officers Liability

Note: This Coverage Part is to be read in conjunction with the General Provisions section of this Policy.

### a) Definitions

The following definitions apply to this Coverage Part only.

**“Claim”** means:

- (a) any written document served upon Your People marking the beginning of a civil, criminal, or arbitral proceeding against Your People alleging a Wrongful Act; or
- (b) any written communication demanding compensation or threatening commencement of proceedings in respect of an actual or alleged Wrongful Act; or
- (c) any formal or official investigation (excluding any internal investigation) by a regulatory, governmental, professional or other authorised institution authorised to carry out such an investigation against Your People which may give rise to a Claim.

**“Loss”** means any amount which Your People becomes legally obligated to pay on account of any Claim first made during the Period of Insurance. Such Claim must be made against Your People for Wrongful Acts for which cover applies, including, but not limited to, damages, judgments, compensation, contributions, or settlements and Defence Costs.

Loss does not include any amount for which Your People are absolved from payment.

**“Wrongful Act”** means any error, misstatement, misleading statement, act, omission, negligence, breach of duty, libel, slander, breach of contract, breach of warranty, wrongful trading, or other act actually or allegedly committed or attempted by Your People in their capacity as a director, secretary, officer or Employee of Your Company or in an Outside Position.

### b) Coverage

The following coverage applies to this Coverage Part only.

#### 1) Individual Cover

We will pay, on behalf of Your People, Loss for any Claim for a Wrongful Act first made and notified to Us during the Period of Insurance, provided Your People are not indemnified by You and are legally obligated to pay.

#### 2) Your Reimbursement cover

We will pay You for any Loss arising from Your indemnification of Your People, as permitted or required by law, and that Your People have become legally obligated to pay on account of any Claim for a Wrongful Act first made and notified to Us during the Period of Insurance.

### c) Extensions

The following extensions apply to this Coverage Part only.

#### 1) Employment Superannuation Scheme

We will pay, on behalf of Your People, for any Claim by reason of any Wrongful Act resulting in Loss arising out of their individual or collective capacities as trustees of the Your Company's Stand Alone Superannuation Fund. Cover provided by this extension shall not be excluded solely on the ground that a Claim is brought by a member of the superannuation or pension scheme who is also a director or officer of the Your Company.

#### 2) Outside Position liability

- (a) We shall indemnify any of Your People for Loss arising out of a Wrongful Act committed whilst serving in an Outside Position of any Non-Profit Entity or Associated Company or any entity listed in the Policy Schedule.
- (b) Any cover provided in this extension will only be in excess of any indemnity available from or provided by, or insurance taken out by, the entity in which Your People serve in the Outside Position or any insurance taken out by any other entity that covers Your People in the Outside Position.

### 3) Retired Directors

In the event that any of Your People ceases to be a director or officer of Your Company prior to the expiry of the Period of Insurance for reasons other than:

- (a) disqualification from holding the office of director or officer and/or;
- (b) dismissal from their position as director or officer and/or;
- (c) the acquisition of Your Company as noted in Conditions and/or;
- (d) Your Company being wound-up.

Your People shall be entitled to a free Discovery Period for a period of 84 months, provided always that this Discovery Period shall not apply where You renew or replace this Coverage Part (whether with Us or not).

### 4) Spousal liability

If a Claim against Your People includes a Claim against Your People's Spouse solely by reason of:

- (a) the legal status as a spouse of Your People; or
- (b) ownership or interest in property which the Claimant seeks as recovery for alleged Wrongful Acts of Your People:  
all Loss which such spouse becomes legally obligated to pay by reason of such Claim will be treated for purposes of this Coverage Part as Loss which Your People becomes legally obligated to pay on account of the Claim made against Your People.

All terms and conditions of this Coverage Part, including without limitation the retention amount, applicable to Loss incurred by Your People in the Claim will also apply to such spousal Loss.

The cover provided by this extension does not apply to the extent the Claim alleges any act or omission by the Your People's Spouse.

### d) Exclusions

The following exclusions apply to this Coverage Part only.

We will not be liable for Loss on account of any Claim:

#### 1) Appropriate Coverage Part

if an indemnity is available under any other Coverage Part of this Policy or any other Policy that more appropriately responds to the Loss.

#### 2) Insured versus Insured Exclusion

arising out of or instigated against Your People (whether in Your name or not) by any other of Your People, provided that this exclusion shall not apply to:

- (a) any Claim brought by Your People solely for a contribution or indemnity in respect of a Claim brought against any other of Your People and which is otherwise covered under another Coverage Part of this Policy; or
- (b) any Claim brought in Your name as a shareholders derivative action, provided that such Claim is not solicited or assisted by any of Your People; or
- (c) any Claim brought in Your name by a liquidator, administrator, or receiver or manager, provided that such Claim is not solicited or assisted by any of Your People.

#### 3) Major Shareholder Exclusion

brought or maintained by or on behalf of any shareholder holding or controlling (directly or beneficially) 20% or more of the voting shares or rights or issued capital of the Your Company if the Wrongful Act occurred or allegedly occurred on or after the date on which the shareholder became a major shareholder.

#### **4) Outside Position**

for a Wrongful Act by Your People in an Outside Position if such Claim is brought or maintained by or on behalf of the entity in which Your People serves or by or on behalf of any director, officer or trustee of such entity except:

- (a) a Claim that is a derivative action brought or maintained on behalf of such entity without the solicitation, assistance or active participation of such entity or any director, officer or trustee of such entity; or
- (b) a Claim brought or maintained by a director, officer or trustee of such entity for any actual or alleged Employment Related Wrongful Act; or
- (c) a Claim brought or maintained by an external auditor appointed by the Outside Directorship Company; or
- (d) a Claim brought or maintained by a liquidator, administrator or receiver or manager or equivalent in any jurisdiction on behalf of the such entity without the solicitation, assistance or active participation of any Your People or by or on behalf of any director or officer in such entity.

#### **5) Fine and Penalties**

which consists of fines or penalties.

However this exclusion shall not apply, up to a sub-limit of \$1,000,000, where Your People have committed an offence under an Act of Parliament punishable on conviction by a Statutory Fine unless:

- (a) such Statutory Fine is due to an actual or alleged violation of any law or regulation with respect to vehicle, air or marine traffic and/or;
- (b) such Statutory Fine is attributable to, or in any way involving Your People's intentional or reckless disregard of the provisions of any Act of Parliament and/or;
- (c) such Statutory Fine (or part of a Statutory Fine) is a penalty imposed for failing to comply with any enforcement order or remedial order or for the cost incurred by Your People in complying with any enforcement or remedial order and/or;
- (d) such Statutory Fine relates to an offence other than in the course of or in connection with Your Business.

## Coverage Part 2 - Employment Practices Liability

Note: This Coverage Part is to be read in conjunction with the General Provisions section of this Policy.

### a) Definitions

The following definitions apply to this Coverage Part only:

**“Claim”** means:

- (a) any written document served upon Your Company marking the beginning of a civil, criminal, or arbitral proceeding against Your Company alleging a Wrongful Act; or
- (b) any written communication demanding compensation or threatening commencement of proceedings in respect of an actual or alleged Wrongful Act; or
- (c) any formal or official investigation (excluding any internal investigation) by a regulatory, governmental, professional or other authorised institution authorised to carry out such an investigation against Your Company which may give rise to a Claim.

**“Loss”** means any amount which Your Company becomes legally obligated to pay on account of any Claim made during the Period of Insurance. Such Claim must be made against Your Company for Wrongful Acts for which cover applies, including, but not limited to, damages, judgments, settlements and Defence Costs.

Loss does not include:

- (a) any amount for which Your Company is absolved from payment;
- (b) taxes, fines or penalties imposed by law;
- (c) the multiple portion of any multiplied damage award or punitive or exemplary damages;
- (d) any other amount which is uninsurable under the law pursuant to which this Policy is construed.

**“Wrongful Act”** means an Employment Related Wrongful Act.

### b) Coverage

The following applies to this Coverage Part only.

We will pay, on behalf of Your Company, Loss for any Claim for a Wrongful Act first made and notified to Us during the Period of Insurance.

### c) Exclusions

The following exclusions apply to this Coverage Part only.

We will not be liable for Loss on account of any Claim:

#### 1) Appropriate Coverage Parts

if an indemnity is available under any other Coverage Part of this Policy or any other Policy that more appropriately responds to the Loss.

#### 2) Your People

arising out of Your People committing a Wrongful Act.

#### 3) Employee Entitlements

for payment to any of Your People of any amount which Your Company was obligated (whether under any statute or any express or implied term of any employment agreement or otherwise) to pay prior to the Wrongful Act being committed.

#### 4) Employee Remuneration

for the payment of any remuneration or benefit to any of Your People who has been reinstated into their former position after a Wrongful Act.

## **5) Industrial action**

arising from Wrongful Acts committed during any lockout, strike, picket, stand-down or suspension, or other industrial dispute.

## **6) Modifications to Workplace**

for the cost of physical modifications to Your Company's workplace, or the cost of changes to workplace procedures.

## **7) Non-Compliance**

for non compliance with any judgment, award, determination or demand against Your Company issued or published by any Employment Relations Authority, Employment Court, Court of Appeal, Human Rights Commission, Complaints Review Tribunal, Privacy Commission, or Labour Inspector employed by a Department of Labour (or equivalent) or any other Court or statutory body.

## **8) Redundancy Compensation**

for failure by Your Company to pay adequate redundancy compensation or benefit in accordance with any legal requirement to any of Your People dismissed by reason of redundancy.

## **9) Statutory Liability**

arising out of or connected with any statute relating to workers compensation, accident compensation or occupational health and safety.



## Coverage Part 3 - Statutory Liability

Note: This Coverage Part is to be read in conjunction with the General Provisions section of this Policy.

### a) Definitions

The following definitions apply to this Coverage Part only.

**“Claim”** means:

- (a) any formal or official investigation (excluding any internal investigation) by a regulatory, governmental, professional or other authorised institution authorised to carry out such an investigation against Your Company which might give rise to a Loss; and/or
- (b) any written communication by a regulatory, governmental, professional or other authorised institution served upon Your Company threatening commencement of legal proceedings, or marking the beginning of legal proceedings against Your Company alleging a Wrongful Act.

**“Loss”** includes any Defence Costs and any Statutory Fine issued during the Period of Insurance.

Loss does not include:

- (a) any amount for which Your Company is absolved from payment;
- (b) any compliance, remedial, reparation or restitution costs;
- (c) the multiple portion of any multiplied damage award;
- (d) punitive or exemplary damages; or
- (e) any other amount which is uninsurable under the law pursuant to which this Policy is construed.

**“Wrongful Act”** means any act or omission by Your Company in connection with the Your Business that may result in an allegation that Your Company has committed an offence under an Act of Parliament punishable on conviction by Statutory Fine or imprisonment.

### b) Coverage

The following coverage applies to this Coverage Part only.

We will pay, on behalf of Your Company, Loss for any Claim for a Wrongful Act first made and notified to Us during the Period of Insurance.

### c) Exclusions

The following exclusions apply to this Coverage Part only.

We will not be liable for Loss on account of any Claim:

#### 1) Appropriate Coverage Parts

if an indemnity is available under any other Coverage Part of this Policy or any other Policy that more appropriately responds to the Loss.

#### 2) Employment Practices Exclusion

arising out of or connected with any Claim in relation to an Employment Related Wrongful Act.

#### 3) Enforcement Order Exclusion

for payment of any fine (or part of a fine) which is a penalty imposed for failing to comply with any enforcement order or remedial order or for the cost incurred by You in complying with any enforcement or remedial order.

#### 4) Motor, Air and Marine Exclusion

arising out of an actual or alleged violation of any law or regulation with respect to vehicle, air or marine traffic.

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**5) Reckless Disregard**

arising out of or based upon, attributable to, or in any way involving Your Company's intentional or reckless disregard of the provisions of any Act of Parliament.

**6) Your Business**

arising out of activities other than in the course of or in connection with Your Business.

**7) Unreasonable Plea**

where Your Company is intending to plead guilty or not guilty, but the intended plea is not reasonable, based on the available evidence, the weight and cogency of that evidence, the burden of proof and the applicable law.

## Coverage Part 4 - Company Expenses

Note: This coverage part is to be read in conjunction with the General Provisions section of this Policy.

### a) Definitions

The following definitions apply to this Coverage Part only.

**"Claim"** means:

- (a) any written communication demanding compensation or threatening the commencement of proceedings in respect of an actual or alleged Wrongful Act
- (b) any written document served upon Your Company marking the beginning of a civil, criminal or arbitral proceeding against Your Company alleging a Wrongful Act

**"Loss"** means Solicitors' reasonable fees, expenses and disbursements incurred by Your Company in investigating or defending a Claim.

**"Wrongful Act"** means; any error, misstatement, misleading statement, act, omission, negligence, breach of duty, libel, slander, breach of warranty, wrongful trading, or other act actually or allegedly committed or attempted by Your Company in connection with Your Business.

### b) Coverage

The following coverage applies to this Coverage Part only.

We will pay for Loss on behalf of Your Company for any Claim for a Wrongful Act first made and notified to Us during the Period of Insurance.

### c) Extensions

The following extensions apply to this Coverage Part only.

#### 1) Tax Audit Costs

We will pay Tax Audit Costs up to a sublimit of \$250,000.

However this extension will not pay Tax Audit Costs;

- (a) incurred without Our prior written consent; and/or
- (b) arising from Your improper, unwarranted or unjustified refusal or failure to comply with any lawful request made by a state or federal Commissioner of Taxation for the production of documents or the supply of information. Refusal or failure to comply will not be deemed improper, unwarranted or unjustified if You refuse or fail to comply based upon the advice of Your accountant or tax agent that such refusal or failure is appropriate; and/or
- (c) relating to audits or investigations under customs legislation; and/or
- (d) relating to audits or investigations of income received or earned where the source of income is, outside the Commonwealth of Australia or where the services giving rise to the claim are performed by persons or entities ordinarily resident outside Australia; and/or
- (e) relating to audits or investigations arising out of any fraud or fraudulent act or omission committed by You or on Your behalf; and/or
- (f) arising from audits or investigations where You, or any person acting on Your behalf, has become aware of any error or deficiency in any return of income or other documentation supplied to a State or Federal Commissioner of Taxation and You, or any person acting on Your behalf, has failed to notify the Commissioner of that error or deficiency within the lesser of a reasonable time or the time limit for contesting such an error or deficiency.

## 2) Fidelity Loss

We will reimburse Your Company, up to a sub-limit of \$750,000, for a Fidelity Loss.

This extension shall also cover subject to the sub-limit:

- (a) auditors fees, costs, charges and expenses incurred with our prior written consent that are reasonably necessary to determining the value of a Fidelity Loss and are reasonable in amount on Our acceptance that a Fidelity Loss has occurred; and
- (b) Fidelity Loss in relation to Your Stand Alone Superannuation Fund; and
- (c) Fidelity Loss in relation to any welfare, social or sporting club formed with Your knowledge and consent and designed exclusively for the benefit of Your Employees.

However, this extension shall not cover Fidelity Loss;

- (a) if an indemnity is available under any other Coverage Part of this Policy or any other Policy that more appropriately responds to the Loss; or
- (b) Discovered more than twelve (12) months after the Fidelity Loss is alleged to have been committed; or
- (c) arising out of, or in any way related to any proprietary information, intellectual property, trade secrets, confidential processing methods, or other confidential information of any kind; or
- (d) arising out of, or in any way related to the destruction or damage to any premises or building; or
- (e) arising out of, or in any way related to or caused by an agent, broker, authorised representative, consignee, contractor, subcontractor or similar representative; or
- (f) arising out of, or in any way related to indirect or consequential loss or damage of any kind, provided that this exclusion shall not apply auditors fees, costs, charges and expenses that are reasonably required in determining the value of a Fidelity Loss and are reasonable in amount; or
- (g) first Discovered prior to the commencement of the Period of Insurance, or after the expiry of the Period of Insurance; or
- (h) which can only be proved by means of one or more of the following: a profit and loss computation or comparison or a comparison of inventory records with an actual physical inventory count; or
- (i) arising out of, or in anyway related to the loss of, damage to, or reproduction of: records, manuscripts, accounts, tapes or any other form of hard copy or electronic records; or
- (j) arising out of, or in anyway related to the authorised or unauthorised trading of Insured Property by an Employee, regardless of whether such trading is in the name of an Insured or not, and regardless of whether any accounts used are genuine or fictitious; or
- (k) arising out of, or in anyway related to, the voluntary giving, exchanging, purchasing or surrendering of Insured Property.

## d) Exclusions

The following exclusions apply to this Coverage Part only.

We shall not be liable for Loss on account of any Claim:

### 1) Appropriate Coverage Part

if an indemnity is available under any other Coverage Part of this Policy or any other Policy that more appropriately responds to the Loss.

### 2) Intentional Claims

that Your Company has intentionally encouraged.

### 3) Motor Exclusion

arising out of an actual or alleged violation of any law or regulation with respect to vehicle, air or marine traffic.

### 4) Fine and Penalties

which consists of fines or penalties.

## **5) Your People Exclusion**

- (a) arising from or solicited by Your People; or
- (b) arising out of or connected with an Employment Related Wrongful Act.

## **6) Anti-Competitiveness Practices Exclusion**

arising out of any actual or alleged anti-competitive practice or accusations of illegal or unfair restraints of trade.

## **7) Intellectual Property Exclusion**

arising out of any actual or alleged breach of intellectual property or copyright.

## **8) Breach of Contract Exclusion**

arising out of any actual or alleged breach of contract.

## **9) Statutory Liability**

arising out of an actual or alleged offence under an Act of Parliament.

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